In the Exchequer of Pleas.

doc 26

Easter Term in the 7th Year of the Reign of Queen Victoria.

Fonseca agt. Foote & ano?

Tuesday the 7th day of May 1844. } Upon reading the Rule made in this cause of the twentieth day of April last, the Affidts of George Lindsay, the Affidavit of Murray Maxwell Johnson, and hearing Mr Willes of Counsel for the Plaintiff, and Mr Waddington of Counsel for the Defendants, It is Ordered that a joint Commission issue immediately directed to two Commissioners on behalf of the Plaintiff and two Commissioners on behalf of the Defendants for the Examination and Cross-Examination viva voce of Witnesses for both parties by a Commissioner to be sent out for that purpose and to perform all such other Acts therein as are authorized and directed by the Statute of the 1st Wm. 4th. cap. 22 to be expressed in such Commission And in case any dispute arise as to the form of such Commission the same to be settled by a Judge at Chambers And it is further Ordered that such Commissioner be chosen by both parties, and if they cannot agree then by a Judge at Chambers - And that the charges and Expences of such Commissioner be paid by the Defendants at all events And it is further Ordered that each party give Heads of intended Examination

To what place

and that either may send out written —
Interrogatories and Cross-Interrogatories if
he please — And it is further Ordered that
the said Commission Depositions Interrogatories
Cross Interrogatories and Examinations to be
taken as aforesaid be transmitted under the
seal of the said Commissioners or Commissioner
and certified by them or him as directed
by the said Act (and to be specified in the said
Commission) to Samuel Dare Esqre. one of the
Masters of this Court on or before the 5.th day
of next Michaelmas Term And that the same
be permitted to be read and given in Evidence
on the Trial of this Cause, saving all just
exceptions And that the trial of this Cause
be postponed until the return of such
Commission. —

By the Court

In the Exchequer of Pleas

doc 27

Manoel Pinta da Fonseca - Plaintiff

and

John Foote and Henry James
Matson ——————————— } Defendants

William Frogatt Robson of No 10 Lancaster
Place near the Strand in the County of Middlesex
Solicitor of the Admiralty and Attorney for the
above named Defendants in this Cause maketh
Oath and saith that this action is brought
against the Defendants by the abovenamed
Plaintiff a subject of and residing within the
Brazilian Empire for an alledged trespass
in seizing and carrying away and destroying
certain Goods and Chattels of the Plaintiff
on the East Coast of Africa. That the Cause
is laid in London and that issue was joined
in the said Cause on the 3rd day of April last
and Notice of Trial given for the 1st Sitting
in last Easter term. And this Deponent further
saith that Edmund Gabriel late Clerk on

board Her Majesty's Ship Madagascar and now
at Devonport is a material and necessary witness
for the said Defendants in this Cause as he is
advised and believes and that they cannot duly
proceed to the trial thereof without the
testimony of the Rt Edmund Gabriel by
whom this Deponent has been informed and
such information he believes to be true
that he had been appointed by Her Majesty
to a situation abroad on the Coast of Africa
as Commissioner of Arbitration to the
British & Portuguese Court of Mixed
Commission at St Paul de Loando
and is expected shortly to leave England
to fulfil the duties of the said Appointment
and that his return to this Country is
uncertain and may not be for a
lengthened period -

Sworn &c

No. 10

Fonseca v Foole

Copy Rule for
Commission &c.

In the Exchequer of Pleas

25 Jany 1844

doc. 29

The Twenty fifth day of January in the year of our Lord one thousand eight hundred and forty four.

Foote and another ... ats Fonseca

And the Defendants by William Frogatt Robson their Attorney Say that they are not guilty of the said supposed Trespasses by the plaintiff above laid to their charge or of any or either of them or any part thereof in manner and form as the plaintiff hath above thereof in his Declaration complained against them and of this the Defendants put themselves upon the Country.

Second plea

And for a further plea in this behalf to the first Count of the Declaration the Defendants say that the goods and chattels in that Count mentioned were not nor were any nor was either of them or any part thereof the goods or chattels of the plaintiff in manner and form as in the first Count is alleged and of this the Defendants put themselves upon the Country &c.

Third plea

And for a further plea in this behalf to the first Count of the said Declaration the Defendants say that before the committing of the said supposed trespasses in the said first Count mentioned or any of them and from thence until and at the said time when &c to wit on the day and year in the first Count mentioned there was and from thence hitherto hath been and still is a certain Independent State to wit a State called Cabinda situate on the West Coast of Africa which during all the time aforesaid was in amity and at peace with this Kingdom and was presided over and ruled by certain persons as Chiefs who had the supreme authority within and were the Government of the said State And the Defendants further say that before and at the said time when &c in the first Count mentioned to wit on the day and year last aforesaid the said Government was waging War against the said plaintiff and divers other persons and that there then was war between the said Government and the plaintiff and others whereof the plaintiff at the said time when &c had notice whereupon the said Government did just before the said time when &c to wit on the day and year last aforesaid authorize and empower the Defendants to burn break tear damage and destroy the said goods and chattels in the first Count mentioned and thereupon the Defendants being so authorized and so empowered and as the Agents and by the command of the said Government did at the said time when &c to wit on the day and year last aforesaid in time of and by right of and in the cause of the War aforesaid burn break tear damage and destroy the said goods

1.

and Chattels the same then being within the said State which are the same trespasses in the said first Count mentioned and this the Defendants are ready to verify &c wherefore they pray Judgment if the plaintiff ought as to the said first Count to have or maintain his Action against them.

Fourth plea. And for a further plea to the first Count of the Declaration the Defendants say that before and at the said time when &c in that Count mentioned the importation of Slaves into the Empire of Brazil from any other part of the World had been and was prohibited and declared illegal by the Laws of the said Empire of Brazil and that it was during all the time aforesaid contrary to the Law of Brazil for any Subject of the said Empire to have a be possessed of goods or chattels in any part of the World for the purpose of exchanging or bartering the same for Slaves with the intent to import or cause to be imported into ~~any~~ the Empire of Brazil the said Slaves when so procured and obtained in exchange for the said goods and chattels And the Defendants further say that the plaintiff before and at the said time when &c in the first Count mentioned to wit on the day and year in that Count mentioned was and still is a Subject of the Brazilian Empire well knowing the premises and the plaintiff shortly before the said time when &c in the first Count mentioned to wit on the day and year last aforesaid had and was possessed of the goods and chattels in that Count mentioned at Cabinda in Africa for the purpose of exchanging and bartering the said Goods and Chattels there for Slaves with intent to import and cause to be imported into the Empire of Brazil the said Slaves when so procured and obtained in exchange for the said Goods and Chattels contrary to the laws of the said Empire And the Defendants say that the plaintiff at the said time when &c was about to exchange and would have exchanged the said goods and chattels and each and every one of them for Slaves with the unlawful intent last aforesaid had not the said Goods and Chattels been burned broken to pieces torn to pieces damaged and destroyed as respectively as hereinafter mentioned Whereupon the Defendants then being Subjects of this Kingdom at the said time when &c to wit on the day and year last aforesaid in order to prevent the plaintiff from acting in the illegal and wicked manner aforesaid did burn break to pieces tear to pieces damage and destroy the said Goods and Chattels in the first Count mentioned doing no unnecessary damage to the plaintiff in that behalf as they

lawfully might for the cause aforesaid which are the same trespasses in the first Count mentioned And the Defendants further say that by the Law during all the time in the said first Count mentioned and from thence hitherto and still in force in the Brazilian Empire the plaintiff being such Subject as aforesaid could not at any time nor can he now have or maintain any action or Suit whatsoever nor obtain a have any remedy or redress whatsoever for the burning breaking tearing damaging and destroying the said goods and chattels so by him then had and possessed with the illegal intent and for the illegal purpose aforesaid and this the defendants are ready to verify wherefore they pray Judgment if the plaintiff ought as to the said first Count to have a maintain his Action against them.

Fifth plea .. And for a further plea in this behalf to the first Count the defendants say that before the time of committing of the supposed trespasses in the first Count mentioned or any of them to wit on the twenty third day of November in the year of our Lord one thousand eight hundred and twenty six a Convention and Treaty was entered into and concluded between our late Lord King George the fourth and Don Pedro of the Emperor of Brazil the said High Contracting parties then having full power and authority to enter into and conclude the said treaty on the part of this Kingdom and the Emperor of Brazil respectively for the regulation and entire abolition of the African Slave Trade as far as related to the dominions and Subjects of the Brazilian Empire and that by the first Article of the said Convention and treaty it was agreed upon and concluded between the said High Contracting parties that at the expiration of three years to be reckoned from the exchange of the ratifications of the said Treaty it should not be lawful for the Subjects of the Emperor of Brazil to be concerned in the carrying on of the African Slave Trade in any manner or under any pretence whatsoever and that the carrying on such trade after that by any person Subject of His Imperial Majesty should be deemed and treated as piracy And Defendants say that afterwards and before the said time when &c to wit on the first day of January in the year one thousand eight hundred and twenty seven the said Convention and Treaty was duly ratified and the ratifications thereof exchanged and that the said Convention and Treaty from thence until and at the said time when &c continued and was and still is in full force and effect and a much longer time than three years to wit fifteen years reckoning from the time of the exchanging of the ratifications of the said Convention and Treaty had expired before

the said time when &c And the Defendants say that the plaintiff at the time of the making and ratifying of the said Convention and Treaty and from thence until and at the said time when &c to wit on the day and year in the first Count mentioned was a Subject of and owed allegiance to the said Empire of Brazil and obedience to the Laws of that Empire and that the plaintiff after the said period of three years had expired and before and at the time when &c to wit on the day and year in the first Count mentioned well knowing the premises was concerned and employed in carrying on and did during all that time carry on the African Slave Trade contrary to the provision of the said Convention and Treaty and in violation thereof at a certain place on the Western Coast of Africa to wit Cabinda and that in the course of his carrying on the said Trade or Traffic and for the purpose thereof the plaintiff before the said time when &c to wit on the day and year in the first Count mentioned had caused and procured the said Goods and Chattels in the said first Count mentioned to be impaled into the said place on the west Coast of Africa for the purpose and with the intent and of using the same in carrying on the said Trade or Traffic to wit by the then and there exchanging the said Goods and Chattels respectively for Slaves Natives of Africa and obtaining such Slaves in exchange for the same respectively and thereupon transporting them the said Slaves so obtained to certain other parts out of Africa and beyond the Seas to be there sold and used as Slaves contrary to the provisions of the said Convention and Treaty and in violation thereof and that the plaintiff at the said time when &c to wit on the day and year last aforesaid was possessed of the said Goods and chattels at the said place for the purpose of their being so used in carrying on the said Trade or Traffic contrary to the provisions of the said Treaty and in violation thereof to wit in the manner aforesaid and that the plaintiff was then about to and intended to use and would then have used the said Goods and Chattels for the purpose aforesaid to wit in manner aforesaid contrary to the provisions of the said Convention and Treaty and in violation thereof had not the same been burnt broken torn damaged and destroyed as hereinafter mentioned Whereupon the Defendants then being Subjects of this Kingdom and holding the rank of Officers in the Royal Navy thereof and being each of them in the command of a Vessel of War in the Naval Service thereof and being then duly authorized and instructed to carry into effect the provisions of the said Convention and Treaty in order to prevent the plaintiff from so using the said Goods and Chattels as aforesaid and from violating the Convention and Treaty aforesaid did as the Servants of Her Majesty Queen Victoria then and still the Queen of this Kingdom and by

Her Command at the said time when &c to wit on the day
and year last aforesaid at the said place on the Western Coast
of Africa burn break tear damage and destroy the said Goods and
Chattels using no more force and doing no more than was ne-
cessary for the purpose of preventing the Plaintiff from so using
the said Goods and Chattels as aforesaid contrary to the said provisions
of the said Convention and Treaty and in violation thereof which are
the same trespasses in the said first Count mentioned And this the
Defendants are ready to verify &c Wherefore they pray judgment if the
Plaintiff ought as to the said first Count to have or maintain his
Action against them.

Sixth Plea - And for a further Plea in this behalf to the first Count
the Defendants say that before and at the time of the committing of
the supposed Trespasses in the said first Count mentioned the Slave Trade
had been and was in the part of the Empire of Brazil and by the Law
of that Empire totally and finally abolished in all parts of the World
and that it was during all the time aforesaid contrary to the Laws of
Brazil for any Subject of that Empire to be concerned or take any
part whatsoever in the Trade or Traffic in Slaves and that it was
during all the time aforesaid contrary to the Law of the said Empire of
Brazil for any Subject thereof to be possessed of any goods or chattels for
the purpose and with the intent of using the same in carrying on
the said Trade or Traffic And the Defendants say that at the said
time when &c to wit on the day and year in the first Count mentioned
the Plaintiff was a Subject of and owed allegiance to the said Empire of
Brazil and obedience to the Laws thereof and that before and at the said
time when &c to wit on the day and year last aforesaid he the Plaintiff
well knowing the premises was concerned and employed in carrying on
and did before and at the said time when &c to wit on the day and
year last aforesaid carry on the said Trade or Traffic at a certain place
on the Western Coast of Africa to wit at Cabinda and that in the
course of his carrying on the said Trade or Traffic and for the purpose
thereof the Plaintiff before the said time when &c to wit on the day
and year in the first Count mentioned had caused and procured the
said goods and chattels in the said first Count mentioned to be im-
ported in the said place on the West Coast of Africa for the pur-
purpose and with the intent of using the same in carrying on the
said Trade or Traffic to wit by exchanging the said goods and chattels
respectively for Slaves, Natives of Africa and obtaining Slaves as
Natives of Africa in exchange for the same respectively and thereupon
transporting the said Slaves obtained to certain other places out of Africa

and beyond the Seas to be there sold and used as Slaves in or
violation of the Law of Brazil aforesaid and that the Plaintiff at
the said time when &c to wit on the day and year last aforesaid was
possessed of the said Goods and Chattels at the said place for the or
purpose of their being so used in carrying on the said Trade in or
manner aforesaid and that the Plaintiff was then about and intended
to use and would have then used the said Goods and Chattels in or
manner and for the purposes aforesaid in carrying on the said Trade
or Traffic in violation of the said Law had not the Defendants burned
broken torn damaged and destroyed the same as hereinafter mentioned
Whereupon the said Defendants then being Subjects of this Kingdom in
order to prevent the Plaintiff from so using the said Goods and Chattels
as aforesaid and from violating the Laws aforesaid did at the said time
when &c to wit on the day and year last aforesaid burn break tear damage
and destroy the said Goods and Chattels doing no unnecessary Damage
to the Plaintiff in that behalf as they lawfully might for the Cause
aforesaid which are the same Trespasses in the said first Count mentioned
And these Defendants aver that by the Law of the said Empire of
Brazil in force before and at and since the said time when &c the or
Plaintiff so being such Subject as aforesaid could not at any time have
maintained nor can he now maintain any Action or Suit whatsoever nor
had he any remedy or redress whatsoever for the said burning breaking
tearing damaging and destroying the said Goods and Chattels or any or
either of them so then by him possessed and used for the unlawful purposes
aforesaid And this the Defendants are ready to verify &c Wherefore they
pray Judgment if the Plaintiff ought as to the said first Count to have or
maintain his Action against them.

Seventh Plea. And for a further Plea in this behalf as to the supposed
Trespasses in the first Count of the said Declaration mentioned the Defendants
say that long before the committing of the supposed Trespasses in the or
first Count mentioned or any of them and until and at the said time
when &c there was and from thence hitherto hath been and still is a
certain Independent State to wit a State called Cabinda situate on the
West Coast of Africa which during the time aforesaid was in Amity
and at Peace with this Kingdom and was presided over and governed by
certain persons as Chiefs who had the supreme authority within and
over the Government of the said State And these Defendants further
say that before and at the time of committing of the Trespasses in the
said first Count mentioned to wit on the day and year in that Count or
mentioned it was contrary to the Law of the said State for any person
without the leave or licence of the said Government to carry on the Trade

or Traffic in Slaves within the said State and that all goods and ac-
chattels brought into the said State for the purpose and with the ac-
intent of being used or employed in carrying on the Trade or Traffic -
without the Leave or License aforesaid within the State were by the Law
of the said State in force there during and at the time aforesaid liable to
be burned broken torn damaged and destroyed and might lawfully be burnt
broken torn damaged and destroyed by the said Government or by any other
person by the command or Authority thereof And that before the said time when
&c to wit on the day and year in the said first Count mentioned the Plaintiff
without the leave or license and against the Will of the said Government
caused to be brought and there then were brought into the said State the
said Goods and Chattels in the said first Count mentioned for the purpose
and with the intent aforesaid And that the said Goods and Chattels from
the time at which they were so brought into the said State until and at the
said time when &c remained and were in the said State in the possession
of the Plaintiff for the purpose aforesaid and were then by the Plaintiff
intended to be so used and would then but for the burning breaking tearing
damages and destroying of the same as hereinafter mentioned have been used
by the Plaintiff in carrying on the said Trade or Traffic to wit by exchanging
the same for Slaves, Natives of Africa within the said State and in
transporting the said Slaves so obtained to parts out of Africa and beyond
the Seas to be there sold and used as Slaves Whereupon the said Goods
and Chattels before and at the said time when &c to wit on the day
and year last aforesaid became and were by the Law of the said State
liable to be burned broken torn damaged and destroyed and might for
the Cause aforesaid lawfully be burned broken torn damaged and so
destroyed by the said Government or any person by the authority or so
command thereof And thereupon the Defendants in aid and assistance
of the said Government and as the Agents thereof and by the authority so
and command thereof did at the said time when &c to wit on the day
and year last aforesaid within the said State burn break tear damage
and destroy the said Goods and Chattels in the said first Count of the
said Declaration mentioned the same Goods and Chattels then being within
the said State and subject to the Laws thereof as they lawfully might for
the Cause aforesaid doing no unnecessary damage to the Plaintiff in so
that behalf which are the supposed Trespasses in the first Count mentioned
And this the Defendants are ready to verify &c wherefore they pray Judgment
if the Plaintiff ought as to the said first Count to have or maintain his
Action against them. -

Eighth Plea - And for a further Plea in this behalf as to the supposed
Trespasses in the first Count of the said Declaration mentioned the
the Defendants say that long before the committing of the supposed

Trespasses or any of them and until and at the said time when &c.
there was and from thence hitherto hath been and still is a certain
Independent State to wit a State called Cabinda situate in the &c
West Coast of Africa which during all the time aforesaid was in
Amity and at peace with this Kingdom and was presided over
and ruled by certain persons as Chiefs who had the supreme authority
within and were the Government of the said State and that the said
Government during all the time aforesaid and at the said time when
&c. to wit on the day and year in the first Count mentioned by the Laws
and Customs of the said State had and exercised absolute power and
authority within the same And the Defendants say that before the said
time when &c. to wit on the day and year in the said first Count
mentioned the Plaintiff caused to be brought and imported And there
were then brought and imported into the said State the said Goods
and Chattels in the first Count mentioned for the purpose and with the
intent of using and employing the same in carrying on the Trade or
Traffic in Slaves within the said State to wit by exchanging the said Goods
and Chattels respectively for Slaves, Natives of Africa within the said
State and transporting the said Slaves so obtained to parts out of
Africa and beyond the Seas to be there sold and used as
Slaves and the Plaintiff just before and at the said time when
&c. to wit on the day and year last aforesaid was possessed of the
said Goods and Chattels at the said place for the purpose of
being so used in carrying on the said Trade to wit in the
manner aforesaid and that the Plaintiff was then about to use
and would then have used the said Goods and Chattels for the
purpose aforesaid to wit in the manner aforesaid had not the same
been burnt broken torn damaged and destroyed as hereinafter mentioned
Whereupon the said Government then having such power and
authority as aforesaid and being desirous of preventing the said
Trade or Traffic from being carried on within the said State
did for the purpose of preventing its being so carried
on afterwards and just before the said time when &c.
to wit on the day and year in the first Count mentioned
ordain enact and command that the said Goods and
Chattels should be burnt broken torn damaged and
destroyed and did then authorize and empower the
Defendants to burn break tear damage and destroy the said
Goods and Chattels and thereupon the Defendants

8.

being so authorized and empowered as aforesaid did by virtue of such authority and power and as the Agents and by the command of the said Government at the said time when &c. to wit on the day and year last aforesaid within the said Stak burn break tear damage and destroy the said Goods and Chattels in the said first Count of the Declaration mentioned as they lawfully might for the cause aforesaid doing no unnecessary damage to the Plaintiff in that behalf which are the supposed trespasses in the said first Count mentioned And this the defendants are ready to verify. Wherefore they pray Judgment if the plaintiff ought as to the said first Count to have or maintain his Action against them

Smith. 2. Plea And for a further Plea in this behalf as to the first Count of the said Declaration the Defendants say that before and at the time of the committing of the supposed trespasses in the first Count mentioned there was and from thence hitherto hath been and still is in parts beyond the Seas to wit on the Western Coast of Africa a certain place called Cabinda to which during all the time aforesaid was not within or subject to the Laws or Government of this or any other Kingdom or State or to any Law or Government whatsoever And the defendants say that before and at the said time when &c. to wit on the day and year in the first Count mentioned the said Plaintiff was concerned and employed in carrying on and did before and at the said time when &c. to wit on the day and year last aforesaid carry on the said trade or traffic in Slaves at the last mentioned place and that in the course of his carrying on the said trade or traffic and for the purpose thereof the Plaintiff before the said time when &c. to wit on the day and year in the said first Count mentioned had caused and procured the said Goods and Chattels in the first Count mentioned to be imported to the said last mentioned place for the purpose and with the intent of using the same in carrying on the said trade or traffic in the said place to wit by exchanging there the said Goods and Chattels respectively for Slaves Natives of Africa and obtaining such Slaves in exchange for the same respectively and of thereupon transporting the said Slaves so obtained to certain other parts out of Africa and beyond the Seas to be there sold and used as Slaves and that the said Plaintiff afterwards and at the said time when &c. to wit on the day and year last aforesaid was possessed of the said Goods and Chattels in the first Count mentioned at the said place for the purpose of their being so used in carrying on the said trade to wit in manner aforesaid and that the Plaintiff was then about and intended to use and would have used the said Goods and Chattels for the purpose aforesaid to wit in manner aforesaid in carrying on the said trade or traffic had not the defendants burnt broken torn damaged and destroyed the same

as hereinafter mentioned Whereupon the defendants then being Subjects of this Kingdom and Officers in the Naval Service thereof and commanding each of them a Vessel of War in the Royal Navy thereof in order to prevent the plaintiff from so using the said Goods and Chattels as aforesaid did by the authority order and command of our Sovereign Lady Queen Victoria and as her Servants at the said time when &c. to wit on the day and year last aforesaid at and in the said place burn break tear damage and destroy the said goods and chattels as they lawfully might for the cause aforesaid doing no unnecessary damage to the plaintiff in that behalf which are the same trespasses in the said first Count of the said Declaration complained of And this the defendants are ready to verify &c. Wherefore they pray Judgment if the Plaintiff ought as to the said first Count to have or maintain his Action against them.

Tenth Plea

And for a further plea in this behalf to the first Count of the Declaration the defendants say that before and at the said time when &c. in that Count mentioned there was and from thence hitherto hath been and still is a certain Independant State or Kingdom called Cabinda, situate on the Western Coast of Africa and ruled and presided over during all the time last aforesaid by certain persons as Chiefs who had the supreme authority within and were the Government of the said State and that shortly before the said time when &c. to wit on the day and year in the said first Count mentioned a Convention and Treaty was entered into and concluded between our Sovereign Lady the Queen Victoria and the said Government of the said State of Cabinda by which it was concluded and agreed by and between the said contracting parties who were then fully authorized to contract on behalf of the said State and of this Kingdom respectively that there should be from that time an entire cessation and extinction for ever throughout the territory of the said Government of the Sale or Export of Slaves to be removed from the said Territory into any foreign Country which said last mentioned Convention and Treaty from the time of the making the same until and at the said time when &c. to wit on the day and year last aforesaid continued and was in full force and effect And the defendants further say that the plaintiff after the making of the said Treaty and at the said time when &c. to wit on the day and year last aforesaid had and was possessed of the said Goods and Chattels in the said ~~said~~ first Count mentioned and each of them within the territory of the said Government for the purpose of exchanging and bartering the said Goods and Chattels there for Slaves with the intent to export and remove the said Slaves when so obtained in exchange for the

said Goods and Chattels from and out of the said Territory into other parts and other Countries beyond the Seas contrary to and in violation of the said Convention and Treaty And the defendants further say that the Plaintiff was at the said time when &c about to and intended to use and would then have used the said Goods and Chattels in manner and for the purpose aforesaid contrary to and in violation of the said treaty had not the defendants burned broken torn damaged and destroyed the same as hereinafter mentioned Whereupon the defendants then being Subjects of this Kingdom and holding the rank of Officers in the Royal Navy thereof and each then being in the Command of a Vessel of War in the Naval Service thereof and being duly authorized and instructed to carry into effect the provisions of the said Convention and Treaty did in order to prevent the Plaintiff from so using the said Goods and Chattels as aforesaid and from violating the said convention and treaty by the order & and authority of and as Servants of our Sovereign Lady Queen Victoria and by her command at the said time when &c to wit on the day and year last aforesaid burn break tear and destroy the said Goods and Chattels then being within the said Territory of the said Government for the purpose aforesaid as they lawfully might for the cause aforesaid doing no unnecessary damage to the plaintiff in that behalf which are the same trespasses in the first Count mentioned And this the defendants are ready to verify Wherefore they pray Judgment if the plaintiff ought as to the first Count to have or maintain his action against them —

Eleventh plea And for a further Plea in this behalf as to the second Count of the Declaration defendants say that the Goods and Chattels in that Count mentioned were not at the said several times when &c in that Count mentioned nor were any or either of them or any part thereof the Goods or Chattels of the Plaintiff in manner and form as the Plaintiff hath in his second Count in that behalf alleged And of this the defendants put themselves upon the Country &c

Twelfth plea And for a further plea to the second Count the Defendants say that before and at the said several times when &c in the second Count mentioned the importation of Slaves into the Empire of Brazil from any other part of the World had been and was prohibited and declared illegal by the laws of the said Empire of Brazil and that it was during all the time aforesaid contrary to the law of Brazil for any Subject of the said Empire to have or be possessed of goods or chattels in any part of the World for the purpose of exchanging or bartering the said goods or chattels for Slaves with the intent to import or cause to be imported into the Empire of Brazil the said Slaves when so procured and obtained in exchange for the said Goods or Chattels And the defendants further say that the plaintiff before and at the said times when &c in the second Count mentioned to wit on the day and year in that Count mentioned was and still is a subject of the Brazilian Empire well knowing the premises and the plaintiff shortly before the first of the said several times when &c in the second Count mentioned to wit on the day and year last aforesaid

had and was possessed of the goods and chattels in the second Count mentioned and each of them at Cabinda in Africa for the purpose of exchanging and bartering the said goods and chattels there for Slaves with the intent to import and cause to be imported into the Empire of Brazil the said Slaves when so procured and obtained in exchange for the said goods and chattels contrary to the laws of the said Empire And the defendants say that the Plaintiff at the said several times when &c ~~and~~ in the second Count mentioned was about to exchange and would have exchanged the said goods and chattels ~~to~~ each and all of them for Slaves with the unlawful intent last aforesaid had not the same ~~being~~ seized taken and carried away as hereinafter mentioned Whereupon the defendants then being Subjects of this Kingdom at the said several times when &c in the second Count mentioned in order to prevent the plaintiff from acting in the illegal and wicked manner aforesaid did take seize and carry away the said goods and chattels in the second mentioned doing no unnecessary damage to the plaintiff in that behalf as they lawfully might for the cause aforesaid which are the said several trespasses in the second Count mentioned And the defendants further say that by the law during all the time in the second Count mentioned and still in force in the Brazilian Empire the Plaintiff being such subject as aforesaid could not nor can he now have or maintain any action or suit or obtain or have any remedy or redress whatsoever for the seizing taking and carrying away of the said goods and chattels so then had and possessed by him with the illegal intent and for the illegal purpose aforesaid And this the defendants are ready to verify Wherefore they pray judgment if the plaintiff ought, as to the said second Count to have or maintain his Action against them.

Thirteenth plea And for a further Plea to the second Count the defendants say that before and at the said several times when &c in that Count mentioned there was and from thence hitherto hath been and still is a certain Independant State or Kingdom called Cabinda situate on the Western Coast of Africa which during all the time aforesaid was in amity and at peace with this Kingdom and was ruled and presided over by certain persons as Chiefs who had the supreme authority within and over the Government of the said State And the defendants further say that before and at the said several times when &c in the second Count mentioned the said Government was waging war against the plaintiff and divers other persons and there then was War between the said Government and the Plaintiff and others whereof the plaintiff at the said several times when &c in the second Count mentioned had notice whereupon the said Government just before the first of the said several times when &c to wit on the day and year in the second Count mentioned authorized and empowered the defendants to capture seize take and carry away the Goods and Chattels in the said second Count mentioned Whereupon the Defendants being so authorized and empowered by the said Government as aforesaid and as Agents thereof did by the command thereof at the said several times when &c in time of and by right

of and in the course of the War aforesaid capture seize take and carry away the goods and chattels in the said second Count mentioned the same and each of them then being within the said State of Cabinda respectively as the defendants lawfully might for the cause aforesaid doing no unnecessary injury to the plaintiff in that behalf which are the said several trespasses in the second Count mentioned And this the Defendants are ready to verify Wherefore they pray Judgment if the plaintiff ought as to the second Count to have or maintain his Action against them.

Fourteenth Plea — And for a further plea in this behalf to the second Count of the Declaration the Defendants say that before the time of the committing of the supposed trespasses in the second Count mentioned or any of them to wit on the twenty third day of November in the year one thousand eight hundred and twenty six a Convention and Treaty was entered into and included and signed between our late Lord King George the fourth and His Majesty Don Pedro the then Emperor of Brazil (the said High Contracting Parties then having full power and authority to enter into and conclude the said Convention and treaty on the part of this Kingdom and the Empire of Brazil respectively and for the regulation and final abolition of the African Slave Trade as far as related to the Dominions and Subjects of the Brazilian Empire and that by the first Article of the said Convention and Treaty it was agreed upon and concluded between the said High Contracting Parties that at the expiration of three years to be reckoned from the exchange of the ratifications of the said Convention and Treaty it should not be lawful for the Subjects of the Emperor of Brazil to be concerned in the carrying on the African Slave Trade in any manner or under any pretence whatsoever and that the carrying on of such trade after that by any person Subject of his Imperial Majesty should be deemed and treated as piracy and that afterwards and before the said several times when &c. to wit on the first day of January in the year of our Lord one thousand eight hundred and twenty seven the said Convention and Treaty was duly ratified and the ratifications thereof exchanged and that the said Convention and Treaty from thence and until and at the said several times when &c. continued and was and still is in full force and effect and a much longer time than three years to wit fifteen years reckoning from the time of the exchange of the ratifications of the said Convention and Treaty had expired before the first of the said several times when &c. And the Defendants say that the plaintiff at the time of making and ratifying of the said Convention and Treaty was and from thence until and the said several times when &c. was and still is a Subject of and owing allegiance to the said Empire of Brazil and obedience to the Laws of that Empire and that the Plaintiff after the expiration of the said period of fifteen years from the exchange of the ratification aforesaid and before and at the said several times when &c. though well knowing the premises was concerned and employed in carrying on and did during the times last aforesaid carry on the African Slave Trade or Traffic contrary to the provisions of the said Convention and Treaty and in violation thereof at a certain place on the Western coast of Africa to wit at Cabinda in Africa and that in the Course of his carrying on the said trade or traffic and for the purpose thereof the plaintiff before the said times when &c. to wit on the day and year

last aforesaid had caused and procured the said Goods and Chattels in the second Count mentioned to be imported to the said Place on the said West Coast of Africa for the purpose and with the intent of using the same in carrying on the said trade or traffic contrary to the provisions of the said Convention and Treaty and in violation thereof to wit by the exchanging the said Goods and Chattels respectively for Slaves Natives of Africa and of thereupon transporting them the said Slaves so obtained to certain other parts out of Africa beyond the seas to be there sold and used as Slaves contrary to the provisions of the said Convention and Treaty and in violation thereof and that at the plaintiff at the said times when &c was possessed of the said Goods and Chattels at the said place for the purpose of their being so used in carrying on the said trade or traffic in manner aforesaid and that the Plaintiff was then about and intended to use and would then have used the said goods and chattels in manner and for the purposes aforesaid in carrying on the said trade or traffic contrary to the provisions of the said Convention and Treaty and in violation thereof had not the Defendants seized taken and carried away the same as hereinafter mentioned Whereupon the Defendants then being subjects of this Kingdom and holding the rank of officers in the Royal Navy and each of them being in the Command of a Vessel of War in the Naval Service thereof and being duly authorized and instructed to carry into effect the provisions of the said Convention and Treaty in order to prevent the plaintiff from so using the said Goods and Chattels aforesaid and from violating the said Convention and Treaty aforesaid to wit as Servants of Our Sovereign Lady Queen Victoria then and still being the Queen of this Kingdom and by her command did at the said several times when &c seize take and carry away the said Goods and Chattels doing no unnecessary damage to the Plaintiff in that behalf as they lawfully might for the cause aforesaid which are the same trespasses in the second Count of the Declaration mentioned And this the Defendants are ready to verify &c Wherefore they pray Judgment of the plaintiff ought as to the said second Count to have or maintain his action against them

Fifteenth plea

And for a further plea in this behalf to the second Count of the Declaration the Defendants say that before and at the said several times of the committing of the supposed trespasses in the second Count mentioned or any of them the Slave trade had been and was, on the part of the Empire of Brazil and by the Laws of that Empire totally and finally abolished in all parts of the World and that it was during all the time aforesaid contrary to the Law of Brazil for any Subject of that Empire to be concerned or take any part whatsoever in the trade or traffic in Slaves and that it was during all the time aforesaid contrary to the Law of the said Empire of Brazil for any subject of that Empire to be possessed of any goods or chattels for the purpose and with the intent of using the same in carrying on the said trade or traffic And the Defendants say that before and at the said times when &c the

Plaintiff was a Subject of and owed allegence to the said Empire of Brazil and obedience to the Laws thereof and that before and at the said several times when &c he the plaintiff well knowing the premises was concerned and employed in carrying on and did during and at those times carry on the said trade or traffic at a certain place on the Western boast of Africa to wit at Cabinda in Africa and that in the course of his carrying on the said trade or traffic and for the purpose thereof the plaintiff before the said several times when &c to wit on the day and year in the second Count mentioned had caused and procured the said goods and Chattels in the ~~third~~ second Count mentioned to be imported into the said place on the West Coast of Africa for the purpose and with the intent and of using the same in carrying on the said trade or traffic to wit by exchanging the said goods and chattels respectively for Slaves Natives of Africa and obtaining such Slaves in exchange for the same respectively and of thereupon transporting the said Slaves so obtained to certain other parts out of Africa beyond the seas to be there sold and used as Slaves in violation of the law of Brazil aforesaid and that the Plaintiff at the several times when &c was possessed of the said Goods and Chattels at the said place for the purpose of their being so used in carrying on the said trade or traffic to wit in the manner aforesaid and that the Plaintiff was then about and intended to use and would then have used the said goods and chattels in manner and for the purpose aforesaid in carrying on the said trade or traffic in violation of the said law had not the defendants seized taken and carried away the same as hereinafter mentioned Whereupon the defendants then being Subjects of this Kingdom in order to prevent the plaintiff from so using the said goods and chattels as aforesaid from violating the law aforesaid did to wit at the said several times when &c seize take and carry away the said goods and chattels doing no unnecessary damage to the plaintiff in that behalf as they lawfully might for the cause aforesaid which are the same trespasses in the said second Count mentioned And the defendants further say that by the law of the said Empire of Brazil before and at the said several times when &c and still in force the said Plaintiff being such Subject as aforesaid could not at any time nor can be now have or maintain any Action or Suit whatsoever nor obtain or have any remedy or redress whatsoever for the said seizing taking & carrying away of the said Goods and Chattels or any or either of them so therein by him used and possessed for the unlawful purpose and with the unlawful intent aforesaid And this the defendants are ready to verify &c Wherefore they pray judgment if the Plaintiff ought as to the second Count of the Declaration to have or maintain his action against them.

Sixteenth plea — And for a further plea in this behalf to the second Count of the said Declaration the defendants say that before the said times when &c in that Count mentioned or any of them there was and from thence

hitherto hath been and still is a certain Independent State to wit a State called Cabundi situate on the West Coast of Africa which during all the time aforesaid was in amity and at peace with this Kingdom and was presided over and ruled by certain persons as Chiefs who had the supreme authority within and were the Government of the said State And the Defendants further say that before and at the said several times when &c. in that Count mentioned it was contrary to the law of the said State for any person without the leave & license of the said Government to carry on the said trade or traffic in Slaves within the said State and that all Goods and chattels brought into the said State for the purpose or with the intent of being used or employed in carrying on the said trade or traffic aforesaid within the said State without the leave and license aforesaid were by the law of the said State in force there during the time aforesaid liable to be seized taken and carried away by the said Government or any other person by the authority or command thereof - for the use thereof and that before the said several times when &c. or any of them to wit on the day and year in the second Count mentioned the plaintiff without the leave or license and against the Will of the said Government caused to be brought and there then were brought into the said State the said goods and chattels in the second Count mentioned & for the purpose and with the intent aforesaid and that the said goods and chattels from the time at which they were so brought into the said State until and at the said several times when &c. remained and were in the said Kingdom in the possession of the Plaintiff for the purpose aforesaid and the Plaintiff did then intend to use the same and the same would then but for the seizing taking and carrying away thereof as hereinafter mentioned have been used by the Plaintiff in carrying on the said trade or traffic to wit by exchanging the same for Slaves Natives of Africa within the said State and transporting the said Slaves so obtained to parts out of Africa and beyond the Seas to be there sold and used as Slaves whereupon the said goods and chattels before and at the said several times when &c. became and were by the law aforesaid liable to be seized taken and carried away by the said Government or by any person by the authority or command thereof for the use thereof and thereupon the Defendants in aid and assistance of the said Government and as Agents thereof and by the authority and command thereof did at the said several times when &c. within the said State seize take and carry away the said goods and chattels in the said second Count of the said Declaration mentioned for the use of the said Government the said goods and chattels then being within the said State and subject to the law thereof as they lawfully might for the cause aforesaid doing no unnecessary damage to the Plaintiff in that behalf which are the supposed trespasses in the second Count of the Declaration mentioned And this the Defendants are ready to verify &c. wherefore they pray Judgment if the Plaintiff ought as to the second Count of his Declaration to have or maintain his action against them. -

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Seventeenth Plea — And for a further Plea in this behalf to the seconde[illegible] of the said Declaration the Defendants say that before the said several times when &c. in that Count mentioned or any of them and from thence until and at the said several times when &c. there was and from thence hitherto hath been and still is a certain Independent State to wit the State called Cabundai situated on the West Coast of Africa which during all the time aforesaid was in amity and peace with this Kingdom and was presided over and governed by certain persons as Chiefs who had the supreme authority within and were the Government of the said State and that the said Government during all the time aforesaid and at the said several times when &c. by the laws and customs of the said State had and exercised absolute power and authority within the same and the Defendants say that before the first of the said times when &c. to wit on the day and year in the second Count mentioned the Plaintiff caused to be brought and imported and there were then brought and imported into the said State the said goods and chattels in the second Count mentioned for the purpose and with the intent of using and employing the same in carrying on the trade or traffic in Slaves within the said State to wit by exchanging the said goods and chattels for Slaves Natives of Africa within the said State and transporting the said Slaves so obtained to parts out of Africa and beyond the Seas to be there sold and used as Slaves and the Plaintiff just before and at the said several times when &c. was possessed of the said goods and chattels at the said place for the purpose of their being so used in carrying on the said trade to wit in the manner aforesaid and that the plaintiff was then about to use and would then have used the said goods and chattels for the purpose aforesaid to wit in the manner aforesaid had not the same been seized taken and carried away as hereinafter mentioned whereupon the said Government then having such power and authority as aforesaid and being desirous of preventing the said trade or traffic from being carried on within the said State did for the purpose of preventing its being so carried on just before the first of the said times when &c. to wit on the day and year in the second Count mentioned enact order and command that the said goods and chattels should be seized taken and carried away and forfeited and confiscated to the use of the said Government and did then authorize and empower the Defendants to seize take and carry away the said goods and chattels and thereupon the Defendants being so authorized and empowered as aforesaid did by virtue of such authority and power and as the Agents and by the command of the said Government at the said times when &c. within the said State seize take and carry away the said goods and chattels in the said second Count of the Declaration mentioned then there being as they lawfully might for the cause

aforesaid doing no unnecessary damage to the plaintiff in that behalf which are the said supposed trespasses in the said second Count mentioned and this the Defendants are ready to verify &c. Wherefore they pray Judgment if the plaintiff ought as to the said second Count to have or maintain his Action against them. —

Eighteenth plea. — And for a further plea in this behalf to the second Count of the Declaration the Defendants say that before and at the said several times when &c. in the second Count mentioned there was and from thence hitherto hath been and still is in parts beyond the Seas to wit on the Western Coast of Africa a certain place called Cabinda which during and at the time aforesaid was not within or subject to the Laws of this or any other Kingdom or State or to any Law or Government whatsoever And the Defendants say that before the first of the said times when &c. to wit on the day and year in the second Count mentioned the said plaintiff was concerned and employed in carrying on and did before and at that time carry on the trade or traffic in Slaves at the last mentioned place and that in the course of his carrying on the said trade or traffic and for the purpose thereof the plaintiff before the first of the said times when &c. to wit on the day and year last aforesaid had caused and procured the said goods and chattels in the second Count mentioned to be imported in and to the said last mentioned place for the purpose and with the intent of using the same in carrying on the said trade or traffic in the said place to wit by exchanging the said goods and chattels respectively for Slaves Natives of Africa and obtaining Slaves in exchange for the same respectively and of thereupon transporting the said Slaves so obtained to certain other parts out of Africa and beyond the Seas to be there sold and used as Slaves and that the said Plaintiff at the said several times when &c. was possessed of the said goods and chattels respectively at the said place for the purpose of their being so used in carrying on the said trade to wit in the manner aforesaid and that the plaintiff was then about and intended to use and would have used the said goods and chattels for the purpose aforesaid to wit in manner aforesaid in carrying on the said trade or traffic and would then have carried on the said trade or traffic therewith to wit in manner aforesaid had not the Defendants seized taken and carried away the same as hereinafter mentioned Whereupon the Defendants then being British Subjects and Officers in the Naval Service of this Kingdom and each of them commanding a Vessel of War in the Royal Navy thereof in order to prevent the plaintiff from so using the said goods and chattels as aforesaid did by the order authority and command of our Sovereign Lady the Queen and as her Servants at the said several times when &c. at and in the said place to wit at Cabinda in Africa aforesaid

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seize take and carry away the said goods and chattels doing no unnecessary damage to the plaintiff in that behalf as they lawfully might for the cause aforesaid which are the same trespasses in the said second Count mentioned and this the Defendants are ready to verify &c. Wherefore they pray Judgment if the plaintiff ought as to the said second Count to have or maintain his action against them. —

Nineteenth Plea — And for a further plea in this behalf to the second Count of the Declaration the Defendants say that before and at the said several times when &c. in that Count mentioned there was and from thence hitherto hath been and still is a certain Independent State called Cabenda situate on the Western Coast Africa and presided over and ruled during all the time last aforesaid by certain persons as Chiefs who had the supreme authority within and were the Government of the said State and that shortly before the said several times when &c. to wit on the day and year in the said second Count mentioned a Convention and Treaty was entered into and concluded between our Lady the Queen Victoria and the said Government of the State of Cabenda by which it was concluded and agreed by and between the said contracting parties who then were fully authorized to contract on behalf of the said State and of this Kingdom respectively that there should be from that time an entire cessation and extinction for ever throughout the Territory of the said Government of the Sale or Export of Slaves to be removed from the said Territory into any foreign Country which said last mentioned Convention and Treaty from the time of making the same until and at the said several times when &c. continued & was of full force and effect to wit on the day and year in the second Count mentioned And the Defendants further say that the Plaintiff after the making the said Treaty and at the said several times when &c. had and was possessed of the said goods and chattels in the said second Count mentioned respectively and each of them within the Territory of the said State for the purpose of exchanging and bartering the said goods and chattels there for Slaves with the intent to export and remove the said Slaves when so obtained in exchange for the said goods and chattels from and out of the said Territory into other parts and Countries beyond the Seas contrary to and in violation of the said Treaty And the Defendants further say that the plaintiff was at the said several times when &c. about to and would have used the said goods and chattels in manner and for the purpose aforesaid contrary to and in violation of the said Treaty had not the Defendants seized taken and carried away the same as hereinafter mentioned Whereupon the

Defendants then being subjects of this Kingdom and holding the rank of Officers in the Royal Navy thereof and each being in the command of a Vessel of War in the Naval Service thereof and being duly authorized and instructed to carry into effect the provisions of the said Convention and Treaty did in order to prevent the Plaintiff from so using the said Goods and Chattels as aforesaid and from violating the said Convention and Treaty as Servants of our Sovereign Lady Queen Victoria and by her command at the said several times when &c. respectively seize take and carry away the said goods and chattels the same then being within the said Territory of the said Government as they lawfully might for the cause aforesaid doing no unnecessary damage to the plaintiff in that behalf which are the same trespasses in the said second Count mentioned and this the Defendants are ready to verify Wherefore they pray Judgment if the Plaintiff ought as to the said second Count to have or maintain his Action against them.—

Twentieth plea. — And for a further plea in this behalf to the third Count of the Declaration Defendants say that the Plaintiff was not at the said time when &c. in that Count mentioned lawfully possessed of the Slaves in the said third Count mentioned or of any of them in manner and form as the plaintiff hath above in that behalf in his said third Count alleged and of this the Defendants put themselves upon the Country.—

Twenty first plea. And for a further plea in this behalf to the third Count of the Declaration the Defendants say that before and at the said time when &c. in the third Count mentioned the importation of Slaves into the Empire of Brazil from any other part of the World had been and was prohibited and declared illegal by the laws of the said Empire of Brazil and that it was during all the time last aforesaid contrary to the law of Brazil for any Subject of the Brazilian Empire to be in any way whatsoever concerned or engaged in the buying trafficing for procuring or obtaining Slaves in any part of the World for the purpose of their being imported into Brazil and that it was then also contrary to the law of Brazil for any Subject of the Brazilian Empire to have or be possessed of Slaves in any part of the World with intent to import the same or cause them to be imported into the Brazilian Empire or with the knowledge that the said Slaves were about to be imported into the Brazilian Empire and the Defendants further say that the

plaintiff shortly before the said time when &c. in the third Count mentioned to wit on the day and year in that Count mentioned then being such Subject of the Emperor of Brazil as in that Count mentioned and well knowing the premises had bought traffced for procured and obtained the Slaves in the third Count mentioned and each of them at Cabunda in Africa for the unlawful purpose of their being imported into the Empire of Brazil, and that the plaintiff afterwards and at the said time when &c. in the 3rd Count mentioned to wit on the day and year last aforesaid at Cabunda in Africa had and was possessed of the said Slaves and each of them and kept and detained them by force and against their Will with the intent to export and cause to be exported the said Slaves and each of them into the Brazilian Empire and with the knowledge that the said Slaves and each of them were then about to be exported into the Brazilian Empire contrary to the Law of the said Empire And the Defendants further say that the plaintiff would at the said time when &c. in the third Count mentioned and afterwards have continued to have and be possessed of the said Slaves and each of them and to keep and detain them by force and against their Will with the unlawful intent and knowledge aforesaid contrary to the laws of the Empire of Brazil had not the said Slaves been set free by the Defendants as hereinafter mentioned Whereupon the Defendants then being Subjects of this Kingdom at the said time when &c. in the third Count mentioned to wit on the day and year last aforesaid in order to prevent the Plaintiff from acting in the illegal manner aforesaid seized took and carried away the said Slaves out of the custody and possession of the plaintiff and set them free as they lawfully might for the cause aforesaid doing no unnecessary damage to the Plaintiff in that behalf which are the said trespasses in the third Count mentioned And the Defendants further say that by the law in force in the Brazilian Empire during all the time last aforesaid and still the plaintiff being such Subject as aforesaid could not nor can he now have or maintain any Action or Suit or obtain or have

any remedy or redress whatsoever for the taking out of his custody and possession and setting free the said Slaves so then had and possessed by him with the illegal intent and knowledge aforesaid and this the Defendants are ready to verify wherefore they pray judgment if the plaintiff ought as to the third Count of the Declaration to have or maintain his Action against them.—

Twenty second Plea — And for a further plea in this behalf to the third Count of the Declaration the Defendants say that at the said time when &c. in the third Count mentioned it was not and still is not lawful by the laws of the Empire of Brazil to possess Slaves in manner and form as the plaintiff hath above in his said third Count in that behalf alleged and of this the Defendants put themselves upon the Country.—

Twenty third plea — And for a further plea in this behalf to the third Count of the Declaration the Defendants say that before and at the said time when &c. in the third Count mentioned to wit on the day and year in that Count mentioned the plaintiff was carrying on and exercising the Slave trade at Cabunda on the Western Coast of Africa and that the Slaves in the said third Count mentioned were until shortly before the said time when &c. certain free persons natives of Africa and that they were shortly before that time to wit on the day and year last aforesaid wrongfully and unjustly by force and violence deprived of their freedom and made Slaves and that the said Plaintiff had afterwards and before the said time when &c. to wit on the day and year last aforesaid bought and purchased them as Slaves for the wicked and immoral purpose of selling them as Slaves into other parts of the World out of Africa for the lucre and gain of him the plaintiff And the Defendants say that the plaintiff at the said time when &c. in the third Count mentioned to wit on the day and year last aforesaid wrongfully and injuriously detained and imprisoned the said Slaves by force and against their will in a certain Factory at Cabunda aforesaid and them intended to and would have continued so to detain and imprison them until the plaintiff could have sold them as Slaves as aforesaid had not the Defendants set them at liberty as hereinafter mentioned Whereupon the Defendants then being Subjects of this Kingdom and Officers in the Naval Service of the same and each of them commanding

a Vessel of War therein by the Order authority and comeand of our Sovereign Lady the Queen and as her Servants at the said time when &c. to wit on the day and year last aforesaid rescued and took the said Slaves out of the said Factory in which they were so wrongfully detained and imprisoned by the plaintiff as aforesaid and seized took and carried them away to set them free and did set them free as they lawfully might for the cause aforesaid doing no unnecessary damage to the plaintiff in that behalf which are the same trespasses as are in the third Count mentioned and this the Defendants are ready to verify &c. Wherefore the Defendants pray Judgment if the plaintiff ought as to the third Count to have or maintain his Action against them.—

Twenty fourth plea — And for a further plea in this behalf to the third Count of the said Declaration the Defendants say that before and at the said time when &c. in the said third Count mentioned Cabenda in Africa in the said third Count mentioned was and from thence hitherto hath been and still is a certain Independent State situate on the West Coast of Africa which during all the time aforesaid was in amity and at peace with this Kingdom and was presided over and ruled by certain persons as Chiefs who had the supreme authority within and were the Government of the same And these Defendants further say that before and at the said time when &c. to wit on the day and year in the third Count mentioned the said Government was waging war against the plaintiff and divers other persons and there then was War between the said Government and the plaintiff and others whereof the plaintiff at the said time when &c. then and there had notice Whereupon the said Government just before the said time when &c. to wit on the day and year last aforesaid authorised and empowered the Defendants to capture seize take and carry away the Slaves in the said third Count mentioned Whereupon the Defendants being so authorized and empowered as aforesaid and as Agents to the said Government and by the command thereof did at the said time when &c. to wit on the day and year last aforesaid in time of and during the said War and in the course of the War aforesaid capture seize take and carry away the said Slaves in the third Count mentioned the same then being within the said State ~~of Africa~~ as they lawfully might for the cause aforesaid doing no unnecessary damage to the plaintiff in that behalf which are the same trespasses in the third Count mentioned and this the Defendants are ready to verify &c. wherefore they pray Judgment if the plaintiff ought as to the said third Count to have or maintain his Action against them.—

Twenty fifth plea — And for a further plea to the third Count of the Declaration the Defendants say that before the said time when &c. in that Count mentioned to wit on the twenty third day of November in the year of our Lord one thousand eight hundred and twenty six a Convention and Treaty was

entered into and concluded and signed between our late Lord King George the fourth and his Majesty Don Pedro the then Emperor of Brazil for the regulation and final abolition of the African Slave trade so far as related to the dominions and Subjects of the Brazilian Empire the said High Contracting parties then having full power to enter into the said Convention and Treaty on the part of this Kingdom and the Brazilian Empire respectively And that by the first Article of the said Convention and Treaty it was agreed upon and concluded between the said High Contracting parties that at the expiration of three years to be reckoned from the exchange of the ratifications of the said Convention and Treaty it should not be lawful for the subjects of the Emperor of Brazil to be concerned in the carrying on of the African Slave Trade in any manner or under any pretext or whatsoever and that the carrying on of such Trade after that by any person Subject of his Brazilian Majesty should be deemed and treated as Piracy And defendants further say that afterwards and before the said time when &c to wit on the first day of January in the year of our Lord one thousand eight hundred and twenty seven 1827 the said Convention and Treaty was duly ratified and the ratifications thereof exchanged And that the said Convention and Treaty from thence until and at the said time when &c continued and was and still is in full force and effect And a much longer time than three years to wit fifteen years reckoning from the time of the exchange of the ratifications of the said Convention and Treaty had expired before the said time when &c and the defendants say that the plaintiff at the time of making and ratifying of the said Treaty was and from thence until and at the said time when &c of continued to be and still is a subject of and owing allegiance to the said Empire of Brazil and obedience to the Laws of that Empire and that the said Slaves in the third Count mentioned were at the said time when &c to wit on the day and year last aforesaid natives of Africa born free and from before that time wrongfully reduced to Slavery by force and duress and that the plaintiff after the expiration of the said period of three years from the Exchange of the ratifications aforesaid and before the said time when &c though well knowing the premises had procured and at the said time when &c to wit on the day and year last aforesaid was possessed of and detained the said Slaves forcibly and against their will at Cabinda in Africa in the third Count mentioned for the purpose of carrying on the Slave Trade therewith by transporting them from Africa to certain other places out of Africa and beyond the Seas to be

there sold and used as Slaves contrary to the provisions of the said treaty and in violation thereof and the plaintiff at the said time when &c was about to and would have caused the said Slaves to be so transported sold and used as Slaves had not the defendants set them free as hereinafter mentioned whereupon the defendants then being subjects of this Kingdom and Officers in the Royal Navy of the same and commanding each of them a Vessel of War in the Naval service thereof and being duly authorized and instructed to carry into effect the provisions of the said treaty as the servants of our Sovereign Lady Queen Victoria then and still being the Queen of this Kingdom and by her command at the said time when &c to wit on the day and year last aforesaid did seize take and carry away the said Slaves for the purpose of setting them free and preventing the plaintiff from acting as aforesaid and & violating the said treaty and did then and there set them them free as they lawfully might for the cause aforesaid doing no unnecessary damage to the plaintiff in that behalf which are the same trespasses in the said third Count mentioned and this the defendants are ready to verify wherefore they pray judgment if the plaintiff ought as to the said third Count have or maintain his Action against them.—

26th plea — And for a further plea to the third Count of the declaration the defendants say that before and at the time when &c in that Count mentioned the Slave Trade had been on the part of the Empire of Brazil and by the laws of that Empire totally and finally abolished in all parts of the world and that it was during and at the time aforesaid contrary to the Law of Brazil for any subject of that Empire to be concerned or take any part whatever in the trade or traffic in Slaves And that it was during and at the time aforesaid contrary to the Law of the said Empire of Brazil for any subject of Brazil to be possessed of Slaves for the purpose of carrying on therewith the said trade or traffic in the manner hereinafter mentioned And the defendants say that before and at the said time when &c the plaintiff was a subject of and owed allegiance to the Empire of Brazil and owed obedience to the Laws of that Empire and that the Slaves in the said ~~fourth~~ third Count mentioned were at the said time when &c to wit on the day and year in the said third Count mentioned Natives of Africa born free and before that time wrongfully reduced to slavery by force and duress and that the plaintiff well knowing the premises before the said time when &c to wit on the day and year last aforesaid had procured and at the said time when &c was

possessed of the said Slaves and forcibly detained them &
against their Will at Cabinda in Africa in the said ~~fourth~~ third
Count mentioned for the purpose of carrying on the Slave
trade therewith by transporting them from Cabinda in Africa
to certain other places out of Africa beyond the Seas to be there
sold and used as Slaves contrary to the said Laws of the said
Empire of Brazil and the plaintiff at the said time when &c
was about to and would have caused the said Slaves to be
transported sold and used as Slaves and so carried on &c
the said trade or traffic in Slaves as aforesaid had not the &c
defendants set them free as hereinafter mentioned whereupon
the Defendants then being Subjects of this Kingdom did at &c
the time when &c to wit on the day and year last aforesaid seize
take and carry away the said Slaves for the purpose of setting
them free and preventing the plaintiff from acting as aforesaid
and did then set them free as they lawfully might doing no &c
unnecessary damage to the plaintiff in that behalf which are
the same trespasses in the said third Count mentioned And
the defendants further say that by the Law of Brazil during
all the time aforesaid and still in force there. the plaintiff &c
could not nor can he now have or maintain any Action or
Suit nor obtain any remedy or redress for the taking and carrying
away the said Slaves so then possessed and forcibly detained by him
as aforesaid contrary to the said law, and this the defendants are
ready to verify, wherefore they pray judgment if the plaintiff
as to the said third Count to have or maintain his Action &c
against them —

27th. Plea — And for a further plea in this behalf to the third
Count of the Declaration the defendants say that before and at the
time when &c in that Count mentioned the place called Cabinda
in that Count mentioned was and from thence hitherto hath been and
still is a certain independent State in Africa which during all the
time aforesaid was in amity and at peace with this Kingdom and was
presided over and ruled by certain persons as Chiefs who had
the supreme authority within and were the Government of the said
State And the Defendants further say that before and at the ~~said~~
time when &c it was contrary to the law of the said State for any
person without the leave or licence of the said Government to carry on
the trade or traffic in Slaves within the said State and that all &c
persons in the said State used or employed or intended to be used or
employed as Slaves without the leave or license of the said Government
were by the law of the said State in force there during the time

aforesaid liable to be seized taken and carried away by the said Government or any other person by authority thereof or command thereof for the purpose of being liberated and set free And the defendants say that the plaintiff at the said time when &c to wit on the day and year in the third Count mentioned was possessed of the said Slaves against their Will in the said State for the purpose of their being used and employed as Slaves without the leave or license of the said Government and the plaintiff then intended to use and employ and would have used and employed them as Slaves without the leave or licence of the said Government had not they been seized taken and carried away as hereinafter mentioned whereupon the said Government just before the said time when &c to wit on the day and year in the third Count mentioned authorized and empowered the defendants to seize take and carry away the said Slaves and liberate and set them free and thereupon the defendants being so authorized and empowered as aforesaid as Agents of the said Government and by ~~his~~ command did at the said time when &c to wit on the day and year last aforesaid and within the said State seize take and carry away the Slaves aforesaid for the purpose of liberating and setting them free and did ~~them~~ liberate and set them free as they lawfully might for the cause aforesaid doing no &c unnecessary damage to the plaintiff in that behalf which are the said trespasses in the said third Count mentioned whereof the plaintiff hath above complained against the defendants and this the defendants are ready to verify &c wherefore they pray judgment if the plaintiff as to the said third Count ought to have or &c maintain his Action against them.—

28th Plea— And the defendants for a further plea to the third Count say that before and at the said time when &c in that Count mentioned the place called Cabinda in that Count mentioned was and from thence hitherto hath been and still is a certain independant State situate on the West Coast of Africa which during all the time aforesaid was in amity and at peace with this Kingdom and was presided over and ruled by certain persons as Chiefs who had the supreme authority within and were the Government of the said State and that the said Government during all the time aforesaid and at the said time when &c by the laws and customs of the said State had and exercised absolute power and authority within the same And the defendants say that the Slaves in the third Count mentioned were at the said time when &c to wit on the day and year in that Count mentioned Natives of Africa born

free and before that time wrongfully reduced to Slavery by force and duress and that the plaintiff before the said time when &c to wit on the day and year last aforesaid had procured and at the said time when &c was possessed of and forcibly & detained the said Slaves against their Will in the said State of & Cabinda in Africa for the purpose of carrying on the said Slave trade therewith to wit by transporting them from the said State of Cabinda in Africa to certain other places out of Africa and & beyond the Seas to be there sold and used as Slaves And the plaintiff at the said time when &c was about to and would have caused the said persons to be so transported to be sold and used as Slaves had not the same been seized taken and carried away as hereinafter & mentioned Whereupon the said Government then having such power and authority as aforesaid and being desirous of preventing the said trade or traffic from being carried on within ~~this~~ said State did for the purpose of preventing its being so carried on just before the said time when &c to wit on the day and year in the third Count mentioned enact order and command that the said Slaves should be seized taken and carried away from the said plaintiff and liberated and set free and did then authorize and empower the defendants to seize take and carry away the said Slaves from the plaintiff and liberate and set free and thereupon the defendants being so authorized and empowered as aforesaid did by virtue of such authority and power and as the Agents and by the command of the said Government at the said time when & to wit on the day and year last aforesaid seize take and carry away the said Slaves for the purpose of liberating and setting them free and preventing the plaintiff from acting as aforesaid and did then liberate and set them free as they lawfully might for the Causes aforesaid doing no unnecessary damage to the plaintiff in that behalf which are the same trespasses in the said third Count mentioned And this the Defendants are ready to verify & wherefore they pray Judgment if the plaintiff ought as to the said third Count to have or maintain his & action against them &c.

29th Plea - And for a further plea in this behalf to the third Count of the Declaration the defendants say that before and at the said time when &c in the third Count mentioned the place called Cabinda in Africa in the said third Count mentioned was and from thence hitherto hath been and still is a place not within or subject to the laws or government of this or any other & Kingdom or State or to any Law or Government whatsoever

20.

And the Defendants further say that the Slaves in the third Count of the declaration mentioned were at the said time when &c to wit on the day and year in that Count mentioned Natives of Africa born free and before that time wrongfully reduced to Slavery by force and duress and that the plaintiff before the said time when &c to wit on the day and year last aforesaid had procured and at the said time when &c was possessed of the said Slaves and forcibly detained them against their will in the said place called Cabinda for the purpose of carrying on the Slave Trade therewith to wit by transporting them from the said place called Cabinda in Africa to certain other places out of Africa beyond the Seas to be there sold and used as Slaves And the plaintiff at the said time when &c was about and would have caused the said persons to be so transported sold and used as Slaves had not the defendants set them free as hereinafter mentioned Whereupon the defendants then being subjects of this Kingdom and Officers in the Naval Service thereof and commanding each of them a Vessel of War in the Royal Navy thereof did at the said time when &c to wit on the day and year last aforesaid by the authority order and command of our Sovereign Lady Queen Victoria and as her Servants seize take and carry away the said Slaves for the purpose of setting them free and preventing the plaintiff from acting as aforesaid and did then set them free as they lawfully might & for the cause aforesaid doing no unnecessary damage to the plaintiff in that behalf which are the same trespasses in the said third Count mentioned And this the defendants are ready to verify &c. Wherefore they pray judgment if the plaintiff ought as to the said third Count to have or maintain his Action thereof against them. —

30th Plea — And for a further in this behalf to the third Count of the declaration the defendants say that before and at the said time when &c in that Count mentioned there was and from thence hitherto hath been and still is a certain Independant & State called Cabinda situate on the Western Coast of Africa and ruled and presided over during all the time last aforesaid by certain persons as Chiefs who had the supreme authority within and were the Government of the said State & that shortly before the said time when &c to wit on the day and year in the said third Count mentioned a Convention and Treaty was entered into between our Sovereign Lady Queen Victoria and the said Government of the said State of Cabinda by which it was concluded and agreed between the said Contracting parties who then were fully authorized and empowered to contract on behalf of the said State and of this

Kingdom respectively that there should be from that time an entire cessation and extinction for ever throughout the Territory of the said Government of the Sale or Export of Slaves to be removed from the said Territory into any Foreign Country which said last mentioned Convention and treaty from the time of making the same until and at the said time when &c in the said third Count mentioned continued and was in full force and effect and the defendants further say that the Plaintiff after the making the said treaty and at the said time when &c to wit on the day and year last aforesaid had and was possessed of the said Slaves in the said third Count mentioned and each of them w within the Territory of the said Government to wit at Cabinda aforesaid for the purpose of exporting and removing the said Slaves and with the intent of causing the said Slaves to be exported and removed from and out of the said Territory into other parts and Countries beyond the Seas contrary to and in violation of the said treaty And the de defendants say that the Plaintiff at the said time when &c was about and intended to and would have exported and removed and caused to be exported and removed the said Slaves in manner aforesaid in v violation of the said treaty had not the said Slaves been seized & taken and carried away as hereinafter mentioned Whereupon the Defts then being Subjects of this Kingdom and holding the Rank of Officers in the Royal Navy thereof and each being in the Command of a Vessel of War in the Naval Service thereof and being duly a authorized and instructed to carry into effect the provisions of the said Convention and treaty did in order to prevent the plaintiff from so e exporting and removing and causing to be exported and removed the said Slaves as aforesaid as Servants of our Sovereign Lady Queen Victoria and by her command at the said time when &c to wit on the day and year last aforesaid did seize take and carry away the Slaves in the said third Count mentioned the same then being within the said Territory of the said Government and did then set them free as they lawfully might for the cause aforesaid doing no unnecessary damage to the plaintiff in that behalf which are the same trespasses in the said third Count mentioned And this the defendants are ready to verify Wherefore they pray Judgment if the plaintiff o ought as to the said ~~fourth~~ third Count mentioned to have or maintain his action against them. —

H. Waddington

30.

In the Exchequer of Pleas

Mr. G.

Foote & anr

— ats —

Pleas in Bar

Fonseca

Messrs Baxendale & Co

for Plts

Wm J. Robson

Solr Admy for Defts

Doc 38

Writ of Summons issued into Middlesex, Durham, Kent, Surrey, City of London, Berkshire, Berkshire & Cornwall the 22nd day of July 1845 and into Cornwall

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the faith To Thomas Turner à Becket of No. 7 Golden Square in the County of Middlesex William George Bentley of High Holborn in the same County Harriott Gauldsmith of Mare Street Hackney in the same County David Ralph Gault of Bunhill Row in the same County Thomas Hacket of Birchin Lane in the City of London Henry Hales of Saville Row Walworth in the County of Surry Frederick Hatch No. 7 Jerusalem Passage Saint John's Square in the said County of Middlesex Henry Leach of Love Lane Headwell in the same County William Reeves of Robert Street Adelphi in the said County of Middlesex Josiah Slane of Union Street Deptford in the County of Kent

James Wall of No. 4 New Broad Street in the said City of London Thomas May of Albion Terrace Exeter in the County of Devon John Fairweather Harrison of Hampstead in the said County of Middlesex Robert Hart Pike of the Carn Brea Mines in the County of Cornwall Francis Ignatius Vanzeller of Saint Mary axe in the said City of London Hugh alias Hugh Henry Pantan of Sunderland in the County of Durham Martha Taylor of Grove Cottage near Wantage in the County of Berks and James alias John Carrol Willcocks of High Street Exeter in the said County of Devon Greeting We command you that within eight days after the Service of this writ on you inclusive of the day of such Service you do cause an appearance to be entered for you in our Court of Exchequer of Pleas at Westminster in an action on promises at the suit of John Williams Michall Williams William Williams and John Michael Williams and take notice that in default of you so doing the said John Williams Michael Williams William Williams and John Michael Williams may cause an appearance to be entered for you and proceed therein to Judgment and execution Witness Sir Frederick Pollock Knight at Westminster the Third day of July in the year of our Lord One thousand eight hundred and forty five

N.B. This writ is to be served within four Calendar months from the date thereof including the day of such date and not afterwards

This writ was issued by
Gregory Faulkner Gregory and Bamdillon
of No 1 Bedford Row London

Agents for Messrs Smith & Roberts
of Truro
in the County of Cornwall
Attorneys for the said John Williams Michael
Williams William Williams and John Michael Williams

The Plaintiffs claim £ 254. 17. 3
for debt and £ 19. 10. —
for Costs and if the amount thereof be
paid to the Plaintiffs or their Attorney
within four days from the Service hereof
further proceedings will be stayed

No 12 Wm Vanzeller
15. St Mary Axe
Solicitor Casual

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