

1827 Sept 20 do 03
My Lord,

As representatives by Power of Attorney of Mr Elias Coelho Cintra of Pernambuco, owner of the Portuguese Brig Gaviao, Captain Joze Bento de Macedo, we have to claim Your Lordships indulgence whilst we draw your attention to the following circumstances connected with that Vessel.



On examining the documents which the Owner sent to us in 1823, in order to solicit from the British Government, indemnification for the prejudice, which he had suffered, we found that they contained a most serious charge against Sir George Collier the Commander of H.M. Ship of War, Tartar, by whom his said Brig Gaviao had been detained in Old Calabar, in April 1821, viz

" That after he (Sir George Collier) had taken possession of said Brig, under the plea that she was trading in Slaves, finding that there were no just grounds for her detention, he endeavoured to treat with the Captain and Supercargo to proceed to Sierra Leone, on freight, with certain Slaves, which he had taken from the Constantia, and other captured Ships, and that when Captain Macedo (who could not deviate from his owner's orders) refused to accede to the proposal, he, in an arbitrary manner, and without attending to the Captain's remonstrances, put the Slaves on board the Gaviao and sent her to Sierra Leone for adjudication as a vessel illegally engaged in the Slave trade²³ willing to believe that a British Officer would not have acted

To the Right Honorable
Lord Dudley & Ward

in do

in so arbitrary and unjust a manner, we did not feel ourselves warranted, at that time, in bringing forward this charge, which so seriously affected his character; especially as it was established only by the written statement of the Owner of the Brig, and not substantiated by declaration upon oath - this requisite proof however being since received we have the honor to submit ^{it} to Your Lordship's consideration, as ~~the~~ enclosed document A, and at the same ^{time} beg to inform Your Lordship that on looking over the proceedings of the Commission at Sierra Leone (which we considered it necessary to examine into in order as far as possible to confirm or refute the Owner's statement.) we found the charge in a great measure confirmed by a letter which Sir George Collier addressed to Mr James Hannah, Midshipman of H. M. Ship Tartar, at the time he was directed to take charge of the Gaviao, and of which letter we take the liberty to send the enclosed Copy (B) - Your Lordship will be pleased to observe that the whole tenor of its contents leads to the conclusion that he (Sir George Collier) looked upon the Gaviao as forced into a Service for which the Owner would be entitled to a remuneration

Instead however of candidly avowing the real motives which appear to have induced him to send the Gaviao to Sierra Leone, we find by a declaration which he made on the 17th April, on board H. M. Ship Tartar, at Fernando Po, and which was transmitted to Sierra Leone, accompanied by a letter which under same date he addressed to the Registrar of the Mixed Commission, that he not only endeavoured to free himself from the consequences of his arbitrary conduct but even to obtain the condemnation of Ship and Cargo, for being engaged in an illegal traffic: not having succeeded in accomplishing this object (res-

-toration

restoration of the property to the Captain having been decreed by the Commission at Sierra Leone on the 5th July 1821) we further find that Mr Hamnah, on the 16th August, when the Commission was about to assess damages, found it convenient to send to the Registrar of the Commission the before mentioned letter, which had been written to him, by Sir George Collier and which he had not thought prudent previously to produce.

It becomes our duty as representatives of the owner of the *Gavião* to protest, in the first place against the whole of the proceedings which took place at Sierra Leone, as having their origin in an arbitrary act of Sir George Collier not contemplated by the Treaty of July 1817, and consequently not coming within the jurisdiction of the Mixed Commission - in the second place against the competency of the Commission under any circumstances to take cognizance of the case, being at the time incomplete by the absence of the Portuguese Judge Arbitrator - and in the third place against the mode in which the Commissioners assessed the damages, as being not only contrary to every principle of equity, but also at variance with both the letter and spirit of the Treaty under which the Commission was established - That the assessment of damages was contrary to equity we think the following statement will clearly prove Viz -

The Brig and outfit at the time of sailing from Pernambuco in Sep^r 1820 was valued at, and

insured in the sum of ----- Rs 90000000.

when she returned to Pernambuco in Jan^r 1822,

after having her voyage entirely frustrated by the detention of Sir George Collier, she was valued at, (but when put up to auction

could not be sold for) ----- 14000000

Loss Rs 76000000

Loss - Rs 76004000

The Owner had to pay wages to the Crew from
6th Sep^r 1820 to 26th Jan^y 1822 at the rate of
Rs 2004600 p Month, which for 16 Months
and 20 days amounted to Rs 33434333

And to the Captain for the round

Voyage the sum of --- - - - - 24004000 57434333

The Cargo which the Owner shipped, and which
had not been touched previous to the Vessel's
detention, amounted to --- - - - - Rs 53524895

The Cargo which was on board at
the time of detention belonging to
the Captain --- - - - - - - - - - - 17204300

Rs 70734195

Many of the goods having been plundered by the Captors, and a great
proportion of the remainder being
in a damaged state; said remainder,
when sold by Auction at Pernambuco

on the 22nd March 1822, produced only, 25284170 45454025

The Captain paid at Sierra Leone for various
articles supplied the Gavião, provisions &c,
during his detention --- - - - - - - - - - - 12274640

Rs 191154998

Amounting at the Exchange of 56 p^{ct} to --- £4460.8 -

As compensation for this grievous prejudice of
£4460.8 -, which the owner actually suffered,
the only indemnification which has been
conceded has been.

Amount of award passed at Sierra Leone in
favor of the Captain --- - - - - £1520.13.9

And amount paid to the Captain at
Sierra Leone, for estimated value
of Slave decks, Water Leggers, Boilers,
and Slave chains, which the British
Commissioner ordered to be taken

from on board at Sierra Leone - 65 --- 1585.13.9

leaving the heavy loss of - £2874.14.3,

without taking into calculation interest of money, Sea risk
 &c, for which the Owner expected to be indemnified by the
 ultimate result of the voyage on which he had embark-
 ed his property, and which it is necessary to take into
 contemplation -

By accounts and documents in our possession, he
 (the Owner) shews that the profit of the voyage would
 have been ----- Rs 16,126,805
 less supposed wear and tear ----- Rs 3000,000
 Wages for 9 Months @
 Rs 200,400 ----- } Rs 1805,400
 and Captain's Wages
 for the Voyage ----- } 2,400,000 - 4205,400 7205,400
 Net Profit ----- Rs 8921,405

being at the Exchange of 56% £ 2081.13.3

to which add the actual prejudice

(over and above the amounts awarded

at Sierra Leone) as above mentioned - 2874.14.3

Total prejudice £ 4956.7.6

That the Commissioners in assessing damages have not
 been governed by either the letter, or the spirit of the
 Treaty of 1817, will we think be evident on an exami-
 nation of their award, of which we beg leave to enclose
 a copy (document C), in referring to which we will
 not encroach upon Your Lordship's valuable time by
 entering into the different items of which it is com-
 posed, and which in general give ground for comment;
 but will confine ourselves to the indemnification awarded
 for freight and demurrage -

By the 8th Article of the regulations for the Mixed
 Commission annexed to, and forming a component part
 of the Treaty of July, 1817, it is distinctly stated that
 Demurrage shall be awarded according to the Schedule

annexed to said Treaty, during the days of the Vessel's detention - The Garcia was detained on the 8/9th April 1821 - the indemnification of the Mixed Commission appears to have been determined upon at the meeting of the Court on the 5th October 1821 - but by the declaration of the Captain it is shewn that the award was not delivered to him until the latter end of Nov, that then he was not permitted to proceed on his voyage until the arrival of the new Governor from England, and that only on the 11th December was he able to get his clearances and to leave Sierra Leone.

Though from the deteriorated state of the Vessel, and the plunder of her Cargo, during the time of her detention, there appears to have been no resource for the Captain but to return to his port of loading (Pernambuco) and thereby have his voyage entirely frustrated, yet admitting that the Commissioners might not look upon this as an inevitable consequence, we humbly submit that at any rate it was incumbent upon them to have taken into consideration the period which the Vessel was likely to be detained at Sierra Leone, subsequently to the Court's coming to its decision, and the time it would afterwards require for her return to the port from whence she was taken, and to have awarded demurrage according to the Treaty from the date of her detention, to such estimated date of return - which would have been nearly as follows Viz -

9th April 1821 to 18th Feb^{ry} 1822 - (69 days having been spent in bringing the Vessel, from Old Calabar to Sierra Leone, Viz from 9th April to 17th June, we calculate upon the same number of days after the 11th December for her to return to the same place) 315 days at £6 - $\frac{1}{2}$ Day - £1890 -
Whereas the Commissioners, losing sight

£ 1890

entirely of the Treaty, and having before
them the suggestion of Sir George Collier
that she should be paid as a hired
transport for the conveyance of the Slaves,
awarded

1st Freight at the rate of 15/£ Ton & Month,
from the 10th April to 19th June inclusive,
the latter being the day of disembarkation
of the Negroes at Sierra Leone, (equal to
only about £ 3.11.4 & day) being £ 249.13.3

2. Considering that, from the deficiency
of proper information on the part
of the Captors, the award of damages
had been much protracted, the

Court decreed demurrage according
to the Schedule at £ 6 & day from
the 18th August to 5th October —
inclusive 48 days — — — — — 288 — — — 537.13.3

difference — 1352.6.9

It cannot but be remarked that by this mode of
awarding damages the Commissioners have convicted
themselves in the most marked manner of great
inconsistency — whilst they awarded demurrage
according to the Treaty at the rate of £ 6 & day
from the 18th of August to the 5th of October they
allowed only about £ 3.11.4 & day from 10th April
to 19th June and the intermediate period, from the
19th June to 18th August, they did not even contemplate.
had the Captain of the Gavião chartered his vessel to
Sir George Collier at a certain rate of freight for the
voyage to Sierra Leone, and had Sir George detained
her under any pretence after she was ready to enter
upon another voyage, it would have been perfectly

just for the Commissioners to have awarded the payment of the freight agreed upon, and afterwards to have condemned *Sir George* in demurrage for the term of detention; but when no such Charter existed, when the Commissioners, by declaring the seizure to have been illegal, fixed the commencement of the detention to be the date of *Sir George's* forcibly taking possession of the vessel, and when it must be evident to every one that such detention must at any rate continue until such time as the Captain had her again under his sole control, and was in a situation to navigate her, it evinces the greatest degree of inconsistency as well as of injustice to award a less rate of indemnification for one period of the detention than for another, and to omit altogether an intermediate term of 59 days.

Having shown we trust satisfactorily that the Commissioners of the Mixed Commission at Sierra Leone have not awarded equitable indemnification, and that they did not govern themselves by the Treaty of 1817 - in assessing damages, we flatter ourselves that His Majesty's Government taking into consideration the serious injury which has been done to the owner of the *Gavião* not only by the destruction of his property but also by his being deprived of that property for so long a period, will be pleased to direct such suitable compensation to be made to him as the peculiar circumstances of the case may appear to require.

We have the honor to be

My Lord

Your Lordship's most Obedt^l & c^t Servants

51 Leinster
25th Sep^r 1827-

James Burn Esq^r

new turn for the
Protest made by Jose Bento de Macedo Captain
of the Brig Gavião during his voyage from
Pernambuco to Cabinda, touching at Loanda
and the islands of St Thome & Principe.
That, having sailed from the island of
Principe on the twenty ninth of March
One Thousand eight hundred and twenty
one in pursuit of his voyage, and,
being informed, that in Cabinda the
Slaves were at a very high price, he
made up his mind to go to the port
of Calabar, intending to buy a quantity
of oil and Ivory, and thence return
to the island of Principe to complete
his cargo with Coffee, and judging that
the merchandise composing the cargo
of the said Brig. was insufficient to
buy the Slaves in Cabinda, he in
consequence, with the consent of his
Officers and crew, decided to put into
the said port, on which account he
protests against whomsoever he may
be entitled to protest against. on board
the Brig Gavião March 31st 1821.
Signed J.B.C. by the Captain, and four

Protest made by Joni Bento,
de Macedo Captain of the Brig Gavião
taken by an English Frigate commanded
by Sir George Collier, when at anchor
in the port of Calabar.

That, on the night of the eighth
to the ninth of April in the year One
Thousand eight hundred and twenty
one these came on board his vessel
several large and small boats with
armed people and proceeded to search
the said Brig looking for Slaves bought
in that port, which they did not find,
but, nevertheless, they took possession
of the vessel, and made sail with
her on the morning of the ninth;
and, as he went to that port to purchase
Oil, Ivory and provisions to proceed
on his voyage, as before specified,
he could not continue his intended
voyage, for which reason, he protests
against whomsoever he may have
right to protest against for all losses
and damages of the said Brig
and Cargo, and duties of His Majesty,

during the performance of his voyage.
Done on board the Brig Gavião on the
15th. of April 1821.

(Signed V.^e by the Captain, and four.)

Protest made by José Bento de Macedo
Captain, and Super Cargo of the Brig
Gavião detained by an English Frigate
commanded by Sir George Collier.

On the ninth day of April of the
present year, being taken by an English
Frigate, commanded by Sir George Collier,
I was compelled to anchor off the port near
the said Frigate, and on the following day
proceeded to the island Fernando Po, where,
by order of the said Commander Sir
George Collier, sixty four new Slaves were
put on board the said Brig Gavião, which
I opposed and protested against, the Com-
-mander, to whom I intimated my protests,
did not receive them, but answered that
he knew there was no ground for Capture,
and that, most probably, the mixed Commis-
-sion would declare the said Brig an illegal
prize, and, in such case, he would give
me an order for the indemnification of
the freight of the Slaves, and, finally,

he told me, if I liked, I might go clear, and charter the Brig to him to carry to Sierra Leone a quantity of Slaves, and, as I did not accept the proposition, it being inconvenient to me, he said there was no occasion for protests, and that he would not receive any, as I could only make them at Sierra Leone before the Commission; for which reason I protest against the said Commander Sir George Collier and whomsoever else I may be entitled to protest against, for all losses and damages, the value of the said Brig and her cargo. Done on board the Brig Gaviao, at anchor at the island of Fernando Po, on the 16th. of April 1821.

/Signed &c by the Captain, and four/

Protest made by José Bento de Macedo Captain of the Portuguese Brig Gaviao on her voyage from Pernambuco to Cabinda touching at Angola and the islands of St. Thomé and Príncipe.

That, sailing from Pernambuco on the sixth day of September 1820, with every thing ready on board for the intended voyage

0403
I the undersigned do certify
on oath sworn on the Holy &
Evangelists that being Captain
and Supercargo of the Brig
Gervais on her voyage to Loanda
and thence to the Islands of
St. Thomé and Príncipe with
Cabinda as the final destination
of the said Brig.



That sailing from the Island
of Príncipe on the projected voyage
I fell in with a Schooner coming
from the ports aforesaid, and in
consequence of the news I obtained
through her of the bad state of
the market I determined on going
to Calabar to take in part of
a cargo of Palm Oil and to
return to the said Islands to
complete my Cargo with Coffee, thus
acting in conformity with my in-
structions which allowed me
full power so to do.

That on &

arriving at Calabar, and commencing the purchase of the Oil, I was taken on the night between the 8th and 9th of April 1821 by the boats of the Private Lantar & commanded by George Collier, that on the following day they made sail with the said Brig and anchored her outside the bar near the Private aforesaid; that my log book and other Papers were required of me by the said George Collier but never again returned; that the said Commander George Collier knowing that there was no reason to make a prize of the said Brig proposed his not taking the Brig in case I liked to charter her to him in order to convey to Sierra Leone a number of Slaves which he had made prize of in some other vessels which were not fitted for their conveyance promising me that the moment the Slaves should be landed I should be paid the sum to be agreed on, to which

I made answer that it was not
convenient for me to enter into
such a contract and that I
accordingly could not comply, to
which the said Commander
replied that in such a case
he would take the vessel by
force and that if she was
judged an illegal prize as she
probably might I should be paid
the freight of the slaves.

That sixty four slaves were then
put on board the brig Gavião and
an order given for the Brig to
proceed to Sierra Leone, where
she was judged an irregular prize.

That I protested against the Com-
-mander Sir George Collier &
throughout all these proceedings,
and that the protests being pre-
-sented to the said George Collier
he refused to accept them, saying
that protests could be made in
Sierra Leone only before the
mixed Commission. - That having

been sent from the Island of Fernando
Pó whether he had been ordered by
the said Brigate, on the seventeenth
of April one thousand eight hun-
-dred and twenty one he entered
the Port of Sierra Leone the
seventeenth day of June in the
said Year where he was detained
and on the fifth day of July of the
year aforesaid the said brig having
been pronounced an illegal prize,
the detention was however continued,
the Mixed Commission refusing
to deliver up the proper documents
for my clearance, nor could I
learn what was alleged me for
my detention obstruction of my voyage
and robbery and destruction of the
goods, at length I was informed
that the said Commission at a
meeting held on the twenty fifth day
of September agreed that a certif-
-icate should be issued to me to
recover damages which was accord-
-ingly delivered to me at the latter

end of November and then it was
that I knew that the said Com=
=mission had agreed that one x
thousand five hundred ~~and~~ eighty
five pounds thirteen shillings and
nine pence should be paid to me;
that in consequence of the long
detention that sum is not suffici=
=ent to pay the wages. — That
having required permission to
proceed on my voyage with the
said Brig it was refused until
the arrival from England of the
new Governor who was then expected
and in fact when he arrived
he gave me my passports and I
left Sierra Leone on the eleventh
day of December one thousand
eight hundred and twenty one.

All the above is true which I
confirm upon oath on the Holy
Evangelists Pernambuco Dec^r 1st 1824.

(signed) João Bento de Macedo


I John Parkinson do hereby
certify that the foregoing signature
is in the true hand writing of
Lore Bento de Macedo

British Consular Office
Pernambuco Feb 9th 1825.

(signed) John Parkinson

Consul

At the instance of Lore
Bento de Macedo I John Parkinson
Esq. His Majesty's Consul in the pro-
-vince of Pernambuco hereby certify
unto all persons whom it may concern
that the foregoing is a faithful
translation of an original document
exhibited in my Consular office on
the ninth day of February one thou-
-sand eight hundred and twenty five.

Given under my hand and
Seal of Office this ninth day
of February in the Year of
our Lord One Thousand
hundred and twenty five.


John Parkinson
Consul



Declaration upon Oath
by Captain Maeder of
the Brig Garcia

Copy.

Oct 26

By Sir Geo. R. Collier, Bart.
K. C. B., Captain of His Majesty's
Ship Tartar, & Commander in Chief,
of His Majesty's Ships & Vessels, on the
Coast of Africa —

Memo: It is my direction you proceed on board the
Portuguese Brig "Gavião" and taking charge of the same
proceed with her to Sierra Leone, following such further
directions from Lieut: Stagan, as you may hereafter receive —

And whereas independent of the just & reasonable
grounds, I have had for detaining the Portuguese Brig
Gavião, as trading illicitly for Slaves, North of the Line, the
Crowded State of the Slaves on board the Portuguese Schooner,
Constantia, (detained about the same time in the river of Old
Calabar) imposes on me the imperative duty, of sending these Slaves,
to Sierra Leone, in the most convenient way I can, and the
impossibility of the Tartar or Thistle, receiving on board, any
further addition to the number of Slaves they now have, with-
out endangering the health of the respective Ship's Company, induces
me to order a proportion of the Male Slaves on board the
Gavião for a passage to Sierra Leone, accordingly —

And whereas there is some doubt as to the result of the
deliberations of the Judges of the Mixed Court of Sierra
Leone, it is my direction that you consider the Gavião in some
degree, as a hired transport — you are therefore to be most
particular and careful, while in charge of her and to see
that neither Stores, Provisions, or any part of the master's venture
be touched, and as there are many Casks of Spirits (agua-
dente) on board on deck, and accessible to Sailors, it is my
directions the same be carefully removed for better preservation
to this Ship, and if you find any remaining on board you
will apply to me accordingly — You are to be careful
also that none of the provisions, belonging to the Brig, and
intended for her own intended cargo of Slaves, be touched

unless indeed from failure of provisions sent from this Ship, in which case you are to call the attention of the Portuguese Master to your wants, and giving him a certificate of your having done so, take such a proportion as the exigencies of the moment demand, and in the event of your doing so you are to send a copy of this order to the registrar of the Mixed Court, with the account of the quantity of Provisions or any other article you may have been compelled to make use of, and the better to guard against any such event, as the non-condemnation of the Brig Gavião, you are to present the Governor or Chief Justice of Sierra Leone, with a Copy of so much of this order, as relates to the care and attention required of you, to the Gavião's Stores and Provisions, in order that they may recommend a suitable compensation to the Master, for the use of the Brig, as a transport in conveying the captured Slaves from the Right of Biapa, to Sierra Leone, and deliver the Brig over to the proper authorities — You will then place your crew on board the Thistle, to wait my arrival at Sierra Leone —

Given under my hand on board
His Majesty's Ship Tartar, in
N. W. Bay, Fernando Pó, the 17
of April 1821 —
(Signed) George R. Collier —
Commodore —

Mr James Hannah
Midshipman, of His Majesty's
Ship Tartar, hereby appointed to
take charge of the detained Portuguese
Brig "Gavião" —

Certified a true Copy
(Signed) James Woods —
a registrar —

The above was enclosed in a letter from Mr James Hannah, to the Registrar of the Mixed Commission Court in Sierra Leone, dated 16 August 1821 —

B

Instructions from Sir George
Collier -