MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In compliance with a resolution of the Senate of the 5th instant, a report from the Secretary of State, upon the subject of the supposed kidnapping of colored persons in the southern States for the purpose of selling them as slaves in Cuba.

WASHINGTON, March 15, 1866.

ANDREW JOHNSON.

List of papers accompanying the report of the Secretary of State to the President, of March 15, 1866.

Mr. Seward to Mr. Savage, August 29, 1865, with accompaniments.
Mr. Savage to Mr. Seward, September 15, 1865.
Mr. Durant to Mr. Seward, January 1, 1866.
Mr. Congar to Mr. Durant, January 11, 1866.
Mr. Congar to Mr. Minor, January 12, 1866.
Mr. Hunter to Mr. Minor, with an accompaniment, January 24, 1866.
Mr. Tassara to Mr. Seward, translation, February 4, 1866.
Mr. Seward to Mr. Tassara, February 16, 1866.
Mr. Hall to Mr. Seward, with accompaniments, February 17, 1866.
Mr. Minor to Mr. Seward. February 19, 1866.

Mr. Seward to Mr. Savage.

No. 68.]

DEPARTMENT OF STATE,
Washington, August 29, 1865.

SIR: I transmit a copy of a letter of the 10th instant, and the accompanying papers, addressed to this department by the Secretary of War, on the subject of three colored children abducted from New Orleans and carried to Havana, or some other port of Cuba, where it is supposed they now are.

You will make such inquiries in regard to the matter as may be in your power, and report the result to this department, in order that, if the children can be identified, proper measures may be adopted with a view to their return to New Orleans.

I am, sir, your obedient servant,

THOMAS SAVAGE, Esq.,
Vice-Consul General, Havana.

WAR DEPARTMENT,
Washington City, August 10, 1865.

SIR: I am instructed by the Secretary of War to invite your attention to the enclosed copy of a communication and of its accompaniments from Major General Canby, relating to the abduction from New Orleans of three colored children, and their transfer to the island of Cuba, where it is alleged they are now held in a state of slavery.

I have the honor to be, sir, your obedient servant,

THOMAS T. ECKERT,
Acting Assistant Secretary of War.

Hon. W. II. SEWARD,
Secretary of State.

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, July 15, 1865.

SIR: I have the honor to request that the attention of the Secretary of State may be invited to the accompanying papers relating to the abduction of three colored children from this city, and their transfer to the island of Cuba, where it is alleged they are now held in a state of slavery.

The status of these children at the time of abduction was that of slaves, and their introduction into the island of Cuba was in violation of the laws of Spain. I presume that on a representation of the facts by the Secretary of State the authorities of that island would require them to be returned to this city, in order that they may be returned to the mother. I do not see any other way in which this result can be obtained. It is desirable also that such evidence may be
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procured, if it can be done, as will determine the guilt or innocence of Mrs. De Hart, who is implicated in the abduction and is now detained here under bonds.

The presumptions are strongly against her as an accomplice in the abduction, but there is not sufficient evidence to bring her to trial.

The paper marked "A" is a brief of the case.

Very respectfully, your obedient servant,

EDWARD M. CANBY,
Major General Commanding.

Hon. Secretary of War,
Washington, D. C.

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ROSE ELYRA

vs.

MRS. A. V. DE HART.

Recapitulation.

April 17, 1860.—Rose Elyra, slave girl, aged twenty-two and a half (22½) years, with two (2) children, Ernest, four (4) years, and Marie, two (2) years of age were sold by Mr. Sosthene Allain, of the parish of West Baton Rouge, to W. N. Mercer, of New Orleans, La., for $1,500.

W. N. Mercer bought as agent for and on account of Dr. J. A. De Hart, who paid him $500 cash, and two mortgage notes for $500 each, secured upon said slaves.

The instrument of sale bears W. N. Mercer's indorsement that the notes were subsequently paid and extinguished, vesting all right, title, and interest to the aforesaid slave in Mr. De Hart. The indorsement is without date.

August 14, 1862.—Dr. J. A. De Hart executed bill of sale and transfer to Madam Roland, widow, (both of New Orleans, La.) of Rose and three (3) children, aged respectively six (6) years, four (4) years, and twenty (20) months, for $900, of which $400 was alleged to be paid and received in cash, and two notes given and accepted for $250 each, secured by mortgage on said slaves.

April 8, 1865.—(A certificate from the mortgage office, New Orleans, La., April 8, 1865, shows that the above mortgage, at that date, had not been cancelled.)

October, 1862.—Mr. J. A. De Hart left New Orleans for Havana, Cuba.

December 18, 1862.—Rose Elyra was arrested and, with her infant of two (2) months, placed in the parish prison for alleged insolence to her mistress and owner, Madam Roland.

January 15, 1863.—Rose Elyra, with infant, released from prison by order of Colonel Deming, military mayor of New Orleans, upon Madam Roland's application, dated January 7, 1865.

January 15, 1863.—Mrs. De Hart, Madam Roland, son, and three (3) children, embarked in steamer Bio Bio for Havana, Cuba. Before embarking Mrs. De Hart visits Rose at the prison, and requests her to go to Havana with them. Rose declined, through sickness, according to Mrs. De Hart's testimony, through aversion and disinclination, as Rose alleges.

January 16, 1863.—Steamer Bio Bio sailed for Havana, carrying Madam Roland, Mrs. De Hart and the three children, then aged six (6) years, four (4) years, and two (2) years, respectively.

January 2, 1865.—Mrs. A. V. De Hart returned to New Orleans, La., from Havana.

January 6, 1865.—Arrested on charge, by Rose, of kidnapping the three (3) children, aforesaid.
January 11, 1865.—Placed under bonds, $1,000, to appear before recorder’s court, 2d district.

February 28, 1865.—Dismissed by Recorder Woolsey, on the ground that there was no statute applicable in such a criminal prosecution, and that no statute had been violated.

March 4, 1865.—Rose Elyra petitions Major General Hurlbut, commanding department of the Gulf, for his interference and for the recovery of her children.

March 6, 1865.—Major General Hurlbut orders the arrest of Mrs. De Hart, and her examination before Major Lieber, judge advocate, at the same time granting a hearing for bail.

May 13, 1865.—Special Orders No. 126, paragraph 10, headquarters department of the Gulf, Major General Banks commanding, announces Mrs. A. V. De Hart acquitted of the implied charge of kidnapping, but guilty of improperly and unlawfully separating children of less than ten (10) years of age from their mother. In view of her long confinement, accused is ordered to be released and set at liberty, provided she first secures the return and restoration of the three (3) children to their mother, the natural guardian. Provost marshal general is charged with the execution of this order.

June 22 and 27, 1865.—Mrs. De Hart, upon oath before a justice of the peace, solemnly disclaims any ownership, at any time, in said children; any control of them ever or now, and any and all participation in their removal to Havana, Cuba. She further avers that their production and restoration to the mother is, on her part, an utter impossibility.

July 1, 1865.—Major General Canby, by Special Orders No. 175, paragraph 3, current series, headquarters department of the Gulf, revokes Special Order No. 126, paragraph 10, current series, in that the provost marshal was without jurisdiction in the case. Mrs. De Hart is to be released from confinement and placed under bonds, to be approved by the provost marshal general of the department, to remain in this city and await the result of an application to the Spanish authorities for the return of the three (3) children of Rose Elyra.

S. M. Eaton,

Captain, C. S. O., Department of the Gulf.

New Orleans, La., July 3, 1865.

State of Louisiana, Parish of Orleans:

James Fuller, district attorney first judicial district, Louisiana, being duly sworn, on oath states that he is well acquainted with Mrs. Mary De Hart, and that, to the best of his knowledge and belief, the three children of Rose Elyra (colored) are not in the possession nor under the control of the said Mrs. De Hart; that he verily believes the said children are now in the island of Cuba, and that their production by said Mrs. De Hart is an absolute impossibility.

James Fuller.

Subscribed and sworn to before me, this 22d day of June, 1865.

Michael Gernon, Notary Public.

State of Louisiana, Parish of Orleans:

Personally appeared before me, the undersigned authority, Mrs. Mary De Hart, who, being duly sworn, on oath states that some time in the year 1862 the three children of Rose Elyra (colored) were sold, with their mother, by the husband of the said Mrs. De Hart, to Mrs. Roland; that the last time affiant saw said children was about six months ago, in the island of Cuba; that the
said children were not then, have not since been, and are not now, in the possession, ownership, nor in any manner under the power or control of affiant; that she has no right or title to or in said children; that she has no right or power to control the movements of said children; that she is not pecuniarily or otherwise able to purchase said children, nor to obtain possession or control over them; and that the production or return of said children by affiant to this city is absolutely impossible.

MARY AMILIE DE HART.

Subscribed and sworn to before me, this 22d day of June, 1865.

HUGH MADDER, Notary Public.

STATE OF LOUISIANA, Parish of Orleans, ss:

Be it known that before me, the undersigned authority, personally appeared Mrs. Mary A. De Hart, who, being duly sworn, on oath states that the three children of Rose Elyra, for the kidnaping of whom affiant was tried before the provost court, were duly and bona fide sold by the husband of affiant to Mrs. Roland; that the said children were never in the possession or power of affiant; that, to the best of her knowledge and belief, the said children are in the possession of Mrs. Roland, now residing in Havana, and that by the Cuban laws Mrs. Roland cannot sell said children; that affiant was not in any way or manner, directly or indirectly, instrumental in separating said children from their said mother, nor did affiant assist therein; that the said children were not taken away without the consent of their parents, but with the consent of both father and mother, and with the promise on the part of the mother to go with them; and that affiant is absolutely unable to return said children or procure their return to this State.

AMILIE DE HART.

Subscribed and sworn to before me, this 27th day of June, 1865.

SAMUEL MYERS,
2d Justice of the Peace, Parish of Orleans.

STATE OF LOUISIANA, Parish of Orleans, ss:

We, the undersigned, do solemnly swear that we are well acquainted with Mrs. Mary A. De Hart, whose name is signed to the foregoing affidavit; that we believe her to be truthful and reliable, and that the statements she has made in said affidavit are true, to the best of our knowledge and belief.

CLARA STOCKTON.
CARLOS G'TO LEBEQUE.
S. P. LAMON.
CHARLES CHADWICK.

Subscribed and sworn to before me, this 27th day of June, 1865.

SAMUEL MYERS,
2d Justice of the Peace, Parish of Orleans.

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, May 13, 1865.

[Special Order No. 87.]

In the case of Mrs. A. V. De Hart, examined before the provost court, department of the Gulf, the accused is acquitted of the implied charge of kidnap-
ping, but found guilty of improperly and unlawfully separating children of less than ten years of age from the mother.

In consideration of the period of confinement already undergone by accused, she will be released and set at liberty. The return of the three children of Rose Elyra to their mother, who under existing laws is their natural guardian, is made a condition precedent to such release. The provost marshal general, department of the Gulf, is charged with the execution of this order.

Approved:

N. P. BANKS,
Major General Commanding.

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, 1865.

The trial of Madam De Hart by the provost court, and the decision of the case by the commanding general, was in lieu of a commission, and had the same effect. Hers was a case proper for such commission, as other courts had failed to meet the demands of justice. It was an arbitrary act of the commanding general, and allowable in times of war, like a thousand other corresponding acts that the exigencies of such times demand. Nor was the commanding general bound, in the administration of justice, to follow any statute of the State, or apply the penalty thereto attached; and the term "unlawfully separating the children," &c., is simply descriptive of the offence committed.

Mrs. De Hart, as the proof shows, was particeps criminis at least, and the probable principal in the outrage complained of.

This investigation was upon a petition, and not upon a distinct charge of kidnapping, and if found guilty of any facts constituting an offence against the public good, was, by such authority mentioned, justly subject to such punishment as he might deem appropriate and proper.

The children mentioned for many years have been, and were at the time of their removal, in the possession and under the control of Mrs. De Hart. no change of possession ever having taken place, notwithstanding the pretended sale to Madam Roland, and are now with Madam Roland and the husband of Mrs. De Hart, and to appearances within her control. This, taken together with the assertion of the counsel of the accused that the children could be produced upon the trial, would indicate her ability to return the children, that she had assisted in taking to a foreign country as slaves, to the mother, the natural guardian, in a country where no slaves exist.

The order in the case of Mrs. De Hart proceeds upon the ground that she controlled the children; and if it shall be made fully to appear that she is absolutely unable to comply with the condition precedent to release mentioned in such order, then, and not till then, should she be unconditionally set at liberty.

MAYORALTY OF NEW ORLEANS,
City Hall, January 7, 1863.

SIR: You will release from custody the slave girl "Rose," belonging to Mrs. Roland, upon the payment of jail fees.

By order of—

HENRY C. DEMING,
Colonel United States Volunteers and Acting Mayor.

THOS. HY. MURPHY, Secretary.

J. W. MILLER, Esq.,
Keeper of Police Jail.
In the matter of Rose Elyra, provost court of the department of the Gulf:

The prosecution having, through inadvertence, omitted to offer in evidence, on trial of the cause on the 13th April, 1865, the certificate from the mortgage office, hereunto annexed and marked R, dated March 24, and extended to April 8, 1865, showing that the mortgage on the slave Rose and her three children, given by Mrs. Roland to J. A. De Hart to secure the sum of five hundred dollars, a portion of the price, as per act before Graham, offered in evidence by the defence, has never been cancelled, it is now ordered that said certificate be filed in evidence nunc pro tunc, and that the defendant, Mrs. De Hart, and her counsel have leave to file such written deposition, or other evidence of a legal character on this point, as they may deem necessary.

G. NORMAN LIEBER,
Major, Judge Advocate, Judge Provost Court.

R.

I, the undersigned, recorder of mortgage for the parish of Orleans, city of New Orleans, State of Louisiana, certify that the mortgage granted by Carmelite Boco, widow of George Roland, in favor of James Andrew De Hart, as per act before James Graham, notary, on the 14th August, 1862, and bearing on a certain mulatto woman named Rose, aged about twenty-four years, and her three children, viz: a boy named Ernest, aged about six years, a girl named Mary, aged about four years, and a girl named Josephine, aged about twenty months, to secure $500, interest and costs, has never been cancelled and annulled from the books of my office, viz: B. 78, s. 397.

NEW ORLEANS, March 24, 1865.

This certificate is good for this day.

NEW ORLEANS, April 8, 1865.

J. W. MADDER, Recorder.

NEW ORLEANS, March 10, 1865.

Major: On Wednesday, towards 3 p. m, I found on my desk a note from Captain Fenton Rockwell, stating that the case of Rose Elyra was to be tried on to-day at 10 o'clock. I applied at once to Major General Hurlbut to ask you to have the case continued, and it was only yesterday at 4 p. m. that he sent me word that the application must be made by myself to you. The party concerned, Rose Elyra, has not been informed the case is for trial. She lives remote from my office, viz: at the corner of Burgundy and Barrack, and, not knowing the case would come on, I have not notified her.

On the 7th of March I applied to Major General Hurlbut for instructions to be given to the provost marshal for a copy of the passports for Mrs. De Hart and the three children by the Bio Bio to Havana, and an explanation how the children were permitted to go; also for an explanation from Warnekin & Co. as to what is contained in their books on the subject; they were the agents of the Bio Bio. The general has informed me that he has ordered this information to be furnished to me, but it has not yet been received.

I have also applied to the police jail for copies of the orders by which Rose
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was lodged in and discharged from jail, and for the name of the police officer who committed her, but I have not yet been able to get these facts.

I beg that the case may be postponed for two weeks.

Respectfully,

THOMAS J. DURANT,
For DURANT & HORNER.

Major Lieber, Provost Judge.

______________________________________________________________

PROVOST COURT, DEPARTMENT OF THE GULF,
Office of Judge Advocate, New Orleans, April 14, 1865.

The order introducing certificate that mortgage of Rose, &c., is not cancelled, is granted.

Notice will be given to counsel for defence.

Yours, very truly,

FENTON ROCKWELL,
Captain and Judge Advocate.

DURANT & HORNER, Esqs.

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NEW ORLEANS, March 20, 1865.

DEAR SIR: We wrote you on the 15th instant in regard to this matter, and to that letter we beg to refer.

Henry Train, esq., St. Peter street, opposite Jackson square, tried the cause before Woolfley, recorder of second district, and can give you valuable information on the subject, if you will have the kindness to refer to him.

1st. Rose Elyra, the petitioner, lives at the corner of Burgundy and Barrack street. Can prove all the facts of her own imprisonment; the threats and inducements held out to her to go to Havana, the spiriti ng away of her children by Mrs. De Hart, and that she has recently been called upon and menaced by two white men on account of her complaint.

2d. P. A. Sauer, dentist, No. 14 Baronne street, or 229 St. Claude, saw the children in Havana, in the custody of Mr. De Hart, husband of the accused.

3d. Léocadie, No. 359 Remport street, is the mother of the petitioner, Rose Elyra; knows that Rose was imprisoned and her children taken off, against her remonstrance, to Havana, by Mrs. De Hart.

4th. Julia, No. 167 Ursuline street, between Dauphine and Burgundy, was in prison at the same time with Rose Elyra; knows that Mrs. De Hart visited Rose in the prison, menaced her, and said she would carry off her children.

It is said that shortly before Mrs. De Hart left New Orleans a sham bill of sale of Rose and her children was made by De Hart to a relative residing in his family—by name Mrs. Roland. The latter was a person of no means, and unable to make such a purchase. De Hart himself at the time was pressed with debt, and may have passed the sale to cover up the property from the pursuit of his creditors. These facts can be proved by—

5th. Dr. J. L. Riddell, Dryades street, near canal. In the True Delta of Friday, January 16, 1863, I found the list of passengers by the steamship Bio Bio, and among them those of Mrs. De Hart and Mrs. Roland. These are the persons.
6th. These witnesses, together with such as you can get from the suggestions of our letter of March 15, 1865, will, I think, be all the testimony that can be furnished.

Most respectfully, your obedient servants,

DURANT & HORNER,
By THOMAS J. DURANT.

Captain Fenton Rockwell,
Judge Advocate Provost Court, Department of the Gulf.

NEW ORLEANS, March 8, 1865.

GENERAL: We have just received, 12½ p. m., the enclosed notice of trial, Fenton Rockwell, captain, judge advocate, for Friday, at 10 a. m., in the case of Rosa Elyra, the woman whose children were taken off to Havana. (Doc. A, herewith.)

We beg you to order the trial to be postponed, and not fixed again until we shall have had time to procure the necessary evidence.

1st. We want the evidence from the provost marshal’s office and from the counting-room of Warncken & Co., with regard to which we had the honor of addressing you yesterday.

2d. We want the information and evidence called for in our letter to keeper of parish prison, copy herewith, marked B. He referred me to keeper of police jail, and he writes back that he will give us the privilege of examining the records ourselves if we choose. (See Doc. C.) To do this we must have time, as we cannot well lay all other business aside. There must be but one volume, we should think, containing December and January, 1862 and 1863.

The woman, Rose Elyra, tells me this morning that last evening, about dusk, two white men came to the house, corner of Burgundy and Barrack, where she is employed; they were strangers to her; they tried to induce her, by expostulation and by threats of injury to her children in Havana, to abandon the effort to procure their restoration. From this I infer that Mrs. De Hart has unscrupulous friends to aid her.

I remain, very respectfully, your obedient servant,

THOMAS J. DURANT.

Major General S. A. Hurlbut,
Commanding Department of the Gulf.

NEW ORLEANS, April 15, 1865.

DEAR SIR: I send you a brief in the case of Rose Elyra, which I hope will meet your approval.

I remain your obedient servant,

THOMAS J. DURANT.

Captain Fenton Rockwell,
Judge Advocate Provost Court.

A.

PROVOST COURT, DEPARTMENT OF THE GULF,
Office of Judge Advocate, New Orleans, March 8, 1865.

DURANT & HORNER, Esqs., Counsellors, &c.:

The investigation in the case of petition of Rose Elyra, for children, will be set down for Friday, at 10 a. m. Will you have the kindness to be ready at that time with witnesses. The case is too important to admit of any delay.

Yours, &c.,

FENTON ROCKWELL,
Captain and Judge Advocate.
Sir: The enclosed letter was sent to the keeper of the parish prison to-day. He refers us to the "books of the police jail." We therefore send it to you, and beg the favor of an answer, while we remain your obedient servants,

DURANT & HORNER,
18 Carondelet street.

Keeper of the Police Jail.

New Orleans, March 15, 1865.

Dear Sir: In the matter of Rose Elyra, referred to your court by Major General Hurlbut, we beg leave respectfully to suggest that the following information might be obtained from the police jail, and would be useful:
1. The order by which Rose was committed to jail in December, 1862.
2. The order by which she was discharged from prison.
3. The name of the police officer who conducted her to prison, and his present place of residence.
4. And whatever other entries there may be on the books of the police jail, at that time, in relation to her.

We have begged General Hurlbut to have the provost marshal general inform us what appears on the books as to the passports obtained by Mrs. De Hart to leave the city for Havana, with Rose's three children, by the steamship Bio Bio, about the middle of January, 1863; and a statement of the means, if known, by which Mrs. De Hart could get a pass then for three colored children of such tender years. We have also begged General Hurlbut to have Warnecken & Co., merchants, in Union street, the agents of the steamship Bio Bio at the time, to disclose what their books show about the three children.

General Hurlbut has directed the provost marshal general to give the information, which will no doubt be done, though perhaps it might be well it should be known that you also desire it.

Yours, respectfully,

DURANT & HORNER,
18 Carondelet street.

Captain Fenton Rockwell, Judge Advocate.

New Orleans, March 10, 1865.

Dear Sir: Your favor of date of yesterday is this moment received, and we return you many thanks.

Just before your messenger entered we had sent a letter to Major Lieber suggesting a postponement, and designating the evidence we were in quest of. We shall shortly avail ourselves of the aid of the process of the court to obtain the proper testimony, and in the mean time remain, with great respect, your obedient servants,

DURANT & HORNER.

Captain Fenton Rockwell, Judge Advocate.

In the matter of Rose Elyra, provost court, department of the Gulf.

New Orleans, April 14, 1865.

Dear Sir: Yesterday, through inadvertence, I did not offer in evidence the certificate I had among my papers, from the mortgage office in this city, dated 24th March, and extended to 8th April, 1865, showing that the mortgage given
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by Madam Roland, in the act before James Graham, of 14th August, 1862, in favor of J. A. De Hart, for the security of the two notes given for part of the price of the slaves Rose and her three children, then pretended to have been sold by De Hart to Madam Roland, has never been cancelled, thus affording presumptive evidence that those notes never have been paid, and that the sale was a sham one. I send you the certificates of the mortgage office with this, and beg you to have it submitted to Judge Lieber as part of the evidence. I have written to Mr. Holland, the counsel of Mrs. De Hart, telling him what I have done. He can examine the certificate, and put in what counter proof he pleases.

I remain, respectfully, your obedient servant,

THOMAS J. DURANT.

Captain Fenton Rockwell, Judge Advocate.

NEW ORLEANS, March 8, 1865.

Received, provost court, department of the Gulf, office of judge advocate, by the hands of Officer Omaly, a sealed package, addressed "Durant & Horner, counsellors at law."

To be delivered to them when they come to their office, No. 18 Carondelet street.

JAS. A MAXWELL,
For D. & H.

B.

NEW ORLEANS, March 7, 1865.

DEAR SIR: In the month of December, 1862, a colored woman, with infant child, was committed to the parish prison, and represented as the slave of J. A. De Hart, a dentist, doing business at No. 17 Baronne street at that time. The name of the woman was Rose, (sometimes called Rose Elyra, or George.) This woman was arrested at her master's house by a police officer, whose name she does not know, and lodged in jail, it is supposed, for safe-keeping, and as Mr. De Hart was then absent in Havana, it may have been at the request of Mrs. De Hart. The woman was kept in jail until about the 15th or 16th of January, 1863. The object of the present is to ask, 1st, a copy of the order by which she was committed to prison; 2d, a copy of the order by which she was discharged from prison; 3d, the name of the police officer who brought her to prison, and his present place of residence; 4th, the name of the person who took her out of prison, and his present place of residence; 5th, if there are any entries on the books of these or other matters relating to this woman, we beg you to give us copies of them.

We remain, respectfully,

DURANT & HORNER,
Attorneys at Law, 18 Carondelet street.

The Keeper of the Parish Prison.

NEW ORLEANS, March 7, 1865.

Respectfully referred to the books of the police jail.

E. V. SULIN,
Acting Keeper of Parish Prison.
CAPTAIN: I have the honor to forward herewith the proceedings in the case of Mrs. De Hart, referred to me for the purpose of taking the evidence. Please return the papers put in evidence in the case herein enclosed.

Very respectfully, your obedient servant,

G. NORMAN LIEBER,  
Major, Judge Advocate J. P. C.

Captain H. Stone,  
Assistant Adjutant General.

NEW ORLEANS, March 4, 1865.

GENERAL: We send you with this the petition of Rose Elyra, a colored woman, who has been inhumanly and illegally deprived of her children, and to whom we hope you will be able to grant a remedy.

We were not consulted on the subject previous to the decision of Recorder Woolfley. Mr. Henry Train, who then had the matter in hand, and still gives his services in it, accompanies the woman, and can give any explanation that may be required.

We beg to present Mr. Train to you as a gentleman of entire loyalty, and every way worthy of regard.

We remain, with great respect, your obedient servants,

DURANT & HORNER.

Major General S. A. HURLBUT,  
Commanding the Department of the Gulf.

NEW ORLEANS, May 9, 1865.

HONORED SIR: We, the undersigned, ladies and gentlemen, citizens of the United States, humble petitioners, would most respectfully represent that Mrs. De Hart, a lady, resident of Havana, came to this city to pay a visit to her friends, her former place of residence, on the 3d day of January, 1865. She had been here but a few days when she was arrested on the charge of kidnapping three children of African descent, and carrying them with her to Havana. The case was tried before the recorder's court. Mrs. De Hart was acquitted. The prosecutors, through her attorneys, petitioned General Hurlbut to re-arrest Mrs. De Hart on the same charge, adding the charge of violating the military order issued by Major General Butler. In accordance with said petition, Mrs. De Hart was arrested and confined in female prison, No. 200 Julia street, on the 6th day of March, 1865. General Hurlbut ordered the case to be examined before the provost court, and referred back to him for his decision. Her examination was deferred from time to time to assist the prosecutors in obtaining evidence against her, Mrs. De Hart being ready for trial from the first day of her arrest. Mrs. De Hart also petitioned General Hurlbut, through her friends, for a personal interview, which was refused. Her examination was finally commenced about the 8th of April, 1865, and closed about the 13th of April, 1865. You, no doubt, have the testimony in that case before you. Now, we, your petitioners, verily believe that there has been an effort to prejudice the minds of those in authority against Mrs. De Hart, in this: that in the petition to General Hurlbut Mr. De Hart, the husband of Mrs. De Hart, is represented as having been an officer in the rebel army, and also, in the examination, the prosecutors attempted to prove that the doctor made a sham sale of certain slaves to Mrs. Rowland, for the purpose of defrauding his creditors. This is false; but supposing this to be true, certainly, general, you will not hold his wife responsible for his actions.

Now, we, your petitioners, humbly pray that you grant Mrs. De Hart an
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interview, that she may explain to you her innocence. She has been a long
time confined, as she thinks, unjustly. Should you view it upon investigatiiion,
we rely upon your well-known humanity to grant her immediate pardon.

Respectfully,

Miss KATE JOHNSON, Soniat Station.
Mrs. A. M. McQUAID, 153 St. Charles street.
Mrs. H. A. PITTMAN, 157 Chestnut street.
Mrs. M. H. CLARKE, 153 St. Charles street.
Miss C. HUBBARD, 529 Charles street.
Mrs. J. GERRARD, 246 Baronne street.
Mrs. A. L. STARK, 246 Baronne street.
Mrs. J. H. BOWEN, 206 Sixth street.
Mrs. C J. WHITTEMORE.
Mrs. CHARLES SWIFT.
Mrs. E. S. P. LAMON.
M’relle M. LAMON.
M’elie LAMON.
M’elie JOHNSON, Mrs.
M’elie M. JOHNSON.
M’elie JOSEPH DE GÉNÉRÈS.
M’elie C. STOCKTON.
M’elie LOUIS MALARCHER.
M’elie S. BLOSSMAN.
S. M. COWAN, U. S. A.
S. W. SCOTT.
L. P. NORMAND.
H. C EDWARDS.
RICHARD HENMERN.

Major General BANKS,
Commanding Department of the Gulf.

Ordered released upon return of children.

N. P. B.

STATE OF LOUISIANA, Parish and City of New Orleans:

Be it known, that on this fourteenth day of August, in the year of our Lord
one thousand eight hundred and sixty-two, and of the independence of the
United States of America the eighty-seventh, before me, James Graham, a no-
tary public, in and for the parish and city of New Orleans, State of Louisiana,
duly commissioned and qualified, and in the presence of witnesses hereinafter
named and undersigned, personally came and appeared James Andrew De Hart,
of this city, who declared that, for the consideration hereinafter expressed, he does,
by these presents, grant, bargain, sell, and convey, with all legal warranties, unto.
Mistress Carmelite Boco, widow of George Roland, deceased, also of this city,
present, accepting and purchasing for herself, her heirs, and assigns, and ac-
knowledging delivery and possession thereof, the following-named and described
slaves for life, to wit: A certain mulatto woman, named Rose, aged about twen-
ty-four years, and her three children, viz: a boy, named Ernest, aged about
six years; a girl, named Marie, aged about four years; and a girl, named Jo-
sephine, aged about twenty months.

Said slave Rose and her two first-named children were acquired by W. New-
ton Mercer, by purchase from Sosthene Allain; as per the act of sale thereof;
passed before Felix Grima, a notary public in this city, on the seventeenth day
of April, 1861; and by the fulfilment of said De Hart of an agreement entered
into between him and the said Mercer on the same day, the said slaves became
the sole property of the said De Hart; all relative to which said transaction
will fully appear by reference to a certified copy of said act of sale and to the said
agreement, which are hereto annexed. The said slaves are hereby fully guar-
anted by said vendor against the vices, maladies, and defects prescribed by the laws of this State; and they are free from incumbrance, as the said vendor hereby declares.

The said parties dispensed with the production of a certificate from the recorder of mortgages in and for this city and parish, to show what, if any, mortgage rests against said slaves in the name of said vendor, as is otherwise required by article 3328 of the civil code of this State, to have and to hold the said slaves unto the said purchaser, her heirs and assigns, forever.

And the said vendor hereby binds himself and his heirs forever to warrant and defend the slaves herein conveyed against all claims and demands whatever.

The said vendor, moreover, transfers unto said purchaser all the rights and actions of warranty to which he himself is entitled, against all the former proprietors of the slaves herein conveyed, subrogating said purchaser to the said rights and actions, to be by her enjoyed and exercised in the same manner as they might have been by the said vendor.

This sale is made and accepted for and in consideration of the price and sum of nine hundred dollars ($900) and interest, as hereinafter expressed; four hundred dollars of which have been paid in ready money at the execution hereof by the said purchaser to the said vendor, and for the rest the said purchaser has given her two promissory notes for the sum of two hundred and fifty dollars each, drawn to the order of, and indorsed by, herself, dated this day, and made payable at six and twelve months respectively after date, with interest from date until maturity, at the rate of six per cent. per annum, and from maturity until paid at the rate of eight per cent. per annum; which said cash and notes were delivered to the said vendor, who hereby acknowledges the receipt thereof, and grants a full discharge therefor. And now to these presents personally came and appeared Madam Emilié Grabert, of lawful age, wife of the said James Andrew De Hart, who, after having taken cognizance of the foregoing act, which I, the said notary, carefully read and explained to her, declared and said that she approves and ratifies the same, and that it is her wish and intention to release in favor of the said purchaser the slaves herein described from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she is or may be entitled, whether by virtue of her marriage with her said husband or otherwise.

Whereupon I, the said notary, did inform the said wife, apart and out of the presence and hearing of her husband, that, by the laws of this State, the wife has a legal mortgage on the property of her husband: First, for the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage; secondly, for the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected; thirdly, for nuptial presents; fourthly, for debts by her contracted with her husband; and, fifthly, for the amount of her paraphernal property, alienated by her and received by her husband, or otherwise disposed of for his individual interest: that, in making her intended renunciation, she would deprive herself, irrevocably and forever, of all rights of reclamation against the slaves herein described, whether under mortgage, privilege, or otherwise.

And the said wife did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing, and does formally renounce, not only all the rights, claims, and privileges herebefore enumerated and described, but all others, of any nature and kind whatever, to which she is or may be entitled by any laws now or heretofore in force in the State of Louisiana.
And the said James Andrew De Hart, being now present, aiding and authorizing the said wife in the execution of these presents, she, the said wife, did again declare that she did, and does hereby, make a formal renunciation and relinquishment of all her said matrimonial, dotal, parapernal, and other rights, claims, and privileges, in favor of the said purchaser, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus done and passed in my office, at New Orleans aforesaid, in the presence of Philippe B. Boisfontain and Frederick L. Hubbard, witnesses, both of this city, who herunto sign their names with the parties and me, the said notary, the day and date aforesaid.

J. A. De Hart.
AMELIE DE HART.
VNE. ROLAND.

P. Barron Boisfontain.
F. Louis Hubbard.

JAMES GRAHAM, Notary Public.

As the successor and legal custodian of the records of James Graham, late a notary in this city, I certify that the foregoing is a true copy of the original act on file among the records of said James Graham.

In faith whereof, I grant these presents, under my signature and seal of office, [L. s.] this 12th day of January, 1865.

ANDREW HERO, Notary Public.

STATE OF LOUISIANA, CITY OF NEW ORLEANS:

Be it known, that on this seventeenth day of the month of April, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States of America the eighty-fourth, before me, Felix Grima, a notary public, duly commissioned and sworn, in and for this city and parish of Orleans, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. Sosthene Allain, of the parish of West Baton Rouge, in this State, who declared that, for the consideration hereinafter expressed, he does, by these presents, grant, bargain, sell, assign, convey, transfer, and deliver, with full warranty as to the title, but without warranty on his part as regards the vices and maladies prescribed by law, unto W. Newton Mercer, esq., of the said city of New Orleans, herein present, and accepting purchaser for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the following slaves, to wit: A certain mulatto woman named Rose, aged about twenty-two years and a half, and her two children, to wit: Ernest, now aged about four years, and Marie, now aged about two years, slaves for life, and belonging to the said vendor by means of the purchase which he has made thereof from Mr. Valerien Allain, of this city, by an act executed before me, notary, on the first day of October, eighteen hundred and fifty-eight, to have and to hold the said slaves unto the said purchaser, his heirs and assigns forever, by virtue hereof. And the said vendor moreover transfers unto the said purchaser all the rights and actions of warranty to which he, is or may be entitled, against all the former owners and proprietors of the slaves herein conveyed, subrogating the said purchaser to all the said rights and actions to be by him enjoyed and exercised in the same manner as they might have been by the said vendor himself. The present sale is made and accepted for and in consideration of the price and sum of fifteen hundred dollars cash; which sum the said purchaser has paid at the execution of these presents in ready current money unto the said vendor, who does hereby acknowledge the receipt thereof, and grants unto the said purchaser a full and entire acquittance and discharge therefor.

The said purchaser hereby dispenses with the production of a certificate from the recorder of mortgages in and for the parish of West Baton Rouge, where the
said vendor resides, to be annexed to the present act, as required by the 3328th article of the civil code of Louisiana.

And the said vendor here declared that the slaves herein conveyed are free from all mortgage and incumbrance whatever, of which declaration the purchaser acknowledges himself to be satisfied, hereby exonerating the undersigned notary from all responsibility which he might incur on account of the non-production of the said certificate.

And now to these presents personally came and appeared Madam Marguerite Delia Kennedy, the wife, of full age, of the said Sosthene Allain, who, after having taken cognizance of the foregoing act, which I, the said notary, carefully read and explained to her, declared and said that she approves and ratifies the same; and further, that it is her wish and intention to release, in favor of the said purchaser, the slaves herein conveyed from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she is or may be entitled, whether by virtue of her marriage with the said Sosthene Allain, or otherwise.

Whereupon I, the said notary, did inform the said Mrs. Allain, apart and out of the presence and hearing of her said husband, that she had, by law, a legal mortgage on the property of her said husband: First, for the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage; secondly, for the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened, or the donation perfected; thirdly, for nuptial presents; fourthly, for debts by her contracted with her said husband; and, fifthly, for the amount of her paraphernal property alienated by her and received by her said husband, or otherwise disposed of for the individual interest of her said husband; that, in making her intended renunciation, she would deprive herself and her heirs, irrevocably and forever, of all right of reclamation against the slaves herein conveyed by her said husband, whether under mortgage, privilege, or otherwise.

And the said Mrs. Allain did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing, not only all the rights, claims and privileges hereinbefore enumerated and described, but all others, of any nature or kind whatever, to which she is or may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Sosthene Allain being now present, aiding and authorizing the said Mrs. Allain in the execution of these presents, she, the said Mrs. Allain, did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims and privileges, in favor of the said purchaser, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Done and passed at New Orleans, in my office, the day, month and year aforesaid, in the presence of Charles F. Barry and Louis Dutour, both of this city, witnesses, who have signed with the appeareers and me, notary, after reading the whole.

SOSTHENE ALLAIN.
M. D. ALLAIN.
W. NEWTON MERCER.

CHARLES F. BARRY,
LOUIS DUTOUR.

A true copy:

FELIX GRIMA,
Notary Public.
IN THE SOUTHERN STATES.

I hereby assign to James Andrew De Hart all my right, title, and interest in the within described, but without any warranty.

W. NEWTON MERCER.

It is agreed by and between the undersigned, William Newton Mercer and James Andrew De Hart, of the city of New Orleans:

By an act executed before Felix Grima, notary public, on the seventeenth day of the present month of April, the said W. N. Mercer has acquired in his own name, but for account of the said J. A. De Hart, as he does hereby acknowledge, by purchase from Mr. Allain, of the parish of West Baton Rouge, in this State, the three following named slaves: Rose, a mulatto woman, aged about twenty-two and a half years, and her two children—Ernest, aged about four years; Marie, aged about two years—which sale was made for the price of fifteen hundred dollars cash; five hundred dollars of which was paid by the said J. A. De Hart in part of said purchase price, and the balance, to wit, one thousand dollars, was paid by the said W. N. Mercer, in order to assist the said J. A. De Hart in acquiring the said slaves, as the said J. A. De Hart here declares.

Now, therefore, the said J. A. De Hart acknowledges himself to be justly indebted unto the said W. N. Mercer in the said sum of one thousand dollars, for which he has furnished to the said W. N. Mercer his two promissory notes, drawn to his own order, and indorsed by himself, dated the 17th day of April, instant, each for a like sum of five hundred dollars, and bearing interest at the rate of eight per cent, per annum from date until paid, and made payable in three and eight months after date.

And it is agreed by and between the said parties hereto, that if the said James Andrew De Hart shall and do, well and punctually, pay or cause to be paid unto the said W. N. Mercer the two notes of five hundred dollars above mentioned on the respective dates of the maturity thereof, with the interest as above stipulated, then the said W. N. Mercer shall, and he hereby binds himself to convey and deliver, but without any warranty on his part, unto the said J. A. De Hart, the slaves above described, who will remain in the possession of said J. A. De Hart at his own risk and peril.

In case of non-payment of the said two notes at maturity, as aforesaid, the said slaves shall be considered the property of said W. N. Mercer; the said James A. De Hart hereby agreeing and consenting that in such case the said slaves be sold or disposed of for cash by the said W. N. Mercer, for the purpose of paying the two notes of five hundred dollars each, and all interest due thereon.

And it is further agreed between the said parties hereto, that whereas the said slaves have been sold by the said S. Allain without any warranty as regards the vices and maladies prescribed by law, in case the said slaves should be found hereafter to be subject to any such defects or maladies, the said De Hart, for whose account they are purchased, shall alone bear all responsibility in relation thereto.

In testimony whereof, we have hereunto set our hands this 17th day of April, 1860.

W. NEWTON MERCER.

J. A. DE HART.

Witnesses: F. GRIMA.

CHARLES F. BARRY.

The notes having been paid, my title is relinquished.

W. NEWTON MERCER.

Ex. Doc. 30—2
STATE OF LOUISIANA, City of New Orleans:

I, Andrew Hero, the successor and legal custodian of the records of James Graham, late a notary in this city, do certify that the foregoing documents are true and correct copies of documents annexed to an act of sale of slaves passed by James A. De Hart to Mrs. C. Roland by an act passed before the said James Graham, late notary, on the 14th of August, 1862, on file among the records of the said James Graham.

In faith whereof, I grant these presents under my signature and seal of office, on this fourteenth day of April, A. D. eighteen hundred and sixty-five.

[seal]

ANDREW HERO, Notary Public.

To Major General S. A. Hurlbut, commanding department of the Gulf:

The petition of Rose Elyra, who resides in New Orleans, respectfully represents: That she is of African descent, and was born a slave in the family of Octave Leblanc, in the parish of Pointe Coupee, in Louisiana, being now about twenty-five years of age, as she believes, and was brought to New Orleans some twelve years ago. That since she arrived in New Orleans she has become the mother of four children, viz: Joseph Ernest, born on the 14th day of January, 1857; Marie Georgiana, born the 27th of December, 1858; Marie Josephine, born the 7th of December, 1860; and Joseph George, born the 2d of September, 1862; that the father of all these children was George Elyra, a free man of color, born in this city, to whom she was married by Mr. Costi, a Catholic priest, at the Cathedral in this city, between the dates of the births of her second and third child, as above set forth, and the said husband died in this city on the 7th day of May last, 1864.

Now your petitioner further shows that about the time of her said marriage her former owner, Octave Leblanc, was compelled, by his being in debt, to part with her, and did sell her and two children to J. A. De Hart, a dentist, residing then at No. 17 Baronne street, in this city, where she continued to reside in said De Hart's family as a domestic servant until the latter part of December, 1862, and during her residence there her third and fourth children were born.

Your petitioner further shows that the said De Hart and his wife, Amelie Valeour De Hart, were enemies of the United States and rebels to the government; that the said De Hart was captain of a rebel military company, and a few months after the occupation of the city of New Orleans by the national forces, viz: in the month of October, 1862, he left this city for Havana, Cuba, where he has ever since remained; that after the departure of De Hart Mrs. A. V. De Hart spoke of following him to Havana, and frequently asked and urged your petitioner to go with her to that place, which petitioner constantly refused to do, not wishing to leave her husband, her mother, and her friends; that on one evening after dark about the 18th of December, 1862, Mrs. De Hart caused a police officer to enter the house, who took off your petitioner, with her baby three or four months old, and lodged them in the parish prison of New Orleans, where they were kept in confinement about a month, or until the middle of January, 1863; that during this time the said Mrs. De Hart frequently visited her in the prison, bringing petitioner's three other children with her, urging her to go with her to Havana, and threatening to take off with her to Havana petitioner's three eldest children if petitioner refused to go; but your petitioner always did so refuse, and begged and demanded that her children should be left in New Orleans with her; and, finally, the said Mrs. De Hart did go off to Havana, taking with her petitioner's three eldest children, whom petitioner has never seen since, and who are now held unlawfully by the said De Hart and his wife as slaves in Havana.
Petitioner further shows that when the said children were thus illegally taken off from New Orleans the eldest, Joseph Ernest, was six years old, the second, Marie Georgiana, four years old, and the third, Mary Josephine, two years old; that your petitioner was utterly helpless and powerless to prevent this gross outrage and violation of her natural and civil rights by reason of her condition and her imprisonment, from which she was only released by an order left behind by the said Mrs. De Hart on her departure aforesaid.

Petitioner further shows that on the 2d of January of this year the said Mrs. De Hart returned to New Orleans, when petitioner immediately called upon and begged the restoration of her children, which Mrs. De Hart refused; and thereupon, acting under the advice of counsel, petitioner caused the said Mrs. De Hart to be arrested and brought before Recorder P. A. Wolley, of this city, on a charge of having kidnapped the said children, but on the 28th of February the said recorder dismissed the case, deciding there was no law of Louisiana applicable to it.

Petitioner further shows that her arrest and imprisonment, above stated, was in violation of General Orders No. 88 from headquarters of the department of the Gulf, dated the 1st of November, 1862, to which your petitioner now appeals.

Petitioner further avers that by the fifteenth and sixteenth sections of the act of 31st January, 1829, of the State of Louisiana, (see acts, p. 48,) it is not only forbidden to bring into Louisiana, without the mother, any slave child under ten years of age, but it was also forbidden to any owner of slaves in Louisiana to sell any slave children under ten years of age, without the mother; the humane idea of the legislator having been to prevent the separation of children of tender years from their mother, and the spirit of the law discountenancing such separation by whatever means brought about.

Petitioner further shows that herself and her aforesaid three children are free and entitled to the rights of American citizens, and to the protection of the government of the United States, to which she now appeals, and avers that the said Mrs. A. V. De Hart is bound in law and equity and good morals to restore to her three children whom she wrongfully took away.

Wherefore your petitioner prays, the premises considered, that you will be pleased to cause the said Mrs. Amelia De Hart to appear before you, and that she may be prevented from leaving this city, as she is soon about to do, and that she may be ordered to cause to be brought back from Havana your petitioner's three children, viz: Joseph Ernest, Mary Georgiana, and Mary Josephine, and that the said Mrs. A. V. De Hart be held in confinement until she shall have complied with this order; and your petitioner will ever pray, &c.

ROSE X ELYRA,

H. Train, Durant & Horner,

Of counsel for Petitioner.

New Orleans, March 4, 1865.

State of Louisiana

Mrs. De Hart

Resides Carondelet street, between Common and Canal streets, at Mrs. Lamou's, a boarding-house.

State witnesses.—Mr. J. L. Reidel, Burgundy street, between Canal and Common streets; Mr. Suder, jr., St. Claude street, 229 Baronne street, between Canal and Common streets, a dentist; Jean Elyra, Dumain, between Rampart
and Burgundy; Mr. Chas. Levesque, Hospital, between Charles and Hospital; Mrs. George Elyra, corner Barrack and Burgundy, at Mrs. Pinard's; Mrs. Lagay, Old Basin, between Conté and Brenville streets; G. T. Conway, superintendent, Julia street, near Charles.

**Recorder's Office, Second District.**

Personally appeared before me, F. A. Woolfley, recorder of the second district of the city of New Orleans, duly commissioned and sworn as a justice of the peace, Mrs. George Elyra, who, being duly sworn, doth depose and say that on or about the 15th of January, 1863, her three children, namely, Joseph Ernest, aged then about six years; Mary Georgiana, aged then about four years, and Mary Josephine, aged then about two years, were kidnapped, wilfully and feloniously, from affiant's custody, and without her consent or authority of law, by one Mrs. De Hart, and brought by her in Havana, where said Mrs. De Hart has been residing since, and was therefore absent from the State from the 15th of January, 1863, up to the day before yesterday, when she came back to this city, where she is temporarily now, leaving said children in Havana, where they are now held as slaves by said Mrs. De Hart.

Wherefore deponent charges the accused with wilfully and feloniously kidnapping her said children, and prays that she be arrested and dealt with according to law.

MRS. GEORGE ELYRA.

Sworn to and subscribed before me, this the 6th day of January, 1865.

F. A. WOOLFLEY,
Recorder, Second District.

**Headquarters Department of the Gulf,**

**New Orleans, — —, 1865.**

The petition of Rose Elyra shows that she resides in New Orleans; is of African descent; was born a slave in the family of Octave Leblanc, at Point Coupée, Louisiana; is now about twenty-five years of age; was brought to New Orleans about twelve years ago; has since become the mother of four children by George Elyra, a free man of color, to whom she was married in the Cathedral; was, with two of her children, sold to J. A. De Hart, a dentist at New Orleans, after which her third and fourth children were born; that De Hart and wife, Amelia Valeour De Hart, were rebel enemies of the United States, and after federal occupation De Hart went to Havana; that his wife frequently urged petitioner to go with her to Havana, but petitioner refused to go; that petitioner was lodged in parish prison, and that Mrs. De Hart did take petitioner's three eldest children to Havana, contrary to petitioner's expressed wish, and that the three children are now held as slaves at that place; that an action against Mrs. De Hart was commenced before recorder, and dismissed because of no statute being found applicable.

Petitioner alleges her arrest and confinement was in violation of General Order No. 88, of 1862.

Petitioner prays that Mrs. De Hart be compelled to restore to her, petitioner, her three children. For facts more fully set forth see petition.

Mrs. De Hart arrested and case sent to Major Lieber for examination by General Hurlbut.

On the 8th day of April, 1865, this matter came on for hearing before the provost court, Judge Lieber presiding.
Rose Elyra (colored) sworn, says:

I have four children; oldest is six years old; three of them are away; saw them last two years in January; was then living at defendant's; was put in jail; defendant came to jail; urged me to go to Havana. Witness said, I don't want to leave my mother; said she was too sick, and was not going. Defendant said she would come for her at five o'clock with a carriage. I told the boy to go; that I was not going to Havana, but I wanted my children. I came out of jail the same night she went away; went to Mrs. Blossom's; found defendant had taken the three children to Havana; have never seen them since; my mother saw them go.

Cross-examined:

I was out of jail before the boat went with my children; I knew they were on the boat, and my mother knew they were there; I did not go aboard to get the children; defendant told me she was going to take my children; I said to defendant I never would let the children go if I was out of jail; my mother went to the levee and spoke with a man, and he told her it was too late. My husband died in May, 1864; he knew the children were on board the vessel; he told me he did everything he could, but she acted mean with him; he said he went to the provost marshal, and he told him he gave her permission to take them away on condition of bringing them back in six months. Defendant came to the jail with a gentleman, Fallon, with a carriage for me; she had the children in the carriage; she sent the driver to call me; I was sick and she sent Fallon, and he wanted me to come, he said, and go to Havana with defendant and my three children; I said I would not go; Mrs. Roland and defendant were in the carriage; did not get out.

Madam Leocudie (colored) sworn:

Is mother of Rose; confirms testimony of Rose; Mrs. De Hart had charge of the children and baggage.

P. A. Suar sworn:

Knows Mr. De Hart; saw him in Havana. Defendant proposed to me to take one of the children to Havana; I rejected the proposal, of course.

DEFENCE.

Gerard arrested a girl on Rampart street; does not appear to have been Rose. Letton swears that Rose was asked to go to Havana, but declined. She was arrested the 7th, and was not to be released until the 15th.

Mrs. Fallon:

The father was at the boat; made no objection to the children going; Rose's mother there also, and made no objection.

(Bill of sale of children and mother to Madam Roland put in evidence.)

Fallon swears that he went to jail with Mrs. De Hart and Madam Roland; asked Rose to go to Havana; said she was too unwell; asked her to go in next steamer if she was well; said she would.

(Provost marshal's pass put in evidence.) Is for M. E. Roland; son, servant, and four children.

C. J. Leoque swears:

Saw the children on the Bio Bio. There was no concealment of the children; they were playing about the boat.

Cross-examined:

Am an intimate friend of De Hart's.

A. F. Hickman swears to kind treatment of children. Madam Roland and Mrs. De Hart lived together; De Hart's name on the door.
Dr. J. L. Riddel swears:

Knew defendant; had occasion to go to De Hart's often. Knew Madam Roland; heard them speak of her as an aunt; did not know precisely whether she was a boarder or a guest; she was certainly one or the other; don't know her means but by hearsay; never understood that she had any means or property; left my house owing me $1,500; got nothing but promises; had my eye on Rose; did not know she had been sold until I seized her. Circumstances in the house remained the same as to the control of the girl by defendant. De Hart subsequently acknowledged that the slaves belonged to him after date of sale; that I saw in Graham's office.

Durant and Horner for prosecution; Buchanan and Gillmore, and Holland and Baer for defence.

Briefs of counsel recite portions of evidence and apply the law; each drawing conclusions favorable to the side that he represented.

**Review.**

It appears that Rose Elyra and children were slaves owned by J. A. De Hart. That, on the 14th of August, 1862, an act of sale was made, transferring Rose and children to one Madam Roland, an aunt of De Hart's, residing in the family. There was no change of possession or control of the property, and the testimony is strongly indicative that this transfer was a fraudulent one, and the pretended sale a sham, and the interest of Rose Elyra is of such a character as to give her the equitable right of a creditor to attack the validity of this instrument, and for the purpose of this examination such transfer will be deemed invalid.

It is, in a measure, immaterial, however, who was the real owner, the matter to be determined being what the status of petitioner and children was; whether the act or acts complained of was done; and if done, by whom, and what liabilities were incurred or crime committed by so doing.

The testimony establishes the fact that, on or about the 15th day of January, 1863, the three children of Rose Elyra were taken on board the Bio Bio, bound for Havana, Cuba; that on the 16th the vessel sailed, taking said children to that place, where they have ever since remained; that this was done contrary to the expressed wish of Rose Elyra, the mother, there is little if any doubt. The attempt, on the part of the defence, to show the consent of the mother, is too feebly sustained to be received. Such consent, if proven beyond a doubt, could not properly be received, as the party was in duress, and in such condition that her hopes and fears would naturally influence her answers and actions; and whatever she may have said under such circumstances cannot be taken in proof against her. Mrs. De Hart, never divested of control over Rose and her children, continues the exercise of an active and apparent supervision over them. She visits Rose repeatedly while in jail, and as often persuades her to go to Havana, and Rose, equally often, refuses to go. It is Madam De Hart who proposes to Snaer to take one of the children to Havana. Madam De Hart accompanies the children to the vessel and sails with them to Havana, appearing an active party in the whole transaction, and with full knowledge of all the arrangements, and could in no event be deemed less than *particeps criminis*, and accessory before the fact. But the proof marks her distinctly as principal. The manner of the removal of said children does not appear to have been entirely secret; nor is it necessary that it should be in order to constitute a crime. The weight of testimony is, that it was against the will of the mother, the natural guardian of the children, and therefore a forcible taking, thereby separating the mother from children of less than ten years of age, contrary to the spirit if not to the letter of the statute of the State, and in furtherance of a practice too unnatural and cruel for toleration. I regard the status of mother and children
as being that of slaves at the date of the sailing of the Bio Bio, no seizure ever having been made in accordance with the provisions of the act of July 17, 1862. Nor were the General Orders No. 44 or 88 violated by defendant, as such orders were made for the especial direction and guidance of other parties, to wit, the jailor and masters of vessels, and did not affect the passenger. The objection of counsel to jurisdiction will scarcely deserve a passing remark. It is sufficient to say that this proceeding is entirely the action of the commanding general, who in time of war is the highest local executive power existing. I am of the opinion that Mrs. De Hart is not guilty of kidnapping, within the meaning of the statute, but is guilty of improperly and unlawfully separating the children of less than ten years of age from the mother.

In consideration of the confinement already undergone by accused, she will be released and set at liberty. The return of the children of Rose Elyra to their mother, in accordance with the prayer of the petitioner in this case, is made a condition precedent to such release.

Order made accordingly.

In the matter of the United States vs. Mrs. De Hart, before the provost court, April 8 and 13, 1863, Judge Lieber presiding.

Rose Elyra (colored) sworn:

I have four children. The eldest is six years old. Their names are Joseph Ernest, six years old; Maria Georgiana, four years old; Marie Josephine, two years old; and Joseph George, four or five months old. Three of them are away. I saw them last two years in January. Then I was living at defendant's, but was in jail at the time. She lived on Canal street, between Rampart and Basin; previously she had lived on Baronne street, between Common and Canal. I had lived with her three or four years. I was put in prison about two weeks before Christmas. That was before they went away. Defendant had moved to Canal street with her aunt. She went out one evening and left me there. Mrs. Roland called to me to clean the house. I told her it was too late. She began to quarrel and says "Don't scame me." I said I had been working all day and the little babies were crying. Defendant was not at home. She (Mrs. Roland) came and slapped me. She went out and came back with an officer, who said he had come to arrest me. She said, "Go! I want that man to take you." The policeman told me to go with him. He took me to the parish jail, and I stayed there till the day they went away. The children were not put in jail but the little baby. The three elder children were left out. I left them with defendant. Defendant came to see me. She said the first day, "I come to bring your children to see you." She says, "Don't you feel like going to Havana? I am fixing to go." She had never told me that before. I said, "I don't want to leave my mother." She said, "You make up your mind, and I will come and see you again." She came again and I said I did not want to go. When she came again with my mother and brought my little boy, and said "Try and get well; I am going away in a few days," I said "I was too sick, and was not going." She sent a bundle of clothing, and told me to dress myself and be ready to go on the Bio Bio, and she would come up at five o'clock and get me in a carriage. I told the boy to go—that I was not going to Havana, but I wanted my children. I came out the same night she went away. I stayed in jail about three or four weeks. I came out and went to where she used to live—to Mrs. Blossman's—and found defendant had taken the children to Havana. I have never seen them since. My mother said she saw them go. The oldest child was six years old.
Cross-examined:

I was examined as a witness before the recorder; it was this year. I got out of jail the day defendant went on the boat. The boat went off the next day. She came to my mother's looking for me. I was up stairs, and she asked my mother for Rose. I was out of jail before the boat went with my children. I knew they were on the boat, and my mother knew they were there. I did not go aboard to get the children. I was put in jail because I was saucy. I did not knock her in the face. She came to me with the coffee-pot, and it flew in her face. Nobody else was present. Her aunt is Madam Roland. Defendant kept the house. I can swear to that. The house is on Canal street. I was working for defendant. Never obeyed orders from Mrs. Roland. I told her she was not my mistress, and had no business to give me orders. Mr. Fallon came to the jail to get me out. I am sure I came out before the vessel sailed—the same night she went aboard. The boat sailed the next day. I was bought of Leblanc by DeHart. I did not belong to Allain. Allain sold me for Leblanc. Defendant told me she was going to take my children. I did not see her take them, but I know she took them. I never went on board, and never saw them there with defendant. I never told any gentleman that I was going to Havana by the next steamer; did not tell Mr. Fallon so. Did not tell defendant that in the presence of the jail-keeper. Did not tell Fallon I would join defendant and my children in Havana as soon as I got well, and did not say so to anybody. I know the man in charge of the jail. Only my mother was present when I had the conversation with defendant. When she came I said I would never let the children go if I was out of jail. I asked my mother to go and speak with them. She went on the levee and spoke with a man, and he told her it was too late. My husband died in May, 1864. When I came out of jail he was in the city—staying with me at the house. He knew the children were on board the vessel. He went on board, he told me. He told me he did everything he could, but she acted mean with him. He said he went to the provost marshal, and he told him he gave her permission to take them away, on condition of bringing them back in six months. My mother was on board when the children were on board. They went on in the evening and went the next day. Defendant came to the jail with a gentleman—Fallon—with a carriage for me. She had the children in the carriage. She sent the driver to call me. I was sick, and she sent Fallon, and he wanted me to come, he said, and go to Havana with defendant and my three children. I said I would not go. Mrs. Roland and defendant were in the carriage. Defendant did not come out of the carriage.

Madame Leocudie (colored) sworn:

I am the mother of Rose. She had five children; defendant took three; the eldest was six years old, the next four years old, and the next two. Defendant took them two years ago and went to Havana. Rose was in jail; she stayed there almost one month. I saw her in jail; I went three times to see her—twice with defendant. Defendant told her to come down, but she was sick and could not. Defendant went to her and told her she was going to Havana, and she was to fix herself up to go. Rose said she did not know she could, as she was sick. She said she was going to take the three children. Rose did not like that. Defendant did not let her see the children when she was in jail. Defendant came with the children in a carriage, and would not allow Rose to see them. Did not hear defendant tell Rose anything about taking the children to Havana; did not hear defendant ask Rose to go to Havana. Witness saw the children on board the vessel. Defendant was with them; there were three children; the eldest was crying, and defendant pushed to prevent it from seeing witness when she was going away. Witness has not seen them since,
and never heard any news or got any answer. Rose got out of prison the same
evening that defendant left—the evening of the day defendant left. Witness
took Rose out; finding Rose was not on board, and was sick, she spoke to de-
fendant and took a cab and went and got Rose out of jail.

Cross-examined:
Witness saw Mrs. Roland on the vessel. Witness was on the ship when the
children came. Defendant, Madam Fallon, and several other ladies, came with
them. They were brought down to the ship in a carriage and taken on board
by a little boy. Mrs. Roland asked for the mother of the child, and defendant
stated that the mother was sick and could not come. Mrs. Roland said she
would do better to turn the smallest child over to the grandmother, (witness.)
Defendant said no; if all the children were not brought to Havana Mr. De Hart
would not be satisfied. Witness did not make any attempt to get the children,
but as soon as the children saw witness defendant shoved the children away
and prevented them from getting near her. The children were in the ladies'
cabin, and witness went in; was two or three paces from them. Witness spoke
to the steward of the ship, and he said the children were already embarked, and
if they had not been he could have turned them over to witness. Witness
stayed till she found that Rose had not arrived, and went to the prison. Rose
always stated she would not go to Havana. Witness never saw any pass, but
Fallon and a lady told her defendant had left her address in Havana, and would
like to have Rose come to Havana, for she was greatly embarrassed by the
children. Witness went aboard about 3:30 or 4 p.m., and stayed about an hour
after the children came. Mrs. De Hart had charge of the children and baggage.
Witness did return to the vessel after leaving it. She took Rose out about
6 p.m.; never heard of any order. The keeper told her to walk in and she
could have the prisoner. Witness testified before the recorder. Defendant told
Rose, in the presence of witness, she would send her a doctor and some medicines.
Defendant lived on Canal street, at her own house, and Madam Roland lived
with her. Witness went there rather often; sometimes two or three times a
week, and every second Sunday. The children were pretty well treated. De-
fendant asked witness to go to Havana, and she would pay her passage. Wit-
ness was a slave; belonged to Mrs. Gearan, who is now dead. Witness can-
not read or write, but is sufficiently instructed to defend herself when attacked.
Witneess mistress has been dead four or five years. She was left free by her
mistress, and has been free since. She has lived with her mistress's sister, and
taken care of her children, and had her own time.

P. A. Snare sworn:
I knew Mr. De Hart in 1862; he left the city the last days of September,
1862, and went to Havana. I left here the 1st day of November, 1862, and re-
mained till January 2, 1863. I saw De Hart in Havana; J. A. De Hart is his
full name. I returned to New Orleans January 10, 1863. I know defendant.
A few days before I left New Orleans defendant proposed to me to take one of
the children to Havana at that time. Mr. De Hart had already gone to Havana.
I rejected the proposal of course. I don't think I saw defendant after my ar-
ival, and know nothing, personally, of the taking of the children. De Hart was
a dentist here, before he left. He was a captain in the rebel service; Carondelet
light infantry. The regiment went into camp. He told me it was mustered
into the service a few days before I left. I was a member of the regiment.

Cross-examined:
I was in the company with De Hart. I was with him about six months at
Camp Lewis; were in camp but three months; only went out to Camp Lewis,
and the last day they went to Camp Shalmette. When the federals came in,
of course we disbanded. It was a militia organization, afterwards a volunteer company. I took the oath, I think, in September, 1862. I think every one of the company took the oath. I am a dentist. De Hart left here after I took the oath. I think he went on the Cardenas; I saw him go; he had a pass to go.

**DEFENCE.**

Andrew Miller sworn:

In December, 1862, and January, 1863, I was on the 2d district police. Don't know Rose. I recollect arresting a girl on Rampart street, in an alley way, between Canal and Custom-house streets, at the request of a lady who came to the station. She did not give her name; said her servant had beat her, and the sergeant told me to arrest her. I cannot recognize this woman Rose. I don't recollect when it was. One lady came to the station; a tall lady, dressed in black, and wearing a pair of spectacles. It was an old lady; not defendant. She said she had been struck by the servant. I brought her to the station and locked her up. Did not make a report. The lady made a report to the clerk, Ed. Clarring.

Cross-examined:

She was not locked up for safe-keeping. She was arrested for beating the lady, not for safe-keeping.

Rose Elyra recalled:

I don't know the man that arrested me; it was dark. I don't know Guercard; is not the man. I was arrested on Canal street.

J. A. Letton sworn:

In December, 1862, and January, 1863, I was clerk of the police jail. Rose's face is familiar, and I think she is the same one we had sick there. I recollect her now; can vouch that she was there, but not for the length of time.

(Receipts for board of Rose at the police jail shown witness.)

Three of them are signed by me, and the fourth by the turnkey. That is his handwriting.

(Receipts put in evidence marked A, B, C, D.)

(Document marked E put in evidence.)

She was not released till the 15th. The order is dated the 7th. She was not called for till then. The indorsement is mine. Fallon came in and I went for Rose, and was told she was sick. The office is separated from the jail. He says, "Let us go in and see her, I want to talk with her." I went with him to the room. He says, "Are you the girl arrested by Mrs. Roland?" She says, "Yes." He said, "Your mistress is going to Havana, and I have a release if you are willing to go." She says, "I cannot go to night, I am sick." He says, "Will you go in the next steamer?" She says, "I will see about it, I am sick." He said she must make up her mind about it. Fallon came with defendant. She was in the office. They came in a carriage. Three or four children were in the carriage. I don't remember that she spoke to Rose. Don't know whether the girl asked to see the children or not. I heard her make no objection to the children going to Havana, nor any remonstrance. Did not hear her make any remarks when she left. She left the 15th, as shown by the indorsement.

Cross-examined:

Could not say what Rose was there for. We were receiving slaves arrested by police officers. We could not have received them in any other way.
Andrew Miller recalled:

(Document E shown witness.) This is what we generally got as a release. We were receiving slaves from November to the latter part of December or January, when an order came not to receive them without a special order; that was after the 1st of January. In December, the police generally brought them. We had no order then for prohibiting the receiving of slaves. We received slaves after November 1, 1862. I have seen General Order No. 88. Don't know when we first got it.

Mrs. Blossman sworn:

I know defendant and Rose, and have seen her mother. In January, 1863, I was living on Canal street, between Rampart and Basin. Mrs. Roland left in January or February. I cannot tell exactly. I got the house of her. She rented it of Thomas L. Clark, a lawyer. I saw Madam Roland's eye blacked, but did not see the occurrence. Rose came to see me to see if I had heard from her children. I said it was a pity she struck her mistress. She said she did it in a moment of passion. It was about a week or two before she (Madam Roland) left. Her eye was black. Madam Roland had been very kind to Rose. I told Madam Roland, if ever the children were to be sold, they would find it hard. She said they were never to be sold; they were to be free. They were treated like white children.

Cross-examined:

The place is 219 Canal street. Mrs. De Hart lived on Baronne street then. I took the house after the old lady left. I called on defendant about it, and she told me her aunt lived on Canal street, and I went there. I went there about a month before her departure. Rose was in the yard washing. I saw her. It was at the house on Canal street. That was the first time I went there. Rose called on me several times about six months after they left, to see if I had letters from the ladies, and to know if the children were well.

Mrs. Stockton sworn:

I have known defendant for the last six years. I know Mrs. Roland. I visited at the house. I know Rose and her children. They were treated so well in the family that I was jealous. Mrs. Roland said they were to be free. It was a matter of remark that the children were spoiled. I have seen her hold the children in her lap and kiss them. I saw Madam Roland's eye blacked. It was about the time Rose was committed to prison. When Madam Roland lived on Canal street, defendant had a room at my house on Charles street. Then she went to Madam Roland's house. Before that the girl and her children were with Madam Roland.

Cross-examined:

Defendant went there a few weeks before she left for Havana. I did not see defendant off on the boat.

Mrs. Fallon sworn:

I know defendant, Mrs. Roland, and Rose and her mother. Rose lived in Mrs. Roland's house in the fall and winter of 1863, on Baronne street, and then she moved to Canal street. She lived on Canal street about May, and lived there till she went away. I was there often and saw Rose. I saw her husband there. He was there when they were packing, and they started from the house; was there when the children were taken from the house. He went with the trunks to the boat. The children went in a carriage with Mrs. Roland, defendant, and my husband. I went down to the steamer and saw the children there. The grandmother walked down; there was no place in the
carriage. The father was there; he went with the trunks. He made no complaint or objection to the children going; was perfectly satisfied. He brought the children's baggage and the ladies' things. He made no complaint about the children going aboard. He was perfectly satisfied to have the children go. Rose's mother was in the cabin with the children. I did not see the children cry when she left. She kissed them when she left and bid them good-bye. The boat did not go, and she was there the next day in the morning. Don't recollect when the boat left. The children were on board all night, till the vessel went. Were there the evening before, and all night till the boat left. The children were treated very well by Madam Roland, and the mother also. Never heard any complaint made by the parents or grandmother. The father is dead. The children were spoiled. The grandmother was satisfied to have the children go. She told me a few minutes before I came here that she heard her daughter say to my husband that she was perfectly satisfied to go and meet her children, when she got well, in Havana, by the next boat. The passage of she girl was paid. I went with her (defendant.) They did not charge for the children, they were so young, if they did not trouble the passengers. The servant was to go by the next boat, and the passage was paid in my presence.

Cross-examined:

Neither defendant nor Madam Roland had any children. She told the agents for the boat these were colored children—slaves.

(Document marked I' put in evidence.)

(Objected to by counsel for prosecution to evidence relating to the title of the slaves overruled.)

Andrew Hero sworn:

I am a notary public, the successor of James Graham. This act is registered in the office No. 5233, now in my possession. It was entered under Mr. Graham.

Cross-examined:

I have read it. I know nothing further about it. Don't know that the sum mentioned in the act was paid. I was not a notary then. A party coming into the office and saying the money is paid, I put it in the act as paid. I do it, and I believe it is usual with other notaries.

(The act, record of the sale of the slaves to Madam Roland, put in evidence.)

J. G. Fallon sworn:

I live in New Orleans; I lived here in 1863 and 1864. I know defendant and Madam Roland. I have seen Rose, don't know that I could recognize her. This is the woman [Rose] that was in the parish prison. I went to the parish prison on the 15th of January, 1863, I think, in a carriage with Madam Roland, defendant, and the children—the children of this woman, I am told. When I got there Madam Roland handed me the release of this woman. I went into the clerk's office and handed it to Letton, the clerk. He told me it was all correct, and asked me to go up stairs to the cell where this woman was. Letton and myself went into the cell. I asked her if her name was Rose; she said yes. I told her the ladies were down stairs with the children. Letton says, "Rose, get up; you are released." She said she was too sick and not able to get up. I then told her the ladies and children were going on the steamer Bio Bio to Havana. She repeated that she was too unwell to stand up, let alone to walk. I then asked her, in case she should be well by the next steamer of the same line, if she would go on. She answered yes; she would if she was well. That's all the conversation I had with her. I told her the children were down stairs and were going to Havana. She said she was too sick.
She made no objection to their going, but said she was too sick. I came down and gave her answer, and went to the steamer with Mrs. De Hart, Mrs. Roland, and the children. At the landing I saw a woman who said she was the mother of Rose; she was superintending the things of the children. She is here; I recognize her. The children were in the state-room of defendant and Mrs. Roland; they were not hid away; the room opened into the cabin. The grandmother superintended putting the children on board; I did not see her in the state-room; she was on board; she did not make any objection to the children going. Mrs. Roland had one of the children on her knee in the state-room, giving it a cracker or something. I understood Mrs. Roland was the mistress of them, she appearing to have control of them from what I saw. The passage was paid for the servants to the agents; I was not in the office at the time. I told Rose the passage was secured for her to go on the next steamer; did not tell her by whom. She did not ask to see the children when I was there; said she was too sick. I handed the order of release to Letton. Defendant lived on Canal street in January and December, between Rampart and Basin; Mrs. Roland and defendant were living together there; I was made to believe it was Mrs. Roland's house; I was there only once; only saw the children once.

Cross-examined:

Then I was shipping clerk for Warneken & Co. I was told the passage of Rose and children was paid; I did not see it paid. Had no intimacy with De Hart; my wife and the ladies were intimate, and as they were alone I went at their request to see them safely on board. When I came down from the cell I informed the ladies that Rose said she was too sick, and could not come down. I don't know who signed the pass; I handed it to the provost marshal's guard on the levee; it was for two ladies, servant, and a boy; it was a white orphan boy in defendant's charge. Don't know that the pass mentioned that the three children were slaves. Captain Nichols, whom I gave the pass to, said it was all correct. Captain Drew was master of the ship; don't know that he made oath that no colored persons were on board.

(Records of the provost marshal general's office, containing passes, of which the following are copies, put in evidence.)

Pass.

"No. 9900."

"New Orleans, January 12, 1863.

"Granted to Mrs. E. Roland, son, servant, and four children. New Orleans to Havana, per steamer Bio Bio."

"'V'N ROLAND.'"

Pass.

"No. 9902."

"New Orleans, January 12, 1863.

"Granted to J. A. De Hart. New Orleans to Havana, per steamer Bio Bio."

"AMELIE DE HART."

George L. Leveque sworn:

I live in New Orleans. Have known defendant and Madam Roland over three years. Have seen Rose; I saw her on Hospital street, as she frequently came to my house to learn the news about her children that were taken away; it was some time last winter, 1864. I saw them on the Bio Bio about the middle of January, 1863; I went aboard to bid defendant good-bye, and Madam Roland; I saw the old colored woman aboard; I remained on board till dark; went aboard at 4 or 4½ o'clock. (Witness identifies the colored woman, Rose's mother.) There was no concealment of the children; they were playing about the boat; were apparently happy and contented; there were no
indicates of their being grieved; the old woman was close by them, and spoke to them several times. She asked Madam Roland near the stairway for money to go and see her daughter Rose; she had no change, nor had defendant, and I gave her a dollar or six bits for a cab to go and see her daughter. I have lived in Havana. Slaves brought there are placed in jail, and the owner has to give bond, and when he leaves it is cancelled. They are not allowed to remain, as slaves; are allowed their liberty in prison. For instance: Charles Comack; of the Citizens' Bank, took a man servant to Havana on the steamer Cardenas, who was to attend to some small children. The owner had some influence with parties, and one of our agents, a very influential man, went to the captain general to have the servants released. It was handed in my presence to him, and they were released under the circumstances. I did not hear the grandmother say or do anything to protest against the children going off, or show any dissatisfaction.

Cross-examined:

I was an intimate friend of De Hart, and am still. He lived on Baronne street, between Canal and Common. Mrs. Roland lived in the same house when I knew her. Don't know how long he lived there. I went away, and returned about December 13, 1862. I found defendant living on Canal street, near Basin; Mrs. Roland was living in the same house; I knew she was defendant's aunt; I did not know her before she became a widow; don't know anything of her means; I thought she was almost the head of the family, and saw her working herself. I have been in New Orleans since Madam Roland was living at defendant's house; don't recollect the year; it might have been before the war. I found her on Canal street after my arrival, and went to the house. I think Mrs. Roland was the mistress of the house; she was doing work. I saw the three children there; don't remember whether I saw the mother or not. I went there several times. The children were treated very well. I think I saw defendant there twice; I think she lived in the house at the time. By what I saw I think Mrs. Roland was the keeper of the house. I was on the steamer the first evening; she was detained; I did not go back the next day. The children were on board, and everybody could see them.

(Communication from the Spanish consul, New Orleans, put in evidence, marked H; also record of the recorder's court, marked I.)

Mrs. Hickman sworn, (French:)

Witness lives in New Orleans, and knows defendant and Madam Roland; also Rose; has seen her at Madam Roland's, her mistress; don't know Rose's mother. Witness went on board the Bio Bio to bid good-bye to Madam Roland, who was going, and saw the children on board. Madam Roland was much disappointed when she saw Rose was not on board. The children were Rose's; they were in the cabin of the vessel; every one coming aboard could see them; they were with the ladies in the saloon. Witness went aboard about 10 a.m., and stayed until the ship left; that was the day the vessel left. Defendant was not on board when witness went on, and only came a few minutes before the vessel left. Don't know who had charge of the children; they seemed to be with Madam Roland. I don't know whether the children were satisfied or not; they were playing, and not crying. Did not see the old woman on board.

Cross-examined:

Has known Madam Roland five or six years; when witness first knew her she lived on Baronne street; defendant and Madam Roland lived together; don't know who owned the house; Mr. De Hart's name was on the door; don't know anything of his business; don't know anything of Madam Roland's means. Don't know where defendant went to when she left Baronne street,
but when witness returned from the country she went to see Madam Roland, on Canal street, and found defendant there; don't know whether she lived there or not.

A. F. Hickman sworn:

I have lived in New Orleans nine years. I know defendant and Madam Roland. Before defendant left I think she moved to Canal street, and Mrs. Roland lived on Baronne street, if I am not mistaken. I know Rose and her mother. I remember when defendant left for Havana. The children were aboard. It was on the Bio Bio, about January, 1863. They were in the ladies' cabin. I was there the first day, and when the boat left. The children were playing in the ladies' cabin all the time; were with defendant and Madam Roland. Don't remember of seeing the old lady. The children were amusing themselves; I saw them often at Madam Roland's; I think they were treated as well as own children; not treated as slaves are generally treated; were petted and treated kindly.

Cross-examined:

Were kindly treated, as all slaves are. I did not intend to say they were treated differently from other slaves. I was at Mr. De Hart's sometimes. He lived on Baronne street till he left for Havana. Madam Roland was living there. Mr. De Hart's name was on the door, not Madam Roland's. Was well acquainted with Madam Roland. Don't know her circumstances. Defendant left and went to Canal street, I think. I was there once or twice. Mrs. Roland was on Baronne street. I cannot tell which was living on Canal street; cannot think of it now. Don't know when I went to the house. I visited the house one time before they left, on Canal street; I think one of them was there, but don't recollect which was at the house on Canal street.

Dr. J. L. Riddel sworn for prosecution:

I know Mr. De Hart. He lived, when in New Orleans, at 17 Baronne street, his last residence; I think it was up to the fall of 1862; he might have left earlier. He was my tenant; I was owner of the house. I had occasion to go into the house a good many times. Madam Roland resided with them. I have heard defendant and Mr. De Hart speak of her as an aunt. I never knew precisely whether she was a boarder or a guest at the house; she certainly was one or the other. Don't know her pecuniary means, but by hearsay. I never understood that she had any means or property. I can give my impression about it, but did not bother myself about her general reputation. Madam De Hart continued to occupy the house after he left, I think, till near the end of October or November, 1862; I cannot state precisely. Defendant removed to a house on Canal street, north side, between Basin and Rampart. When they left my house about a year's rent was due me. I instituted a suit for it. The rent was $1,500 or $1,600, I think. Frequently called upon them to pay me, but only got promises, nothing else. When I went to the house, I saw Rose frequently; I had my eye upon her up to the time they left my house; I did not know she had been sold to Mrs. Roland till I had seized her myself. That was subsequent to De Hart going to Havana. I had seen nothing to show that De Hart had ceased to become her owner, or that she belonged to Mrs. Roland; circumstances in the house remained the same as to the apparent control of the girl by defendant. Negotiations were opened with De Hart, who alleged the slaves to have belonged to him subsequent to the date of the sale—the sale that I saw in Graham's office.

E. F. Stockmeyer sworn:

I am one of the firm of Warneken & Co.; were the agents of the Bio Bio in December, 1862, and January, 1863. This is a book of the house; (book pro-
duced;) passenger and freight book; contains the passengers that go on the steamer. The book was kept by one of my clerks. The names of defendant, son, and Mrs. Roland appear on the books, and $120 appears to have been paid for the passage. That is the whole amount that was paid. I could not state whether defendant or Mrs. Roland paid anything else for any other person. Nothing on the book shows that anything else was paid for passage by that vessel. On this trip there are no persons described as colored, or of African descent. We only put down servants; they might be colored. This is another book of the house. (Book produced.) It is the first or memorandum-book; when persons engage passage. When a person comes and engages passage, we put it down here from their own dictation. They sometimes change or fail to go; and afterwards it is copied into the first book. The entry of Rose is crossed out, which indicates she did not go. I don't know whether there was any compliance with General Order No. 44 by defendant and Madam Roland in taking away these children. I don't know that Captain Drew took any oath in regard to these children.

The following is a fac simile of the entry in the book:— (See copy.)

Cross-examined:

I cannot say I saw the entries made. I know nothing but what the book says about the children. I cannot tell whether this book shows that passage was engaged for the children; it does not show on the book. According to the first book it was. The second book contains the whole amount paid in the office. That is all that I know that was paid. Other money for passage could have been paid without my knowing it. All my knowledge of it is derived from the books. Don't recollect whether I went aboard the Bio Bio; we took colored servants to Havana. I believe they did not tell me the servants were colored when they got passage, as a general thing. I have seen colored servants on board, and know they have gone from here. We only required the passage money—did not require a pass. This is the book by which we settle the ship's accounts. That money, as stated on the book, we received on that voyage, and no more.

Copy:

G. NORMAN LIEBER,
Major, Judge Advocate,
Judge Provost Court.

In the matter of Rose Elyra, in the provost court, department of the Gulf.

Most of the facts, indeed all of them essential in their nature, are left by the evidence free from any doubt.

1. Rose and her three children were held as slaves by J. A. De Hart, a dentist of New Orleans, under an act of sale from their former owner, at the time of the occupation of the city by the national forces.

2. At that time De Hart was a captain in the rebel service, commanding the company known as the Carondelet light infantry, in the Beauregard regiment, which had been mustered into the service of the so-called Confederate States, under General Mansfield Lovell. After the retreat of the rebel forces from Camp Chalmette, below the city, this company disbanded.

3. On the 14th of August, 1862, De Hart passed an act of sale of Rose and her three children to Madam Roland, who lived in the same house with him, was an aunt of his wife, and a person of no means to make such a purchase. The act of sale declares that four hundred dollars were paid in cash, but this is shown by no other proof, and it is proved that it is unusual to state such a payment in notarial acts when not even made in the presence of the notary, and
without any knowledge on his part of the truth of the statement. There is no proof that the credit portion of the price has ever been paid by Madam Roland.

4. In December, 1862, Rose was separated from her three children mentioned in the act of sale, and together with one born since, and at the time a sucking baby, was locked up for safe-keeping in the police jail, where she remained until the night of the 15th of January, 1863. During this period of confinement Rose was unwell, and on the last day so sick she could not get out of bed. Under these circumstances Mrs. De Hart and Madam Roland took the three children of Rose, all under ten years of age, and respectively, four and two years old, on the steamship Bio Bio to Havana. The ship had been advertised to leave during the 15th, but was detained until the 16th.

5. In the mean time De Hart himself had gone to Havana. In October or November he was heavily in debt, and owed fifteen hundred dollars to his landlord for rent at the date of the alleged sale to Madam Roland, and is not shown to have renewed his allegiance to the lawful government.

6. In the fall of the same year, 1862, Mrs. De Hart had proposed to Snaer to take off one of the children to Havana, but was refused.

7. On the books of Messrs. Warnecken & Co., agents of the steamship Bio Bio, there is no entry of the three children as ultimate passengers, or as being paid for as such; and on their first book of entries the children are not mentioned either as slaves or colored; the same absence of designation occurs on the provost marshal's book.

8. While Rose was in jail Mrs. De Hart repeatedly visited her and urged her to go to Havana, which she refused, and prayed to have her children left behind.

9. No proof is made by the defence of compliance with General Order No. 44, headquarters department of the Gulf, June 21, 1862, or with General Order No. 88, headquarters department of the Gulf, November 1, 1862.

These being the substantial facts, we proceed to inquire what was the legal status of Rose and her three children.

The answer is, they were from and after the 17th July, 1862, free, or, what amounts to the same thing, every military officer of the United States is bound to consider and treat them as free from that date. The 5th section of the act of 17th July, 1862, makes it "the duty of the President of the United States to cause the seizure of all the estate and property, money, stocks, credits and effects of the persons named in this section," and among them are "any person hereafter acting as an officer of the army or navy of the rebels in arms against the United States."

It is proved that De Hart was an officer of the rebel army when the national forces arrived here, and as there is no proof that he ever resigned, it was the duty of the President to take possession of his property, and also of the President's subordinate officers here to do the same; but De Hart could not defeat the performance of this duty by any transfer, and all such transfers would be necessarily null and void. As is stated with regard to the transfers made by other persons after due warning in the 6th section of the same act, slaves could only be taken possession of by the President and the subordinate officers to become free. Therefore Rose and her three children, by the rebellion of their owner, became free.

And in addition to this, by the 10th section of the same act "no person engaged in the military or naval service of the United States shall, under any pretence whatever, assume to decide on the validity of the claim of any person to the service or labor of any other person," &c., &c. Hence, no defence that can be set up here involving or resting upon the pretended slavery of Rose and her children, can be entertained or passed upon.

Under this view you must look upon the case as that of three free children taken off from a free mother, and carried to a foreign country. This was a crime.

Ex. Dec. 30—3
under the 22d section of the act of the State of Louisiana, of 14th March, 1855, p. 132, making it a felony to forcibly seize and carry out of the State any free person without authority of law.

The case would not be improved for the defence should you choose to look upon Rose and her three children as slaves. All the children were under ten years of age at the time they were separated from their mother. The public policy of Louisiana was averse to the separation of children of that age from the mother. The 15th section of the act of January 31, 1829, p. 48, forbade the introduction of any slave child under ten years of age into the State without the mother; and the 15th section of the same act forbids a sale of the mother separately from the child under ten years old, under penalty of fine and imprisonment; the case of Rose and her children is embraced in the spirit of this law. An attempt has been made by the defence to show that Rose consented to the deportation of her children, but the attempt is futile; that she did not consent, but protested with the vehemence of a mother against the outrage, is proved by her own oath and that of her mother, far outweighing the contradiction of the female witnesses on the other side, who, trained in the fashionable female accomplishments of treason, see but dimly the cause of justice when presented under a dark skin.

But an admitted consent on the part of Rose, under the circumstances she was in, would not avail. A contract, whether one separating her from her children, or any other, she could not make.

The Louisiana code, article 174, says: "The slave is incapable of making any kind of contract except those which relate to his own emancipation."

And such a contract, whether the mother were slave or free, would be against public policy, and in contravention of the prohibitory law of 1829; while "individuals cannot by their conventions derogate from the force of laws made for the preservation of public order or good morals," (Louisiana code, article 11,) and "whatever is done in contravention of a prohibitory law is void, although the nullity be not formally directed." (Louisiana code, article 12.)

Such a consent, moreover, is a mere delusion, and if it were on a subject not prohibited by law and good morals, would be utterly without binding force. Rose was treated as a slave, was sick and in prison. She was in no condition, mental or physical, to give a valid consent. "Consent to a contract is void if it be produced by violence or threats. (Louisiana code, article 1844.) Can there be any doubt that if Rose had been sent out of prison with the children, and told she was free to keep them with her or send them from her, she would have declared to keep them?

For the semblance of consent which the friends of her former mistress try to impute to her, what cause was there but her imprisonment; and in such a case the slightest violence is sufficient to invalidate. (Louisiana code, article 1853.)

An attempt has been made to divert the criminal act from Mrs. De Hart to her aunt, Madam Roland, by showing, not that there was a sale, but that the form of a sale was gone through with, of Rose and her children, by an act before a notary, on the 14th August, 1862, from J. A. De Hart to Madam Roland. Admitting this sale, argomenti grata, was not null under the acts of Congress, as we have attempted to show, even if serious; yet this one was evidently a simulation. The testimony shows that Mrs. Roland had no pecuniary means to make such a purchase; the notes given in pretended part price have never been paid; no proof has been furnished that the cash part of the price was really paid; Madam Roland and the De Harts lived in the same house, and after the pretended sale there was no change in the indicia of ownership; and after the sale De Hart spoke of the slaves to Riddel as his own, and acted as owner; the sale was passed at a time when De Hart was heavily in debt, and no doubt was a concocted scheme for the double purpose of defrauding his creditors and of ultimately spiriting away Rose and her children into slavery in a foreign land. The combination of De Hart and his wife and Mrs. Roland to effect the object be-
comes manifest when you look at the facts and circumstances. The condition of De Hart as a rebel officer; the sham sale to a woman of no means; the flight of De Hart to Cuba; the proposal of Mrs. De Hart to Snuer to carry off one of the children to that island; the desperate condition of De Hart's pecuniary affairs; the imprisonment of Rose, and the final condemnation of the robbery of the children by the wife of De Hart, and her aunt—all show a conspiracy of the parties to carry out their wicked design.

One of the culprits is now before the presence of justice, no doubt the most guilty one of the three, and should be held to make reparation.

DURANT & HORNER, of counsel.

NEW ORLEANS, April 14, 1865.

In the matter of Mrs. A. V. De Hart, in the provost court of the department of the Gulf:

The undersigned, counsel of Mrs. De Hart, submit the following observations upon the law of this case:

1. Mrs. De Hart has been arrested by the provost marshal general, and has been now imprisoned for more than a month, upon a charge (as declared in the report of the provost marshal general, of March 7, 1865) of "kidnapping three negro children." Upon this charge Mrs. De Hart has been tried before the provost court of the department of the Gulf, as far as hearing the evidence on both sides; which evidence is now referred to the commanding general of the department for his decision. This charge of kidnapping is based, as it appears from the written argument of Durant & Horner, page 5, upon a certain act of the legislature of the State of Louisiana, entitled "An act relative to crimes and offences," approved March 14, 1865, sec. 22, page 132 of the session acts. Now the prisoner contends, by her counsel, that offences against the criminal laws of Louisiana committed in New Orleans are to be tried in the first district court of New Orleans, before a jury of the vicinage, upon an indictment found by a grand jury, according to the course of proceeding in criminal cases at common law.—See constitution of Louisiana, article 105, Revised Statutes, under criminal proceedings, and page 287. The right to a trial by jury is also secured to Mrs. De Hart in a trial upon this charge by the Constitution of the United States, articles 5 and 6 of the amendments to said constitution.

2. Mrs. De Hart was, indeed, prosecuted before the civil authorities of Louisiana upon this charge in the first place, a complaint having been lodged in the office of the recorder of the second district of New Orleans, upon the oath of the petitioner Rose, upon which a warrant was issued, and a full investigation was had, which resulted in the discharge of Mrs. De Hart by the recorder, on the ground, as stated in the written decision of that officer, that the statute in question did not apply to this case. We do not deny that this decision of the recorder did not preclude the complainant from having the case brought before the district court by the district attorney of the State or the attorney general. But we formally deny that any military commander or military tribunal is competent to try offences against the State laws by a citizen when there is a regularly organized and constitutional tribunal in session for the trial of such offences.

3. The statute of Louisiana upon which this charge of kidnapping is founded, in its terms applies only to free persons kidnapped or abducted. Now, the prosecutrix declares, in her petition to the commanding general of the department, that she was born a slave; that she was held as a slave at the time the acts complained of were committed; that her children were held as slaves; and the civil code of Louisiana, article 183, declares that the offspring follows the condition of the mother as to freedom or slavery. The issue of slavery or freedom,
therefore, necessarily arises in this case. A title to Rose and her children, as slaves, in Mrs. Roland, and in Mrs. Roland's order, is given in evidence by Mrs. De Hart; and the counsel for the prosecution do not deny that they were slaves, but say that they were the slaves of De Hart, the husband of the prisoner, at the time of the alleged kidnapping; that the conveyance to Mrs. Roland was a sham, intended to defraud De Hart's creditors. Now, the singular anomaly and contradiction are presented in the argument of Durant and Horner for the prosecution, that while they call upon the commanding general to decide that those slaves have acquired a title to be considered free, they in the same breath invoke the 10th section of the act of Congress of July 17, 1862, as prohibiting the general from assuming, under any pretence whatever, to decide upon the validity of the claim of any person to the service or labor of any other person; in other words, the learned counsel deny the general's power to decide the very issue upon which this prosecution turns. It is very true the counsel conclude, most illogically, that the general is bound to declare Rose and her children free. If this conclusion has any meaning, it seems to be that the general can decide the question of Rose and her children's freedom against the prisoner, but is without power to decide it in her favor. Can there be a greater instance of the absurdities into which an advocate may be hurried by his zeal for his client? For, remark, we are not even contending with the official prosecutor, the judge advocate, but with the retained and particular counsel of the principal witness against us. Instead of this most absurd conclusion, which would give us a judge who can only decide in our way, let us rather carry out the argument derived from the 10th section of the act of Congress, to its natural and necessary conclusion, thus: The military officer of the government who its trying this case is forbidden to decide upon the validity of a claim on the part of Mrs. Roland or Mr. and Mrs. De Hart to the service or labor of Rose and her children. But the title and right of those persons to the service and labor of Rose and her children is necessary to be decided in the application of the statute to the case before the court. Ergo, the tribunal is incompetent to decide the cause, and the prosecution must be dismissed.

4. The counsel for the prosecution relies upon the 5th and 6th sections of the confiscation act of July 17, 1862, but we do not perceive their applicability to this case. By the 5th section it is made the duty of the President to cause the seizure of the property of a person hereafter acting as an officer of the army or navy of rebels in arms against the government of the United States.

Clearly this section can only apply to persons who were in arms against the United States after the 17th July, 1862. The review which my colleague has made of the evidence sufficiently demonstrates that Mr. De Hart (supposing him to have been the owner of Rose on the 16th January, 1863) was not in arms or acting as an officer of the rebel army or navy after the 17th July, 1862.

The 6th section declares that all persons engaged in armed rebellion against the United States, after the passage of this act, shall return to their allegiance within sixty days after public warning and proclamation by the President, under penalty of seizure of their property, and all sales or transfers of any such property after the expiration of said sixty days from the date of such proclamation shall be null and void.

Let us examine that section, in connexion with this prosecution, by the light of the evidence.

In the first place, De Hart was not engaged in armed rebellion after the 17th July, 1862; he had laid down his arms; his company, which had never gone into the field, was disbanded upon the arrival of the federal navy in New Orleans, (25th April, 1862,) and he, with all his company, took the oath of allegiance to the United States, as proved by Snear, a witness for the prosecution.

Secondly, the President's proclamation was published on the 25th July, 1862, and the sixty days' delay provided by the 6th section of the act of Congress,
after said proclamation, expired on the 23d September, 1862. Now, De Hart's sale to the widow Roland was made on the 14th August, 1862, consequently before the expiration of the delay provided in the act of Congress.

Thirdly, there is no such thing specified in the 5th or 6th sections of the act of Congress in question as a forfeiture, *ipsa facto*, of the property of persons who are within the scope and purview of said sections, no matter how clearly. The language is: It is the duty of the President to cause to be seized—the property shall be liable to seizure; now, there is not a little of proof that any of De Hart's property was ever seized by the government; much less Mrs. Roland's property, whose loyalty has never been called in question.

5. The counsel for the prosecution charge us with an infraction of the 15th section of the State law of 31st January, 1829, which forbades the introduction into the State of any slave child under ten years of age without its mother; and also of the 16th section of the same act, which forbids the sale of a slave child under that age separately from its mother, under penalty of fine and imprisonment.

The first answer we have to make to this part of the argument of counsel is, as before, that this is not a competent tribunal for the trial of a citizen for an offence against the criminal laws of the State, punishable with fine and imprisonment.

And secondly, there is no proof in the record that the slave children in question were introduced into this State without their mother, but the contrary; the allegations of the petition filed against us being that said children were born in the State. And, also, there is neither allegation nor proof that said children have been sold by the accused, or by any one else, separately from their mother.

6. To conclude, upon the charge of kidnapping. The children of Rose were not free persons. They were on the 16th of January, 1863, under the control of a mistress, (or master, it matters not which,) and “entirely subject to his will.” (Louisiana code, article 173.) Slavery was only abolished on the 23d July, 1864, more than a year after the sailing of the Bio Bio, by the adoption of the new State constitution. Moreover, the said children were not forcibly seized or taken or carried away from the State. Lastly, their carrying away was not without authority of law, but with the knowledge and sanction of the military authorities, and under a pass from the provost marshal.

7. Mrs. De Hart is accused of violating General Order No. 44. That was an order prohibiting any ship or vessel from taking away from this port any colored person, under certain restrictions—an order directed to owners, agents and masters of vessels, not to passengers. So far as Mrs. De Hart was concerned, she was abundantly protected by the pass given by the provost marshal to Mrs. Roland.

8. Mrs. De Hart is accused, lastly, of violating General Orders No. 88. This, likewise, is an order which did not concern her. It prohibited jailors from receiving and detaining slaves, unless their owners are loyal persons. If any person has violated this military order in the present instance, it is not Mrs. De Hart, but the jailor who received Rose when committed for safe-keeping, after beating her mistress, as proved by several witnesses. It does not seem necessary that we should undertake the defence of that jailor. If, however, Mrs. De Hart is to be held responsible for any dereliction of duty on his part, we will observe that there is nothing in the evidence impugning, in the slightest degree, the loyalty of Mrs. Roland, and, further, that the jailor was not bound to investigate the title of Mrs. Roland to the slave girl Rose before looking up the latter when brought to him by the police officer.

All which is respectfully submitted.

BUCHANAN & GILMAN,
*Of Counsel for Mrs. De Hart.*
In the matter of Rose Elyra vs. Mrs. J. A. De Hart, in the provost court, department of the Gulf.

The learned counsel for the prosecution, in his brief, says: "Most of the facts, indeed all of them (!) essential in their nature, are left by the evidence free from doubt."

Now let us, as briefly as possible, review the evidence, and ascertain calmly and dispassionately the true state of facts as shown by the record.

The first witness, the complainant, testifies that she is the mother of the three children in question; that she and they were the property of De Hart; that Madam Roland caused her arrest by an officer, and she was placed in the police jail about two weeks before Christmas, 1862. This occurred after an altercation between Madam Roland and herself. She remained in jail about two weeks. The three children were left at the house where she lived; another child, an infant, she had with her in jail. That Mrs. De Hart came to see her, while in jail, on several occasions, and on one occasion said, "Don't you feel like going to Havana? I am fixing to go." To which she, Rose, replied, "I don't want to leave my mother." (She did not say I don't want to leave my children.) Mrs. De Hart then said, "You make up your mind, and I will come and see you again." She came again. "I said I did not want to go." Then she came again with my mother, and brought my little boy, and said, "Try to get well; I am going away in a few days." I (Rose) said, "I was too sick, and was not going." That afterwards she sent a boy with a bundle of clothes to her, (Rose,) and he told her to dress herself and be ready to go on the Bio Bio, and Mrs. De Hart would come at five o'clock and get her, in a carriage; to which the witness says, "I told the boy to go; I was not going to Havana, but I wanted my children." The witness came out of the jail the same night.

Cross-examined:

Rose says, "I got out of jail the day she (Mrs. De Hart) went on board. The boat left the next day. That she was out of jail the day before the boat went with her children, and she knew they were on board, and her mother knew it; 'I did not go on board to get the children.' (Why?) Her husband also knew the children were on board. Her mother went on board when the children went on board. They went in the evening, and the boat went off the next day. 'Madam De Hart came to the jail with a gentleman, in a carriage, for me—Mr. Fallon. She had the children in the carriage. She sent her driver to call me; I was sick, and she sent Mr. Fallon, and he wanted me to come,' he said, 'to go to Havana with (Madam de Hart) defendant and my three children; I said I would not go." Again, she says, "I never told any gentleman that I was going to Havana by the next steamer. Did not tell Mr. Fallon so; did not tell defendant that in presence of the jail-keeper. Did not tell Fallon I would join defendant and my children in Havana as soon as I got well. Did not say so to anybody." This is about the substance of Rose's evidence, and we will now ascertain what truth there is in it.

Mr. Fallon, a gentleman of unimpeached character, was examined by the defence, and he testifies that he went to the jail on the 15th of January, 1863, in a carriage, with Madam Roland, Mrs. De Hart, and the children, (the children of Rose;) when he got there Madam Roland handed him the release for the woman. He then went into the clerk's office of the jail and handed the release to Letten, the clerk, and he and Letten went up to the cell where she was, and he, Fallon, asked her if her name was Rose; she answered, it was; he then told her the ladies were down stairs with the children, and it. Letten then said, "Rose, get up; you are released." She said she was too sick, and not able to get up. Witness then told her the ladies and children were going on the steamer Bio Bio to Havana. She repeated that she was "too unwell to stand up, let alone walk." Witness then asked her, in case she would be well by
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the next steamer of the same line, if she would go on. She answered, "Yes, she would, if she was well." Witness told her the children were down stairs, and were going to Havana. She made no objection to their going, but said she was too sick. He told her the passage was secured for her to go in the next steamer. She did not ask to see her children.

The next witness, J. A. Letton, testifies that Rose was confined in the police jail, of which he was clerk. That Fallon came there in a carriage with defendant and three or four children. He came to the office, and witness went for Rose, and was told she was sick; then went up to the room where she was, with Fallon, who asked her if she was the girl arrested by Mrs. Roland? She said, "Yes." He then said, your mistress is going to Havana, and I have a release for you, are you willing to go? She said, "I cannot go to-night; I am sick." He asked her, will you go in the next steamer? She said, "I will see about it; I am sick." Witness did not hear her make any objections to the children going away to Havana, nor any remonstrance against it. Did not hear her make any remark when she left the jail. She left on the 15th of January. This evidence is uncontradicted, and completely destroys the evidence of Rose, and shows, conclusively, that she had consented to go to Havana as soon as she got well, and was satisfied that her children should go with Madame Roland to Havana.

The next witness introduced by the prosecution is Marie Lenodee, mother of Rose. She testifies that Rose was in jail; that she went there three times to see her—twice with defendant; that defendant told her to come down; she was sick, and defendant went to her and said she was going to send her a pass; that she was going to Havana, and that she (Rose) was to fix herself to go; Rose said she did not know she could, as she was sick; defendant said she was going to take her three children; Rose did not like that; witness then says she "did not hear defendant tell Rose anything about taking the children to Havana;" that she "did not hear defendant ask Rose to go to Havana." (The witness here directly contradicts herself.) Witness saw the children on board of the vessel; defendant was with them.

Cross-examined:

Saw Mrs. Roland on board of the vessel; witness was on the ship when the children came; defendant, Mrs. Fallon, and several other ladies came with them; they were brought down to the ship in a carriage, and taken on board by a little boy; witness made no attempt to get the children; they were in the ladies' cabin, and she went in; witness finding Rose was not on board, "had not arrived," went to the prison and took Rose out at about 6 o'clock p. m. This is about the substance of her evidence, and we will revert to the same hereafter.

The next witness is one P. A. Suace. Knows De Hart; was in the same company in New Orleans. He (De Hart) was captain; went to Camp Lewis, near Carrolton, and camped there some time, and afterwards went to Chalmette. On the arrival of the Union fleet they disbanded, and witness took the oath of allegiance, and thinks every one of the company did so. De Hart left here for Havana, on the Cardenas. Witness saw him when he went. He (De Hart) had a pass to go. (This shows De Hart had taken the oath of allegiance, otherwise, he could not have got a pass to go to Havana, or anywhere else.) This witness went to Havana in November, 1862, and returned here on January 10, 1863. A few days before he left, defendant "proposed to me to take one of the children to Havana." "I rejected the proposal, of course." (Why, he does not state.) With this evidence the prosecution closed.

The witnesses introduced by the defence are all well-known and respected citizens of this city, of unimpeachable character, and, notwithstanding the ungracious and discourteous assertion of the plaintiff's counsel in his brief, are true and
loyal, though unfortunately differing with the counsel in his exalted ideas and eutopian theories relative to the race to which his client belongs.

By the policeman and keeper of the police jail we have established that Rose was committed to the police jail in December, 1862, having been arrested by the policeman "for beating the lady." This lady, there is no doubt, was Mrs. Roland. (See evidence of Mrs. Blossman and others.) She was released on the evening of the 15th of January, 1863, upon the order of release from Major Demming, (which is of record,) which Mrs. Roland handed to Fallon, who gave it to Letton, the clerk of the jail, as stated in their evidence.

Mrs. Blossman testifies that she took or rented the house on Canal street, between Rampart and Basin streets, which Madam Roland rented from Thomas Allen Clarke, (see receipt on file from Madam Roland.) This was about a month before Madam Roland left, and witness took the house after she left. About a month before Madam Roland left, witness called at her house in Canal street, between Rampart and Basin streets, and found Madam Roland with a "black eye." After Rose got out of jail she came to see witness, and witness told her it was a pity she struck her mistress. Rose said she did it in a moment of passion. (This admission corroborates the statement made by the watchman, or policeman, that the girl was arrested for beating a lady, and that Rose is the one he arrested.) Mrs. Stockton in her evidence also corroborates this.

Mrs. Fallon, the next witness, testifies: Madam Roland lived on Canal street till she left; that she saw Rose there; that Rose's husband, when Madam Roland and accused were going away, was at Madam Roland's, packing up their affairs; that he was at the house when the children were taken from the house in a carriage; that he went to the steamer with the trunks and baggage of the ladies, and those of the children; that both the husband and mother were on board of the steamer while the children were there, and saw them brought on board, and they made no objections to the children's going away, and appeared perfectly satisfied; that the grandmother kissed the children before she left the vessel; that the boat did not leave till the next day about twelve o'clock; that the children remained on board during all the time.

All the other witnesses, viz., C. J. Leveque, Mr. and Mrs. Hickman, and Mr. Fallon, prove conclusively that the grandmother of the children, and their father, were on the steamer; that the children were not concealed, but, on the contrary, they were playing about the cabin, and were visible to any one coming on board; that both the father and the grandmother appeared perfectly satisfied, and made no objections to, nor any remonstrance against, the children being taken to Havana by Madam Roland. We would respectfully call the attention of the general to this evidence as shown by the record.

The next evidence introduced by us is—

1. The pass No. 9900, from the provost marshal general, department of the Gulf, to Madam Roland, son, servant, and four children, from New Orleans to Havana, and pass No. 9902, to Madam De Hart, from New Orleans to Havana.

2. The release signed by Colonel Demming, military mayor of New Orleans, ordering the keeper of the police jail to release the slave Rose (Eliza) belonging to Madam Roland, which release is referred to in the evidence of Mr. Fallon and Mr. Letton.

3. The act of sale of Rose and children from J. A. De Hart to Mrs. Roland, with the documents annexed.

4. The record from the recorder's court, 2d district, showing that the accused was arrested on the complaint of the plaintiff, and that after due examination of the evidence the recorder dismissed the same.

5. The statement of the Spanish consul relative to the regulations in Havana concerning colored persons (slaves) brought there from foreign countries.

With the foregoing evidence we closed our defence, being satisfied that the innocence of the accused was fully established.
The counsel for the plaintiff thereupon introduced, first, Doctor J. L. Riddell to contradict or disparage the sale from De Hart to Madam Roland, but totally failed in his object.

Also E. T. Stockmeyer, of the firm of Warneken & Co., agents of the Bio Bio. This witness was examined in relation to certain entries made in the books of the firm, (which books and entries are in evidence,) showing that Madam Roland and defendant were passengers in the Bio Bio, and that $120 was paid for their passage. Also an entry in the book wherein the names of persons engaging passage were entered, as follows, viz: [See copy.]

The above is a fac simile of this entry, and establishes the fact that the passage of Rose and her four children had been engaged, but afterwards her name was scratched out; and also the figure 4 was changed to 3, as the youngest child remained with Rose.

This closed the evidence on both sides; and we respectfully contend that the plaintiff has totally failed to establish any of the allegations set forth in her petition, or any points assumed by her counsel. That, on the other hand, we have established beyond contradiction—

1. That the complainant and her children were the property of Mrs. Roland.
2. That the complainant was arrested at the instance of Mrs. Roland, and placed in jail, for having beat her.
3. That the provost marshal of this department issued a pass to Mrs. Roland for herself, Rose, and her children, from New Orleans to Havana, per the steamer Bio Bio.
4. That Madam Roland obtained a release for Rose from Major Demning, and upon that release she was discharged from jail on January 15, 1863, before the steamer left.
5. That Rose, when she came out of jail, knew her children were on board the steamer then at the wharf, yet she made no efforts to take any measures to claim them or prevent their going away, although she had ample time to do so.
6. That Rose consented positively to the children's going, and agreed to join them as soon as she got well.
7. That both Rose's husband and her mother were on board of the steamer with the children, and made no objections or remonstrance against their going; and that had they, or either of them, desired to prevent the children being taken away they had ample time, between the time the children were brought on board and that of the departure of the steamer, to take proper steps to prevent their going and obtain possession of the children.
8. That the children were under the control of Madam Roland on board of the steamer, and were brought there by her in open daylight, and were in and about the cabin in full view.
9. That Madam De Hart was merely a passenger on the same steamer, and did not interfere with or exercise any control over the children, and is innocent of the charges made against her by the plaintiff.

With these observations, together with those made by our colleagues, upon the law of this case, we submit this cause to your decision, being satisfied that you will maturely consider the same, and that you will dismiss the complaint of the plaintiff, and order that the accused be restored to her liberty.

All of which is respectfully submitted.

HOLLAND & BAER,
Associate Counsel for Mrs. De Hart.
In the matter of the United States, upon violation of Rose Elyra (colored,) vs. Mrs. A. V. De Hart, in the provost court.

DEPARTMENT OF THE GULF, OFFICE JUDGE ADVOCATE,
New Orleans, March 16, 1865.

I have the honor to request, on behalf of the government, in the ease of Rose Elyra vs. Mrs. De Hart, the following particulars, which may be obtained through the office of the provost marshal general with more accuracy and dispatch.

1. The order by which Rose Elyra was committed to the police jail in December, 1862.
2. The order by which she was discharged from jail.
3. The name of police officer who conducted her to prison, and, if possible, his present place of residence.
4. Whatever other entries may be on the books of the police jail at that time relative to Rose Elyra.
5. A transcript of records in the books of the provost marshal general’s office relating to Rose Elyra; passes given to Mrs. A. V. De Hart, with the three children of Rose Elyra, per steamer Bio Bio, or otherwise, in January, 1863.
6. Also the means by which Mrs. De Hart could obtain passes for the children.
7. That Warneken & Co., merchants, Union street, be ordered to report what their books disclose as to Mrs. De Hart’s passage for herself and the three colored children of Rose Elyra.

I have the honor to be,

Fenton Rockwell,
Captain, &c., Judge Advocate.

Colonel F. A. Starring,
Provost Marshal General, Department of the Gulf.

Pass.

No. 9900.] Office Provost Marshal, Parish of Orleans, La.,
New Orleans, January 12, 1863.

Passed Mrs. M. C. Roland, son, servant, and four children, from New Orleans to Havana, per steamer Bio Bio.

This pass is given upon the parole of honor of the holder that he will in no way give information, countenance, aid, or support to the so-called confederate government or States.

———, Provost Marshal.

A.

City Police Jail,
New Orleans, January 13, 1863.

Received of Mrs. Roland the sum of six dollars and ninety cents, amount of jail fees on slave Rose, from the 7th January up to the 14th January, 1863.

A. W. Miller, Police Jail Keeper.
L. A. Letton, Clerk.
IN THE SOUTHERN STATES.

B.  
City Police Jail,  
New Orleans, December 20, 1862.  

Received from Mrs. Roland the sum of three dollars and sixty cents, amount of jail fees on slave Rose from the 19th December up to the 25th December, 1862.  

A. W. MILLER, Police Jail Keeper.  
J. A. LETTON, Clerk.  

C.  
City Police Jail,  
New Orleans, January 5, 1863.  

Received from Mrs. Roland the sum of two dollars and ten cents, amount of jail fees on slave Rose from 31st December up to the 6th January, 1863.  

A. W. MILLER, Police Jail Keeper.  
J. A. LETTON, Clerk.  

D.  
City Police Jail,  
New Orleans, December 27, 1862.  

Received from Mrs. Roland the sum of one dollar and fifty cents, amount of jail fees on slave Rose from the 26th December up to the 30th December, 1862.  

A. W. MILLER, Police Jail Keeper.  
J. A. LETTON, Clerk.  

E.  

F.  

Received, New Orleans, 10th September, 1862, of Madam George Roland, thirty dollars, being rent of house No. 215 Canal street, for month from September, 1862, to 15th October, 1862, in advance.  

THOMAS ALLEN CLARK, Agent.  

H.  

Consulado de España en Nueva Orleans,  
Nouvelle Orleans, ce 11 Avril, 1865.  

Monsieur: En réponse à la consultation que vous m'avez adressée en date d'hier relativement aux formalités nécessaires pour autoriser l'introduction dans l'île de Cuba d'esclaves venant d'un autre pays, je m'empresse de vous dire que l'immigration des personnes de couleur est interdite par les lois de la colonie, et qu'un propriétaire d'esclaves qu'y arriverait accompagné de quelques domestiques est obligé de fournir un cautionnement pour garantir le retour des dits domestiques esclaves au pays d'où ils procèdent. Si le propriétaire refusait de prêter le cautionnement requis, l'esclave serait mis en prison, et renvoyé au point de départ par le gouverneur de la colonie.  

Je suis, monsieur, votre très obéissant serviteur,  

Le Consul d'Espagne,  
JUAN CALLYO.  

Mr. ANTOINE DUBUC.
New Orleans, June 6, 1865.

General: I respectfully request your attention to the case of Mrs. Amelie De Hart, now confined at No. 232 Julia street, in pursuance of Special Orders No. 126, extract 10, headquarters department of the Gulf, dated May 13, 1865.

She was tried by his honor Judge Lieber, of the provost court, upon the charge of kidnapping three children of Rose Elyra, colored. The case was not decided by the court, but the record was forwarded to the commander of the department for his decision.

There is no law in the military code, nor is there any necessity, which gives a military court jurisdiction of this case. The act, if committed, was not in violation of any article of war, any principle of the laws of war, nor of any general or special order. It must be considered, then, a gross assumption of power upon the part of the commander of the department, who ordered the arrest, imprisonment, trial and sentence, for which he might be liable personally for damages.

The offence for which she is condemned is for "unlawfully separating children of less than ten years of age from their mother."

The law which the late commanding general undertook to execute is section 75, page 60, Revised Statutes of Louisiana, 1856, which reads as follows: "Whoever shall sell the mother of any slave child under the age of ten years, separate from its mother, shall incur the penalties of the preceding section," which is a fine of "not less than one thousand nor over two thousand dollars and forfeiture of such slave."

This case presents a strange instance of an attempt to execute the law and at the same time to violate its most important provisions—an enforcement of the law by violating it. If the general had the power to try and condemn the accused under the law, he is certainly guilty of mal-execution in office when he failed to apply the penalty attached to such an offence by the law. But he had no right to arrest and imprison the accused; his court had no right to try her, and he had no right to condemn her to be a hostage for the return of property, which she never owned or had in her possession.

The evidence is, that Dr. De Hart, the husband of the accused, owned Rose Elyra and three children; that in 1862 he sold the same to Madam Roland, who, early in 1863, took the children to Havana, first ordering the mother to prepare herself to go with her, which the mother refused to do; and Madam Roland, not able to compel her to go, had to go to Havana with the three children without the mother; certainly no fault of the mistress that she did not go.

The law prohibited the selling of either mother or children separate from each other. In this case they were sold together. The new mistress tried to keep them together. Was it her fault that they were separated? Certainly not. At all events, the separating was not by sale.

It should be remembered that the laws of the State which the general attempts to execute, in part ignoring the other and most important provision, the penalty, and substituting one of his own instead, at that time allowed, provided for and protected property in negroes, which laws had been for many years in full force, recognized by the paramount government of the United States, and never up to that time restricted, limited, or prohibited; and under those laws Dr. De Hart had a right to own, to sell, or dispose of said property to whomsoever he pleased; and he, or any one who became the owner afterwards, had a legal right to take that property to any place he or she might desire, subject to the laws of the State or county to which he might emigrate.

Therefore, if Dr. De Hart were on trial, the following points would be involved and decided:

First. The laws of this State recognizing property in negroes, his ownership of Rose Elyra and her three children was legal.
Second. Being the owner, he had a right, under the laws then in existence, to
sell or dispose of them to any one whom he desired.

Therefore, as a consequence,

Third. He had a right to sell them to Madam Roland.

If Madam Roland were on trial, her case would be as follows:

First. The negroes being the property of Madam Roland, she had the right
to take them to any State or country, if permitted by the law of the State or
the country to which she desired to take them, there being no law of Louisiana
or of the United States to the contrary.

Second. The fact that the mother refused and would not go with her children
when she was requested and ordered to do so, with every facility for so doing,
does not attach any guilt to Madam Roland for taking the children.

Therefore, Mrs. De Hart, who never owned or possessed the mother or children;
who never sold or disposed of them; who did not, and could not, buy or sell
them to separate them, is not guilty of the offence under the law of Louisiana,
laws of war, articles of war, general or special orders, nor under any law of the
United States. Her imprisonment is therefore unwarranted, unlawful, arbitrary,
unjust, and should cease.

If it should appear that Dr. De Hart sold the mother and children in violation
of the law aforesaid; and if it should also appear that Madam Roland took the
children to Havana in violation of the law aforesaid; and if it should further
appear that Mrs. De Hart aided or assisted or brought about their separation in
violation of the law aforesaid, then Dr. De Hart, Madam Roland, and Mrs. De
Hart are liable to trial and punishment for the offence; but by what tribunal?
By a military commission, which is established for the trial of offences arising
from the military occupation of the country? By a court-martial, which is
established for the trial of violations of the laws of war, articles of war, or gen-
eral or special orders? Or by a provost court, which has no existence in law?
No, neither. It is an offence—if it be an offence—in violation of the statute of
Louisiana, with no tribunals to try the offenders but the courts appointed lawfully
for the execution of Louisiana law.

Mrs. De Hart was tried once before a civil tribunal of Louisiana for this of-
fence as a violation of State law and acquitted. This trial and acquittal should
have been recognized as her safeguard, secured to her by an elementary princi-
ple of constitutional law, "that no one shall be tried twice for the same of-
fence,"* a principle dear to all supporters of Anglican liberty.

It is, therefore, respectfully submitted that humanity and justice alike demand
her release.

I have the honor to be, general, with high respect, your most obedient servant,

JOS. T. TATUM,

Attorney for Mrs. De Hart, late officer of United States Volunteers.

Mr. Savage to Mr. Seward.

No. 137.]  

CONSULATE GENERAL OF THE UNITED STATES,
Havana, September 15, 1863.

Sir: I have the honor to state, in answer to your despatch of the 29th ultimo
(No. 68,) which, with the accompanying documents, reached me a few days ago,
that the three colored children therein referred to, and named Ernest, Maria,
and Josephine, have been virtually under my control since the first part of July
last, although staying at the house of Dr. De Hart. I enclose herewith a copy of
a communication I addressed, on the 6th of July, to the United States provost

* Dr. Lieber on civil liberty.
marshal general, department of the Gulf. No reply thereto has been received at this office.

Madam Roland, the aunt of Mrs. De Hart, lives with Dr. De Hart. The children are very kindly treated—in fact, the same as if they were her children; she is very fond of them, and seems to feel keenly the threatened separation.

At this season of the year, with no proper conveyances running between this port and New Orleans, and a very severe quarantine at the latter named place, it would have been cruel in me to embark them. I have deemed it best to await the time when the quarantine restrictions shall be removed, and then avail myself of the best vessel that may be going to that port. It is possible that some steamer (the most proper conveyance for children of tender age) may be running in the winter, and they can be sent in her to their mother. I fear that the consulate will have to pay their passage, as Madam Roland declares she has no means, and owes her support to the kindness of Mr. De Hart.

A colored girl named Delia was brought here from New Orleans, in the first part of last year, by a Mrs. Whittmore, who sold her at Matanzas. So soon as the case was brought to the notice of Mr. Hall, our consul, he took steps to have the same investigated, and the representation being correct, he laid the matter before the governor there, by whom it was referred to the captain general. I have the satisfaction of announcing to the department that Delia has been declared free, and orders have been issued for her surrender to Mr. Hall. Mrs. Whittmore, it is understood, died somewhere in the United States, shortly after the sale of Delia was effected.

In justice to the man who purchased the girl, it is proper to state that she has been looked upon and in every respect treated as one of his family. She has been quite happy, but she must be sent to the United States, the law of this country so requiring it.

I have the honor to be, sir, with great respect, your obedient servant,

THOMAS SAVAGE.

Hon. William H. Seward,
Secretary of State, Washington, D. C.

UNITED STATES CONSULATE GENERAL,
Havana, July 6, 1865.

SIR: The following is a copy of a letter addressed to me by Madam Roland, of New Orleans, residing in this city:

"Havana, July 4, 1865.

"DEAR SIR: It having come to my notice that Mrs. J. A. De Hart, my niece, is detained in New Orleans on account of three little negroes, named Ernest, Maria, and Josephine, who were brought by me into this city in the month of January, 1863, in order to remove all difficulty, and that she may be allowed to return to her friends and family in Havana, I hereby offer to deliver the said children to you, or to the person whom you shall designate, and to place them in your charge, whenever you think proper to call for them.

"I am, sir, respectfully, your obedient servant,

"V. ROLAND.

"THOMAS SAVAGE, Esq.,
"United States Consul General, Havana."

Consequently, the three children in question are now virtually under my control, and will be sent to New Orleans when a proper conveyance shall offer.

In justice to Madam Roland, I will state, from information given me by Mr. Dugué, of New Orleans, and other persons of respectability, that the three
children have been treated, at the house of Mr. De Hart, with all the kindness and affection that their mother could desire. They have been treated by Madam Roland as if they were her own children.

I am also informed that it was always the intention of Madam Roland to take the children to New Orleans when she returned there herself.

I am, sir, very respectfully, your obedient servant,

THOMAS SAVAGE,
United States Vice Consul.

The U. S. Provost Marshal General,
Department of the Gulf, or any other competent authority, New Orleans.

Memorandum.—This letter was taken by an English vessel to Mobile. She sailed some four or five days after the date thereof. Mr. Dugué was charged with the delivery, so that it must have reached New Orleans some days after the 15th of July, the date of Major General Canby's letter to the Secretary of War. It must have been delivered, because I understand that Mrs. De Hart was released. Mr. Dugué would not have failed to deliver it.

THOMAS SAVAGE.

Mr. Durant to Mr. Seward.

NEW ORLEANS, January 1, 1865. [1866.]

Sir: In November, 1862, in this city, Mrs. De Hart, in the exercise of a power then held by the owners of slaves, caused her slave woman, Rose Elyra, to be confined in the city prison, and during her imprisonment the mistress took off to Havana Rose's three children, all of tender years, all less than ten years old, and of an age at which the slave laws of Louisiana forbade the separation of children from their mother. The abduction was moreover in violation of the orders of the general then commanding the department of the Gulf, and was surreptitiously executed, as on the ship's (Bio Bio's) papers, and on the papers at the provost marshal's office, the names and color of the children were omitted. Two years afterwards Mrs. De Hart returned to New Orleans without the children, and the mother having appealed without redress to one of the local civil tribunals, I commenced a prosecution for her against Mrs. De Hart, in the provost court of the department of the Gulf, in consequence of which the major general then commanding, General Hurlbut, ordered Mrs. De Hart to be confined in custody until she should cause the children to be restored. This order was modified by Major General E. R. S. Canby, who permitted Mrs. De Hart to be enlarged and to return to Havana, under a promise from her that she would, on arrival, have the children sent back. She went to Havana in July last, but up to this time the children have not been restored.

On the 30th of August, 1865, General Canby informed me that the case of the children of Rose Elyra had been fully reported by him to the Secretary of War, and all the papers connected with it transmitted to Washington.

On the 16th of October, 1865, the Secretary of War informed me that copies of all the papers in the case of the children of Rose Elyra had been transmitted to the Department of State, "in order that application may be made to the Spanish authorities for the return of the children."

My object is to call your attention, in the most respectful manner, to this case, and beg to be informed what steps have been taken to redress so enormous a wrong, committed on a poor mother, in violation of every written or unwritten law.
Her children have now been kept from her for three years, and in her name I earnestly invoke the aid of your department to redress one of the most grievous injuries that the crimes of a departed system have left evidence of.

Soliciting your reply, and with sentiments of respect, I remain your most obedient servant,

THOMAS J. DURANT,
18 Carondelet street.

Hon. William H. Seward,
Secretary of State, Washington City.

Mr. Congar to Mr. Durant.

DEPARTMENT OF STATE,
Washington, January 11, 1866.

Sir: I have to acknowledge the receipt of your communication of the 1st instant, making inquiries relative to three colored children removed in the year 1862 from New Orleans to Havana, Cuba.

The case has already received the attention of this department, and for your information I transmit, herewith, an extract from a despatch No. 137, of the 15th of September, 1865, from the United States vice-consul general at Havana, a copy of which had previously been communicated through the War Department to the general in command at New Orleans.

I am, sir, your obedient servant,

H. N. CONGAR,
Acting Assistant Secretary.

THOMAS J. DURANT,
18 Carondelet street, New Orleans, La.

Mr. Congar to Mr. Minor.

No. 87.] DEPARTMENT OF STATE,
Washington, January 12, 1866.

Sir: You are informed that the department has received unofficial information that small vessels loaded with cotton, and perhaps other products of value, and manned by negroes, have left the southern coast of the United States for the island of Cuba, and have returned again without the colored persons who were on board upon their departure.

As it is feared that, if the information referred to should be correct, the men have, on their arrival, been kidnapped and sold as slaves, you are directed to make careful inquiry regarding the matter, and report the result of the same to this department, in order that, should the reports and apprehensions referred to prove to be true, steps may be taken to restore the men to their freedom.

I am, sir, your obedient servant,

H. N. CONGAR,
Acting Assistant Secretary.

Wm. T. MINOR, Esq.,
U. S. Consul General, Havana.

[Same to H. C. Hall, consul at Matanzas.]
Mr. Hunter to Mr. Minor.

No. 89.

DEPARTMENT OF STATE,
Washington, January 24, 1866.

Sir: Referring to despatch No. 87, of the 12th instant, transmitted to you from this department, I now enclose a copy of a communication addressed to Hon. James Harlan, on the 9th instant, by Mr. Matt. S. Coffin, from New Orleans, relative to the report of negroes being kidnapped in the United States, and sold as slaves in the island of Cuba.

You will be vigilant to observe and prompt to report all movements which tend to confirm the truthfulness of this report.

I am, sir, your obedient servant,

W. HUNTER,
Acting Secretary.

WM. T. MINOR, Esq.,
U. S. Consul General, Havana.

[Private.]

NEW ORLEANS, January 9, 1866.

Dear Sir: Since my arrival here, some ten days ago, I have been informed that thousands of negroes have been kidnapped and transported to Cuba, and sold into slavery, on the block, to the highest bidder. Having resided and done business here at an early period of life, I have many acquaintances here, and it is through southerners that my information is derived. It seems to me the government should institute investigation into this nefarious business, and take means to stop it, if it is not already being done.

I have made the acquaintance of Dr. A. P. Dostie, the recently appointed register and receiver in the United States land office at this place.

Very truly, yours,

MATT. S. COFFIN.

Mr. James Harlan,
Secretary Interior.

Mr. Tassara to Mr. Seward.

[Translation.]

No. 9.

LEGATION OF SPAIN AT WASHINGTON,
Washington, February 4, 1866.

The undersigned, minister plenipotentiary of her Catholic Majesty, has the honor to transmit to the honorable Secretary of State of the United States a communication he has received from the captain general of the island of Cuba, caused by the alleged kidnapping and carrying to that island of free negroes from the southern States, about which Senator Sumner busied himself in the session of the Senate of 9th January; annexed the honorable Secretary of State will also find a copy of the provisions in force in the island of Cuba relating to the arrival at that island of people of color, free or slave—provisions which the captain general of Cuba affirms to have always been faithfully complied with.

Ex. Doc. 30—4
The undersigned avails of this occasion to reiterate to the honorable Secretary of State of the United States the assurance of his very high consideration.

GABRIEL G. TASSARA.

The Hon. Secretary of State of the United States.

[Translation.]

Instructions regulating the formalities in respect to the arrival, movements, and departure of people of color coming from abroad to this island, and published on the 1st of April, in the year 1849.

ARTICLE 21. The individual of color, free or slave, who may arrive, coming from a foreign country, shall be immediately placed in safe-keeping, and with precautions that may be suitable, until he is taken abroad again.

If the house to whom he is consigned give security for the payment of one thousand dollars in the case of his leaving the vessel, he may live on board; but that security shall not be cancelled until the re-exportation is verified by the report of the captain of the port.

[Translation.]

HAVANA, January 20, 1866.

YOUR EXCELLENCY: I have read with surprise in the newspapers which have come by the last mail from New York, that during the session of the Senate on the 9th instant, Mr. Senator Sumner said that the freed negroes of the southern States are now kidnapped and taken off to this island and to Brazil, to be held in slavery, and that in this manner a new traffic had been inaugurated on the shores of the south.

What was said by Mr. Sumner with reference to the island of Cuba is not true; and you may give assurance that a case cannot be made out, even of a solitary individual.

Our legislation relating to individuals of color, free or slave, arriving from abroad, which was published on the 1st of April, 1849, is conclusive, and to the end that you may place before that government the inaccuracy into which Mr. Sumner has fallen, there is annexed a literal copy of article 21st of the instruction above cited, which has never been infringed.

God save you, &c.

DOMINGO DULCE.

His Excellency the Minister of her Catholic Majesty

At Washington.

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Mr. Seward to Mr. Tassara.

DEPARTMENT OF STATE,

Washington, February 16, 1866.

The undersigned, Secretary of State of the United States, has the honor to acknowledge, with much satisfaction, the receipt of the note addressed to him, of the 4th instant, by Mr. Tassara, on the subject of the provisions in force in the island of Cuba relative to the arrival there of people of color, free or slave.

The undersigned offers to Mr. Tassara renewed assurances of his very high consideration.

WILLIAM H. SEWARD.

SIR: Don Gabriel Garcia y Tassara, &c., &c., &c.
IN THE SOUTHERN STATES.

Mr. Hall to Mr. Seward.

No. 36.]

United States Consulate,
Matanzas, February 17, 1866.

Sir: I have the honor to acknowledge the receipt of despatches Nos. 26 to 28, inclusive. With reference to the subject of No. 27, I have to inform the department that, after diligent investigation, and having heard the opinions of persons likely to be informed, I have not as yet been able to learn that there is any truth in the unofficial information, as given to the department, in regard to the kidnapping of negroes who have left the southern coast of the United States, and arrived in this island, in vessels laden with cotton and other products. It would have facilitated in ascertaining the facts if the names of the vessels, time, and places of departure and return had been given.

If such atrocities were practicable, there is no doubt that people could be found here, as well as elsewhere, ready to participate; but, as far as concerns this consular district, I am quite confident that no transactions of the kind have occurred, unless in some individual case like that of the girl Delia, the only one that has been brought to my notice, the particulars of which are hereinafter given.

In April of last year the British schooner Arrow arrived at this port from Port Royal, South Carolina, and two negroes belonging to her crew, shipped at that place, deserted, and presented themselves to me, complaining of harsh treatment on board. Having ascertained that their statements were in part true, I requested the British vice-consul to have the men discharged, and extra wages allowed them by the vessel, sufficient to pay their expenses back to the United States. This was complied with, and the money handed to me. The men remained here a few days, while I obtained passages for them to New York. These I paid, and handed the men the balance of their money. The Arrow returned to Port Royal. This may have been one of the cases in which the vessels returned without the negroes.

Aside from the penalties which would surely follow detection, it is believed that the introduction of that class of people from the United States at this late day is not in the least desirable. Planters could hardly be induced to take them to their estates; they would not object to receiving any number of native Africans, but would be wary of introducing among their slaves, who are beginning to have some vague ideas about freedom, negroes from the United States, who might give the planters any amount of trouble in enforcing discipline.

It is seldom that a cargo of Africans has been landed that the facts have not soon been made public, and any attempt to introduce negroes from the United States in the manner referred to, to be sold into slavery, could hardly fail of becoming known immediately. I shall, however, continue my investigations, and communicate promptly to the department whatever I can learn.

During the first month of 1864 a Mrs. Whittemore arrived at Havana from New Orleans, bringing with her a colored girl of about twelve years of age, named Delia, held as a slave when she left the latter place; the girl was allowed to land in Havana, at the request of Mr. Savage, Mrs. Whittemore representing to him that she proposed remaining on the island for a few weeks only, and would then take the girl with her to the north. Subsequently the girl was brought to this place and sold. A statement of the case was made by me to the proper authority, as will appear by the accompanying copies of correspondence with the governor of this city, from which it will be seen that the girl has been declared free "in fact and by right," and placed at the disposition of the consulate. The girl was brought to the consulate and delivered to me; she had been told already that she was free. I asked her whether she desired to return to the United States. She replied that not then; that she did not know where
KIDNAPPING OF COLORED PERSONS.

her friends were; that her mother was not living; that she had been very kindly treated in the family she was with—much better than she had been by Mrs. Whittemore—had never had such a good home; that they had taught her to read; that she was then learning embroidery and fancy needle-work, at which she thought she could earn a livelihood when she had grown up, and finally that for the present she preferred to remain where she was, but that if anything should occur she would come to the consulate at once.

Her freedom being fully established and recognized; having been assured also that Rodriguez, the purchaser, had made the purchase in good faith; that he and his family are people of good standing and morality, according to the earnest wishes of the girl herself, I requested the governor to allow her to remain with them until a suitable opportunity might offer of sending her to the United States. She is still with the family, and I do not believe her welfare would be promoted by removing her against her wishes.

I have the honor to be, with high respect, your obedient servant,

HENRY C. HALL,
United States Consul.

Hon. William H. Seward,
Secretary of State, Washington.

Mr. Hall to the governor of Matanzas.

MATANZAS, July 31, 1865.

Sir: I have to inform you that during the first month of last year a woman, named Mrs. Whittemore, arrived at Havana from New Orleans, having with her a colored servant girl named Delia, a native of the United States, which servant was permitted to land by request of the acting consul general of the United States at that port. Subsequently Mrs. Whittemore came to this city and sold the girl Delia to Don José Rodriguez, who resides in “Calle de Contrenas, No. 56.” I have understood that the bill of sale was executed in the office of the Notary Zambrana some time in the month of April or May, 1864. Having heard also that this girl is still held by Rodriguez as a slave, when by every right she is free, I therefore consider it my duty to make a statement of the foregoing facts, persuaded that you will order such measures to be taken as this case demands.

I have the honor to be, &c., &c.,

HENRY C. HALL,
United States Consul.

His Excellency the Governor of Matanzas, &c., &c., &c.

From the governor of Matanzas.

CIVIL AND MILITARY GOVERNMENT OF MATANZAS,
Office of the Political Secretary, August 17, 1865.

On receipt of your communication of 31st July ultimo, relating to the mulattress girl Delia, I gave orders to have Don José Rodriguez, the purchaser, to appear before me, which, on account of ill health, he was not able to comply with, Don José M. Gasana, holding his power of attorney, appearing in his stead, who stated that his constituent had in reality purchased the mulattress of Mrs. Cornelia Whittemore, believing her to be a slave, and subject to service as such by virtue of a document which the sender exhibited, but that subsequently he (Rodriguez) ascertained that Delia was free, and could not be sold, for which
he attempted to institute judicial proceedings against Mrs. Whittemore, but could not do so, as he learned that she had gone to the United States; he therefore at once delivered the girl alluded to to this government, reserving the right of reclamation against Mrs. Whittemore.

In view of which I have disposed that the girl Delia remain with Rodriguez until his excellency the superior civil governor of the island gives his decision on the subject, and to that effect I remit his excellency the foregoing particulars of which I have the honor to inform you.

God preserve you many years.

PEDRO ESTEBAN.

The Consul of the United States of America, in this city.

From the governor of Matanzas.

Civil and Military Government of Matanzas,
Office of the Political Secretary.

His excellency the superior civil governor of the island has been pleased to decide that, as to the introduction of slaves into this island is prohibited, and the mulattress girl Delia not having been returned to the place whence she came, as should have been done by Mrs. Cornelia Whittemore, she is free in fact and by right, (de hecho y de derecho,) and consequently the sale is null; instructing me also to deliver the said mulattress to you, in order that she may be restored to her family and native country. All of which I have the honor to inform you, as well as that, under this date, I have issued the requisite order to Don José Rodriguez to place the said mulattress at your disposition. God preserve you many years.

Matanzas, September 4, 1865.

PEDRO ESTEBAN.

The Consul of the United States of America, in this city.

From Mr. Hall to the governor of Matanzas.

United States Consulate,
Matanzas, September 5, 1865.

SIR: I have the honor to acknowledge the receipt of your communications of 17th ultimo and 4th instant, and in reply thereto I have to say, that whenever the girl Delia is placed at my disposal, I will take charge of her and improve the first opportunity that offers to send her to the United States, in compliance with the disposition to that effect made by his excellency the superior civil governor of the island.

I have the honor to be, &c.,

HENRY C. HALL,
United States Consul.

His Excellency the Governor of Matanzas, &c., &c., &c.

From the United States consul to the governor of the city.

United States Consulate,
Matanzas, September 14, 1865.

SIR: Referring to the communication which I had the honor to address you, dated 5th instant, I have now to inform you that yesterday an employé of the
police of this city presented himself, and delivered to me the mulattress girl Delia, referred to in said communication; but as there is no suitable opportunity, at present, of sending her to her native country, I have to request that you will permit her to remain in care of the family of Don José Rodriguez until such opportunity offers of returning her to the United States. To which the said Rodriguez agrees, as I am informed by his attorney, Don José M. Casals; and is also the earnest wish of the girl, as she herself has expressed to me.

I have the honor to be, &c.,

HENRY C. HALL,
United States Consul.

His Excellency the Governor of Matanzas, &c., &c., &c.

From the Governor of Matanzas.

CIVIL AND MILITARY GOVERNMENT OF MATANZAS,
Office of the Political Secretary.

In reply to your communication of the 14th instant, requesting permission for the girl Delia to remain in care of the family of Don José Rodriguez until a suitable opportunity offers of returning her to her native country, I beg to state that I accede to the request therein contained. God preserve you many years.

MATANZAS, September 16, 1865.

PEDRO ESTEBAN.

To Consul of the United States of America, in this city.

Mr. Minor to Mr. Seward.

No. 170.]

UNITED STATES CONSULATE GENERAL,
Havana, February 19, 1866.

Sir: In reply to despatches Nos. 87 and 89 from the Department of State, the latter accompanied by copy of a letter from Mr. Matt. S. Coffin to the Hon. Secretary of the Interior, I have the honor to state, that immediately upon the receipt of the first despatch I instituted inquiries, and up to this time have not been able to find anything to warrant the belief that colored persons have been brought here from the southern coast of the United States, on vessels, large or small, laden with cotton or other products, and left on the island upon the departure of the vessel.

Without doubt there are persons on this island, as well as in the United States, bad enough to engage in this inhuman business, if it could be safely and profitably carried on; but by the Spanish law no colored person can be landed on the island of Cuba unless a bond, with a suitable penalty, be given that the negro shall be again removed from the island, and for obvious reasons the Spanish colonial authorities, not only in Havana but all over Cuba, are strict in requiring the observance of this law; no colored person can therefore have been landed here for the purpose of being kidnapped and sold into slavery, except in violation of this law, and, of course, at some uninhabited place upon the coast, and if so landed must have been taken at once to some plantation in the interior of the island. The impression is quite general here that, by recent events in the United States, even the most ignorant slave has been educated into some idea of personal liberty, and that, consequently, even if again reduced to a state of slavery, his examples and teachings would be dangerous on the plantations; therefore, in the absence of all proof, and even of rumors among the people here,
and on account of the difficulties attending an attempt of this character, I do not believe that negroes have been kidnapped from the United States, brought here, and reduced to slavery.

The investigations will be continued, and I shall also attempt to ascertain whether there be any plan to carry on this nefarious business hereafter, and will promptly report the result of those investigations.

Mr. Coffin, in his letter bearing date New Orleans, January 9, 1866, says: "Since my arrival here, some ten days ago, I have been informed that thousands of negroes have been kidnapped and transported to Cuba, and sold into slavery on the block to the highest bidder." During the existence of the rebellion, I have no doubt that refugees from New Orleans brought here some of their slaves. During the past year seven of these have been reclaimed through this consulate, four of whom have been sent to the United States, and three children are now here, at the control of the consulate, awaiting a proper opportunity to go to New Orleans, which will be about the 1st of March. One of the negroes above referred to, and who was returned to New Orleans about the middle of January, 1865, had been sold some time during the year previously thereto. It is possible that the information given to Mr. Coffin may have originated from cases similar to those above. I think, however, that I may safely assure the department that the information given to Mr. Coffin, and as stated in his letter, is without foundation in fact.

It is, however, always difficult to arrive at the truth from general statements; and if Mr. Coffin will obtain from his informants any particular case, it will afford great assistance in the further investigation of the matter.

I have the honor to be, with sentiments of respect, your obedient servant,

WILLIAM T. MINOR,
United States Consul General.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington, D. C.