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Dorothy Dodd



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THE SCHOONER EMPEROR
An Incident of the Illegal Slave Trade in Florida

By DOROTHY DODD

The story of the African slave trade after its prohibition in 1808 is one which, because of the illicit nature of the trade, can never be fully known. In Florida, as in other Southern states, however, occasional hints of this subterranean traffic found their way into records which have been preserved. A record, fuller than most, found in the archives of the Florida Supreme Court as the case of the *United States vs. the Schooner Emperor*,¹ may be taken as a fair illustration of the methods employed in the slave trade, when entered into upon a small scale, and of the difficulties involved in enforcing the prohibitory statutes.

There is no way of ascertaining the extent of the illegal slave trade. U. B. Phillips, though stating that illegal importations into the entire South between 1808 and 1860 had been conjectured from unreliable sources to be as high as 270,000, contents himself with remarking that "these importations were never great enough to affect the labor supply in appreciable degree."² We do not even have estimates, unreliable as they must be, of the number of slaves illegally imported into Florida. Frederic Bancroft, however, calls attention to the fact that

¹ This case is not mentioned in Helen T. Catteral, *Judicial Cases concerning American Slavery and the Negro*, because there are no published reports of the Court of Appeals of the Territory of Florida. The published reports of the Supreme Court begin in 1845, the year in which Florida became a state. There are several hundred manuscript records of cases heard before the Court of Appeals which have recently been filed in envelopes and indexed according to title and term of court in which heard. The titles give little indication of the nature of their contents. Of 150 cases examined at random, thirty pertained to slaves.

² *American Negro Slavery*, 147.

Florida, especially in the earlier years, bred very few slaves and was almost entirely a slave-importing state.³ Although Bancroft is concerned primarily with the domestic slave trade, the factors that made Florida a good market for negroes bred in the Old South probably created a certain tolerance of the importation of negroes from beyond the seas.

Expression of this tolerance is to be found in private opinion and semi-official acts and utterances, rather than on the statute books. The Legislative Council adopted, perforce, the federal attitude toward the African slave trade and made federal statutes on the subject the law of the Territory of Florida. In addition, the Act of March 3, 1822, fixed a fine of three hundred dollars for every negro imported into Florida from without the limits of the United States and decreed that every negro so imported should receive his freedom.⁴

In spite of the law against the importation of African negroes, many citizens of the Territory doubtless agreed with the Editor of the Tallahassee *Floridian*, when he wrote at the time of the seizure of the schooner *Emperor* for the importation of slaves from Cuba:

"Apart from this act, being a violation of positive law, many do not regard the importation of slaves from Cuba as a crime. They are already slaves and their change of residence to this country is undoubtedly an amelioration of their condition, and should not be objected to by friends of humanity. It is a much less crime than the stealing by the abolitionists of ten slaves from the South, and also a much less evil; but while the law prohibiting their importation is in force, it should not be violated, and every good citizen should aid in its enforcement."⁵

That Captain Charles G. Cox, master of the *Emperor*, thought the law could be violated with impunity because of complacent public opinion is

³ *Slave-Trading in the Old South*, 383.

⁴ *Florida Acts . . .*, 1822, 21-23.

⁵ Quoted in *Pensacola Gazette*, May 27, 1837.

shown by the deposition of Joseph Elsaundi,⁶ a witness in the case, who testified:

“Witness met Cox a few months since at Key West and asked Cox if he had not been hung yet. Cox replied that no Jury in the United States would hang him for bringing negroes in the United States as an evidence of it he said they bailed him for four hundred dollars.”⁷

Twenty years later, when the question of reopening the African slave trade was agitated by southern hot-heads, Floridians in high position favored the trade in principle, though admitting practical difficulties in its way. Florida's delegates to the Commercial Convention of 1857 at Knoxville refused to agree to an amendment to a proposal to recommend abrogation of Article VIII of the Treaty of Washington⁸ which would have declared it inexpedient and against settled policy to reopen the slave trade.⁹ Two years later, however, Florida's delegates to the Vicksburg convention voted against a resolution which demanded repeal of all state and federal laws prohibiting the African slave trade.¹⁰

Governor Madison S. Perry, discussing the subject in his message of November 22, 1858, deprecated its agitation, not from any “sickly-sentimentality,”¹¹ but because of treaty obligations and because the South itself was not united in its opinion. A united South, he thought, might defy the abolition North,

⁶ Joseph Elzuardi, presumably the same man, was a member of the Florida House of Representatives from Monroe county in 1841. *Apalachicola*, Jan. 16, 1841.

⁷ *United States vs. the Schooner Emperor*, MS. The federal Act of March 3, 1819, made the importation of African Slaves piracy, punishable by death.

⁸ This section of the Webster-Ashburton Treaty of 1842 provided that Great Britain and the United States should maintain squadrons of specified strength on the African coast for the suppression of the slave trade.

⁹ DuBois, W. E. B. *The Suppression of the African Slave Trade to the United States of America, 1638-1870*. 171.

¹⁰ *Ibid.*, 172-173.

¹¹ Perry believed “that had we the ability to import and *continue* in *servitude* all the negroes of Africa, they would be most unquestionably benefited.”

but “unhappily for us-in all of the Southern States there are large masses decidedly opposed, from motives of policy, to the re-opening of the Slave Trade.” He believed that the time would come when England would reverse her policy toward the slave trade, “and then our loving brethren of **New England**, whose filial affections are admirable, will gladly follow the example of their pious mother.” The Southern states had but to “bide their time,” remaining faithful to their compacts and united in the defense of their reserved rights, “and that Providence which has hitherto blessed them will shape their ends, and conduct them to their high destiny.”¹²

By 1859 the agitation had become so wide-spread that a letter from Jacksonville, published in the Baltimore *American*, stated that “it is believed here that the slave trade has been re-opened.” As a result of this belief, the writer said, a bark had sailed from Jacksonville for the African coast several weeks before to take on a cargo of negroes for sale in Georgia and Florida. And on the preceding day, a brig had left port to meet the bark and transfer the cargo at sea.¹³ The result of this venture is not known.

Because of its long and indented coastline and of its proximity to Cuba, Florida afforded an excellent opportunity for the illegal importation of slaves. Before the purchase of the territory by the United States, slaves had been landed in Florida and smuggled across the border, the piratical community on Amelia Island having been especially brazen in its activities.¹⁴ When Andrew Jackson was appointed governor of the Territory of Florida in 1821, *Niles' Register* approved the appointment

¹² Florida Senate *Journal*, 1858, 39-41.

¹³ Unsigned letter dated Jacksonville, Jan. 30, 1859, quoted in *National Intelligencer*, Feb. 10, 1859.

¹⁴ DuBois, *op. cit.*, 113-114.

because it brought assurance that the laws "to prevent the importation of slaves, will be duly enforced, if the means are allowed."¹⁵

But the means were not allowed. It is true that the United States immediately stationed a squadron in the West Indian seas for the protection of commerce and the suppression of piracy and of the slave trade,¹⁶ but appropriations for the purpose were small and the last object, at least, was never fully achieved. The slaver who wished to effect an entry on the Florida coast had the choice of two methods of attaining his end. He might man his vessel with West Indian negroes and, after purposely wrecking it on the Florida reefs, sell his crew,¹⁷ or he might attempt secretly to land African negroes at some place chosen in advance and where arrangements had been made for the disposal of the negroes. The master of the schooner Emperor engaged in a venture of the latter type.

Charles G. Cox appears to have been a seaman of uncertain reputation¹⁸ whose vocation frequently took him to Havana, where he determined to profit

¹⁵ XX. 49. March 17, 1821.

¹⁶ *American State Papers, Naval Affairs*, II, 789. This squadron frequently had its base at Thompson's Island, now Key West.

¹⁷ DuBois, op. cit., 166. In the case of the *Guerrero*, a large slaver was accidentally wrecked on Carysfort reef, Dec. 20, 1827, while being pursued by a British man-of-war. The Spanish crew took possession by force of two wrecking vessels from Key West and escaped to Cuba with 398 slaves, while a third wrecking vessel succeeded in bringing only 121 of the cargo into Key West. After many delays, the negroes landed at Key West were sent to Liberia. *Niles' Register*, XXXIII, 373, Feb. 2, 1828; *House Reports*, 24 Cong., 1 Sess., I, No. 268.

¹⁸ After Cox's arrest in May, 1837, on the charge of illegally importing negroes, he wrote to acquaintances in Havana for money and testimonials of good character. The replies were notable for their failure to say a good word for Cox. The firm of DeConinck and Spaulding said they had never heard the report that Cox had "been a prisoner with a ball and chain," and refused him an advance.

Unless otherwise noted, the story of the Emperor is reconstructed from the MS in the Florida Supreme Court archives.

by the cheapness of negroes in the Havana market and the opportunity which the location of the city offered for the illicit introduction of slaves into Florida. He approached a Dr. Bumstead, of Havana, with a proposal that Bumstead put \$20,000 into the business of running slaves, but the doctor refused to entertain such a risky proposition. Failing to attract a large sum to his project, Cox associated himself with Le Chevalier Paul de Malherbe, "a Frenchman of some distinction, residing in Florida,"¹⁹ and the two entered upon the business on a modest scale. De Malherbe was said to have borrowed part of the money for the purchase from Farquhar Macrae, of Florida, whose part in the affair did not become generally known until after his death on the steamboat *Pulaski*²⁰ on June 18, 1838.²¹

The terms of Cox's agreement with de Malherbe are not known, but they may be inferred from a proposal which Cox made about the same time to Joseph Elsaurdi. Elsaurdi later testified that while he was in Havana in April or May, 1836,²² Cox

"proposed to him a speculation but first said he was engaged to land some negros at St. Joseph, or Appalachi-cola, he said after landing there he would land others for the witness at the same rate towit at one hundred dollars per head in the United States, he Cox was to run all risk at sea, but the witness all risk in landing on shore."

¹⁹ Charles S. Sibley to John Forsyth, Aug. 25, 1838. Solicitor's Office, U. S. Treasury, BIA, Misc. Let. 2144. The Editor of the *Floridian* stated that de Malherbe was well known in Leon county. *Pensacola Gazette*, May 27, 1837.

²⁰ Sibley to Forsyth, Aug. 25, 1838.

²¹ A memorial to Rev. J. L. Woart and his wife, Elizabeth, who perished on the *Pulaski*, stands in the yard of St. John's Episcopal Church, Tallahassee.

²² This date apparently is wrong, as the slaves were landed at St. Joseph, Feb. 6, 1837. Elsaurdi's deposition was not taken until Jan. 8, 1839, and faulty memory probably accounts for the discrepancy in dates, which played its part in confusing the issue when the case was tried. The only other explanation is that Cox and de Malherbe engaged in two ventures, in 1836 and 1837, which is not likely.

Elsaurdi further stated that after this conversation he saw Cox and de Malherbe

"at the deposit for the sale of negroes at *Havanna* bargaining for some negroes, [and] a few days afterwards he heard Cox say that he had purchased the negroes at *three* hundred dollars to land in the United States. Cox and his vessel soon after Sailed from *Havanna* and Malherbe disappeared about the same time."

Since the average price of negroes in the United States at that time was around \$300,²³ and probably higher in Florida, de Malherbe would have made a tidy profit had he succeeded in his speculation.

Cox solved the problem of transportation by signing on as master of the *Emperor*, a 72-foot, single-decked, two-masted schooner of 105 tons burthen, of American ownership and registry. The crew was foreign, and Cox carried a certificate from the American consul at Havana²⁴ stating that he had been unable to procure an American one. The temporary register showed that the schooner belonged to Anthony G. Richards, of Savannah, Georgia, although John J. Evertson was the owner when the vessel was seized in Pensacola four months later. Whether Anthony G. Richards was a fictitious name, invented by Cox, or the schooner was purchased by Evertson in the meantime is not clear. The *Emperor* was bound for Mobile when she cleared from Havana late in January or early in February, 1837.

On the afternoon of February 6, Captain Robert Jenkins, pilot for the port of St. Joseph, spoke a small schooner from his station at Cape St. Joseph. Although the vessel was strange in those waters, the master declined to take a pilot and stood off between

²³ DuBois, *op. cit.*, 162, gives the average price of negroes in the United States in 1840 as \$325.

²⁴ The consul was Nicholas P. Trist, who was proved to have aided the slave trade, "consciously or unconsciously," by the issuance of blank clearance papers. *Ibid.*, 164.

the point and the mainland during the night. The next morning the *Emperor* was entered at the office of Gabriel J. Floyd,²⁵ collector of the port. Floyd overlooked the irregularities in the schooner's papers because of the certificate from the American consul. The *Emperor* carried one passenger, Paul de Malherbe, and Floyd noted that, though bound for Mobile, her cargo "consisted of only a few Oranges in the hold." The mate of the *Flavias*, then in St. Joseph's Bay, might have enlightened Floyd as to the true nature of the cargo, for he later told Captain Jenkins that on the night of February 6, "he saw Slaves or persons of color taken from the Schooner Emperor & put on land [in] the boat in which Malherbe was afterwards drowned."

It was not long before everyone in St. Joseph knew what the mate of the *Flavias* had seen. The report that African negroes had been landed was substantiated when later in the month Joseph Croskey²⁶ conducted the negroes across St. Andrews Bay, by way of Captain William Loftin's ferry,²⁷ on his way to his Econfino plantation in Washington

²⁵ Floyd was collector of the port for a number of years. He later removed to Missouri and was killed, Aug. 26, 1842, by a band of ruffians who robbed his house. *Florida Journal*, Sept. 23, 1842.

²⁶ Croskey was a rolling stone who had once been at Oxford. He edited the short-lived *Apalachicola Courier* in 1839 and 1840. J. O. Knauss, *Territorial Florida Journalism*, 31, 78, 119. He apparently left Florida in 1843, for his Econfino plantation of 280 acres, "eighty of which have been cleared and cultivated," was advertised for sale in the *Apalachicola Commercial Advertiser* of Feb. 4, 1843, and succeeding issues. He is evidently the Joseph R. Croskey, American consul at Cowes, England, for whom E. C. Cabell, of Florida, presented a petition to the House of Representatives, Jan. 20, 1852. *Cong. Globe*, 32 Cong., 1 Sess., Pt. 1, 382.

²⁷ By act of the Legislative Council of Jan. 12, 1827, any owner or keeper of a ferry or toll bridge who allowed a slave to cross his ferry or bridge without permission of the master of the slave was liable to a fine of twenty-five dollars. *Florida Acts. . .*, 1827, 143. It was necessary, therefore, for Croskey to declare his ownership of the negroes in order to get them across the bay.

county. Croskey later claimed, in defense of his participation in the affair, that the accidental death of his friend, de Malherbe, had forced him to take charge of the negroes.²⁸ Several persons testified, however, that Croskey told them that the negroes belonged to him and de Malherbe, and it seems very probable that their destination, from the first, had been Croskey's plantation. Croskey gave it out that the negroes were from Louisiana,²⁹ presumably in the hope that their African dialect would be mistaken for French. Since they bore unmistakable evidence of their origin on their faces, Captain Loftin was not deceived, and gave information to the district attorney.

It was not until the first week in May that Samuel H. DuVal, marshal for the Middle District of Florida, visited Croskey's plantation and took eight negroes into custody. According to a statement by DuVal:

"The negroes were on the Plantation of Mr. Joseph Croskey. Mr. Robert C. Adams who lived about half a mile from the plantation and acted as overseer for Mr. Croskey had charge of the negroes, the name of the negroes were Sam, Jim, Coogar, Milo, Larkin, Tony, Harper, & Peter (who had since died)-

"The negroes could not speak the English language or understand it when spoken to them and the witness sup-

²⁸ The Editor of the Tallahassee *Floridian* stated in discussing the matter: "We learn little if any blame is imputable to Mr. Croskey, who has hitherto been esteemed as a highly respectable and enterprising citizen and who became unfortunately entangled in the matter, by the death of Malherbe, who was drowned in landing the negroes, and the care of them thrust upon him against his inclination. It is to be regretted that he did not overcome his scruples to give public information of the violation of the law by his deceased friend, and thus have prevented any shadow of censure being attached to himself." Quoted in *Pensacola Gazette*, May 27, 1837. This was written before the depositions of witnesses to whom Croskey claimed ownership of the slaves were taken.

²⁹ Even had the negroes been from Louisiana, it would have been necessary under the Act of Congress of March 2, 1807, for them to have been declared to the collector of the port by the master of the Emperor, who *would* have been required to swear that they were not illegally imported.

posed them to be foreign negroes. Two of them are tattooed upon their cheeks and two of them had their front teeth of the upper jaw filed to a point ; One of them whose name is Milo says that he is from Africa, that he was brought here from Havana & he is the only one has acquired any knowledge of the English language--the negroes appear to be of different African tribes and will not associate or eat together."

An information was immediately being charging illegal importation of the negroes, and on May 30, Charles S. Sibley, United States attorney for the Middle District of Florida, requested an executive order from the President concerning the disposition to be made of the negroes. This was refused until the fact of illegal importation should have been ascertained by verdict of a jury.³⁰ In the meantime, Thomas Randall, presiding judge of the Court of Appeals, placed the negroes in the custody of DuVal, as United States marshal. On August 25, 1838, Sibley stated that the negroes had been "adjudged to have been illegally imported and declared free," and again requested an executive order "for their removal from the country to Africa, or elsewhere, as their support and maintenance by the Marshall will cause considerable expense in addition to what has already been incurred."³¹ As late as January 24, 1839, however, the negroes were still in the custody of DuVal, and their ultimate disposition is not known.

Long before Loftin's information had been given, the *Emperor* had left St. Joseph. She put in at Pensacola on March 16, but the information evidently had not been received at that port then, for she proceeded to Mobile, where she registered on March 29, and then returned to Havana. The schooner was fitted out for another voyage by the owner's agents, and soon was cleared for Tobasco.

³⁰ A. O. Dayton to Sibley, July 30, 1837. Dept. of State, BIA, Dom. Let. 29, 2101.

³¹ Sibley to John Forsyth.

Cox, ignorant that his venture had not been entirely successful, ignored his orders and sailed to Pensacola, probably in the hope of making arrangements for the landing of a second cargo of negroes. Soon after his arrival he engaged W. W. Kelley in a conversation on the profits to be had from the slave trade, especially as the penalty for bringing slaves into the Territory was only \$300.

On May 3 the *Emperor* was seized by Robert Mitchell, collector of the port of Pensacola, and on May 25 Cox was arrested by order of John A. Cameron, judge of the Superior Court for the District of West Florida. Cox and Croskey were both indicted, but it does not appear that Croskey was even arrested. Cox was in jail as late as November 18, 1837, but was later released under bail of \$400. If he was ever convicted, we have no record of the fact.

A legal battle followed over the *Emperor*, which was appraised at \$3,000 and was subject to confiscation if it could be proved that she was the vessel in which the negroes had been imported. The case was continued from the special June term of the Superior Court, sitting as a District Court of the United States, for lack of the depositions of two witnesses from St. Joseph, who were unable to give their testimony "on account of Indian disturbances in their immediate neighborhood." At the November term of the court, Judge Cameron found that there was insufficient evidence to connect the *Emperor* with the importation of the negroes and ordered the schooner restored to the claimants. George S. Walker, United States attorney for the District of West Florida, thereupon appealed the case to the Court of Appeals of the Territory of Florida.

The Court of Appeals at once ordered DuVal to sell the *Emperor* at public auction and to pay the

proceeds into the registry of the court, to be held until the decision of the court should be given. The sale took place in Pensacola on March 24, 1838, but DuVal did not deposit the money as directed by the court.

Sibley, who had taken over the prosecution of the case from Walker, busied himself in locating witnesses in Florida and Havana, but it was not until January 8, 1839, that he secured the deposition of Joseph Elsaundi, which contained the most damaging evidence against the *Emperor*. His efforts appeared to have been in vain when the case was dismissed on January 24, 1839, because the transcript of record had not been transmitted from Pensacola within two terms after the appeal had been granted. When Thomas H. DuVal, former clerk of the court, swore that the record had been received on December 27, 1837, and properly filed, the case was ordered back on the docket and was heard by the Court of Appeals, sitting in admiralty as a Circuit Court of the United States, on February 15 and 16, 1839. Robert R. Reid, acting presiding judge, gave the opinion, in which he stated that the question was one of evidence, the defense having been based on the confusion of dates in Elsaundi's testimony. The court, finding other evidence to outweigh the discrepancy, reversed the decision of the lower court and ordered the proceeds from the sale of the *Emperor* to be distributed according to law.

The claimants appealed to the United States Supreme Court, but the court refused to hear the case. On February 15, 1840, the sheriff served notice on DuVal and his bondsmen that the money from the sale of the *Emperor* must be paid into the registry of the court or his bond be forfeited. The money was divided equally between the United States and Robert Mitchell, who seized the vessel, when the certificate of dismissal from the Supreme Court was filed.