

Slavery and Property Rights in the Federal Courts— A Simulation Activity

For use in conjunction with “Amistad: The Federal Courts and the Challenge to Slavery,” by Bruce A. Ragsdale, available at <http://www.fjc.gov/history/home.nsf>. A unit in the Teaching Judicial History Project, developed by the Federal Judicial Center in partnership with the American Bar Association’s Division for Public Education.

Activity Objectives

Through a simulation of the key arguments related to claims to the *Amistad* captives as property, students will gain a deeper understanding of the legal arguments offered to challenge and to defend the right to hold slaves as property.

Essential Questions

- Did the federal courts recognize and protect the right to hold slave property?
- What arguments did the abolitionist lawyers present to challenge the *Amistad* captives’ status as slaves?
- What precedents did the Supreme Court’s *Amistad* decision establish for future challenges to slavery?
- What was the impact of the personal testimony of Cinque and the other Mende alleged to be slaves?

Legal Issues Raised by the *Amistad* Case

The several property claims to the alleged slaves on the *Amistad* presented the federal courts with questions about laws protecting slave property, laws prohibiting the slave trade, and treaty obligations with Spain and Great Britain. These claims also presented the opportunity for the abolitionist lawyers to introduce the alleged slaves as parties in a federal case.

Estimated Time Frame

Four to five 50-minute class periods.

Recommended Prep Work

Students should read “The *Amistad* Case: A Brief Narrative” (pp. 1–6), and Legal Questions Before the Courts (pp. 13–17). (*Note:* Page numbers refer to the PDF version of “*Amistad: The Federal Courts and the Challenge to Slavery,*” by Bruce A. Ragsdale, available online at <http://www.fjc.gov/history/home.nsf>.) Teachers should be familiar with the entire unit.

Prepare copies of the worksheets and documents for the four groups.

Description of the Activity

Activity Overview

Students will reenact the arguments of key claimants and respondents in the admiralty proceedings related to the *Amistad*. Subsequent to the simulations, the class will examine the district court and Supreme Court decisions regarding the property claims.

Preparing and Conducting the Simulations

Remind the students that the *Amistad* case made its way through the federal courts over a period of approximately nineteen months in three different courts. When the criminal charges against the Mende were dismissed by the circuit court in September 1839, the Mende were held subject to property claims pending before the U.S. district court. The students' simulations deal with these property claims and the response of the Mende. Students will develop statements that represent the major points made by the claimants and respondents.

Divide the class into four groups to represent each of the parties identified below. In addition to the background material discussed above, distribute copies of the relevant resource material identified for each group. To facilitate their work, suggest that students divide among themselves responsibility for researching and preparing remarks relating to the different key points.

- Group One Thomas Gedney
- Group Two Jose Ruiz and Pedro Montes
- Group Three The U.S. government, as represented by U.S. Attorney William Holabird and Attorney General Henry Gilpin
- Group Four Cinque and the other Mende captives who presented the "Several Plea," represented by their attorney, Roger Sherman Baldwin

All group members should review the resource material, identify the points to be made and generate a script or an outline for the speakers. Each group should assign someone to draw on the biographical information to briefly introduce the characters being portrayed. Students will need at least one class period to prepare their statements. The presentations will also require one class period.

Debrief and Wrap-up

Distribute for review as homework the attached excerpts from the decision of Judge Andrew Judson and the opinion of Justice Joseph Story. In the final class period, ask students from the four groups to explain how each judge responded to the arguments presented by individuals their group examined. Did Judson and Story agree with one another?

Clarify the ways in which the simulation differed from the actual court proceedings.

Conclude the examination of the slavery and property rights in the federal courts by returning to the question: Could the federal courts protect slave property?

Assessment

Students can write essays or present oral reports on how one or both of the judges responded to the arguments about the property claims to the Mende captives.

Alternative Modalities and Enrichment Activities

Develop a map of the Atlantic world, with focus on the places referred to in the *Amistad* case. An accompanying chart could indicate the laws governing slavery and the slave trade in each of the nations.

Report on Antonio, the claims against him, and the decision of each of the courts that ruled on the claims to him as slave property, paying special attention to explaining why his legal status was different from that of the *Amistad* captives.

Report on what the federal courts had decided in earlier cases involving the foreign slave trade, drawing information from the discussion of *The Antelope* and *United States v. La Jeune Eugenie* (pp. 17–18).

Involving a Judge

Invite a judge to discuss the challenges courts face in litigation related to controversial public debates or broader political movements.

Standards Addressed

U.S. History Standards (Grades 5–12)

Era 4—Expansion and Reform (1801–1861)

Standard 2D: The student understands the rapid growth of “the peculiar institution” after 1800 and the varied experiences of African Americans under slavery.

Standard 4: The sources and character of cultural, religious, and social reform movements in the antebellum period.

Standards in Historical Thinking

Standard 2: Historical Comprehension

A. Identify the author or source of the historical document or narrative and assess its credibility.

- C. Identify the central question(s) the historical narrative addresses.
- D. Differentiate between historical facts and historical interpretations.

Standard 3: Historical Analysis and Interpretation

- A. Compare and contrast differing sets of ideas, values, etc.
- B. Consider multiple perspectives.
- E. Distinguish between unsupported expressions of opinion and informed hypotheses grounded in historical evidence.

Standard 5: Historical Issues-Analysis and Decision-Making

- A. Identify issues and problems in the past and analyze the interests, values, perspectives, and points of view of those involved in the situation.
- D. Evaluate alternative courses of action, keeping in mind the information available at the time, in terms of ethical considerations, the interests of those affected by the decision, and the long- and short-term consequences of each.
- F. Evaluate the implementation of a decision by analyzing the interests it served; estimating the position, power, and priority of each player involved; assessing the ethical dimensions of the decision; and evaluating its costs and benefits from a variety of perspectives.

Group One: Thomas Gedney

Assignment

Your group will review the provided documents to prepare a script or outline for Lieutenant Thomas Gedney's testimony describing events related to taking custody and moving the *Amistad* and arguing for salvage rights. Identify the student who will play the role of Gedney giving testimony. Another student should draw on the biographical information to introduce Gedney.

Documents

- The *Amistad* Case: A Brief Narrative (pp. 1–8)
- Thomas Gedney biography (pp. 30–31)
- The libel of Lieutenant Thomas R. Gedney, August 29, 1839 (pp. 51–53)

(*Note:* Page numbers refer to the PDF version of “*Amistad: The Federal Courts and the Challenge to Slavery*,” by Bruce A. Ragsdale, available online at <http://www.fjc.gov/history/home.nsf>.)

Key Points

Lieutenant Gedney's testimony should address the following:

- where his crew first encountered the *Amistad* and its condition;
- where they took the *Amistad* and what they did upon arrival;
- the date Gedney submitted his libel; and
- why he is claiming salvage rights and what he is claiming.

Group Two: Jose Ruiz and Pedro Montes

Assignment

Your group will review the documents provided to prepare an outline for the testimonies of the two Spanish planters, Jose Ruiz and Pedro Montes, who purchased enslaved Mende in Havana and transported them on the *Amistad*. Identify two students to play the roles of Ruiz and Montes giving their testimonies in court. Another student should draw on the biographical information to introduce the planters.

Documents

- “The *Amistad* Case: A Brief Narrative” (pp. 1–6)
- Jose Ruiz and Pedro Montes biographies (pp. 31–32)
- The libel of Jose Ruiz, September 18, 1839 (pp. 55–57)
- The treaty between Spain and the United States, 1795 (excerpts) (pp. 78–79)

(*Note:* Although the unit does not provide Montes’ libel, the unit notes that “Pedro Montes, the planter who purchased the four young Mende on the *Amistad*, submitted a similar libel requesting the return of the alleged slaves and his other property.” Page numbers refer to the PDF version of “*Amistad: The Federal Courts and the Challenge to Slavery*,” by Bruce A. Ragsdale, available online at <http://www.fjc.gov/history/home.nsf>.)

Key Points

The testimonies for the two planters should include the following:

- the date Ruiz submitted his libel (Montes’ libel was same date);
- where and how they secured the Mende;
- where they were taking the Mende, what happened onboard the *Amistad*, and how the Mende got to the United States;
- the documentation the planters have to prove ownership of the Mende and which of the Mende each planter claims; and
- the nature of the cargo items they claim.

Group Three: U.S. Attorney William Holabird and Attorney General Henry Gilpin

Assignment

Your group will review the relevant documents to prepare a script or outline for Holabird's and Gilpin's arguments in support of the Spanish demand for return of all property on the *Amistad*. While you may wish to use some direct quotations, try to put the attorneys' arguments in your own words. Identify two students to play the roles of Holabird and Gilpin delivering their arguments before the courts. Another two students should draw on the biographical information to introduce the attorneys.

Documents

- The *Amistad* Case: A Brief Narrative (pp. 1–8)
- Biographies—Henry Gilpin (pp. 37–38); William S. Holabird (pp. 38–39)
- Lawyers' arguments and strategies—the U.S. government (pp. 20–21)
- The libel of William S. Holabird (pp. 57–59)
- U.S. attorney's letters (pp. 68–70)
- Anti-Slave Trade Act of 1819 (pp. 79–82)
- The treaty between Spain and the United States, 1795 (excerpts) (pp. 78–79)

(*Note:* Page numbers refer to the PDF version of “*Amistad: The Federal Courts and the Challenge to Slavery*,” by Bruce A. Ragsdale, available online at <http://www.fjc.gov/history/home.nsf>.)

Key Points

Holabird's arguments should include reference to and explanation of the following:

- the Spanish ambassador's demand;
- evidence that the Mende were slaves; and
- Holabird's appeal to the 1819 Act.

Gilpin's arguments should include reference to and explanation of the following:

- which nation's government had authority to determine validity of the passes;
- property rights regarding slaves and other types of property; and
- Gilpin's arguments as noted in Story's opinion.

Group Four: Cinque and the other Mende captives who presented the “Several Plea,” and their attorney, Roger Sherman Baldwin

Assignment

Your group will review the documents provided to prepare a script or outline for Cinque’s testimony describing events during the Mendes’ journey and for Roger Sherman Baldwin’s arguments challenging the claims for slave property. (*Note:* Two other Mende testified, but only Cinque speaks here.) Two students should draw on the biographical information to introduce Cinque and Baldwin.

Documents

- The *Amistad* Case: A Brief Narrative (pp. 1–8)
- Biographies—The Mende and Cinque (pp. 28–30); Roger Sherman Baldwin (pp. 36–37)
- The several plea of Cinque and the other Mende captives (pp. 60–63)
- Lawyers’ arguments and strategies—the abolitionists (pp. 19–20)
- The treaty between Spain and the United States, 1795 (excerpts) (pp. 78–79)
- Anti-Slave Trade Act of 1819 (pp. 79–82)

(*Note:* Page numbers refer to the PDF version of “*Amistad: The Federal Courts and the Challenge to Slavery*,” by Bruce A. Ragsdale, available online at <http://www.fjc.gov/history/home.nsf>.)

Key Points

Cinque’s testimony should address the following:

- the seizure, voyage, and location where the slave ship landed;
- what happened in Havana; and
- the revolt and the voyage.

Baldwin’s arguments should address the following:

- Spanish law regarding the slave trade;
- the U.S. treaty with Spain;
- evidence that the Mende were not slaves;
- a challenge to the documentation presented by planters; and
- the natural rights of the Mende.

Judge Andrew Judson's Decision, U.S. District Court for Connecticut, January 13, 1840

Gedney et al. v. L'Amistad, 10 Fed. Cases 141–51. Judson declared that his court had proper jurisdiction over the Amistad case and then proceeded to the salvage claim that originally brought the case to the federal courts. He awarded Gedney and his crew a salvage award of one-third the value of the schooner and the goods on board, but denied the claim for salvage in the alleged slaves. Without revealing his decision about the status of the Mende, he explained why he could not order their sale or determine their monetary value.

The next question is, can salvage be allowed upon the slaves? There are insuperable objections to this portion of the claim. There is no foundation here laid for a decree in personam. The decree, if at all, must operate in rem. That is, the salvage must be considered as a lien upon the slaves themselves, and the amount to be decreed must be raised out of them, as out of other property. Here, then, I find the claim hedged about by fixed and known laws, over which it would be impossible for me to leap. I have heretofore decided, in the very outset of this case, that these alleged slaves cannot be sold. There is no law of the United States nor of the state of Connecticut by which the title can be given to them under any decree of this court. I am still confirmed in that opinion. It is impossible. Can a decree be predicated upon a supposed valuation to be ascertained by an appraisal? There is no authority in this court to cause such an appraisal. Who can appoint the appraisers? Who can administer to them an oath? And above all, by what rule could their estimate be formed? Are they to be estimated by their value in the district of Connecticut? That is not one cent. The laws which I am bound to administer can recognize no value on them. Can the appraisers travel into other states or countries to seek their value? Surely not. If a decree should be framed, it would be wholly nugatory, inoperative and void. This the court is never called upon to do. When a decree is made, it always presupposes that the court making it, possesses the power of enforcing it. This part of the claim, therefore, will be passed over.

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At the center of the Amistad case was the issue of whether or not the Mende were the slave property of the planters, Ruiz and Montes. Here Judson recognized that the unique nature of the case and the source of public interest rested in the fact that the Africans themselves came into court to challenge that property claim.

The two great questions still remain to be settled. Shall these Africans, by a decree of this court, be delivered over to the government of Spain, upon the demand

of her minister, as the property of Don Pedro Montez and Don Jose Ruez? But if not, what ultimate disposition shall the government of the United States make of them? The other questions, in importance, cannot be compared with these. Here we have her majesty, the queen of Spain, by her resident minister, at the court of the United States, unequivocally demanding for her subjects these Africans, as their property in the fulfillment, as he says, of treaty stipulations, solemnly entered into by this nation. These Africans come in person, as our law permits them to do, denying this right. They say, that they are not the slaves of Spanish subjects, and are not amenable to Spanish laws. We have also the humanity of our own laws, ready to embrace them, provided we are not compelled by these treaty stipulations to deliver them up.

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Judson's most important decision was that the Africans on board the Amistad were not slave property under the laws of Spain that were in force in Cuba. From this conclusion, Judson determined that the federal courts had no obligation or authority to return the Mende to Cuba.

I find, then, as a matter of fact, that in the month of June, 1839, the law of Spain did prohibit, under severe penalty, the importation into Cuba of negroes from Africa. These negroes were imported in violation of that law, and be it remembered that, by the same law of Spain, such imported negroes are declared to be free in Spain. ...

. . . If, by their own laws, they cannot enslave them, then it follows, of necessity, they cannot be demanded. When these facts are known by the Spanish minister, he cannot but discover that the subjects of his queen have acquired no rights in these men. They are not the property of Spain. His demand must be withdrawn. The very essence of his demand consists in the supposed Spanish right of property in the thing demanded. That being removed, by his own law there can no longer be cause for complaint. At all events, this cannot be expected at my hands, because the supreme court have already refused to surrender property, unless there was proof of title in the claimants. The same rule applies equally to foreign and domestic claimants. Title must be shown in the property claimed, as belonging to the claimant, or it cannot be surrendered.

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Judson agreed that the treaty of 1795 between Spain and the United States required the return of all legally held Spanish property included in the Amistad claims, even if that property was a slave. Antonio was by his own admission, born into slavery in Spanish territory, and under Spanish law remained the property of

his owner. Judson announced that he would order the return of Antonio to the heirs of Captain Ferrer, who had been killed on the Amistad.

. . . and to show that I abide by the treaty, and that authority, I take another branch of this case. Antonio is demanded, and the proof from him is that he is a Creole, born, as he believes, in Spain. He was, at the time his master was murdered by Cinquez, a slave, so recognized and known by the laws of Spain. The property in him was in Raymond Ferrer, a Spanish subject, at the time of his death on board the schooner, and now is in his legal heirs. Here is both right and property in Spanish subjects. I shall decree a restoration of this slave, under the treaty of 1795.

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Judson accepted the proposal of U.S. attorney William Holabird that the court order the return of the Mende to Africa under the terms of a congressional act of 1819. Judson acknowledged that the law did not apply precisely to the Amistad case, but he asserted that the humanitarian goals of the act called for a broad interpretation of its provisions for return to Africa of victims of an illegal slave trade. In the most widely quoted portion of the decision, Judson referred to two of the Mende by name and recognized their poignant desire to return home.

Cinquez and Grabeau shall not sigh for Africa in vain. Bloody as may be their hands, they shall yet embrace their kindred. I shall put in form a decree of this court, that these Africans, excepting Antonio, be delivered to the president of the United States to be transported to Africa, there to be delivered to the agent, appointed to receive and conduct them home. To do it, we have ample authority, and ample means. What American can object to this decree? No one surely, when the case is correctly understood. It will indeed require the executive arm to carry out this decree. This may well be anticipated, because the facts which I have found and shall put upon record, will carry conviction to every mind. Antonio, falling clearly within the other principle, and in the presence of the court, expressing a strong wish to be returned, will be decreed to the government of Spain, with the vessel and goods, the vessel and goods being alone subject to the lien which necessity of the case has thrown upon them, for the salvage service and the cost.

Justice Joseph Story's Opinion for the Supreme Court, March 9, 1841.
/UNITED STATES, Appellants, v. The LIBELLANTS AND CLAIMANTS of the SCHOONER AMISTAD, her tackle, apparel and furniture, together with her cargo, and the AFRICANS mentioned and described in the several libels and claims, Appellees.

Justice Story offered a summary of the Amistad case as it stood before the Supreme Court. After a review of the proceedings in the district and circuit courts, Story wanted to emphasize the limited questions on which the Supreme Court would rule, and he made clear that the most important question was whether or not the Mende were slaves. At each stage of the Amistad case, the judges and justices recognized that the unusual popular interest in this federal case obliged them to explain their decisions to a broad audience.

Before entering upon the discussion of the main points involved in this interesting and important controversy, it may be necessary to say a few words as to the actual posture of the case as it now stands before us. In the first place, then, the only parties now before the court on one side, are the United States, intervening for the sole purpose of procuring restitution of the property as Spanish property, pursuant to the treaty, upon the grounds stated by the other parties claiming the property in their respective libels. The United States do not assert any property in themselves, or any violation of their own rights, or sovereignty or laws, by the acts complained of. They do not insist that these negroes have been imported into the United States, in contravention of our own slave trade acts. They do not seek to have these negroes delivered up for the purpose of being transported to Cuba as pirates or robbers, or as fugitive criminals found within our territories, who have been guilty of offences against the laws of Spain. They do not assert that the seizure, and bringing the vessel, and cargo, and negroes into port, by Lieutenant Gedney, for the purpose of adjudication, is a tortious act. They simply confine themselves to the right of the Spanish claimants to the restitution of their property, upon the facts asserted in their respective allegations.

In the next place, the parties before the Court, on the other side, as appellees, are Lieutenant Gedney, on his libel for salvage, and the negroes, (Cinque, and others,) asserting themselves, in their answer, not to be slaves, but free native Africans, kidnapped in their own country, and illegally transported by force from that country; and now entitled to maintain their freedom.

No question has been here made, as to the proprietary interests in the vessel and cargo. It is admitted that they belong to Spanish subjects, and that they ought to be restored. The only point on this head is, whether the restitution ought to be upon the payment of salvage or not? The main controversy is, whether these negroes are the property of Ruiz and Montez, and ought to be delivered up; and to this, accordingly, we shall first direct our attention.

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Story acknowledged that the treaty with Spain provided for the return of legally held slaves from Cuba, but in language even stronger than that of the district court decision, Story said that the evidence clearly established that the Mende

had never been slaves under Spanish law. Even the U.S. attorney acknowledged in court that the Mende were recently arrived from West Africa, and thus under Spanish law must be free. Story also declared that kidnapped Africans who took possession of a vessel in an attempt to return home could not be considered pirates and thus could not be demanded by Spain under the treaty of 1795.

If these negroes were, at the time, lawfully held as slaves under the laws of Spain, and recognised by those laws as property capable of being lawfully bought and sold; we see no reason why they may not justly be deemed within the intent of the treaty, to be included under the denomination of merchandise, and, as such, ought to be restored to the claimants: for, upon that point, the laws of Spain would seem to furnish the proper rule of interpretation. But, admitting this, it is clear, in our opinion, that neither of the other essential facts and requisites has been established in proof; and the onus probandi of both lies upon the claimants to give rise to the casus foederis. It is plain beyond controversy, if we examine the evidence, that these negroes never were the lawful slaves of Ruiz or Montez, or of any other Spanish subjects. They are natives of Africa, and were kidnapped there, and were unlawfully transported to Cuba, in violation of the laws and treaties of Spain, and the most solemn edicts and declarations of that government. By those laws and treaties, and edicts, the African slave trade is utterly abolished; the dealing in that trade is deemed a heinous crime; and the negroes thereby introduced into the dominions of Spain, are declared to be free. Ruiz and Montez are proved to have made the pretended purchase of these negroes, with a full knowledge of all the circumstances. And so cogent and irresistible is the evidence in this respect, that the District Attorney has admitted in open Court, upon the record, that these negroes were native Africans, and recently imported into Cuba, as alleged in their answers to the libels in the case. The supposed proprietary interest of Ruiz and Montez, is completely displaced, if we are at liberty to look at the evidence or the admissions of the District Attorney.

If then, these negroes are not slaves, but are kidnapped Africans, who, by the laws of Spain itself, are entitled to their freedom, and were kidnapped and illegally carried to Cuba, and illegally detained and restrained on board the Amistad; there is no pretence to say, that they are pirates or robbers. We may lament the dreadful acts, by which they asserted their liberty, and took possession of the Amistad, and endeavored to regain their native country; but they cannot be deemed pirates or robbers in the sense of the law of nations, or the treaty with Spain, or the laws of Spain itself; at least so far as those laws have been brought to our knowledge. . . .

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When the Mende in custody entered the district court proceedings as respondents to the property and salvage claims, it forced the courts to address the Mende's right to contest claims submitted in a federal case. Here Story explicitly states that the Africans are free, and, like all free foreigners, they may assert their rights in court. Story went a step further to announce that what applied to property claims was all the more important in a case centering on issues of human life and liberty.

It is also a most important consideration in the present case, which ought not to be lost sight of, that, supposing these African negroes not to be slaves, but kidnapped, and free negroes, the treaty with Spain cannot be obligatory upon them; and the United States are bound to respect their rights as much as those of Spanish subjects. The conflict of rights between the parties under such circumstances, becomes positive and inevitable, and must be decided upon the eternal principles of justice and international law. If the contest were about any goods on board of this ship, to which American citizens asserted a title, which was denied by the Spanish claimants, there could be no doubt of the right of such American citizens to litigate their claims before any competent American tribunal, notwithstanding the treaty with Spain. A fortiori, the doctrine must apply where human life and human liberty are in issue; and constitute the very essence of the controversy. The treaty with Spain never could have intended to take away the equal rights of all foreigners, who should contest their claims before any of our courts, to equal justice; or to deprive such foreigners of the protection given them by other treaties, or by the general law of nations. Upon the merits of the case, then, there does not seem to us to be any ground for doubt, that these negroes ought to be deemed free; and that the Spanish treaty interposes no obstacle to the just assertion of their rights.

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The grant of freedom for the Mende of the Amistad followed the Supreme Court's decision to reverse the circuit court's affirmation of the order to deliver the captives to the President for return to Africa. Story said that the Act of 1819 authorizing that return did not apply to these individuals since they had not been transported to the United States in violation of the act. In fact, they arrived as individuals asserting their own freedom, not as enslaved people. Story went on to dismiss the government's claim on behalf of Spain and to uphold the award of salvage for Gedney and his crew. Finally, the Supreme Court sent the case back to the circuit court and ordered that court to issue a decree declaring the Mende free.

There is another consideration growing out of this part of the case, which necessarily rises in judgment. It is observable, that the United States, in their original claim, filed it in the alternative, to have the negroes, if slaves and Spanish prop-

erty, restored to the proprietors; or, if not slaves, but negroes who had been transported from Africa, in violation of the laws of the United States, and brought into the United States, contrary to the same laws, then the Court to pass an order to enable the United States to remove such persons to the coast of Africa, to be delivered there to such agent as may be authorized to receive and provide for them. At a subsequent period, this last alternative claim was not insisted on, and another claim was interposed, omitting it; from which the conclusion naturally arises that it was abandoned. The decree of the District Court, however, contained an order for the delivery of the negroes to the United States, to be transported to the coast of Africa, under the act of the 3d of March 1819, ch. 224. The United States do not now insist upon any affirmance of this part of the decree; and in our judgment, upon the admitted facts, there is no ground to assert that the case comes within the purview of the act of 1819, or of any other of our prohibitory slave trade acts. These negroes were never taken from Africa, or brought to the United States in contravention of those acts. When the Amistad arrived she was in possession of the negroes, asserting their freedom; and in no sense could they possibly intend to import themselves here, as slaves, or for sale as slaves. In this view of the matter, that part of the decree of the District Court is unmaintainable, and must be reversed. . . .

As to the claim of Lieutenant Gedney for the salvage service, it is understood that the United States do not now desire to interpose any obstacle to the allowance of it, if it is deemed reasonable by the Court. It was a highly meritorious and useful service to the proprietors of the ship and cargo; and such as, by the general principles of maritime law, is always deemed a just foundation for salvage. The rate allowed by the Court, does not seem to us to have been beyond the exercise of a sound discretion, under the very peculiar and embarrassing circumstances of the case.

Upon the whole, our opinion is, that the decree of the Circuit Court, affirming that of the District Court, ought to be affirmed, except so far as it directs the negroes to be delivered to the President, to be transported to Africa, in pursuance of the act of the 3d of March 1819; and, as to this, it ought to be reversed: and that the said negroes be declared to be free, and be dismissed from the custody of the Court, and go without day.