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# THE AMISTAD CLAIM.

## SPEECH

OF

### HON. JAMES DIXON, OF CONNECTICUT,

IN THE SENATE OF THE UNITED STATES, JANUARY 9, 1860.

The Senate having the Message under consideration—

Mr. DIXON said:

Mr. PRESIDENT: The portion of the message of the President of the United States on which I now propose to address the Senate, is that in which he recommends the passage of a bill for the payment of the claimants in what is known as the Amistad case. I propose to submit my views on the subject at this time, while the message is under discussion, believing that I shall now be more likely to draw the attention of the Senate to the merits of the case than at a later stage of the session, when other subjects of greater importance may occupy the minds of Senators. The President brings the question to our notice in the following language:

“I again recommend that an appropriation be made ‘to be paid to the Spanish Government for the purpose of distribution among the claimants in the Amistad case.’ In common with two of my predecessors, I entertain no doubt that this is required by our treaty with Spain of the 27th October, 1795. The failure to discharge this obligation has been employed by the cabinet of Madrid as a reason against the settlement of our claims.”

It is more than twenty years since the date of the occurrences which gave rise to the claim thus recommended to the favorable consideration of Congress in the message before us. A part of these occurrences took place in the State of Connecticut, and those of the actors therein who were of the African race were for some time imprisoned in that State. The circumstances connected with their capture, their habits and mode of life, and, to some extent, their subsequent history, became familiar to many of my constituents. Hence, the question now presented is one of peculiar interest to them, not merely because it is somewhat related to the controversy between the North and the South on the subject of slavery, but because the facts on which it is founded, and the principle it involves, were, at the outset, brought to their notice, and, for the long period I have mentioned, have from time to time claimed their attention.

I propose to examine this question, Mr. President, without much reference to certain exciting topics which might be brought within the range

of this discussion. I shall treat the subject in the spirit in which it might have been treated in 1839, when there was comparatively little excitement, either at the North or the South, on the subject of slavery. At that time, legal process was executed upon the Africans of the Amistad, without causing the slightest manifestation of feeling. No one thought, for a moment, of resisting, except by legal means, the attempt to return them to the bondage from which they had escaped. The only inquiry was as to their state and condition, under the Spanish law and our own; and in the decision of a competent tribunal all were willing to acquiesce.

The main facts in the case are as follows: In the year 1839, a Spanish ship, laden with Mendian negroes, kidnapped in Africa, was, in violation of Spanish law, brought into Havana. Two Spaniards, named Ruis and Montez, purchased about fifty of these negroes, with a full knowledge of their true character and condition, and attempted to convey them on board the Spanish schooner L'Amistad to the port of Principe, distant from Havana about three hundred miles. On the passage to Principe, the negroes rose, took possession of the vessel, killed the captain and cook, sent part of the crew ashore, and placing Montez at the helm, compelled him to steer for Africa. This he did in the day time, when the negroes could judge of their course and direction by the sun, but at night he steered northward, turning the vessel again eastward before daylight. At the end of three or four weeks, they had reached the shores of Long Island, having been drifted northward by the Gulf stream. Here a few of the negroes, ignorant as they were of the place, and scarcely competent to do anything to provide for themselves, driven by hunger and thirst, went ashore in search of food and water. The vessel was soon discovered, and was taken possession of, at the request of Ruis and Montez, by Lieutenant Gedney, of the United States brig Washington, who was at that time employed in the coast survey. Lieutenant Gedney took the Amistad to New London. Montez and Ruis, claiming to be the owners of the negroes and the schooner, were set at lib-

erty, while the adult Africans were committed to prison, and the children, of whom there were four, and the cabin boy, named Antonio, were held as witnesses.

An attempt was made to indict the negroes in the State of Connecticut, for murder and piracy. From the testimony of Montez before the grand jury summoned by the district court, it fully appeared that the prisoners were not by the laws of Spain slaves, but were illegally restrained, and were entitled to their freedom. The negroes were shown to be totally unacquainted with the language of any civilized people, unable to express their ideas intelligibly, or to understand any communication, except by signs; though a Mendian African was at length found in New York who could converse with them. The grand jury, after a full investigation, refused to find a bill of indictment.

The vessel, with the negroes on board, having been brought by Lieutenant Gedney into the district of Connecticut, was there, by him, libeled for salvage in the district court of the United States. A libel for salvage was also filed by other parties, who claimed to have aided in saving the ship by arresting the negroes on shore. On the 18th day of September, 1839, Ruis and Montez filed claims and libels, in which they asserted the ownership of the negroes as their slaves, and of certain parts of the cargo, and prayed that the same might be delivered to them, or to the representative of her Catholic Majesty, the Queen of Spain, as might be most proper. On the 19th of September, the district attorney of the United States for the district of Connecticut filed an information, or libel, setting forth the claim of the Spanish Government under the treaty of 1795, renewed in 1821.

To these various libels, the negroes, Cinques and others, with the exception of Antonio, on the 7th of January, 1840, filed an answer, denying that they were slaves or the property of Ruis and Montez, or that the court could, under the Constitution or laws of the United States, or under any treaty, exercise any jurisdiction over their persons, by reason of the premises; and praying that they might be dismissed. They specially set forth and insisted, that they were native-born Africans; that they were born free, and still of right ought to be free, and not slaves; that they were, on or about the 15th day of April, 1839, unlawfully kidnapped and forcibly and wrongfully carried on board a certain vessel, on the coast of Africa, which was unlawfully engaged in the slave trade, and were unlawfully transported in the same vessel to the Island of Cuba, for the purpose of being unlawfully sold as slaves; that Ruis and Montez well knowing the premises, made a pretended purchase of them, that afterwards, on or about the 28th of June, 1839, Ruis and Montez confederating with Ferrer, captain of the Amistad, caused them, without law or right, to be placed on board the said Amistad, to be transported to some place unknown to them, to be enslaved for life; that on the voyage they rose and took possession of the vessel, intending to return therewith to their native country, or to seek an asylum in some free State, &c. At the hearing of the case

all the libelants and claimants appeared, except Jose Ruis and Pedro Montez, whose libels and claims, as stated of record, respectively, were pursued by the Spanish Minister, the same being merged in his claim. The negroes also appeared by their counsel.

On the 23d day of January, 1840, the district court made a decree. By that decree all claims for salvage were rejected, except that of Lieutenant Gedney and others, to whom salvage was allowed on the vessel and cargo of one third of the value thereof—but not on the negroes. The vessel, with the exception of the above-mentioned salvage, was decreed to be returned to the owners, Tellincas, Aspez & Laca. The libels of Ruis and Montez, were dismissed with costs, as being included under the claim of the Spanish Minister. The cargo, with the exception of salvage, was returned to Ruis and Montez, as owners, but their claim for the negroes was rejected. The slave Antonio was ordered to be returned to the representatives of Ferrer. The claim of the district attorney of the United States, on behalf of the Spanish Minister, for the restoration of the negroes, under the treaty, was rejected; and it was decreed that they should be delivered to the President of the United States, to be transported to Africa, in pursuance of the act of March 3, 1819.

From this decree the district attorney, on behalf of the United States, and for the benefit of Ruis and Montez and the Spanish Government, appealed to the circuit court, and thence to the Supreme Court of the United States. Ruis and Montez, it is expressly stated of record, and in the argument of the district attorney, withdrew, because their claim was merged in that presented by the Spanish Minister.

The decision of the Supreme Court of the United States, on this appeal, was as follows, (Mr. Justice Baldwin only dissenting:)

“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.”

Failing thus in their attempt to regain possession of the negroes by judicial proceedings, Ruis and Montez then presented their claim for compensation to the Government of the United States through the Spanish Minister. This claim has been pursued by them for a period of nearly twenty years; and now, the President, following the example of two of his predecessors—Presidents Tyler and Polk—recommends to Congress the payment of the claim.

Such are the facts in relation to this case in its present posture. That the negroes of the Amistad were born free; that they were kidnapped in Africa; that they were brought to Cuba, and sold as slaves to Montez and Ruis, in violation of the laws of Spain, is beyond controversy. Still, it is claimed that by treaty stipulations, notwithstanding the decision of the Supreme Court of the United States, this Government is bound to make compensation to the pretended owners of the negroes in question. The honorable chairman of the Committee on Foreign Relations, in his report



on this subject, made at a previous session, insists that this Government is under treaty obligations to indemnify these claimants. Our obligations in this respect are supposed to arise out of the 8th, 9th, and 10th articles of our treaty with Spain, which follow:

"ART. 8. In case the subjects and inhabitants of either party, with their shipping, whether public and of war, or private and of merchants, be forced, through stress of weather, pursuit of pirates or enemies, or any other urgent necessity for seeking of shelter and harbor, to retreat and enter into any of the rivers, bays, roads, or ports, belonging to the other party, they shall be received and treated with all humanity, and enjoy all favor, protection, and help; and they shall be permitted to refresh and provide themselves, at reasonable rates, with victuals and all things needful for the subsistence of their persons, or reparation of their ships, and prosecution of their voyage; and they shall nowhere be hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance.

"ART. 9. All ships and merchandise, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either State, and shall be delivered to the custody of the officers of that port, in order to be taken care of and restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof.

"ART. 10. When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and, if the operations of repair should require that the whole or any part of the cargo be unladen, they shall pay no duties, charges, or fees, on the part which they shall relade and carry away."

The honorable chairman of the Committee on Foreign Relations takes the ground that the construction of the treaty between this Government and that of Spain given by our Supreme Court is not binding upon Spain. He says:

"It is no answer to Spain, therefore, to say that this subject has been determined by the judiciary of the country adversely to this claim of Spain; and it becomes necessary, in consequence, for the executive and legislative departments of the Government, in replying to the demand of Spain, to construe the treaty originally, and to decide the obligations that may arise under it."

To this I have, in the first place, to reply that Ruis and Montez personally, and afterwards, for them, the Spanish Government, appeared by our district attorney, and were voluntarily parties to this suit. They originated it. There was no claim before the court for the negroes till they presented it. Gedney libeled, not the negroes, but the ship and cargo. The first parties appearing before the court, as claimants of the negroes, are Ruis and Montez, who filed their libel on the 18th of September, 1839. They made themselves parties to the suit; and on the day following, the Spanish Government appeared by the United States district attorney, who filed a claim at the suggestion of the Spanish Minister. Having thus voluntarily become parties to the proceedings, I submit that on every principle they are bound by the decree. The chairman of the committee says, in his report, that "neither Spain nor the United States could have been made parties *in invito*." This is true; but, in point of fact, the Spanish Government, by its own motion, became a party in behalf of the claimants, as the record shows, and Montez and

Ruis actually instituted and originated the proceedings, and only withdrew, as appears of record, when their claim was merged in that pursued for their benefit by the Spanish Government. Can it be said that in a claim of this kind, presented to a court sitting in Admiralty, and proceeding *in rem*, the parties to the suit being themselves present by themselves and counsel, are not bound by the decision? I submit to the Senate that, in any court, sitting anywhere, the judgment of the Supreme Court, in this case, would be a bar to any claim that might be set up by Ruis and Montez against the negroes of the *Amistad*. It is a well-known principle throughout all civilized nations, that adjudications *in rem* of a court of Admiralty are conclusive against all mankind, much more are they binding upon actual parties to the proceedings. Having submitted their claim to a competent tribunal; having been heard by their counsel, they are bound by the decision. They cannot open the question before any other tribunal, but must submit to the law as it is declared by the tribunal of their own seeking. This is law and common sense everywhere.

To make this more clear, allow me, Mr. President, to suppose that the alleged merchandise in question, and upon the title to which the adjudication of the Supreme Court of the United States was had, instead of being negroes, had been any species of property acknowledged everywhere to be merchandise:—any citizen of the United States would have had a perfect right to assert a claim to this property, on the trial in the United States court. It could not have been claimed that the treaty with Spain deprived any citizen of a right to show his title to the property in question, and the decision of the court would not only have settled definitively and forever the question of title, but would have estopped all other claimants, where ever they might be, much more the very parties to the controversy. The fact that the alleged merchandise consisted of human beings could not diminish, though it might well strengthen, the force of this illustration. The negroes themselves had rights, which the court was bound to consider. No treaty with Spain could affect their rights. The law of nations required the court to give them due consideration; nor could Spain say to us, you have agreed to return our merchandise: therefore you are bound to maintain our claim to such foreigners as we may have enslaved and reduced to a state in which they become, by our laws, merchandise. If acknowledged to be merchandise, the title is settled by the decision of the court. If not merchandise, no claim can be made for remuneration for its loss.

But the chairman of the Committee on Foreign Relations says it is no answer to Spain to say that the subject has been determined by the judiciary of the country adversely to the claim of Spain, and that it becomes necessary, therefore, for the executive and legislative departments of the Government, in replying to the demand of Spain, to construe the treaty originally, and to decide upon the obligations that may arise under it. I propose, sir, accordingly, to examine this as a new and open question, without insisting on the idea that the parties, having once submitted their claim

to the adjudication of a competent tribunal, are bound by the decision, and only claiming that the facts, as found by the court, are to be taken as true.

If then we concede that it is our duty, as one branch of the legislative department of the Government, in our examination of this subject, to construe originally the treaty under which this claim is made, it will appear equally manifest that it has no foundation in justice or equity, and that no treaty stipulations existing between this Government and Spain required that the negroes in question should have been surrendered, or that their supposed value should now be paid to the claimants.

And here it is important to observe that the surrender of fugitive slaves, or fugitives from justice, is not demandable of right. In the absence of treaty stipulations, no nation can be required to make such surrender. Such being the law of nations, a stipulation by treaty for the surrender of slaves or fugitives from justice must be clear and unmistakable in its terms, and cannot be made out by implication or construction. The intent must be apparent, and will not be presumed.

Let us, then, examine this treaty, and see for ourselves, irrespective of the opinions of the courts, whose decisions have been given on the subject, whether the claim of the Spanish Government ought to be allowed by Congress.

The main reliance of the claimants is on the ninth article of the treaty of 1795, which provides that—

“All ships and merchandise, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either State, and shall be delivered into the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof.”

To establish the claim it is necessary to show that the negroes in question are merchandise, within the meaning of the ninth article of the treaty of 1795; that there has been a rescue of them on the high seas out of the hands of pirates and robbers, and that Ruis and Montez are the true proprietors of the alleged merchandise, and have established their title by competent proof.

1. Are the negroes to be considered merchandise within the true intent and meaning of the treaty?

Admitting them, now, for the purpose of the argument, to have been, by the laws of Spain, slaves, it could not, in my judgment, have been the intent of the treaty to include them under the term *merchandise*. This nation, as a nation, does not treat or consider slaves as merchandise. They are so treated and considered in certain States of the Union; but they have never, as yet, been considered merchandise in such a sense as that they can be voluntarily carried into a free State, and there sold as property. On the contrary, all or nearly all the decisions, in all the courts, of all the States, have been to the effect, that slavery is the creation of local law, and that a slave carried from a slaveholding State into a free State, thereby becomes free. In the case of Groves and others *vs.* Slaughter, (15 Peters's Reports, 508,) Chief Justice Taney thus states the law with regard to the

right of the several States to legislate respecting slave property:

“In my judgment, the power over this subject is exclusively with the several States, and each of them has a right to decide for itself, whether it will or will not allow persons of this description to be brought within its limits, from another State, either for sale, or for any other purpose; and also to prescribe the manner and mode in which they may be introduced, and to determine their condition and treatment within their respective territories; and the action of the several States upon this subject cannot be controlled by Congress, either by virtue of its power to regulate commerce, or by virtue of any other power conferred by the Constitution of the United States.”

How, then, could this nation, by treaty, have intended to acknowledge slaves as merchandise, and to stipulate for their rendition, under that general term? If they are merchandise in a national point of view, then, under the Constitution of the United States, the regulation of the commerce in slaves between the States belongs to the General Government, and no State could prohibit their sale, as no State can prohibit the trade or traffic between the States in cotton or other merchandise.

That Spain at the date of the treaty recognized slaves as merchandise, when legally held, does not affect the argument. We have similar treaties with Algiers and Tunis, in which are contained stipulations for the return of the property of citizens of each of the contracting States. In the treaty of peace and amity, concluded on the 6th of June, 1815, between the United States of America and the Dey of Algiers, it was agreed that—

“Should a vessel of either of the contracting parties be cast on shore within the territories of the other, all proper assistance shall be given to the crew; no pillage shall be allowed, and the property shall remain at the disposal of the owners.”—*European Treaties, United States Statutes*, volume 8, page 225.

A similar provision is contained in our treaties with Tripoli and Tunis. When these treaties were made, Algiers held Christian captives as slaves; yet, under this stipulation that *property* should remain at the disposal of the owners, would it be claimed that Spanish prisoners, or those of any other Christian nation, held by Algerine corsairs, were to be given up as property, under the treaty with Algiers? Suppose an Algerine vessel, laden with Spanish captives, had been driven on our coasts, and we had attempted to surrender, under this treaty, the enslaved Spaniards. The attempt would have sent a thrill of horror to the heart of the civilized world; and Spain, in resistance of the attempt, might justly have waged against us a war in which she could demand the sympathy, if not the succor, of every nation in Christendom. Yet, if the claim now urged by Spain is just, and her interpretation of the treaty of 1795 correct, we should be bound to render to the Algerines the same assistance in reclaiming captives held by them to be property, which Spain demands in the present instance.

I say, therefore, that, by no just interpretation of the treaty of 1795, can it be held that within the term “merchandise” was intended to be included human beings—black or white, heathen or Christian—who might, under the laws of either nation, be held as property.

But, Mr. President, I am not under the neces-



sity of resting the argument here. If we admit that slaves—held as such by the laws of Spain—are to be considered “merchandise,” under the treaty of 1795, still the present claim cannot be sustained. It remains to be proved, in order to support the claim, that these negroes were, by Spanish law, slaves, and were rescued on the high seas out of the hands of pirates and robbers, and that Ruis and Montez have shown themselves to be the true proprietors of the alleged merchandise by competent proof. Let us see whether these points can be established. That the negroes of the Amistad were kidnapped from Africa, and that, knowing them to have been thus kidnapped, Ruis and Montez purchased them, with the intention of holding them as slaves, are conceded facts. What was the law of Spain regarding the slave trade in the year 1839, when these events took place?

I have before me the special message of James Monroe, President of the United States, dated January 4, 1821, communicating to the House of Representatives, among other papers, a letter from Don Luis de Onis, the Spanish Minister, in which he announced that his Catholic Majesty, Ferdinand VII, had concluded a treaty with the King of the United Kingdom of Great Britain and Ireland, by which the abolition of the slave trade is stipulated and agreed on, and that—

“He had received his Majesty’s commands to deliver to the President of the United States a copy of the same; his Majesty feeling confident that a measure so completely in harmony with the sentiments of this Government, and of all the inhabitants of this Republic, cannot fail to be agreeable to him.”

He adds:

“In the discharge of this satisfactory duty, I now transmit you the aforesaid copy of the treaty, which I request you will be pleased to lay before the President.”—*Executive Papers, second session, Sixteenth Congress, 48.*

The treaty between Great Britain and Spain, thus transmitted, was not printed with the document containing the above communication, but I find it published in the “British and Foreign State Papers, 1816-17.” It is dated and signed at Madrid, the 23d of September, 1817. It first refers to the treaty of July 5, 1814, in which the King of Spain promised and agreed to take the subject of prohibiting the slave trade into consideration. It then declares that his Catholic Majesty, conformably to the spirit of that treaty, and to the principles of humanity with which he is animated, having never lost sight of an object so interesting to him, and being desirous of hastening the moment of its attainment, has resolved to cooperate with his Britannic Majesty in the cause of humanity, by adopting, in concert with his said Majesty, efficacious means for bringing about the abolition of the slave trade; and accordingly,

“ART. 1. His Catholic Majesty engages that the slave trade shall be abolished throughout the entire dominions of Spain, on the 30th day of May, 1820, and that from and after that period it shall not be lawful for any of the subjects of the Crown of Spain to purchase slaves, or to carry on the slave trade on any part of the coast of Africa, upon any pretext, or in any manner whatever.”

Article third provides for the payment, by his Britannic Majesty, of the sum of £400,000 sterling to such person as the King of Spain shall appoint

to receive the same, which was to be in full for all losses previously incurred, and also for the losses which are a necessary consequence of the abolition of the said traffic.

On the 19th of December, 1817, the King of Spain promulgated a royal cedula, or decree; the first article of which is as follows:

“ART. 1. From this day forward I prohibit forever to all my subjects, both in the Peninsula and in America, to resort to the coast of Africa, north of the equator, for the purchase of negroes. All the blacks bought on those coasts shall be declared free in the first seaport of my dominions at which the vessel containing them shall arrive. That vessel shall be confiscated for my royal treasury; and the purchaser, the captain, the master, and the pilot shall, without fail, be sentenced to ten years’ imprisonment in some fortress of the Philippine Islands.”

Article fourth extends the same prohibition to the coasts of Africa south of the equator, under the same penalties, after the 30th of May, 1820.

It thus appears, that at the time when these negroes of the Amistad were kidnapped on the coast of Africa, and brought by the confederates of Montez and Ruis into the Island of Cuba, the slave trade was prohibited in all the Spanish possessions; and that by Spanish laws, the negroes thus kidnapped were of right free the moment they reached the port of Havana; and that they were entitled to freedom when purchased by Ruis and Montez.

It appears, also, that the treaty stipulation with Great Britain, was not made without consideration and compensation, received by Spain. Although motives of humanity are stated to have led to that treaty, yet Spain received, under this treaty, from Great Britain, the sum of \$2,000,000 in full compensation for losses that might be occasioned by the abolition of the slave trade in her colonies; a sum with which, it would seem, she ought to be satisfied, without now demanding payment from this Government for fifty miserable Africans imported into Cuba in violation of her own laws.

There are some peculiar circumstances, Mr. President, connected with the payment of this sum of money by Great Britain, which, though they perhaps have no direct bearing on the merits of this claim, I am yet tempted to lay before the Senate, as showing the astuteness and assurance of the Spanish Government in pushing their own interests. On the 14th of June, 1815, prior to the treaty with Great Britain, the King of Spain directed the supreme council of the Indies “to deliberate and give their advice upon a question of the highest and most urgent importance, namely, whether or not the slave trade should continue to exist?” I have here the proceedings of this council containing—1. “The report of the Council of the Indies to the King of Spain, recommending the immediate abolition of the slave trade;” 2. “The opinion of the dissentient members of the council against the immediate abolition of the slave trade;” and 3. “The reply of the majority of the council.” The majority of the council were of opinion that, not only the cause of humanity but the interests of the Spanish colonies, particularly Cuba, required the immediate prohibition of the slave trade. They discuss the subject in a long and extremely able report, which

they conclude by recommending that "his Majesty may be pleased to command that the slave trade be forthwith perpetually abolished throughout his dominions." The dissentient members, in their report, take ground against the immediate abolition, for certain reasons, among others, to which I desire to call the attention of the Senate. They say:

"We admit that the slave trade ought to be prohibited. All Europe, departing from its ancient maxims, has just come to this resolution, for the good of the human race; and it would ill become Spain to refuse taking part in so glorious a proceeding; indeed, she would gain nothing by such a refusal."

They then proceed to consider the subject of compensation for pretended losses, as follows:

"Putting aside, however, for a moment, the interests of the American slaves, as well as those of their owners, it may not be improper to turn our attention to our own interests, and to the present exhausted state of our treasury. We ought to avail ourselves of the opportunity now offered, to put forth against the English a demand for some valuable consideration as an indemnification for the losses which would be consequent upon the abolition which is so much desired by them. This policy, which would be practiced by all the nations of the world, has not escaped the penetration of his Majesty. Accordingly, when he consented to prohibit the slave trade within eight years, he did so under certain conditions, which, although we are ignorant of their purport, have not yet been fulfilled. The English, notwithstanding, have since continually urged that we should reduce this term of eight years to five. In this state of the question, the most natural and the best advice that could be given to his Majesty, is that he should accede to this request, that he should lay stress upon the service which he thereby renders, and should require in compensation for that service the same conditions that had previously been agreed on, or such other as his exalted judgment may deem more suitable to the general interests of his dominions. If, instead of following this course, which is dictated by prudence, the slave trade be immediately prohibited, the English will not believe we make any sacrifice, because even more would be conceded by us than they ask; no convenient opening would be left for stipulating any compensation, and his Majesty would lose the relief which he has a right to demand from a rich and powerful nation founded upon so just and honorable a title."—*British State Papers*, 1816-17, page 538.

Here, Mr. President, is presented what the Spanish considered a very adroit piece of diplomacy. They had decided, in reference to their own interests, to prohibit the slave trade. In the year 1814, (July 5,) they had stipulated, by treaty with Great Britain, to take the subject into consideration. The Spanish Government had come to the conclusion that humanity and interest required this prohibition to be made; but instead of doing it at once, they now proceed to make another treaty with Great Britain, by which they stipulate for the prohibition of the slave trade in all their colonies, in consideration of £400,000 sterling for losses which it appears were pretended. The king is advised to lay stress upon the service he is rendering, otherwise England will not believe the Spanish have made any sacrifice. "No convenient opening would then be left for stipulating any compensation, and his Majesty would lose the relief he might otherwise gain." Accordingly, a treaty was made on the 23d of September, 1817, soon after the date of the "proceedings of the Council of the Indies," to which I have referred. The remuneration provided under this treaty was ample. The Spanish Government received "relief" to the amount of \$2,000,000 for performing an act which they admitted was demanded not

only by considerations of humanity, but by their own interests. Now, sir, without indulging in any severity of comment upon this specimen of Spanish diplomacy, I must say that it does not at all diminish my opposition to the present claim, or tend in any way to show that further remuneration ought to be made for the alleged losses of Spanish slave traders.

Mr. President, notwithstanding the treaty stipulations thus solemnly made; notwithstanding the ample remuneration received by the King of Spain, for real or supposed losses; notwithstanding the royal ordinance of the 19th December, 1817, issued in compliance with this treaty, the slave trade has been carried on from that day to this, between the coast of Africa and Cuba, in violation of all law, human and divine. I will not say that the Spanish Government has connived at this traffic, but she has not suppressed it. Ruiz and Montez, in whose behalf the present claim was made, were undoubtedly engaged in it. If not directly engaged in the trade, they were purchasers of negroes known to be kidnapped in Africa, and were, perhaps, liable to the penalty of the royal ordinance of the 19th December, 1817—ten years' imprisonment in some fortress in the Philippine Islands. They were themselves criminals, while on their attempted voyage in the *Amistad* from Havana to Principe, with those fifty kidnapped negroes. The negroes were free by the express terms of the royal ordinance, and when they asserted their freedom and took possession of the *Amistad*, they committed no crime for which they could be punished by any tribunal even in Spain, which should administer justice according to the Spanish law.

It so happened that they were thrown upon our coasts, and it became the duty of our judicial tribunals, and is now also the duty of this body, to apply to their case the law of nations, as well as the laws of Spain. If, sir, you will look upon the map, you will see that, steering eastward by day and northward by night, the course resulting from this would have brought the vessel to some part of the shores of Europe; but for the drift of the Gulf stream. Suppose, instead of being thus drifted, they had landed in England or France. Would England have restored these negroes to Ruiz and Montez, acknowledged violators of the laws of their own country? Would France have restored them had they been thrown on the French coast? No, sir; neither of these nations would have returned the negroes to bondage; nor would they have remunerated the pretended owners. Even Spain herself would have been compelled to restore them to freedom had they been cast by the waves on the Spanish coasts, if, in the administration of justice, her tribunals are governed by the treaties and laws of Spain. I doubt, sir, whether there is in all Christendom another nation where a claim like this would be thought worthy of serious consideration; and I apprehend that the free Republic of the United States is that Christian Government in the world more likely than any other to remunerate the malefactors in whose behalf such a claim might be made.

But the chairman of the Committee on Foreign Relations argues that, inasmuch as the negroes of the *Amistad* were shipped from Havana, on board



that schooner, under passports signed by the Governor General of Cuba, it is not competent for the United States to look into the evidence which contradicts these documents; and he cites, in support of this claim, an opinion given in October, 1839, by the Attorney General of the United States, Mr. Grundy. This is sufficiently answered by Mr. Justice Story, in his published opinion in the case of the United States vs. the *Amistad*, (15 Peters's Reports, 594,) an extract from which I beg leave to read to the Senate:

"But it is argued that the ship, cargo, and negroes were duly documented as belonging to Spanish subjects, and this court have no right to look behind these documents; that full faith and credit is to be given to them; and that they are to be held conclusive evidence in this cause, even although it should be established by the most satisfactory proofs that they have been obtained by the grossest frauds and impositions upon the constituted authorities of Spain. To this argument we can in no wise assent. There is nothing in the treaty which justifies or sustains the argument. We do not here meddle with the point whether there has been any connivance in this illegal traffic on the part of any of the colonial authorities or subordinate officers of Spain; because, in our view, such an examination is unnecessary, and ought not to be pursued, unless it were indispensable to public justice, although it has been strongly pressed at the bar.

"What we proceed upon is this, that although public documents of the Government, accompanying property found on board of the private ships of a foreign nation, certainly are to be deemed *prima facie* evidence of the facts which they purport to state, yet they are always open to be impugned for fraud; and whether that fraud be in the original obtaining of these documents, or in the subsequent fraudulent and illegal use of them, when once it is satisfactorily established, it overthrows all their sanctity, and destroys them as proof. Fraud will vitiate any, even the most solemn transactions, and an asserted title to property founded upon it is utterly void. The very language of the ninth article of the treaty of 1795 requires the proprietor to make due and sufficient proof of his property. And how can the proof be deemed either due or sufficient which is but a connected and stained tissue of fraud? This is not a mere rule of municipal jurisprudence. Nothing is more clear in the law of nations, as an established rule to regulate their rights and duties, and intercourse, than the doctrine that the ship's papers are but *prima facie* evidence, and that if they are shown to be fraudulent, they are not to be held proof of any valid title." \* \* \* "In the solemn treaties between nations, it can never be presumed that either State intends to provide the means of perpetrating or protecting frauds; but all the provisions are to be construed as intended to be applied to *bona fide* transactions."

The pretended passports covering the negroes shipped on board the *Amistad* are therefore only *prima facie* evidence, and, being clearly shown to have been fraudulent, are not to be held proof of any valid title.

But the majority of the Committee on Foreign Relations, in their report, say that if it were competent for the United States to look into evidence to contradict these documents, yet the United States could not rightfully undertake to decide questions arising under treaty stipulations made between Spain and other nations, to which this Government is no party; in other words, that, not being a party to the treaty between Spain and Great Britain, by which she stipulated to prohibit the slave trade, and under which she actually did so prohibit it, we cannot inquire whether the pretended merchandise on board the *Amistad* was really merchandise under Spanish law. To this, I answer that the action of Spain in this regard was officially announced to the Government of the United States, as I have already indicated, by

express command of the King of Spain in the year 1818—(Executive Papers, second session Sixteenth Congress.) This Government, therefore, has a right, and is bound to take notice of the law of Spain on this subject; and the announcement could only have been made with the intention that such notice should be taken, and to enable it to be done. How can Spain complain that we now avail ourselves of the information solemnly given by her Minister, by command of the King, that, under her laws, negroes kidnapped in Africa and sold into slavery in Cuba, are not merchandise, but are entitled to their freedom the moment they place their feet on the soil of any Spanish colony?

I cannot conceive of any reason for announcing the existence of the treaty, except that our Government should take official notice of its provisions, and give effect to them as far as it may be proper to do so.

We have a right, then, and it is our duty, to go behind these documents purporting to be passports. When we do so, we find them grossly fraudulent; that the negroes specified therein as *Ladinos*, or skilled, acclimated, and therefore legal, slaves, are not such, but, as all the testimony most conclusively shows, and as, indeed, is conceded, when shipped by Ruis and Montez, were entitled, even by Spanish law, to their freedom. How, then, can Senators vote to pay the parties who so pertinaciously, through the Spanish Government, pursue this flagitious claim from year to year? Why should they receive the sum of \$50,000, or any other sum, from our national Treasury, as the supposed value of Africans kidnapped in violation of the laws of nations and of their own Government? Is it because it is true, as the President, in his message, informs us, that Cuba is the only spot in the civilized world where the African slave trade is tolerated? In spite of all her treaties, in violation of solemn stipulations—notwithstanding Spain has announced to our Government that the slave trade is abolished in her colonies—still "Cuba is the only spot in the civilized world where the African slave trade is tolerated." The President says this is to us "a constant source of injury and annoyance," and he adds:

"We are bound by treaty with Great Britain to maintain a naval force on the coast of Africa at much expense both of life and treasure, solely for the purpose of arresting slavers bound to that island, (Cuba.) The late serious difficulties between the United States and Great Britain respecting the right of search, now so happily terminated, could never have arisen if Cuba had not afforded a market for slaves. As long as this market shall remain open, there can be no hope for the civilization of benighted Africa. Whilst the demand for slaves continues in Cuba, wars will be waged among the petty and barbarous chiefs of Africa for the purpose of seizing subjects to supply this trade. In such a condition of affairs it is impossible that the light of civilization and religion can ever penetrate these dark abodes."

Yet we now are seriously urged to appropriate a sum of money to remunerate the pretended owners of the negroes kidnapped and torn from their native shores, as is acknowledged and avowed in violation of Spanish law, for the purpose of being forever enslaved by the present claimants.

Mr. President, I am willing to go as far as truth and justice will permit in cultivating friendly rela-

tions with Spain. The President informs us that an appropriation made for the purpose of remunerating the claimants in the Amistad case, could not fail to exert a favorable influence on our negotiations with that country. At the same time he informs us that our national flag has been insulted by Spanish officials, in repeated instances; that we have suffered outrages of such a character as would have justified an immediate resort to war; and that "all our attempts to obtain redress have been baffled and defeated." If this be true, I cannot see the propriety of attempting to "exert a favorable influence upon negotiations" which have hitherto been so unfortunate in their results, by remunerating the very men who, by keeping alive the slave trade, put us to the expense of "maintaining a naval force on the coast of Africa," solely for the purpose of arresting slaves bound to Havana. They have very nearly, it seems, involved us in a war with Great Britain, on the question of the right of search, "that could not

have arisen if Cuba had not afforded a market for slaves;" a market which, as long as it remains open, expels all "hope for the civilization of benighted Africa." One of the most serious grievances urged by the President against the Spanish Government, is the "injury and annoyance" thus inflicted upon us. Yet he urges us to reward the criminal agents in one of the most atrocious cases of kidnapping that has ever been perpetrated.

Mr. President, while at this time the Government has a high duty to perform, while the powers of the Federal courts and of the Federal executive authorities are invoked for the suppression of the African slave trade, I trust that no such spectacle of inconsistency will be exhibited to the world as that of a Government remunerating on the one hand the guilty agents in a piratical and inhuman traffic, which, on the other hand, if official duty is not criminally neglected, it is exerting all its authority to suppress within our own borders.





