

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 114.]

The Committee on Foreign Relations, to whom was referred so much of the message of the President of the United States as relates to the claim made by the government of Spain of certain Spanish subjects in the case of the schooner Amistad, and recommending that provision be made by law for its payment, have had the same under consideration and report:

The justice of this claim, and the obligation of the United States to provide for its payment, has been, as stated by the President in his message, recognized by more than one of his predecessors. It has also met, heretofore, the favorable consideration of the Senate. At the session of 1851-'52 it was the subject of a special report of the Committee on Foreign Relations of the Senate. The committee, entirely concurring in the views taken in that report, adopt them, and now report accordingly.

It appears that, on the 26th of August, 1839, the Spanish schooner called the "Amistad" was taken possession of by Captain Gedney, an officer of the navy of the United States, then in command of one of our public vessels. The "Amistad" was found at anchor on the coast off Long Island, Connecticut, about three-fourths of a mile from the shore. The seizure was made at the request of two Spanish subjects, named, respectively, Ruiz and Montez, residents of the island of Cuba, then on board the vessel; and she, with her entire cargo, was carried, with all on board, into the port of New London, in Connecticut.

In the course of judicial proceedings which were there instituted before the district court of the United States, and which commenced in a claim for salvage on the part of the officer making the seizure, the following facts were elicited: That the "Amistad" was a Spanish coasting vessel, owned by her captain, a Spanish subject and resident of Cuba; that, on the 27th June, 1839, she cleared, in due and regular form, at the port of Havana, in that island, for Puerto Principe, in the same island. There were then on board, besides the captain and owner, a slave named "Antonio," the property of the master, and

the two passengers, subjects of Spain, residing in Cuba, name Ruiz and Montez. The cargo, in addition to various merchandise, owned in part by said Ruiz and Montez, and in part by merchants in Cuba, consisted of fifty-three negroes, certified, in passports signed by the captain general of Cuba, to be slaves, the property of said Ruiz and Montez. That, on the voyage, these negroes revolted, killed the captain and cook, severely wounded one of said passengers, and succeeded in taking possession of the vessel. That two of the sailors were set adrift in a boat belonging to the schooner, and the negroes compelled the said Ruiz and Montez to navigate the vessel, directing them to steer for the coast of Africa. That the vessel continued at sea, in possession of the negroes, (the passengers availing themselves of all opportunity to direct her course towards the coast of the United States,) until land was made, where, being short of provisions and water, they anchored, as above stated, for the purpose of procuring those supplies. When discovered, a party of the negroes were on shore. These were captured by the naval officer and returned to the vessel, when the whole were taken by him, as stated above, into New London. The judicial proceedings terminated in a decree for salvage, under which the vessel and cargo, the negroes excepted, were sold. The fifty-three negroes were declared to be free, and were never restored to those claiming them. The boy "Antonio," claimed as the property of the murdered captain by the Spanish consul, and admitted as such throughout, was detained in custody during these proceedings, and then secreted and sent away to New York—by whom, it does not appear. But the consul made diligent search for him in that city, but never recovered him. And, to crown the whole, the two gentlemen on board the vessel, Ruiz and Montez, were imprisoned for months, under various pretexts, pending the judicial trials, and then suffered to depart, stripped of all the valuable property they had with them on board the vessel when seized by an officer of this government.

Pending the judicial proceedings, the district attorney of the United States filed a suggestion before the district court, setting forth that a claim for the said vessel and cargo had been made to the government of the United States, by the Spanish minister at Washington, claiming that the same was the property of Spanish subjects, and should be restored to them, as required by treaty between the two governments.

The vice-consul of Spain for the State of Connecticut filed a libel, claiming the boy Antonio as the property of the deceased master of the vessel. And the negroes, (with the exception of Antonio,) in answer to the claim for salvage, denied that they were slaves—alleging that they were natives of Africa, then recently brought to Havana in violation of the laws of Spain prohibiting the slave trade, and under which laws they were free.

It appears that, immediately after this capture—that is to say, in September, 1839—the minister of Spain accredited to this government made a formal demand of the Secretary of State for the restoration of the vessel and cargo entire, under the treaty, which was followed in October by a further demand from the successor of that minister for the release of Ruiz and Montez, then imprisoned in the common jail at New York.—(See Ex. Doc. No. 185, 1st session 26th Congress.)

In February, 1842, this claim was made the subject of a special message to the House of Representatives by President Tyler, communicating a further correspondence between the minister of Spain and the Secretary of State during the year 1841, in which the demand was strenuously urged on this government.—(See Ex. Doc., H. R., No. 191, 3d session 27th Congress.)

In January, 1844, President Tyler communicated to the House of Representatives a further correspondence with the Spanish minister, reiterating and pressing his former demand.—(See Ex. Doc., H. R., No. 83, 1st session 28th Congress.)

President Polk again brought the subject before Congress, as recited in the resolution of the Senate, strongly recommending that the claim should be paid; and from the correspondence communicated by the Secretary of State at the last session, under a call from the Senate, it appears that this claim continues to be strenuously urged on the part of Spain before the Executive, in terms of the strongest and most just remonstrance. The foregoing narrative is given to show that Spain has been in nowise remiss in urging this demand—making it, in the opinion of the committee, the more incumbent on Congress to pass finally on the subject.

The courts of the country having taken cognizance of, and made a final disposition of the subject, so far as the jurisdiction assumed by them is concerned, it remains only to be determined whether the United States are under treaty obligation, nevertheless, to indemnify these claimants.

For the due and proper observance of treaty stipulations nations look only to the contracting power—that is to say, to the government. If the treaty with Spain required that this vessel and cargo should have been delivered up to the Spanish claimants, the obligation so to do rested upon this government, so far as Spain was concerned. And it is no answer to Spain, neither can the government exonerate itself towards her, or in the eyes of other nations, by saying that the judiciary of the country assumed jurisdiction of the subject, and thus withdrew it from the control of the government which made the treaty, and which became responsible for its observance.

By the Constitution of the United States the judiciary is constituted an independent department of the government, and its jurisdiction clearly defined; and it nowhere appears that in controversies between the United States and foreign nations, arising under treaties between the respective powers, the determinations of the judiciary are to bind the contracting parties. The judiciary is a passive department; it acts only through prescribed forms, and when its authority is invoked by parties designated in the Constitution, for causes stated in the Constitution; its judgments are binding only upon parties to the cause and the privies of such parties. This is the universal law of the judiciary, and furnishes in itself a full answer to any objection that the decision of the judiciary is the law of the treaty on questions arising between the contracting parties. Neither Spain nor the United States were parties, or could have been made parties, (*se invito*) to the controversy before the courts, arising out of the seizure of the Amistad. It is a wise and sound rule of the judiciary, in ex-

pounding a treaty in a cause, and between parties properly before it, to adopt such construction, if any, as may have been given to it by the legislative and executive departments—those departments which represent the government in its relations with foreign nations—and this subordination would seem due to preserve the harmony of such relations. But it has never been considered that the converse is true; that the executive and legislative departments, in conducting the intercourse or adjusting the relations of the government with foreign States under existing treaties, acts in subordination to the decisions of the judiciary. 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. The eighth, ninth, and tenth articles of this treaty are as follow :

“ARTICLE 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 noways 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.*

“ARTICLE 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.

“ARTICLE 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.”

In view of the true intent and spirit of these articles in the treaty, construed together, it might well be taken that the case would come within the true and fair meaning of the eighth; for here it is very clear that the Spanish schooner, under the guidance of Ruiz and Montez, Spanish subjects, and under a most “urgent necessity,” did

seek "shelter and harbor" on the coast of the United States, and within its maritime jurisdiction, though, from duress, they were unable actually to enter any "bay, river, road, or port."

But it is the ninth article, in the consideration of the committee, on which this claim properly rests; because, in their judgment, this vessel and cargo, being "rescued out of the hands of pirates and robbers on the high seas," and carried into a port of the United States, should have been there, pursuant to the terms of the treaty, "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 should be made concerning the property thereof."

The committee understand that "a ship or vessel on the high seas, in time of peace, engaged in a lawful voyage, is, according to the laws of nations, under the exclusive jurisdiction of the State to which her flag belongs, as much so as if constituting a part of its own domain;" and that, according to the same laws, the ship's papers, exemplified in proper form according to the laws of the nation to which she belongs, are held as, between independent nations, conclusive of the character of her voyage and of her cargo.

Upon the question how far each government is bound to give full faith and credit to the public official acts of other governments, performed in due course of law by such governments, and certified under the forms pertaining to such governments, and upon the consequences that would ensue by refusing such faith and credit, the committee can add nothing to the views contained in the opinion of the Attorney General of the United States on the "Amistad case," dated in October, 1839, and communicated to Congress, with other documents, by President Van Buren, in his message of the 15th April, 1840, (see Executive document No. 185, H. R., 1st session 26th Congress,) from which is the following extract:

Extract from the opinion of the Attorney General.

"In the intercourse and transactions between nations, it has been found indispensable that due faith and credit should be given by each to the official acts of the public functionaries of others. Hence the sentences of prize courts under the laws of nations, or admiralty, and exchequer, or other revenue courts, under the municipal law, are considered as conclusive as to the proprietary interest in, and title to, the thing in question; nor can the same be examined into in the judicial tribunals of another country. Nor is this confined to judicial proceedings. The acts of other officers of a foreign nation, in the discharge of their ordinary duties, are entitled to the like respect. And the principle seems to be universally admitted, that whenever power or jurisdiction is delegated to any public officer or tribunal, and its exercise is confided to his or their discretion, the acts done in the exercise of that discretion, and within the authority conferred, are binding as to the subject-matter; and this is true whether the officer or tribunal be legislative, executive, judicial, or special.—(Wheaton's Elements of International Law, page 121; 6 Peters, page 729.)

"Were this otherwise, all confidence and comity would cease to exist among nations, and that code of international law which now contributes so much to the peace, prosperity, and harmony of the world would no longer regulate and control the conduct of nations. Besides, in this case, were the government of the United States to permit itself to go behind the papers of the schooner Amistad, it would place itself in the embarrassing condition of judging upon the Spanish laws, their force, effect, and their application to the case under consideration.

"This embarrassment and inconvenience ought not to be incurred. Nor is it believed a foreign nation would look with composure upon such a proceeding, where the interests of its own subjects or citizens were deeply concerned. In addition to this, the United States would necessarily place itself in the position of judging and deciding upon the meaning and effect of a treaty between Spain and Great Britain, to which the United States is not a party. It is true, by the treaty between Great Britain and Spain, the slave trade is prohibited to the

subjects of each ; but the parties to this treaty or agreement are the proper judges of any infraction of it, and they have created special tribunals to decide questions arising under the treaty ; nor does it belong to any other nation to adjudicate upon it, or to enforce it. As, then, this vessel cleared out from one Spanish port to another Spanish port, with papers regularly authenticated by the proper officers at Havana, evidencing that these negroes were slaves, and that the destination of the vessel was to another Spanish port, I cannot see any legal principle upon which the government of the United States would be authorized to go into an investigation for the purpose of ascertaining whether the facts stated in those papers by the Spanish officers are true or not."

With the same executive document, No. 185, are communicated copies of this vessel's papers, all of which are admitted to be regular and complete, and exemplified in proper form. Among them are manifests or passports signed by the captain general of Cuba, attesting that these negroes were slaves, and were the property of said Ruiz and Montez, respectively, with a license to transport them from Havana (the port whence the vessel sailed) to Puerto Principe, in the same island of Cuba.

The committee hold that in questions between this government and Spain, arising under the treaty, these documents are conclusive upon the United States, both as to the condition of the subject—that is to say, the slavery of the negroes—and as to the property of the claimants. On being remanded to the jurisdiction of Spain, as contemplated and provided for by the treaty, any inquiries into the validity of the evidence they imported may have been proper for her tribunals on questions either as to the slavery of the negroes or the rights of property of the claimants *inter se*.

But again: were it competent to the United States to look into evidence to contradict these documents certifying the condition of these negroes, the committee concur entirely in the opinion of the same Attorney General, that 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. The institution of slavery exists in the island of Cuba, a Spanish dependence, and is protected there by the laws of Spain. It appears that in the year 1819 Spain contracted by treaty with England to abolish and prohibit the African slave trade within her dominions, and it is alleged that these negroes were imported into Cuba subsequent to that treaty. If this be so, it may follow that if done with the connivance of Spain, it is in violation of that treaty ; or if by her subjects, without authority, that, by proceedings in the proper tribunals constituted by that treaty, the negroes would have been declared free, and the offenders punished ; or if either, that England would have had cause of complaint against Spain, and have been entitled to redress. But in no aspect can it be admitted that the United States could undertake to decide upon the effect and operation of treaties between foreign powers exclusively, not affecting the rights of citizens of the United States.

Upon the whole, the case, as fully shown by the documents above referred to, is nakedly this :

A Spanish vessel and cargo, owned by subjects of Spain, is found on the high seas, near the coast of the United States, in possession of lawless negroes, who had obtained such possession by murder and rapine.

Two of the passengers in the vessel, also subjects of Spain, who are

the principal owners of the cargo, and the only survivors of the white men who set out on the voyage, were found on board, held in duress and in imminent peril of their lives by the negroes; and at their urgent solicitation, for the safety of their lives and property, the vessel and cargo were seized by a public vessel of the United States and brought into a port of the United States.

The vessel was on a lawful voyage, under the flag of Spain, and with regular and complete sea-papers.

On these facts, the committee unhesitatingly pronounce that, independent of positive treaty stipulations, decent courtesy or the ordinary hospitality of civilized countries would have required, in the language of the eighth article of the treaty with Spain, that these helpless foreigners, thus cast upon our shores, should have been "treated with all humanity, and have enjoyed all favor, protection, and help." But if not so, the terms of the ninth article of the treaty are too clear to admit of doubt, and, in the opinion of the committee, the case of the *Amistad* and cargo comes fully within it.

It was incumbent on the United States, on the arrival of the *Amistad* at the port of New London, to have seen that she was "delivered to the custody of the officers of that port;" that by them she was "taken care of;" and, finally, that the vessel and cargo were "restored *entire* to the true proprietor," such being the plain language of the treaty.

That such was the obligation of the treaty, the government of the United States was fully advised by the Attorney General, in the opinion cited above; and the committee add, as appearing from the correspondence communicated with document No. 185, before referred to, that President Van Buren, in whose administration the case occurred, had caused one of our public vessels to await, off the port of New London, the decision of the district court of the United States while the case was depending, with orders, upon the release of the negroes from custody of the court, to receive them on board, and to convey them to Havana, there to be restored to the authorities of Spain.

As to the slave "Antonio," there is no justification for the failure to restore him, except that he was in some mysterious manner lost or stolen after the trial was over, and thus the government was unable to comply with its treaty obligation as to him.

In estimating the allowance that should be made for the whole claim, the committee find that the actual value of the property at Havana, when there shipped, with the reasonable expenses of said Ruiz and Montez while detained in this country in their effort to reclaim it, with interest thereon, will exceed the sum of fifty thousand dollars; and they report a bill for payment of that sum accordingly.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

VIEWS OF THE MINORITY.

Mr. SEWARD made the following

R E P O R T .

The Committee on Foreign Relations, to whom was referred the resolution of the Senate instructing them to inquire into the propriety and justice of providing by law for the payment of the claims, &c., in the case of the schooner "Amistad," having had the same under consideration, and the majority of said committee having reported favorably to said claim, the minority submit the following adverse report :

The facts upon which the claim to indemnity are founded are substantially as follows :

In the year 1839 certain Cuban slave dealers imported from Africa a number of negroes, natives of that country, and on the 12th of June of that year landed them from their vessel in Havana, where they were imprisoned in the barracoon of that city, and sold as slaves. They were purchased by Don Pedro Montez and José Ruiz, subjects of the Spanish crown, with full knowledge of their character, and of the mode in which they had been brought from their native country, not one of the Africans being able to converse in the Spanish language, or to understand it.

On the 22d of June, ten days after their landing at Havana, Montez obtained a permit from the governor general of Cuba to transport three "ladinoes," or legal slaves, from Havana to Principe, on the south side of the island ; and on the 27th of June Ruiz obtained a like permit to transport *forty-nine* "ladinoes" to the same port.

Under claim that these Africans were *legal slaves*, they were placed on board the "Amistad," a Spanish coasting vessel, owned by her captain, a Spanish subject, and resident of Cuba ; and on the 27th of June, the same day on which the last permit was obtained, she cleared from Havana for Principe, having on board the captain, a boy named "Antonio," claimed by him as a slave, two sailors, Ruiz and Montez, and the fifty-two negroes.

On the 1st of July, while on the eastern coast of the island, the Afri-

cans rose and claimed their freedom. The captain and cook, attempting to restrain them, were slain, and Ruiz and Montez and the two sailors surrendered the vessel to them. They sent the sailors on shore, retained Ruiz and Montez, and directed them to steer the vessel for the African coast. In the darkness the vessel was steered northward, and on the 28th of August came to anchor off the coast of Connecticut, near the eastern shore of Long Island, and in the vicinity of New London, to which place she was taken by Lieutenant Gedney, of the ship Washington, a vessel of the United States, she having been brought to anchor there for the purpose of procuring provisions, and a part of the negroes being on shore for that purpose at the time of her capture.

2. Upon these facts judicial proceedings were instituted, to determine the question of salvage and the ownership of the negroes, claimed to be the lawful property of Montez and Ruiz.

These claimants, on the 29th of August, 1839, filed their claim in the district court of the United States, demanding these Africans as their slaves, and requiring their rendition under our treaty stipulations with Spain; and on the 19th day of September the Africans filed their answer, denying that they were, or ever had been, slaves to Montez and Ruiz, or any other person, but that they were free, and always had been.

The case was ably tried and fully argued in the district court, and decided in favor of the Africans, thus establishing their freedom.

An appeal was taken from this decision to the circuit court, in which the judgment below was affirmed.

From this judgment the case was removed to the Supreme Court of the United States, where, after due consideration and advisement, the decision was reaffirmed.

The court says: "It is plain, beyond controversy, if we examine the evidence, that the negroes never were the lawful slaves of Ruiz and Montez, or of any other Spanish subject. They were natives of Africa, and were kidnapped thence, 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 their 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 thereafter 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 answer."

Every facility was afforded by the President to these claimants. Learned counsel were employed on the argument, and a vessel of the United States was detailed to deliver over the negroes if the court should pronounce them slaves. They were set at liberty as freemen, by a well considered judgment of the highest legal tribunal of the country where the fact was directly in issue.—(15 Peters' U. S. Reports, p. —.)

The Spanish minister, however, at the solicitation of the claimants, brought the matter to the attention of the President of the United States, and from 1839 to this time (19 years) it has been made the subject of frequent attention in some way.

President Tyler brought it to the notice of the 27th Congress, in a special message, in 1842, and again in 1844; and President Polk, in 1847, notwithstanding the above decision, recommended to Congress to appropriate means for the payment of this claim, thus solemnly adjudged to have no validity.

The vessel was sold for salvage, and the boy, "Antonio," escaped and was never afterwards found.

Our obligations in this respect are supposed to arise out of the 8th, 9th, and 10th articles of our treaty with Spain.

"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 noways 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 United States are in no manner compromised or obliged to satisfy this claim by these executive recommendations, made in the face of an adjudication of our highest court, and without any new facts on which to base them.

Still, the frequency and pertinacity with which this claim is urged, and especially by the present Executive in his message of December 8, 1858, who uses the following language in respect to it: "Our minister is met with the objection that Congress has never made the appropriations recommended by President Polk in December, 1847,

'to be paid to the Spanish government, for the purpose of distribution among the claimants in the Amistad case. A similar recommendation was made by my immediate predecessor, in his message of December, 1853, and entirely concurring with both in the opinion that this indemnity is justly due, under the treaty with Spain of the 27th October, 1795. I earnestly recommend such an appropriation to the favorable consideration of Congress,' calls upon and justifies the minority of the committee in giving it a careful consideration, and they have no hesitation in recommending the rejection of the claim, for the following among other reasons:

First.—Ruiz and Montez, the Cuban claimants, had no *property* in these *Africans*, and could not have held them, even by the laws of Spain, if the facts proved in the United States court had been ascertained before a Spanish tribunal, they having been kidnapped and stolen from Africa in violation of national law, by an *act of piracy*, and these claimants buying them with full knowledge, acquired no rights in them superior to those possessed by their original captors.

The crown of Spain, in 1817, in a treaty with Great Britain, agreed to abolish the slave trade and declare it piracy; by its decretal order, made soon after it declared the slave trade abolished through all her dominions, including her colonies, and asserted the *freedom of all Africans* who should be *thereafter imported* into any of her national or colonial ports, as these Africans were imported into Cuba after the passage of this ordinance, they were free by the law of Spain. Their capture was piracy; their detention in bondage by any one was illegal; these claimants, therefore, had no property in them, but were themselves violators of law, and held them in unlawful imprisonment.

If these negroes were not "property" by the laws of Spain, it is too plain for argument that their pretended owners have no just claim for *indemnity* against us. This principle was decided in the case of the "*Amedie*."—(1 *Acton Reps.*, 240.)

Second.—Our treaty stipulations with Spain contemplate the restoration of "*lawful merchandise*," rescued "out of the hands of *pirates or robbers on the high seas*, as soon as due and sufficient *proof shall be made concerning the property thereof*."

1. These negroes we have seen were not "*lawful merchandise*."

2. They were not rescued from "*pirates or robbers on the high seas*." Indeed, it is perfectly clear that the "piracy" consisted in the unlawful detention of these *Africans* by Ruiz and Montez, and it is difficult to perceive how they could have escaped the penalty of the law if taken in the act of carrying off these negroes against their will, *after* they were landed any more than *before*.

How men stolen from their *homes*, in violation of all law and right, and rescuing themselves out of the hands of their captors, and returning to that home, can be called "*pirates*," is beyond comprehension!

3. There was never any "proof" offered to show these Africans the property of the claimants. In the nature of the case this could not be done. So that the case falls within no single provision of the 9th article of the treaty!

4. The vessel and owners were themselves engaged in an act of

piracy and robbery as much as if no landing had ever been effected in Cuba, and they had been transferred on the high seas from one vessel to the other; it was a *continuation* of the piracy, and the vessel was contraband and forfeited, with all property of her owners on board, which would have included "Antonio," if he could have been deemed a "chattle" by the laws of the United States.

5. The facts were ascertained by the court in a case in which the *claimants were parties to the record* in fact; and although the decision of the Supreme Court is no estoppel upon a co-ordinate branch of the government—the legislative—still, as its decision was just, it should be respected, and made a finality.

6. The court had power, and Congress has power, to go *behind the record*—the *permits* of the governor general of Cuba; but whether this be done or no, it is clear that the permits authorized only the transfer of *legal slaves*. These Africans were not such slaves. When that fact was proved, it became apparent that the attempt to smuggle them through under the authority of this *permit* was a gross fraud, which the papers did not and could not justify.

A pirate on the high seas may have legal papers as a *merchant vessel*; but when the fact of his actual character is proved by evidence *aliunde*, the papers are no protection; they are only *prima facie* evidence, liable to be contradicted by competent proof.

A pirate is an outlaw, and liable to be punished by any nation taking him, and no obligation exists to deliver up pirates to the government to which they purport to belong.—(Kent, vol. 1, 202.)

"The case of the "*Amedie*" was the earliest decision in the English courts on the great question touching the legality of the slave trade on general principles of international law. That was the case of an American vessel employed in carrying slaves from the coast of Africa to a Spanish colony. She was captured by an English cruiser, and the vessel and cargo were condemned to the captors in a vice admiralty court in the West Indies, and on appeal to the court of appeals in England the judgment was affirmed. Sir William Grant, who pronounced the opinion of the court, observed that the slave trade being abolished by both England and the United States, the court was authorized to assert that the trade, abstractly speaking, could not have a legitimate existence, and was *prima facie* illegal upon principles of universal law. *The claimant, to entitle him to restitution, must show affirmatively a right of property under the municipal laws of his own country; for if it be unprotected by his own municipal law, he can have no right of property in human beings carried as his slaves, for such a claim is contrary to the principles of justice and humanity.*"—(1 Kent's Com., 197.)

This claim is not supported, therefore, by the facts or the law so as to authorize Congress to make provision for its payment.

WILLIAM H. SEWARD.
SOLOMON FOOT.

FEBRUARY 2, 1858.