

# Race Law

Cases, Commentary,  
and Questions

F. Michael Higginbotham

CAROLINA ACADEMIC PRESS

Durham, North Carolina

# Dedi

---

Copyright © 2001  
F. Michael Higginbotham  
All Rights Reserved.

ISBN 0-89089-235-0  
LCCN 2001091151

CAROLINA ACADEMIC PRESS

700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919)493-5668  
www.cap-press.com

Printed in the United States of America

This book  
Leon as I call  
all. Referred  
ciary, during  
botham ofte  
without hop  
tomorrow.

Preparati  
botham and  
had been del  
retirement fi  
with this pro  
professional  
ther to me p  
1986 and inc  
*tics and Pres*  
ticles, and co  
New York Un  
drafted or ed

With Leon  
While my ne  
represent a c

---

1. For artic  
VI HARV. J. AF  
ers, *Working V*  
HARV. J. AFR.  
(2000); Adam  
*Jr.—His Days,*  
Anderson, *Wh*  
*Year Clerking I*  
*All Season*, 16  
16 HARV. B.L.  
*Venerable Voic*  
*All*, 26 HUM. F  
1813 (1999); C  
Jones, *In Mem*  
*riam: A. Leon*  
*Higginbotham,*  
NAT. BAR ASSO  
INEQ. 383 (199

claimed that slavery was fully entitled to federal protection and wholly immune from federal restraint.<sup>42</sup>

*Slavery and its Consequences: The Constitution, Equality, and Race* 11–18.  
Copyright © (1988) The American Enterprise Institute.  
Reprinted with permission of the American Enterprise Institute.

While the Constitution did not prohibit slavery, for economic and moral reasons many individual states did. Pennsylvania led the anti-slavery movement when it passed the first abolition legislation in 1780. As many states followed Pennsylvania's lead throughout the first half of the nineteenth century, the conflict between slave states and free states was heightened. Slave states were particularly disturbed by the degree to which free states provided protection to runaway slaves and free blacks. By the late 1850s, however, the Supreme Court would severely curtail the power of states to contest or abolish slavery within their borders. Three Supreme Court cases contributed to the nationalization of slavery and indirectly limited a state's power to abolish slavery.

## B. Background on *Amistad*

The *Amistad* case became a battleground between the leading supporters of slavery and abolitionists. President Martin Van Buren, who was counting on strong support from slaveholding states in the upcoming presidential election of 1840, was anxious to appease slave states and avoid any ruling that might call into question the fundamental legality of slavery. Those opposed to slavery, on the other hand, including former President John Quincy Adams, believed the case presented an opportunity to reveal the violence and cruelty of the international slave trade. Both Martin Van Buren and John Quincy Adams, however, would be overshadowed by Cinque, the leader of the slave revolt and the center of attention during the *Amistad* litigation, whose courage against oppression and commitment to family and freedom were steadfast.

## C. *The United States v. The Libellants and Claimants of the Schooner Amistad*, 40 U.S. 518 (1841)

### 1. Facts

Justice STORY delivered the opinion of the Court.

The leading facts, as they appear upon the transcript of the proceedings, are as follows: On the 27th of June, 1839, the schooner L'Amistad, being the property of Spanish subjects, cleared out from the port of Havana, in the island of Cuba, for Puerto Principe, in the same island. On board of the schooner were the captain, Ransom Ferrer, and Jose Ruiz, and Pedro Montez, all Spanish subjects. The former had with him a negro boy, named Antonio, claimed to be his slave. Jose Ruiz had with him forty-nine

42. Taney, in his *Dred Scott* opinion, declared: "The right of property in a slave is distinctly and expressly affirmed in the Constitution. . . . The only power conferred [on Congress] is the power coupled with the duty of guarding and protecting the owner in his rights." *Dred Scott v. Sandford*, pp. 451–52. For the relevant cases, see William M. Wiecek, *Slavery and Abolition before the United States Supreme Court, 1820–1860*, JOURNAL OF AMERICAN HISTORY, vol. 65, 34–59 (1978–1979).

negroes, claimed by him as his slaves, and stated to be his property, in a certain pass or document, signed by the Governor General of Cuba. Pedro Montez had with him four other negroes, also claimed by him as his slaves, and stated to be his property, in a similar pass or document, also signed by the Governor General of Cuba. On the voyage, and before the arrival of the vessel at her port of destination, the negroes rose, killed the captain, and took possession of her.

On the 26th of August, the vessel as discovered by Lieutenant Gedney, of the United States brig Washington, at anchor on the high seas, at the distance of half a mile from the shore of Long Island. A part of the negroes were then on shore at Culloden Point, Long Island; who were seized by Lieutenant Gedney, and brought on board. The vessel, with the negroes and other persons on board, was brought by Lieutenant Gedney into the district of Connecticut, and there libelled for salvage in the District Court of the United States. A libel for salvage was also filed by Henry Green and Pelatiah Fordham, of Sag Harbour, Long Island. On the 18th of September, Ruiz and Montez filed claims and libels, in which they asserted their 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 representatives of her Catholic majesty, as might be most proper..."

## 2. Opinion

... 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...

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 of 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 endeavoured 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. Nor do the libels of Ruiz or Montez assert them to be such.

This posture of the facts would seem, of itself, to put an end to the whole inquiry upon the merits. But it is argued, on behalf of the United States, that the ship, and 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 Cuba; 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 that 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....

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.

There is another consideration growing out of this part of the case, which necessarily arises 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 property, 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.

The view which has been thus taken of this case, upon the merits, under the first point, renders it wholly unnecessary for us to give any opinion upon the other point, as to the right of the United States to intervene in this case in the manner already stated. We dismiss this, therefore, as well as several minor points made at the argument.

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.

### 3. Holding

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 delay.

## D. Commentary on *Amistad*

*Amistad* represented the first shot fired in the Civil War. The case helped galvanize the pro-slavery and anti-slavery forces, pitting them against one another in the first direct legal confrontation over slavery before the Supreme Court. Although it came thirty years before the official outbreak of the war, the abolitionist victory in *Amistad* was a precursor to the North's ultimate victory over southern pro-slavery forces. But despite the bravery, courage, and character of Cinque and the other freedom fighters, most

Africans already enslaved in the United States would remain in bondage until the end of the Civil War.

## E. Background on *Prigg*

Less than a year after *Amistad*, the Supreme Court would strengthen the chains of bondage for enslaved blacks by making it easier to capture and return runaway slaves. As northern states outlawed slavery, some became more tolerant of and receptive to runaway slaves. This development created legal and political conflict between slave states and free states.

## F. *Prigg v. The Commonwealth of Pennsylvania*, 41 U.S. 539 (1842)

Justice STORY delivered the opinion of the Court.

### 1. Facts

The plaintiff in error was indicted in the Court of Oyer and Terminer for York county, for having, with force and violence, taken and carried away from that county to the state of Maryland, a certain negro woman, named Margaret Morgan, with a design and intention of selling and disposing of, and keeping her as a slave or servant for life, contrary to a statute of Pennsylvania, passed on the 26th of March, 1826. That statute in the first section, in substance, provides, that if any person or persons shall from and after the passing of the act, by force and violence take and carry away, or cause to be taken and carried away, and shall by fraud or false pretence, seduce, or cause to be seduced, or shall attempt to take, carry away, or seduce any negro or mulatto from any part of that commonwealth, with a design and intention of selling and disposing of, or causing to be sold, or of keeping and detaining, or of causing to be kept and detained, such negro or mulatto as a slave or servant for life, or for any term whatsoever; every such person or persons, his or their aiders or abettors, shall, on conviction thereof, be deemed guilty of a felony, and shall forfeit and pay a sum not less than five hundred, nor more than one thousand dollars; and moreover, shall be sentenced to undergo a servitude for any term or terms of years, not less than seven years nor exceeding twenty-one years; and shall be confined and kept to hard labour, &c. There are many other provisions in the statute which is recited at large in the record, but to which it is in our view unnecessary to advert upon the present occasion.

The plaintiff in error pleaded not guilty to the indictment; and at the trial the jury found a special verdict, which, in substance, states, that the negro woman, Margaret Morgan, was a slave for life, and held to labour and service under and according to the laws of Maryland, to a certain Margaret Ashmore, a citizen of Maryland; that the slave escaped and fled from Maryland into Pennsylvania in 1832; that the plaintiff in error, being legally constituted the agent and attorney of the said Margaret Ashmore, in 1837, caused the said negro woman to be taken and apprehended as a fugitive from labour by a state constable, under a warrant from a Pennsylvania magistrate; that the said negro woman was thereupon brought before the said magistrate, who refused to take further cogni-