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NEW HAVEN, BEFORE THE SUPREME
COURT OF THE UNITED STATES,
IN THE CASE OF THE UNITED STATES,
APPELLANTS, VS. CINQUE, AND OTHERS,
AFRICANS OF THE AMISTAD**

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Argument of Roger S. Baldwin, of New Haven, Before the Supreme Court of the United States, in the Case of the United States, Appellants, vs. Cinque, and Others, Africans of the Amistad by Roger S. Baldwin

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ROGER S. BALDWIN

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OF
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VS.
CINQUE, AND OTHERS, AFRICANS OF THE AMISTAD.

NEW YORK:
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—
1841.

ARGUMENT OF R. S. BALDWIN,

BEFORE THE

SUPREME COURT OF THE UNITED STATES.

MAY IT PLEASE YOUR HONORS,—

In preparing to address this honorable Court on the questions arising upon this record, in behalf of the humble Africans whom I represent,—contending, as they are, for freedom and for life, with two powerful governments arrayed against them,—it has been to me a source of high gratification, in this unequal contest, that those questions will be heard and decided by a tribunal, not only elevated far above the influence of Executive power and popular prejudice, but from its very constitution exempt from liability to those imputations to which a Court, less happily constituted, or composed only of members from one section of the Union, might, however unjustly, be exposed.

In a case like this, involving the destiny of thirty-six human beings, cast by Providence on our shores, under circumstances peculiarly fitted to excite the sympathies of all to whom their history has become accurately known, it is much to be regretted that attempts should have been made in the official paper of the Government, on the eve of the trial before this Court of dernier resort, to disturb the course of justice, not only by passionate appeals to local prejudices, and supposed sectional interests, but by fierce and groundless denunciation of the honorable Judge before whom the cause was originally tried, in the Court below: and, as if this were not enough, that two miserable articles from a Spanish newspaper, denouncing these helpless victims of piracy and fraud, as murderers, and monsters in human form, should have been transmitted by the minister of Spain to the Department of State, and published in

an Executive communication to the Senate, on the very day on which the hearing commenced in this honorable Court.

I do not allude to these improprieties from any apprehension of their influence here, but because I feel it to be a duty thus publicly to reprobate a course of proceeding, the obvious tendency of which is to excite jealousy and distrust, and thereby to impair the just confidence with which an unprejudiced community have ever regarded the judgments of this high tribunal.

This case is not only one of deep interest in itself, as affecting the destiny of the unfortunate Africans whom I represent, but it involves considerations deeply affecting our national character in the eyes of the whole civilized world, as well as questions of power on the part of the government of the United States, which are regarded with anxiety and alarm by a large portion of our citizens. It presents, for the first time, the question whether that government, which was established for the promotion of justice, which was founded on the great principles of the Revolution, as proclaimed in the Declaration of Independence, can, consistently with the genius of our institutions, become a party to proceedings for the enslavement of human beings cast upon our shores, and found in the condition of freemen within the territorial limits of a FREE AND SOVEREIGN STATE?

In the remarks I shall have occasion to make, it will be my design to appeal to no sectional prejudices, and to assume no positions in which I shall not hope to be sustained by intelligent minds from the South as well as from the North. Although I am in favor of the broadest liberty of inquiry and discussion,—happily secured by our Constitution to every citizen, subject only to his individual responsibility to the laws for its abuse,—I have ever been of the opinion that the exercise of that liberty by citizens of one State in regard to the institutions of another should always be guided by discretion, and tempered with kindness.

The facts on which the counsel for the appellees move to dismiss this appeal as they appear on the record, or are averred in their motion and not denied, are these:—

The schooner *Amistad*, on the 26th of August, 1839, arrived in Long Island Sound, in the possession of the appellees, and was anchored about half a mile from the northerly shore of Long Island, near Culloden Point.

She had sailed from Havana on the 28th of June, bound to Guanaja, under the command of her then owner, Raymon Ferrer, having on board, as passengers, two Spaniards, José Ruiz and Pedro Montez, and fifty-four “native Africans,” admitted to have been “recently import-

ed from Africa," of whom the appellees are a part. They were put on board the schooner on the night previous to her sailing, by Ruiz and Montez respectively, as their slaves; under order, (with the exception of the boy Kali,) of two custom-house permits, authorizing certain *Ladinos*, described only by Spanish names, and said to belong to them respectively, to go by sea to Puerto Principe. When the schooner arrived in Long Island Sound, none of her original crew, except Antonio, the slave of Captain Ferrer, were on board. She had no flag flying to denote her national character or former ownership. The captain and cook had been killed soon after she sailed from Havana, by some of the Africans in their efforts to recover their liberty; and the rest of the crew had abandoned the schooner in the boat. From that time, the schooner and the two Spanish passengers, and the boy Antonio, were under the control of the Africans, who were themselves, *de facto*, free.

Most of them had been on shore, within the territorial limits of the State of New York, whose laws prohibit slavery, and a part of them were then on shore in communication with the inhabitants, on whose protection they had thrown themselves, when the schooner was boarded by an officer and boat's crew of the United States brig Washington, and the Africans on board, as well as those on shore, were, at the instance of the two Spaniards, who claimed them as their slaves, seized by the order of Lieutenant Gedney, a naval officer in the service of the United States; forcibly withdrawn from the territorial jurisdiction of the State in which they were found, and brought, with the schooner of which they were in possession, into the District of Connecticut. The Africans were ignorant of any language but that of their nativity, and were known by Ruiz and Montez to have been recently imported from Africa.

In May, 1818, the Spanish government, by its minister, Don Onis, communicated to the government of the United States the treaty between Great Britain and Spain, bearing date the 23d of September, 1817, for the abolition of the slave-trade, and the ordinance of the King of Spain, issued in pursuance thereof, of the date of December, 1817, prohibiting the traffic, and directing that its victims shall be declared free, in the first port in his dominions at which they shall arrive. In February, 1819, the treaty between Spain and the United States was revised at Washington, after a protracted negotiation between Mr. Adams, then Secretary of State, and the Spanish minister, Don Onis.

On the arrival of the schooner at New London, on the 29th of Au-

gust, 1839, before the intervention of the Spanish minister at Washington, the Africans were placed in the custody of the law, under process of the District Court of the United States, as a Court of Admiralty, against them *as property*, on the libel of Lieutenant Gedney and his officers for salvage.

On the 6th of September, 1839, the Spanish minister wrote to the Secretary of State, demanding that the schooner and *her cargo*, be delivered to the owner without salvage; and that "the negroes" (whom he represented to belong to Ruiz and Montez,) "be conveyed to Havana, or be placed at the disposal of the proper authorities in that part of her Majesty's dominions, in order to their being tried by the Spanish laws which they have violated; and that in the mean time they be kept in safe custody in order to prevent their evasion."

Subsequently to this requisition by the Spanish minister, viz., on the 18th of September, 1839, José Ruiz and Pedro Montez, respectively, filed their libels in the District Court, and prayed process of attachment against the Africans as their property, averring that they were within the jurisdiction of the court, and insisting that they "ought, by the laws and usages of nations and of the United States, and according to the treaties between Spain and the United States, to be restored to them, without diminution and entire." The process of the court was issued according to their request, and the appellees were again taken into custody thereon as *property*. Claims were, at the same time, filed by Ruiz and Montez, respectively, in answer to the libel of Lieutenant Gedney for salvage.

After the parties in interest were thus before the court, the District Attorney of the United States on the 19th of September, filed a suggestion that the Spanish minister had presented to the government of the United States a claim, that the appellees are the property of Spanish subjects, and that they arrived within the jurisdictional limits, and were taken possession of by a public armed vessel, of the United States, under such circumstances as to make it the duty of the Government to cause them "to be restored to the true proprietors and owners thereof, as required by the treaty subsisting between the United States and Spain."

And therefore the District Attorney, in behalf of the United States, prays the Court, on its being made legally to appear that the claim of the Spanish minister is well founded and conformable to the Treaty, to make such order as may best enable the United States to comply with their Treaty stipulation; but if it should appear that the negroes were transported from Africa, and brought within the United States,

contrary to the laws of the United States, that the Court will make such order as will enable the President to send them to Africa pursuant to the act of Congress in such case provided.

On the 19th of November, the District Attorney filed another suggestion similar to the first, omitting only the alternative prayer; and on each of these suggestions, a warrant of seizure was issued by the Court, and the Africans were again taken into custody thereon.

To these several libels, claims, and suggestions, the Africans, who, when seized, were in the condition of freemen, capable of having and enforcing rights of their own, severally answered: that they were born free,—and were kidnapped in their native country, and forcibly and unlawfully transported to Cuba;—that they were wrongfully and fraudulently put on board of the Schooner *Amistad* by Ruiz and Montez, under color of permits, *fraudulently* obtained and used; that after achieving their own deliverance they sought an asylum in the State of New York, by the laws of which they were free; and that while there, they were illegally seized by Lieutenant Gedney, and brought into the District of Connecticut.

The District Court found these allegations in substance to be true, and therefore dismissed Lieutenant Gedney's libel for salvage on the Africans; and also dismissed the libels of Ruiz and Montez, and the suggestion or claim made by the United States on their behalf; but in accordance with the alternative prayer by the District Attorney in behalf of the United States, decreed that the Africans should be delivered to the Executive to be sent back to Africa.

From the finding and decree of the District Court, neither Ruiz nor Montez, nor Gedney have appealed. They voluntarily sought, by their libels, the action of the Court, and submitted to the decision against them. They might have appealed, but chose not to avail themselves of the privilege.

The Spanish minister never made himself a party to the proceedings in the Court, either as the Representative of the Government, or of the subjects of Spain. It is true, the decree of the District Court speaks of "the *claim* of the minister of Spain which demands the surrender of Cinque and others,"—as if it were a claim made by him in Court, and dismisses it. It also speaks of the claims of Ruiz and Montez as being "included under the claim of the minister of Spain," and dismisses them also.

But the Record shows that no appearance or claim was ever made in Court, by the Spanish minister; and it appears by the correspondence transmitted to the House of Representatives, (Doc. 185, 26 Cong. p. 6.

7, 8,) that his demand on the Executive for the surrender of the Africans as *criminals*, was made on the 6th of September, 1839, several days anterior to the filing of the libels of Ruiz and Montez in the District Court against them as *property*. Of course their libels and claims could not have been included in any claim of the Spanish minister, on which the Court was called to decide. Indeed the Spanish minister would have had no right to appear in the Court of Admiralty as the representative of Spanish claimants of property, who were personally in Court pursuing their claims for themselves. See 1 Mason, 14; 10 Wheat. 66. And so far was he from actually appearing, or desiring to appear as a suitor in the Court, that he has continued to the present time to protest against the exercise of jurisdiction by any of the tribunals of the United States over the subject matter in controversy. Cong. Doc. 185, p. 21. H. R. 1840, and Sen. Doc. 179, 1841, p. 6. He has neither taken, himself, an appeal from the decree of the Court, nor has he authorized an appeal to be taken by the United States in his behalf. The Government of the United States, therefore, are acting in these proceedings as *volunteers*, having no interest of their own, and no authority to represent or affect the rights of others. And yet, singular as it may seem, the *only appeal* which has been taken from the decree of the Court below is the appeal of the United States in the following words: "And after the said decree is pronounced the said United States, *claiming as aforesaid in pursuance of a demand* made upon them by the minister of her Catholic Majesty the Queen of Spain, to the United States, move an appeal, &c."

The Counsel for the Africans move the Court to dismiss this appeal, on the ground that the Executive Government of the United States had no right to become a party to the proceedings against them as *property*, in the District Court, or to appeal from its decree.

1st. It was an unauthorized interference of the Executive with the appropriate duties of the Judiciary.

By the constitution of the United States the sovereignty, originally in the people, was confided by them, so far as was deemed necessary for the purposes of a National Government, to three separate departments; each in the exercise of its legitimate powers, sovereign and independent of the other. And, it was long since remarked by an eminent jurist, that when either branch of the government usurps that part of the sovereignty which the constitution assigns to the other branch, liberty ends, and tyranny begins. The constitution designates the portion of sovereignty to be exercised by the *judicial* department, and among