

## ADMIRALTY LAW

## Expert Analysis

# Slave Ships: When Mutiny Matters

*I've paid my dues  
Time after time  
I've done my sentence  
But committed no crime ...  
But it's been no bed of roses  
No pleasure cruise  
I consider it a challenge  
before the whole human race  
And I ain't gonna lose*

—“We are the Champions,”  
song by Queen

**A**vessel sailing toward the United States often stands as a symbol of hope and even freedom for some asylum seekers. For many that arrived in this country long ago by sea, the opposite is true. Centuries old maritime cases capture some events that are not so seeworthy, but federal judges have righted the ship.

One of the most famous cases is “The Amistad.”

### Captured

In February 1839, Portuguese slave hunters rounded up hundreds of people in Sierra Leone, Southwest



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Africa. The unwitting passengers were then forced to board a Spanish ship heading toward Cuba.

By this time, the transatlantic slave trade had already been abolished by the United States and European powers. Nonetheless, the illegal transportation of African captives to be traded as slaves unfortunately remained on some radars.

When this ship of the enslaved arrived in Havana, Cuba, two Spanish plantation owners named Pedro Montes and Jose Ruiz purchased 53 of the African captives. They stowed the captives onboard a 78-foot wooden Spanish Schooner named Amistad, to travel from Havana toward Central Cuba, where their plantations were located.

### Mutiny!

Shortly into the journey, the cook onboard Amistad shook the captives to the core—threatening to salt,

cook and eat them. Horrified by this and the equally distasteful prospect of slavery, one brave captive named Joseph Cinque escaped his shackles and freed the other captives. Using knives they found in the cook’s own arsenal, the captives slaughtered the cook and the captain.

Despite the mutiny, the plantation owners, Montes and Ruiz, continued northward along the east coast of the United States, hoping Amistad would be intercepted and the African captives would be returned to Cuba as slaves. Sure enough, Amistad was seized off Montauk, New York, by a U.S. Navy battleship, USS

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Washington, but not with the plantation owners’ desired outcome. The Naval officers placed the captives in chains and brought them to federal court in Connecticut, where the Naval officers sought to claim “salvage” rights to the ship, its cargo

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and a salvage award to return the captives to captivity in Spain.

### Salvage

As Judge Korman in the Eastern District once recognized: “Salvage is a doctrine unique to maritime law that pre-dates the Christian era by 900 years.” *In re City of New York*, 534 F. Supp. 2d 370, 376 (2d Cir. 2008). To succeed, a salvage claim requires that the vessel be in peril, the service rendered is voluntary, and that the assistance is successful. See James E. Mercante, “Treasure at Sea: Finders Are Not Always Keepers.” Typically, salvage applies to property, such as saving a vessel. However, many have sought to recover an award for “life salvage.”

In *Broere v. Two Thousand One Hundred Thirty-Three Dollars*, 72 F. Supp. 115 (E.D.N.Y. 1947), a vessel owner sought to claim salvage rights after recovering a dead body at sea. There, the vessel owner recovered a corpse with \$2,133 in cash in his pockets. The New York federal court held that the vessel owner was entitled to a salvage award. The claim was not dismissed outright because there was no life salvaged, but the money recovered from the corpse constituted property subject to salvage. In *Tug Dorothy J v. City of New York*, 749 F. Supp. 2d 50 (E.D.N.Y. 2010), the Eastern District of New York awarded a tug company and its crew \$75,000 for the comfort and aid provided to a stranded Staten Island Ferry and its stricken passengers onboard after a crash into a concrete pier. Indeed, the 1989 Salvage Convention includes saving

“life” as a factor to be considered when rewarding salvage. Life salvage awards are infrequently made. “If the few life salvage awards which have been made are enough to support a generalization, it can be said that it is still far more profitable to save property than to save lives.” See Gilmore & Black, “The Law of Admiralty” (2d ed. 1975) at 573.

### Rumble in the Courts

The *Amistad* captives were charged with mutiny and murder, but the federal judge in Connecticut rightfully dismissed the indictments after the horrific story and the

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Today, the *Amistad* floats newly constructed, secure and seaworthy in its new home ... America.

cook’s alarming pronouncement was revealed.

Two lawsuits were filed in the District of Connecticut following dismissal. The first was brought by the U.S. Naval officers and Spanish plantation owners who asserted competing property claims to the cargo and captives onboard *Amistad*. A second suit was filed by the captives against the Spanish plantation owners, charging them with kidnapping and enslavement. The Naval officers’ property rights claim was based on the law of salvage. Generally speaking, the *Amistad*, in peril after having been overtaken and then rescued by the Naval officers (voluntary and successful), met the basic criteria for a salvage claim by the Naval officers.

The plantation owners’ claims for return of the schooner *Amistad* and the captives were based on a U.S. treaty with the Spanish government which, under normal circumstances, would require the vessel and its occupants to be extradited to Spain. The case ultimately made its way from the “Circuit Court of the District of Connecticut, sitting in Admiralty” to the U.S. Supreme Court. (The Second Circuit was not founded until June 16, 1891). Former President John Quincy Adams represented the African captives as defense counsel arguing for their freedom. See *United States v. Libellants and Claimants of Schooner Amistad*, 40 U.S. 518 (1841).

The U.S. Supreme Court, with an opinion authored by Justice Story, held that the rights and liberties of human beings took precedence over any treaty of another land. The court decided that “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.” For the same reasons, the Naval officers could not claim any right to an award for seizing the African captives.

### Pack the Court

At this time (1841), there were only eight Supreme Court justices, and one (Justice Baldwin)

dissented. If the Supreme Court had been split, 4-4, then the lower court ruling would have remained in place. In the *Amistad*, because the lower court held in favor of the captives, the outcome would have been the same.

Not long after the *Amistad*, Congress passed an act in 1866 that reduced the Supreme Court to just seven justices, thereby preventing democratic president (Andrew Johnson) from appointing a new justice. But three years later, Republican Ulysses S. Grant became president and passed a Judiciary Act, which in today's parlance, packed the court to nine, where it has remained ever since.

From the decision of *Amistad*, freedom was restored to Joseph Cinque and 34 survivors of the ordeal (the others had died at sea or in prison), who were repatriated to their homes in Sierra Leone.

### Amistad Lives On

The *Amistad* has long been scrapped, but a 128-foot replica of the schooner is presently docked in Long Island Sound at the Mystic Seaport Museum in New Haven, Connecticut. The new *Amistad* is 10-feet larger than the 1839 version to accommodate an engine room. The replica, like its original, boasts two 100-foot masts and stands as a reminder of the brave protest and successful uprising of Cinque and his fellow captives during the illegal slave voyage.

*Amistad* paved the way for many important decisions on equality, such as *Lemmon v. People*, 20 N.Y.

562 (N.Y. 1860), which mandated the release of eight slaves, including six children, brought to the Port of New York by Virginia slave owners, Jonathan and Juliet Lemmon, who were in transit while relocating to Texas.

On July 26, 2019, the state of Alabama filed a claim to protect its rights to the wreckage of the slave ship *Clotilda*. See *State of Alabama v. The Unidentified Shipwrecked Vessel believed to be the Schooner Clotilda*, 19-cv-423 (S.D. Ala. 2019). The *Clotilda* is the last known slave ship to travel to the United States. In 1860, the ship illegally carried 109 captives from Africa to Mobile, Alabama, nearly 50 years after the slave trade had been abolished. The captives were sold as slaves upon arrival in Alabama.

According to the state of Alabama's complaint "To hide the evidence of their crime, the owner and captain of the *Clotilda* arranged to have the vessel towed by steam tug up the Spanish River, following the waterway to the junction of the Mobile River. At that point—at or near Twelve Mile Island—the captives were transferred to other vessels, and the *Clotilda* was burned and scuttled." The Unidentified Shipwrecked Vessel believed to be the *Schooner Clotilda*, 19-cv-423 (S.D. Ala. 2019).

Alabama now wants to own and maintain the wreck as an historical artifact. Alabama instituted a maritime action in rem (against the *Clotilda*) seeking salvage rights to ownership. There was consideration by the descendants of the Africans held captive onboard

*Clotilda*, of filing a claim against the ship, in rem, for reparations. However, no conflicting claim was filed in the federal court action. On March 30, the District of Alabama in admiralty entered default judgment against "any party alleging a claim or lien against the Unidentified Shipwrecked Vessel believed to be *Schooner Clotilda*" that had not filed a claim by the deadline.

### What Matters

From the beginning of trade and commerce aboard wooden sailing vessels, federal courts helped right some serious maritime wrongs, with decisions paving the way for landmark Supreme Court rulings such as the *Amistad*. Today, the *Amistad* floats newly constructed, secure and seaworthy in its new home ... America. A stark reminder of its enslaved past but with a safe, bright and proud future. Now that's a seaworthy concept!