

**Marine Insurance and Mercantile Enterprise Through the
Lens of *The Baltimore Insurance Company v. McFadon*
4 H. & J. 31 (1815)**

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I. Introduction

On March 20, 1799, the Brig Betsey, a merchant vessel flying under American colors, found herself anchored in a small harbor on the northeast of Cuba, caught between the fire of French privateers on the shore and a massive British frigate. Only three days prior, she had been captured by a French privateer, and now a British naval ship wanted to claim her as a prize of its own. In many ways, this scene was a microcosm for what had been occurring in Europe and America during the 1790's—European powers embroiled in hostilities against each other and the United States caught in the middle of the controversy between them.

The Baltimore Insurance Company v. McFadon,¹ at its core, stems from the altercation in the harbor and surrounding events. However, the dispute in the Cuban harbor is a far cry from what was ultimately the dispute before the Maryland Court of Appeals—whether mutual claims could be set-off against each other in a suit involving an open policy of insurance. Thus, to the unknowing reader, the case will seem mundane at first glance. However, a study of the historical context of the case and the events that led up to it proves illuminating as to the history of marine insurance, trade between Baltimore and the West Indies, and the impact of the war in Europe on American mercantile enterprise. This paper traces the evolution of *The Baltimore Insurance Company v. McFadon* from its origin to its disposition in the Maryland Court of Appeals, explaining the historical significance and meaning of what occurred at each step.

II. Historical Context: The Napoleonic Wars and the Quasi-War with France

¹ 4 H. & J. 31 (1815).

In early 1793, war broke out between republican France and a coalition of royalist European powers.² It was not only a military and political conflict, but also an economic struggle, that ensued.³ Shortly after the eruption of hostilities, Britain declared that all French ships and cargo were liable to seizure.⁴ An immediate effect of the outbreak of war was to stimulate American shipping.⁵ Trade in the West Indies, which was dominated by European shippers in times of peace, fell to American neutrals.⁶ American merchants began to import goods from Europe both to supply American markets, and to provide for the needs of the Caribbean islands through neutral shipping.⁷ However, this opportunity for American merchants did not last unhindered. In November 1793, the British government authorized the capture of the vessel of any nation trading with French colonies, which led to the seizure of a large number of American vessels in the West Indies.⁸

The British interruption of American shipping soon calmed. The strict orders were altered in January 1794 to only authorize the capture of ships trading directly between the French West Indies and a European Port.⁹ Then, Britain and the United States signed the Jay Treaty in November 1794. The Jay Treaty continued the prohibition on direct trade between the French West Indies and Europe, but opened the

² John D. Forbes, *European Wars and Boston Trade: 1783-1815*, THE NEW ENGLAND QUARTERLY, Dec. 1938, at 712.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Geoffrey Gilbert, *Baltimore's Flour Trade to the Caribbean, 1750-1815*, THE JOURNAL OF ECONOMIC HISTORY, Mar. 1977, at 250.

⁷ Stuart Bruchey, *Success and Failure Factors: American Merchants in Foreign Trade in the Eighteenth and Early Nineteenth Centuries*, THE BUSINESS HISTORY REVIEW, Autumn 1958, at 283.

⁸ Forbes, *supra* note 2, at 713.

⁹ *Id.*

British West Indies to American ships for direct trade with England and the United States.¹⁰

However, the Jay Treaty caused anger in France, who believed that the U.S. policy was aiding Britain.¹¹ It also caused tension with the Spanish, who had first allied themselves with the British, but then reentered the war on the side of France in 1796 after taking a brief break from the hostilities in 1795.¹² Spain, for their part, feared that Britain might use the United States as a base for attacks on Louisiana and Florida.¹³ Consequently, France and Spain became bent on crippling U.S. commerce in the West Indies, and “by means of privateers preyed upon the United States commerce in the Caribbean, on the pretext that most of it was bound for British island ports with contraband.”¹⁴ Both France and Spain used Spanish ports to sell the goods that they obtained through the capture and condemnation of U.S. vessels.¹⁵

Attacks on American ships increased with the act of Nivôse 29, passed on January 18, 1798, which declared that the nationality of the vessel was determined by its cargo.¹⁶ If any item on board was of British origin, the vessel could be confiscated.¹⁷ With this act, France began a period of essentially unrestricted privateering.¹⁸ Anger over the X.Y.Z. Affair and the continued aggression of French privateers on American shipping

¹⁰ Forbes, *supra* note 2, at 715.

¹¹ Roy F. Nichols, *Trade Relations and the Establishment of the United States Consulates in Spanish American, 1779-1809*, THE HISPANIC AMERICAN HISTORICAL REVIEW, Aug. 1933, at 297.

¹² *Id.* at 292.

¹³ *Id.* at 297.

¹⁴ *Id.*

¹⁵ *Id.* This is significant because it explains why the French privateer captured The Betsey off the coast of Cuba, a Spanish colony, and then brought her to a Cuban harbor.

¹⁶ Forbes, *supra* note 2, at 717.

¹⁷ *Id.*

¹⁸ *Id.*

precipitated a period of undeclared hostilities with France,¹⁹ often referred to as the “Quasi-War,” which lasted from 1798 to 1800. During this time, the Congress enacted a series of laws forbidding all trade with France or its possessions: “An Act to Suspend the Commercial Intercourse between the United States and France, and the Dependencies Thereof,” passed June 13, 1798; “An Act Further to Suspend the Commercial Intercourse between the United States and France, and the Dependencies Thereof,” passed February 9, 1799; and an additional act titled “An Act Further to Suspend the Commercial Intercourse between the United States and France, and the Dependencies Thereof,” passed February 27, 1800. Napoleon Bonaparte became First Counsel of France in November 1799 and had the Nivôse law repealed shortly thereafter, recognizing the disadvantages of alienating a power neutral to the conflict between the European powers.²⁰ On September 6, 1800, President John Adams ended the restraints and prohibitions on trade with France and its territories by proclamation.²¹ Hostilities between the France and the United States officially culminated when the two powers signed the Treaty of Mortefontaine on September 30, 1800. It was against this backdrop that the events that precipitated that case of *The Baltimore Insurance Company v. McFadon* took place.

III. The Events that Precipitated the Controversy

A. Departure from Baltimore

¹⁹ Nichols, *supra* note 11, at 299.

²⁰ Forbes, *supra* note 2, at 717.

²¹ Proclamation of September 6, 1800, John Adams, President of the United States of America.

The protagonist of this case is not a person, but a ship—the Brig Betsey.²² Four Baltimore merchants, Richard Caton, John McFadon, Richard Lawson, and John F. Kennedy, owned the vessel.²³ In February 1799, the merchants appointed Captain William Furlong, a native of Massachusetts who had resided in Baltimore since 1792, to command the Brig Betsey on a voyage to the West Indies.²⁴ Furlong had become acquainted with the owners about ten years before when transacting business with them as merchants.²⁵ Caton, Kennedy, and John McFadon and Co., the trading partnership of McFadon and Lawson, owned the cargo that was placed on board, which they consigned to Furlong for sale.²⁶

Baltimore merchants, as a class, were heavily invested in the shipping industry.²⁷ For this reason, it was not uncommon for Baltimore merchants to be involved in the

²² The Betsey was built in Wilmington, Delaware in 1794. Daniel Delozier, surveyor of the Port of Baltimore, described her as follows:

the said Ship or vessel has two decks and two masts and [] her length is seventy nine feet seven inches her breadth twenty four feet ten inches her depth _____ and [] she measures two hundred and nine tons and 78/95th part of a ton [] she is a square sterned Brig has a round Tuck no Galleries and Minerva head.

Ship's papers No. 1, Registration at Port of Baltimore (Feb. 29, 1799).

²³ *Id.*

²⁴ Ship's papers No. 13, Invoice of Merchandise Shipped on Board the Brig Betsey (Feb. 23, 1799).

²⁵ The Advocate General ex rel. Hamilton v. The Schooner La Lionne, Deposition of William Furlong, Answer to the Second Interrogatory.

²⁶ Ship's papers No. 3, Certification of Thomas Donaldson, Notary Public (Feb. 23, 1799) (certifying that John McFadon and Richard Caton took oaths before him, and that the property mentioned in the bill of lading and invoice "are actually and bona fide the sole and entire property of the said John McFadon and Co. and Richard Caton and John F. Kennedy and are consigned on their sole account and risque to the above named master"). It also appears that there was also one box of calicoes on board of the Brig Betsey owned by Hugh Neilson, which he consigned to Furlong. He requested that Furlong sell the calicoes and purchase in return the best green coffee that he could find. Ship's papers No. 7, Invoice for One Box of Calicoes (Feb. 29, 1799).

²⁷ Geoffrey Gilbert has concluded that, between the years of 1789 and 1793, the majority of those who invested in shipping also identified themselves as merchants. Of the two hundred and thirty-seven individuals who invested in shipping during that period, one hundred and twenty-four were merchants, whereas only seventy were mariners. Merchants also owned the greatest number of total investment shares in shipping as compared to any other profession. Geoffrey Gilbert, *Maritime Enterprise in the New Republic, Investment in Baltimore Shipping, 1789-1793*, THE BUSINESS HISTORY REVIEW, Spring 1984, at 17.

shipping of their own cargos.²⁸ The consignment of cargo to ship captains was also a typical practice of eighteenth century trade in the West Indies.²⁹ Stuart Bruchey has attributed the growth of merchant-captain consignment trading to a number of reasons.³⁰ First, many merchants started as captains of ships going to the West Indies, and were familiar with the markets. Second, only a limited numbers of items were typically imported from the West Indies (e.g. molasses, rum, coffee), and they were much easier to appraise than European manufactured goods. Third, the practice of consigning goods provided much greater flexibility—it gave the captains leave to take the cargos to ports that were not glutted. Finally, the North American goods were often perishable, so the traders could not wait a long time for an upturn in the market.³¹

By Letter of Instruction, Caton and McFadon provided Furlong with the following directions on how he was to conduct his voyage:

[P]roceed without delay to Carthagena on the Spanish main where we have reason to believe you will meet a ready and profitable sale for the Cargo now on board the proceeds you will invest in the produce of that country preferring such articles as by a comparison with the prices of our markets hereto annexed will promise to pay the best profit. We shall not confine you to produce or any particular article for your Return cargo relying very much on your Judgment and experience for selecting the most profitable articles and those quickest in sale . . . Should you not meet with a ready sale at Carthagena you will inform yourself the market of Vera Cruse which we expect is open, New Orleans and Havana and you will avail

²⁸ *Id.* at 17.

²⁹ Bruchey, *supra* note 7, at 280.

³⁰ *Id.* at 281-82.

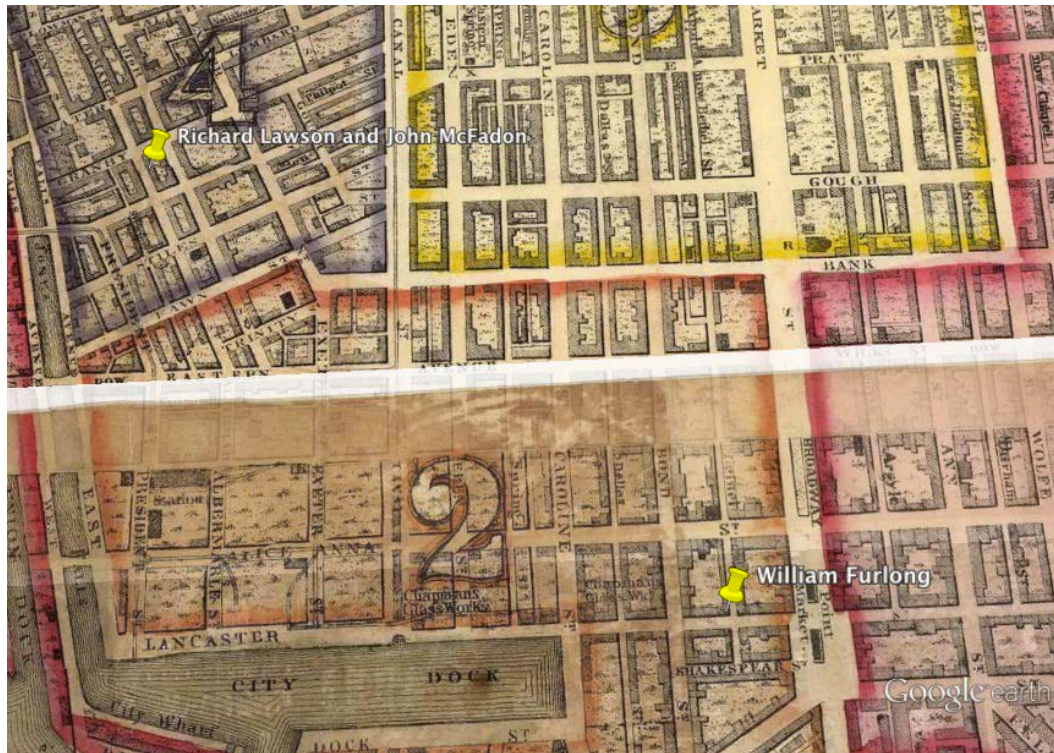
³¹ *Id.*

yourself of any one of them *but you must not if possible go to more than two ports as you will thereby make a deviation in our Insurance and subject us to Risk which we wish to guard against. We are Insured to two Spanish ports only either on the main or Cuba* – you will not run from a good market on any account in hopes of doing still better. You will give us the earliest Information of your arrival and every occurrence respecting your voyage and be particularly pointed as to the time of the Betsey’s sailing *that we may govern ourselves respecting Insurance*

[emphasis added]. The Letter of Instruction is notable for two reasons. First, the owners placed particular emphasis on the need to comport with the terms of the insurance policy. Second, despite the owner’s strict admonitions regarding the insurance policy, the owners gave Furlong considerable latitude with regard to the disposition of the cargo. According to Bruchey, this was characteristic of the agency relationship between the merchant and captain in the eighteenth century, where goods had been consigned to the captain.³² A merchant would often direct a captain to go to a particular island, inquire about the markets there and in the surrounding islands, and sell where they thought they could gain the most profit.³³ Thus, in every aspect of the voyage, the captain was afforded extreme flexibility.

³² *Id.* at 281.

³³ *Id.* at 281.



This figure uses the plan of Baltimore created by Thomas Poppleton to show where Richard Lawson, John McFadon, and William Furlong resided. As demonstrated this figure, the three lived relatively close to one another. According to the 1799 Baltimore City Directory, Lawson and McFadon resided on Albermarle Street. However, the Directory does not specify the street number for Lawson or McFadon. The Directory lists Furlong as a “captain” and places his residence at 24 Sheepspear Street. A deposition of Furlong indicates that he lived there with his wife and children. As discussed in biography of Richard Caton provided in the addendum, Caton resided between two large estates outside of the city at that time. John F. Kennedy does not appear the 1799 Baltimore City Directory, so he likely lived outside of the city.

The ship’s papers from the Port of Baltimore indicate that the ship was “laden with fish, pork, beef, flour, lard, oil, soap, candles, and dry goods.”³⁴ An invoice of the merchandise shipped on board of the Brig Betsey indicates that the total value of the goods shipped was \$32,554.21.³⁵ On top of this amount, a five percent commission and a twelve percent insurance fee were charged, which brought the total cost to \$38,933.64.³⁶

Lawson and McFadon, operating as John McFadon and Co., obtained the insurance for

³⁴ Ship’s papers No. 1, Sea Letter Signed by President John Adams (Feb. 23, 1799). “Carthagen” appears to be an Anglicized misspelling of “Cartagena,” a port city on the coast of Colombia.

³⁵ Ship’s papers No. 13, Invoice of Merchandise Shipped on Board the Brig Betsey (Feb. 23, 1799).

³⁶ *Id.* At that time, twelve percent was a normal rate for marine insurance. Solomon Huebner, *The Development and Present Status of Marine Insurance in the United States*, AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, Sept. 1905, at 255

the cargo through the Baltimore Insurance Company.³⁷ The policy, dated March 11, 1799, insured the cargo for loss up to \$20,000 on a voyage from Baltimore to Cuba, and back.³⁸ At trial, the discrepancy between what is described in the ship's papers, and what is described as the ship's destination in the insurance policy would become an issue.

By a sea letter dated February 23, 1799, President John Adams gave "leave and permission . . . to William Furlong of Baltimore Master or commander of the Brig called Betsey . . . at present in the Port of Baltimore bound for Carthagen"³⁹ It was necessary for neutral merchant ships to carry a sea letter as evidence of their nationality in times of war.⁴⁰ The sea letter always listed the port of origin and the port of destination and contained a description of the ship's cargo, as it did here.⁴¹ As it turned out, it was a document that the Brig Betsey would soon need.

B. Trouble in the West Indies

i. The Capture of the Brig Betsey

³⁷ Trial Court Papers, at 4.

³⁸ *Id.* at 5. The following clause in the insurance policy detailed the risks that the insurance policy agreed to bear:

"perils . . . of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and counter mart, surprisals, taking, at sea arrests, restraints and detainments of all kings princes and people of what nation, condition or quality so ever, barratry of the master and mariners and of all other such perils losses and misfortunes that have or shall come to the hurt detriment or damage of the said goods and merchandizes or any part thereof"

At that time, this was a standard clause inserted into marine insurance policies to describe the hazards that the insured was protected against. *See* SOLOMON HUEBNER, *MARINE INSURANCE* 56 (1922). Solomon Huebner explains that marine insurance is not intended to indemnify all kinds of losses that might result from a voyage. Rather, the purpose of marine insurance is to cover losses "which are accidental in character and beyond the control of the insured." *Id.* at 3. These "fortuitous losses" stand in contrast to "[c]ustomary and inevitable loss, such as results from the inherent nature of the goods or the usual wear and tear of seafaring property, or which occurs in connection with the inherent nature of goods or their packing when considered in light of the particular voyage under consideration." *Id.*

³⁹ Ship's papers No. 1, Sea Letter Signed by President John Adams (Feb. 23, 1799).

⁴⁰ BLACK'S LAW DICTIONARY 1516 (4th ed. 1968)

⁴¹ *Id.* President Madison, by proclamation, discontinued the use of sea letters in 1815. *Id.*

The Brig Betsey left Baltimore on March 1, 1799,⁴² and it quickly encountered trouble. On March 17, 1799, a French schooner privateer called La Lionne (or “the Lyon”) captured the Betsey about three leagues from Barracoa.⁴³ While in the possession of La Lionne, the crew of the French privateer took away “the most valuable part” of the dry goods in the Betsey’s cargo, and transferred it to their own ship.⁴⁴ However, the Betsey was not to stay in possession of the French privateer for long. In the early morning of March 20, 1799, the HMS Surprise (or “Surprize”), a British frigate commanded by Captain Edward Hamilton, discovered La Lionne and the Brig Betsey off the northeast end of Cuba while the ship was on a cruise.⁴⁵ The HMS Surprise then pursued the Betsey and La Lionne into a small harbor on the Cuban coast, which was reported to be a gathering place for privateers.⁴⁶

When the HMS Surprise entered the harbor, it was met by heavy fire from the shore.⁴⁷ The HMS Surprise found the Brig Betsey anchored, and the French privateer drifting toward shore, abandoned by its crew.⁴⁸ Nevertheless, the HMS Surprise had difficulty leaving the harbor due to sustained fire from the shore, and was forced to stay in the harbor two days and two nights.⁴⁹ By the time the ships succeeded in leaving the harbor, two men aboard the HMS Surprise had been killed, both the Betsey and La Lionne had lost their rudders from being run aground, and the Betsey was so damaged

⁴² The accounts of the number of men in the crew vary. Furlong asserted in the course of a deposition that there were thirteen mariners on board, including officers, all of which were American. Ebenzer Banks, the second mate of the Brig Betsey, attested that there were fourteen mariners on board, including Furlong, some American, some Swedish, and some Irish. *See* Deposition of William Furlong, Answer to Fifth Interrogatory (Mar. 27, 1799); Deposition of Ebenezer Banks, Answer to Fifth Interrogatory (Apr. 3, 1799).

⁴³ Deposition of William Furlong, Answer to Third Interrogatory (Mar. 27, 1799).

⁴⁴ Deposition of William Furlong, Answer to Twenty-fifth Interrogatory (Mar. 27, 1799).

⁴⁵ Deposition of William, Midshipman on the Surprise (Apr. 19, 1799).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

that both pumps had to be run continually in order to get her back to the Kingston Harbor in Jamaica.⁵⁰



Captain Edward Hamilton⁵¹

ii. Proceedings in the Court of Vice Admiralty of Jamaica

After being taken to the Kingston Harbor, *La Lionne* and the *Betsey* were libeled before the Vice Admiralty Court of Jamaica in the town of Saint Lago de la Vega.⁵² Although the *Betsey* had been flying under American colors, Captain Hamilton alleged that the *Betsey* and the articles on board “belong[ed] unto Spain or to some person or persons being subjects of Spain or inhabiting within some of the territories of Spain.”⁵³ Furlong, represented Edmund Pusey Lyon, Esq., brought a claim for the Brig *Betsey* and her cargo on behalf of the owners.⁵⁴ He asserted that the *Betsey* and her goods were

⁵⁰ *Id.* Jamaica was a British colony at that time.

⁵¹ Sir Edward Hamilton (Print by Thompson, Ridley, William Gold & Bunney, 1801), ROYAL MUSEUMS GREENWICH, <http://collections.rmg.co.uk/collections/objects/107751.html>.

⁵² The seizure of ships in the West Indies was not unfamiliar to Richard Caton and Richard Lawson. The two men appear on a “List of American Vessels Taken by British Cruisers and Carried into Different Ports in the West-Indies for Legal Adjudication,” which was featured in the *Philadelphia Gazette* on September 1, 1794, as owners of a seized Schooner by the name of *Hercules*. *Philadelphia Gazette*, Vol. XI, Issue 1830 (Sept. 1, 1794).

⁵³ The Advocate General ex rel. Hamilton v. The Brig *Betsey*, Extract from the Registry of the Court of Vice Admiralty.

⁵⁴ The Advocate General ex rel. Hamilton v. The Brig *Betsey*, Claim of William Furlong (Apr. 18, 1799).

property of McFadon, Caton, Lawson, and Kennedy, all citizens of the United States of America and the seizure and detention of the ship and her cargo were illegal.⁵⁵

Part of the *Betsey*'s cargo was sold in Jamaica pursuant to an interlocutory decree of the vice admiralty court.⁵⁶ The owners received \$4,000 from that sale, although the owners of the cargo asserted that the actual value of the cargo was \$5,000.⁵⁷ By a final decree, the vice admiralty court acquitted the *Betsey* and the remaining part of the cargo.⁵⁸ The owners received \$8,000 for the sale of remaining part of the cargo, but asserted in court that the true value of this portion of the cargo was \$10,000.⁵⁹

Furlong, on the part of the owners, also brought a claim in the proceeding against *La Lionne*, which was libeled as belonging to "France or to some person or persons being subject of France or inhabiting within some of the territories of France."⁶⁰ Furlong sought the portion of the goods that *La Lionne* stole from the *Betsey* before the HMS *Surprise* captured them both.⁶¹ He again asserted that the owners of the ship and cargo were all citizens of the United States and that the seizure and detention of this portion of the goods that had been on *La Lionne* was illegal.⁶² It is unclear from the historical documents whether Furlong succeeded in recovering these goods. However, it seems likely that the cargo stolen by the French privateer was not recovered because only \$15,000 worth of the *Betsey*'s original cargo was ultimately sold. Thus, the remaining

⁵⁵ *Id.*

⁵⁶ *Baltimore Ins. Co. v. McFadon*, 4 H. & J. 31, 37 (1815).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *The Advocate General ex. rel Hamilton v. The Schooner La Lionne*, Libel (Apr. 3, 1799).

⁶¹ *The Advocate General ex. rel Hamilton v. The Schooner La Lionne*, Claim of William Furlong (Apr. 18, 1799).

⁶² *Id.*

\$17,000 worth of cargo originally loaded in Baltimore was either lost in the admiralty court proceedings, or perished.

It is interesting to note that the Brig Betsey was indeed in violation of the Nivôse law at the time of her capture, assuming that Furlong's assertions to the Vice Admiralty Court regarding the items that La Lionne stole from the Brig Betsey were truthful. Furlong reported that the goods stolen from the Betsey by La Lionne included Kerseymere (misspelled "Kersemere" in the report), which was a cloth manufactured in Kersey, England.⁶³ He also reported that La Lionne had stolen a number of pieces of dowlas, a type of linen that was made in Ireland and England.⁶⁴

IV. A Dispute Arises Over the Marine Insurance Policy

A. The Plaintiff's Claim

As soon as the owners received notice of the loss of cargo, they requested payment from the Baltimore Insurance Company, but the insurance company refused to pay for the loss, and continued to refuse payment, despite repeated requests.⁶⁵ John McFadon & Co., the entity under which McFadon and Lawson acted as trading partners, was the holder of the insurance policy, although Caton and Kennedy were also owners of the ship and cargo.⁶⁶ Thus, McFadon and Lawson were the ones with the power to assign and transfer the policy. On October 24, 1803, McFadon and Lawson, by name of John McFadon & Co., assigned and transferred the policy to Robert Oliver.⁶⁷ The same day,

⁶³ THE DRYGOODSMAN'S HANDY DICTIONARY 29 (F.M. Adams ed., 1912)

⁶⁴ LOUIS HARMUTH, DICTIONARY OF TEXTILES 54 (1920).

⁶⁵ Trial Court Papers, at 3.

⁶⁶ *Id.* at 4.

⁶⁷ Baltimore Ins. Co. v. McFadon, 4 H. & J. 31, 36 (1815). Robert Oliver arrived in Baltimore in 1783 as a poor Irish immigrant, and became a millionaire from his mercantile enterprises. Gilbert, *supra* note 27, at 19.

Oliver assigned and transferred the policy to John F. Kennedy.⁶⁸ Only a day later, on October 25, 1803, Kennedy transferred the policy to Joshua Dorsey and John Hollins.⁶⁹ It seems that the McFadon and Lawson's assignment of the policy must have been precipitated by financial straits because McFadon declared bankruptcy on November 29, 1803, only a few weeks after Lawson's death the same month.⁷⁰

It was not until September 1808 that McFadon, represented by Robert Goodloe Harper, brought an action of covenant on the insurance policy, as surviving partner of Lawson. Dorsey and Hollins still held the policy at the time of the action, and it was for their use that the action was brought.⁷¹ In his initial pleading, McFadon asserted that he and Lawson had obtained an insurance policy or "deed" through the Baltimore Insurance Company on March 11, 1799,⁷² which covered losses up to \$20,000 "on any kind of lawful goods and merchandise laden or to be laden" on the Brig Betsey during the course of her voyage to Cuba from Baltimore and back.⁷³ McFadon alleged that Baltimore Insurance Company broke its covenant with McFadon and Lawson by refusing payment, and requested \$35,000 in damages.⁷⁴

B. Marine Insurance and the Napoleonic Wars

Marine insurance is one of the earliest forms of indemnity.⁷⁵ However, prior to the late part eighteenth century, few American marine insurance companies existed. Rather, most American merchants obtained marine insurance in London through Edward

⁶⁸ *McFadon*, 4 H. & J. at 36.

⁶⁹ *Id.*

⁷⁰ *Id.* at 35.

⁷¹ *Id.* at 26-37.

⁷² Trial Court Papers, at 1-2.

⁷³ *Id.* at 2.

⁷⁴ *Id.* at 3.

⁷⁵ Huebner, *supra* note 36, at 243.

Lloyd's Coffee House.⁷⁶ It was not until the late part of the eighteenth century that there was a heavy push to develop American sources of marine insurance.⁷⁷

In large part, the Napoleonic Wars were what spurred the development of American marine insurance companies. The Napoleonic Wars, and the blockades and counter-blockade associated with it “subjected American Commerce to unusual risks and losses.”⁷⁸ Due to these unusual risks and losses, marine insurance came into high demand and was regularly adopted by all ship owners for the first time.⁷⁹ Therefore, there was a dramatic rise in domestic sources of marine insurance around the turn of the eighteenth century.

Although the growth of the marine insurance business was stimulated as a result of the hostilities, the business was also precarious because it was “constantly subject to the heavy losses arising from capture, detention, and litigation which frequently resulted.”⁸⁰ Because these relatively young companies lacked a large surplus of capital, the losses were a heavy drain to the companies' resources.⁸¹

The situation of the Insurance Company of North America is demonstrative of the struggles that these insurance companies faced. On February 12, 1801, the Insurance Company of North America formed a committee to create an account of all of the illegal captures made by the French and the British.⁸² The report found that the company's claims on the British government for “spoliation of property,” which the committee

⁷⁶ A. Glenn Crothers, *Commercial Risk and Capital Formation in Early America: Virginia Merchants and the Rise of American Marine Insurance, 1750-1815*, THE BUSINESS HISTORY REVIEW, Winter 2004, at 610. For example, marine insurance companies did not begin operation in Baltimore until 1795. *Id.* at 616.

⁷⁷ *Id.* at 615.

⁷⁸ Huebner, *supra* note 36, at 255.

⁷⁹ *Id.*

⁸⁰ *Id.* at 256.

⁸¹ *Id.*

⁸² *Id.*

thought the nation should refund, was about \$981,355.⁸³ Other losses caused by British capture, for which they did not expect to be reimbursed, totaled \$78,800.⁸⁴ The committee found that losses occasioned by captures made by the French amounted to \$1,952,730.⁸⁵

C. The Baltimore Insurance Company

The Baltimore Insurance Company was incorporated in November 1795 by an act of the General Assembly of Maryland.⁸⁶ The act of incorporation describes it as “a society for the insurance of ship and merchandize at sea,” and declared its formation to be “advantageous to the commercial and agricultural interest of [the] state.”⁸⁷

By act of the Legislature of Maryland a number of persons are incorporated into a Society by the name of the “Baltimore Insurance Company,” for the purpose of insuring merchandize at sea. The Capital stock is 300,000 dollars,

The capital stock of the company consisted of \$300,000, divided into one thousand shares of \$300 each.⁸⁸ Out of the capital stock, the act required that \$20,000 “be kept and preserved in some secure place of deposit, to answer all demands upon their policies for any losses incurred.”⁸⁹ On February 1797, the Baltimore Insurance Company

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Act of 1795, ch. 59. The Maryland Insurance Company was incorporated the same year by act of 1795, ch. 60.

⁸⁷ Act of 1795, ch. 59, preamble.

⁸⁸ Act of 1795, ch. 59, s. III. Alexander McKim, president of the Baltimore Insurance Company at the time the claim was filed, was one of the original stockholders. *See id.* at s. II. He was elected to the board of directors in February 1796, and he was elected president of the Baltimore Insurance Company in August 1798. Finlay’s American Naval and Commercial Register (Philadelphia), Vol. I, Issue 19, p. 2 (Feb. 5, 1796); Federal Gazette (Baltimore), Vol. IX, Issue 1491, p. 3 (Aug. 23, 1798).

⁸⁹ Act of 1795, ch. 59, s. IV. No information was found on the dividend that the Baltimore Insurance Company declared between January 1798 and 1805. In 1805, the company declared a dividend of twelve and a half percent.

declared a dividend of thirty-three dollars on each share of the capital stock of the company for the period of August 10, 1796 to January 10, 1797.⁹⁰ By January 1798, the company was declaring a dividend of twenty five percent of the capital stock for the half year.⁹¹ After January 1798, no information appears on the dividend that the Baltimore Insurance Company declared until January 1805, at which time it declared a dividend of twelve and a half percent.⁹² However, the business of marine insurance at the turn of the eighteenth century experienced great fluctuations.⁹³ Thus, to the extent that dividends are demonstrative of a company's success, the dividends declared in 1798 and the dividends declared in 1805 are only marginally indicative of how the company fared in the intervening years.

The figures of the losses that the company occasioned from French and British captures may be more telling. From the period of June 1, 1796 to January 5, 1798, the Baltimore Insurance Company reported that it paid losses on French captures in the amount of \$105,162.98.⁹⁴ Allegedly, it made no payments for losses due to British captures during the same period.⁹⁵ In contrast, the Maryland Insurance Company paid losses due to British captures in the amount of \$93,639.12, and losses due to French captures in the amount of \$108,775.42 for the period of June 1, 1795 to December 27, 1797.⁹⁶ However, in January 1802, a Baltimore paper related that the Baltimore Insurance Company had demands for restitution from France in the amount of \$600,000,

⁹⁰ Federal Gazette (Baltimore) Vol. VI, Issue 1013, p. 1 (Feb. 2, 1797).

⁹¹ Federal Gazette (Baltimore), Vol. VIII, Issue 1313, p 4. (Jan. 25, 1798).

⁹² American and Commercial Daily Advertiser (Baltimore), Vol. X, Issue 1781, p. 1 (Jan 25, 1805).

⁹³ Huebner, *supra* note 36, at 255.

⁹⁴ Federal Gazette (Baltimore), Vol. VIII, Issue 1313, p 4. (Jan. 25, 1798).

⁹⁵ *Id.*

⁹⁶ *Id.*

while the Maryland Insurance Company had demands of \$300,000.⁹⁷ The demands of these companies, combined with the demands of individuals in Baltimore, totaled two million dollars.⁹⁸ In light of the financial drain that the British and French captures put on the newly-formed marine insurance companies at that time, it becomes easy to understand why the Baltimore Insurance Company was eager to refute responsibility for payment.

V. Proceedings in County Court

The Baltimore Insurance Company, represented by Walter Dorsey, appeared in county court in October 1808 to answer McFadon's charges.⁹⁹ The proceedings in the county court continued from 1808 to 1811. During the course of the proceedings, John Purviance and William Winder joined Harper as counsel for the plaintiff, and William Pinkney joined Dorsey as counsel for the defendant. Thus, a veritable array of Maryland's most prominent attorneys represented the parties at the county court level.¹⁰⁰

Four bills of exceptions arose from the trial, which occurred in October 1811. A bill of exceptions was a written statement of the objections (or "exceptions") by a party to the decisions, rulings, or instructions of a trial judge.¹⁰¹ The purpose of a bill of exceptions was "to introduce into the record that which does not otherwise appear therein, and which it is necessary to bring to the notice of the court to which appeal is

⁹⁷ New Hampshire Gazette (Portsmouth), Vol. XLVII, Issue 3, p. 2 (Jan. 12, 1802).

⁹⁸ *Id.*

⁹⁹ Trial Court Papers, at 4.

¹⁰⁰ *See generally* ROBERT M. IRELAND, THE LEGAL CAREER OF WILLIAM PINKNEY: 1764-1822 (1986). It was typical for William Pinkney to represent the insurance company in cases involving disputes over marine insurance policies. *See id.* at 90.

¹⁰¹ BLACK'S LAW DICTIONARY 207 (4th ed. 1968)

made.”¹⁰² A court of appeal would generally not review the judgment of the court below, unless an error appeared in the record, or exceptions were taken.¹⁰³

The first bill of exceptions involved the question of whether the fact that the ship was cleared for Cartagena, and not Barracoa, effected plaintiff’s right to recover. The defendant asserted that the insurance company required a written communication when a ship that it insured went to a port other than the one it was cleared for.¹⁰⁴ The plaintiff responded that, at the time the policy was made, the defendant knew that the Betsey was cleared for Cartagena.¹⁰⁵ The court adopted the plaintiff’s purposed jury instructions: if the jury believed that the Betsey went on a voyage from Baltimore to Barracoa, and if the fact that she cleared out for Cartagena was known to the defendants at the time the policy was created, then the clearance and other documents could not effect the plaintiff’s right to recover.¹⁰⁶

The second bill of exceptions concerned defendant’s argument that the policy was void because plaintiff’s true intent for the voyage was to trade in a French territory. The defendant asserted that Furlong had been instructed by the owners of the vessel and cargo to go to Barracoa, Cuba, leave the vessel, and take the cargo to the Port of Jeremie on the Island of Santo Domingo, which was within French territory, to trade the cargo there.¹⁰⁷ On this issue, the county court instructed the jury that if they believed that the object of the voyage and instructions to Furlong were as the defendants described, then the plaintiff

¹⁰² JOHN CLELAND WELLS, QUESTIONS OF LAW AND FACT, INSTRUCTIONS TO JURIES, AND BILLS OF EXCEPTIONS 493 (1879).

¹⁰³ *Id.*

¹⁰⁴ *Baltimore Ins. Co. v. McFadon*, 4 H. & J. 31, 37 (1815). The defendant read into evidence the sea letter, letter of instruction, manifest of cargo, bill of lading, and invoice, all of which described the voyage as one from Baltimore to Cartagena. *Id.*

¹⁰⁵ *Id.* at 34.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 35.

could not recover because “he cannot call up a court of this country to aid him in recovering compensation for not having succeeded in an attempt to violate the laws of the country.”¹⁰⁸

The third bill of exceptions involved the issue of whether promissory notes from the plaintiff to the defendant could be admitted in bar or discount of the plaintiff’s claim. The defendant entered six promissory notes into evidence, some given jointly by John McFadon & Co. and Richard Caton to the defendant, and others given solely by John McFadon & Co. to the defendants. The defendant sought to use the promissory notes to set-off the plaintiff’s claim.¹⁰⁹ The county court decided, as a matter of law, that the promissory notes could not be admitted in bar or discount of the plaintiff’s action.¹¹⁰ The county court rejected the set-off because the policy was open, and therefore, the extent of the plaintiff’s claim was uncertain.¹¹¹ Had the policy been valued, the county court indicated, a set-off would have been permitted.¹¹²

The fourth bill of exceptions related to the question of what losses the plaintiff could recover for. The court instructed the jury that the plaintiff could recover for the partial loss for the difference between the amount he got from the sale by the order of the vice admiralty court and the actual value. However, he could not recover the difference in sum produced by the sale of the part of the cargo that the plaintiffs or his agents sold

¹⁰⁸ *Id.* As previously mentioned, the 1798 and 1799 acts made it illegal to trade with France or any of its possessions.

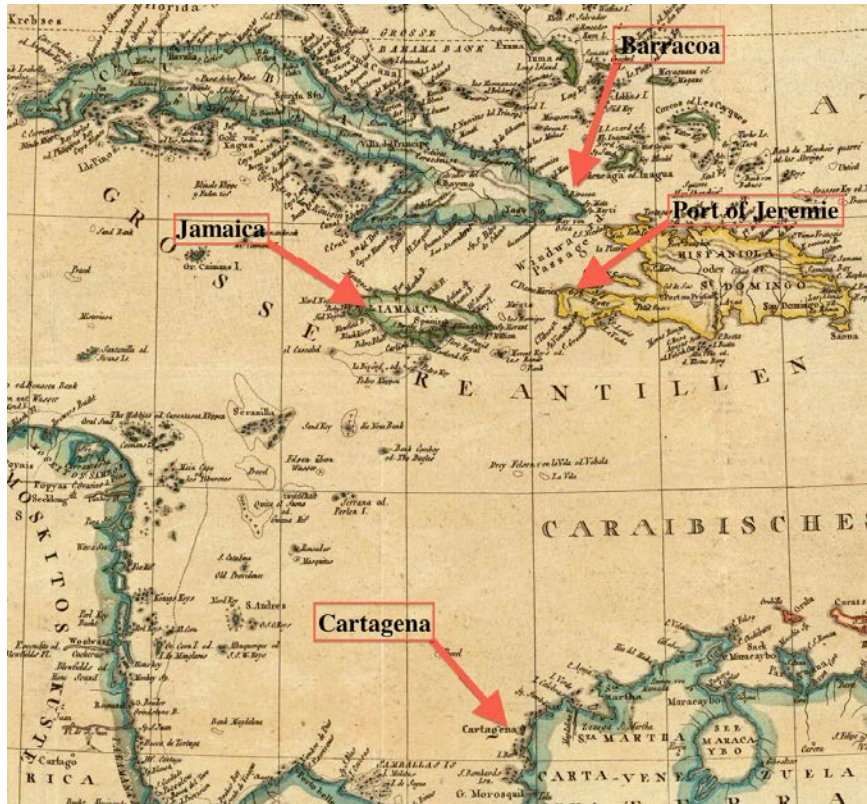
¹⁰⁹ Black’s Law Dictionary defines set-off as “a counter demand which defendant holds against plaintiff, arising out of a transaction extrinsic of plaintiff’s cause of action.” BLACK’S LAW DICTIONARY 1538 (4th ed. 1968)

¹¹⁰ *McFadon*, 4 H. & J. at 37.

¹¹¹ *Id.* at 41.

¹¹² *Id.*

themselves and the actual value at the Port of Baltimore. ¹¹³



VI. The Court of Appeals

The first, third, and fourth bills of exceptions went up to the Court of Appeals before Judges William Bond Martin, John Johnson, Richard Tilghman Earle, John Buchanan, Jeremiah Townley Chase.¹¹⁴ The Court of Appeals concurred with the county court's jury instructions with regard to the first and fourth bills of exception. However, it dissented from the county court's judgment with regard to the third bill of exceptions, and it was on the question of whether mutual claims could be set-off against each other in a suit on an open policy that the opinion of the Court of Appeals focused.¹¹⁵

A. The Arguments of the Parties

¹¹³ *Id.* at 37.

¹¹⁴ On appeal, Pinkney represented the defendant, and Winder and Harper represented the plaintiff.

¹¹⁵ Judge Buchanan dissented from the court's opinion on the third bill of exceptions. However, the dissent is unwritten.

Pinkney, as the sole counsel for the defendants on appeal, argued that the liquidated claim due from the plaintiff to the defendants may be set off against an unliquidated demand of the plaintiff against the defendants, citing to Chapter 45 of the Act of 1785.¹¹⁶ Winder and Harper, on behalf of the plaintiffs, asserted that the Act of 1785 did not permit a defendant to offer a set-off in an action for an unliquidated claim. Rather, for the claim to be set-off, the demand had to be “certain.” In addition, Winder and Harper argued, “the equitable assignees [Dorsey and Hollins] were not liable to any claim against the assignor [McFadon and Lawson] without notice, and there was no proof of notice.”¹¹⁷ In reply, Pinkney said that it would not be proper to set-off an unliquidated demand because, then, there would be two distinct issues to try. He further contended that while the defendant’s demand had to be liquidated in order to set-off a claim, the plaintiff’s demand did not have to be. With regard to notice of assignment, Pinkney argued that it was the *assignees* that should have given the insurers notice of the assignment. Because they did not do so, if the assignment was legal, nothing could prevent the set-off for antecedent claims against the assignor.¹¹⁸

B. The Court’s Analysis

In an opinion by Judge Johnson, the court began by noting that for a suit on an open policy, a plaintiff must: (1) show that the event insured against has taken place; and (2) establish the value of the goods insured. In contrast, for a suit on a valued policy, the plaintiff need only show that the event insured against has taken place.¹¹⁹ At that time,

¹¹⁶ Trial Court Papers, at 38.

¹¹⁷ *Id.* at 39.

¹¹⁸ *Id.* at 40.

¹¹⁹ *Baltimore Ins. Co. v. McFadon*, 4 H. & J. 31, 40 (1815).

an “open policy” was what is now referred to as an “unvalued policy.”¹²⁰ The difference between an open policy and a valued policy was that a valued policy specified the agreed-upon value of the items insured, whereas an open policy did not fix the value of the items insured.¹²¹ Subject to the limit of the sum insured, the insurable value was left to be determined later.¹²² Hence, McFadon’s policy expressly provided that its limit was \$20,000, but the insurable value of the cargo on board the Brig Betsey was not agreed upon between McFadon and the Baltimore Insurance Company at the time of the policy’s formation. Because the value was not stated in an open policy, the insurable value had to be proved.¹²³

According to the Court of Appeals, the question of whether mutual claims can be set off against each other in a suit involving an open policy depended on the act of 1785, ch. 46, in virtue of which the defendants attempted to make the discounts.¹²⁴ The act of 1785, ch. 46, to which the case refers, is “An Act directing what shall be good evidence to prove foreign and other debts, and deeds and wills, and instruments of writing executed in any of the United States, or in any foreign country, for allowing discounts, and for repealing an act of assembly therein mentioned.”¹²⁵ The court noted that it seemed reasonable to be able to set mutual claims off against each other, as a party would

¹²⁰ Phillip W. Thayer, *Marine Insurance Certificates*, HARV. L. REV. 239, n. 4 (1935). In modern times, the term “open policy” has evolved to describe policies that cover all shipments of the insured within certain geographical limits, and is now used interchangeably with the term “floating policy.” *Id.* at 239.

¹²¹ SIR JOSEPH ARNOULD, ARNOULD ON THE LAW OF MARINE INSURANCE AND AVERAGE 443 (1909).

¹²² *Id.*

¹²³ Huebner, *supra* note 38, at 280. Sir Joseph Arnould explains in his treatise on the law of marine insurance that “under an open policy, in the case of loss, the assured must prove the actual value of the subject of insurance; under a valued policy he need not do so, the valuation of the policy being conclusive between the parties.” Arnould, *supra* note 121, at 444.

¹²⁴ *McFadon*, 4 H. & J. at 41.

¹²⁵ Act of 1785, ch. 46.

otherwise have to refund whatever he was paid by the opposing party on the adverse judgment against himself.¹²⁶

The court proceeded to provide a history of how the law concerning set-off had evolved up to that point. According to the court, one could not set mutual claims off against each other at common law.¹²⁷ Rather, “the parties were left to their mutual remedies at law by distinct suits, or one of them must resort to a court of equity to have his claim set off or discounted from his adversary’s judgment.”¹²⁸ It was like this until the time of King George II, when parliament passed a law in the second year of his reign that allowed mutual debts between the defendant and the plaintiff to be set-off against each other.¹²⁹ The court noted that the British statute contained no other description as to the nature of the debts, except to say that they are “mutual.”¹³⁰ In operation, however, courts were so used to not having this statute allowing set off that they restrained the use of it so that it would only permit debts of the same grade to be discounted.¹³¹ Then, in the eighth year of King George II’s reign, a statute was passed that permitted discounts “notwithstanding they were of different nature.”¹³²

The court opined that all claims are uncertain in a sense—there is always a question of whether any claim to any amount exists.¹³³ If it does exist, “then, and not

¹²⁶ *McFadon*, 4 H. & J. at 41.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* The court was referring to 2 Geo. II c. 22. See WILLIAM BLACKSTONE, BLACKSTONE’S COMMENTARIES 304, reprinted by St. George Tucker (1803). Acts are cited by the year of the reign during which the relevant parliamentary session was held. Thus, 2 Geo. II, c. 22 was the 22nd act by parliament passed in the second year of the reign of King George II.

¹³⁰ *McFadon*, 4 H. & J. at 41.

¹³¹ *Id.*

¹³² *Id.* The Court was referring to 8 Geo II c. 24. See Blackstone, *supra* note 129, at 304.

¹³³ *McFadon*, 4 H. & J. at 42.

before, the extent of the claim presents itself.”¹³⁴ Thus, all types of debts have the same problem—the instrument upon which the claim is brought must first be proved before a court can examine the amount of the claim.¹³⁵ The court reasoned that it did not necessarily follow that the instrument upon which the claim is founded, when proved, must disclose on its face the extent of the claim; the same went for a claim resting on a simple contract.¹³⁶

The court opined that all claims are uncertain in a sense—there is always a question of whether any claim to any amount exists.¹³⁷ If it does exist, “then, and not before, the extent of the claim presents itself.”¹³⁸ Thus, all types of debts have the same problem—the instrument upon which the claim is brought must first be proved before a court can examine the amount of the claim.¹³⁹ The court reasoned that it did not necessarily follow that the instrument upon which the claim is founded, when proved, must disclose on its face the extent of the claim; the same went for a claim resting on a simple contract.¹⁴⁰

The court saw no reason to prevent a party from retaining a certain demand in order to meet an uncertain demand, unless an act specifically precluded him from doing so.¹⁴¹ Accordingly, the court turned to the act of 1785, ch. 46. It noted that the act did not say anything about liquidated or unliquidated claims, or anything about debts.¹⁴² The court thereafter quoted the act:

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 43.

¹⁴² *Id.* at 43.

in case any suit shall be brought on any judgment, or on any bond, or other writing sealed by the party, and the defendant shall have any demand or claim against the plaintiff . . . [the defendant] shall be at liberty to file his account in bar, or plead discount to the plaintiff's claim, and the judgment shall be given for the plaintiff for the sum only which remains due, after such discount . . . after such discount, be sufficient to support a judgment in the court where the cause may be tried, according to its established jurisdiction; *and in all cases of suits upon simple contracts, the defendant may file an account in bar, or plead discount of any claim he may have against the plaintiff*, proved as aforesaid, or otherwise proved according to law, *which may be of an equal or superior nature to the plaintiff's claim*, and judgment shall be given as aforesaid

[emphasis in original].¹⁴³ The court then proceeded to interpret the act, applying two fundamental principles of statutory interpretation: (1) when construing a written instrument, one must consider the instrument as a whole; and (2) no interpretation should be given “that tends to render any of the provisions nugatory, much less the whole of them.” The court found that restraining the words of the act of 1785 to exclude the discount in question “would make the general and comprehensive expression of that act useless” because it would limit the right to discount in the cases provided for by the statutes of King George and the act of 1729, ch. 20, s. 5, which provided that in a suit brought by a creditor against a debtor, the court may discount any claims that the debtor has against the creditor, and award the creditor the remaining amount.¹⁴⁴

¹⁴³ *Id.* at 43-44.

¹⁴⁴ Act of 1729, ch. 20, s. 5 (“An Act providing what shall be good evidence to prove foreign and other debts, and to prevent vexatious and unnecessary suits at law, pleading discounts in bar, and for repealing an act of assembly therein mentioned”).

In justifying this conclusion, the court explained that a liberal construction of the act advances the purpose and policy of the law because it enlarges the types of claims against which discounts could be made. The court reasoned, “if it is not just to permit one man to recover a sum of money from another, to whom he is liable for a like sum, so is justice promoted by extending the power of discount.”¹⁴⁵ Here, the court considered the issues that would be presented by assignment if it did not reach this result. The court observed that if there was no right to discount, then the person with the claim has the power to transfer the claim, and enable the transferee to recover the sum due even though the person from whom the claim was obtained could not have forced payment.¹⁴⁶ By permitting discounts at law, the assignees stand in the assignor’s place, and are “liable to the same objections against payment of the money that might have been made against the assignor.”¹⁴⁷ The court thereby reversed the county court’s judgment as to the third bill of exceptions and awarded procedendo, a writ by which a court of appeal sent a case back down to the lower court from which it was removed.¹⁴⁸

VII. Conclusion: Connecting the Court’s Opinion to its Historical Context

In 1807 case of *Gordon v. Bowne*, the New York Court of Appeals reached the opposite result of Maryland Court of Appeals, holding that no set-off was permitted in an action on an open policy of insurance because the damages were uncertain and unliquidated.¹⁴⁹ Rather, the claims in cases of set-off had to be both certain and mutual.¹⁵⁰ According to the New York Court of Appeals, it made no difference that the

¹⁴⁵ *McFadon*, 4 H. & J. at 42.

¹⁴⁶ *Id.* at 45.

¹⁴⁷ *Id.*

¹⁴⁸ BLACK’S LAW DICTIONARY (4th ed. 1968)

¹⁴⁹ 2 Johns. R. 150 (N.Y. 1807)

¹⁵⁰ *Id.*

freight was valued.¹⁵¹ However, the Pennsylvania Supreme Court reached the same result as the Maryland Court of Appeals in the 1808 case of *Rousset v. Insurance Company of North America*,¹⁵² and the earlier case of *Gourdon v. Insurance Company of North America*.¹⁵³ Despite the conflicting outcomes, it is no surprise that the cases arising on the question of set-off on an unvalued insurance policy came from Pennsylvania, New York, and Maryland. Along with Boston, Philadelphia, New York, and Baltimore were the largest port cities in the United States at that time.¹⁵⁴

The result that the Maryland Court of Appeals reached was not only the just result—it was also practical in light of the conditions of the day. First, allowing parties to set-off mutual debts avoided duplicative lawsuits, which promoted efficiency in a court system that was already crowded with claims arising from the seizure of vessels. Second, preclusion of set-off on a claim involving an open policy of marine insurance would have the effect of preventing recovery in a large number of cases where the policy had been assigned. The assurance of recovery was especially important in a time when domestic sources of marine insurance had grown so rapidly, and its use had become so widespread. Thus, the court’s decision promoted important societal interests, which were unique to this period in history and to the needs of a state with a booming port town.

¹⁵¹ *Id.*

¹⁵² 1 Bin. 429 (P.A. 1808)

¹⁵³ 3 Yeates 327 (P.A. 1802).

¹⁵⁴ Jessica Parr, *Freeborn Americans: The Rise of the Urban Wage Earner and the Rhetoric of the Early Republic*, in *THE EARLY REPUBLIC: PEOPLE AND PERSPECTIVES* 22 (Andrew K. Frank ed., 2009).

ADDENDUM

Biography of Richard Caton

Richard Caton was born on April 15, 1763 in Lancashire, England, one of eight children.¹⁵⁵ He was the grandson of Captain Joseph Caton, a slave trader who commanded his own ship.¹⁵⁶ Richard Caton is described as being “of a good family, but poor.”¹⁵⁷ Although many accounts assert that Richard Caton immigrated to America in 1785,¹⁵⁸ newspaper articles place Caton in Baltimore as early as 1784.¹⁵⁹ Shortly after arriving in Baltimore, Caton began business as a merchant and formed Richard Caton and Co,¹⁶⁰ which occupied a space on the corner of Market and Gay Street.¹⁶¹ This location served, at least in part, as a base to sell the merchandise that the company imported.¹⁶²

In 1786, Caton became engaged to Mary “Polly” Carroll, the daughter of Charles Carroll of Carrollton.¹⁶³ Mary Carroll was sixteen at the time.¹⁶⁴ Charles Carroll, a signer of the Declaration of Independence and one of Maryland’s most prominent and powerful figures, originally objected the marriage.¹⁶⁵ Two things, no doubt, contributed to Carroll’s disapproval of Caton. First, at the time of the engagement, Caton was in debt.¹⁶⁶ Second, the Carrolls were devout Catholics, and Caton was a member of the

¹⁵⁵ A.M.W. STIRLING, *A PAINTER OF DREAMS AND OTHER BIOGRAPHICAL STUDIES* 207 (1916).

¹⁵⁶ *Id.*

¹⁵⁷ *Built by Richard Caton: House in Which Charles Carroll of Carrollton Died One of City’s Historic Places*, *The Sun* (Baltimore), Vol .CXXXVIII, Issue 129, p. 14 (Mar. 25, 1906).

¹⁵⁸ *See, e.g., Three Maryland Women Famed as the American Graces*, *Baltimore American*, Vol. CCXXXII, p. 12 (Oct. 1, 1922).

¹⁵⁹ *See, e.g., Maryland Journal*, Vol. XI, Issue 86, p. 3 (Oct. 29, 1784).

¹⁶⁰ *See Maryland Journal*, Vol. XI, Issue 89, p. 1 (Nov. 9, 1784).

¹⁶¹ *Maryland Journal*, Vol. XV, Issue 65, p. 3 (Aug. 12, 1788).

¹⁶² *See Maryland Journal*, Tuesday Nov. 9, 1784, Vol XI, Issue 89, pg. 1

¹⁶³ *Pennsylvania Journal*, Issue 2213, p. 2 (Dec. 8, 1787).

¹⁶⁴ *Thunder Castle Sold*, *The Sun* (Baltimore), Vol CXI, Issue 59, p. 14 (Jan. 14, 1907).

¹⁶⁵ *Three Maryland Women Famed as the American Graces*, *Baltimore American*, Vol. CCXXXII, p. 12 (Oct. 1, 1922).

¹⁶⁶ Stirling, *supra* note 155, at 208.

Church of England.¹⁶⁷ As the story goes, Carroll enlisted his friend to dissuade Mary from marrying Caton.¹⁶⁸ The friend asked Mary, “Who shall take him out if he gets into jail?”¹⁶⁹ In reply, Mary held up her hands and said, “These hands shall take him out.”¹⁷⁰ Carroll then acquiesced to the marriage.¹⁷¹ In November 1787, Richard Caton married Mary Carroll in Annapolis.¹⁷²

B A L T I M O R E, November 30.
On Sunday Evening last was married, at Annapolis, Mr.
RICHARD CATON, of this Town, Merchant, to Miss POLLY
CARROLL, Daughter of the Honorable CHARLES CARROLL,
of CARROLLTON, Esquire.
On Monday Evening last was married, in this Town, Mr.
JAMES BUCHANAN, Merchant, to Miss SUSANNAH YOUNG,
of Philadelphia.

Richard Caton’s Wedding Notice, as it appeared in the Pennsylvania Journal on December 8, 1787.

John H.B. Latrobe provides a description of the couple years later, “Mr. Richard Caton was a tall, and when young must have been extremely handsome, man, of graceful and refined manners and good conversational power. His wife, when I first knew her, was extremely plain, both in person and face, but of all the women I have ever met she was the most charming.”¹⁷³ Despite Latrobe’s description of his impressions of Richard and Mary Caton in their elder years, sources indicate that Mary was a great beauty at the time of their marriage.¹⁷⁴ Perhaps owing to his marriage to a beautiful and wealthy woman, “tradition states that [Richard Caton] was for long viewed by the older residents in

¹⁶⁷ *Built by Richard Caton: House in Which Charles Carroll of Carrollton Died One of City’s Historic Places*, The Sun (Baltimore), Vol .CXXXVIII, Issue 129, p. 14 (Mar. 25, 1906).

¹⁶⁸ *Three Maryland Women Famed as the American Graces*, Baltimore American, Vol. CCXXXII, p. 12 (Oct. 1, 1922).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Pennsylvania Journal, Issue 2213, p. 2 (Dec. 8, 1787).

¹⁷³ *Three Maryland Women Famed as the American Graces*, Baltimore American, Vol. CCXXXII, p. 12 (Oct. 1, 1922).

¹⁷⁴ See, e.g., *Catonsville Biographies*, Mrs. Richard Caton, George C. Keidel, Maryland Historical Magazine, vol. 17, pg. 81

Baltimore with considerable jealousy, and looked upon by them in light of a foreign adventurer.”¹⁷⁵



Mary and her sister are depicted at their father’s side on the floor of the state house in *Washington Resigning His Commission*.¹⁷⁶

As part of the marriage settlement, Charles Carroll gave the young couple an estate, situated in what is now known as Catonsville.¹⁷⁷ On this estate, the couple built a house named Castle Thunder, and it is reputed that George Washington and Marquis de Lafayette were among the Caton family’s visitors at this home.¹⁷⁸ Only a few years later, Charles Carroll bought a large tract of land in the Green Spring Valley and built a larger home for his daughter and her family, which took the name Brooklandwood.¹⁷⁹ Some sources assert that Charles Mansion, located on Front and Lombard Streets, was built and

¹⁷⁵ Stirling, *supra* note 155, at 208.

¹⁷⁶ *Washington Resigning His Commission* (painted by John Trumball, 1812), ARCHITECT OF THE CAPITOL, <http://www.aoc.gov/capitol-hill/historic-rotunda-paintings/general-george-washington-resigning-his-commission>; Catonsville Biographies, Mrs. Richard Caton, George C. Keidel, Maryland Historical Magazine, vol. 17, pg. 76 (identifying Mary Carrollton and her sister as the two girls on the floor of the state house in Washington Resigning His Commission).

¹⁷⁷ *Three Maryland Women Famed as the American Graces*, Baltimore American, Vol. CCXXXII, p. 12 (Oct. 1, 1922).

¹⁷⁸ George C. Keidel, *Catonsville Biographies, Mrs. Richard Caton*, MARYLAND HISTORICAL MAGAZINE, vol. 17.

¹⁷⁹ *Id.* Brooklandwood is the present site of St. Paul’s School for Boys.

owned by Richard Caton.¹⁸⁰ However, when there was an attempted to preserve the historic Mansion in 1910, the will of Charles Carroll was found and it indicated that Carroll owned the house.¹⁸¹ Nevertheless, Richard Caton and his family likely spent time in Carroll Mansion, as well as in Carrollton Hall, which is located in Howard County.¹⁸²



FORMER HOME OF RICHARD CATON

**Picture of Castle Thunder, as it appeared in *The Baltimore Sun*,
Vol. CXXXVIII, Issue 10, p. 8 (Nov. 26, 1905).**

Richard and Mary Caton had four daughters: Mary (or Marianne), Elizabeth, Louisa Catharine, and Emily.¹⁸³ The three eldest were known as the “American Graces.”¹⁸⁴ The “American Graces” were famous for their beauty and marriage to British nobility. Mary became the Marchioness of Wellesley, Elizabeth became Baroness Stafford, and Louisa became the Duchess of Leeds.¹⁸⁵ Emily, the youngest, stayed in

¹⁸⁰ *Historic Homes of the Maryland Carroll Family*, *The Sun* (Baltimore), Vol. CLI, Issue 150, p. 1 (Oct. 13, 1912).

¹⁸¹ *Id.*

¹⁸² *Three Maryland Women Famed as the American Graces*, *Baltimore American*, Vol. CCXXXII, p. 12 (Oct. 1, 1922).

¹⁸³ *Thunder Castle Sold*, *The Sun* (Baltimore), Vol. CXI, Issue 59, p. 14 (Jan. 14, 1907). One source reports that they had a fifth daughter, who died as an infant. George C. Keidel, *Catonsville Biographies, Mrs. Richard Caton*, *MARYLAND HISTORICAL MAGAZINE*, vol. 17. p. 80. However, it is not entirely certain because the practice of the day was to exclude children that died in infancy. *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

Baltimore and married John Lovet Mactavish; she was the only one of the sisters that had children.¹⁸⁶



Elizabeth Caton



Louisa Caton



Mary Caton¹⁸⁷

Richard Jackson, a nephew of Richard Caton who came from Liverpool to visit his uncle, paints a picture of the life of the Caton family through letters to his mother:

We breakfast at nine, dine at three, after which we don't go out, except to Parties and then in the carriage, sup at seven and go to bed at ½ past 9 o'clock very regular; good, kind people they are, they anticipate my wishes in everything. Uncle Caton's roof is certainly the roof of hospitality; . . . He lives splendidly here, sees a deal of company and visits—at least not he but the family, —a great deal. I have been called upon by a great many gentlemen and ladies . . .¹⁸⁸

In a subsequent letter, Jackson wrote, “. . .they have a very large farm and plenty of servants. I think male or female, they have nearly if not more than twenty in town.”¹⁸⁹

¹⁸⁶ *Id.*

¹⁸⁷ Pictures of the Caton sisters as they appeared in *The American Graces*, Harper's New Monthly Magazine, Vol. LXI, No. CCCLXIV (Sept. 1880).

¹⁸⁸ Stirling, *supra* note 155, at 213.

¹⁸⁹ *Id.*

The wealth that afforded this lifestyle came partly through inheritance, and partly through the eventual success of Richard Caton’s various mercantile enterprises and industrial endeavors. His wealth was particularly enhanced by the discovery of coal on Cape Sable.¹⁹⁰ Nevertheless, he had a propensity throughout his life for getting involved in financial trouble. This was a trait that never ceased to bother Carroll.¹⁹¹ Fellow merchant Richard Oliver was of the mindset that “[one] must establish a reputation for real industry & prudence & quit visionary schemes” to be successful in business, and hinted at Caton’s failures in this regard when he described Caton as “too sanguine,” “too speculative.”¹⁹² Ultimately, Richard Caton died insolvent.¹⁹³

Apart from his livelihood as a merchant, Richard Caton served in a number of other rolls. Throughout his life, he was a director of the Baltimore Manufacturing Company,¹⁹⁴ a director of the Bank of Maryland,¹⁹⁵ president of the Falls Turnpike Road Company,¹⁹⁶ and one of the founders of the Library Company.¹⁹⁷

Richard Caton died in May 1845 at the age of eighty-three, having suffered a paralytic stroke four days prior that left him unable to speak.¹⁹⁸ Richard Caton’s obituary, which

DEATH OF AN AGED CITIZEN.—Richard Caton, Esq., a venerable and respected citizen of Baltimore, died yesterday morning, after a short illness, at the advanced age of 83 years. Mr. C, says the Patriot, “was a native of Lancashire, England, and has been a resident of Baltimore for the last sixty-two years. He married the eldest daughter of the late Charles Carroll of Carrollton, and is the father of the Marchioness of Wellesly. Mr. C. has long had the management of large landed estate; possessed a highly enterprising spirit, and was distinguished as an accomplished gentleman of the old school.” The immediate cause of his death, we learn, was a paralytic stroke, which he received on Thursday last, since which time up to his death, he was unable to speak. We may also add that he was the father of two other distinguished ladies, the Lady Stafford and Duchess of Leeds.

¹⁹⁰ Stirling, *supra* note 155, at 209.

¹⁹¹ *Id.* at 208.

¹⁹² Bruchey, *supra* note 7, at 274.

¹⁹³ Stirling, *supra* note 155, at 213

¹⁹⁴ Maryland Journal, Vol .XVI, Issue 51, p. 6 (June 26, 1789). Notably, Richard Caton and Alexander McKim, president of the Baltimore Insurance Company at the time the case arose, served on the Board of Directors of the Baltimore Manufacturing Company simultaneously. *See id.*

¹⁹⁵ Maryland Journal, Vol. XVIII, Issue 19, p. 3 (Mar. 8, 1791).

¹⁹⁶ American and Commercial Daily Advertiser, Vol. XI, Issue 1995, p. 3 (Oct. 2, 1805).

¹⁹⁷ Stirling, *supra* note 155, at 209.

¹⁹⁸ *Death of an Aged Citizen*, The Sun (Baltimore), Vol .XVII, Issue 3, p. 2 (May 20, 1845).

appeared in newspapers throughout the nation, recounted that he “possessed a highly enterprising spirit; and was distinguished as a gentleman of the old school.”¹⁹⁹

¹⁹⁹ *Id.*