

**Barney v. Smith (MD 1819)  
Congressman versus the Commodore**

by

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Baltimore & the War of 1812**

## 1. SUMMARY OF THE CASE

*Smith v. Barney*, (4 H. & J. 485, Court of Appeals of Maryland, 1819)

primarily addresses the rights of a surviving partner, for himself and on his own behalf, to the proceeds of debts owed to the partnership. Ordinarily collection of the debt in question would have been barred by the three year statute of limitation. However, the Maryland Court of Appeals upheld the established exception that an acknowledgement of a debt serves to preserve the remedies available to one who is owed money as against any statute of limitation. At issue was whether this acknowledgement was made to the surviving partner as executor of the decedent's estate, and if so, whether, as surviving partner, the acknowledgement was also effective as to him, in his own right.

The court also ruled on a procedural issue concerning whether the plaintiff could read into the record his own letter for the purpose of demonstrating that a letter of the plaintiff's introduced by the defendant to prove that no monies were owed, in fact, did not refer to the money at issue in the case.

This case arose through the efforts of the plaintiff to sue for money owed to a partnership consisting of the plaintiff and his subsequently deceased partner. The money was owed by the French government as a result of the seizure and detention of ships owned by the partnership. It was collected by the defendant, but never paid over to the partnership. But how did it happen that a private merchant was owed money by the French government?

## 2. HISTORICAL CONTEXT

When the American colonies seceded from the British Empire during the latter part of the 18<sup>th</sup> century, they had assistance from the French, and in 1778, the two countries signed an alliance, providing for continued mutual support<sup>1</sup> During the last years of the 18<sup>th</sup> century, after the French Revolution, Napoleon waged war with most of Europe.<sup>2</sup> It was a lengthy and ultimately unsuccessful, campaign, during which Napoleon eventually met his death at the hands of the English.<sup>3</sup> By this time, however, the military engagement between French and English military had adversely impacted a fledgling and vulnerable United States of America.<sup>4</sup>

Prior to this conflict between the two nations, the United States had enjoyed excellent trading success with not only France and England, but with other countries as well. However, in aid of their war efforts, France and Britain each established blockades to prevent merchant ships from entering the country.<sup>5</sup> This had a substantial economic impact on the United States, as the exporting business constituted a large percentage of the nation's revenue.<sup>6</sup> It not only prevented trade between the colonies and these countries, but also interfered with trade between the United States and other countries.<sup>7</sup> Moreover,

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<sup>1</sup> Carol Sue Humphrey, *The Revolutionary Era: Primary Documents on Events from 1776 to 1800*, (2003).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Walter R. Borneman, *1812: The War that Forged a Nation*, (2004).

soon American merchant ships and the goods that they carried were being seized by both nations.<sup>8</sup>

The United States, of course, protested the blockades, and particularly the seizures, but ultimately, in an effort to stave off a potentially devastating military outcome at the hands of the British, a young United States signed the Jay Treaty in 1794,<sup>9</sup> hoping to improve relations between the United States and the Britain.<sup>10</sup> The United States also hoped to prevent Britain from exploiting the lands to the west of the existing American boundaries, where the United States had its own expansion plans.<sup>11</sup>

France saw this as a betrayal and decided to focus its attention on the United States, and thus began the Quasi-war between France and the United States.<sup>12</sup> In essence the Quasi-war was a silent , non-declaration of war between France and the United States in which each actively sought to capture the other's vessels.<sup>13</sup> In the course of this Quasi-war, the United States Navy took a small fleet and sailed to known French areas in the Caribbean, with the intention of capturing French vessels.<sup>14</sup> And so, relations between the two countries declined even further.

Understanding her precarious relationships with both France and Britain and in aid of her continued efforts to remain neutral, the United States sent a group of diplomats -- John Marshall, Elbridge Gerry, and Charles Cotesworth

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<sup>8</sup> Philipp Ziesche, *Cosmopolitan Patriots: Americans in Paris in the Age of Revolution*, (2010).

<sup>9</sup> Walter R. Borneman, *1812: The War that Forged a Nation*, (2004).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Carol Sue Humphrey, *The Revolutionary Era: Primary Documents on Events from 1776 to 1800*, (2003).

<sup>13</sup> <http://en.wikipedia.org/wiki/Quasi-War>

<sup>14</sup> *Id.*

Pinkney -- to work to ease tensions between the United States and France.<sup>15</sup> France's contempt for the United States was very plainly expressed in their lack of regard for these peacekeepers. The three men spent six months in France attempting to come to an amenable result for both the United States and France.<sup>16</sup> However, the Prime Minister of France, Charles Maurice de Talleyrand-Périgord, refused to meet with the group, initially, instead sending representatives to convey messages between the three American men and himself.<sup>17</sup>

Eventually, Talleyrand did allow the men an audience.<sup>18</sup> However, when he did so, it was only to present a set of unreasonable demands to which they could not possibly agree.<sup>19</sup> Talleyrand's principal demand was that the United States provide a low interest loan to France in order to fund the ongoing conflict with Britain, as well as paying France, outright, a quarter of a million dollars.<sup>20</sup> Pinkney and Marshall wanted to end negotiations and immediately return to the United States.<sup>21</sup> Gerry, acting on his own, and no longer as a representative of the United States, decided to remain and continue his efforts to rebuild the relationship between the United States and France.<sup>22</sup>

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<sup>15</sup> James Morton Smith, *Background for Repression: America's Half-war with France and the Internal Security Legislation of 1798*, 18 *Huntington Library Quarterly*, 37-58, (1954).

<sup>16</sup> James Morton Smith, *Background for Repression: America's Half-war with France and the Internal Security Legislation of 1798*, 18 *Huntington Library Quarterly*, 37-58, 40, (1954).

<sup>17</sup> James Morton Smith, *Background for Repression: America's Half-war with France and the Internal Security Legislation of 1798*, 18 *Huntington Library Quarterly*, 37-58, 41, (1954).

<sup>18</sup> James Morton Smith, *Background for Repression: America's Half-war with France and the Internal Security Legislation of 1798*, 18 *Huntington Library Quarterly*, 37-58, 40, (1954).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Upon the news of these events, Congress requested that the communications between the peacekeepers and President John Quincy Adams be released to the public.<sup>23</sup> In preparing the communiqués for release, President Adams disguised the names of the French messengers, designating them as “X”, “Y”, and “Z”.<sup>24</sup> Thus, the failed diplomatic efforts between the United States and France became referred to as the “XYZ Affair”.<sup>25</sup>

Outraged by the blatant disrespectful and audacious behavior of the French, America made preparations to go to war with France.<sup>26</sup> A navy was established, Congress authorized the President to pay for a troop of 10,000 men, and merchants were now allowed to arm their ships.<sup>27</sup>

When Talleyrand received news of the release of the XYZ Affair transcripts, he became concerned about the possibility of an international backlash,<sup>28</sup> so in 1780, Talleyrand sent French Ministers to the United States to negotiate a treaty.<sup>29</sup> He intended that the ministers to achieve three things: (1) reestablish Franco-American relations, (2) reestablish the French consuls, and (3) obtain treaty revisions, which would result in equal treatment of France and England.<sup>30</sup>

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<sup>23</sup> James Morton Smith, *Background for Repression: America's Half-war with France and the Internal Security Legislation of 1798*, 18 *Huntington Library Quarterly*, 37-58, 41, (1954).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> James Morton Smith, *Background for Repression: America's Half-war with France and the Internal Security Legislation of 1798*, 18 *Huntington Library Quarterly*, 37-58, 42, (1954).

<sup>27</sup> *Id.*

<sup>28</sup> E. Wilson Lyon, *The Franco-American Convention of 1800*, 12 *The Journal of Modern History*, 305-333, 308, (1940).

<sup>29</sup> E. Wilson Lyon, *The Franco-American Convention of 1800*, 12 *The Journal of Modern History*, 305-333, 312, (1940).

<sup>30</sup> *Id.*

One result of these negotiations between France and the United States, was that France agreed to pay damages to American merchants for any seizures of ships and goods.<sup>31</sup> Under the Treaty of 1800, the owner of a seized ship was owed, from the individual who took the ship and goods, the value of whatever was taken.<sup>32</sup> If, however, that individual was unable to pay the debt, the French government assumed the responsibility of paying the aggrieved party.<sup>33</sup>

The plaintiff Samuel Smith, and his father and business partner, John Smith, were casualties of a French seizure of two of their merchant ships. In 1796 the partnership had two vessels, the Pomona and the Sydney, that were seized by the French government in Santa Domingo, Dominican Republic, by the French. Under the treaty, the partnership was entitled to have the value of their ships and seized goods restored to them as a result of this French seizure.

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<sup>31</sup> E. Wilson Lyon, *The Franco-American Convention of 1800*, 12 *The Journal of Modern History*, 305-333, 314, (1940).

<sup>32</sup> George A. King, *The French Spoliation Claims*, 6 *American Journal of International Law*, 830-857, 833 (1912).

<sup>33</sup> *Id.*

### 3. THE CASE: BARNEY V. SMITH

#### a. *The Plaintiff*

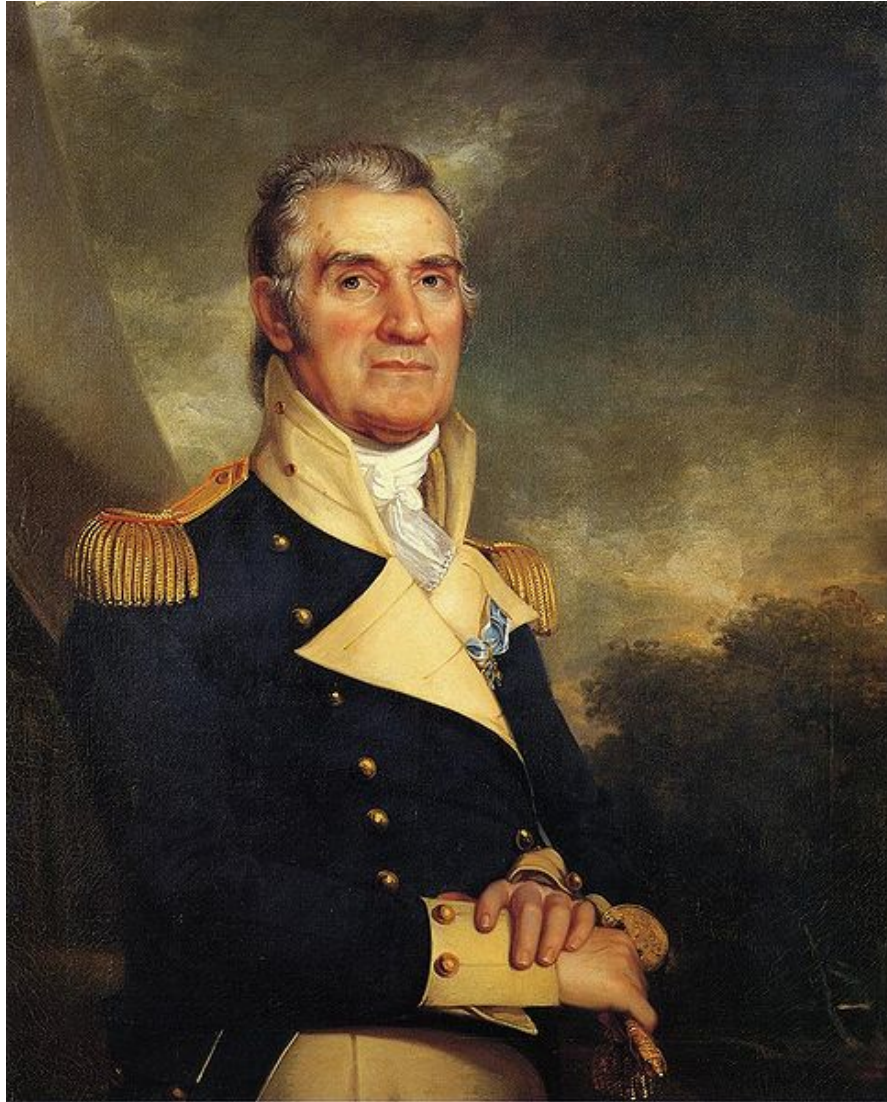


Figure 1 - General John Smith<sup>34</sup>

Samuel Smith was born in Carlisle, Pennsylvania on July 27, 1752.<sup>35</sup>

Smith was son to a wealthy merchant John Smith, who was also the deceased partner in the *Smith v. Barney* case, was born in Strabane, Ireland<sup>36</sup> and Mary

<sup>34</sup> [http://en.wikipedia.org/wiki/Samuel\\_Smith\\_\(Maryland\)](http://en.wikipedia.org/wiki/Samuel_Smith_(Maryland))

<sup>35</sup> *Id.*

<sup>36</sup> <http://www.virtualology.com/samuelsmith1/>



Adams Smith, who was born in Baltimore, Maryland in 1823.<sup>37</sup> Samuel Smith married Margret Smith (nee. Spear), who bore him two children, John (b. 1786-1866) and Mary (b. 1788-1868) Smith.<sup>38</sup> Smith died in Baltimore, Maryland on April 22, 1839.<sup>39</sup>

Samuel Smith worked to become educated in his father's work, hoping to follow in his father's footsteps and become a distinguished merchant in his own right.<sup>40</sup> His education began in his father's counting room, a place where individuals were hired to count the large sums of money for a particular company.<sup>41</sup> He spent five years of his time there,<sup>42</sup> after which Smith set his sights on gaining additional experience in the mercantile trade by serving as a supercargo --an individual, seen as the representative of the owner who is responsible for overseeing the ships cargo and the sale of said cargo -- for one of his fathers ships that was destined for France.<sup>43</sup>

Smith also had an extensive military career, serving in the American Revolution, as well as the War of 1812, where he was part of the Maryland Militia.<sup>44</sup> In the War of 1812, Samuel Smith served as a Major General, and was in command at the Battle of Baltimore at Fort McHenry in 1803.<sup>45</sup>

In addition to his service in the military, Smith also enjoyed a long career as a public servant. Smith served as a United States Congressman from 1793 to

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<sup>37</sup> <http://www.geni.com/people/Mary-Smith/6000000015014617151>

<sup>38</sup> <http://www.geni.com/family-tree/index/6000000015014496553>

<sup>39</sup> *Id.*

<sup>40</sup> <http://www.virtualology.com/samuelsmith1/>

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> [http://en.wikipedia.org/wiki/Samuel\\_Smith\\_\(Maryland\)](http://en.wikipedia.org/wiki/Samuel_Smith_(Maryland)).

<sup>45</sup> *Id.*

1815, where he served as he chairman of the U.S. House Committee on Commerce and Manufactures during the fifth through seventh congressional sessions.<sup>46</sup> Smith also served as a Senator from 1803 to 1815, where he held the highest seat in the senate, *president pro tempore*.<sup>47</sup>

Smith took a seven-year sabbatical from public service, but was again elected to the United States Senate in 1822, where he went in to serve until 1833.<sup>48</sup> This time, Samuel Smith served as the chairman of the U.S. House Committee on Expenditures in the Department of the Treasury during the fourteenth Congress.<sup>49</sup> During the fifteenth through the seventeenth Congresses, Smith was a member of the Committee on Ways and Means.<sup>50</sup> As he did in the past, Smith served as the President Pro Tempore of the Senate during the twentieth and twenty-first Congressional Sessions.<sup>51</sup> He also served on the Committee of Finance during the eighteenth Congressional Session as well as the twentieth through the twenty-second.<sup>52</sup> Smith retired from his distinguished national positions, and went on to become the mayor of Baltimore from 1835 to 1838.<sup>53</sup>

Without question, Samuel Smith was a well-regarded pillar of the community. He was both famous and rich, with a stellar reputation.

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<sup>46</sup> *Id.*  
<sup>47</sup> *Id.*  
<sup>48</sup> *Id.*  
<sup>49</sup> *Id.*  
<sup>50</sup> *Id.*  
<sup>51</sup> *Id.*  
<sup>52</sup> *Id.*  
<sup>53</sup> *Id.*



Figure 2 - Statute of General Samuel Smith in Federal Hill<sup>54</sup>

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<sup>54</sup> <http://monumentcity.net/2009/03/02/major-general-samuel-smith-monument-baltimore-md/>

***b. The Defendant***



**Figure 3 - Commander Joshua Barney<sup>55</sup>**

Commodore Joshua Barney was born in on July 6, 1759 in Baltimore, Maryland. Barney was born to William Barney II (b. 1718-1773<sup>56</sup>) and Frances Watts (b.1724-1788).<sup>57</sup> He lived on his father's farm until he was ten, when he left to have a career as a sailor.<sup>58</sup> Joshua Barney was married to Harriet Barney

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<sup>55</sup> [http://www.uri.edu/artsci/his/mua/in\\_the\\_field/mht.shtml](http://www.uri.edu/artsci/his/mua/in_the_field/mht.shtml)

<sup>56</sup> The Pennsylvania Chronicle had a small article related to the death of William Barney II, indicating that he had been accidentally shot by his son, who was approximately 8 years old. Joshua Barney was 13 at the time.

[http://phw01.newsbank.com/cache/ean/fullsize/pl\\_011242012\\_1317\\_42043\\_76.pdf](http://phw01.newsbank.com/cache/ean/fullsize/pl_011242012_1317_42043_76.pdf)

<sup>57</sup> <http://www.geni.com/family-tree/index/6000000003866908104>

<sup>58</sup> [http://www.history.navy.mil/danfs/barney\\_josa.htm](http://www.history.navy.mil/danfs/barney_josa.htm)

(nee. Coale) on August 27, 1809.<sup>59</sup> The two had three children: Adalee, Elizabeth and Joshua Jr.<sup>60</sup> He later married Anne Bedford, who bore him an additional six children: William Bedford, John, Louis, Henry, Caroline and one other son.<sup>61</sup> Commodore Barney died on December 10, 1818 in Pittsburgh, Pennsylvania.<sup>62</sup>

Like Samuel Smith, Commander Joshua Barney served in the American Revolutionary War, as well as the War of 1812, which ultimately claimed his life in 1818.<sup>63</sup> Barney was a career military man serving in the United States Navy and was notably involved in Chesapeake Bay Flotilla and the Battle of Bladensburg.<sup>64</sup> Commodore Joshua Barney was appointed the Naval Officer of the Port Baltimore by the President in 1817.<sup>65</sup>

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<sup>59</sup> [http://phw01.newsbank.com/cache/eaa/fullsize/pl\\_011242012\\_1326\\_26516\\_730.pdf](http://phw01.newsbank.com/cache/eaa/fullsize/pl_011242012_1326_26516_730.pdf)

<sup>60</sup> <http://www.geni.com/family-tree/index/6000000003866908104>

<sup>61</sup> *Id.*

<sup>62</sup> [http://en.wikipedia.org/wiki/Joshua\\_Barney](http://en.wikipedia.org/wiki/Joshua_Barney)

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> [http://phw01.newsbank.com/cache/eaa/fullsize/pl\\_011242012\\_1535\\_37656\\_218.pdf](http://phw01.newsbank.com/cache/eaa/fullsize/pl_011242012_1535_37656_218.pdf)

### ***c. The Judge***

Joseph Hopper Nicholson



**Figure 4 - Justice Nicholson**<sup>66</sup>

Joseph Hopper Nicholson was born on May 15, 1770 in Chestertown Maryland, and died on March 4, 1817 in Baltimore County in Maryland.<sup>67</sup> He was the son of one of the wealthiest families in Maryland.<sup>68</sup> Nicholson served in the Maryland House of Delegates from 1796 to 1798 and the United States House of Representatives from 1799 to 1806.<sup>69</sup>

During his tenure in the United States House of Representatives, Nicholson presented what was known as the Nicholson Resolution, which was a

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<sup>66</sup> <http://www.msa.md.gov/msa/speccol/sc3500/sc3520/001800/001893/html/msa01893.html>

<sup>67</sup> [http://en.wikipedia.org/wiki/Joseph\\_Hopper\\_Nicholson](http://en.wikipedia.org/wiki/Joseph_Hopper_Nicholson)

<sup>68</sup> *Id.*

<sup>69</sup> <http://maryland1812.wordpress.com/?s=joseph+hopper&submit=Search>

predecessor to the Embargo Act of 1807.<sup>70</sup> The Embargo Act was the United States' efforts to punish England and France for the seizure of United States vessels.<sup>71</sup> The Act was designed to prevent trade with France and England until the countries agreed to discontinue the seizure of the U.S. vessels.<sup>72</sup> Unfortunately, this Act hurt the United States economy, more than it protected it.<sup>73</sup> As a result, the Act was repealed on March 1, 1809.

After his time in the U.S. House of Representatives, Nicholson was elected as chief judge in the Maryland Court of Appeals in March 26, 1806, where he served until his death.<sup>74</sup> Nicholson was also the judge who held the trial case in *Barney v. Smith*. Interestingly, Nicholson had served in the United States House of Representatives with Samuel Smith during Nicholson's tenure in the House and they had worked together during the Embargo Act.

#### **d. The Facts**

*Barney v. Smith* involved a dispute over payment of claims owed to the plaintiff by the defendant. As discussed earlier, John and Samuel Smith were father and son partners in a trading company that owned the two ships at issue in the case, the *Pomona* and the *Sydney*.<sup>75</sup> The two ships were used to ship flour to the island of Santa Domingo, in the Dominican Republic, and ship sugar and fruits from Santo Domingo to the United States.<sup>76</sup> According to several newspapers articles circulating around the Baltimore area in the late 1700's early

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<sup>70</sup> *Id.*

<sup>71</sup> <http://www.britannica.com/EBchecked/topic/185515/Embargo-Act>

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> [http://en.wikipedia.org/wiki/Joseph\\_Hopper\\_Nicholson](http://en.wikipedia.org/wiki/Joseph_Hopper_Nicholson)

<sup>75</sup> *Barney v. Smith*, 4 H. & J. 485, 485 (Md. 1819).

<sup>76</sup> [http://phw01.newsbank.com/cache/ean/fullsize/pl\\_011242012\\_1136\\_08987\\_563.pdf](http://phw01.newsbank.com/cache/ean/fullsize/pl_011242012_1136_08987_563.pdf)

1800's, Barney and Smith had engaged in a business where Barney supplied passports to Smith's crew in order to avoid French seizure.<sup>77</sup> In return, Barney was to receive a percentage of the profit once the goods were sold, although the exact percentage agreed to was disputed between Barney and Smith.<sup>78</sup>

In 1794, the French government detained these two ships.<sup>79</sup> The Plaintiff, Samuel Smith, and the plaintiff's deceased partner, John Smith, who died in June 1805<sup>80</sup>, enlisted the services of the defendant, Joshua Barney, to get payment from the French government as a result of the detainment.<sup>81</sup> The responsibility of getting the money from the French government was most likely left to Barney because of the earlier arrangement. Since Barney provided passports that were supposed to prevent the seizure of Smith's ships, and because these ships were in fact seized, it is likely that the Smiths required Barney to recoup the losses of the partnership.

In addition to the *Pomona* and the *Sydney*, the defendant represented nine other clients whose vessels had been detained by the French.<sup>82</sup> The total owed to these clients by the French government adding up to 156,105 livres, 39,330 livres of which were to go to the plaintiff for the detention of the *Pomona* and the *Sydney*. The evidence presented to the court was that the defendant had acquired a certificate from the French government in his own name for the

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<sup>77</sup> [http://phw01.newsbank.com/cache/ean/fullsize/pl\\_011242012\\_1148\\_55892\\_875.pdf](http://phw01.newsbank.com/cache/ean/fullsize/pl_011242012_1148_55892_875.pdf)

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 487.

<sup>81</sup> *Id.* at 485.

<sup>82</sup> *Id.*



156,105 livres and then sold this certificate to a third party for half of its value.<sup>83</sup>  
The defendant did not deny that he used this money for his own gain.<sup>84</sup>

To counteract this proffered evidence, the defendant entered a letter into evidence that Smith had written to the Secretary of Treasury, Albert Gallatin.<sup>85</sup> In the letter, Smith denounced any claim he had to an account with the French government in the amount of 156,105 livres and stated that he was not aware of any claims for this amount.<sup>86</sup> He later recounted in the letter that any claims he had with the French government had been satisfied.<sup>87</sup> Additionally, he stated that he had not authorized anyone to accept these monies on his behalf, and had no claim to these monies in the future.<sup>88</sup>

In response to this evidence, plaintiff offered a letter from Secretary Gallatin, a document with a list of American claims against the French government, which included the one filed by the defendant in the amount of 156,105 livres.<sup>89</sup> Defendant sought to exclude this evidence as hearsay offered to prove the information that it contained.<sup>90</sup> Nevertheless, the court, Judge Nicholson presiding, allowed the letter to be read into the record.<sup>91</sup>

Additional evidence was presented by the plaintiff, showing that defendant had accepted money on the behalf of John Smith: 21,850 livres for the *Pomona*

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 486.

and 16,800 livres for the *Sydney*.<sup>92</sup> Further evidence was presented, showing that an agent for the defendant, Paul Bentalou, had sold these claims to Robert Fulton for half the value of the claim on April 9, 1803.<sup>93</sup> Plaintiff proffered a letter from the defendant, dated on February 19, 1805, in which the defendant had learned that the first request presented to the French government had been denied, because it had been deemed improper.<sup>94</sup> The defendant went on to say in his letter that he expected a lump sum for the *Pomona*, *Sydney* and the other ships for which he had filed claims totaling 89,430 livres, and that he expected six percent for his efforts.<sup>95</sup> After this communication, Smith testified that he had heard nothing more from the defendant, other than his claims had been denied because the balance had been paid in full.<sup>96</sup> Defendant's response was that the French could not pay the claims until the property had been liquidated.<sup>97</sup>

Plaintiff Smith proved that he was unaware that his claims were lumped together with other claims.<sup>98</sup> He also presented evidence that three years after the defendant made a promise to pay the his father, John Smith, the defendant made a new promise to the plaintiff, Samuel Smith, to pay what he owed.<sup>99</sup> However, there was an understanding that the amount was contingent upon another case<sup>100</sup> that was currently underway, *Hollins case*,<sup>101 102</sup> the crux of

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 487.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 488.

<sup>100</sup> *Id.* at 487.

<sup>101</sup> See Barney v. Smith, 4 H. & J. 485, (1819) (The *Hollins case* was heard in June 1809).

which was to determine whether the plaintiff in that case should receive the full amount they were owed, or only what the defendant had received from the transaction.<sup>103</sup> The evidence showed that the defendant understood the Smith was awaiting the outcome of the *Hollins* case<sup>104</sup> before he proceeded with his action attempting to recoup his money from the defendant.<sup>105</sup>

Plaintiff entered two additional letters into evidence. One letter, dated January 25, 1809, was sent to the defendant, explaining that Smith had become aware of the total price of the demurrage (the extra charges by the ship owner against the charterer for use of the vessel beyond the prescribed, or agreed upon time)<sup>106</sup>, and that the French government had settled it.<sup>107</sup> The letter went on to express concern that he had not received any information from the defendant regarding payment to Smith from the settlement with the French government.<sup>108</sup> Smith also wrote that he had no idea what commission the defendant had taken.<sup>109</sup> The second letter, dated January 27, 1809, was from the defendant, which referred the plaintiff to the Secretary of Treasury for any claims against him.<sup>110</sup>

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<sup>102</sup> One interesting factual note regarding the *Hollins* case is that John Hollins was the brother-in-law to Samuel Smith. <http://www.geni.com/family-tree/index/6000000015014496553>

<sup>103</sup> *Id.* at 488.

<sup>104</sup> See *Barney v. Smith*, 4 H. & J. 485, (1819) (In the *Hollins* case, the defendant admitted to receiving the liquidated certificate for Hollins' ships, along with the Pomona and the Sydney. The case also revealed that the defendant had sold the demurrage for fifty-percent of its value. The court held that the parties who expected the demurrage were only entitled to receive the amount the defendant actually received, not the entire value of the liquidated certificate. The defendant appealed this decision, however, the decision was later affirmed).

<sup>105</sup> *Id.* at 488.

<sup>106</sup> <http://en.wikipedia.org/wiki/Demurrage>

<sup>107</sup> *Id.* at 490.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

**e. The Issue**

There were two issues presented in this case. The first issue dealt with the standing of Samuel Smith. The original promise made by the defendant was made to the deceased partner, John Smith, not to Samuel Smith, the surviving partner,<sup>111</sup> so the first question was whether Samuel Smith had standing to challenge the statutory bar.<sup>112</sup> The second issue was whether the plaintiff's suit was barred by the statute of limitations<sup>113</sup> or whether there was enough evidence to prove that the defendant had acknowledged the debt to the plaintiff, thereby extinguishing the bar.<sup>114</sup>

**f. Arguments**

Nathaniel Williams, Samuel Smith's attorney, argued that at the time, there was no law on point.<sup>115</sup> The most analogous law was that if an intestate made a promise to pay a debt, that promise was not enforceable if the plaintiff attempted to collect after the statute of limitations had run.<sup>116</sup> The rationale behind the statute of limitations was to prevent the debtor from being sued after the evidence was no longer available.<sup>117</sup> However, if the debtor is alive and acknowledges a debt, the statute of limitations could be overcome.<sup>118</sup> In this same vein, if the debtor acknowledged the debt, the statute of limitations is deprived of its purpose.<sup>119</sup> Williams argued that the statute of limitations in the

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<sup>111</sup> *Id.* at 489.

<sup>112</sup> *Id.*

<sup>113</sup> The statute of limitation was three years.

<sup>114</sup> *Id.* at 490.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 491.

<sup>118</sup> *Id.* at 492.

<sup>119</sup> *Id.*

case at bar had been reset since the defendant had acknowledged his debt to the plaintiff, Samuel Smith.<sup>120</sup>

William Pinkney, the defendant's attorney asserted that if the defendant had, in fact, acknowledged the debt, which was a point of fact to be determined by a jury, then indeed he was still bound by the original promise made to the decedent.<sup>121</sup> However, because three years had passed since the original promise was made, the statute had run.<sup>122</sup> Additionally, Pinkney argued that the acknowledgment, even if it did exist, was made to Smith in Smith's capacity as the representative of the estate of John Smith, the decedent.<sup>123</sup> In plaintiff's representative capacity, Pinkney argued, Smith stood in the shoes of John Smith, and it was therefore not possible to extend the statute of beyond three years after John Smith had died that would place the cause of action outside any time that an acknowledgement could have been made to the decedent.<sup>124</sup>

Williams, the plaintiff's attorney, then argued that even if his action failed in the representative capacity, Smith was also partner in the venture to which the money was owed.<sup>125</sup> As such, Pinkney argued, even if Smith received the information in a representative capacity on behalf of the decedent, he also received that information as a member of the partnership.<sup>126</sup> Further, even though it could be argued that Smith received this information in a representative capacity on behalf of the partnership, as a partner himself entitled to the benefits

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 494.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 493.

<sup>126</sup> *Id.* at 494.

of the partnership and responsible for the debts, he also received the information on his own behalf.<sup>127</sup>

***g. The Holding***

The courts believed that there was enough evidence to prove that a debt was owed.<sup>128</sup> The court held that the purpose of the statute of limitations was to bar plaintiffs from recovering monies from defendants, years later, based on stale evidence or claims that had been already satisfied.<sup>129</sup> It was further explained that the purpose of the statute of limitations was not to prevent people from seeking to satisfy claims that were never paid.<sup>130</sup> The court recognized that under the law, any admissions by the debtor that the debt was owed was sufficient to remove the statutory bar.<sup>131</sup> However, the court was careful to point out that the admission only extinguishes the bar. It does not create a new agreement, it only resurrects the original agreement.<sup>132</sup>

The court also pointed out that the monies owed to an executor differ from the monies owed to a partner and a decedent partner, in that there is a shared interest in the payment of funds because all debts of business are still in existence and are the responsibility of the surviving partner.<sup>133</sup> Therefore, if there is any admission to the partner regarding payment, that payment can be extended to the monies owed to the decedent as well.<sup>134</sup> In other words, the surviving partner has claim to his share and the share of his partner against the

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 495.

<sup>129</sup> *Id.* at 496.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

debtor and the bar is removed on both accounts.<sup>135</sup> The judgment was affirmed in favor of the plaintiff.<sup>136</sup>

#### 4. CONCLUSION

*Barney v. Smith* is a case of a business relationship gone awry. There was a strong business history between Barney and the Smith family. This relationship spanned from John Smith to Smith's grandson-in-law, John Hollins. The existence of the generational dealings between Barney and the Smith's implies that there existed a trust between the two, at least enough trust to conduct a substantial amount of business in the West Indies for nearly two decades. On the other hand, once the passport scheme had gone awry, that trust was broken and the parties began to squabble.

Like in all cases in a court of law, the real question can be boiled down to the role of veracity in an epic and proverbial game of he-said/he-said. Here there were two very different stories. On the one hand, there was a family with a history of wealth, stemming back to the old country, a family who, despite the constant threat of French and English seizure continued to thrive, not only in mercantilism, but in public service as well. On the other side, you had a distinguished Commander and well-regarded ship's captain, whose service in the Navy was very notable, but who came from humble beginnings. It is difficult to hold any doubt that the influence of Smith family and the prior common experiences of Smith and Nicholson played a role in the outcome of the case.

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<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

While it is easy to dismiss the outcome of the case with the idea that money was what tipped the scale, there should also be given some consideration given to the fact that Barney was a professional military man, who traditionally did not make a great deal of money. As a captain and Commodore, some responsibility rested on his shoulders to supply the needs of the men he commanded. Thus, even though Barney converted the money owed to Smith to his own use, it is entirely possible that he used this money to offset some of these costs.



## 5. NATHANIEL WILLIAMS, PLAINTIFF'S COUNSEL

Nathaniel Williams was born in Roxbury, Massachusetts on March 14, 1782, to Joseph and Susana Williams.<sup>137</sup> Williams was from a line of people who could be traced back to Wales.<sup>138</sup> Williams was educated in Roxbury, where he was born, and later graduated from Harvard in 1801.<sup>139</sup> He was an apprentice in 1802 at a Boston law firm, but moved from Boston to Baltimore, where he completed the program.<sup>140</sup> Williams entered the Bar in 1804 and remained barred until his death until September 10, 1864.<sup>141</sup>

Williams was married twice.<sup>142</sup> His first wife, Caroline Barney, was the daughter of Commodore Barney.<sup>143</sup> Caroline bore him at least one child.<sup>144</sup> After the death of his first wife, Williams married Maria Pickett Dalrymple.<sup>145</sup> Maria bore Williams three children, one son and two daughters.<sup>146</sup>

During his 60 years at the bar, Williams did not only practice law.<sup>147</sup> In 1812, he was elected to the state senate, where he served in that position for 4 years.<sup>148</sup> In addition to his time served as a state senator, Williams also served as a United States district attorney, an office he held for sixteen years.<sup>149</sup> In

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<sup>137</sup> *Min of Maryland*, Lynn Roby Meekins et al. (1912).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup>

<http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/001800/001824/html/01824bio.htm>

<sup>149</sup> *Min of Maryland*, Lynn Roby Meekins et al. (1912).

1852, Williams resumed his previous role as state senator.<sup>150</sup> Part of his goals and accomplishments in the state senate was to ensure that women could own and purchase property.<sup>151</sup> Additionally he served as commissioner to e a group who sought out to improve the Baltimore street layout, as well as established the layout for Patapsco City, now known as Brooklyn.<sup>152</sup>

Despite Williams's forward thinking regarding women's rights, he sympathized with the South during the Civil war and was a starch Democrat.<sup>153</sup> Williams was a founder if the Unitarian Church of Baltimore, as well as the Baltimore theater.<sup>154</sup> He was also a trustee of the University of Maryland in 1826.<sup>155</sup>

In 1814, Williams volunteered to be apart of a brigade during the battle of North Point.<sup>156</sup> During this battle, Williams was shot and thought to be mortally wounded by British soldiers.<sup>157</sup> However, a silver pencil holder saved his life and prevented the bullet from killing him.<sup>158</sup>

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<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup>

<http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/001800/001824/html/01824bio.htm>

<sup>156</sup> *Min of Maryland*, Lynn Roby Meekins et al. (1912).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*