

***The Merrimack*, 12 U.S. 317 (1814):
Transatlantic Trade and the Transfer of Property During the
War of 1812**

Author

Jeremy Esperon

Document Type

Article

Publication Date

2013

Keywords

1812, privateer, prize law, transfer of property, trade, Baltimore, Rossie, Merrimack, merchant

Abstract

A key prong of American strategy during the War of 1812 was to enlist the aid of privateers – private actors licensed by the government to use force against the enemy. Among the ships American privateers seized during the war pursuant to this strategy was the *Merrimack*, an American-owned vessel returning from Liverpool, England to Baltimore, Maryland carrying on board a cargo of British goods. Her seizure led to the Supreme Court case *The Merrimack*, 12 U.S. 317 (1814), a seemingly banal case that in fact is a cautionary tale for merchants of one belligerent nation seeking to structure transactions with the merchants of another. *The Merrimack* tells the story of what happens to goods shipped by merchants of one nation to those of another when those goods are not consigned directly to the merchants who requested their purchase but to intermediaries acting on the shippers' behalf, raising a question as to whether, at the time of shipment, property in the goods had remained in the shippers or transferred to the purchasers.

Disciplines

Law, Maritime History, Property

The Merrimack:
Transatlantic Trade and the Transfer of Property During the War of 1812

I. Introduction

When the United States declared war on Great Britain in 1812, the nation was at a considerable disadvantage: whereas the British Royal Navy was unquestionably the most powerful naval force in the world, the U.S. Navy was an eighteen-year-old institution with barely a dozen ships to its name. To overcome this disparity, one of President Madison's key strategies was to harness the large fleet of privately owned vessels by issuing them letters of marque and reprisal, allowing those vessels to carry guns and attack and capture enemy vessels on the United States' behalf. The strategy paid off: these commissioned vessels – so-called privateers – proved to be extremely successful, claiming a majority of the 2,500 British merchant ships taken during the war.

Among the ships American privateers seized during the war was the *Merrimack*, an American-owned vessel returning from Liverpool, England to Baltimore, Maryland carrying on board a cargo of British goods. Her seizure led to the Supreme Court case *The Merrimack*, 12 U.S. 317 (1814), a seemingly banal case that in fact is a cautionary tale for merchants of one belligerent nation seeking to structure transactions with the merchants of another. As is further described below, *The Merrimack* tells the story of what happens to goods shipped by merchants of one nation to those of another when those goods are not consigned directly to the merchants who requested their purchase but to intermediaries acting on the shippers' behalf, raising a question as to whether, at the time of shipment, property in the goods had remained in the shippers or transferred to the purchasers.

II. Historical Context

Privateers – vessels "owned, equipped, and armed by one or more private individuals, and duly commissioned by a belligerent power to go on cruises and make war upon the enemy, usually by preying on his commerce" – have for long commanded a critical role in international warfare.¹ In *The Merrimack*, 12 U.S. 317 (1814), it was a conflict between the United States and Great Britain – the War of 1812 – that served as the basis for an American privateer's seizure of an American merchant vessel on the grounds that the vessel was carrying the enemy's goods. The seizure, inspired even more by a profound sense of patriotism than by an opportunity to turn a profit, is but one example of how privateers could help a nation advance its cause in wartime.

As there is no privateering without an underlying war, so too is there no analysis of a prize case without an understanding of the belligerency that caused it to occur. Accordingly, although a full explanation of the War of 1812 is far beyond the scope of this paper, a brief introduction to the war and its relevance to *The Merrimack* is provided here.² As is further described below, privateering was a critical component of U.S. strategy, and Baltimoreans jumped on the opportunity to make a profit while serving their country.

a. Privateering as a Strategy of War

¹ Theodore Cooperstein, *Letters of Marque and Reprisal: The Constitutional Law and Practice of Privateering*, 40 J. OF MARITIME LAW & COMMERCE 221, 222 (2009). A brief summary of the rules of privateering is provided *infra* at Appendix 1.

² Additionally, a summary of key events leading up to the declaration of war is provided *infra* at Appendix 2.

On 1 June 1812, President Madison delivered a special message to Congress in which he listed a series of transgressions Great Britain had committed against the United States. Among other things, he noted that:

“British cruisers have been in the continued practice of violating the American flag on the great highway of nations, and of seizing and carrying off persons sailing under it, not in the exercise of a belligerent right founded on the law of nations against an enemy, but of a municipal prerogative over British subjects ... British cruisers have been in the practice also of violating the rights and the peace of our coasts. They hover over and harass our entering and departing commerce. To the most insulting pretensions they have added the most lawless proceedings in our very harbors, and have wantonly spilt American blood within the sanctuary of our territorial jurisdiction... Under pretended blockades, without the presence of an adequate force and sometimes without the practicability of applying one, our commerce has been plundered in every sea, the great staples of our country have been cut off from their legitimate markets, and a destructive blow aimed at our agricultural and maritime interests.”³

Although he did not specifically call for a declaration of war, after four days of deliberation, Congress voted in favor of declaring war.⁴ President Madison would sign the declaration on 18 June 1812, and the stage was set for the United States to wage war against the greatest maritime power at the time.

From the outset, the United States was at a considerable disadvantage against Great Britain. At the time, the United States was a tiny fish in a great big sea ruled by the British: among other disparities, the U.S. would be pitting a grand total of seventeen

³ President James Madison, War Message to Congress (June 1, 1812), available at <http://www.presidentialrhetoric.com/historicspeeches/madison/warmessage.html>.

⁴ RALPH E. ESHELMAN & BURTON K. KUMMEROW, IN FULL GLORY REFLECTED: DISCOVERING THE WAR OF 1812 IN THE CHESAPEAKE 14 (Maryland Historical Society Press 2012).

warships against Great Britain's five hundred.⁵ "Fortunately, the American sailing class was well suited to man ships of war when the call came, due to the independent and self-sufficient nature of American sailing vessels, especially after the period of armed neutrality required defense or flight from both British and French privateers."⁶

Accordingly, one of President Madison's strategies of war was to harness the large fleet of privately owned vessels by granting them a letter of marque and reprisal, which would allow those vessels to carry guns and attack and capture enemy vessels.⁷

Both Congress and President Madison understood the importance of this strategy: in its declaration of war, Congress specifically authorized the President to issue such letters of marque,⁸ and President Madison personally signed each of the letters. Between 1812 and 1815, the United States issued 1,100 letters of marque to privateers.⁹ The

⁵ "The poverty of the three Federalist administrations and the political principles of the three Republican administrations which succeeded them, prevented the development of any substantial federal navy." ESHELMAN & KUMMEROW, *supra* note 4, at 14. Francis R. Stark, *The Abolition of Privateering and the Declaration of Paris*, in 8 STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW 227, 347 (Columbia Univ. 1897).

⁶ Cooperstein, *supra* note 1, at 25. "Wherever an American seaman went, he not only had to contend with all the legitimate perils of the sea, but he had also to regard almost every stranger as a foe. Whether this foe called himself pirate or privateer mattered but little. French, Spaniards, Algerines, Malays, from all alike our commerce suffered, and against all, our merchants were forced to defend themselves. The effect of such a state of things, which made commerce so remunerative that the bolder spirits could hardly keep out of it, and so hazardous that only the most skilful and daring could succeed in it, was to raise up as fine a set of seamen as ever manned a navy. Altogether, there could not have been better material for a fighting crew than cool, gritty American Jack." THEODORE ROOSEVELT, *NAVAL WAR OF 1812* (Naval Institute Press 1987) (1882).

⁷ ESHELMAN & KUMMEROW, *supra* note 4, at 18.

⁸ An Act Declaring War Between the United Kingdom of Great Britain and Ireland and the Dependencies Thereof and the United States of America and Their Territories. June 18, 1812.

⁹ ESHELMAN & KUMMEROW, *supra* note 4, at 18. Of the 1,100 letters issued, 122 went to Baltimore privateers. *Id.* "Baltimore had a leg up on the rest of the maritime community. In their search for speed under sail, local ship builders and owners had developed a topsail schooner known as the Baltimore clipper. Heavy with sail, they were majestic,

strategy paid off: privateers were responsible for taking a majority of twenty-five hundred British merchant vessels, causing a major disruption to the commerce of Great Britain.¹⁰

b. Baltimore and the War of 1812

The lead up to the War of 1812 (and, of course, the War itself) had a significant effect on the entire nation, and Baltimore was no exception. From 1793 to 1807, the city had experienced an accelerated growth, fueled in large part by maritime trade.¹¹ As a result of the passage of the Embargo Act,¹² however, trade stagnated, so the focus of Baltimore's economy shifted away from trade and moved towards industrialization.¹³

As the likelihood of war against Great Britain increased, however, so did the efforts placed on trade. In particular, anxious to capitalize on the potential profits that could be made from the high seas, Baltimore increasingly turned to privateering as a commercial activity:

“Baltimore was famous, and infamous, for its privateers. About 126 privately armed vessels were fitted out in Baltimore during the War of 1812, and they captured 556 British prizes. This was almost one third of the total of

sleekly designed thoroughbreds of their day. Clippers were known to taunt their competition by flying pennants that announced ‘catch me if you can.’” *Id.*

¹⁰ DONALD A. PETRIE, *THE PRIZE GAME: LAWFUL LOOTING ON THE HIGH SEAS IN THE DAYS OF FIGHTING SAIL 1* (US Naval Institute Press 1999), citing *Niles Weekly Register*, 12 August 1815.

¹¹ GARY LAWSON BROWNE, *BALTIMORE IN THE NATION 1789-1861* 54 (The University of North Carolina Press 1980).

¹² *Supra*, section II.c.

¹³ “Within a month after the embargo began, prices of most imported goods, especially dry goods, had risen and the maritime business was in the doldrums. By March the depression had deepened: vessels were laid up and the crews discharged, flour mills were idled and millers let go.” BROWNE, *supra* note 20, at 52. Between the passage of the Embargo Act until the outbreak of the War of 1812, several large factories were built in and around Baltimore. *Id.* at 55.

British prizes (1,634)¹⁴ taken by all American vessels, both naval and private, and almost half of the British prizes taken by all privately armed American vessels (1,380). The value of Baltimore's British prizes has been estimated at \$16 million."¹⁵

Indeed, those who engaged in the business of privateering stood to gain from the practice in several ways.¹⁶ In addition to the prize itself, privateers could count on receiving a bounty of twenty dollars (later one hundred) from the federal government for each man captured alive aboard an enemy ship.¹⁷ Moreover, the danger involved in privateering meant that privateer seamen were paid higher than they would be paid during peacetime.¹⁸ By some estimates, privateering allowed an ordinary sailor to earn in one voyage what he might earn in several months.¹⁹

c. Privateering as Patriotism: Joshua Barney

One Baltimorean who tried his hand at the privateering business was Joshua Barney. Born on 6 July 1759 to William and Frances Holland Barney, Barney lived a remarkable life and is widely regarded as one of America's earliest heroes:

¹⁴ Between 1812-1815, the *Niles Weekly Register* listed 1,634 prizes, but Niles estimated that additional vessels that escaped his notice would have brought the total up to 2,500. See PETRIE, *supra* note 10, at 1, fn. 2.

¹⁵ BROWNE, *supra* note 11, at 62-63

¹⁶ Questions remain as to whether privateering as a business was a profitable endeavor. See Frederick Leiner, *Privateers and Profit in the War of 1812*, 77 J. OF MILITARY HISTORY 1225 (2013).

¹⁷ BROWNE, *supra* note 11, at 63. The captured person had to be of equal or greater size than the captor.

¹⁸ BROWNE, *supra* note 11, at 63 ("Because of the danger involved in such cruises, seamen also received higher wages than they received during peacetime, ranging up to thirty dollars a month. This greatly increased the owner's expenses, because such privately armed vessels commonly carried crews ranging from a hundred to two hundred men, not all of whom were seamen. It was thus imperative that the vessel capture enemy shipping to pay its way.").

¹⁹ BROWNE, *supra* note 11, at 63, fn. 14.

A man without formal education or military background, he had natural gifts seamanship, leadership, and courage. At the age of fifteen, on the death of his sea captain brother-in-law, Barney found himself in command of a foundering vessel in the middle of the stormy North Atlantic. He completed the passage, proved his adeptness at business in a cutthroat market, and returned home with an impressive profit. At the start of the American Revolution he was a sixteen-year-old master's mate on the Continental navy ship *Hornet*, one of the first vessels to fly the American flag at sea. Shortly thereafter, he was promoted to naval lieutenant, an event that launched his remarkable career.²⁰

Equal parts businessman and patriot, Barney was quick to take part in the prize game when the War of 1812 was declared. Driven not only by the possibility of turning a profit, but also (and primarily) by the opportunity to punish the British, Barney accepted command of the schooner *Rossie*, a 206-ton, ninety-eight-foot private armed vessel, which had been issued the coveted commission number I.²¹ The *Rossie* set sail in December 1811, and, by the end of her voyage in October 1812, was responsible for destroying or capturing eighteen prizes carrying 3,698 tons of shipping worth an estimated \$1.5 million, as well as capturing 217 prisoners.²²

Barney would profit greatly from this bounty: he received 16 of 285 shares generated for the officers and crew, ten percent of the gains from the sale of the proceeds from the bounty, ten regular shares as captain of the vessel, and four merit shares that he

²⁰ LOUIS ARTHUR NORTON, *JOSHUA BARNEY: HERO OF THE REVOLUTION AND 1812* (Naval Institute Press 2000).

²¹ *Id.* at 160. Interestingly, a day before *Rossie* was to set sail, Barney was detained on “suspicion of debt,” for apparently owing one thousand dollars that “it was necessary for him to do away with” before he could leave Baltimore. *Id.* A friend of Barney’s, Isaac McKim, loaned Barney the money so that he could pay off the debt. *Id.*

²² *Id.* at 166.

awarded to himself.²³ According to the *Rossie*'s financial records, Barney's received a total of \$18,195 for his ninety days at sea.²⁴

III. The Case

Among the prizes Barney seized while in command of the *Rossie* was the *Merrimack*, an American-owned vessel that had been sailing from Liverpool, England to Baltimore, Maryland.²⁵ Ultimately, the ship's seizure and the determination of whether her cargo was good prize would require input from the Supreme Court. As is further described below, *The Merrimack*, 12 U.S. 317 (1814), tells the story of what happens to goods shipped by merchants of one nation to those of another, when those goods are not consigned directly to the merchants who requested their purchase but to intermediaries²⁶ acting on the shippers' behalf, raising a question as to whether, at the time of shipment, property in the goods had remained in the shippers or transferred to the purchasers. In peaceful times, such a transaction would not be a cause for concern – the goods would

²³ JEROME R. GARITEE, *THE REPUBLIC'S PRIVATE NAVY: THE AMERICAN PRIVATEERING BUSINESS AS PRACTICED BY BALTIMORE IN THE WAR OF 1812* (AMERICAN MARITIME LIBRARY SERIES) 187 (Wesleyan 1977).

²⁴ NORTON, *supra* note 20, at p. 166

²⁵ The *Merrimack* was one of many British ships that were brought into port in Baltimore at the time. *Niles Weekly Register*, vol. 3, no. 9, Oct. 31, 1812, 143 (“Many *American* vessels, with goods from *England*, have been sent into port by our privateers, on suspicion of having British property on board. These have not been noticed in our list; but, it appears, the facts are, in many instances, as they were supposed; and, if the proper *proof* can be furnished, condemnations to a great amount will take place. It is positively stated that one of the Yankee's prizes of this description will afford the privateer the enormous sum of 200,000 dolls.”), available at <https://archive.org/stream/nilesweeklyregis03balt#page/143/mode/1up>

²⁶ Merchants often preferred to consign their goods to agents. One Baltimorean merchant firm, Oliver & Thompson, almost always did so from 1785 to 1790. STUART WEEMS BRUCHEY, *ROBERT OLIVER: MERCHANT OF BALTIMORE, 1783-1819* (The Johns Hopkins University Press 1956). Having good agents at various parts gave merchants an important source of market information and enabled merchants to “protect the credit reputation at their house, and helped save their ventures from loss.” *Id.* at 151.

arrive at their destination and be received by the consignee, and the purchasers would be able to obtain their goods from the consignee. But, as is further explained below, during wartime, structuring a transaction as such could create a precarious situation in which property in goods is found to have remained in the shipper. Because British property was subject to condemnation, such a finding could be disastrous for Baltimore merchants, putting their goods shipped from Great Britain at risk of capture by privateers and condemnation by a prize court.

a. Chronology of the Case

The story of the *Merrimack* began in December of 1811 when, under the command of Charles Cook, she set sail from Newburyport, Massachusetts.²⁷ From there, the *Merrimack* sailed to Charleston, South Carolina, then to Chatham, England, and then to Liverpool, England.²⁸ Finally, in mid-August, she left Liverpool for Baltimore, Maryland, licensed by the British government to transport goods back to the United States.²⁹ By then, however, it was known throughout Great Britain that war had been declared, and two months later, on approximately 22 October 1812,³⁰ the *Merrimack* was

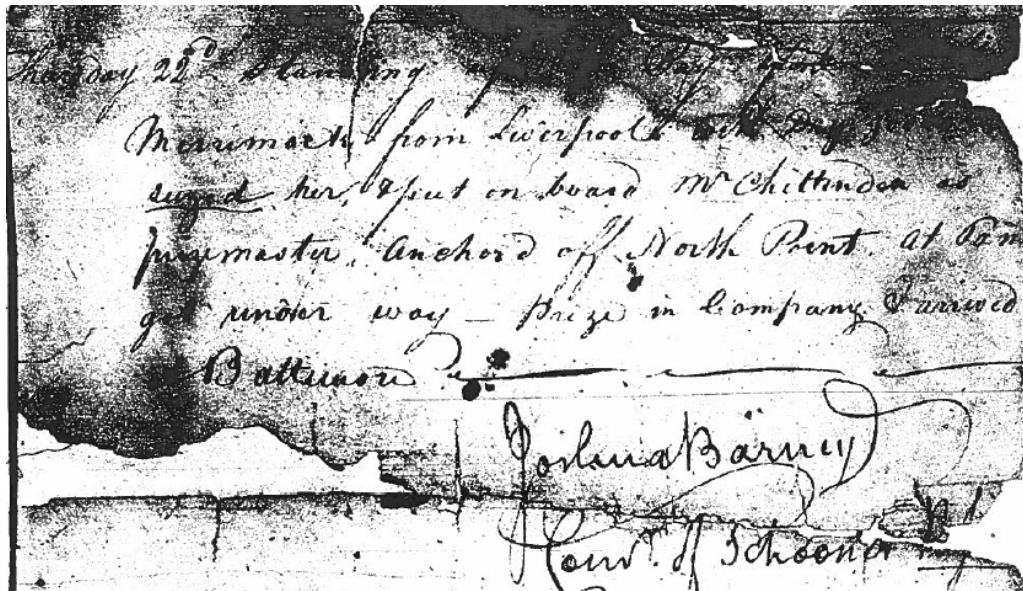
²⁷ Records of the U.S. District Court for the District of Maryland, Admiralty Case Files, 1800, File 1072, Maryland State Archives (via mdhistory.net), available at http://www.mdhistory.net/nara_rg21/nara_rg21_24m127/pdf/nara_rg21_24m127-1072.pdf. Hereinafter, citations to this file will take the form “*Merrimack* File #####”, where “#####” represents four numbers in the URL http://www.mdhistory.net/nara_rg21/nara_rg21_24m127/pdf/nara_rg21_24m127-####.pdf, where that file can be accessed.

²⁸ *Merrimack* File 1072.

²⁹ *Merrimack* File 1072.

³⁰ Although the Supreme Court states in its opinion that the *Merrimack* was seized on 25 October 1812, the log of the *Rossie* indicates that the seizure occurred on 22 October 1812.

seized by the *Rossie* somewhere between Annapolis and the mouth of the Patapsco River in the Chesapeake Bay.³¹



An excerpt from the log of the *Rossie*. Log of the *ROSSIE* (Sept. 15-Oct. 22, 1812), collection MS 2312, Maryland Historical Society.

The *Merrimack* and the *Rossie* arrived in Baltimore on 22 October 1812, and on 28 October 1812, Elias Glenn, attorney of the United States for the Maryland District, filed an information in that District's court.³² According to the filing, one day before, James H. McCulloh, esq., collector of customs for the port of Baltimore, seized to the use of the United States the ship *Merrimack* as well as her cargo, which consisted of 6,243 rolls, rods, bundles, and other packages of goods, as well as an unknown quantity of coal, all of which were produced and manufactured in Great Britain.³³ In filing the information, Glenn requested that the court condemn the goods as forfeited by law.³⁴

³¹ *Merrimack* File 1071.

³² *Merrimack* File 0448.

³³ *Merrimack* File 0448.

³⁴ *Merrimack* File 0448.

Over the next few weeks, James Law, John E. Carey, and John Hastings engaged in a series of valuations of the goods that were part of the *Merrimack*'s cargo. The following chart lists the types of cargo on the ship, their valuations, and their apparent claimants:³⁵

Description of goods valued	Valuation	Claimants	Case file number ³⁶
The ship Merrimack, her tackle, apparel, and furniture	\$3,000	Robert Follensbe, Moses Goodrich, Nathaniel Fletcher	0469
Five bales of sagathy	\$1,001.18	Peter Hoffman and George Hoffman	0473
Twelve sheets lead, twelve casks white lead, twenty casks shot, twenty casks Spanish Brown, eight whiting, twenty casks copper, 320 bundles red iron, 575 ____, 100 bundles ____, 68 boxes tin, two casks iron wire, 35 casks ____	\$5,756	Ebenezer Breed and Elijah ____ and John Breed of Boston	0475
Four bales mze marked FC and one bale mze marked CFC	\$4,111.44	Conleius Comegys, William Chochran, and ____ of Comegys, Falconner & Co.	0477
Ten bales of merchandise	\$2,016.87	George Hoffman and John Hoffman	0479
Eight bales mze marked WB_S and ten bales mze marked (seal)	\$5,221.67		0481
Two cases mze marked (seal) and two bales mze marked F+M	\$1,195.00	Alexander Fridge, James Campbell, and Nathaniel Appleton	0486
176 crates, 21 casks, 16 chests, 17 bales, 220 kegs, 4,016 bars of iron, 100 bundles of iron and __ coal	\$22,181.99	Appleton, Fridge, John A. Brown	0488
Two bales mze marked TEB, five cases mze marked (seal) and one trunk mze marked (seal)	\$1,210.05	Thomas Edmondson, Jos. Lochester, John Robinson	0490

³⁵ These claimants were those who had posted bond for the goods as valued.

³⁶ See *supra*, fn. 52.

Description of goods valued	Valuation	Claimants	Case file number³⁶
Five bales mze marked RM and four bales mze marked RNB	\$5,217.59	Robert Miller, George Frundy, George Crosdale	0492
Two cases of saws and one cask of hardware	\$605.77	Thomas Poultney, Lewis W___, P.E. Thomas	0494
Eight cases and one box merchandise marked (seal)	\$917.37	John Robinson, Thomas Edmondson, James Wilson	0496
Bale woollens marked (seal) and 1 bale woollens marked (seal)	\$624.29	Henry Scott, Isaac Edmondson, and Joseph ___	0498
Six bales woolens marked (seal)	\$2,322.39	Elisha Browne, Joseph ___, and Matthew Smith	0500
One bale mze marked (seal), three bales mze marked (seal), two bales mze marked (seal)	\$5,061.65	James Campbell, Alexander Fridge, and ___	0502
Six crates of mze	\$96.00	Washington Hall, Robert Barry, and Nicholas C. Hall	0504
Two bales and one trunk mze marked W+JW and six bales mze marked (seal)	\$5,201.46	William and Joseph Wilkins	0506
One bale mze marked (seal)	\$254.78	Hezekiah Clagett, K. Owen, and Luke Tiernan	0509
Nine casks and eight bundles marked E+C, five casks marked A, five casks marked C	\$3,025.20	Jesse Eichelberger	0512
Ten bales mze marked (seal)	\$2,016.87	John Hoffman, George Hoffman, and Peter Hoffman	0514
Three bales mze marked TG	\$901.52	Christopher Johnston and Robert Ferguson	0516
Eight cases merchandise marked (seal) and three cases marked W+JW and one bale marked (seal)	\$4,136.06	William Wilkins and R.H. Mullikin	0518
One cask mze marked (seal)	\$420.25	John H. Browning and ___	0521
Ten boxes mze marked (seal)	\$4,052.68	John Heathcole, William Cole, James Clarke	0523
Two bales mze	\$700.19	John Wilkins, Henry Wilkins, and R.H. Mullikin	0525
Ten casks mze marked (seal), two casks mze marked (seal), fifteen casks & twenty four bundles mze marked (seal),	\$11,307.44	Samuel McKean, Alexander Fridge, and James Campbell	0527

Description of goods valued	Valuation	Claimants	Case file number ³⁶
twenty two casks mze marked SA, & sixty five bundles marked (seal)			
Three casks mze and four bundles marked (seal)	\$206.68	Jacob Albert	0529
Two bales (seal), ten bales (seal), four bales merchandise	\$9,618.59	Luke Tiernan, James Campbell, Jacob Fohley	0530
141 crates mze marked (seal), 25 crates mze marked F, 9 crates mze marked G, 13 crates mze marked (seal)	\$4,267.12	Bolton Jackson, John White, and Henry Jackson	0532

It appears as though six claims were filed in the District Court.³⁷ One was filed by Nathaniel Williams on behalf of the owners of the *Merrimack*, Robert Follansbe, Moses Goodrich, and Nathaniel Fletcher.³⁸ The ship was eventually remitted to those claimants on 12 July 1816.³⁹ Another was also filed by Nathaniel Williams on behalf of 27 sets of claimants, claiming the 6,343 rolls, rods, bundles, packages, and coal that were aboard the *Merrimack*.⁴⁰ The other four were filed by John Purviance, on behalf of William and Joseph Wilkins, McKean & Woodland, John H. Browning and Joseph Biays, and Michael Kimmel and Jacob Albert.⁴¹ At the District Court, the claims were granted,⁴² which decisions were upheld at the Circuit Court.⁴³

b. Adjudication in the Supreme Court

³⁷ A second case, not discussed in the Supreme Court case, was also filed. Styled *Libel Usance et al v. Charles Cook*, this case was a complaint by William Usance, Samuel Easton, John Gaslin, and Ana Brickwall for unpaid wages. It is unclear from the records how this case was resolved.

³⁸ *Merrimack* File 0468.

³⁹ *Merrimack* File 0482.

⁴⁰ *Merrimack* File 0461.

⁴¹ *Merrimack* Files 0456, 0457, 0462.

⁴² *Merrimack* Files 1086, 1087.

⁴³ *The Merrimack*, 12 U.S. 317, 317 (1814).

By the time this case reached the Supreme Court, only the four claims that had originally been filed by John Purviance were left to decide. In each of the claims, the goods were produced and manufactured in Great Britain and shipped by British merchants in Great Britain to American merchants in the United States who had requested the purchase of the goods. In each claim, however, the goods were consigned to an intermediary in the United States that was acting on behalf of the British merchants as their agent.

The adjudication of each of these claims turned on whether or not property in the claimed goods had transferred from the British shippers to the American merchants. As is described in Section II. h. above, in determining whether there was probable cause to believe a chase was good prize, a privateer would look at all of a ship's papers, such as the ship's registry, journals, and bills of lading. Likewise, in its adjudication of a prize case, a court would pay close attention to such papers to determine whether chase was a good prize or not.⁴⁴ Accordingly, in each of these claims, the captors argued that "from the papers and letters on board, it appeared that the goods were not sold and delivered in England, so as to vest the property in the Claimants, but were sent to the agents of the shipper in the United States, to be delivered or not, according to their discretion."⁴⁵ As such, the captors argued, because property had not vested in the American claimants, the goods were liable to capture as British property.⁴⁶

Ultimately, the Court held that the fact that a shipment is not consigned directly to the claimants does not necessarily trigger a finding that property in the goods remained

⁴⁴ PETRIE, *supra* note 10, at 160.

⁴⁵ *The Merrimack*, 12 U.S. at 321.

⁴⁶ *The Merrimack*, 12 U.S. at 321.

with the shippers – rather, one must look at the overall nature of the transaction and determine the rights each party to the transaction can exercise with respect to the goods. It appears as though even if a shipper consigns goods to its agent, the Court will view the shipment to transfer property to the goods to the claimants so long as the only right the agent can exercise over the goods is the right to stoppage *in transitu*.

i. Claim 1: William and Joseph Wilkins

The first claim the Court addressed was that of William and Joseph Wilkins, merchants of Baltimore, who claimed goods contained in eleven cases marked W.J.W.⁴⁷ Pursuant to an order placed by William and Joseph Wilkins, the goods were manufactured by a company in Great Britain before the declaration of war was known there.⁴⁸ These goods were accompanied by the following documents:

- A **bill of parcels** in the name of William and Joseph Wilkins (which also served as an invoice);
- A **bill of lading** in the name of Edward Harris, consignee;
- A **letter dated 29 July 1812**, from Thomas Leich, one member of the manufacturing company and resident of Great Britain, to Edward Harris, another member of the company who was an American citizen and resident of the United States, stating, in pertinent part:
 - “Have not sent but about half the cotton goods they ordered, . . . **informed them that we thought it necessary to secure our property to ship all to you, as you could prove that they were American property by making affidavit they are bona fide your property**. As our orders in council are repealed, hope your government will be amicably inclined as well, and that trade will be on regular footing again, but for fear there should be some other points in dispute, I shall send you and our friends through your

⁴⁷ *The Merrimack*, 12 U.S. at 318.

⁴⁸ *The Merrimack*, 12 U.S. at 318.

hands all the goods prepared for your market which you'll perceive is very large. . . . Hope you will approve of my sending all, and as there may have been some alterations in some of your friends, shipping them to you gives the power of keeping back to you."

- A **letter dated Leicester, 22 July 1812**, from Harris, Leich & Co. and addressed to William and Joseph Wilkins, stating:
 - o The repeal of the orders in council having been agreed on by our government, we have availed ourselves of the opportunity of sending the greater part of your spring and fall orders. . . . **As we are not certain that your government will protect British property, we have thought it right to ship all ours under cover to Mr. Harris who can claim as his own bona fide property**, and he, being a citizen of the United States, thought proper to use every precaution, having received some unpleasant accounts about your government's having agreed on war with this country, which we hope will not be the case.⁴⁹

ii. Claim 2: McKean and Woodland

McKean and Woodland claimed parcels of goods that were purchased for them by Baily, Eaton and Brown, British merchants.⁵⁰ The goods were shipped to Robert Holladay, an American citizen, and accompanied by the following documents:

- A **bill of lading** made out to Robert Holladay "on account and risk of an American citizen";
- A **letter dated 11 July 1812** from the British merchants to Samuel McKean, explaining why the goods have been consigned to Robert Holladay:

⁴⁹ *The Merrimack*, 12 U.S. at 318-319 (emphases added).

⁵⁰ *The Merrimack*, 12 U.S. at 319.

- A few days ago we received a letter from Mr. Rogerson, of New York, informing us that the partnership of Messrs. McKean & Woodland was dissolved, but he does not say whether you or Mr. Woodland continue the business, or whether both of you decline it. We have purchased about 3,000*l.* sterling of goods by order of Page 12 U. S. 320 the late firm, and on their account, most of which have been purchased and paid for by us from fifteen to eighteen months ago, and have been on our hands waiting for shipment. We have this day given orders to our shipper at Liverpool to put them on board a good American vessel sailing for your port with a British license, but from the uncertainty we are in respecting the particulars of your dissolution of partnership, and in fact not knowing whether to consign them to you or Mr. Woodland, we have finally concluded to consign them to Mr. Holladay, with whom you will be pleased to make the necessary arrangements respecting them. . . . We have addressed the invoice to Mr. Holladay to your care, and directly on receiving it, if he should not be in Baltimore, you will please advise him of its arrival.

- **A letter dated 10 July 1812** from the British merchants to Robert Holladay

explaining why the goods were shipped to him, directing him to coordinate with

Samuel McKean, and adding:

- “We cannot view this consignment at all in the light of an intercepted shipment coming within the meaning of the articles of agreement between you and us.”
- Additionally, the British merchants included a proposition for immediate remittance given how much time has elapsed since the goods were first purchased. This proposition, the merchants say, is made to all their friends in the United States, but they generally “have left the matter to the free and unbiased will of our friends, and they are certainly acting upon honor.”⁵¹

iii. **Claim 3: Kimmel and Albert**⁵²

⁵¹ *The Merrimack*, 12 U.S. at 320.

⁵² The fourth claim – that of John H. Browning & Co. – is based on the same principles and had a similar documentary basis as that of Kimmel and Albert, so the Court dealt with it in the same manner as this claim. *The Merrimack*, 12 U.S. at 328.

Baltimore merchants Kimmel and Albert claimed seven packages of goods, also purchased for them by British merchants Baily, Eaton, and Baily. The goods were accompanied by:

- An **invoice, a bill of lading, and letters addressed to Kimmel and Albert** showing property in Kimmel and Albert.
- However, these documents were enclosed in a **letter dated 5 August 1812** from the British merchants to Samuel McKean. This letter referred to a letter dated 3 July 1812, in which the British merchants shared with McKean the recommendations of their agent, Mr. Hollaway, specifically:
 - o That the British merchants send their invoices of bill of lading to McKean;
 - o That the British merchants instruct McKean to make inquiries into the circumstances of their correspondents, and only send out their letters if the result of those inquiries is satisfactory.
- The British merchants also write that McKean should proceed pursuant to the 3 July letter if Great Britain's repeal of its orders in council⁵³ are successful in restoring peace between Great Britain and the United States. But, if not, then McKean is "not to deliver these goods until you have received the amount of the invoices from the consignees, in cash."⁵⁴

c. Analysis of the Claims

The Supreme Court addressed each of these claims, but in an order different from the one in which they were presented. First, Chief Justice Marshall delivered the Court's

⁵³ See section II.b., *supra*.

⁵⁴ *The Merrimack*, 12 U.S. at 321.

opinion relating to McKean and Woodland's claim.⁵⁵ The captors, represented by Robert Goodloe Harper, had argued that because Baily, Eaton and Brown had shipped their goods to their agent, American citizen Robert Holladay, instead of to the claimants, property had not transferred from the British merchants to the claimants – it remained with the British merchants until Holladay, who now had absolute control over the goods, was able to make arrangements with the claimants to deliver and receive payment for the goods.⁵⁶

Relying particularly on the 11 July 1812 letter from Baily, Eaton and Brown to Samuel McKean, in which the writers explained that they were assigning the goods to Mr. Holladay because they had heard that the McKean and Woodland partnership had been dissolved and thus were not sure who or whether the business would be continued, the Court affirmed the lower court's decision for restitution of the goods to the claimants, finding that the goods had been purchased and shipped for McKean and Woodland, in pursuance of their orders, and that property had vested in them.⁵⁷ In doing so, Chief Justice Marshall looked to the transaction as a whole and found that "it unquestionably is, what, on the face of these letters, it purports to be, a purchase for McKean and Woodland, made in pursuance of their orders, and shipped for them to Robert Holladay, because, in the moment of the shipment, information was received that their partnership was dissolved, and the shipper had no instructions in what manner to direct to them."⁵⁸ Thus, even though the goods had been consigned to someone other than the claimants, the Court was comfortable finding that property had vested in the claimants because of the

⁵⁵ *The Merrimack*, 12 U.S. at 327.

⁵⁶ *The Merrimack*, 12 U.S. at 327.

⁵⁷ *The Merrimack*, 12 U.S. at 327.

⁵⁸ *The Merrimack*, 12 U.S. at 327.

overall nature of the transaction: the shippers did not consign the goods to their agent to maintain control over them – rather, they consigned the goods to their agent because of the uncertain status of the McKean and Woodland partnership.

The Court then moved on to Kimmel and Albert’s claim, holding that the goods were enemy property and dismissing the claim. Here, the majority of the relevant documents had been made out to the claimants, except that they were all enclosed in a letter to Samuel McKean, in which the British merchants direct McKean to investigate the circumstances of the claimants and not to deliver the goods until payment has been received.⁵⁹ The claimants argued that legal property had vested in the claimants when the goods were delivered to the master of the ship, because the invoice, bill of lading and letters all concurred in showing property in them, and the merchants could not regain property in the goods on any ground but the consignee’s insolvency, pursuant to the doctrine of stoppage *in transitu*.⁶⁰

Chief Justice Marshall disagreed, finding that by enclosing the invoice, bill of lading, and letters to Kimmel and Albert within a letter to their agent, it was clear that the British merchants intended to keep “that power which ownership gives over goods.”⁶¹ A number of steps had to be taken before property could have vested in the claimants: McKean had to first investigate Kimmel and Albert’s circumstances; if the result of this investigation was satisfactory, McKean could deliver the goods to them, but only under a new contract to be made with McKean, and only after payment had been made to McKean. Because the goods were seized before these steps could be completed, property

⁵⁹ *Id.* at 328.

⁶⁰ *Id.*

⁶¹ *The Merrimack*, 12 U.S. at 328.

in the goods had not yet transferred to Kimmel and Albert. Unlike in the McKean and Woodland claim, here, consigning the goods to the shippers' agent and enclosing all the documents in a letter to their agent caused the shippers to maintain control over the goods because the agent could not deliver the goods until he received payment from the claimants.

Finally, the Court addressed the claim of William and Joseph Wilkins. Representing the captors, Harper argued that property in the goods at issue remained in British citizens – accordingly, the goods were good prize. In making this argument, Harper pointed out that the goods were to be delivered first to the shippers' agent, Edward Harris, who had the ability to determine whether the claimants would receive the goods and also had the ability, under certain circumstances, to make the goods his own.⁶² In addition, the claimants had the option to take the goods or not.⁶³ And, in their letters to Harris and the claimants, the shippers described the goods as British property, expressing their apprehensions that the American government would not protect it. Last, had the goods been lost at sea, the loss would have inured to the shippers – they could not have charged the claimants for the goods.⁶⁴ Harper also points out the documents – the invoice and the bill of lading – that were directed to Harris.⁶⁵

Representing the claimants' interests, Pinkney argued that property of the goods had vested in the claimants, and the Court agreed, affirming the lower courts' decisions in favor of the claimants. Here, Justice Johnson articulated what it would take for the Court to find that property in goods has vested in the claimants even though the shipper has

⁶² *Id.* at 322.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

consigned them to an agent: like a shipment where the goods are directly consigned to the claimants, the claimants of goods that have been consigned to the shippers' agent must show that "every beneficial interest which such a shipment would vest in the consignee, was vested in the claimants."⁶⁶

Justice Johnson found this to be the case in this claim. Even though the bill of lading was made out to Harris, "upon a fair view of the whole transaction," this produced no difference in the state of right between the parties – unlike the Kimmel and Albert claim, where the agent had a great deal of control over the goods, the only right the bill of lading in this claim gave to Harris was the ability to exercise the right of stoppage *in transitu*, in case the claimants were found to be insolvent.⁶⁷ Moreover, even though the bill of lading gave Harris the right to demand the goods of the captain, the invoice, made out and directed to the claimants, made clear that the claimants have the right to demand the goods of Harris.⁶⁸ Finally, as to the contention that the shippers themselves conceded that the goods are British in their letters to the agent and to the claimants, the Court found this to be of no consequence: the shippers merely needed an excuse not having made the bills of lading out to the claimants themselves.⁶⁹

Justice Story dissented with respect to this claim.⁷⁰ He argued that because the purchase was made with the shipper's money, property remained completely in the shipper until a delivery, actual or constructive, to the claimants, was made.⁷¹ Justice Story further disputed Justice Johnston's analysis of the documents: he believed that the

⁶⁶ *Id.* at 329.

⁶⁷ *Id.* at 330.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 332.

⁷¹ *Id.* at 333.

letters show the shippers never intended for the property to transfer to the claimants while the goods were in transit, and even if the goods had gotten to Harris, as agent of the shippers, his possession would have been a continuation of their possession.⁷²

The table below summarizes the Court’s decisions with respect to each claim:

	Claim 1	Claim 2	Claim 3
Claimants	William and Joseph Wilkins	McKean & Woodland	Kimmel and Albert
Consignee (from the bill of lading)	Edward Harris	Robert Holladay, an American citizen	Kimmel and Albert, but enclosed in a letter to Samuel McKean
Correspondence	Letter to Edward Harris describes the goods as British property and expresses the merchants’ apprehension that the American government will not protect them.	Letter from British merchants to Samuel McKean explains that the goods were consigned to Robert Holladay because the merchants had heard the McKean & Woodland partnership had been dissolved and were unsure as to whether the business was to be continued.	Letter from British merchants to McKean directs McKean to investigate the circumstances of the claimants and not to deliver goods until payment has been received.
Court’s holding	Claim upheld. Upon a fair view of the transaction, the consignment to Harris made no difference in the state of right between the parties: the only power Harris had over the goods was the ability to keep the goods if the claimants were found to be	Claim upheld. Even though the goods were consigned to someone other than the claimants, property had vested in the claimants because of the overall nature of the transaction. The consignee had no control over the	Claim dismissed. Even though all the documents were made out to the claimants, they were enclosed in a letter to the shippers’ agent that gave the agent the power to determine whether or not Kimmel and Albert would get the goods.

⁷² *Id.*

	insolvent.	goods.	
--	------------	--------	--

This case adds a wrinkle to the general principle of prize law that goods shipped from one belligerent nation to another are subject to condemnation as prize if seized by a privateer. Specifically, the case stands for the proposition that property in goods can transfer upon shipment from the shipper to the purchaser even if the goods are consigned to an agent of the shipper, so long as the only right the agent can exercise over the goods is the right to stoppage *in transitu*. *The Merrimack* has been cited in numerous cases dealing with the passage of title.⁷³

It is unclear what the Supreme Court relied on in adjudicating the claims at issue, as neither Chief Justice Marshall nor Justice Johnson cited to any cases for precedent. Instead, they seemed to rely on general principles of fairness and proceeded with an analysis that consisted of “comparing all the circumstances of this case” to adjudicate the claims.⁷⁴ However, their analysis of the transfer of property appears to be consistent with

⁷³ See, e.g., *The Sally Magee*, 21 F.Cas. 248, 250, Blatchf. Prize Cas. 382, 382, No. 12,260, 12260 (S.D.N.Y. Jul 30, 1863) (In contemplation of law, the cargo became the property of the consignees from the time of its being laden on board of the ship, and from the execution of the bills of lading therefor at Rio Janeiro, May 10, 1861. This is a settled doctrine of the American courts of law and admiralty, and, correlatively, of prize courts.”); *Schreiber v. Andrews*, 101 F. 763, 766, 41 C.C.A. 663, 663 (C.C.A.8 (Mo.) Apr 30, 1900) (NO. 1306) (“The title to goods consigned to a purchaser by the indorsement of the bill of lading and an attached draft for the purchase price passes to the vendee when the draft is paid.”); *Hobbie v. Smith*, 27 F. 656, 662 (C.C.N.D.N.Y. May 10, 1886) (“When goods are sent upon the account and risk of the shipper, the delivery to the carrier is a delivery to him as agent of the shipper, and not of the consignee.”). Moreover, at least one treatise on insurance continues to cite to *The Merrimack* in discussing types of trade that constitute a breach of warranty. STEVEN PLITT ET AL., COUCH ON INSURANCE § 99:76 (3d ed. 2013).

⁷⁴ Another theory is that, rather than relying on a principle of admiralty law to determine the final distributions, Justices Marshall and Johnson sought to cater to the lawyers on each side in an equitable fashion. Given the fact-specific nature of the determinations made by the Court, such a theory is not entirely outside the realm of possibility.

general principles of prize law. In particular, as it relates to the transfer of property, it has been said that property can divest out of the shipper upon delivery of the goods to the master of the vessel that will be shipping the goods to the purchaser:

Where goods were shipped to be sold on joint account of the shipper and consignees, or on account of the shipper only at the option of the consignee, and the goods were claimed by the consignee, the whole question as to the exclusive property of the shipper in the goods was rested by the captors upon the option given to the consignee to be jointly concerned or not in the shipment. The court stated that the question of law was, in whom the right of property was vested at the time of capture? To effect a change of property as between seller and buyer, it is essential that there should be a contract of sale agreed to by both parties; and if the thing agreed to be sold is to be sent by the vendor to the vendee, it is necessary to the perfection of the contract, that it should be delivered to the purchaser or to his agent, which the master, to many purposes is considered to be. ... Yet the delivery of the goods to the master of the vessel, was not for the use of the consignee, anymore than it was for the use of the shipper solely; and, consequently, it amounted to nothing, so as to divest the property out of the shipper, until the consignee should elect to take the goods on joint account, or to act as the agent of the shipper. Until this election was made, the goods were at the risk of the shipper, which was conclusive as to the right of the property.⁷⁵

Moreover, the general rule that property in ships and their cargoes which was enemy's property at the commencement of the voyage cannot be transferred to a neutral *in transitu* so as to protect it from capture and condemnation does not apply

to a consignment on credit made by an enemy shipper to a neutral consignee, were the consignor learning after the shipment, that the consignee has become a bankrupt or failed, stops the goods *in transitu* on their passage to the consignee. For by the municipal law the consignor having a right in this case to change the consignment, law of war

⁷⁵ HENRY WHEATON, A DIGEST OF THE LAW OF MARITIME CAPTURES AND PRIZES 87 (1815).

permits the delivery to be made to another neutral consignee by order of the enemy shipper.⁷⁶

Thus, it appears as though although the Supreme Court Justices did not cite to any cases in their opinions, they did adjudicate the case in a manner consistent with general principles of prize law, particularly as they relate to the transfer of property rights and the right to stoppage *in transitu*.

IV. Conclusion

In *The Merrimack*, the Supreme Court addressed seemingly banal issues relating to the transfer of property from one set of merchants to another. But viewed through the lens of the War of 1812, the case tells us much more: in particular, the case could have been viewed as a cautionary tale for merchants of one belligerent nation when structuring transactions with merchants of another. More generally, *The Merrimack* shows us just how far-reaching the tentacles of war can be in its effects on commerce and the nation.

⁷⁶ *Id.* at 88.

APPENDIX 1: THE RULES OF PRIVATEERING

What distinguishes privateering from piracy, and what lends privateering its legitimacy, is that privateers are licensed by a sovereign to use force on the sovereign's behalf against other nations.⁷⁷ In the United States, this licensing scheme stems from the Constitution, which grants to Congress the power “to declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.”⁷⁸ These letters of marque and reprisal constitute permission for private vessels to capture the vessels of other nations as “prize.”⁷⁹ Thus, a privateer may only act as such after it has been issued a letter of marque and reprisal by the U.S. government.

Once a letter of marque and reprisal has been issued, the act of privateering can begin. When the privateer takes sight of a vessel, commonly referred to as the “chase,” it must, as an initial matter, identify the vessel's nationality – the letters of marque and reprisal issued by the federal government during the War of 1812 were explicit in stating that commissioned privateers could not use force against neutral vessels.⁸⁰ This identification can be accomplished in a number of ways. Before setting sail, the captain may have gathered intelligence on the local trade routes, predominant traffic, and the vessels known to be in the vicinity, but privateers would also have to rely on their ability to identify vessels by sight.⁸¹ It is not unusual, however, for vessels to attempt to conceal

⁷⁷ Cooperstein, *supra* note 1, at 2.

⁷⁸ U.S. Const. art I, § 8.

⁷⁹ Cooperstein, *supra* note 1, at 2.

⁸⁰ Cooperstein, *supra* note 1, at 25.

⁸¹ The ability to identify vessels by sight was considered to be an extremely valuable skill. PETRIE, *supra* note 10.

their national identity or deceive others as to their actual identity either by setting sail under the flag of a different nation or under no flag at all.⁸²

The next step in the game is for the privateer to “bring the chase to” – in other words, to instruct the chase to stop and await inspection. At this point, the privateer typically sends an officer on a boat to the chase to conduct an inspection. The inspecting officer had the right, *inter alia*, to “examine the ship’s registry, documents of origin, seapass, bills of lading, journals, logs, records of capture and condemnation, muster roll, and all other ship’s papers.”⁸³ Proper examination of these papers allows the inspecting officer to determine the vessel’s nationality. If the privateer determines that the chase was a vessel of his own nation, an ally, or a neutral nation, or if the vessel was an enemy vessel licensed by the privateer’s nation to conduct its voyage, the privateer is required to release the chase.⁸⁴ If not, however, the privateer has probable cause to believe he has good prize, and could bring the chase back to port for adjudication in a prize court.⁸⁵

⁸² PETRIE, *supra* note 10, at 147.

⁸³ PETRIE, *supra* note 10, at 148.

⁸⁴ PETRIE, *supra* note 10, at 150.

⁸⁵ PETRIE, *supra* note 10, at 150.

APPENDIX 2: SUMMARY OF EVENTS LEADING UP TO THE DECLARATION OF THE WAR OF 1812

I. Prelude to the War of 1812: The *Chesapeake-Leonard* Affair

The United States officially declared war against Great Britain on 18 June 1812, but the events leading up to this declaration began several years earlier. Indeed, tensions between Americans and the British were brought to the forefront on 22 June 1807, in a naval engagement between British warship HMS *Leopard* and American frigate USS *Chesapeake*.

Under the command of Commodore James Barron, the *Chesapeake* had just left Norfolk and was heading across the Atlantic to relieve the U.S. frigate *Constitution*.⁸⁶ Just hours after the *Chesapeake* had entered the Atlantic, the *Leopard* hailed her. A junior British officer boarded the *Chesapeake* and demanded that Commodore Barron allow the British to search the *Chesapeake* for deserters.⁸⁷ Barron “politely declined,” at which point *Leopard* signaled *Chesapeake*, which message Barron “either ignored or misunderstood,”⁸⁸ and *Leopard* followed a warning shot across *Chesapeake*’s bow with a devastating broadside. *Chesapeake* struck its colors and turned over four suspected deserters to the British – three of whom were Americans who had been impressed into British service.⁸⁹

⁸⁶ ESHELMAN & KUMMEROW, *supra* note 4, at 4. James Barron was a rising naval star who had spent 28 of his 39 years at sea. *Id.*

⁸⁷ Desertion was common among sailors in the British Royal Navy as “conditions aboard Royal Navy vessels were deplorable for the lowly seaman.” *Id.*

⁸⁸ *Id.*

⁸⁹ “British ships routinely stopped American merchant ships to search for and seize such deserters and sometimes to force unwilling American seamen to fill the ranks. Needless to say, this practice of impressment became a first-class irritant over decades for the Yankees.” *Id.* at 6.

Americans were infuriated by the incident, and many called for the United States war with Great Britain. Instead, hoping to avoid war, President Jefferson ordered British ships out of American waters and sent an envoy to England to demand that all impressment cease, to no avail.⁹⁰

II. **Prelude to the War of 1812: The Orders-in-Council**

British decrees relating to trade further strained the relationship between the two countries. In the course of its war with Napoleonic France, Great Britain issued a series of “Orders in Council” – roughly equivalent to Executive Orders issued by the President of the United States – which, in addition to enforcing a naval blockade of Napoleonic France and its allies, had the effect of restricting neutral trade.

Over a dozen such sets of Orders were issued between 1783 to 1812, but the ones most inflammatory to Americans were those of 7 January 1807, 11 November 1807, and 26 April 1809, which forbade French trade with the United Kingdom, its allies, and neutrals, and instructed the Royal Navy to blockade French and allied ports.⁹¹ The French responded with their own decrees, and between 1807 and 1812, “Americans lost nine hundred ships, seized by the two warring nations and their allies.”⁹²

III. **Prelude to the War of 1812: The Embargo Act**

The perceived violations of U.S. neutrality pressured President Jefferson to act. Hoping to avoid war by instead imposing trade restrictions, President Jefferson pushed

⁹⁰ SPENCER C. TUCKER, *THE ENCYCLOPEDIA OF THE WAR OF 1812* (ABC-CLIO 2012).

⁹¹ Tom Holmberg, *The Acts, Orders in Council, &c. of Great Britain [on Trade], 1793 – 1812*, http://www.napoleon-series.org/research/government/british/decrees/c_britdecrees1.html.

⁹² ESHELMAN & KUMMEROW, *supra* note 4, at 12.

the Embargo Act of 1807 through Congress in December of that year.⁹³ Among other things, the Act laid an embargo on all ships and vessels in the ports and harbors of the United States and prevented all ships and vessels from obtaining clearance to undertake voyages to foreign ports or places.⁹⁴ Drafted with the intent to impose economic hardship on Great Britain and France, President Jefferson hoped that this bit of commercial warfare would force both countries to respect U.S. neutrality, stop seizing U.S. shipments, and, particularly in the case of Great Britain, cease the policy of impressment.⁹⁵

In each of these respects, President Jefferson's attempt was a failure. Instead of imposing economic hardship on Great Britain and France, the Act actually ended up having a devastating effect on the U.S. economy, as seamen and merchants had been dependent on foreign trade for their livelihoods.⁹⁶ Moreover, neither the British nor the French had been coerced into doing anything.⁹⁷ In fact, the British actually benefitted from the Act as they were able to appropriate the lucrative trade routes to and from South America that Americans had been forced to abandon, which in turn caused demand for English goods to increase in that region.⁹⁸

⁹³ United States Embargo Act of 1807. Dec. 22, 1807.

⁹⁴ 2 Stat. 451 (1807).

⁹⁵ Lawrence S. Kaplan, *Jefferson: The Napoleonic Wars, and the Balance of Power*, THE WILLIAM AND MARY QUARTERLY 196 (1957).

⁹⁶ ESHELMAN & KUMMEROW, *supra* note 4, at 9.

⁹⁷ "Reports from France were far from encouraging. 'Here it is not felt, and in England... forgotten.'" ESHELMAN & KUMMEROW, *supra* note 4, at 9.

⁹⁸ BRADFORD PERKINS, PROLOGUE TO WAR: ENGLAND AND THE UNITED STATES, 1805-1812 (University of California Press 1961).

Ultimately, the Act was repealed on 1 March 1809, but not before Americans had the chance to ridicule the Act, referring to it as the “Dambargo” or “Ograbme,” as is depicted below:⁹⁹



IV. Prelude to the War of 1812: The Non-Intercourse Act

Following the repeal of the Embargo Act, Congress passed the Non-Intercourse Act of 1809, which lifted the embargoes on American shipping except to Great Britain and France.¹⁰⁰ Again, the intent here was to cause damage to the British and French economies, and again, the Act was ineffective – once American ships left the United States, it was virtually impossible to enforce the restrictions imposed by the Act.¹⁰¹

⁹⁹ Image from ESHELMAN & KUMMEROW, *supra* note 4, at 8.

¹⁰⁰ United States Non-Intercourse Act. March 1, 1809.

¹⁰¹ MARY BETH NORTON, *A PEOPLE & A NATION: A HISTORY OF THE UNITED STATES TO 1887* 215 (Houghton Mifflin College 2010).

V. Prelude to the War of 1812: Macon's Bill

On 14 May 1810, Congress passed Macon's Bill Number 2, formally known as "An Act concerning the commercial intercourse between the United States and Great Britain and France, and their dependencies, and for other purposes." Designed to incentivize Great Britain and France to stop seizing American vessels and respect its right to neutrality, Macon's Bill temporarily lifted all embargoes on the two countries and gave both countries the option to cease attacks upon American shipping. The United States would then reward the first country to do so by ending trade with the other country.¹⁰² Napoleon, seeing this as an opportunity to further his Continental Plan, was the first to agree to the terms of the law so the United States ended trade with Great Britain, but it quickly became clear that he was not going to follow through on his promise, and the law has since been regarded as having been useless.¹⁰³

¹⁰² *Id.*

¹⁰³ *Id.*

APPENDIX 3: BIOGRAPHIES

1) James Houston (1767-1819)¹⁰⁴

Born 10 October 1767 in Chestertown, MD.

Died 8 June 1819, in Chestertown, MD.

Read law to enter the Bar, 1806

Judge, U.S. District Court, District of Maryland (1806-1819)

- Nominated by Thomas Jefferson on 19 April 1806, to a seat vacated by James Winchester.
- Confirmed by the Senate on 21 April 1806, and received commission on April 21, 1806.
- Service terminated on 8 June 1819, due to death.

2) Elias Glenn (1769-1846)¹⁰⁵

Born 26 August 1769.

Died 6 January 1846 in Baltimore, MD.

- Associate Justice for the Baltimore County Court on 30 May 1804.
- Returned to the private practice of law by early 1806.
- Elected to the Maryland State Senate on 25 November 1806.
- He was elected as a director on the part of the state for the Union Bank of Maryland on 28 November 1810 and again on 17 December 1811.
- Confirmed as U.S. Attorney for Maryland on 23 April 1812
- Confirmed as judge for the U.S. District Court for the District of Maryland on 3 January 1825, and remained there until he resigned on 1 April 1836 due to poor health.
- The name for the city of Glen Burnie, Maryland comes from Elias Glenn, who named his property “Glennsburne.” The name was changed to “Glennsbourne Farm” and eventually “Glenburnie” as the property passed through Glenn’s descendants.¹⁰⁶

¹⁰⁴ Source: Federal Judicial Center, available at <http://www.fjc.gov/servlet/nGetInfo?jid=1100&cid=87&ctype=dc&instate=md>.

¹⁰⁵ Source: MSA SC 3520-16205, Maryland State Archives.

¹⁰⁶ Glen Burnie, Maryland, available at http://www.princeton.edu/~achaney/tmve/wiki100k/docs/Glen_Burnie,_Maryland.html.

APPENDIX 4: INDEX OF THE MERRIMACK CASE FILE

From the records of the U.S. District Court for the District of Maryland, Admiralty Case Files, 1800, Files 0447 *et seq.* Maryland State Archives (via mdhistory.net), available at http://www.mdhistory.net/nara_rg21/nara_rg21_24m127/pdf/nara_rg21_24m127-0477.pdf. The *Merrimack* File Number represents four numbers (####) in the URL http://www.mdhistory.net/nara_rg21/nara_rg21_24m127/pdf/nara_rg21_24m127-####.pdf.

Merrimack File Number	Description
0447	Case Styling: United States v. 6343 rolls, _____, bundles and packages of goods, and a quantity of coal _____
0448/0449	28 Oct. 1812 – Information: Elias Glenn, attorney of the U.S. for the Maryland District informs the court that James H. McCulloch, collector of the customs for the port of Baltimore seized 6343 rolls, rods, bundles and other packages of goods and a quantity of coal unknown, on the ship Merrimack from Great Britan, and requests that these goods be condemned as forfeited by law.
0450	Filed 10 Nov. 1812
0451	10 Nov. 1812: Michael Kimmel, Jacob Albert, and Anthony Kimmel of Baltimore – \$500 bond for three casks or cases marked KA number 1.6.7 and four bundles _____
0452	Same as 451
0453	10 Nov. 1812: Nathaniel N. Appleton and Charles H Appleton of Maryland – bond of \$500
0454	Michael Kimmel and Jacob Albert appear in court by John Purviance to claim goods market KA
0455	\$500 bond of John H. Browning and Joseph Brays, merchants of Baltimore, for one cask marked AA (in star)
0456	Claim of Mckean and Woodland
0457	Claim of Samuel McKean
0458	Blank pages
0459/0460	Claim of Samuel McKean and Alexander Fridge
0461	Claim of several, represented by Nathaniel Williams, proctor
0462	7 Nov. 1812: Claim of Joseph Wilkins
0463	Claim of William and Joseph Wilkins
0464	Filing by Elias Glenn
0465/0466	28 Oct. 1812: Information filed by Elias Glenn (same as 448/449?)
0467	Information filed by Elias Glenn; filing by Nath. Williams
0468	Claim of Robert Follansbe, Moses Goodrich, and Nathaniel Fletcher, by Nath. Williams, Proctor, claiming the ship, apparel, furniture, and appurtenancy
0469	4 Nov. 1812: Order by Philip Moore (Dist. Ct. clerk?) authorizing James Law, John E. Carey and John Hastings to appraise and value the Merrimack for the Honorable James Houston. 13 Nov. 1812: appraised at \$3,000
0470	5 nov. 1812: Bond of Nathaniel Appleton and Charles H Appleton
0471	Same as 470
0472	Same as 470
0473	4 Nov. 1812: Valuation of five bales of _____ marked (H) by Law/Carey/Hastings at \$1,001.18
0474	\$2,003 bond of Peter Hoffman and George Hoffman
0475	Valuation of various goods at \$5756

Merrimack File Number	Description
0476	12 Nov. 1812: \$12,000 Bond of Ebenezer Breed and Elijah ____ and John Breed of Boston
0477	4 Nov. 1812: Valuation of four bales marked FC and one bale marked CFC at \$4,111.44
0478	Bond of \$8,300 of Cornelius Comegys, William Cochran?, and ____ (Comegys, Falconner & Co.)
0479	Valuation of ten bales of merchandise at \$2,016.87
0480	Bond of George Hoffman and John Hoffman of \$41,000
0481	Valuation of eight bales marked WB+S and ten bales marked (symbol) at \$5,221.67
0482	Decree from Secretary of the Treasury Alexander James Dallas remitting to Petitioners Follanbe, Goodrich, and Fletcher, the ship Merrimack
0483	Blank page
0484	Blank page
0485	Bond of William Baker and son of Baltimore of \$11,000 for goods valued at \$5,221.67
0486	6 Nov. 1812: Valuation of two cases marked F+NI B-B two bales marked the same at \$1,195.00
0487	7 Nov. 1812: Alexander Fridge, James Campbell, and Nath. Appleton's bond of \$2,400 for goods valued at \$1,195.00
0488	4/6 Nov. 1812: Valuation of 176 crates, 21 casks, 16 chests, 17 bales, 220 kegs, 4,016 bars of ____, 100 bundles of ____ (iron) and (coal?) at \$22,181.99
0489	Bond of Appleton, Fridge, and John A Brown of \$45,000 for the goods valued at \$22,181.99
0490	4 Nov. 1812 Valuation of goods at \$1,210.05
0491	Bond of Thomas Edmondson, Jos. Lochester, John Robinson of \$3,500.00 for goods valued at \$1,210.05
0492	Valuation of goods at \$5,217.59
0493	Bond of Robert miller, George Grundy, and George Crosdale of \$11,000 for goods valued at \$5,217.59
0494	Valuation of goods at \$605.77
0495	Bond of Thomas Poultney, Lewis W____, P.E. Thomas of \$1,300 for goods valued at \$605.77
0496	4 Nov. 1812 Valuation of goods at \$917.37
0497	Bond of John Robinson, Tho. Edmondson, and James Wilson for \$1,900.00 for goods valued at \$917.37
0498	Valuation of goods at \$624.29
0499	Bond of Henry Scott, Isaac Edmondson, and Joseph ____ of \$1,300 for goods valued at \$624.29
0500	Valuation of goods at \$2,322.39
0501	Bond of Elisha Browne, Joseph ____ and Matthew Smith for \$5,000 for goods valued at \$2,322.39
0502	Valuation of goods at \$5,061.65
0503	Bond of James Campbell, Alex. Fridge, and ____ of \$10,200 for goods valued at \$5,061.65
0504	Valuation of goods at \$96
0505	Bond of Washington Hall, Robert Barry and Nicholas C Hall for \$500 for goods valued at \$96
0506	Valuation of WJW goods at \$5,201.46
0507	Same as 506
0508	Bond of William Wilkins and B.H. Mullikin for \$11,000 for goods valued at \$5,201.46
0509	Valuation of goods at \$254.78
0510	Bond of Hezekiah Clagett, K Owen and Luke Tiernan of \$600.00 for goods valued at \$254.78

Merrimack File Number	Description
0511	Bond of Jesse Eichelberger of \$6,050 for goods valued at \$3,025.20
0512	Valuation of goods at \$3,025.20
0513	Same as 512
0514	Valuation of goods at \$2,016.87
0515	Bond of John Hoffman, George Hoffman, and Petter Hoffman of \$4,100.00 for goods valued at \$2,016.87
0516	Valuation of goods at \$901.52
0517	Bond of Christopher Johnston and Robert Ferguson for \$2,000 for goods valued at \$901.52
0518	Valuation of goods at \$4,136.06
0519	Bond of William Wilkins, R.H. Mullikin of \$9,000.00 for goods valued at \$4,136.06
0520	Bond of John H Browning and others of \$900 for goods valued at \$420.25
0521	Valuation of goods at \$420.25
0522	Bond of John Heathcole, William Cole, and James Clarke of \$8,000 for goods valued at \$4,052.68
0523	Valuation of goods at \$4,052.68
0524	Bond of John Wilkins, Henry Wilkins, and R.H. Mullikin of \$1,400.00 for goods valued at \$700.19
0525	Valuation of goods at \$700.19
0526	Bond of Samuel McKean, Alexander Fridge, and James Campbell of \$23,000 for goods valued at \$11,307.44
0527	Valuation of goods at \$11,307.44
0528	Bond of Jacob Albert of \$500 for goods valued at \$206.68
0529	Valuation of goods at \$206.68
0530	Valuation of goods at \$9,618.59
0531	Bond of Luke Tiernan, James Campbell, and Jacob Fohley of \$20,000 for goods valued at \$9,618.59
0532	Valuation of goods at \$4,267.12
0533	Bond of Bolton Jackson, John White, and Henry Jackson of \$9,000 for goods valued at \$4,267.12
2 nd folder	
0534	Calculations of Appleton & Co.
0535/0536	Libel and Complaint of William Usance, Samuel Easton, John Gaslin, and Asa Brickwall. States that on 2 Dec. 1811, they shipped themselves as mariners on the Merrimack from the port of Newbury in Rhode Island to perform a voyage to Charleston then to Plymouth Chatham and Liverpool then back to Baltimore for monthly wages of \$18 each (Asa later joined for \$22). They state that William, Samuel, and John are owed the sum of \$192.60 and to Asa the sum of \$180 because Charles Cooke has refused to pay them. Request process of attach and mo_____ against Cooke, and that he be compelled to answer under oath and produce the shipping articles for the voyage and the payment of their wages. (For libellants: J Boyd?)
0537	Case style: Libel Usance et al v. Charles Cooke, filed by J.H. Boyd 25 Nov. 1812 (Looks like wages were decreed?)
0538	Calculations
0539	Calculations
0540	30 March 1813: Received of P. Moore Clerk of the District Court the sum of Fifty Seven Dollars and Forty five cents being in full of the Decree against Capt. Charles Cooke and my fee of nine Dollars – Decrees to Dec. term 1812 \$57.42 – James H Boyd, atty for libellants Calculations
0541	Blank pages
0542	Accounting Sheet

Merrimack File Number	Description
0543	Accounting Sheet
0544	Blank pages
0545	Calculation
0546	Calculation of wages
0547	Calculation of wages
0548	Blank pages
0549	Calculation of wages
0550	Calculations
0551	Calculations
0552	Blank pages
0553	Accounting sheets
0554	Blank sheets
0555/0556	Charles Cook answer to libel and complaint: Brickwell's wages were \$10/month; libellants each received a month's pay in advance at the respective times of their entering on board; they have been paid part of the amounts they are requesting; during the voyage there were embezzled goods and merchandise laden on board at Liverpool belonging or consigned to Appleton of Baltimore worth \$737.35, and this sum was paid by Cook to Appleton; Cook believes that the merchandise was embezzled by crew of the ship; so claims of libellants are subject a deduction for a proportion of the loss so sustained. Lawyer for cook: John Purviance
0556	There were
Folder 3	
0977	Form from the Port of Liverpool (not filled out)
0978	Form + Blank page
0979	11 Aug. 1812 Wm. Brown and Co. Bill of Lading for merchandise to Ed Harris
0980	Bill of lading
0981	Bill of lading
0982	Bill of lading
0983	Bill of lading
0984	Bill of lading
0985	Bill of lading
0986	Bill of lading
0987	Bill of lading
0988	Bill of lading: Know ye that Richard & Breed hath entered here to be laden on board the Merrimack Char Cook for Baltimore per special licence dated 22 July 1812 Eight Boxes, Eight Hundred Weight Ten Plates – British manufacture. Value nineteen pounds four shillings Duly paid Certified this 8 th August 1812
0989	Bill of lading
0990	Bill of lading
0991	Bill of lading
0992	Bill of lading
0993	Bill of lading
0994	Bill of lading
0995	Bill of lading
0996	Bill of lading
0997	Bill of lading
0998	Bill of lading
0999	Bill of lading
1000	Bill of lading
1001	Bill of lading
1002	Bill of lading

Merrimack File Number	Description
1003	Bill of lading
1004	Bill of lading
1005	Bill of lading
1006	Bill of lading
1007	Bill of lading
1008	Bill of lading
1009	Bill of lading
1010	Letter
1011	
1012	
1013	Letter to New York Merchant Ezra Hounsfield
1014	Letter to New York Merchant Ezra Hounsfield
1015	Letter to New York Merchant Ezra Hounsfield
1016	Letter to New York Merchant Ezra Hounsfield
1017	Letter to New York Merchant Ezra Hounsfield
1018	Letter to Mrs. Robert Wilson, _____, New Providence
1019	<p>New York 9th June 1811</p> <p>Dear Madam</p> <p>By the same conveyance your daughter Jane will write you, and I suppose she will give all particulars. Which will leave me but little to say further than to inform you that my dear wife has given me another son to be named "John". The whole of the family are in good health and be assured Madam that it is our earnest prayer that you may long enjoy that blessing. Eliza and Mr. Wilson will of course receive our love. Your son Kearney has not yet returned from his second voyage to Liverpool. We expect him every day.</p> <p>I remain Dear Madam</p> <p>Yours most affectionately</p> <p>Joseph _____</p>
1020	Letter to James Dunshee Esq., Nassau, New Providence
1021	1020 letter continued
1022	1020 letter continued
1023	1020 letter continued
1024	<p>Joshua Barney on behalf of the owners, officers and crew of the Private armed Schooner Rossie</p> <p>Vs</p> <p>Michael Kimmel and Jacob Albert Claimants of certain packages by the ship Merrimack intervening</p> <p>On this 10th day of November in this present year the said Michael Kimmel and Jacob Albert produced for sureties Anthony Kimmel and George Decker of the city of Baltimore merchants who submitting themselves to the jurisdiction of this court, bound themselves, their Heirs executors and administrators, and the said Michael Kimmel + Jacob Albert also bound themselves their heirs executors and administrators in the sum of Five Thousand dollars Current money onto the said Joshua Barney on the behalf aforesaid, the Captor, that they the said Michael Kimmel + Jacob Albert will on a credit of six months sell the goods wares and merchandize by them claimed as aforesaid, for good negotiable notes and for Cash, of which sales when made, they will exhibit an account verified by affidavit to the District Court for Maryland District, to be there filed and that they the said Michael Kimmel + Jacob Albert will deposit the notes and cash for which the said goods shall be sold in the Franklin Bank of the City of Baltimore there to be retained until final determination, which notes and cash, or the proceeds thereof, shall be only subject to the order of the Clerk of said District Court in Execution of and pursuant to such final sentence, and unless they the said Michael Kimmel and</p>

Merrimack File Number	Description
1025	Jacob Albert shall do so, they and their said sureties do hereby severally consent, that execution shall severally issue forth against them, their heirs, executors and administrators, goods and ___ lands and tenements wheresoever the same shall be found to the value of the sum afore said. (signed by Jacob Albert and Anthony Kimmel and George Decker
1026	Similar to 1025
1027	Joshua Barney on behalf of himself & others Vs Certain goods, wares and merchandize captured on board the Ship Merrimack. The claim of Michael Kimmel and Jacob Albert of the City of Baltimore, merchants, Citizens of the United States of America, the true and lawful proprietors of three casks or cases of merchandize, marked [K][A], for the said three casks of merchandize as their property on board the said Ship Merrimack at the time of the capture thereof and for all such costs, charges and expenses, that have arisen or shall or may arise by reason of the capture and detention of the said goods & merchandize.
1028	Joshua Barney on behalf of himself & others Vs Certain goods, wares and merchandize captured on board the ship Merrimack The claim of Michael Kimmel and Jacob Albert of the City of Baltimore, merchants, citizens of the United States to three casks of merchandize. Jacob Albert of the firm of Kimmel & Albert, appeared personally, and made oath, that himself and Michael Kimmel, composing the firm of Kimmel & Albert, are both citizens of the United States and that they are true and lawful proprietors of the goods and merchandize specified in the preceding claim, and were so at the time of the capture thereof on board the ship Merrimack by the private armed schooner Rossie Joshua Barney, commander and that no person or persons, being a subject or subjects of the United Kingdom of Great Britain and Ireland, or the Dependency thereof, or inhabiting ___ any of the territories of the said United Kingdom of Great Britain and Ireland had at the time of said capture or now have directly or indirectly, any right, title, or interest in the said goods and merchandize ___ aforesaid specified, and that the preceding claim at a time and first claim and that he shall be able to make due proof, as the _____ believes. Sworn to in open court this 6 Nov. 1812 Philip Moore
1029	Samuel McKean Esquire Baltimore Merrimack
1030	Liverpool 10 August 1812 Samuel McKean Esq. Baltimore Dear Sir, Agreeably to the instructions of Messrs. Bailey Eaton & Bailey therewith hand you invoices for Messrs. Kimmel & Albert and Messrs. John H. Browning & Co. of your place, which you will be pleased to put immediately into the Post Office if you are satisfied they are perfectly safe trust-worthy; but should there be good cause to suspect the responsibility of either of them, then you are to enter the goods at the Customhouse and sell them upon the best possible terms on account of B.E. & B. I am very respectfully, Dear Sir, Yours ___ William ___ & J. ___
1031	Sheffield 10 th July 1812

Merrimack File Number	Description
	<p>Mr R Halliday Dear Sir Inclosed you will receive invoices of sundry goods for Messrs. McKean & Woodland which complement their orders except _____ -- as these ____ would now be out of season we omit them – as we were packing these good we recd a letter from Mr. Rogerson whereon he just mentions that the above House have dissolved partnership but he does not say whether the business is to be continued by Mr. McKean, or Mr. Woodland, or whether it is to be entirely given up. Under these circumstances we have thought it best at once to consign the Goods to you, that you may make all the necessary arrangement respecting them with Mr. Mckean from whose integrity + honour we are confident of a satisfactory adjustment. Nearly all those goods have been purchased for account of Messrs. McKean + Woodland from 15 to 18 months ago. We have however only dated the invoices from the day we gave orders for shipment. But as this must subject us to an immense loss of interest, we shall propose to Mr. McKean what we have done to all our friends</p>
1032	<p>____, that instead of taking the usual credit of 12 months they shall remit us immediately on arrival of the goods. This will be some compensation tho a very inadequate one for the long time we have been out of the money. Whatever arrangement may be made between yourself _ Mr. McKean we cannot view this consignment at all in the light of our <u>Intercepted Shipment</u> coming within the meaning of _____ of agreements between you + us. Mr. McKean or you awe</p>
1033	<p>Sheffield July 10th of 1812 Messrs. Kimmel + Albert</p> <p>_____ Referring to our Circular of the 24 ____ we have now the pleasure to hand you invoice of sundry goods which we have this day ordered round to Liverpool for shipment + which form a principal part of the orders we have had on hand from your House. The remainder we hope will be ready in three or four weeks. As we shall order these goods to be put on board a vessel, American ____, carrying out a British License, + shall elect insurance not only against Common risks but also against American seizure, you will be made perfectly secure against all possible loss. We understand that common risks or American ____ are ____ at 2 ½ ____ +</p>
1034	<p>Sheffield goods generally maintain the prices of 1810. A few articles such as ____, files we have taken a small advance but you will find the whole of this shipment paid in upon the lowest possible terms _ eve ____ make it will meet your entire appreciation. As almost all the goods we are shipping this season were purchased from 15 to 18 months ago + as we have only dated the invoice from the day we gave instructions for shipment, we shall of consequence sustain a very great loss in interest. In order to alleviate this in some degree we would respectfully propose to all our friends in the United States that they should ____ the customary credit for this Fall + remit us on arrival of the goods, by which means a part of the weight of loss will be taken from us. We have no doubt you will think this proposal very reasonable + will comply with it with great pleasure + remain</p> <p>Very respectfully Your obliged _____ Baily Eaton & Bailey PS. We shall forward you an ____ of duties, insurance, _____</p>
1035	<p>Robert Halliday Esqre. Care of Sam McKean Esqre Merrimack Baltimore</p>
1036	<p>Liverpool, August 1812 Robert Halliday Esqre Dear Sir, Enclosed I have the pleasure to hand you invoice & Bill Lading for 137 packages</p>

Merrimack File Number	Description
	<p>goods which I have shipped to your address __ Merrimack Capt. Cook for Baltimore, by order of our mutual friends Messrs. Baily Eaton & Bailey of Sheffield—I have been obliged to fill up full freight for _____; and indeed I am afraid some of the latter article will run out of the barrels owing to their insufficiency.</p> <p>I am respectfully, Dear Sir.</p> <p>Your friend * ____</p> <p>William Frears & J. B. Gilmour</p>
1037	Invoice from Bailey, Eaton & Bailey for Mr. Robt Halliday, Esqre
1038	Picture of microfilm box
1039	(Invoice?)
1040	(Invoice?)
1041	(Invoice?)
1042	(Invoice?)
1043	(Invoice?)
1044	(Invoice?)
1045	(Invoice?)
1046	Bill of lading – William
1047	List of Prices July 1 st 1812
1048	<p>Messrs. John H. Browning & Co.</p> <p>Ship Handlers</p> <p>Falls Point</p> <p>Baltimore</p>
1049	Invoice from Bailey Eaton and bailey to John H. Browning & Co.
1050	Letter from Bailey Eaton & Bailey to John H. Brownin g& Co.
1051	<p>Messrs. John H. Browning & Co.</p> <p>Ship Handlers</p> <p>Falls Point</p> <p>Baltimore</p>
1052	Letter to John H. Browning & Co. from William Frears & J.B. Gilmour
1053	John H. Browning Bill of lading
1054	Kimmel & Albert Invoice
1055	Kimmel & Albert Invoice
1056	Kimmel & Albert Invoice
1057	Kimmel & Albert Invoice
1058	<p>Messrs. Kimmel + Albert</p> <p>Merchants</p> <p>Baltimore</p>
1059	Kimmel & Albert Bill of Lading
1060	Letters to Kimmel & Albert from William Frears & J.B. gilmour
1061	Table of contents created by John Purviance
1062	<p>Joshuan Barney on behalf of himself and others</p> <p>Vs.</p> <p>Certain goods, wares and merchandize captured on board the ship Merrimack, commanded by</p> <p>The claim of John H. Browning and Joseph Beays of the city of Baltimore, merchants, citizens of the United States of America, the true and lawful proprietors of one cask of merchandise marked AA (in a star) for the said goods and merchandize as their property on board the ship Merrimack at the time of the capture thereof; and for all such costs, charges damages and expenses as have arisen or shall or may arise by reason of the capture and detention of said goods and merchandize.</p> <p>J Purviance</p> <p>Proctor for Cliamants</p>

Merrimack File Number	Description
1063	Claim of John H. Browning
1064	Surety – Samuel McKean, Alexander Fridge, James Campbell
1065	Surety of John H Browning
1066	Surety of John H Browning
1067	Surety of John H Browning and Samuel McKean
1068	Surety of John H Browning
1069	<p>22d. When did the said ship sail from her ___ Port?</p> <p>23d. At what time did you _____ that war had been declared between the United States of America and the United Kingdom of Great Britain + Ireland? Was it then generally known in the Port of Liverpool</p> <p>24 At the time of the capture of the said ship did you or not know whether the act commonly called the Nonimportation Act was in full force or not?</p> <p>25 Do you or not know the House in trade of Bailey Eaton + Bailey –</p> <p>26 Do you or not know Thomas Leach of Leicester in England?</p>
1070	<p>Non Importation Act would be repealed when the news of the Orders in Council being rescinded, arrived in America</p> <p>24th Saith that while on his voyage from Liverpool to Baltimore He spoke a ship called the Mohawk the Captain of which informed this Examinant that he had spoke a vessel from America, who told him that Part of the Non Importation Act was repealed, that he heard nothing further, until he was informed that the Act was in full force, by Capt. Barney of the Rossie</p> <p>Sworn to in open court this 6th day of Nov. 1812</p> <p>Philip Moore</p>
1071	<p>In the case of Joshua barney +als agst Sundry, packages of goods, libeled as prize Charles Cook being produced, sworn + examined, deposeth saith</p> <p>1 ___ Saith that he was born in Newbury Port that he considers that his place of residence except when at sea that he is married + his family reside at Newbury port aforesaid</p> <p>2__ saith that he was present on board the ship Merrimack when she was taken seized by the Privateer Rossie Capt. Barney</p> <p>3 ___ that the said ship was taken seized on the 21st day of October ___, between Annapolis + the mouth of the Patapsco River in the Chesapeake Bay, and that they put a Prize master on board of her + the pilot of the said ship Merrimack brought her into the Port of Baltimore that the said ship had none other than American colours</p> <p>4th that this Depo. Is the master of the said ship he received _____ the owners, Robert Follanbe, M___ Goodrich, + Nath.l Fletcher, who are</p>
1072	<p>Native citizens of the United States, on or about the first day of December last</p> <p>5th that the said ship is of the burthen of 288 tons or thereabouts, that there were on board, including officers + ___ thirteen men</p> <p>6th that the said ship is called the Merrimack of Newbury Port, that he never knew her called by any other name, that he had a license from the British government and all the papers that were necessary for an American ship that he saith from Newbury Port to Charleston South Carolina + arrived there on 20th December last, that he there took on board a cargo of timber + saith from thence + arrived at Chatham in England in the month of April last _ then discharged the outward cargo, + from thence sailed to Liverpool and arrived there in July and took on board cargo between the middle of July and thirteenth day of August, bound for Baltimore and arrived on the 23d day of October last at this port as before stated</p> <p>8th that the said Robert Follanbe, ___ Goodrich and Nathaniel Fletcher were the owensr at the time she was seized, that they are native citizens of the United States + that they reside at Newbury port, with their families,</p> <p>9th that the lading of the said ship at the time of her leaving Liverpool consisted of dry goods, crates + coal _ iron and hardware – that the whole of it was taken on board at</p>

Merrimack File Number	Description
	<p>Liverpool, between middle of July and thirteenth day of August last, that the whole of the cargo was taken on board at Liverpool</p> <p>12th that he cannot tell the names of the shippers owners or consigners of said cargo but refers to the manifest lodged at the custom house of this Port of Balto which will show to this court who are the consigners + owners of the same, that he was chartered by Mr. William Appleton a resident of ____, who was at the time in Liverpool, l to take in cargo for Baltimore, + that the same was to be delivered there for the account risk + benefit of the Persons stated in the bills of lading</p> <p>13th that he cannot say positively but thinks he signed from twenty to twenty five bills of lading, that they were true + genuine, nor were any bills of lading signed different in any respect from those which were found on board at the time she was seized</p> <p>15th that there was a Charter party for the voyage home signed by the said Appleton + this examinant that the same is now in my possession, ready ____</p>
1073	<p>Produced ____</p> <p>16th that the said ship had on board at the time of her seizure, all her papers, bills of lading, letters, and other writings that were on board her at the time she took her departure from her last clearing port</p> <p>16th saith that she had on board when she sailed from Liverpool + when taken the register, mediterr+++ ____, Lecin/Rolle D'equipage, various letters and a ____ bills of lading + invoices, Hoc ____, which were delivered up to the captors that none of them were burnt, win, thrown over board or destroyed, concealed, or attempted to be concealed</p> <p>21. that the said cargo is of the growth produce + manufacture of Great Britain</p> <p>22d Saith that as near as he can judge he hear that war was declared between the UStates + Great Britain on and about 1____th day of July in ____ that it was generally known at Liverpool at that time + that it was some time after he began to ship the goods + that he had begun to ____ before he heard of the War, that he was aboard a fortnight taking in cargo as far as he can judge with respect to the day he cannot ____ state that it was in general + ____ of the merchants at Liverpool, that the</p>
1074	Claim of Samuel McKean of Mckean + Woodland as stated to Philip Moore
1075	<p>United States of America District Court of Maryland Sct. To the Honorable James Houston Judge of the District Court of the United States for the District of Maryland</p> <p>Be it remembered that on the 28th day of November of one thousand eight hundred and twelve here comes Joshua Barney, commander of the private armed vessel of war Rossie of Baltimore, and belonging to Citizens of the United States of America and on behalf of himself and the owners officers and crew of said private armed vessel of war, pleads and alleged to this Honorable Court as follows to wit</p> <p>That the United States of America by an act of Congress passed the 18th day of June in the year 1812, entitled an act declaring war between the United Kingdom of Great Britain and Ireland and the Dependencies thereof and the United States of America and their territories enacted as follows to wit "That war be and the same is hereby declared to exist between the United Kingdom of Great Britain and ireland and the dependencies thereof and the United States of America and their territories, and that the President of the United States is hereby authorized to use the whole land and naval force of the United States to carry the same into effect, and to issue to private armed</p>
1076	<p>essels of the United States commissions or letters of marque and general reprisal, in such form as he shall think proper, and under the seal of the United States, against the vessels, goods, and effects of the government of the said United Kingdom of Great Britain and Ireland, and the subjects thereof. That despite [need to complete]</p>
1077	Ship Merrimack may be pronounced to belong to the United Kingdom of Great Britain and Ireland and the dependencies thereof or to persons being subject of the United Kingdom of Great Britain and Ireland and the dependencies thereof, or to persons

Merrimack File Number	Description
	<p>inhabitant within the territories thereof and as such or otherwise ___ to confiscation and to be adjudged and condemned as good and lawful prize to the aforesaid captors and all others into ___ is the aforesaid private armed schooner Rossie, and that such ___ attachment and other proceedings be had as are agreeable to law, and the usage and ___ of this Honorable Court</p> <p>Prize ___ Robert G Harper ___ Donaldson Libellant, Proctor</p> <p>Also on this page: declaration of Joshua Barney re letter bag, as written by Philip Moore</p>
1078	Same as 1077
1079	Closer view of 1077
1080	<p>Joshua barney on behalf of himself And of the owners officers and crew of the private armed schooner Rossie Vs William and Joseph Wilkins Claimants of certain packages By the Ship Merrimack intervening</p> <p>On this 7th day of November in this present year, the said William and Joseph Wilkins produced(?) for sureties Benjamin H. Millkin and Samuel Robinson of the City of Baltimore merchants who submitting themselves to the jurisdiction of this court...</p>
1081	Continuation of 1080
1082	Bond of WJW
1083	Cover of Claim of WJW
1084	Summary of WJW claim
1085	Sworn statement of Joseph Wilkins
1086	<p>Joshua barney on behalf of himself, and of the owners officers and crew of the private armed vessel the Rossie Vs Sundry caasks ___ and packages of goods, on board of the Ship Merrimack</p> <p>Decree of ___ of the said goods as claimed, goods as claimed to be delivered to the claimants respectively, and to be sold by them, on the usual terms, as to credit and ____. The account of sales to be kept ____. The claimants to ___ respectively, is</p>
1087	<p>...</p> <p>The claimants waive all objection and exceptions on account of the omission of the libellants to ___ the mate or any of the seaman of the ____</p>
1088	Merrimack's licence from Great Britain
1089	Same as 1088
1090	Same as 1088 + letter showing ship was cleared
1091	<p>Sheffield July 10th 1812 Mr Samuel McKean Dear Sir A few days ago we received a letter from Mr. Rogerson of New York informing us that the partnership of the M___ McKean + Woodland was dissolved but he does not say whether you or Mr Woodland continue the business or whether both of you dissolve it. We have purchased about 3000<i>l.</i> sterling of goods by order of the late firm + on their account, most of which have been paid for by us from fifteen to eighteen months ago +</p>

Merrimack File Number	Description
	have been on our hands waiting for shipment. We have this day given orders to our shipper at Liverpool to put them on board a good American vessel sailing for you rport with a British license but from the uncertainty we are in respecting the particulars of your dissolution of partnership + in fact not knowing whether to consign the goods to you or Mr Woodland, we have finally
1092	<p>Concluded to consign them to Mr. Halliday, with whom you will be pleased to make the necessary arrangements respecting them. We have only dated the invoice on this day but as the goods have nearly all been collected for you from 18 months since, we doubt not you will see the propriety + justice of paying the amount to Mr. Halliday immediately in the amount and even in this case we shall be very great sufferers by loss of interest. On this ground all our friends in America will waive the usual credit for the present reason + remit us immediately. We have addressed the invoice to Mr. Halliday, to your care and directly on receiving it if he should not be at Balto you will please advise him of its arrival.</p> <p>We will hand you an account of charges upon these goods soon as we have effected the insurance. We ___ they will be twenty h___</p> <p>We are Dear Sir Yours most respectfully Baily Eaton & Bailey</p>
1093	<p>Leicester 22nd July 1812 Messrs. Wilkins Gentlemen The repeal of our Orders in Council having been agreed upon by our God we have availed ourselves of the opportunity of sundry</p>
1094	(Letter continued)
1095	Front of letter addressed to WJW
1096	Prices of Files and Rasps
1097	Prices of Files and rasps
1098	Letter to Edward Harris
1099	Letter continued
1100	Invoice from Harris Leach to Brown & Co.
1101	Cover letter for invoice and bill of lading to Edward Harris from WM Brown & Co
1102	<p>Mr Edward Harris Philadelphia Merrimack</p>
1103	Same as 1102
1104	Picture of microfilm box
1105	Same as 1004