

Title

Issues of Delay & Deviation in Marine Insurance: A Case Study of Oliver v. the Maryland Insurance Company, 7 Cranch 487 (1813)

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Abstract

An examination of the case *Oliver v. The Maryland Insurance Company*, 7 Cranch 487 (1813). In *Oliver*, Robert Oliver, the plaintiff, sued the Maryland Insurance Company, the defendant, in an attempt to recover on an insurance policy he had purchased for a shipment of goods aboard the snow *Comet*. The *Comet* was seized by a British ship on its return from Spain, and was condemned under the Orders in Council of 1807. The Court affirmed a lower court judgment that Oliver was not entitled to recover, because the *Comet* had engaged in an unreasonable delay and deviation on its return voyage that voided the insurance contract. Livingston and Marshall both filed opinions; Livingston claiming that the *Comet*'s delay in Barcelona for 4 months constituted the allotted time for a reasonable delay, and the further deviation to the nearby port of Salou was therefore unreasonable, even though it was the usage and custom of trade at Barcelona. Chief Justice Marshall filed a concurring opinion, stating his opinion that the jury should have determined whether the *Comet*'s delay was caused by a reasonable apprehension of fear due to "Algerine" privateers in the area; and if the jury found this reasonable apprehension existed, he would have held the deviation excused. An examination of the principle of deviation law as it stands today shows the importance of the Court's decision in *Oliver* and shows how the Court's holding provided for the soundest precedent for courts, merchants, and marine insurers to rely on through the present.

Disciplines

Maritime History, Prize Law, Marine Insurance, Napoleonic Wars,

Part I: The Case

Facts of the Case:

In 1807, the snow *Comet*, owned by wealthy Baltimore merchant Robert Oliver, shipped out of Baltimore for Barcelona. Oliver had taken out an insurance policy on the ship from the Maryland Insurance Company, a Baltimore insurance company of which Oliver coincidentally also had an ownership interest.¹ The insurance policy specifically insured the *Comet* only “at and from Baltimore to Barcelona and at and from thence back to Baltimore.”² The ship and her crew sailed into Barcelona on July 25th, 1807, and port officials there deemed it necessary to place the ship in quarantine. She was not unloaded and ready to sail on until November 28th, 1807.³ On this date, the *Comet* departed Barcelona for the port city of Salou, sixty miles south of Barcelona, to take on cargo for the return trip to Baltimore.⁴ Again, the insurance policy strictly covered merely sailing from Baltimore to Barcelona and back.

During the trip to Salou, crew on board the *Comet* were informed that “Algerine cruiserz (*sic*),” were in the area and had been capturing American ships.⁵ “Algerine cruiserz” referred to privateers dispatched by the regency of the Barbary states located in Algiers, which had a history of harassing and kidnapping the crews of American merchant ships in the area and holding them in exchange for ransom payments from the young American government. Because they were advised to stay and wait for more information, the ship did not sail for Salou until January 8th, and they arrived to the port

¹ *Oliver v. Maryland Insurance Co.*, 11 U.S. 487, 7 Cranch 487, 489 (1813)

² *Oliver*, 7 Cranch 487 at 489 (1813)

³ *Id.*

⁴ *Id.*

⁵ *Id.*

on the tenth.⁶ Once there, weather forced the *Comet* to remain in Salou until January 28th, 1808, when she finally departed for Baltimore.⁷ On February 5th, 1808, a British ship blockading Europe captured the *Comet*, and carried her back to Gibraltar. There, a British admiralty court adjudicated the prize under the Orders of Council of 1807, and condemned the ship as a lawful prize.⁸

Procedural History

After the seizure of the *Comet*, Oliver brought this action to recover on his insurance policy. The Judiciary Act of 1789, as well as Article III, Section 1 of the Constitution, placed original jurisdiction with the federal district court in admiralty actions such as this.⁹ Both Oliver and the defendant Maryland Insurance Company were domiciled within Maryland for the purposes of federal jurisdiction; as such, the trial began in the federal district court for the District of Maryland.

At trial, attorneys representing the defendants asked the trial judge to instruct the jury that Oliver could not recover for his insurance policy, because of the extended stay of the *Comet* in Barcelona.¹⁰ However, the trial judge instructed the jury differently, telling the members of the jury that Oliver could only recover on the policy if the entirety

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ U.S. Const. art. III, §1 establishes that the judicial power of the United States, in addition to resting with the Supreme Court, also rests with “such inferior courts as Congress may from time to time ordain and establish.” The “Judiciary Act of 1789,” in sections 2 and 3, established the District Court of Maryland. An Act to Establish the Judicial Courts of the United States, Pub. L. No. 1-20, §§2, 3, I Stat. 10, 73 (1789). These District Courts were then granted original jurisdiction over civil cases in admiralty and maritime law by the same Act of Congress. Curiously, the Act also stated that the jury were the triers of issues of fact in all cases **except** admiralty and maritime jurisdiction—an issue integrally tied to the disposition of *Oliver*. An Act to Establish the Judicial Courts of the United States, Pub. L. No. 1-20, §9, I Stat. 10, 76-77 (1789).

¹⁰ *Oliver*, 7 Cranch 487 at 489, *infra* (1813).

of the testimony convinced the jury that the *Comet* was not in Barcelona longer than “the usage and custom of trade at that place rendered necessary to complete her cargo.”¹¹

Oliver’s attorney objected to this instruction. However, the trial and appellate level courts did not examine the exception very thoroughly, and favored the instruction that Oliver could only recover if the *Comet* had stayed in Barcelona according to the usage and custom of the trade. The Supreme Court found no “principle to which he [Oliver’s lawyer] could rightly object,” so his exception was also not adopted by the Court; instead, they examined the judge’s instructions about the usage and custom of the trade at Barcelona described above.¹²

In addition, the attorneys for the Maryland Insurance Company pressed the judge to instruct the jury that if they found that the *Comet* deviated from her course in order to sail to Salou, then Oliver could not recover on his insurance claim, even if the *Comet* only stayed in Barcelona for as long as the “usage and custom of trade” allowed.¹³ The trial judge accepted this argument, and so instructed the jury that the ship “could not afterwards go to another port and take [her cargo] in without violating the policy.”¹⁴

At trial, both the plaintiff and defendant offered testimony arguing, respectively, that usage and custom and trade justified the delays in the *Comet*’s voyage or that the delays represented an unwarranted deviation. As support for Oliver’s position, attorneys for the plaintiff offered evidence that ships sailing into Barcelona ordinarily stayed in that port until the return cargo they needed could be collected at a nearby port like Salou, and then they went on to sail to that port not as a deviation but as a necessary step to collect

¹¹ *Id.* at 489-490.

¹² *Id.* at 490.

¹³ *Id.* at 490-491

¹⁴ *Id.* at 491.

their cargo.¹⁵ On the other hand, the Maryland Insurance Company argued that evidence from the crew of the *Comet*, as well as the British sentence of condemnation against the *Comet*, showed that the ship's cargo was all loaded by November 28th, and she was ready to sail on December 1st.¹⁶ Thus, the insurers argued, the *Comet* made an unnecessary delay in staying in Barcelona over a month after her cargo was readied, and if the jury accepted these facts, the defendants argued, then the plaintiffs could not recover under the insurance policy.¹⁷ The trial judge accepted this argument and instructed the jury accordingly; the trial court, at the Circuit Court level for the District of Maryland, then found the defendant Maryland Insurance Company not liable under the policy, and the plaintiff Oliver appealed.¹⁸

Robert Goodloe Harper was the attorney representing Robert Oliver before the Supreme Court.¹⁹ His argument for the Plaintiff was centered on two premises: that the *Comet* was entitled to remain at Barcelona for the length of time it did and then sail on to Salou under the normal usage and custom of trade in Barcelona; and that even if the Court did not find the *Comet*'s stay was justified under the usage and custom of trade, the ship's delay was still justified until the threats of seizure by vessels from Algiers had passed.²⁰

William Pinkney and Luther Martin made up the legal team representing the Maryland Insurance Company before the Supreme Court.²¹ In reply to Harper's

¹⁵ *Oliver*, infra, 7 Cranch 487 at 492 (1813).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 487-488.

¹⁹ *Id.*

²⁰ *Oliver*, infra, 7 Cranch 487 at 488 (1813).

²¹ *Id.*

argument, they argued that the Plaintiff could not produce enough evidence to show that the *Comet* relied on a “reasonable apprehension” of danger from seizure by ships based in Algiers, and that such a determination was a matter of law to be decided by the Supreme Court.²² To this point, Harper replied that the “reasonable apprehension” determination was a question of fact that must be decided by a jury, or was such a blended question of law and fact that it was still properly decided by a jury, not the Court.²³ Finally, Martin and Pinkney advanced the argument that furthermore, the deviation in the trip to Salou, contrary to the language in the policy Oliver had taken out on the *Comet*, was not justified by “usage and custom of trade,” and thus the ship was not covered by the policy because of this deviation.²⁴

Opinion of the Court

The Supreme Court’s opinion is broken down into three parts: the majority opinion, by Chief Justice Marshall, a concurrence, by Justice Livingston, joined by Justice Story, and a brief reply to this concurrence, written again by the Chief Justice.²⁵ Two justices, Justice Washington and Justice Todd, were missing from the Court’s opinion.²⁶ The Chief Justice’s opinion adopted the position that, “If the *Comet* remained without excuse at Barcelona an unnecessary length of time while her cargo was ready for her and she might have sailed, she would remain at the risk of the *owners*-not of the underwriters.”²⁷ Furthermore, Marshall’s opinion set forth that if it was the usage of the

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 489, 493, 495-496.

²⁶ *Id.* at 487.

²⁷ *Oliver*, *infra*, 7 Cranch 487 at 490 (1813) (emphasis added)

trade for ships in Barcelona to touch at Salou, then this would not place liability with the ship owners.²⁸

However, on this point Marshall had to acknowledge that the majority came to a different conclusion, as the majority considered the delay at Barcelona and the travel to Salou “not as independent but as auxiliary usages which are to be taken in connexion (sic) in ascertaining whether there was or was not unreasonable delay in the conduct of the voyage.”²⁹ The difference of opinion between Marshall’s opinion and the holding of the Court is summed up when Marshall describes how the Court held that “the delay necessary for [taking in its cargo] at either port,” but that because the *Comet* spent all the time allotted to her under the usage of trade of Barcelona in the port there, “the subsequent delay at another port, for the purpose of taking in the cargo, must be considered as unreasonable.”³⁰ Marshall’s opinion makes it clear that, because the Court believed that the *Comet* exhausted all her allotted time for delay while in Barcelona, Oliver was not entitled to recover when the ship deviated from the insurance policy by sailing to Salou; however, if the ship had not stayed in Barcelona as long, then the deviation might have still been covered under the policy.³¹

Next, Marshall’s opinion turned its focus to the danger faced by the *Comet* from privateers in the Mediterranean asserted by the plaintiff Oliver.³² Marshall held that a reasonable apprehension of danger of capture by ships from Algiers was justifiable, but only if the apprehension was not “a mere general danger, indefinite in its application and

²⁸ *Id.* at 491.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Oliver*, *infra*, 7 Cranch 487 at 491-492 (1813)

³² *Oliver*, *infra*, 7 Cranch 487 at 493 (1813)

locality.”³³ The danger, Marshall said, had to be specific and definite to the circumstances surrounding the *Comet* at that time, and in this case, Marshall found it was not “shown that there was any danger in proceeding from Barcelona to Salou.”³⁴ Thus, Marshall’s opinion upheld the judgment of the Circuit Court holding that the Maryland Insurance Company was not liable on the policy to Oliver.³⁵

In his opinion, Justice Livingston agreed that the judgment of the Circuit court, holding that the Maryland Insurance Company did not owe payment on the policy to Robert Oliver, was correct.³⁶ However, Livingston’s justification for this holding relied on slightly different grounds than Marshall’s justification. Livingston claimed only to be examining the issue of whether the *Comet* was justified in not sailing for Salou until January of 1808, when she was cleared to sail on December 1st, 1807, because of fear of capture by ships from Algiers.³⁷ Livingston justifies this belief that the matter is a question of law by saying that the Court is best positioned to make judgments like this, so that it will create a coherent body of law that is easier for shipping merchants to understand.³⁸

Justice Livingston’s opinion had the effect of compartmentalizing the spheres of the jury and the court in deciding questions of law and fact during maritime insurance cases. He held that the best holding for effective maritime commerce and shipping would be to confine the jury solely to questions of fact in cases like these, where questions of whether a delay was justifiable arose. Also, his opinion clearly stated his view that a

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 494.

³⁸ *Id.* at 495.

question of justifiable delay should not be a mixed one of law and fact, as doing so would allow the jury to encroach on the area of the law traditionally under the purview of the judge.³⁹

Specifically, Livingston found that the determination of whether an act had been performed during the time required under the law to allow a party to claim an action for that act was a determination to be made entirely by the court.⁴⁰ Finally, upon this point Livingston held that he “entirely concur[red]” with the judgment of the Circuit Court and Marshall’s opinion that, examining the Plaintiff’s claims as a question of law, the delay of the *Comet* out of fear of “Algerine cruizers” was not justifiable to entitle relief on the policy.⁴¹ Justice Story joined Justice Livingston’s concurrence without adding any further opinion of his own.⁴² No information exists in the official Court record of the case to indicate that Justice Marshall and Duvall had any other opinions on the case, so presumably they joined Marshall’s original opinion of the Court. However, they are not listed as having joined Marshall’s final addendum, where he explained the ways in which his opinion diverged from that of the rest of the Court. Therefore, Justices Marshall and Duvall joined the judgment of the Court, and agreed that the Maryland Insurance Company could not be held liable for Oliver’s claims.

Finally, Chief Justice Marshall wrote a brief addendum explaining his differences from the opinion of the rest of the Court, stating that he would have left it up to the jury to determine whether there was danger between Barcelona and Salou, and he would have

³⁹ *Oliver*, infra, 7 Cranch 487 at 495.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

“instructed that if there was danger that it justified the delay, otherwise not.”⁴³ This practice of multiple opinions by written by justices in such a back and forth manner is not seen on the Court today, but in early cases of the United States Supreme Court (and others), it was not all that uncommon, and was a practice of English judges as well. In this way, Chief Justice Marshall’s parting sentences in this case highlight where he

Part II: Historical Context of *Oliver v. Maryland Insurance Company*

Prize Law

At the time *Oliver v. the Maryland Insurance Company* was decided in 1813, prize law was a well-established area of the law. As one writer has described it, “the laws controlling prize taking were as familiar to the American populace [of the 18th and 19th centuries] as the rules of baseball are today.”⁴⁴ Prize cases involved several different elements, but all began with a portion called the “chase,” where the prize-taking vessel (the “predator”) attempted to catch up to its intended prize and compel her to “bring too” or stop, so she could be inspected.⁴⁵ From there, the British (and most other countries of the time) usually tried prize cases in their own courts, as it was their firm belief that “prize cases be tried on the soil of the captor’s nation.”⁴⁶ In prize cases, courts decided whether the capture was a good prize or not, and then sold the ship and the cargo, with proceeds going to valid claims from neutral claimants (usually those who owned neutral cargo on board) and then to the capturing crew.⁴⁷

⁴³ *Id.* at 495.

⁴⁴ Donald A. Petrie, *The Prize Game: Lawful Looting in the Days of Fighting Sail*, 2 (1999).

⁴⁵ *Id.*, 147-148.

⁴⁶ *Id.*, 154.

⁴⁷ *Id.*, 159-161.

Normally, neutrality of ships was highly respected by all powers involved in prize law. However, there were three major exceptions that a capturing party could use to overcome a claim of neutrality from a captured ship: “the right to halt and inspect, the right to confiscate military supplies (contraband) intended for the enemy, and the right to blockade.”⁴⁸ These were important exceptions in many cases, and especially so in *Oliver v. the Maryland Insurance Company*. The case record does not disclose what type of cargo was aboard the *Comet*; however, she was intended for Barcelona and Salou, two ports in Spain that were under the auxiliary control of Napoleon’s empire around the time the *Comet* shipped out.⁴⁹ Indeed, as discussed in more depth below, the context of the Napoleonic War is crucial to understanding the events of *Oliver*. Partly because of this context, it would seem reasonable that the British could have believed a ship headed from the European Continent could be carrying contraband.

However, the exception for the right to blockade is the more important concern in the case of the *Comet*. In 1806 and 1807, Britain passed a series of “Orders in Council,” restricting trade with Napoleon’s French Empire.⁵⁰ Specifically, this British legislation, in effect a paper blockade, hurt American shipping, as it “prohibited neutral trade with Napoleonic Europe except under [British] license,” and many American merchants understandably did not want the complex issues involved with applying for these British licenses.⁵¹ This is the exception to neutral trade that the British ship that captured the *Comet* presumably relied on to justify the capture. The *Comet* was a neutral ship, trading

⁴⁸ *Id.*, 162.

⁴⁹ *Encyclopedia of the Age of Imperialism*. Ed. Carl Cavanagh Hodge. Westport, Connecticut: Greenwood Press, 2008. Pg. 551

⁵⁰ British Orders in Council, 1807

⁵¹ Muir, Rory. *Britain and the Defeat of Napoleon, 1807-1815*. New Haven: Yale University Press, 1996. Pg. 232.

with the enemy, Napoleonic France, right around the time Britain passed the Orders in Council. Most likely, the *Comet* did not have the required licenses to engage in this trade, and under Britain's laws, therefore, she was subject to the blockade and could be captured as good prize despite its neutrality.

Napoleonic Wars

As mentioned in the preceding paragraphs, the seizure of the *Comet* took place during a heightened time of international conflict. Great Britain and France, along with other European nations, were embroiled in the height of the Napoleonic Wars. Specifically, Napoleon's reliance on the Continental system as a way of waging economic warfare on Britain, combined with Britain's subsequent issuance of the Orders in Council, directly affected neutral American shipping to European nations.⁵² Along with these economic phases of the war, though, heightened actual conflict was taking place, as Napoleon began the Peninsular War on the Iberian Peninsula in the early 1800s as well.⁵³

Napoleon's invasion of Portugal in 1807, as a punishment for Portugal's lack of acquiescence in Napoleon's Continental System, sparked the Peninsular War.⁵⁴ At first, Spain complied with Napoleon's request to invade Portugal; however, he quickly grew tired of Spain's feeble and uninspired assistance in his invasion.⁵⁵ As a result, Napoleon replaced Spain's ruler with his own brother, Joseph, and was fully embroiled in a war with Britain and her allies on the Iberian Peninsula by 1808.⁵⁶ In the context of

⁵² Id., 232-233.

⁵³ Hodge, Encyclopedia of the Age of Imperialism, supra, 551.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

examining these events at the time of the *Comet*'s capture, it is clear that the *Comet* shipped out to ports that were at the very least friendly to Napoleon's French Empire. It also is reasonable to conclude some of the goods on the *Comet* could have gone to supplying Napoleon's armies potentially moving across the Iberian Peninsula to invade Portugal, as the invasion took place in the same year as the *Comet*'s voyage.

In fact, American merchants frequently took advantage of the wartime climate of this time to make significant sums of money. Warring European nations were constantly demanding American wheat in order to feed their massive armies. Baltimore at this time was rising to prominence as a global shipping center, primarily due to the presence of large-scale wheat production in the areas surrounding the city.⁵⁷ As Bruchey wrote, "The war-born demand [stemming from the French Revolution and the Napoleonic Wars] encouraged the 'milling interests' of Baltimore and its environs, and the manufacture of flour increased so greatly that after 1795 it largely replaced wheat in the city's exports."⁵⁸ Furthermore, Great Britain in 1807 and 1809 was a large importer of Baltimore flour exports, and "French armies in the Iberian Peninsula accounted for the primacy of Spain and Portugal from 1810 through 1813."⁵⁹ Thus, it is quite obvious that during the period Oliver's cargo shipped out on the *Comet*, Napoleon's armies and Britain's armies were large-scale consumers of grain shipped from the Baltimore area and provided much incentive for Baltimore merchants to ignore any blockade announcements and ship to the fighting nations.

⁵⁷ Stuart Weems Bruchey, Robert Oliver, Merchant of Baltimore, 1783-1819, 102 (1956).

⁵⁸ Id. at 103 (citing Scharf, Chronicles of Baltimore, at 277).

⁵⁹ Id. at 104 (citing statistics from Pitkin, A Statistical View, at 97 and 119-20)

Between the Orders In Council of 1807, Napoleon's various pronouncements of his Continental system, and the enormous opportunities afforded by the Peninsular War, Baltimore merchants such as Robert Oliver faced a complicated balancing of interests in determining whether to continue to ship to Europe. Furthermore, the United States had itself issued an embargo in 1807, which also nominally restricted American merchants' ability to trade.⁶⁰

"Algerine Cruizers"

The "Algerine cruizers" as they were described in the case record, represented an important threat to American ships in the Mediterranean Sea in the early nineteenth century. In 1795, the United States was forced to pay the government in Algiers over \$1 million for the release of captives that had been taken from American vessels and held in captivity for a decade.⁶¹ The privateering states along the North African coast continued to demand tribute from the American government in return for promises to not seize American ships; by 1800, the young government was expending a fifth of its revenue on these tributes.⁶²

With Jefferson's election in 1800, the American government's attitude towards these pirates changed from one of appeasement to one of aggression. In the early years of the 19th century's first decade, Jefferson increased the American naval presence in the Mediterranean, and American naval ships defended merchant ships from attacks by

⁶⁰ Sherry H. Olson, Baltimore: The Building of an American City, Commerce is the Mainspring, 46 (Johns Hopkins University Press 1997)

⁶¹ Jack Kenny, "Bane of the Barbary Pirates," The New American, 35 (American Opinion Publishing 2011)

⁶² Id. at 37.

Barbary Coast pirates.⁶³ By 1805, the tide had turned in America's favor with the capture of an important fortress of one of the Barbary nations, and the Pasha faction agreed to sign the Treaty of Peace and Amity, instituting relative safety for American ships in the region.⁶⁴ This is an interesting development when it is considered in the context of Oliver's arguments in *Oliver v. the Maryland Insurance Company*. Since this treaty was signed before the *Comet* was delayed due to an alleged "reasonable apprehension" of fear of Algerine privateers, it seems the argument may have been somewhat disingenuous. However, by 1815 the Americans found themselves once again fighting off privateers from the North African Barbary states, underscoring the instability of the peace signed in 1805. Furthermore, in 1807 Algerine ships had violated the treaty and seized three American ships (the *Mary Ann*, the *Violet*, and the *Eagle*) because the United States was two years behind on its tribute payments.⁶⁵

Perhaps, then, only the crew of the *Comet* will ever truly know how "reasonable" their apprehension of the Barbary pirates was on their journey to Salou. However, since Oliver was unable to produce significant evidence that pointed to a specific threat posed by these forces, it appears the Court's judgment was fair that the *Comet* had not claimed any specifically defined reasonable apprehension to excuse its deviation.

Marine Insurance

Marine Insurance was, and still is, an important device for merchants to ensure their cargo against certain losses that can happen on the high seas. Obviously more important in the time of prize law and piracy, maritime insurance frequently covers

⁶³ Id. at 38.

⁶⁴ Id. at 39.

⁶⁵ Frederick C. Leiner, The End of Barbary Terror: America's 1815 War against the Pirates of North Africa 21 (Oxford University Press, 2006)

insured shippers from losses suffered by capture of cargo. However, as with every other type of insurance, a few exceptions can nullify an insurer's liability under maritime policies.

Deviation is one such exception, as there is an implied policy of a "doctrine of no deviation" common to marine insurance contracts.⁶⁶ Under the common law definition, was "a 'voluntary departure, without necessary or reasonable cause, from the regular and usual course' of a voyage."⁶⁷ Deviation was "rooted in the marine insurance law" of "both American and British maritime law" very early on in the common law system, and certainly earlier than many of the statutes that govern the area of law today.⁶⁸ Specifically, the doctrine has been described as the idea that, "a marine underwriter was deemed to have contracted only for the risks inherent to the expeditious prosecution of the voyage by the agreed or customary route."⁶⁹ A deviation of the ship from the route described in the insurance contract therefore invalidated any maritime insurance contract.⁷⁰ In addition, "such a deviation amounted to a repudiation," meaning that not only was the insurer no longer liable on the ship's insurance; it was also not liable for any insurance contract on the cargo of the ship.⁷¹

This deviation doctrine, releasing insurers from liability when insured ships went away from the agreed-upon course of travel, rested on principles from contract and tort

⁶⁶ William D. Winter, Marine Insurance: Its Principles and Practice, 168 (McGraw Hill Book Company 1952, 3rd Ed.)

⁶⁷ Margaret M. Lennon, Deviation Then and Now: When COGSA's Per-Package Limitation is Lost, 76 St. John's Law Review 437, 437 (2002) (citing *Hostetter v. Park*, 137 U.S. 30, 40 (1890))

⁶⁸ Theodora Nikaki, The Quasi-Deviation Doctrine, 35 J. Mar. L & Com. 45, 45 (January 2004)

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

law before its statutory enactment.⁷² The contract law justification for releasing the maritime insurer lay in the fact that a specific contract had been drawn up between the insurer and the owners of the insured ship.⁷³ This contract only covered the ship for a very specific and detailed trip; therefore, when the ship made a deviation from the chartered and contracted course, it was creating a new course.⁷⁴ As no contract existed between the owners of the insured ship and the insurer covering the new course, the insurer could not be held liable for claims arising from this new course.⁷⁵ The tort justification lay in the “fundamental wrongdoer principle”: any damages incurred by a deviation could not be held to have occurred had the deviation not occurred, and therefore the insurer could not be held liable for these damages.⁷⁶

Applying the deviation doctrine to this case, the Court’s reasoning becomes quite clear. The contract between the Maryland Insurance Company and Robert Oliver covered the *Comet* specifically in her travels from Baltimore to Barcelona, and then back.⁷⁷ When the *Comet* then detoured from that route, and sailed for Salou, a deviation from the agreed-upon course occurred. Under this deviation theory, contract law principles excused the Maryland Insurance Company from compensating Oliver for the losses, as this new course was not covered by his insurance policy. Furthermore, tort law principles also supported the Court’s reasoning in this case, as under the “fundamental wrongdoer principle,” the fact that the losses suffered by Oliver (namely, losing his ship and its cargo as a prize) occurred after the deviation meant that he was liable for those losses, not

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*, 45-46.

⁷⁵ *Id.*

⁷⁶ *Id.*, 46.

⁷⁷ *Oliver*, *supra*, at 487 (1813).

the Maryland Insurance Company. By applying the deviation law doctrine common to American maritime law at the time, the Court was able to determine that Oliver, not the Maryland Insurance Company, should be responsible for the losses incurred due to the deviation of the *Comet*.

In light of this doctrine, it also appears that the Court's determination was probably relatively straightforward. The deviation doctrine was a well-established principle of maritime law during the period that *Oliver* was decided. It was seen in not only American law, but in the law of the great naval power of the time, Britain, as well.⁷⁸ Thus, it would have presumably been well known to a prominent merchant who relied on international shipping frequently, such as Oliver, and to the captain of the *Comet* who decided on the deviation in the first place.

Realistically, the only potential argument Oliver would have (and one that he indeed relied upon) was that the deviation was not a true "deviation," but was actually a custom and usage of the trade at Barcelona.⁷⁹ This would excuse the detour, because it would therefore legally still be considered part of the trip to Barcelona and would be covered under the specific terms of the insurance contract.⁸⁰ However, the Court upheld the Circuit Court's determination that the trip to Salou was not the custom and usage of the trade at Barcelona.⁸¹ As a result of this finding, Oliver effectively had no defense against the Maryland Insurance Company's claim that the *Comet*'s trip to Salou was a deviation, and thus the Court correctly applied the deviation doctrine in finding Oliver,

⁷⁸ Nikaki, *The Quasi-Deviation Doctrine*, *supra*, at 45.

⁷⁹ *Oliver*, *supra*, at 487 (1813).

⁸⁰ *Id.* and Nikaki, *The Quasi-Deviation Doctrine*, *supra*, at 45.

⁸¹ *Oliver*, *supra*, at 494 (1813).

not the Maryland Insurance Company, liable for the losses incurred by the seizure of the *Comet*.

The Court also could draw support for its finding of a deviation if it determined that the *Comet* had been unreasonably delayed in its stay at Barcelona. A commonly held principle of maritime insurance law that was first articulated in *Oliver* states that, “an unreasonable delay in the voyage [of the ship] that extends the insurer’s liability” will release the insurer from liability.⁸² At the heart of the determination of whether a delay was justified was whether the delay was an unreasonable one, or whether it was part of the usage and custom of the trade at the port where the delay occurred.⁸³ In marine insurance issues today, the “reasonableness or unreasonableness of the delay...is a question of fact, determined in the light of all the circumstances surrounding the case.”⁸⁴ In this case, the Court determined that the delay caused by extending the ship’s stay at Barcelona and sailing to Salou was not reasonable, and the Court examined it as a mixed matter of law and fact, not a purely factual issue to be determined by a jury.⁸⁵ In examining the Court’s decision in this light, it becomes clear that it is a straightforward application once again of this delay doctrine, and that the Court made the right determination here. Even though Chief Justice Marshall appealed for a holding that this was a question of fact, Livingston and the rest of the Court agreed that under the common law of the time, the determination of the reasonableness of a delay was a question of law.⁸⁶ The majority of the Court led by Livingston here made the prescient point that if

⁸² Jeremiah Spiers, *Doing Business In the United States*, §29.05(5)(a)(2) (2nd ed. 2013)

⁸³ American Jurisprudence 2d Insurance, *Delay as Deviation*, §1304 (November 2013)

⁸⁴ Winter, *Marine Insurance*, *supra*, 220.

⁸⁵ *Oliver*, *supra*, at 492-495 (1813)

⁸⁶ *Id.*, at 494-495

the determination of reasonableness was not made by a court, it would be impossible for a firm precedent to be set in such a way that merchants could look to the law for guidance.⁸⁷

Even more authorities, especially some contemporary ones, further support and crystallize the Court's ruling in *Oliver*. The fact that modern day treatises examining insurance law continue to discuss *Oliver* underscores how important this case continues to be in the area of maritime insurance law. Theodora Nikaki in her law review article The Quasi-Deviation Doctrine directly cited *Oliver* before launching into an extensive examination of how the deviation doctrine has evolved.⁸⁸ This evidence of the *Oliver* holding's impact in modern marine insurance law is important and shows how this somewhat complicated, nuanced holding of the Court still holds defining importance today in delineating the limits of one of the exceptions to the deviation doctrine.

Part III: The Litigants and Attorneys Involved

Robert Oliver: Robert Oliver was born in Northern Ireland in 1757, and emigrated from there to Baltimore in 1783, the year the American Revolution ended.⁸⁹ He came to America with "probably little or no money."⁹⁰ However, he quickly established one of the largest fortunes in the early years of the American Republic; it's estimated he was worth over a million dollars by the early nineteenth century.⁹¹

⁸⁷ *Id.*

⁸⁸ Nikaki, The Quasi-Deviation Doctrine, *supra*, at 45.

⁸⁹ Bruchey, Robert Oliver: Merchant of Baltimore, *supra*, 19.

⁹⁰ *Id.*

⁹¹ *Id.*

Shortly after his arrival in Baltimore, Oliver began a partnership with a man named Simm, who was potentially one of the first investors in Oliver's business future.⁹² Evidence in the historical record suggests that the firm of Oliver & Simm most likely began as "commission merchants"; that is, they sold goods others shipped into Baltimore.⁹³ Most likely, Oliver came to Baltimore from the city of Belfast, in Northern Ireland, and his connections to Ireland and England proved fruitful, as virtually all of the early shipments Oliver & Simm important were from cities in England or Ireland.⁹⁴ However, Oliver's partnership with Simm was short-lived, and by early 1785 Oliver was doing business on his own and looking for a new partner.⁹⁵

Oliver found that new partner in Hugh Thompson, with whom he founded Oliver & Thompson and invested an estimated £4,000 of his own money to help start the partnership.⁹⁶ However, as Bruchey writes, the partnership of Oliver & Thompson served as a vehicle for collecting unpaid charges from the old firm of Oliver & Simm and paying off unpaid debts to creditors; thus, Oliver's actual original contribution probably worked out to only around £1,000 of his own funds.⁹⁷ Regardless, it is evident from the ledgers of the early years of Oliver & Thompson that Oliver probably possessed very little money of his own outside of the business, thus providing even more incentive for the firm to diversify its business interests, as it did beginning in the latter half of the 1780s.⁹⁸

⁹² Id. at 52

⁹³ Id. at 53

⁹⁴ Id. at 54

⁹⁵ Id.

⁹⁶ Id. at 55

⁹⁷ Id.

⁹⁸ Id., 57-59.

During these post-Revolutionary War years, however, Oliver & Thompson struggled with weak markets for their shipments, as did most American merchants of the time.⁹⁹ The British navy, still stinging from the defeat of the American Revolution, kept American merchant ships out of British ports throughout the empire, severely dampening American exports and causing shippers to resort to illegal methods in an attempt to get their goods into British ports.¹⁰⁰ During this time, and during the recovery years following the economic downturn, Oliver & Thompson stayed afloat by doing most of its business in commission sales, which included such tasks as, “selling goods consigned to them; guaranteeing the debts arising from sales; tending to the repair and provisioning of the vessel which brought them; securing insurance and return freights; and remitting the proceeds of sales, in bills and exchange or a return shipment.”¹⁰¹ In addition to the significant amount of money the firm was making in commission fees on others’ sales, then, Oliver was getting his first taste of maritime insurance. At the time, “Baltimore had no chartered company...to insure vessels and property at sea, [so] Oliver & Thompson secured insurance in England, from other Baltimore men, or covered the property themselves.”¹⁰²

As far as goods that Oliver & Thompson actually shipped on their own behalf (that is, their non-commission business), it appears their biggest export was tobacco.¹⁰³ The vast majority of the firm’s tobacco exports of this time went to ports in England and France, especially Lorient, where Oliver & Thompson shipped tobacco to a

⁹⁹ Bruchey, Robert Oliver: Merchant of Baltimore, *supra*, 60-62.

¹⁰⁰ Id., 60-61.

¹⁰¹ Id., 63.

¹⁰² Id., 65

¹⁰³ Id., 68

commissioning firm of J.J. Berard & Company.¹⁰⁴ However, while the firm invested a large amount of its finances in these exports at this time, only very small profits were realized from its exports.¹⁰⁵ Finally, Oliver & Thompson began the dissolution of their partnership in 1796, and the winding up period continued until profits ceased in 1799.¹⁰⁶

By 1796, Oliver had already set up his partnership with his brothers, through which he would continue to amass wealth throughout his lifetime.¹⁰⁷ This partnership was helped along by the massive funds Oliver was able to invest thanks to the profits he realized from the Thompson partnership, as he eventually came into around \$160,000 as a result of profits from the Thompson partnership.¹⁰⁸ Undoubtedly, this large amount of initial investment, along with Oliver's obvious business acumen, led to Oliver's place as the primary director of the Oliver Brothers partnership. Bruchey also extensively describes how this profit and Oliver's rise to the director of Baltimore's first bank as well as "two marine insurance companies" shows Oliver's growing stature in this business world, as well as reflects "the rise...of the city in which he lived."¹⁰⁹

The early years of the Oliver Brothers partnership coincided with Baltimore's rise as the primary merchant town in the region.¹¹⁰ This rise was partly perpetuated by the French Revolution and the subsequent Napoleonic Wars, as Bruchey writes that this "war-born demand" influenced a large increase in the export of wheat and flour from the

¹⁰⁴ Id., 68.

¹⁰⁵ Id., 70.

¹⁰⁶ Id., 96-97.

¹⁰⁷ Id., 98.

¹⁰⁸ Id.

¹⁰⁹ Id., 99.

¹¹⁰ Id., 103.

Baltimore region.¹¹¹ This makes sense, as the leaders involved in the struggles between the European powers of the time had to rely on massive shipments of flour to help feed their growing armies. As these wars became frequent to the point of being nearly constant in the late 18th and early 19th century, the demand for flour from the region created a growing market for merchants like Oliver. Luckily for these merchants, this boom in demand coincided with technological advances in flour milling in areas close to the port of Baltimore.¹¹² Thus, merchants had an ample and easily accessible supply to meet the expansive demands of the market, and took advantage of it to realize significant profits at the time.

These profits would prove to be crucial, as they acted as a sort of cushion to help soften the blow that felled many Baltimore merchants when a period of peace emerged from 1801 to 1803.¹¹³ Because of these profits, and most likely because of the residual profits Oliver was able to use from his partnership with Thompson to invest in the Oliver Brothers partnership, the Oliver Brothers business survived. However, many Baltimore merchants of the time were not so lucky; “a hundred Baltimore merchants” had been ruined as a result of the peace following the Treaty of Amiens.¹¹⁴ These spectacular failures, often caused by risky business ventures, as Oliver noted, led Oliver to lead his Oliver Brothers partnership into a more cautious path, investing in more low risk business ventures than some of his peers.¹¹⁵

¹¹¹ Id.

¹¹² Id.

¹¹³ Sherry H. Olson, Baltimore: The Building of an American City, Commerce is the Mainspring, 46 (Johns Hopkins University Press 1997)

¹¹⁴ Id.

¹¹⁵ Id.

By the time the *Comet* was seized in 1807, it was obvious that shipping to Europe carried with it a more significant risk. This risk was reflected in the Oliver Brothers partnership's shipping activity at the time. In November of 1806, the Olivers lost a schooner to British capture (the *Rapid*).¹¹⁶ During 1806 and into 1807, the Oliver Brothers attempted to procure British licenses to trade as neutral vessels, as they recognized that a heightened risk of capture existed because of the passage of the Orders in Council of 1806 and 1807.¹¹⁷

Unfortunately for the Oliver Brothers, they did not receive these licenses in time to prevent the seizure of the *Comet*. However, despite the losses of various ships in the years 1806 and 1807 and their failure to obtain licenses that would end the threat of capture by the British, the Oliver Brothers partnership still realized a significant profit during this period. Indeed, their trade in Spanish gold yielded a net profit of over \$1 million on shipments they made with John Craig using the licenses of one David Parish.¹¹⁸ In addition, the profits on their own ships alone grossed them \$493,382, despite the loss of one of their ships.¹¹⁹ Thus, the Oliver Brothers partnership was still pulling in significant enough profits to weather the losses of a few ships.

However, by 1808, the Oliver Brothers realized that the changing nature of the ongoing European conflict would hamper further profits, and determined finally that it was not worth the risk. Thus began the end of their international shipping career and the winding up period of their partnership.¹²⁰ Napoleon's issuance of the Continental System

¹¹⁶ Bruchey, Robert Oliver, Merchant of Baltimore, *supra*, 319.

¹¹⁷ Id., 320-322.

¹¹⁸ Id., 329.

¹¹⁹ Id., 332.

¹²⁰ Id., 335.

decrees, combined with the Orders in Council of 1806 and 1807, presented too much of a deterrence for Robert Oliver to consider trade with Europe worth the risk anymore.¹²¹

From the period of the American embargo on trade with Europe in 1809, the Olivers began slowly withdrawing from international trade, and most of the profits of the firm from that point on were realized on domestic business ventures.¹²²

Bruchey writes that, “the most obvious external factor in Oliver’s success was American neutrality during the long European wars.”¹²³ This is inescapably true. His vast fortune was acquired as a result of his opportunistic trade with colonial European powers such as Spain, France, and England. The large demand created by these warring nations created an opportunity that a shrewd businessman like Oliver pounced on immediately, but in a risk-averse manner at the same time.¹²⁴ In his later years, the Oliver brothers partnership was able to focus on new business ventures in stocks, property interests, and a focused interest in insurance, among others.¹²⁵ From this point on, Oliver lived a more quiet life, full of less international renown, until his death in 1834, at the age of 77.¹²⁶

Robert Goodloe Harper:

Robert Goodloe Harper was the lawyer for Robert Oliver in *Oliver v. Maryland Insurance Company*. He was born in 1765 in Virginia, and moved four years later to

¹²¹ Id., 337-338 and 340.

¹²² Id., 360-362.

¹²³ Id. 362.

¹²⁴ Id., 363-364.

¹²⁵ Id., 360-362.

¹²⁶ “Death of Robert Oliver,” Baltimore, Maryland, The Belfast Newspaper, 10th February 1835 (archived in the Belfast Central library, transc. Peter Best). Interestingly, this obituary notes that Oliver died at the age of 74, which would put his birth year at 1760, not 1757.

South Carolina.¹²⁷ He moved to Baltimore in the early nineteenth century and established a prominent law practice.¹²⁸ He also served in the War of 1812, as did William Pinkney, and was promoted all the way to major general.¹²⁹ Harper was also a fairly successful politician, having been elected a senator from his newly adopted state in 1815; however, he later ran unsuccessfully for Vice-President.¹³⁰ At this point he apparently retired from public life, travelling extensively until his death in 1825.¹³¹ In this litigation, Harper represented Robert Oliver, and was unsuccessful in his attempts to advocate for the holding that the reasonableness of the *Comet*'s delay was a question of fact to be tried by a jury, not a question of law to be determined by judges; as such, Oliver lost his claim against the Maryland Insurance Company.

Luther Martin:

Luther Martin represented the Maryland Insurance Company in this litigation. Martin was most likely born in 1748, and graduated from Princeton at the top of his class at the age of nineteen.¹³² For a few years after college, Martin taught in various schools across the Eastern Shore, both in Maryland and Virginia.¹³³ However, this was merely to be a stop on his journey to becoming a lawyer. In 1771, Martin was admitted to the bar in Virginia, and from there he began a practice on the Eastern Shore, covering counties in

¹²⁷ *History, Art & Archives, U.S. House of Representatives*, "HARPER, Robert Goodloe," <http://history.house.gov/People/Detail/14566> (November 26, 2013)

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Bill Kaufmann, Forgotten Founder, Drunken Prophet: the Life of Luther Martin, 3 (2008)

¹³³ *Id.*, 4-5.

Maryland and Virginia.¹³⁴ He apparently had an affinity for the Eastern Shore, as he also lived during this time in Somerset County.¹³⁵ However, Martin's aspirations were not simply limited to the private practice of law. By 1778, he had been appointed the Attorney General of Maryland.¹³⁶ Furthermore, he was chosen as one of Maryland's delegates to the Constitutional Convention of 1787, where he was a champion for Anti-Federalist causes and warned against the dangers of a too-powerful central government.¹³⁷ Martin's political connections and ambitions therefore permeated the breadth of his legal career.

Martin's political connections can be seen in his "last great victory," when he defended Aaron Burr against charges of treason.¹³⁸ In this case, Martin's legal acumen was present as well, since he managed to prevent Burr's conviction despite being described as "awkward, disgusting, coarse, fulsome, gross, crude, and ungrammatical" in his advocacy.¹³⁹ This case took place around the turn of the century, just a few years before the *Oliver* case, and displays some of the legal skills that, while they may have been failing by the time of *Oliver*, were still potent enough to help win the case for the Maryland Insurance Company.

In 1818, Martin was once again appointed the attorney general for Maryland, a post in which he argued perhaps his most famous case, *McCulloch v. Maryland*, 17 U.S. 316 (1819).¹⁴⁰ In his capacity as attorney general, however, Martin had to unfortunately

¹³⁴ *Id.*, 5-6.

¹³⁵ *Id.*

¹³⁶ *Id.*, 7

¹³⁷ *Id.*, 15

¹³⁸ *Id.*, 155.

¹³⁹ *Id.*

¹⁴⁰ *Id.*, 160-161.

represent Maryland, and was on the losing end in this famous case of federalism. Adding insult to injury, some of Martin's own words from the Constitutional Convention, in his concessions about federalism, were used by Marshall in his decision in *McCulloch*.¹⁴¹ After this case, old age and alcoholism undoubtedly began to catch up with Martin, as did his indebtedness. However, Martin was so esteemed as a public figure that Maryland set up a fund, supported by taxes on new lawyers that was intended to support Martin until his death.¹⁴² In addition, Martin's old friend Aaron Burr took him and supported Martin in his older years. Martin died on July 10, 1826, at the age of 78.¹⁴³

William Pinkney:

Pinkney was another attorney for the Maryland Insurance Company in *Oliver v. the Maryland Insurance Company*. Oddly enough, Pinkney and Martin must have been quite a dichotomy in their arguments before the Court in *Oliver*. Pinkney was born in 1764 in Annapolis, Maryland.¹⁴⁴ He began his legal practice in 1786 in Maryland, and had risen so quickly that just two years later he was elected a state delegate to ratify the Constitution.¹⁴⁵ Just a few years after that, in 1790, Pinkney was elected to Congress, launching his political career.¹⁴⁶ As a politician, statesman, and generally a lawyer, Pinkney was a somewhat cleaner figure than Martin. He was appointed to England as a minister under the terms of Jay's Treaty, and stayed abroad long enough to sharply

¹⁴¹ *Id.*, 161.

¹⁴² *Id.*, 163-164.

¹⁴³ *Id.*, 164-165.

¹⁴⁴ Pinkney, William. *The Life of William Pinkney*. New York: Da Capo Press, 1969., 11 Print.

¹⁴⁵ *Id.*, 17.

¹⁴⁶ *Id.*, 21.

criticize the Orders in Council England passed in 1807.¹⁴⁷ Justice Marshall apparently thought so highly of Pinkney that he called him, “the closest reasoner he had ever heard.”¹⁴⁸

Pinkney’s later exploits in life were also slightly more esteemed than Martin’s. Pinkney served in the War of 1812, even receiving a grave wound at the Battle of Bladensburg while defending Washington, D.C.¹⁴⁹ In his later years as a politician, Pinkney was even involved in such historical events as defending the Missouri Compromise before legislative bodies with Daniel Webster.¹⁵⁰

This picture of Pinkney helps shed some light on the juxtaposition of his character and Martin’s character in representing the Maryland Insurance Company before the Supreme Court in *Oliver*. Where Martin covered all broad arguments he could and argued with passion and fervor, sometimes fortified by alcohol and sometimes bordering on disgusting, Pinkney comes across as a more cool, reserved, and logical advocate before the Court.¹⁵¹ However, the image of these two lawyers is somewhat more complicated than this dichotomy presented here, as the *Life of William Pinkney* perhaps casts Pinkney as too clean of a character. Robert Ireland describes Pinkney as, “...pompous, vain, jealous, abrasive and vindictive,” but goes on to further admit that, “Despite his many weaknesses of character, William Pinkney was widely acknowledged to be the foremost lawyer of his day.”¹⁵² Regardless of the complex characters presented by Martin and

¹⁴⁷ *Id.*, 127, 133-134.

¹⁴⁸ *Id.*, 93.

¹⁴⁹ Pinkney, *Life of William Pinkney*, *supra*, 62.

¹⁵⁰ *Id.*, 382.

¹⁵¹ *Id.*, 93 and Kaufman, *Forgotten Founder*, *supra*, 155-158.

¹⁵² Robert M. Ireland, *William Pinkney: A Revision and Re-emphasis*, *The Journal of American History* vol. 14, no. 3, 235, 236 (1970).

Pinkney, the strengths of these two esteemed attorneys and eloquent speakers before the Court must have been effective when combined, as they came out victorious in *Oliver*.

The Maryland Insurance Company

On January 12, 1796, the Baltimore newspaper *The Federal Gazette* published the legal document incorporating the Maryland Insurance Company.¹⁵³ These documents showed that the Maryland Insurance Company was fully incorporated by its shareholders in 1795.¹⁵⁴ On April 6, 1795, Robert Oliver was elected one of the directors of the Maryland Insurance Company.¹⁵⁵ Both Oliver and his partner in Oliver and Thompson, Hugh Thompson, were among the incorporating shareholders listed in the documents of incorporation.¹⁵⁶ This partly reflects on the friendship between Oliver and Thompson, as Bruchey writes that Thompson, even after their partnership, was one of Oliver's lifelong friends.¹⁵⁷ Thus, in an odd coincidence, Oliver was suing a company he had helped to found and for which he had once served on the board of directors. In fact, he may have even still held shares of the Maryland Insurance Company, as it was his practice to engage in multiple business ventures; thus, he may have been covered on both sides of this litigation.

The Maryland Insurance Company remained active in prize cases through the beginning of the twentieth century, as can be seen from claims the company filed to recover on items on the seized schooner *Thetis* in 1915, as well as a multitude of others

¹⁵³ *Federal Gazette*, Vol. 4, Iss. 682, 3 (January 12, 1796)

¹⁵⁴ *Id.*

¹⁵⁵ Advertisement, *Federal Intelligencer*, Vol. 3 Iss. 448, 4 (April 10, 1795)

¹⁵⁶ *Id.*

¹⁵⁷ Bruchey, Robert Oliver, Merchant of Baltimore, *supra*, 58

during the nineteenth century.¹⁵⁸ In 1943, the company was listed on a House document relating to the nonapplicability of antitrust laws to insurance companies. However, at this time the company was incorporated in Delaware, not Maryland.¹⁵⁹ It seems likely, therefore, that this was a different company from the original one incorporated by Oliver and others in Maryland in the late eighteenth century, which presumably was defunct by this time.

Part IV: Conclusion

As mentioned above, this case still holds some precedential value today. It has been cited in twenty-two cases, including 3 before the Supreme Court. In addition, it was mentioned in two other opinions of the Court.¹⁶⁰ A full Shepardization of the case on Lexis databases reveals twenty-six decisions that have cited to *Oliver*. Of these, only one is listed as distinguishing from the holding of *Oliver*; the rest cite to the case or follow it. Furthermore, of the four Supreme Court cases that have relied on the *Oliver* opinion, none have a negative indication of the Court's decision.¹⁶¹ It is therefore evident that the Court deemed its own reasoning in this case to be logical precedent, and it has therefore been adopted as an important aspect of the canon of marine insurance law.

¹⁵⁸ Letter from the Chief Clerk of the Court of Claims transmitting certified copy of findings of fact and conclusions of law in the French spoliation claim relating to the schooner *Thetis*, H.Doc. 279, Serial Set Vol. No.7101 (December 10, 1915).

¹⁵⁹ Nonapplicability of antitrust laws to the business of insurance, Appendices 23-Table, Serial Set Vol. No. 10764, H.Rpt. 873 (November 18, 1943).

¹⁶⁰ For citing cases, see: *The Konprizzen Cecilie*, 37 S.Ct. 490, 492 (1917); *Constable v. National S.S. Co.*, 14 S.Ct. 1062, 1068 (1894); *The Confiscation Cases*, 87 U.S. 92 (1873). For mentioning cases, see: *Hostetter v. Park*, 11 S.Ct. 1, 4 (1890); *Hogg v. Emerson*, 52 U.S. 587, 603 (1850).

¹⁶¹ For the Supreme Court cases only, see: *The Konprizzen Cecilie*, *infra* (1917); *Constable v. National S.S. Co.*, *infra* (1894); *Hostetter v. Park*, *infra* (1890); and *Colombian Ins. Co. v. Catlett*, 25 U.S. 383 (1827). These were all found by finding *Oliver v. The Maryland Insurance Company*, 7 Cranch 487 (1813) on Lexis Advance, then clicking the "Shepardize" link.

Oliver's importance is not limited to citations within Supreme Court holdings, however, as it is cited in numerous treatises, law review articles, legal dictionaries, and other such modern documents that define important terms such as deviation and delay for the marine insurance practitioner.¹⁶² In conclusion, despite the nuanced and technical opinion-which at first glance appears to apply only in specific situations-the central holding of *Oliver* clarified the definitions of the deviation and reasonable delay doctrines, and established firm limits on what could be considered a reasonable deviation and delay that would not void a marine insurance contract.

¹⁶² For example, see Nikaki, The Quasi-Deviation Doctrine, supra, at 45.