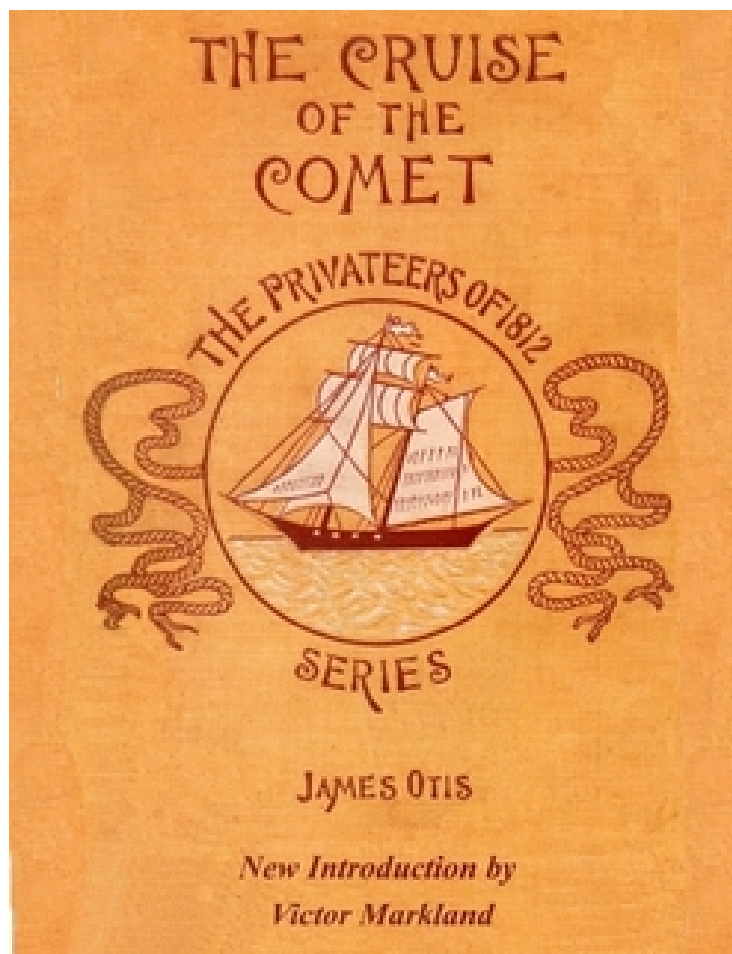


Thirty Hogsheads of Sugar v. Boyle, 9 Cranch 191 (1815):

How One Case Expanded the American Conception of Prize Law



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Abstract:

The outbreak of the War of 1812 introduced an opportunity for merchants and sailors alike, as the concept of privateering became a key facet in the United States' war at sea. This case, *Thirty Hogsheads of Sugar v. Boyle*, is an illustration of such privateering activity, as Thomas Boyle, commander of the privateer ship, the *Comet*, engaged in prize taking activity with a British ship, after receiving a commission from the government on June 29, 1812. This paper puts this particular case into the greater privateering context surrounding the War of 1812, exploring why the case may have been brought in the first place along with the impact of the case beyond the end of the War. I also attempt to delve further into the lives of those involved throughout the life of the case, both directly and indirectly, to provide a more in-depth analysis of the circumstances surrounding the inception and aftermath of the litigation. The case of *Thirty Hogsheads of Sugar v. Boyle* represents far more than a plantation owner seeking to recoup his sugar and this paper hopes to reconstruct the world encompassing the action by examining its role in the establishment of international prize law.

Disciplines:

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I. Introduction

The outbreak of the War of 1812 introduced an opportunity for merchants and sailors alike, as the concept of privateering became a key facet in the United States' war at sea. Almost immediately after war was formally declared, private merchant ships, or privateers, in major port cities, including Baltimore, received commissions or letters of marque from the government, giving them the legal ability to use force against foreign ships.¹ This case, *Thirty Hogsheads of Sugar v. Boyle*, arose from such a situation, as Thomas Boyle, commander of the privateer ship, the *Comet*, engaged in prize taking activity with a British ship, after receiving a commission from the government on June 29, 1812.² After taking the ship, Boyle sent it back to Baltimore to be libeled as a prize, where it was condemned in the federal prize court.³ The appellant in this matter, Adrian Benjamin Bentzon, brought a claim for his thirty hogsheads of sugar, which were included in the cargo as condemned prize.⁴



Figure 1: Preparing a hogshead to be taken to sea

¹ Petrie, Donald A. *The Prize Game: Lawful Looting on the High Seas in Days of Fighting Sail*. Annapolis: Naval Institute Press, 1999, p. 2-3.

² Garitee, Jerome R. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*. Middletown, CT: Mystic Seaport, Inc. Wesleyan University Press, 1977, p. 149.

³ Cranwell, John Philips and William B. Crane. *Men of Marque: Baltimore Privateers in the War of 1812*. New York: W. W. Norton & Company, 1940, p. 130.

⁴ *Thirty Hogsheads of Sugar v. Boyle*, 9 Cranch 191, 195 (1815).

⁵ British Library Online Gallery. "Carting and Putting Sugar-hogsheads on Board." <http://www.bl.uk/onlinegallery/onlineex/carviews/c/022zzz0001786c9u00010000.html>. 16 Nov. 2013.

It may seem strange that thirty hogsheads of sugar would be the subject of a Supreme Court case, but, as is usually the case, other external influences seem to perhaps be the real reason why such a case was brought at all. Bentzon, a Danish officer and plantation owner, was the son-in-law of prominent businessman John Jacob Astor, the first multi-millionaire in the United States.⁶ Though there has not been any specific commentary on this connection and its influence on the case, it is likely that Astor's relationship to the appellant propelled this case through the courts and provided Bentzon the financial resources to do so. Additionally, it is likely that the geopolitical atmosphere at the time of the case influenced its outcome. When this case was heard by the Supreme Court, in 1815, the War of 1812 had recently ceased, and it is possible that the Court saw an opportunity to forge a stronger link among the international community. Further, as prize law continued to grow, a need developed to more clearly define the governing international law. This case provided that, elucidating the source of the law of nations and establishing that as a basis of authority for future prize law cases. For that reason, *Thirty Hogsheads of Sugar v. Boyle*, a seemingly narrow case, impacted the direction of prize law cases in the United States beyond the close of the War of 1812.

II. Historical Context

A. *The War of 1812*

The United States declared war on Great Britain and Ireland through an Act of Congress on June 18, 1812.⁷ A particular part of the act gives context to the prize-taking endeavors undergone throughout the War, including the subject of this particular case, stating, “[t]he President of the United States is hereby authorized...to issue to private armed vessels of the

⁶ Emmerich, Alexander. *John Jacob Astor and the First Great American Fortune*. Jefferson, NC: McFarland, 2013, p. 3.

⁷ The Avalon Project. “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.” http://avalon.law.yale.edu.ezproxy.law.umaryland.edu/19th_century/1812-01.asp. 3 Nov. 2013.

United States commissions or letters of marque and general reprisal, in such form as he shall think proper...against the vessels, goods, and effects of the government of the said United Kingdom of Great Britain and Ireland, and the subjects thereof.”⁸ A subsequent act, enacted on July 6, 1812, forbid American vessels from trading with enemies of the United States and also required the owners of each ship leaving the United States to give bond, “with sufficient security, in the amount of such ship or vessel and cargo.”⁹ It further required that the owners of any ship that sailed to a foreign port without such a bond would forfeit her to the United States and pay the value of the ship and cargo.¹⁰ Additionally, the commander of that ship would be liable for a fine of \$1000 and could be imprisoned up to a year, at the discretion of the court.¹¹ This evidences Congress’s attempts at limiting financial risks of war, as all ships leaving the United States for a foreign port must be properly bonded or the ship’s owners face the price and lose their ship.

After that attempt to lessen the potential for financial risk, Congress seemed to get into the spirit of war through an act approved on March 3, 1813, encouraging the destruction of the enemies’ armed vessels.¹² The act further detailed the financial aspect of capturing an enemy vessel and what the crew could expect to earn.¹³ Specifically, the act states that it,

“shall be lawful for any person or persons to burn, sink, or destroy any British armed vessel of war, except vessels coming as cartels or flags of truce; and for that purpose to use torpedoes, submarine instruments, or any other destructive machine whatever: and a bounty of one half the value of the armed vessel so burnt, sunk, or destroyed, and also one half the value of her guns, cargo, tackle, and apparel, shall be paid out of the treasury

⁸ *Id.*

⁹ The Avalon Project. “An Act to Prohibit American Vessels from Proceeding to or Trading with Enemies of the United States, and for Other Purposes.” http://avalon.law.yale.edu/ezproxy.law.umaryland.edu/19th_century/1812-03.asp. 3 Nov. 2013.

¹⁰ *Id.*

¹¹ *Id.*

¹² The Avalon Project. “An Act to Encourage the Destruction of the Armed Vessels of the War of the Enemy.” http://avalon.law.yale.edu/ezproxy.law.umaryland.edu/19th_century/1812-04.asp. 3 Nov. 2013.

¹³ *Id.*

of the United States to such person or persons who shall effect the same, otherwise than by the armed or commissioned vessels of the United States.”¹⁴

This act in particular provides the context under which ships, without letters of marque or commissions, were lawfully able to capture and destroy enemy ships, and receive a financial reward for doing so. The *Comet*'s taking of the *Henry* in *Thirty Hogsheads of Sugar v. Boyle* occurred within weeks of the declaration of war, and though the *Comet* operated under an American commission, she was but one of many American vessels capturing, destroying, and earning prize on enemy ships throughout the War of 1812.

B. *Island of St. Croix*

The island referred to as “Santa Cruz” in the case is more commonly known as St. Croix, one of the United States’ Virgin Islands. The island was in possession of the French from 1650 to 1733 when France sold the island group to the Danish West Indies Company.¹⁵ St. Croix was one of the wealthiest islands of the West Indies due to its sugar production, rum trade, and slave labor.¹⁶ In 1803, leading up to the time of this case, the population of St. Croix was 30,000, with 26,500 of that being slaves involved with the planting and production of sugar cane.¹⁷ The island’s economy suffered when Denmark ended its involvement with the slave trade, as St. Croix had played a crucial role in the triangular trade route that connected Europe, Africa, and the Caribbean in the human cargo, rum, and sugar trade.¹⁸ Eventually slavery was abolished in the Danish colonies in 1848 after a series of slave revolts.¹⁹ After an extensive period of changes, rebellion, and progress in the late 1800s, St. Croix and the Danish West Indies were

¹⁴ *Id.*

¹⁵ “St. Croix, Virgin Islands: Facts and History.” <http://www.vinow.com/stcroix/history/>. 26 Oct. 2013.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

sold to the United States by Denmark in the Treaty of the West Indies of 1916 in exchange for \$250,000,000 in gold.²⁰

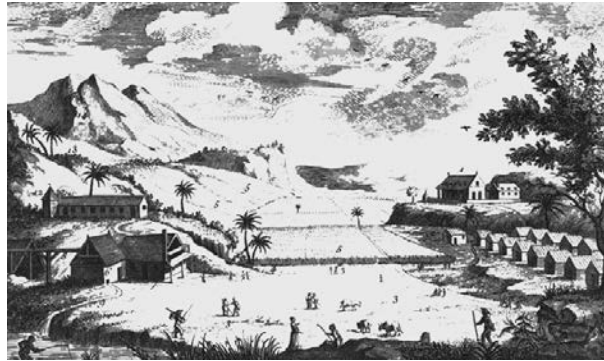


Figure 2: A Sugar Plantation on St. Croix²¹

C. General Privateering Information

Several terms are used frequently in discussing this case and the age of privateering in general. Such terms are defined here as well as a description of the general privateering process in order to provide context for this particular case. In a time of war, “letters of marque and reprisal” were often issued by the government to privately owned vessels, which constituted the vessel as a privateer.²² Therefore, letters of marque and reprisal are defined as the legal documents commissioning the privately owned ship to use force on behalf of the sovereign nation against other nations; it could also be referred to as “privateers’ commissions.”²³ Many of the investors in a privateer served as a letter of marque bond surety. Each commissioned vessel needed two sureties or secondary risk-taking participants for its letter of marque bonds.²⁴ Surety bonds for commissioned vessels were in addition to the usual bonds required of vessels clearing

²⁰ “St. Croix, Virgin Islands: Facts and History.” <http://www.vinow.com/stcroix/history/>. 26 Oct. 2013.

²¹ “Sugar Production in the Danish West Indies.” http://en.wikipedia.org/wiki/Sugar_production_in_the_Danish_West_Indies. 16 Nov. 2013.

²² Petrie. *The Prize Game: Lawful Looting on the High Seas in Days of Fighting Sail*, at 2-3.

²³ *Id.*

²⁴ Cranwell and Crane. *Men of Marque: Baltimore Privateers in the War of 1812*, at 42.

to foreign ports.²⁵ Signers of letter-of-marque bonds had to be recognized by the collector as merchants whose financial status matched that of the bond.²⁶ Owners and part-owners traded off this role, but nonshareholders charging a fee were brought into the private vessel establishment in this role.²⁷ Several investors or owners would also serve as the “prize agent” for the ship or the “ship’s husband”. A prize agent was usually one of the owners and was the person who would file a libel against the ship and her cargo in federal court.²⁸ A hearing was held, and if the testimony proved that the prize was the property of the enemy, the court would order her sold at auction together with her cargo, and the proceeds turned over to the prize agent.²⁹ A ship’s husband, though similar, served a slightly different role. He was an agent appointed by the owner of a ship, and invested with the authority to make the requisite repairs, and attend to the management, equipment, and other concerns of the ship.³⁰ He was usually authorized to act as the general agent of the owners, in relation to the ship in her home port.³¹

The owners of the ship would hire a captain to command the privateer and her crew. A letter of marque captain expected a monthly wage twice that of an experienced seaman or \$60 during the war.³² The captain retained historic prerogatives of masters in the form of percentages for supervising the loading and unloading of cargo and space in the hold for his own merchandise.³³ In wartime, captains were allotted the largest number of the crew’s prize shares as well as an occasional bonus on dangerous voyages.³⁴

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 21.

²⁹ Cranwell and Crane. *Men of Marque: Baltimore Privateers in the War of 1812*, at 21.

³⁰ “Ship’s Husband.” <http://legal-dictionary.thefreedictionary.com/Ship%27s+husband>. 13 Oct. 2013.

³¹ *Id.*

³² Garitee. *The Republic’s Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 100-01.

³³ *Id.*

³⁴ *Id.*

For specific context of this case, given the cargo at issue: a hogshead, a unit of measurement for volume, is equal to about 238.5 liters or 62.5 to 140 US gallons.³⁵ When carrying sugar, a hogshead is more equal to 100 to 140 US gallons.³⁶

III. The Case

A. Factual Situation

This case arose following the declaration of the War of 1812, after an American privateer, the *Comet*, commanded by Thomas Boyle, captured a British ship, the *Henry*, and took it back to Baltimore to retain the ship and its cargo as a prize.³⁷ Boyle and the crew of the *Comet* captured the *Henry* on July 7, 1812, though this case was not decided until early 1815.

According to the *Niles Weekly Register*, the *Henry* was, “400 tons burthen, coppered to the bends, mounting 4 twelve pounders and 6 six pounders, bound from St. Croix to London, laden with upwards of 700 hogsheads of sugar, 13 pipes of old Madeira wine, and a quantity lignum vitee.”³⁸ Further, it was, “detained and ‘sent for adjudication’ by the privateer *Comet*, Boyle, of this port. This vessel and cargo will produce a clear profit to the captors of more than \$10,000 and the duties to be paid to the United States will amount to nearly \$50,000.”³⁹

The particular cargo at issue in this case, thirty hogsheads of sugar aboard the *Henry*, belonged to Adrian Benjamin Bentzon, the appellant, a Danish officer and plantation owner on the island of Santa Cruz.⁴⁰ Bentzon shipped these thirty hogsheads of sugar, a product of his plantation, to London after the island of Santa Cruz had been captured by the British.⁴¹ After the island was captured, Bentzon left the island and resided both in Denmark and the United

³⁵ “Hogshead.” <http://www.thefreedictionary.com/hogshead>. 30 Sept. 2013.

³⁶ *Id.*

³⁷ *Thirty Hogsheads of Sugar*, 9 Cranch at 195.

³⁸ “Military Notice,” *Niles Weekly Register*, March 1812- September 1812, p. 398

³⁹ *Id.*

⁴⁰ *Thirty Hogsheads of Sugar*, 9 Cranch at 195.

⁴¹ *Id.*

States.⁴² Bentzon retained his estate and plantation on Santa Cruz through an agent since, under the articles of capitulation of the island of Santa Cruz, the inhabitants of Santa Cruz were allowed to retain their property, though they could only ship produce of the island to Great Britain.⁴³ When Boyle and the crew of the *Comet* captured the *Henry* and took it as a prize, it was libeled as British, or enemy, property and that became the issue in this case.⁴⁴ Bentzon put in a claim for his thirty hogsheads of sugar, but they were condemned, along with the rest of the cargo and ship, and deemed a valid prize.⁴⁵ This finding was affirmed in the Circuit Court for the District of Maryland and Bentzon appealed to the Supreme Court of the United States.⁴⁶



Figure 3: Plantation on St. Croix⁴⁷

B. Issues

The Court’s analysis and subsequent holding rested on two issues presented in this case. First, was this case within the established rule of British prize courts that the produce of a plantation in an enemy’s country shall be considered, while such produce remain the property of the owner of the soil, as the property of the an enemy, whatever may be the general national

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Thirty Hogsheads of Sugar*, 9 Cranch at 195.

⁴⁶ *Id.*

⁴⁷ “Our Sugar Mill.” <http://www.buccaneernotes.com/2010/10/sweet-tropical-luxury-our-sugar-mill/>. 16 Nov. 2013.

character of the owner?⁴⁸ Secondly, if this case was within that rule, was that rule to be considered as a rule of national law in the United States?⁴⁹ The answer to the second question and Chief Justice Marshall's analysis of the law of nations provide the larger impact of this case beyond prize law surrounding the War of 1812.

C. Counsels' Arguments

The parties in this case were represented by two of the most prominent attorneys of the admiralty bar: William Pinkney and Robert Goodloe Harper.⁵⁰ Mr. Pinkney represented Thomas Boyle and the prize-taking crew of the *Comet*, while Mr. Harper represented Bentzon, owner of the thirty hogsheads of sugar.⁵¹

Harper, in representing the appellant, argued that the British rule of prize law that produce of an enemy's country shall be considered as enemy property was qualified by a requirement that the owner of the plantation or produce incorporated himself with the permanent interests of the country.⁵² Harper cited to three other prize cases in

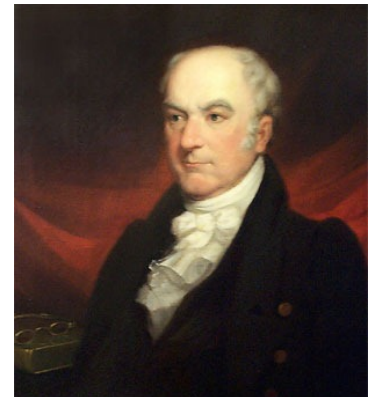


Figure 4: Robert Goodloe Harper

particular, the *Phoenix*, the *Diana*, and the *Vrow Anna Catharina*, where the ships were excepted from the general rule because the owners of the cargo had not incorporated themselves with the permanent interests of the nation.⁵³ He argued that Bentzon never incorporated himself with Great Britain permanently or temporarily because it was forced upon him and Bentzon always remained a Danish subject.⁵⁴ Harper continued that Bentzon purchased his land while Santa Cruz was neutral and the British occupation of the island was temporary in nature, so it was not

⁴⁸ *Id.*

⁴⁹ *Id.* at 197.

⁵⁰ Pinkney and Harper are discussed in greater detail, see *infra* Portraits of Those Involved, Sections D. and E.

⁵¹ *Thirty Hogsheads of Sugar*, 9 Cranch at 191, 193.

⁵² *Id.* at 192.

⁵³ *Id.*

⁵⁴ *Id.*

possible for Bentzon to incorporate himself permanently with the interests of Great Britain.⁵⁵ Harper further argued that if the produce falls under that British rule, the rule should not be adopted by the United States as a part of the law of nations.⁵⁶ Harper focused his argument on the premise that the extension of this rule would only increase Great Britain's maritime power and a rule found in Great Britain's maritime code is not and should not be binding upon the United States.⁵⁷ He stated that in particular regard to his case, Denmark had not acknowledged the rule, so it would be unjust to enforce such a rule against the nation, but if the Court did decide to adopt the rule, it should only be with the "strictest limitation."⁵⁸

Pinkney countered that once Santa Cruz was taken as a British colony, it and everything produced there became enemy property, despite the character of the particular produce's owner.⁵⁹ He distinguished the cases that Harper relied on as exceptions, stating that they were exceptions from the general rule due to other questions that were not at issue in the present case.⁶⁰ Specifically, Pinkney strikes down Harper's reliance on the requirement of permanent incorporation with the nation stating, "[t]here is no difference whether he acquire the estate before or after it comes into the possession of the enemy; if he continues to hold the estate, he becomes immediately incorporated with the nation *jure belli*."⁶¹ In regards to the second question, Pinkney agrees that Great Britain's law should not necessarily be the law for other nations, but rather, the Court will respect British decisions, especially as other European nations have followed suit.⁶²

D. *The Court's Analysis*

⁵⁵ *Id.*

⁵⁶ *Thirty Hogsheads of Sugar*, 9 Cranch at 192.

⁵⁷ *Id.* at 193.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Thirty Hogsheads of Sugar*, 9 Cranch at 194.

⁶² *Id.*

Chief Justice Marshall wrote the opinion of the Court and came to the holding by discussing each issue separately. In regards to the first question, Marshall analogized this case to that of the *Phoenix* and the *Vrow Anna Catharina*.⁶³ In the case of the *Phoenix*, the vessel was captured on a trip from Surinam to Holland and a part of the cargo was claimed by people residing in Germany, a neutral country, as the produce of their estates in Surinam.⁶⁴ In that case and in the case of *Vrow Anna Catharina*, Sir William Scott stated that produce of a person's own plantation in the colony of the enemy is liable to be considered as property of the enemy because the proprietor has incorporated himself with the permanent interests of the nation, independent of his personal residence and occupation.⁶⁵ Marshall rejected Harper's argument that this should not apply to Bentzon because he had not incorporated himself permanently with the interests of Great Britain stating, "the acquisition of land in Santa Cruz binds [Bentzon] to the fate of Santa Cruz, whatever its destiny may be. While that island belonged to Denmark, the produce of the soil, while unsold, was Danish property, whatever the character of the particular proprietor. When the island became British, the soil and its produce, while that produce remained unsold, were British."⁶⁶ Marshall distinguished that Bentzon's general character or nationality as Danish did not affect this transaction, but rather his incorporation with the island of Santa Cruz, in owning an estate there, was the important fact.⁶⁷ Bentzon, Marshall reasoned, was incorporated with the permanent interests of Santa Cruz, which was British at the time, and though he was at war with the British, as a Dane, as a proprietor of land in Santa Cruz, Bentzon was not an enemy to Great Britain and could ship his produce there safely.⁶⁸

⁶³ *Id.* at 196.

⁶⁴ *Id.*

⁶⁵ *Id.* at 197.

⁶⁶ *Thirty Hogsheads of Sugar*, 9 Cranch

⁶⁷ *Id.*

⁶⁸ *Id.*

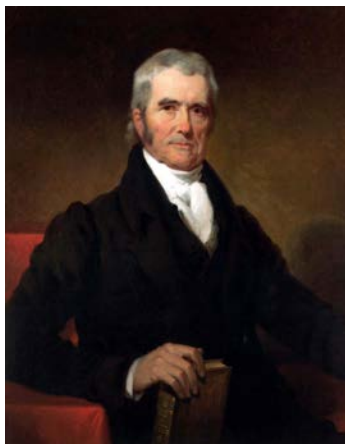


Figure 5: Chief Justice John Marshall⁶⁹

Marshall then discusses whether this rule should be adopted by the United States as a part of the law of nations, ultimately deciding that it should be.⁷⁰ Marshall states that since the United States formed from the British empire, British prize law was American prize law and even when the United States separated, it remained American prize law as it was adapted to those circumstances.⁷¹ Further, Marshall places great importance on how the Court receives decisions of other countries' courts, not as authority, but with respect.⁷² He continues that simply because the rule was made by British courts, it does not mean that it should not be the rule for the United States and since the rule in the *Phoenix* is appropriate in this case and not contrary to any other rule of any other nation, it should be adopted.⁷³ Marshall explains, “[t]he opinion that ownership of the soil does connect the owner with the property, so far as respects that soil, is an opinion that prevails extensively... Wherever the owner may reside, that land is hostile or friendly according to the condition of the country in which it is placed... The proprietor, so far as respects his interest in this land, partakes of its character and the produce,

⁶⁹ “John Marshall by Henry Inman.” http://en.wikipedia.org/wiki/File:John_Marshall_by_Henry_Inman,_1832.jpg. 16 Nov. 2013.

⁷⁰ *Id.* at 198.

⁷¹ *Id.*

⁷² *Thirty Hogsheads of Sugar*, 9 Cranch at 198.

⁷³ *Id.* at 199.

while the owner remains unchanged, is subject to the same disabilities.”⁷⁴ The Court affirmed the decision of the Circuit Court condemning Bentzon’s thirty hogsheads of sugar as enemy property.⁷⁵

IV. Portraits of Those Involved

A. *Adrian Benjamin Bentzon*

Adrian Benjamin Bentzon, the original plaintiff and appellant in this case was a notable figure not only in St. Croix, but in the United States by family connection. Bentzon was born in Tonsberg, Norway on April 22, 1777.⁷⁶ He graduated from Bergens Latinskole in Copenhagen in 1793 and took his legal exams in 1798.⁷⁷ He later served as an adjunct and notary for the legal faculty there.⁷⁸ In 1814, he became part of the government of the Danish West Indies and became Governor at the level of Major General in 1816.⁷⁹ While Governor, Bentzon was named Commander of the Order of the Dannebrog, a chivalric order with six classes awarded for meritorious civil or military service, for particular contribution to the arts, sciences or business life for those working for Danish interests.⁸⁰ In 1820, he became embroiled in scandal and was forced to resign as Governor, but he was subsequently acquitted by the Supreme Court of Denmark in 1825.⁸¹ Bentzon died in Christiansted, St. Croix in January of 1827 at the age of forty nine.⁸²



Figure 6: Order of the Dannebrog Grand Cross Star

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Holsoe, Svend E. www.vifamilies.org/images/Bentzon.doc. 26 Oct. 2013.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Dookhan, Isaac. *A History of the Virgin Islands of the United States*. Kingston: Canoe Press, 1974, p. 146.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Holsoe, Svend E. www.vifamilies.org/images/Bentzon.doc. 26 Oct. 2013.

While Bentzon served as Governor of the Danish West Indies, he worked to improve the lives of the islands' citizens, including those enslaved persons working on plantations.⁸³ On June 13, 1817, Governor Bentzon made a proclamation, “condemning planters who instead of handing out provisions, gave their enslaved workers Saturday off to work on their provision grounds.”⁸⁴ He regarded that behavior as extremely illegal and irresponsible, both towards the enslaved workers, who according to him should be treated as fellow human beings, and towards the security and property of other planters.⁸⁵ Not even a bad economy sufficed as an excuse, “because he who cannot feed his Negroes must not possess any plantation.”⁸⁶ He stipulated that six quarts of corn meal, or the equivalent in other vegetable provisions, was the minimum ration per adult enslaved worker per week.⁸⁷ This was likely necessitated by a draught that had damaged the provision crops and spurred plantation owners to provide their enslaved workers with less provisions than in prosperous times.⁸⁸



Figure 7: Adrian Benjamin Bentzon⁸⁹

⁸³ Jensen, Niklas Thode. *For the Health of the Enslaved: Slaves, Medicine, and Power in the Danish West Indies, 1803-1848*. Copenhagen: Museum Tusulanum Press, 2012, p. 157.

⁸⁴ *Id.* at 158.

⁸⁵ *Id.*

⁸⁶ *Id.*

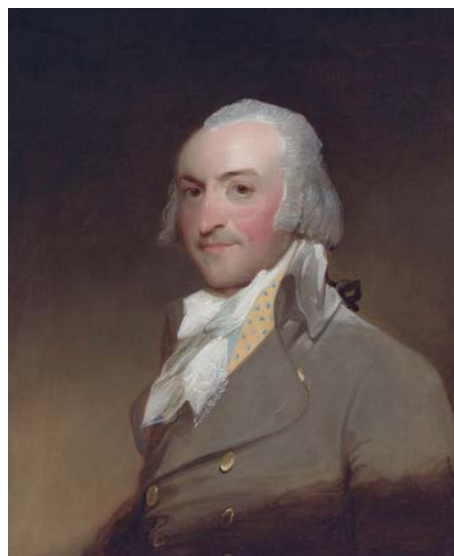
⁸⁷ *Id.*

⁸⁸ Jensen. *For the Health of the Enslaved: Slaves, Medicine, and Power in the Danish West Indies, 1803-1848*, at 160.

⁸⁹ Holsoe, Svend E. www.vifamilies.org/images/Bentzon.doc. 26 Oct. 2013.

Bentzon's connection to the United States came through his marriage, to the eldest daughter of successful American businessman John Jacob Astor, Magdalen Astor.⁹⁰ The two married on September 14, 1807, when Magdalen was just nineteen years old.⁹¹ They had a son, John Jacob Bentzon, who tragically died in 1818 on trip with Astor to Washington.⁹² He went to skate on Tiber Creek with another young boy and the ice was too weak to hold the weight of both children.⁹³ They fell into the water and were not retrieved in time.⁹⁴ Magdalen and Bentzon divorced a year later.⁹⁵

Despite the divorce, John Jacob Astor continued to have a relationship with Bentzon, and frequently used Bentzon as an agent in his fur-trading business to establish relationships with foreign countries, specifically with the Russian ambassador, to set up a trade connection with a Russian company.⁹⁶ Astor was a German-born businessman, merchant, fur trader and investor who was the first multi-millionaire in the United States.⁹⁷ He was born in Waldorff, Germany, near Heidelberg and came to the United States following the Revolutionary War.⁹⁸ Taking advantage of the Jay Treaty of 1794, Astor started a fur-trading empire with new markets in the Great Lakes and Canada and later expanded to the American West and Pacific Northwest coast.⁹⁹



⁹⁰ Emmerich. *John Jacob Astor and*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 147.

⁹⁴ *Id.*

⁹⁵ Emmerich. *John Jacob Astor and*

⁹⁶ Haycox, Stephen W., and Mary C. University of Washington Press, 19

⁹⁷ Emmerich. *John Jacob Astor and*

⁹⁸ *Id.*

⁹⁹ Madsen, Axel. *John Jacob Astor. America's First Multi-Millionaire Investor.* John Wiley & Sons, 2002, p. 16, 22.

Interpreting the Past. Seattle:

Figure 8: John Jacob Astor¹⁰⁰

Astor then established a connection with London and imported furs from Montreal to ship to Europe.¹⁰¹ By 1800 he had acquired over a quarter of a million in profits and expanded into importing into China.¹⁰² He formed the American Fur Company in 1808 after the US Embargo Act impeded his business and formed subsidiaries of this company to ship to each of the regions of his business: the American West, the Great Lakes, Canada, and others.¹⁰³ During the War of 1812, Astor's business was disrupted again, so he joined the opium trade with China, then solely with England.¹⁰⁴

In 1804, Astor purchased what was left of a 99 year lease on Manhattan land from Aaron Burr.¹⁰⁵ He began subdividing the lease into 250 lots to sublease them and from that point on, his business focused on New York real estate as he strategically bought up more land.¹⁰⁶ He rarely built on his land, but had others pay rent to use his land.¹⁰⁷ At the time of his death in 1848, Astor was the wealthiest person in the United States, leaving an estate estimated at \$20

¹⁰⁰ History Network. "America's First Multi-Millionaire." <http://www.history.com/news/americas-first-multi-millionaire-250-years-later>. 16 Nov. 2013.

¹⁰¹ Dolan, Eric Jay. *Fur, Fortune, and Empire: The Epic History of the Fur Trade in America*. New York: W. W. Norton & Company, 2011, p. 194.

¹⁰² Geisst, Charles R. *Encyclopedia of American Business History*. New York: Infobase Publishing, 2009, at 26.

¹⁰³ Dolan. *Fur, Fortune, and Empire: The Epic History of the Fur Trade in America*, at 194.

¹⁰⁴ Geisst. *Encyclopedia of American Business History*, at 26.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

million, which would have been equivalent to \$110.1 billion in 2006.¹⁰⁸ It is interesting to note that Astor long outlived his once son-in-law, Bentzon, who likely only had a very small role in the course of Astor's many successful business endeavors.

This case similarly likely only played a small role in the life of Adrian Benjamin Bentzon, but served a greater role in the life of American prize law and shaped the way the Supreme Court addressed international law. While not acknowledged in any commentary on this case, it seems likely that Bentzon's connection to such a prominent American businessman as John Jacob Astor provided the impetus for filing the original claim and bringing the case to the Supreme Court.

B. *Thomas Boyle and the Comet*

Thomas Boyle was a notable privateer commander and famously captained two successful privateer vessels, the *Comet* and the *Chasseur*. It was during the first of the *Comet's* cruises that Boyle and his crew captured the *Henry* and took its cargo as prize, thirty hogsheads of which were the subject of this case.

The Baltimore collector of customs assigned the American Commission No. 4 to the privateer *Comet* on June 29, 1812, eleven days after the proclamation of the War of 1812.¹⁰⁹ The syndicate of merchants sponsoring the *Comet*, including Andrew Clopper, Levi Hollingsworth, Peter Arnold Karthaus, and Jeremiah Sullivan appointed Boyle, an experienced Baltimore schooner master, as commander.¹¹⁰ Boyle was of Irish descent and had married a local girl after migrating south at nineteen from his birthplace in Marblehead, Massachusetts.¹¹¹ The *Comet*, a 187-ton schooner, constructed by Thomas Kemp in 1810, sailed from Baltimore in early July,

¹⁰⁸ Emmerich. *John Jacob Astor and the First Great American Fortune*, at 3.

¹⁰⁹ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 149, 251.

¹¹⁰ *Id.* at 149.

¹¹¹ *Id.* at 150.

1812, along with several other Baltimore privateers, for a three month's cruise.¹¹² Captain Boyle drilled his crew on guns and sails everyday as he headed southeasterly from the Chesapeake.¹¹³ One Englishman referred to Boyle as, "a crazy American privateersman who wouldn't take no for an answer."¹¹⁴



Figure 9: Thomas Boyle¹¹⁵

After leaving Baltimore, the *Comet* first took on the British ship, the *Hopewell*.¹¹⁶ The ship was four hundred tons, carrying fourteen guns and a crew of twenty five, headed from Surinam to London.¹¹⁷ The ship was, "laden with 710 hogsheads of sugar, 54 hogsheads of molasses, 111 bales of cotton, and 260 bags and casks of coffee and cocoa."¹¹⁸ Boyle sailed up close and the English only surrendered after one of their crew had been killed and six were

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Bourne, M. Florence. "Thomas Kemp, Shipbuilder, and His Home Wades Point," *Maryland Historical Magazine* XLIX: 4 (December 1954), 277.

¹¹⁵ "Captain Thomas Boyle." <http://feniagraves.net/Boyle,%20Thomas/TBoyle.htm>. 16 Nov. 2013.

¹¹⁶ Maclay, Edgar Stanton. *A History of American Privateers*. London: Sampson, Low, Marston & Company: 1900, p. 280.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

wounded, which was nearly a third of the crew.¹¹⁹ The *Hopewell*, with her cargo, was valued at \$150,000 and the prize taken by the crew of the *Comet* itself was \$28,455.21.¹²⁰

The *Comet* sailed on and next came upon the *Henry*, a four hundred ton ship on the way from St. Croix to London, with a mixed cargo including sugar, fustic and wine.¹²¹ After taking the ship and its cargo, Boyle transferred the *Henry*'s first and second officers and thirteen of the crew to the *Comet* and put his prize-master, Seth Long, his master's mate, Edward Carey, and nine members of the crew on the *Henry* with orders to bring her and her captain into Baltimore.¹²² The *Henry* arrived in Baltimore shortly and was condemned as a prize by the federal court.¹²³ The ship and its cargo were sold for \$128, 641.51, though court costs and duties cut this amount to \$78, 414.12 for the *Comet*'s owners and the crew.¹²⁴ The owners of the *Comet* paid \$47,154.96 in duties to the United States Treasury, leaving \$37, 942.54 in prize for the crew.¹²⁵ However, the ship's prize agent, Andrew Clopper, had to withhold the sale of thirty hogsheads of sugar, when John Jacob Astor filed a petition with the court, alleging that they belonged to a client, Adrian Benjamin Bentzon.¹²⁶ This sugar subsequently became the subject of the case at issue, and it is interesting to note that Astor referred to Bentzon as a client, when in reality, he was his son-in-law. The *Henry* itself was ultimately sold to the highest bidder, a Mr. Henry Thompson, for \$16,500.¹²⁷

¹¹⁹ *Id.*

¹²⁰ *Id.*; Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 270.

¹²¹ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 150.

¹²² *Id.*

¹²³ Cranwell and Crane. *Men of Marque: Baltimore Privateers in the War of 1812*, at 130.

¹²⁴ *Id.*

¹²⁵ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 184, 270.

¹²⁶ Cranwell and Crane. *Men of Marque: Baltimore Privateers in the War of 1812*, at 130.

¹²⁷ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 44.

All the while, the *Comet* continued to sail and next encountered the British ship the *John*.¹²⁸ The *John* was four hundred tons, carrying fourteen guns and a crew of thirty-five men, from Demerara to Liverpool.¹²⁹ She was laden with 742 bales of cotton, 230 hogsheads of sugar, 100 puncheons of rum, 50 casks and 300 bags of coffee, with a large quantity of old copper and dye-wood; the entire cargo and vessel was worth at least \$150,000.¹³⁰ Of the final prize, \$50,000 went to the United States Treasury in the form of bounty and \$34, 218.68 was left for the crew of the *Comet*.¹³¹ Soon after, the *Comet* sailed back to port in Baltimore after completing a successful 83 day cruise during which the *Comet* was not chased once.¹³² Boyle also impressively reported that he had not lost a man.¹³³ With four large prizes entered in Baltimore and Wilmington, North Carolina, the *Comet*'s owners were inspired to "fit her out again with all possible expedition for a second cruise" under the same commander.¹³⁴

Boyle was equally and perhaps more successful throughout his second cruise on the *Comet*. The vessel was recommissioned on November 6, 1812 under the commission No. 572.¹³⁵ This time, Boyle was given, "one undivided thirteenth part" of the *Comet*, valued at \$2,307.70, in a last minute registration change on November 10, 1812.¹³⁶ It is likely that the *Comet*'s original owners found it advantageous to sweeten the deal to retain Boyle, especially

¹²⁸ Maclay. *A History of American Privateers*, at 281.

¹²⁹ *Id.*

¹³⁰ Coggeshall, George. *History of the American Privateers, and Letters-of-marque: During Our War with England in the Years 1812, '13, and '14. Interspersed with Several Naval Battles Between American and British Ships-of-war*. London: Oxford University Press, 1856, p. 78.

¹³¹ Maclay. *A History of American Privateers*, at 281; Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 270.

¹³² Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 150.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 252.

¹³⁶ *Id.* at 34.

after he had completed such a successful cruise.¹³⁷ Boyle continued to have his men exercise the big guns and small arms, changing sails, and working in various maintenance jobs required on a sailing vessel of war.¹³⁸ There is little evidence that Boyle, on either cruise, had serious difficulties with his crews.¹³⁹ The *Comet*'s drummer testified that Boyle was "very strict and rigid in his behavior towards the sailors and marines, and often damned and abused them, and swore he could knock their brain out, and such things."¹⁴⁰ The boatswain on the *Comet* stated however, that he had served on many vessels and did not "know a better Commander" and that Boyle "was not a tyrant or a cruel man."¹⁴¹ George Coggeshall, a privateer during the War of 1812 wrote about Boyle in his memoirs, describing the *Comet*'s second cruise in detail.¹⁴² He summarized the latter part of the cruise:

"[n]ine vessels captured by the *Comet* of Baltimore, divested of their valuable articles and sunk. The *Comet* is stated to have had a handsome amount in cash and rich goods on board. Besides the above, she captured and manned four prizes, one of which had at this time arrived. She had a terrible battle with the ship *Hibernia*, of 800 tons, 22 guns, and a large complement of men, but was beaten off. The fight lasted about eight hours. The great height and strength of the ship probably saved her. The privateer had three men killed and 16 wounded. The ship had 8 killed, and 13 wounded. The *Comet* put into Puerto Rico to refit, and *Hibernia* arrived at St. Thomas, both much injured."¹⁴³

After 21 months of privateering, Boyle and Baltimore were done with the *Comet* after chasing the *Hibernia*; Boyle took the *Comet* into Wilmington, North Carolina in March of 1814.¹⁴⁴ In July of 1814, a Baltimore newspaper carried an advertisement for "the well-known fast sailing schooner *Comet*, Thomas Boyle, late commander," stating that she would be auctioned off in

¹³⁷ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 34.

¹³⁸ *Id.* at 216.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Coggeshall. *History of the American Privateers, and Letters-of-marque: During Our War with England in the Years 1812, '13, and '14. Interspersed with Several Naval Battles Between American and British Ships-of-war*, at 166.

¹⁴³ *Id.*

¹⁴⁴ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 152.

Baltimore while “lying at Wilmington, NC with all her armament and stores, as she arrived for her last cruise.”¹⁴⁵ The *Comet* was sold to New Yorkers in December of 1814 and subsequently sold to foreigners in Havana in 1816.¹⁴⁶

Boyle went on to successfully command the Baltimore privateer, the *Chasseur*. Amongst many prizes taken, the *Chasseur* captured eighteen vessels on her first cruise in the British Channels.¹⁴⁷ Boyle next sailed the *Chasseur* to the West Indies and after a prosperous cruise, returned to Baltimore on April 15, 1815, having aptly acquired the nickname, the “Pride of Baltimore”.¹⁴⁸ Upon his return to Baltimore, Boyle was notified of the peace reached with Great Britain with the signing of the Treaty of Ghent and lived the remainder of his life privately and peacefully, having earned a legacy of bravery and honor.¹⁴⁹

C. *The Comet’s Investors*

The *Comet* was owned by a syndicate of thirteen Baltimore investors, including one share by Captain Thomas Boyle.¹⁵⁰ The group of investors included a mix of those who only invested in two or three privateers to those substantiated investors having stakes in upwards of five vessels.¹⁵¹ The more marginal investors were Captain Thorndike Chase and brothers Elie and Levi Clagett.¹⁵² The Clagett brothers were flour merchants and Levi’s interest in the *Comet* extended beyond his share of the prize value, as he purchased guns off of the *Comet’s* prize, the *Henry*.¹⁵³ The more substantiated investors included Francis Foreman, Levi Hollingsworth,

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 152, 272.

¹⁴⁷ Coggeshall. *History of the American Privateers, and Letters-of-marque: During Our War with England in the Years 1812, '13, and '14. Interspersed with Several Naval Battles Between American and British Ships-of-war*, at 360.

¹⁴⁸ *Id.* at 366.

¹⁴⁹ *Id.* at 367-68.

¹⁵⁰ Garitee. *The Republic’s Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 257, 260, 263.

¹⁵¹ *Id.* at 260, 263.

¹⁵² *Id.* at 260.

¹⁵³ *Id.* at 121.

Andrew Clopper¹⁵⁴, Peter Arnold Karthaus¹⁵⁵, Christian Keller, Thomas Shepherd, and Jeremiah Sullivan.¹⁵⁶

Francis Foreman was a partner in Keller and Foreman, a firm of flour millers, merchants, and ship owners.¹⁵⁷ He was the proprietor of a mill on Jones Falls and a former Private in the 51st Regiment of the Maryland Militia.¹⁵⁸ His other ownership interests were in the *Phaeton*, *Harrison*, *Chasseur*, *Vidette*, and *Charles*.¹⁵⁹ Levi Hollingsworth was a merchant and ship owner, a proprietor of the Gunpowder Copper Works, and director of the Chesapeake Insurance Company.¹⁶⁰ He also served as manager of the Washington Monument Committee and Washington Monument Lottery, was a member of the State Senate and a Private in the Independent Company.¹⁶¹ Hollingsworth was also a letter-of-marque bond surety and known as a Madison Republican.¹⁶² His other ownership interests were in the *Rossie*, *Globe*, *Lynx*, *Inca*, *Patapsco*, *Phaeton*, *Price*, *Grampus*, *Pioneer*, and *Active*.¹⁶³

Christian Keller was a partner in Keller and Foreman, the same firm of flour millers, merchants, and ship owners, with Francis Foreman, and shared in the proprietorship of the mill on Jones Falls.¹⁶⁴ He was a director of the Patapsco Insurance Company and a member of the Inspection Committee of the Committee of Relief.¹⁶⁵ His other ownership interests were in the

¹⁵⁴ Clopper will be discussed in more detail *infra*, see Selected Biographies, Section A.

¹⁵⁵ Karthaus will be discussed in more detail *infra*, see Selected Biographies, Section B.

¹⁵⁶ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 263-65.

¹⁵⁷ *Id.* at 266.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 267.

¹⁶¹ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 267.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

*Phaeton, Harrison, Chasseur, Vidette, and Charles.*¹⁶⁶ Thomas Shepherd was similarly a flour miller, merchant, and ship owner. He served as director of the Mechanic's Bank, manager of the Baltimore-Havre de Grace Turnpike Road Company, proprietor of the Athenian Society (Insurance), president of the Columbian Fire Company, and a member of the Committee to Examine a New Mode of Harbor Defense.¹⁶⁷ He was a Captain of the 6th Regiment of the Maryland Militia and was known as a Smith Republican.¹⁶⁸ Shepherd often served as the prize agent and ship's husband and letter-of-marque bond surety for his vessels.¹⁶⁹ He shared in ownership prize proceeds between \$200,000 and \$299,000, likely from his many ownership interests in the *Hornet, Experiment, Shepherd, Argo, Caroline, Orb, Chasseur, Croghan, Hussar, and Vidette.*¹⁷⁰ Finally, Jeremiah Sullivan was a captain and partner in Hollingsworth and Sullivan, and later J. and J. Sullivan.¹⁷¹ He served as director of the Commercial and Farmers Bank, manager of the Medical College Lottery, manager of the Liberty Engine House Lottery, and division quartermaster of the 3rd Division of the Maryland Militia.¹⁷² He was a letter-of-marque bond surety and known as a Madison Republican.¹⁷³ His other ownership interests were in the *Rossie* and the *Chasseur.*¹⁷⁴

After considering the lives and business interests of each of these investors, it becomes clear that a relatively small group of men controlled, and received the benefit from, the Baltimore privateering endeavors.

¹⁶⁶ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 267.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 269.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

D. *William Pinkney*

William Pinkney was born in Annapolis, Maryland in 1764 and after studying medicine, turned his studies to law and became a member of the bar in 1786.¹⁷⁵ While beginning his law practice, Pinkney also began a lifelong political career as a member of the State House of Delegates from 1789 to 1792.¹⁷⁶ Pinkney became the Attorney General of Maryland in 1805 and subsequently served as Joint Minister to Great Britain with James Monroe from 1806-1807.¹⁷⁷ After returning to Baltimore, Pinkney was appointed Attorney General of the United States in President James Madison's cabinet and served in that role from 1811-1814.¹⁷⁸ Interestingly, he served as a Major in the Maryland Militia in the War of 1812, but was wounded in the Battle of Bladensburg in 1814 and returned to politics.¹⁷⁹ After serving in Congress for a year, Pinkney was elected to the United States Senate as a Democratic Republican, and served from December 1819 until he died in February of 1822.¹⁸⁰



¹⁷⁵ Biographical Directory of the United States Congress. "Pinkney, William." <http://bioguide.congress.gov/scripts/biodisplay.pl?index=P000362>. 20 Oct. 2013.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Biographical Directory of the United States Congress. "Pinkney, William." <http://bioguide.congress.gov/scripts/biodisplay.pl?index=P000362>. 20 Oct. 2013.

Figure 10: William Pinkney¹⁸¹

While he was a noted political figure, Pinkney is perhaps best known as a member of the admiralty bar and one of the greatest advocates to argue in front of the Supreme Court. Justice Joseph Story once stated about Pinkney, “his clear and forcible manner of putting his case before the Court, his powerful and commanding eloquence, and, above all, his accurate and discriminating law knowledge, give him, in my opinion, a great superiority over every other man whom I have ever known.”¹⁸² Pinkney frequently argued against the same lawyers who were equally impressed with his skills.¹⁸³ He was known for his vehement and eloquent orations, his particular fashion sense guided by his acknowledged vanity, and for frequently and adamantly redressing his opponents on a personal and legal front before the Court.¹⁸⁴ Despite his flamboyant style, Pinkney was incredibly successful in front of the Court, arguing and winning notable cases such as *McCulloch v. Maryland*.¹⁸⁵ He argued his last case before the Supreme Court, his 84th, only days before this death, and the Justices of the Court adjourned their proceedings out of respect for Pinkney.¹⁸⁶

While this case was but just one throughout Pinkey’s legendary career, its opinion, based on his argument, continued to influence the world of maritime law long after his death.

E. *Robert Goodloe Harper*

Robert Goodloe Harper, like William Pinkney, was a prominent member of the admiralty bar and politician both in South Carolina and Maryland. He was born in Fredericksburg, Virginia in 1765, and after attending what is now Princeton University, was admitted to the

¹⁸¹ “William Pinkney.” http://en.wikipedia.org/wiki/William_Pinkney. 16 Nov. 2013.

¹⁸² Shapiro, Steven M. “William Pinkney: The Supreme Court’s Greatest Advocate.” <http://www.appellate.net/articles/wilpin799.asp>. 9 Nov. 2013.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

South Carolina bar in 1786.¹⁸⁷ Harper served in the South Carolina State House of Representatives from 1790-1795 and was then elected to serve in Congress from 1795-1801.¹⁸⁸ After an unsuccessful attempt at reelection, Harper moved to Baltimore and began a law practice there.¹⁸⁹ He served in the War of 1812 as Major General, and after the war was a member of the Maryland State Senate.¹⁹⁰ Harper was elected to the United States Senate in 1815 and served in the year of 1816, but resigned after he unsuccessfully ran as the Federalist candidate for Vice President in 1816.¹⁹¹ He subsequently traveled extensively throughout Europe and had a large role in Lafayette's visit to Baltimore in 1824.¹⁹² Harper died in January of 1825 in Baltimore at the age of 60.¹⁹³

Throughout his legal career, particularly in terms of prize cases argued before the Supreme Court, Harper frequently argued for the owner of the cargo or captured prize, as opposed to the captor, which holds true for this case. Overshadowing Harper's legal practice was his unsettled view on slavery, balancing the concerns of abolitionists with his own as a slaveholder worried about rebellions.¹⁹⁴ He became a very active member of the American Colonization Society, established in 1816, which supported the return of free African Americans to greater freedom in Africa.¹⁹⁵ Through the Society's work, Harper helped develop Liberia as a

¹⁸⁷ Biographical Directory of the United States. "Robert Goodloe Harper." <http://bioguide.congress.gov/scripts/biodisplay.pl?index=H000225>. 20 Oct. 2013.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Biographical Directory of the United States. "Robert Goodloe Harper." <http://bioguide.congress.gov/scripts/biodisplay.pl?index=H000225>. 20 Oct. 2013.

¹⁹³ *Id.*

¹⁹⁴ Papenfuss, Eric Robert. *The Evils of Necessity: Robert Goodloe Harper and the Moral Dilemma of Slavery, Volume 87, Part 1*. Philadelphia: American Philosophical Society, 1997.

¹⁹⁵ "The American Colonization Society." <http://personal.denison.edu/~waite/liberia/history/acs.htm>. 9 Nov. 2013.

haven for the repatriation of African Americans in 1822 and the town of Harper, Liberia, is named for him.¹⁹⁶

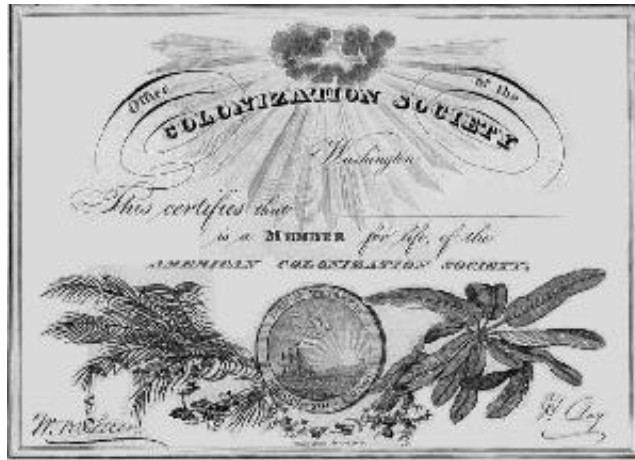


Figure 11: American Colonization Society Membership Certificate¹⁹⁷

Harper was unsuccessful in reclaiming Bentzon's captured thirty hogsheads of sugar, but it is a fitting instance into the larger theme of his legal and political careers in fighting for those who all too often had things taken from them without a say of their own.

V. Impact of the Case

During the 1815 court term, at the time this case was decided, the Supreme Court heard over ten prize cases.¹⁹⁸ The Court was comprised of seven justices, led by Chief Justice John Marshall, and the other justices hearing *Thirty Hogsheads of Sugar v. Boyle*, were Bushrod Washington, William Johnson, Henry Livingston, Thomas Todd, Gabriel Duvall, and Joseph Story.¹⁹⁹ This term began the period on the Court referred to as the "Marshall Court," where the decisions made between 1815 and 1835 reflected a reinterpretation of the Constitution and

¹⁹⁶ Archives of Maryland Biographical Series. "Robert Goodloe Harper."

<http://msa.maryland.gov/megafile/msa/speccol/sc3500/sc3520/002000/002031/html/02031bio.html>. 20 Oct. 2013.

¹⁹⁷ "The American Colonization Society." <http://personal.denison.edu/~waite/liberia/history/acs.htm>. 16 Nov. 2013.

¹⁹⁸ US Supreme Court Center. "Opinions from 1815." <http://supreme.justia.com/cases/federal/us/year/1815.html>. 19 Oct. 2013.

¹⁹⁹ Federal Judiciary Fact Sheet, 1789-1835.

principles of republicanism to fit the requirements of a rapidly changing nation.²⁰⁰ To that point, it is likely that the subject matter of this case proved particularly relevant for the time, as the claims from the War of 1812 continued to come before the Court. Further, as the war came to a close, the Court may have seen an opportunity to develop rapport with the greater international community.

This case influenced the future of prize law in the United States, as it more clearly defined the scope of authority in prize decisions and the concept of the “law of nations”. Particularly, the opinion advises that in future cases, the Court should look to the decisions of foreign courts as a source of precedent to adopt as its own. Robert Ireland, in his dissertation on the legal career of William Pinkney, discusses the impact of this case and particularly Pinkney’s contribution to it:

“Marshall, relying on the argument of Pinkney, aside from determining the rather narrow legal question presented by the facts of the dispute, constructed a significant opinion on the sources of international law and, more particularly, on the value of analogous English decisions as precedent...Marshall, writing for the Court, accepted Pinkney's reasoning and thus established an important precedent in American jurisprudence regarding the sources of international law. A ruling made by the judiciary of a foreign country if reasonable and based on ‘ancient principles’ not rejected by other sovereigns was entitled to great respect, Marshall declared, when invoked in an American court. Aside from elucidating the sources of international law, the Court had bolstered the authority of the English decision on the nature of crops grown on enemy soil by neutrals.”²⁰¹

As suggested, Marshall’s opinion was significant in that he directly referred to the law of nations as an authority as opposed to domestic law. It also enforced the notion that international law, or the law of nations, would be the guide in the United States, establishing that the law of nations is part of the American body of law.²⁰² Based on this opinion, piracy cases from that point on were

²⁰⁰ White, Edward G. *The Marshall Court and Cultural Change, 1815-1835: History of the Supreme Court of the United States*. London: MacMillan Library Reference, April 1988.

²⁰¹ Ireland, Robert. *The Legal Career of William Pinkney, 1764-1822*. New York: Garland, 1986, p. 141.

²⁰² G. Edward White, “The Marshall Court and International Law: The Piracy Cases,” *American Journal of International Law*, Vol. 83, No. 4, *The United States Constitution in its Third Century: Foreign Affairs* (Oct., 1989), pp. 727-735.

to be decided by the “law of nations,” the “great source from which we derive [international] rules.”²⁰³

The magnitude of this decision cannot be overlooked as it was one of the first instances in which the Court looked to foreign case law as authority and further prescribed that such cases involving prize law should be governed by the collective international law. To write such a deferential opinion barely three months after the close of the war, illustrates the Court’s, and Marshall’s, ability to recognize the need for a shared conception of prize law and a keen insight into the future of international relations.

VI. Conclusion

At first glance, *Thirty Hogsheads of Sugar v. Boyle* seems to be about a relatively small amount of sugar captured in a routine prize-taking interaction, but a deeper look reveals the multitude of characters and motivations involved. This case brought together the prevalence of privateering in the War of 1812, the business behind privateering, prominent businessmen and admiralty bar attorneys, and the growing concept of an international body of law. While the true reasons for the inception of this case remain relatively unknown, it is probable that the appellant’s family connection to the American business world and the status of international relations following the end of the War of 1812 directly influenced its progress through the courts. Chief Justice John Marshall’s opinion delineated a source of international law that provided guidance for prize law decisions well into the late nineteenth century. While the case revolved around a seemingly narrow issue, its reach extended far beyond those directly involved and provided a small glimpse into the world of War of 1812 privateering.

²⁰³ *Id.*, quoting *Thirty Hogsheads of Sugar v. Boyle*, 9 Cranch 191 (1815).

VII. Appendix: Selected Biographies

A. Andrew Clopper: 1771-?

Andrew Clopper was one of the owners and investors in the *Comet* and ultimately became one of the leading owners of private armed vessels in Baltimore.¹ Clopper was the Baltimore entrepreneur participating in the largest estimated owners' prize proceeds.² Clopper was a partner in Fulford and Clopper, merchants and ship owners, with Henry Fulford.³ He spread his eighteen commissions among thirteen vessels; eight were privateers and all eight were successful.⁴ He owned two-twelfths and then two-thirteenths of the *Comet*.⁵ He served as director of the Commercial and Farmers Bank and director of the Patapsco Insurance Company.⁶ He was a second lieutenant in the Baltimore Fencibles, a volunteer naval unit.⁷ He served as the prize agent and ship's husband for several of the ships he held ownership interests in, including the *Comet*, which took the prize in *Thirty Hogsheads of Sugar v. Boyle*.⁸ He was also a letter-of-marque surety.⁹ Clopper, along with his fellow investors, would alternately send ships out as letters of marque or privateers.¹⁰ He owned shares in four of the first six privateers to sail from Baltimore.¹¹

Clopper was considered a substantiated Baltimore investor in privateer ships and the ships he had ownership interests in were: *Rossie*, *Comet*, *Globe*, *Highflyer*, *Tom*, *Patapsco*,

¹ Cranwell John Philips and William B. Crane. *Men of Marque: Baltimore Privateers in the War of 1812*. New York: W. W. Norton & Company, 1940, p. 75.

² Garitee, Jerome R. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*. Middletown, CT: Mystic Seaport, Inc. Wesleyan University Press, 1977, p. 206.

³ *Id.* at 266.

⁴ *Id.* at 206.

⁵ *Id.*

⁶ *Id.* at 266.

⁷ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 266.

⁸ *Id.*

⁹ *Id.*

¹⁰ Cranwell and Crane. *Men of Marque: Baltimore Privateers in the War of 1812*, at 344.

¹¹ *Id.* at 86.

Phaeton, Grampus, Arab, Pioneer, Ultor, Transit, and Diamond.¹² He was a part of the syndicate sponsoring the *Comet*, with other merchants Peter Arnold Karthaus, Levi Hollingworth and Jeremiah Sullivan.¹³ They appointed Baltimore schooner master Thomas Boyle commander of the privateer and Clopper, as agent, personally offered Boyle the *Comet*.¹⁴ Clopper shared in estimated prize proceeds of \$799,070 and based on his proportionate ownership, likely pocketed between \$80,000 and \$90,000.¹⁵ He was one of thirty-two Baltimore owners, including John Hollins and Michael McBlair, who complained to Congress of high costs and court reductions of prize proceeds.¹⁶ Congress agreed to forego some of its income and voted to sustain the private system of privateering.¹⁷ Congress authorized a one-third reduction in the duties of prize goods in an act signed in August of 1813.¹⁸

B. *Peter Arnold Karthaus: 1765-1841*

Peter Arnold Karthaus was one of the owners and investors in the *Comet*, holding a one-thirteenth share.¹⁹ Karthaus was born in Hamburg, Germany in 1765 and emigrated to the United States in 1796, when he was thirty one years old.²⁰ He married Anna Maria Magdalan Hermes in January 1788, before he came to the United States.²¹ Karthaus was a principal partner in Peter Arnold Karthaus and Company, merchants and ship owners.²² He served as director of

¹² Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 266.

¹³ *Id.* at 149-150.

¹⁴ *Id.*

¹⁵ *Id.* at 206.

¹⁶ *Id.* at 184.

¹⁷ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 184.

¹⁸ *Id.*

¹⁹ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 206.

²⁰ Brown, Earl E. *Commerce on Early American Waterways: The Transport of Goods by Arks, Rafts, and Log Drives*. Jefferson, NC: McFarland, 2010, p. 49.

²¹ *Id.*

²² Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 267.

the City Bank of Baltimore and director of the Patapsco Insurance Company.²³ He was the proposed superintendent of a new bank.²⁴ He served as the prize agent and ship's husband for several of the ships he held ownership interests in.²⁵ He was also a letter-of-marque bond surety for these ships.²⁶ He is said to have preferred to operate his fleet of ships as letters of marque in freight, but ultimately changed his mind and began investing in privateers.²⁷

Karthus was considered a substantiated Baltimore investor in privateer ships and the ships he had ownership interests in were: *Baltimore*, *Comet*, *Thetis*,

Engineer, *Bordeaux Packet*, *Pike*, *Amelia*, *Java*, *Saranac*, and

Kemp.²⁸ Karthus often partnered with his son-in-law, Ferdinand

Hurxthal, to invest in privateers, and those included the *Baltimore*,

Bordeaux Packet, *Pike*, *Amelia*, *Java*, *Engineer*, *Thetis*, and

Saranac.²⁹ He was a part of the syndicate sponsoring the *Comet*,

with other merchants Andrew Clopper, Levi Hollingsworth and

Jeremiah Sullivan.³⁰ They appointed Baltimore schooner master Thomas Boyle commander of

the privateer.³¹ He once gave famed privateer Joseph Almeda command of one of his ships, the

Kemp.³² The most notable and prosperous of his ships were the *Kemp*, the *Pike*, and the

Amelia.³³ Karthus shared in estimated prize proceeds exceeding \$400,000, the exact value is



Figure 12: Bridge over Susquehanna River in Karthus, PA

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Cranwell and Crane. *Men of Marque: Baltimore Privateers in the War of 1812*, at 294.

²⁸ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 267.

²⁹ Cranwell and Crane. *Men of Marque: Baltimore Privateers in the War of 1812*, at 294.

³⁰ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 149-50.

³¹ *Id.*

³² Cranwell and Crane. *Men of Marque: Baltimore Privateers in the War of 1812*, at 229.

³³ *Id.* at 295.

estimated at \$418,054.³⁴ After the War of 1812, Karthaus sold his remaining vessels and around 1811, he purchased several tracts of land in Clearfield County, Pennsylvania.³⁵ He was a proprietor of that new land development, a flour and saw mill, and was a member of the Alleghany Coal Co.³⁶ He then had a hand in coal mining and boat building operations for a Susquehanna rapids project in what became Karthaus, Pennsylvania in May of 1814.³⁷ He later died there in October 1841 at the age of 76.³⁸

³⁴ Garitee. *The Republic's Private Navy: The American Privateering Business as practiced by Baltimore during the War of 1812*, at 206.

³⁵ Brown. *Commerce on Early American Waterways: The Transport of Goods by Arks, Rafts, and Log Drives*, at 49.

³⁶ *Id.* at 267.

³⁷ *Id.*

³⁸ Brown. *Commerce on Early American Waterways: The Transport of Goods by Arks, Rafts, and Log Drives*, at 49.