

A MONETARY MISUNDERSTANDING

Smith v. Gilmor and Baltimore's Place in
Turn of the 19th Century Globalization

Smith, et al. v. Gilmor, et al. Garn. Of Willink, et al.,
4 H. & J. 177 (M.d. 1816)

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I. Introduction

The case of *Smith v. Gilmore* was emblematic of the growing reach of the Baltimore merchantmen during the early republic and the problems that came with their foray into the global trading network of the old world. Less than two decades after America won its independence, the new nation's merchants had extended their reach across the world, to lands that had once been the exclusive domains of the European trading monopolies. Baltimore, once a small river town, was at the forefront of America's arrival on the global trading scene, led by a group of elite merchant houses, which included the parties to this case.

This case, which brought international economic disputes into the Maryland state courts, was not unusual for the early 19th century, although from its basic facts it would seem more likely to occur in our 21st century global economy. A wealthy American plaintiff, a prestigious European trading magnate as a co-defendant, and a business dispute that occurred in East Asia. Because of Baltimore's stature as an international port during the period, the courts there dealt with a variety of international disputes, ranging from privateering libel to petitions for freedom from imported slaves. The controversy here shows the complexity of doing international business at the time. At a time when communication could take months and the global monetary system was not standardized, let alone that of a single nation, trade between parties in different parts of the world could give rise to uncertainties which are an afterthought today.

II. Background

To understand the setting behind this dispute between turn of the century international merchant houses one must look back to the years following the American Revolution to find the origin of Baltimore's rapid rise to international importance.

A. Baltimore's Assentation to American Trading Power

The post-revolutionary era Baltimore can be considered the United States first true “boom town”, in the decade leading up to 1800 it rose from a small river town to the third largest commercial port in the new nation. In the first federal census of 1790, Baltimore Town’s population was calculated at 13,758, ten years later it had more than doubled to 31,514. In the same period, the town’s exports had increased from a little over two-million dollars to over sixteen-million, outpacing much older colonial era cities like Boston and Charleston.¹ As a recognition of its new place of importance, the Maryland Legislature granted Baltimore Town incorporation into a city in 1797. The incorporation of Baltimore into a city had been a hotly contested issue for some years splitting the populace along professional lines. The residents of Fells Point feared that city taxes would go towards deepening the inner harbor, causing them to lose their navigational advantage of deeper water, the merchant leaders pushed for incorporation, which was eventually granted.² The consolidation of the city’s power into a mayor and city council allowed for better organization and new taxing powers which would be used to improve the city’s infrastructure and most importantly, expand and deepen the harbor.³ This ten-year stretch of rapid growth was later referred to as the “zenith of Baltimore’s prosperity”⁴.

Much of the rapid growth of the city ran parallel to, and no doubt was aided by the prospering of the city’s merchant class. This group would include families who had been involved in the cities trade before the revolution, such as Samuel Smith’s, to immigrants who found Baltimore the ideal place for new trading houses, like Robert Gilmore. At the close of the American Revolution, the years of British warships looming off the American coast had taken a

¹ Clayton Colman Hall, *Baltimore: Its History and its People*, at 63 (1912)

² Richardson Dilworth, *Cities in American Political History*, at 90 (2011)

³ Hall, *supra* at 64.

⁴ Brantz Mayer, *Baltimore: Past and Present*, at 65 (1871)

toll on the trading houses of the newly free nation, in this vacuum the merchants of Baltimore would make a place for themselves.⁵ To rebuild their businesses, many merchants turned toward financing privateering,⁶ which would become a mainstay of Baltimore's economy for decades to come. The fortunes of coastal cities such as Baltimore would be quick to turn around however. After the ratification of the Constitution, Congress worked to protect American shipping, this included heavy taxes on foreign made and owned ships entering the U.S.⁷

The prosperity of American shipping would only increase after 1793, with the outbreak of hostilities between Great Britain and France, neutral America was left to assume much of the trade between European nations and their colonies around the world, where trading previously would have been reserved for the mother nation.⁸ Going through great pains, America managed to remain neutral in the conflict between the European heavyweights allowing Americans to trade with both sides, resulting in great profits. This could be risky however, since trade with either Britain or France would put American ships at risk for seizure by the opposing side.

Americans' new status as an independent people also allowed them to reap more of the profits from trade than they had as a colony. The English Navigation Acts of the 1650s and 1660s mandated that all foreign goods and raw materials go through England, leading to a boost in British manufacturing.⁹ Americans were now able to retain this benefit for themselves. Ships from Baltimore were traveling all over the world at this time, from Amsterdam to India to China. The West Indies though was the prime destination for Baltimore merchants.¹⁰ As with many of

⁵ Frank A. Cassell, *Merchant Congressmen in the Young Republic: Samuel Smith of Maryland, 1752-1839*, at 37 (1971).

⁶ Cassell, *Supra*, at 38.

⁷ Geoffrey Gilbert, *The Business History Review*, Maritime Enterprise in the New Republic: Investment in Baltimore Shipping, 1789-1793, at 15 (1984).

⁸ Brantz Mayer, *Baltimore: Past and Present*, at 58 (1871)

⁹ Kendall Johnson, *Narratives of Free Trade: The Commercial Cultures of Early U.S.-China Relations*, at 37 (2012).

¹⁰ Mayer, *Supra*, at 63.

the ports in the country, tobacco was the largest export from Baltimore, shipments of flour, wheat, and grain were also common and in demand.¹¹

The merchants of Baltimore began to invest heavily in their own ships; Baltimore merchants would make 56 percent of their investment in ships, while non-merchants would only allocate 26 percent of their investment in this area.¹² In this fast growing business, a handful of Baltimore merchant houses would rise to prominence, controlling a large portion of the industry in the city. Between 1789 and 1793, the top ten percent of ship owners registered 52.1 percent of the total shipping tonnage in the city.¹³ These mercantile elite would soon become very influential in Baltimore extending their reach to politics and other business ventures. Samuel Smith would rise from the Maryland House of Delegates to Congress¹⁴ while Robert Gilmore would be influential in city politics as well as Baltimore's first joint stock insurance companies and banks.



Engraving of a turn of the century merchant ship

¹¹ Mayer, *Supra*, at 56.

¹² Gilbert, *Supra*, at 18.

¹³ Gilbert, *Supra*, at 27.

¹⁴ Dilworth, *Supra*, at 92.

The war in Europe, while creating increased opportunity for merchants, also created increased risks with both Great Britain and France acting belligerently towards American merchant ships at various periods in the 1790's. With an estimated 5,000 British sailors dying from combat and disease each year and more deserting, the navies of Europe had a chronic need for additional sailors.¹⁵ To fill this need nearly 3,000 sailors were forcibly taken from American merchant ships during the 1790's.¹⁶ Once hostilities with Great Britain had tapered off for a time after Jays Treaty, France began interfering with American shipping with a series of harsh decrees escalating to a "quasi-war" in 1798.¹⁷

The merchant houses of Baltimore were not going to take these hostilities lying down. In 1798, as a result of the French aggression, the merchants of Baltimore met to discuss the matter and raised \$40,000 for the construction of two warships to be offered to the federal government.¹⁸ These increased risks also lead Baltimore merchants to innovate. Traditionally ship owners would bear all the risk of losing a ship and cargo.¹⁹ With the seizures of American ships by the European belligerents running into the hundreds, combined with the normal losses due to the inherent dangers of ocean travel at the time, international trade was becoming a more dangerous endeavor. To mitigate these risks merchants opened the Maryland Insurance Company, the city's first joint stock marine insurer, in 1795.²⁰ Baltimore merchants were often directors of these companies, thereby they were solving one of the risks of the profession, while also turning a profit.

¹⁵ Ballard C. Campbell, *Disasters, Accidents, and Crises in American History: A Reference Guide to the Nation's Most Catastrophic Events*, at 53 (2008).

¹⁶ Ballard, *Supra*, at 53.

¹⁷ Gardner Weld Allen, *Our Naval War With France*, at 31 (1909).

¹⁸ John Thomas Scharf, *History of Baltimore City and County, from the Earliest Period to the Present Day*, at 83 (1881).

¹⁹ Henry Elliot Shepard, *History of Baltimore, Maryland from Its Founding to the Current Year, 1729-1893*, at 24 (1893).

²⁰ Mayer, *Supra*, at 64.

It was in this turn of the century global market where our case has its beginnings. During Baltimore's boom period the merchant house of S. Smith and Buchanan was one of the wealthiest in the city, owning at least twenty ships during the period.²¹ Smith's ships sailed around the globe to far off destinations such as Curacao, Italy, and the East Indies.²² Men who would soon become national heroes such as Joshua Barney and John Rodgers also captained the firm's ships.²³ One of these voyages would lead Smith and Buchanan into a fifteen year litigation dispute with another of Baltimore's prominent merchant houses, Robert Gilmor and Sons.

B. The Global Setting

In 1801, Smith and Buchanan dispatched one of their ships, *The Union*, to Amsterdam in The Batavian Republic.²⁴ Captain A. Porter helmed the ship and was accompanied by Robert Purviance Jr. as supercargo. This position left Purviance as the owner's agent for the voyage, being in charge of selling cargo at port along with buying and receiving goods to be carried on the return voyage. In Amsterdam Purviance was to draw on bills for the ship's ultimate destination of Batavia in the East Indies.²⁵

The Batavian Republic was founded January 19, 1795 by Dutch sympathizers to the newly created French Republic (1792-1804), it was the successor to the Dutch Republic which had been in existence since 1581. As the Batavian Republic allied itself closely with France, the enemies of the French then became the enemies of the Dutch, namely Great Britain.²⁶ The Dutch colonial system had been based upon its trading prowess, centered on the Dutch East India

²¹ John S. Pancake, *Samuel Smith and the Politics of Business: 1759-1839* (1972).

²² Hall, *Supra*, at 81.

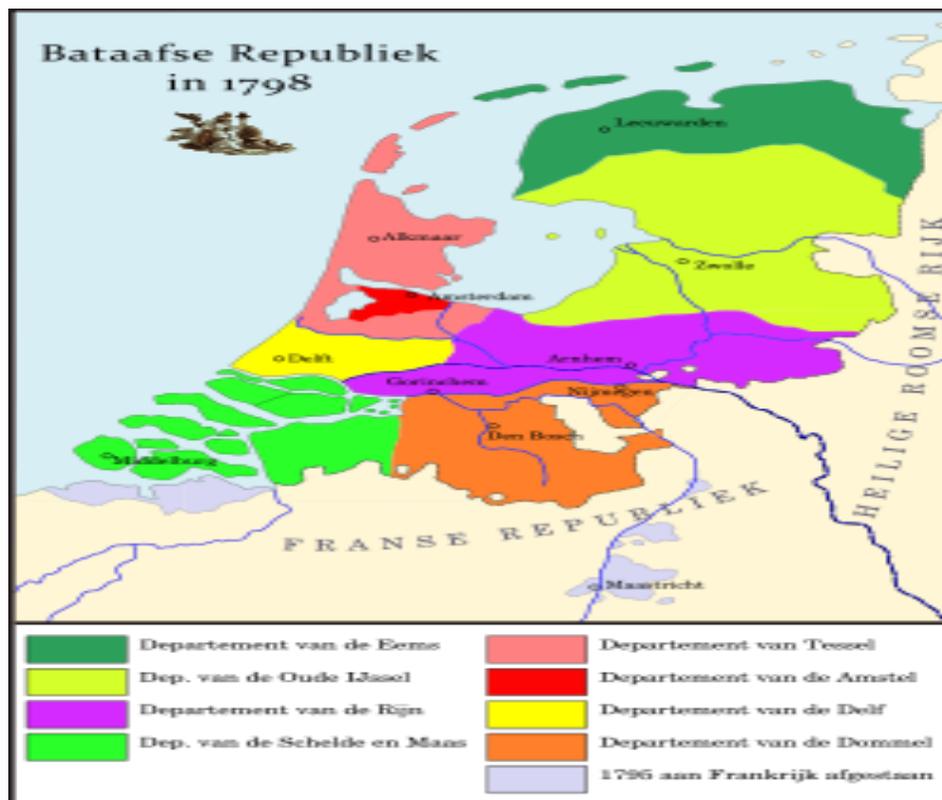
²³ Hall, *Supra*, at 81.

²⁴ Modern day Netherlands.

²⁵ Modern day Jakarta.

²⁶ Ooi Keat Gin, *South East Asia: A Historical Encyclopedia, from Angkor to East Timor*, at 937 (2004).

Company, which came to dominate trade between Asia and Europe by the seventeenth century.²⁷ The Batavian Republic would rely on the navy of their new ally to maintain their access the Dutch colonies around the globe. Unfortunately for them the French Navy was eventually overmatched by the British Navy and the Dutch lost the ability to maintain control of their colonies in the east. The Dutch trading empire had been severely the damaged by their twenty-year alliance with France, when they emerged from French control in 1814 some of their former colonies reverted back to Dutch control from the British, including the East Indies,²⁸ but the muscle behind their previous success, the Dutch East India Company, had collapsed.²⁹



The Batavian Republic 1798

²⁷ H.V. Bowen, *The Worlds of the East India Company*, at 50 (2002).

²⁸ Gin, *Supra*, at 937.

²⁹ Chris Nierstrasz, *In the Shadow of the Company: The Dutch East India Company and its Servants in the Period of its Decline, 1740-1796*, at 212 (2012).

Prior to the Revolution, American merchants were shut out of East Asia by the commercial monopolies of the English and Dutch East India Companies.³⁰ However, by the time Purviance set sail for Batavia in 1801, American trade to the Far East had been steadily growing since the mid-1880s. Simultaneously, the English East India Company was assuming the mantle of major trading power in the region, which was once the purview of the Dutch East India Company.³¹ The beginning of the post-revolution American foray into Asian trade was the voyage of *The Empress of China*, which was the first ship to show American colors in East Asia when it arrived in Macao on August 23, 1784.³² *The Palace* with John O'Donnell as master was the first ship from China to arrive in Baltimore on August 15, 1785 carrying goods that could not fit on the return voyage of *The Empress of China*.³³ From that first connection with China, the reach of American merchants would expand to many of the international ports of East Asia. The 1794 Jay Treaty between the U.S. and Britain also aided American trade expansion in the East Indies by giving the U.S. most-favored-nation status in East India Company possessions, allowing them to sail to all the ports company ships were allowed.³⁴

The gradual encroachment of the English East India Company, as well as the ongoing war in Europe, which was spilling over to many Dutch colonial possessions, left many former Dutch trade routes available for Americans to assume. Because of the Dutch alliance with France, the British Navy had cut off the Dutch from their colonies in the east, and by 1795, those colonies had turned toward the neutral United States for their trading needs.³⁵ The British tolerated the new American presence in the East Indies, seeing America's interest there as

³⁰ Kendall Johnson, *Narratives of Free Trade: The Commercial Cultures of Early U.S.-China Relations*, at 37 (2012).

³¹ K. Johnson, *Supra*, at 84.

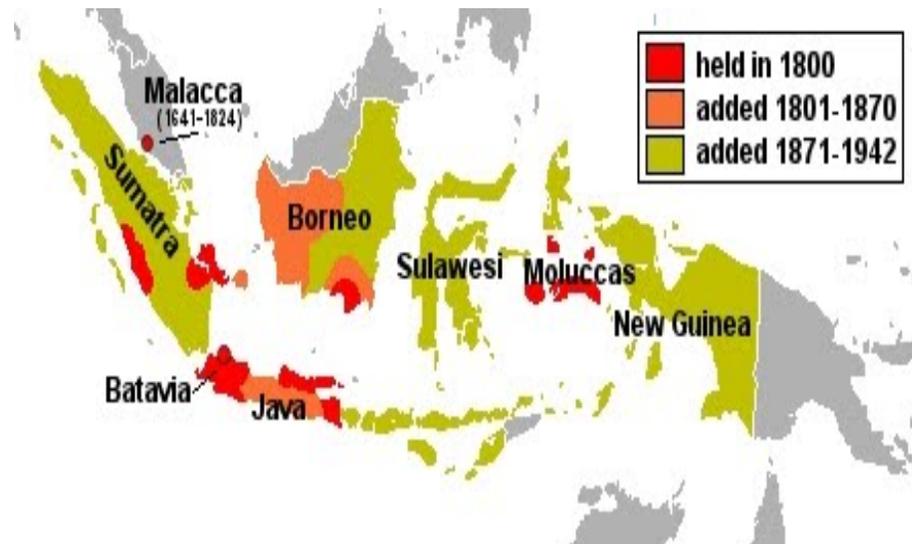
³² Donald D. Johnson, *The United States in the Pacific: Private Interests and Public Policies, 1784-1899*, at 11 (1995)

³³ Jean McClure Mudge, *Chinese Export Porcelain for the American Trade, 1784-1835*, at 35 (1962)

³⁴ James R. Fichter, *So Great a Profit: How the East Indies Trade Transformed Anglo-American Capitalism*, at 71 (2010).

³⁵ Fichter, *Supra*, at 149.

strictly commercial and non-threatening to their newfound control over the region. Batavia, a port on the East Indian Archipelago, was at the heart of the East Indian spice trade. It had been a Chinese trading port for centuries and became the seat of the Council of the Dutch East India Company in 1619 when they established dominance over the region.³⁶



Dutch East Indies

American merchants, seizing on this rich opportunity, were not only shipping Batavian staples such as coffee, sugar, and spices back to the U.S., but to France (with much effort) who had lost their ability to send merchants to the region during the Napoleonic Wars.³⁷ Between 1796 and 1807, 65 percent of long-haul arrivals in Batavia were U.S. owned ships,³⁸ with at least 74 American ships arriving in 1804 alone.³⁹ American neutrality was again playing to their favor due to the fact that Batavia was still technically controlled by the Dutch East India Company, although they could not reach it, and thus the English East India Company was barred from

³⁶ Bowen, *Supra*, at 51.

³⁷ The North American Review, Vol. XLVII, at 413 (1838).

³⁸ Fichter, *Supra*, at 150.

³⁹ K. Johnson, *Supra*, at 37.

trading there.⁴⁰ This would change after 1811 when the British conquered the archipelago, resulting in dwindling American presence.

III. The Purchase

To reach its ultimate destination of Batavia, *The Union* would first have sail to Amsterdam, the economic center of Dutch trade, since the colony was still under the ownership of the Dutch East India Company. Here *The Union's* supercargo, John Purviance Jr., would sell the cargo brought from Baltimore to buy bills of exchange on Batavia. From there he would sail to his ultimate destination of Batavia and use these bills of exchange to purchase the return cargo, most likely coffee or spices, and return to Baltimore.

A. The Key to Bills of Exchange

At the time if a merchant wished to buy goods overseas they needed to finance the purchase with credit from foreign sellers. To do this a system known as bills of exchange was developed by European merchants in the middle ages. This method of payment also reduced the risk of having to carrying gold or silver for making purchases on ships during their voyages across the globe, which always presented a danger of being stolen or lost at sea. “Bills of exchange were orders to pay denominated in foreign money and payable in a foreign port. Acting much like travelers’ cheques today, bills saved merchants the expense of moving bullion.”⁴¹ A visiting trader would purchase a bill of exchange from a European merchant house or bank. The trader would then sail to his destination with said bill of exchange and exchange them in the new

⁴⁰ Fichter, *Supra*, at 71.

⁴¹ Stephen Quinn, Gold, Silver, and the Glorious Revolution: Arbitrage between Bills of Exchange and Bullion in Economics History Review 49/3 at 474 (1996).

port for local currency minus a preset “discount” (fee). The trader would then use this cash to buy goods for his return voyage.

This was the forefather of our modern bank note or credit system. As the reach of European merchants grew during the 17th Century so did their method of cashless payment,⁴² allowing American merchants to purchase bills of exchange by making a stop in a European parent country before proceeding to her colonial possessions to purchase goods.

B. Contacts in Amsterdam

In Purviance’s case, he needed to first stop in Amsterdam, there selling off a cargo of American goods, he then would purchase bills of exchange on Batavia with money gained from the sale of goods or using the goods themselves as payment. Next, he would sail to the East Indies and cash in those bills of exchange for currency to be used in Batavia and purchase foreign cargo to bring back to Baltimore.

When *The Union* arrived in Amsterdam in July 1801, Purviance sought to purchase 30,000 U.S. dollars in bills of exchange on Batavia for this was the estimated cost to buy his return cargo in Batavia. The agent he used to procure the bills was the merchant house of Messrs. Wilhem & Jan Willink, who were regular Dutch contacts of S. Smith and Buchanan, as well as other Baltimore merchants. Purviance sent a letter to the Willinks upon his arrival inquiring about the bills of exchange and asking whether they would be payable in specie (coin) or paper money, and if the latter, what the proportionate value would be. The Willinks answered the same day with a letter in English stating “Bills on Batavia might be purchased to the amount of f.75,000 [guilder] or \$30,000 at 48 per rix dollar of 2 ½ a piece, and 10 or 12 per cent discount...”

⁴² Markus A. Denzel, *The European Bill of Exchange*, at 23

This was acceptable to Purviance as he sent back orders to the Willinks to purchase bills according to their offer, which the Willkins did as agents of Smith and Buchanan for a commission. The Willkins purchased 30,000 rix dollars' worth of bills on Batavia at the rate of 28 stivers to the rix dollar, with a discount of 12 percent, these bills were written in Dutch. When the bills were delivered to Purviance on August 18, 1801 he stated that he did not understand the Dutch language and wished to have the bills explained to him in English. He was informed that each guilder, being equal to 40 cents of the United States, and that Holland rix dollars were on par with Batavian rix dollars. Purviance received bills for 30,000 rix dollars, being under the impression that they would be paid to him in hard coin in the value of 2 ½ guilders which was equal to 30,000 Spanish dollars. Purviance then sailed for Batavia on August 19, 1801 to exchange the bills for cargo at that port.

C. 19th Century Global Monetary Rates

To understand the error in this exchange it is first necessary to know what these differing currencies were and how where they were used. A guilder (also known as a florin) was the currency of the Dutch from the 17th Century to 2002.⁴³ The rix dollar was the general English name for silver coinage used in various countries on the northern European continent and their colonies. The Dutch rix dollar, known locally as a rijksdaalder, was subdivided into stivers, a stiver being equivalent to an English shilling.⁴⁴ A guilder was worth 2 ½ rix dollars. Spanish dollars were silver coins minted by Spain, the Spanish dollar (also known as a peso) was the basis for the American dollar and was legal tender in the U.S. until the Coinage Act of 1857.⁴⁵

⁴³ http://en.wikipedia.org/wiki/Dutch_Guilder (Last visited Nov. 28, 2012)

⁴⁴ http://en.wikipedia.org/wiki/Dutch_rijksdaalder (Last visited Nov. 28, 2012)

⁴⁵ Michael S. Rozeff, *The U.S. Constitution and Money: Corruption and Decline*, at 17 (2010)

Being considered equal in value, American merchants seem to have used American dollars and Spanish “milled” dollars interchangeably.



Dutch Guilder 1794

D. The Deal Goes South in East Asia

When Purviance reached Batavia on February 7, 1802, he realized there had been a miscommunication with the Willinks in the purchase of the bills of exchange. Upon presenting the bills for exchange Purviance was told that they were only to be paid in the currency of Batavia which would yield no more than \$22,000 U.S. dollars, \$7,500 less than expected. This amount of money was insufficient to purchase enough of the desired cargo to fill the ship. Despite this, Purviance accepted the money, investing only \$22,500 in return cargo and sent *The Union* back to Baltimore. Instead of returning to the Plaintiff’s absent their entire investment, Purviance sailed back to Amsterdam to remedy the situation.

Wilhem & Jan Willink, as with many Dutch merchants, were well acquainted with doing business with Americans. They had been acquaintance with John Adams⁴⁶ who was the first Minister Plenipotentiary from the United States to The Hague from 1782-1788, assisting him in negotiations on behalf of the United States to borrow money from Dutch merchants.⁴⁷ The

⁴⁶ John Adams to Wilhem & Jan Willink, Nicolaas & Jacob van Staphorst, and De la Lande & Fynje, 29 May 1785

⁴⁷ Jonathan Elliot, *The American Diplomatic Code Embracing a Collection of Treaties and Conventions Between the United States and Foreign Powers from 1778 to 1834*, at 166 (1834)

Willinks were investors in the Holland Land Company, which speculated in large tracts of land in western New York and northern Pennsylvania; they also owned property in Havre de Grace, Maryland.⁴⁸ As they did in this case, the Willinks acted as the agents for many Baltimore merchants in Amsterdam.

IV. The Case

On February 2, 1805 Plaintiffs sued, alleging \$14,094.84 due from Defendants out of a writ of *capias ad respondendum* against Defendants, this writ was used when a defendant has failed to appear for a civil matter. Not being present in the country, an attachment was issued against the lands, tenements, goods, chattels and credits of the Willinks. The attachment was laid at the hands of Robert Gilmor, being the garnishee for the Willinks. Gilmor was acquainted with the Willinks from both business dealings and personally from his time living in Amsterdam. It is possible he was named their garnishee because of debts he may have owed them. Gilmor appeared before the Baltimore County Court and pled *non assumpsit* on behalf of the Willinks, claiming they did not undertake any obligation to Plaintiff. He then pled *nolla bona* on his own behalf, meaning he did not have possession any property of the Willinks that could be seized.

A. Trial Before the Baltimore County Court

At trial in October 1808, Plaintiffs and Defendants submitted the correspondences between Purviance and the Willinks as evidence. They also stipulated their beliefs as to the meanings of the monetary terms in their correspondence. Plaintiffs read into evidence the correspondence between Purviance and the Willinks from July 29, 1801 where Purviance explicitly explained that his desire was to purchase bills in the amount of 30,000 Spanish dollars,

⁴⁸ http://en.wikipedia.org/wiki/Willem_Willink (Last visited Nov. 28, 2012)

which was necessary to purchase a return cargo in Batavia. They contended that the Willinks assured him that one rix dollar equaled 2 ½ Holland guilders and one guilder equaled 40 U.S. cents, thus one rix dollar would equal one American/Spanish dollar.

Plaintiff also submitted a letter from September 15, 1802, after Purviance had returned to Amsterdam to inquire about the exchange complication. There the Willinks wrote that they had explained to Purviance by word that bills on Batavia were always drawn in rix dollars at 48 stivers and if the contact in Batavia had refused to pay 30,000 Spanish dollars and he suspected error, then his duty was to decline receipt of any money in protest. Since he had accepted the lesser amount and spent it on return cargo, he had given up his right. In addition, Plaintiffs contended that although the word “dollar” is not in the Dutch language nor is it a coin in Holland, it is used there among merchants meaning the Spanish or American dollar.

Defendants argued that the Willinks were natives of Holland and the word “dollar” is neither used in the Dutch language nor as a form of currency in that country or Batavia. They explained that the rix dollar of Holland contains 50 stivers, equal to 2 ½ guilders, or one U.S. dollar. However, a Batavian rix dollar contains 48 stivers, and worth no more than 75 U.S. cents if paid in silver, but much less than that when paid in paper on Batavia, which is how it was paid here. Defendants also claimed that in Amsterdam when one discusses “bills on Batavia” it is common knowledge they are referring to rix dollars on Batavia, not Holland, which is paid in paper money of Batavia unless it be specified that it is to be paid in actual coin, where it would be worth the previously mentioned 75 cents.

Defendants then made five prayers to the court for directions to the jury. Their first prayer was to direct the jury that their initial letter to Purviance should be constructed to read that 75,000 guilders or \$30,000 worth of bills on Batavia could be purchased at a rate of 48 stivers for

each rix dollar of Batavia. The judge however rejected this and instead instructed the jury to construe the letters meaning as saying 75,000 guilders or \$30,000 worth of bills on Batavia could be purchased at a rate of 48 stivers per rix dollar and one rix dollar equaled 2 ½ guilders, thus one rix dollar equals \$30,000, the Defendants excepted.

The second prayer was to direct the jury that the order given by Purviance to the Willinks to purchase the bills did not bind them to any price besides the fair market price of those bills in Amsterdam at the time. The court rejected this direction and instead instructed the jury that the Willinks were obliged to purchase according to the terms they had stated to Purviance (laid out in the previous jury direction), or not to buy at all, the Defendants excepted.

The third prayer was that the said order did not bind the Willinks to procure bills which would produce in Batavia the sum of 30,000 Spanish dollars. On this prayer, the presiding judges, Hollingsworth and Jones were divided. Being divided no instruction was given on the subject. Defendants forth prayer was a direction that the Willinks acted fairly and in good faith in execution of the order and that Purviance affirmed the order by accepting the bills. The judges were also divided on this prayer and did not give any instruction on the matter. The fourth prayer was to instruct the jury that if the jury understood Willinks offer to Purviance to mean that the bills would be purchased at a rate of 48 stivers per rix dollar of Batavia, in heavy stivers, then Defendants were not responsible for having purchased the bills at that price. The judges were also divided in this opinion. Both the Plaintiff and Defendant excepted to all three split prayers. However, despite the lower court refusing to grant any of the Defendants prayers for jury direction they still rendered a verdict for the Defendants.

B. The Appeal

Plaintiffs appeal was heard by the Court of Appeals of Maryland in December 1812. The presiding judges were Buchanan (unrelated to Plaintiff James Buchanan), Earle, and Johnson. Attorneys for Appellants were Luther Martin and William Pickney, Pickney also being the U.S. Attorney General at the time. Representing the Appellees were Robert Goodloe Harper and Walter Dorsey. The issues on appeal were the exceptions third, fourth, and fifth prayers for jury direction of which the lower court was split on and did not submit them to the jury in either a positive or negative manner.

Appellees argued that based on the act of October 1778, ch. 21. S. 14 Appellants should not be able to appeal under this issue because the act states only a person affected by division of the court may except. In this case, by the division of the court below, Appellees alone were affected, as the prayers were made on their behalf. Appellees stated that Appellants could take no advantage of the refusal to grant Defendants prayers. The situation would be different if Plaintiffs had made contrary prayers that were rejected, but since they did not they should be precluded from appealing their rejection.

The act of October 1778, Ch. 21, S. 14, directs, that “where the judges of courts of law shall be divided in opinion, *any person affected* thereby shall be entitled to his bill of exceptions, as if the opinion of the court had been against him, and as allowed by law in other cases [emphasis added].”⁴⁹ Appellants council contends that based on this statute Appellants were in fact affected by the division of the court and refusal to declare the law on the Defendant’s prayers. They contended that “..there could be no reason why the plaintiffs should be compelled to call on the court for the converse directions to the jury, when the court had been divided in opinion, and had refused to give those asked for by the defendants, either for or against the

⁴⁹ Kilty’s English Statutes, Vol. 143, Pg. 213 (1811).

plaintiffs.”⁵⁰ If they had asked for these converse directions the court would have still be divided, just in the opposite way.

The Court accepted Appellants challenges to the lower court’s refusal to rule on the law and give direction to the jury. Judge Buchanan delivering the opinion of the court stated that the third and fifth prayers should have been rejected, thus directing their converse proposition, and the fourth should have been accepted as submitted by Defendants.

A *procedendo*⁵¹ was awarded and the case returned to the Baltimore County Court for a new trial which was held March of 1814. There a verdict was awarded to the Plaintiffs of \$12,775. Defendants then motioned to arrest the judgment because no declaration had been filed in the case. The county court sustained the motion and it was then appealed back to the Court of Appeals of Maryland. The second appeal was heard during the 1816 term before judges Buchanan, Earle, Johnson, and William Bond Martin. The Court again reversed the lower court, adding \$1,975.93 in additional damages.

V. Conclusion

The misunderstanding in *Smith v. Gilmer*, between the Defendants and Plaintiff’s agent, as to the monetary exchange between multiple countries at various parts of the globe, must have been a common occurrence in the trading industry. It was a representation of the growing pains of what we refer to now as “globalization”. The Europeans had been on the forefront of this trend centuries earlier, opening up the world during the age of exploration. But while they were fighting over their colonial possessions, the arrival of ships from the opportunistic United States to those same ports being fought over would foreshadow the changes the Americans would bring

⁵⁰ *Smith v. Gilmer*, 4 H. & J. 177 (M.d. 1816)

⁵¹ A writ by which a cause which has been removed on insufficient grounds from an inferior to a superior court by certiorari, or otherwise, is sent down again to the same court, to be proceeded in there.

a century and a half later. Baltimore's explosive growth and prosperity was both a product of and a force behind America's entry into the global economy. And it was the citizens of Baltimore, like Samuel Smith and Robert Gilmore, who pushed American resources in this direction, across the sea, and set the stage for the United States to become the driving force behind globalization.

VI. Selected Biographies

Walter Dorsey (1771-1823)

Walter Dorsey was born March 19, 1771 in Anne Arundel County, Maryland. He was the son of Lt. Col. John Dorsey and Mary Hammond and the fifth of eight children. The Dorseys were a very prominent family in Maryland during the colonial era and early republic with multiple family members serving as elected representatives and members of the state's bar.

The Dorsey lineage is first found in Maryland in 1649/50 when Edward "the immigrant" Dorsey settled in Anne Arundel County.⁵² Edward had originally emigrated from England to Virginia at an unknown date and moved to Maryland because of laws restricting religious worship in Virginia.⁵³ On February 28, 1693 the first session of the Maryland General Assembly was held as the home of Maj. Edward Dorsey (son of Edward the immigrant) in Anne Arundel Town (Annapolis).⁵⁴

Walter Dorsey Married Hopewell Hebb, daughter of Col. Vernon Hebb, on July 8, 1795 in St. Mary's County, Maryland,⁵⁵ they would have 4 children. Walter had a short stint in politics

⁵² Henry Ridgley Evans, *Founders of the Colonial Families of Ridgley, Dorsey, and Greenberry, of Maryland* (1935)

⁵³ Maxwell J. Dorsey, *The Dorsey Family Descendants of Edward Darcy-Dorsey of Virginia and Maryland for Five Generations and Allied Families*, at 2.

⁵⁴ Dorsey, *Supra*, at 14

⁵⁵ Maryland records, colonial, revolutionary, county and church, from original sources, at (1915), can be found at http://archive.org/stream/marylandrecordsc01brumuoft/marylandrecordsc01brumuoft_djvu.txt

serving first in the House of Delegates for St. Mary's County,⁵⁶ where he served with a William Hebb and James Hopewell, possibly relatives of his future wife. Soon after they were married Walter and his new wife moved to Baltimore where he was elected to the Maryland General Assembly on November 20, 1797 representing Baltimore City.⁵⁷ However, Walter's political career did not last long as he was soon appointed Chief Justice of the new Court of Oyer and Terminer for Baltimore City and County on February 8, 1800.⁵⁸ His address according to the 1803 Baltimore City directory was 25 South Howard St. with his office on Chatham St., nearly opposite the courthouse.

In 1808, Judge Dorsey was accused of two counts of high judicial misdemeanor. The first count alleged that during the riots surrounding Aaron Burr's stay in Baltimore in November 1807 Judge Dorsey along with the Mayor of Baltimore Thorowgood Smith moved for Brigadier-General Stricker to call out the militia to put down the riot. The problem was that the Militia Act of 1798 prohibited the Brigadier-General from ordering out any part of the militia unless ordered to by three justices of the peace in writing, which was apparently missing here. As to this count, the legislative committee found that even if there was a violation of the act, it was an error of opinion of law, not corruption and not worth removing him from office.⁵⁹ The second accusation accused Dorsey of abusing his power by oppression of a citizen by compelling him to become his own accuser, no wrongdoing was found as to this charge either.⁶⁰ Although Judge Dorsey

⁵⁶ <http://www.msa.md.gov/msa/speccol/sc2600/sc2685/house/html/smhouse.html> (Last visited Nov. 28, 2012).

⁵⁷ Federal Gazette, Vol. VII Iss. 1289 Pg. 3 (Nov. 21, 1897)

⁵⁸ J. Thomas Scharf, *The Chronicles of Baltimore: Being a Complete History of "Baltimore Town" and Baltimore City from the Earliest Period the Present Time*, at 286 (1874).

⁵⁹ North American, Vol. 1 Iss. 9 Pg. 3 (January 20, 1808)

⁶⁰ North American, Vol. 1 Iss. 9 Pg. 3 (January 20, 1808)

escaped official sanction, he resigned from the bench a couple of months later in April 1808 and was replaced by John Scott.⁶¹

Dorsey then went into private practice where he had great success. He represented various Baltimore merchants in their trade disputes, including Robert Gilmor in the subject case. He also represented another Judge accused with misconduct, Judge Jones who was accused of misconduct on the bench for failing to attend to his duties. Dorsey argued on his behalf in December 1810 that the Judge Jones had previously served faithfully on the Court of Appeals for 26 years and was only absent because of infirmity and that the Constitution allowed judges to stay on the bench in times of good behavior, Judge Jones had not behaved counter to this. Delegates were not able to garner the two-third majority to convict Judge Jones.⁶²

On March 14, 1817 Dorsey resumed his judicial career, being appointed to the Court of Appeals of Maryland for the judicial district of Baltimore County and Harford County, replacing the deceased Judge Joseph Hopper Nicholson.⁶³ Dorsey heard a number of important cases while sitting on Maryland's highest court, including *Baptiste et.al. v. Volunhrun* in June 1820. There Madame Volunhrun had fled Haiti during the Haitian Revolution in 1797 and eventually settled in Baltimore. One of her slaves, Baptiste petitioned for his freedom, arguing that he had been imported into Maryland illegally. The Court held that although Volunhrun had been in the U.S. for twenty years she was still "sojourning" through the state and was allowed to bring her slaves with her, the petition was denied.⁶⁴

Dorsey had various interest and ventures outside of his law career. He was a member of the board of directors of the Union Bank of Maryland to which he was reelected a number of

⁶¹ North American, April 7, 1808

⁶² *Federal Gazette*, Vol. XXXIII Iss. 5164 Pg. 2 (December 19, 1810)

⁶³ Thomas W. Griffith, *Annals of Baltimore*, at 225 (1883)

⁶⁴ Patricia A. Reid, *The Haitian Revolution, Black Petitioners and Refugee Widows in Maryland, 1796-1820*, 50 *Am. J. Legal Hist.* 431, 447-52 (2010).

times.⁶⁵ During The War of 1812 he was a member of the Governors Executive Council, in May 1813 he sent a letter on behalf of the Governor to Major General Samuel Smith (the same as the Plaintiff in the subject case) warning of British warships in the Chesapeake Bay.⁶⁶ Judge Dorsey also seems to have had a side business of in planting, a 1822 newspaper article describes how “[t]obacco made by Judge Dorsey last year sold in Europe for \$52 per hundred.”⁶⁷ The law must have been close to his heart however, as he often gave lectures on the subject, which were advertised in the newspapers. During one such lecture that was reported on, he praised the character and talents of the recently deceased William Pinkney, a well-known practitioner of the time.⁶⁸ Judge Dorsey also started a law school in Baltimore in 1822,⁶⁹ the advertisement of which spoke of his legal acumen to such a great degree that the class was full and underway six days after it was advertised.⁷⁰ Judge Dorsey’s new school was a legal preparatory school, which was a popular alternative to the legal apprenticeships that had traditionally dominated the teaching of law.⁷¹

Unfortunately, Judge Dorsey did not get much time to guide his new students as he died the summer of 1823. The notice of his death explains that he had been on a family vacation to Cape May, New Jersey when he suddenly became ill, he was taken to Philadelphia where he soon expired.⁷² To mourn his passing, judges and members of the Baltimore Bar wore crape for 30 days while his students wore the same for 60 days in his honor.⁷³ At the time of his death, Judge Dorsey was still a member of the Court of Appeals and was succeeded by Stevenson Archer.⁷⁴

⁶⁵ Political Intelligencer, Vol. XII Iss. 94 Pg. 3 (April 27, 1804)

⁶⁶ Baltimore Patriot (May 10, 1813)

⁶⁷ Baltimore Patriot Vol. XX Iss. 91 Pg. 2 (Oct 19, 1822).

⁶⁸ Baltimore Patriot, Vol. XX Iss. 106 Pg. 2 (November 6, 1822).

⁶⁹ Baltimore Patriot, Vol. XIX Iss. 10, Pg. 2 (January 15, 1822).

⁷⁰ Baltimore Patriot, Vol. XIX Iss. 20 Pg. 3 (Jan 26, 1822).

⁷¹ Craig Evan Klafter, The Influence of Vocational Law Schools on the Origins of American Legal Thought, 1779-1829, 37 Am. J. Legal Hist. 307, 323 (1993) Fn. 83, 86.

⁷² Baltimore Patriot (August 2, 1823).

⁷³ Baltimore Patriot, Vol. XXII Iss. 26 Pg. 3 (August 2, 1823), Baltimore Patriot (August 4, 1823)

⁷⁴ Griffith, *Supra*, at 240.

Robert Gilmor Sr. (1748-1822)

Robert Gilmor was an archetype for what would later be known as the “American Dream”. Immigrating to the American colonies at a young age, through his own efforts he eventually became one of the leading men in the city of Baltimore during its ascendancy and the quality of his character was recognized throughout the United States and abroad.

Gilmor was born in Paisley, Scotland on November 10, 1748 to Gavin Gilmor and Jean Spier. At 18 years old, he came to America aboard a merchant ship from Glasgow, arriving in Talbot County Maryland. “Having a good address, a handsome person, and pleasing manners, he made friends wherever he went, of the principal inhabitants, whom he retained as such as long as they lived.”⁷⁵ Some of those with whom he became acquainted with in his early days in Maryland turned out to be influential people who would help him along, such as Martin Luther who would later represent Plaintiffs in *Smith v. Gilmor*, and Col. John Henry, future member of the Continental Congress and Governor of Maryland.⁷⁶ Gilmor married Louisa Airey, the half-sister of his first business partner on September 25, 1771,⁷⁷ they had four children who survived into adulthood. Most notable of his children was Robert Jr., who would become a prominent philanthropist and write a biography of Robert Sr. after his death.

Gilmor started his career as a merchant at a young age, at 19 years old in 1768 he sailed aboard a ship to the Azores islands carrying lumber. During the early years of the Revolutionary War he served as quartermaster for the militia of Dorchester County, this allowed him to continue to run his business while serving.⁷⁸ In 1778 he was persuaded by a business associate to move to Baltimore Town for a better business opportunity, there his new firm of Russell &

⁷⁵ Robert Gilmor Jr., *Memoir, or Sketch of the History of Robert Gilmor of Baltimore*, at 6 (1830).

⁷⁶ Gilmor, *Supra*, at 6.

⁷⁷ Gilmor, *Supra*, at 12.

⁷⁸ Gilmor, *Supra*, at 13.

Gilmor was located on Market St. near Gay St. It was noted that “his partner had more talent for spending than making money..” and after a short time they parted ways.⁷⁹

In 1782, Gilmor formed a new partnership with the wealthy Pennsylvania merchant William Bingham. The new firm of Bingham, Inglis, and Gilmor was involved in business dealings in Europe, because of this Gilmor moved with his family to Amsterdam in 1783 so he could run the firm’s affairs from that side of the Atlantic. When Gilmor stopped in Paris while on his way to Amsterdam, he received a letter of introduction to Wilhem and Jan Willink, Bankers of the United States and “one of the richest houses in Europe”.⁸⁰ This first introduction to his future co-defendants would create a lasting business relationship that would continue after Gilmor’s death with Robert Jr. Unfortunately his new partnership and time in Amsterdam would be short lived as his new partner Inglis died soon after Gilmor arrived, dissolving the partnership. Gilmor would continue a relationship with Bingham however, keeping in regular contact with him and pursuing other business ventures.⁸¹ Before returning to Baltimore, Gilmor would spend time in London where he purchased a new ship, the 205 ton *Ann Summer*, in 1784. He sent her to St. Petersburg to import Russian goods and later to Batavia, the *Ann Summer* would be the first ship to fly the American flag in those two ports.⁸²

On his return to Baltimore he founded Robert Gilmor & Co., later renaming it Robert Gilmor and Sons in 1799 when his sons Robert Jr. and William came of age.⁸³ Gilmor’s firm traded with places all over the world including Aux Cayes, Surinam, St. Iago, Curacao, St.

⁷⁹ Gilmor, *Supra*, at 15.

⁸⁰ Gilmor, *Supra*, at 19.

⁸¹ The Historical Society of Pennsylvania, Correspondence of William Bingham, 1791-1803, at 2 (2004).

⁸² Gilmor, *Supra*, at 24.

⁸³ http://wc.rootsweb.ancestry.com/cgi-bin/igm.cgi?op=GET&db=g_hammond_iii&id=I2273 (Last visited Nov. 29, 2012).

Thomas, West Indies, Leghorn, India, and Amsterdam.⁸⁴ The business of running a merchant house also led Gilmor to various other ventures and professional positions. His ships returning from India used saltpeter as ballast, to make use of this he erected powder mills and became involved in the manufacturing of gunpowder.⁸⁵ He sat on the board of a number of companies including the Union Bank of Maryland⁸⁶ and the Baltimore East India Company, of which he was elected President.⁸⁷ In 1795, he was involved in the first joint stock insurance company in Baltimore, the Maryland Insurance Company, until he sold his stock and founded the Marine Insurance Company, which he remained a director of until his death. The Marine Insurance Company made claims on behalf of ships owners whose ships had been confiscated and sunk in defense of Baltimore Harbor during the war of 1812.⁸⁸

⁸⁴ Hall, *Supra*, 81 (1912).

⁸⁵ Gilmor, *Supra*, at 25.

⁸⁶ Political Intelligencer, Vol. XII, Iss. 94, Pg. 3 (April 27, 1804).

⁸⁷ American and Commercial Daily Advertise, Vol XIV, Iss. 2428, Pg. 2 (February 14, 1807)

⁸⁸ Vessels Sunk for the Defense of Baltimore. Communicated to the House of Representatives, American State Papers 036, Claims Vol. 1. (December 11, 1820)



Robert Gilmore of Baltimore, Maryland by Robert Field

Gilmore's duties also spread beyond the business of trade. He was member of the Baltimore City Council from the city's incorporation in 1800 through 1811,⁸⁹ only resigning after he became the last Federalist left in the Second Branch.⁹⁰ He was head of a group of Baltimore insurance men who petitioned the federal government for relief from the French capture and spoliation of ships.⁹¹ These claims arose from the deal the Government had made in the Conventions of 1800 and 1803 with France whereby France agreed to pay spoliations to American claimants.⁹²

As a respected member of the community he was appointed to a committee to draft a resolution on behalf of the people of Baltimore, condemning the attack on the USS Chesapeake

⁸⁹ http://www.msa.md.gov/msa/speccol/sc2600/sc2685/county/html/bc_council/secondbranch_1797.html, http://www.msa.md.gov/msa/speccol/sc2600/sc2685/county/html/bc_council/secondbranch_1809.html (Last visited Nov. 29, 2012)

⁹⁰ Gilmore, , *Supra*, at 26.

⁹¹ Federal Gazette Vol. XVI, Iss. 2544, Pg. 3 (January 20, 1802).

⁹² Allen, *Supra*, at 271.

by a British ship of war in 1807⁹³ and later a committee comprised of “men of the most respectable character” to investigate the 1812 “mob town riots”.⁹⁴ Throughout his life, Gilmor gained the respect of others wherever he went through his strength of character and business acumen. This was no doubt a factor in his rise from a young Scottish immigrant in colonial America to head of an elite merchant house in one of the most economically successful cities in the young United States. After his death on January 14, 1822 his obituary was printed in newspapers all the way up to New England. In eulogizing Gilmor both his success and character were summed up in his description as “..one of the oldest and most respected merchants, and one of the worthiest and most esteemed citizens”.⁹⁵

⁹³ Sun (Pittsfield, MA) Vol. VII, Iss. 356, Pg. 1 (July 18, 1807)

⁹⁴ Independent Chronicle (Boston) Vol. XLIV, Iss. 3272, pg. 1 (Aug 20, 1812)

⁹⁵ Weekly Messenger (Boston) Vo. 2, Iss. 34, Pg. 4 (Jan 24, 1822)