

**The Santa Maria:
Baltimore Privateering and Piracy during the
Latin American Revolutions**



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Abstract

After the War of 1812 and the Napoleonic Wars, South American privateering in Baltimore took on a new dimension. Technically, the United States remained neutral with Spain in the face of Latin American revolution. However, Baltimore remained an area where privateering on foreign commissions was common. This paper puts privateering in 1817 in the context of international and national affairs. *The Santa Maria* involved pirates and what was considered a bona fide purchaser in a prize court. Included in the paper are historical backgrounds of the key players involved as well as a legal analysis of the issues brought up in *The Santa Maria* and related cases.

Disciplines

Law, Maritime History, International politics, United States' History

I. INTRODUCTION

The privateer *Patriota*, outfitted on Fells Point in Baltimore, Maryland, captured the *Santa Maria* off the coast of Cuba in 1817.¹ Captained by William Joseph Stafford, the *Patriota* departed Baltimore on an illegal pirate cruise, taking the Spanish owned *Santa Maria* and her cargo.² In direct contradiction to neutrality laws, the *Patriota* took its prize to Galveston, Texas to sell the cargo.³ The Supreme Court decided *The Santa Maria* in 1822.⁴ The five years in between the *Patriota*'s departure from Baltimore and the final disposition of the case, a variety of events occurred nationally and internationally: a new system of privateering developed, the United States gingerly maintained neutrality with Spain, U.S. forces invaded Florida, and America's first economic depression hit. The Court decided *The Santa Maria* against this backdrop. Justice Livingston relied on witness statements and circumstantial evidence to conclude that the original Spanish owners were the rightful owners of the sugar cargo from the *Santa Maria*.⁵

II. BACKGROUND

In the 18th and 19th centuries, wars were fought and won largely due to naval prowess on the high seas.⁶ However, alongside the naval vessels, another naval force worked to make a significant difference on the outcome of the war, these were the privateers.⁷ Privateers, a term used to describe both the ship and the person, were commercial raiders that captured opposing

¹ *The Santa Maria*, 20 U.S. 490 (1822).

² David Head, *Baltimore Seafarers, Privateering, and the South American Revolutions, 1816-1820*, 103 MD. HIST. MAG. 269, 277 (2008).

³ *The Santa Maria*, 20 U.S. at 490.

⁴ *Id.*

⁵ *Id.* at 495.

⁶ DONALD A. PETRIE, *THE PRIZE GAME: LAWFUL LOOTING IN THE DAYS OF FIGHTING SAIL 1* (Naval Institute Press, 1999).

⁷ *Id.*

merchant ships and took them to prize court where they could reap the monetary reward of their capture.⁸ During wartime, a private vessel could secure something called a commission or a letter of marque that would constitute the vessel as a privateer.⁹ The letter of marque allowed the ship to legally capture enemy ships and take them to prize court.¹⁰ The letter of marque, issued by the federal government, differentiated the privateer from a pirate cruising the seas looking for plunder.¹¹ The lure of making a fortune on the high seas inspired many men to go privateering, but in reality, much of the privateering was unprofitable. However, this did not stop the few successful commissions from inspiring scores of men to try their luck.¹²

The height of privateering came during the War of 1812 and the Napoleonic Wars. The U.S. Navy seized fifteen British warships, and privateers seized three, but when it came to British merchant ships, privateers took approximately twenty-five hundred.¹³ These numbers are indicative of the important role that privateers played in the landscape of war, and how their influence could dramatically affect resources. Although the most famous privateering adventurers were during the War of 1812, privateering remained a useful wartime supplement up through the Civil War.¹⁴

A. SPANISH NEUTRALITY

To fully understand privateering from 1815-1820, it is important to look at national and international affairs and place the privateers in that context. Although the War of 1812 was officially over, the United States remained a key player in international politics. In the face of

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 3–4.

¹³ *Id.* at 1.

¹⁴ *Id.* at 5.

Latin American revolution, the U.S. maintained difficult neutrality with Spain.¹⁵ Not far removed from the American Revolution, many Americans supported Latin American independence. However, American neutrality laws made it inappropriate to officially recognize rebellions against Spain.¹⁶ United States policy-makers dealt with the fear that supporting Latin American rebellion could cause Spain to go to war against the United States.¹⁷ The possibility of an international war would be catastrophic on the new nation and its cohesion.¹⁸

The first United States legislation concerning neutrality was the Act of 1794.¹⁹ The Neutrality Act of 1794 did not come to fruition without discourse and disagreement as to its construction and breadth. Federalist supporters of strict neutrality introduced the legislation in 1793.²⁰ In its original form, the act would outlaw selling within the United States any vessel or goods captured from a prince or state with whom the United States was at peace.²¹ The only exception was for vessels and goods that were first carried to the territory where the captors belonged.²² The legislation also aimed to outlaw sales without a prior condemnation.²³ Consumer goods could be sold more easily and without a condemnation sale because it was harder to trace them back directly to a ship.²⁴

¹⁵ SAMUEL J. WATSON, *JACKSON'S SWORD: THE ARMY OFFICER CORPS ON THE AMERICAN FRONTIER, 1810-1821*, 96 (1st ed. 2012).

¹⁶ *Id.* at 98.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Alfred P. Rubin, *The Concept of Neutrality in International Law*, 16 *DENV. J. INT'L & POL'Y* 353, 366 (1987).

²⁰ WILLIAM R. CASTO, *FOREIGN AFFAIRS AND THE CONSTITUTION IN THE AGE OF FIGHTING SAIL* 80 (1st ed. 2006).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

By 1794, many of the French privateers operating along the coast had been lawfully fitted out in France and sold their prizes and cargo in American ports.²⁵ Section 7 of the Neutrality Act in its original form would have changed everything and outlawed the sale of any prizes and cargo by the British or the French in American ports.²⁶ Section 7 came under much scrutiny, and it came down to a close vote in the Senate.²⁷ The Vice President held the tie-breaking vote and passed the Neutrality Act as it was submitted, including Section 7.²⁸ The Act faced much harsher criticism in the House, but the President and other House members urged that the legislation should be pushed through.²⁹ Their worries included potential attacks by Americans on Louisiana and Florida as well as American privateers beginning to sail against British ships.³⁰ In the end, the Neutrality Act passed less than a week before the end of session, but the provision on the sale of prizes was noticeably absent.³¹

Even though the Act did not include a prize sale provision, the 1794 Neutrality Act did address privateering and punishment generally,

If any person shall within any of the ports, harbors, bays, rivers, or other waters of the United States, fit out and arm, attempt to, or knowingly be concerned in the finishing, fitting out or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state to cruise or commit hostilities upon the subjects, citizens, or property of another foreign prince or state with which the United States is at peace, or shall issue or deliver a commission for any aforesaid ship, shall be convicted guilty of a high misdemeanor, and shall be fined and imprisoned at the court's discretion.³²

²⁵ *Id.* at 159.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 160.

³⁰ *Id.*

³¹ *Id.* at 162.

³² Neutrality Act of 1794, ch. 50, sec. 3, 1 Stat. 381, 383 (1794).

The Act discouraged the practice of privateering against neutral nations on paper, but as time went on, more and more investors found loopholes in the language and continued funding privateering ventures against countries like Spain and Portugal.

This Act made it a crime for any citizen of the United States acting within the territory or jurisdiction of the United States to exercise a commission to serve a foreign prince or state in war by land or sea.³³ The Act also made it a crime for any person, regardless of citizenship to enlist in foreign military or privateering service in the territory of the United States.³⁴ Specifically, Section 3 of the Act of 1794 forbade, “the arming or fitting out within the United States of a foreign privateer or naval vessel knowing it to be for employment against another foreign country with which the United States was at peace.”³⁵

Congress amended the Neutrality Act in 1797, changing some of the language and adding investors and the crew of privateering vessels to the list of those who could be found guilty of a high misdemeanor. Even with the Neutrality Act provisions, privateers continued to go after Spanish ships in the Caribbean. Juries, especially in privateer-friendly courts like Baltimore’s, failed to convict, and Spain continued to put pressure on the U.S. government to create stricter neutrality laws.

Privateering in South America after the War of 1812 was considered illegal and punishable by law, but with the United States’ ambivalent stance toward the issue, the line of illegality blurred.³⁶ Officials used privateering to their advantage as a way to indirectly put pressure on Spain.³⁷ Despite the language of the neutrality laws, the United States’ government

³³ Rubin, *supra* note 19.

³⁴ Rubin, *supra* note 19.

³⁵ Rubin, *supra* note 19, at 367.

³⁶ Watson, *supra* note 15, at 103.

³⁷ Watson, *supra* note 15, at 103.

skirted the law by denying Americans' active participation in privateering, but refusing to exclude rebel ships from American ports.³⁸ Spanish officials were up in arms about the lax treatment of privateering, and demanded the U.S. Administration take a firmer stance on the issue.³⁹

Stricter neutrality laws were bound to come into effect, especially because of pressure from Spanish and U.S. officials.⁴⁰ On December 20, 1816, the Portuguese Minister, Correa de Serra, urged preventative legislation.⁴¹ Less than a week later, President Madison pointed out that existing laws were ineffective in deterring violation of American neutrality.⁴² In March of 1817, the U.S. passed the Neutrality Act of 1817.⁴³ The new neutrality laws kept the language of the Act of 1794 while making it a crime to enter into the service of a foreign colony, district, or people within United States territory.⁴⁴ This addition was designed to prevent Americans from enlisting in the revolutionary cause by taking out privateer's licenses from unrecognized revolutionary authorities.⁴⁵ The 1818 Act made it impossible to argue as a defense that "insurgent colonies" (a.k.a. the Latin American independent nations) could not be considered a foreign prince or state.⁴⁶

Once again, the Act of 1817 kept in force the provisions of the 1794 Act, but also provided that owners of all armed ships sailing out of the United States would enter into a bond

³⁸ Edward Dumbauld, *Neutrality Laws of the United States*, 31 AM. J. INT'L L. 258, 263 (1937).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Rubin, *supra* note 19, at 368.

⁴⁵ Rubin, *supra* note 19, at 368.

⁴⁶ CHARLES G. FENWICK, *THE NEUTRALITY LAWS OF THE UNITED STATES* 41 (1913).

with the U.S. government in double the amount of the value of vessel and cargo.⁴⁷ Customs collectors were given the authority to detain any vessel build for warlike purposes departing the United States.⁴⁸

In 1818, Congress added even more restrictions. The new language of the Neutrality Act provided:

That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years.⁴⁹

The Neutrality Act in its 1794 form left open the argument that Latin American rebel governments were unrecognized and did not fall under any of the requirements of the neutrality laws.⁵⁰ The Neutrality Act of 1818 included the language “of any foreign prince, state, colony, district, or people....”⁵¹ This would ensure that the Act covered Latin American governments and the loopholes would be filled. The tightening of neutrality laws as well as the increase in convictions significantly curtailed privateering in South America.

B. UNITED STATES EXPANSION INTO FLORIDA

In 1817, Spain maintained control of parts of Florida and the Gulf Coast.⁵² Members of the U.S. military, namely Andrew Jackson, advocated for U.S. forces to invade Florida and

⁴⁷ An Act More Effectually to Preserve the Neutral Relations of the United States, March 3, 1817 2 COLL. NEUTR. L. REG. & TREATIES 1079, 1084 (1939).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Fred Hopkins, For Freedom and For Profit: Baltimore Privateers in the War of South American Independence, THE NORTHERN MARINER 93, 103 (2008).

⁵¹ Neutral Relations, *supra* note 47.

⁵² Watson, *supra* note 15, at 96.

expand U.S. territory.⁵³ Described as “carefully defined neutrality,” United States’ policy-makers wanted to deny any responsibilities for Spanish-American tensions, while putting pressure against Spain in Florida.⁵⁴ In his first Inaugural Address on March 4, 1817, President Monroe said, “the sentiment in the mind of every citizen is national strength” and that if the United States continued in the direction it was going, the nation could not fail to reach its destiny.⁵⁵ The national attitude was toward expansion even at the risk of upsetting Spain.

In 1817, this notion proved true when Sir Gregor MacGregor successfully took and occupied Amelia Island, a small island controlled by Spain, off the northeast coast of Florida.⁵⁶ MacGregor, attracted by Latin American independence, went to Venezuela to join the revolutionaries.⁵⁷ He received a military commission from South American to liberate East and West Florida from the Spaniards.⁵⁸ MacGregor thought the United States would look favorably on his campaign against Florida and began recruiting sailors, adventurers, and brawlers in Baltimore, Charleston, and Savannah.⁵⁹ He landed on Amelia Island and the Spanish commander, Don Francisco Morales, gave it up without a fight.⁶⁰ In that moment MacGregor possessed the island.⁶¹ After a number of challenges, MacGregor left the island, but Luis Aury, a figure

⁵³ Watson, *supra* note 15, at 96.

⁵⁴ Watson, *supra* note 15, at 96.

⁵⁵ Frank L. Klingberg, *The Historical Alternation of Moods in American Foreign Policy*, 4 WORLD POLITICS 239, 243 (1952).

⁵⁶ Richard G. Lowe, *American Seizure of Amelia Island*, 45 THE FLA. HIST. Q. 18 (July 1966).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 19.

⁶⁰ *Id.*

⁶¹ *Id.*

discussed later for his involvement in Galveston, landed right after and claimed it for Mexico.⁶² Under Aury, Amelia Island became a base for naval assaults on Spanish shipping.⁶³

Senior Spanish officials recognized the likelihood that Florida would be lost without British support, and they began trying to secure Texas, hoping for restraint on American recognition of the Latin rebels in exchange for ceding Florida.⁶⁴ John Quincy Adams used this to his advantage in his negotiations to get Spain to cede Florida territory to the United States.⁶⁵ At this time, the U.S. Administration's loyalties were torn in different directions: toward Latin American revolution, neutrality with Spain, and increasing U.S. territory.

Apart from Amelia Island, problems erupted in Florida where an essentially self-governing citizenry employed methods of populist vigilantism and violence.⁶⁶ The day after Christmas in 1817, Secretary of War John C. Calhoun ordered Major General Andrew Jackson to cross into Spanish Florida to punish the Seminole Indians.⁶⁷ In direct opposition to earlier foreign policy, Jackson went down to Florida and took over the few Spanish forces without much resistance.⁶⁸ Leaving Jackson unsupervised in the South, Administrators were surprised when instead of controlling the Seminoles and working with Spain, Jackson had the American flag flying over Pensacola and began looking toward St. Augustine.⁶⁹ In an attempt to save foreign relations with Spain, the Monroe Administration tried to salvage the situation, while John

⁶² *Id.* at 21–22.

⁶³ *Id.*

⁶⁴ Watson, *supra* note 15, at 137.

⁶⁵ Lowe, *supra* note 51, at 24.

⁶⁶ Watson, *supra* note 15.

⁶⁷ David S. Heidler, *The Politics of National Aggression: Congress and the First Seminole War*, 13 J. OF EARLY REPUBLIC 501, 504 (1993).

⁶⁸ *Id.*

⁶⁹ *Id.* at 506.

Quincy Adams used Jackson's assault to help negotiate an even better price for Florida.⁷⁰

Officially President Monroe gave Pensacola back to Spain, but in its aftermath a host of cabinet meetings and an official investigation of what happened in Florida went on in Washington.⁷¹

United States' policy-makers recognized the strength of public opinion supporting territorial expansion and Latin American independence. They also recognized that privateers could put pressure on Spain in a way the U.S. Navy could not.⁷² Monroe and Adams continually ignored Spanish complaints about privateering and effectively recognized the South American rebels as legitimate, even though they did not formally sanction them with U.S. letters of marque.⁷³

C. SOUTH AMERICAN PRIVATEERING GENERALLY

With no war to fight, Baltimore hosted restless privateers without commission or a purpose. Many of them were not transitioning well into civilian life and wanted to get involved with privateering.⁷⁴ Immediately following the Napoleonic Wars, international shipping rebounded and privateers started to return to normal civilian life.⁷⁵ Even though privateers were not satisfied with the lifestyle that civilian life supported, international shipping was just coming back, and the American people did not want privateering to deter the merchant business.⁷⁶ After spending their prize money from the War of 1812, most of the sea captains and sailors were unemployed and looked to the South American revolutions as way to make cash fast and solve

⁷⁰ *Id.* at 507

⁷¹ *Id.* at 508.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Head, *supra* note 2, at 271.

⁷⁵ Watson, *supra* note 15, at 103.

⁷⁶ Watson, *supra* note 15, at 103.

their money problems.⁷⁷ During the War of 1812, Baltimore was a hot bed for privateers and along with the popularity of South American independence, privateering during the Latin American revolutions became just as popular.⁷⁸

Privateering in 1815 differed significantly from what it had been during the Napoleonic Wars. The problem was, at this point in time, the United States remained a neutral nation to all of its former adversaries. As previously discussed, under the 1794 and 1797 neutrality laws, no American was allowed to own, outfit, arm, supply, command, or sail aboard any foreign warship that intended to commit hostilities against a nation at peace with the United States.⁷⁹ Furthermore, no one, regardless of citizenship, was allowed to outfit a privateering vessel in United States territory.⁸⁰ Privateers faced serious ramifications because if tried for piracy, the punishment was death.⁸¹ Additionally, the terms of the 1795 treaty with Spain specified that the U.S. was to treat anyone who violated American neutrality and attacked Spain as pirates.⁸²

Several prominent merchants traveled to Buenos Ayres (now the country of Argentina) to support South American independence and get back in the prize game.⁸³ Men outfitting privateers to sail to the Caribbean had to keep their affairs secret for fear of getting prosecuted for the violation of American neutrality laws.⁸⁴ Baltimore merchants kept a level of secrecy around South American privateering and developed a level of organization within the marine

⁷⁷ Head, *supra* note 2, at 270.

⁷⁸ Head, *supra* note 2, at 270.

⁷⁹ Head, *supra* note 2, at 270.

⁸⁰ Head, *supra* note 2, at 270.

⁸¹ Head, *supra* note 2, at 270.

⁸² Head, *supra* note 2, at 270.

⁸³ Charles C. Griffin, *Privateering from Baltimore During the Spanish American Wars of Independence*, 35 MD. HIST. MAG. 1, 14 (1940).

⁸⁴ Head, *supra* note 2, at 270.

community.⁸⁵ Maintaining a system allowed respectable members of the community to remain players in the prize game.⁸⁶ Despite, the dangerous penalties, many merchants and sea captains took the chance to outfit privateers. However, capital investment, a problem in the War of 1812, was an even bigger problem in 1817 Baltimore.⁸⁷ The risks were high and securing investment was crucial; outfitting a fully equipped, armed, and provisioned privateer could run investors \$40,000.⁸⁸

Securing a commission, the only thing separating privateers from pirates, was just as important as raising the necessary funds. Most of the Baltimore privateers received a commission from Buenos Ayres through a network of agents and investors.⁸⁹ Getting commission from a revolutionary country required partners in South America, usually the same set of merchants, who would secure commissions from the revolutionary governments in exchange for an interest in the prizes.⁹⁰ Thomas Taylor introduced the system of South American privateering to Baltimore in 1816, and it caught on like wildfire, soon including famous names like Joseph Almeida, John Daniels, David DeForest, and John Chase.⁹¹ The investors and agents in South America, particularly Buenos Ayres, formed a close circle. Most of them knew each other and without their help, many of the privateering ventures out of Baltimore would not have come to fruition.⁹² Despite the secrecy and planning of South American privateering, a number of Baltimore officials were crucial in making sure that their privateering friends' interests were

⁸⁵ Head, *supra* note 2, at 270.

⁸⁶ Head, *supra* note 2, at 270.

⁸⁷ Head, *supra* note 2, at 271

⁸⁸ Head, *supra* note 2, at 271.

⁸⁹ Head, *supra* note 2, at 270.

⁹⁰ Head, *supra* note 2, at 270.

⁹¹ Griffin, *supra* note 83, at 5.

⁹² Head, *supra* note 2, at 276.

secure.⁹³ Some of these friends included Skinner, the postmaster, James McCulloch, collector of the port, Judge Bland of the Federal Court, and several famous lawyers, including William Pinkney and William Winder.⁹⁴

The South American revolutionary governments were not giving commissions out of the kindness of their hearts, they needed the help.⁹⁵ Naval warfare of this kind was cheap for the rebel governments because all they had to do was sign a piece of paper granting the commission, and the privateers would do all the rest.⁹⁶ The South American revolutionaries were in need of reinforcements and this was an economical way to get them.⁹⁷ Once the privateer had a commission, on the way out of port all he had to do was quickly change allegiances from the United States to the South American country that granted the commission.⁹⁸

Once the privateer was outfitted and on its way, the next obstacle was the customs house.⁹⁹ All vessels departing for foreign ports needed to file clearance papers attesting to the ship's owners, master, destination, cargo, size, nationality of the crew, and any arms the ship may be carrying.¹⁰⁰ Many privateers would leave port with a limited number of men and weapons, making it appear as if they were going on a merchant mission.¹⁰¹ However, once the ship sailed down the Chesapeake Bay, it would meet up with a schooner or two that supplied the privateer with more men and weapons.¹⁰²

⁹³ Griffin, *supra* note 83, at 6.

⁹⁴ Griffin, *supra* note 83, at 5.

⁹⁵ Griffin, *supra* note 83, at 14.

⁹⁶ Griffin, *supra* note 83, at 14.

⁹⁷ Griffin, *supra* note 83, at 14.

⁹⁸ Head, *supra* note 2, at 271.

⁹⁹ Head, *supra* note 2, at 277.

¹⁰⁰ Head, *supra* note 2, at 277.

¹⁰¹ Head, *supra* note 2, at 277..

¹⁰² Head, *supra* note 2, at 277.

The prizes proved to be lucrative in South American privateering as a whole; however, in the face of criminal and civil charges, captains found it difficult to enlist seamen for the cruises.¹⁰³ Wages were hit or miss, and normally the crew on privateering cruises was only given a small percentage of the prize money.¹⁰⁴ It got more difficult when the neutrality laws directed customs officials to detain any vessels whose outfit showed “probable” hostile activity.¹⁰⁵ The captain had to post an expensive bond in order for the customs officer to let them go.¹⁰⁶ In response to the new laws being enforced, American citizens on the privateering cruises were made to swear to foreign names and nationalities for added protection.¹⁰⁷

In order to make money, the privateers had to find a way to sell their prizes and cargo in the United States.¹⁰⁸ Spanish officials in the United States were on the lookout for any goods from privateers that could have been the product of a breach of the United States Neutrality Act of 1818.¹⁰⁹ To avoid the U.S. prize courts, the privateers would go to St. Thomas, Haiti, St. Martins, or Jamaica and meet up with the agents of the owners who would carry out the sale of the cargo with local merchants.¹¹⁰ This complicated method of getting commission, avoiding detection, and secretly pawning off their cargo was the way privateers had to transact business in order to realize the value of their capture.¹¹¹

D. SOUTH AMERICAN PRIZE COURTS—GALVESTON, TEXAS

¹⁰³ Griffin, *supra* note 83, at 10.

¹⁰⁴ Griffin, *supra* note 83, at 10.

¹⁰⁵ Griffin, *supra* note 83, at 12; Head, *supra* note 2, at 281.

¹⁰⁶ Head, *supra* note 2, at 281 (the bond was normally double the value of the vessel, cargo, and arms; it would be a huge sum of money in these times).

¹⁰⁷ Griffin, *supra* note 83, at 12.

¹⁰⁸ Griffin, *supra* note 83, at 12.

¹⁰⁹ Griffin, *supra* note 83, at 12.

¹¹⁰ Griffin, *supra* note 83, at 19.

¹¹¹ Griffin, *supra* note 83, at 19.

Privateers mainly went to the West Indies and off the coast of Spain to look for prizes and were able to make use of a small number of ports in the Gulf including, Juan Griego in northern Venezuela, Galveston, Texas, Ferdinanda on Amelia Island, and Port au Prince in Santo Domingo; however, none of them were appropriate for major ship repairs.¹¹² Pirate bases had to be remote, but they were needed as markets so pirates could get rid of their plunder.¹¹³ They had to be away from areas of authority, but they also needed to provide access to the market.¹¹⁴ Galveston proved to be one of these places. Texas was a frontier region operating in a section of disputed territory beyond the authority of Texas, Mexico, the United States or Spain.¹¹⁵ “Piracy thrived along the Texan coast for five years from 1815, and both Mexican and Texan traders saw Galveston as a lucrative source of contraband, including slaves, guns, and more conventional cargoes.”¹¹⁶ Galveston was not a place where people wanted to live, but the one thing that made it desirable was the deep-water harbor.¹¹⁷ Privateers flocked to the harbor because it was protected by a pass and could be easily defended.¹¹⁸ Three privateer captains, Luis Aury, Jean Laffite, and Pierre Laffite controlled Galveston Bay from 1816-1820.¹¹⁹

Luis Michael Aury, a French sea captain, was commissioned and given command of a naval squadron at Cartagena in August of 1815.¹²⁰ An informal organization called “The New Orleans Associates” contacted Aury to support them in an expedition against Mexico. The

¹¹² Griffin, *supra* note 83, at 18.

¹¹³ ANGUS KONSTAM, PRIVATEERS AND PIRATES, 1730-1830, 55 (2001).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 56.

¹¹⁷ Jean L. Epperson, Jean Laffite and Corsairs on Galveston Bay, Lecture to the East Texas Historical Association (February 21, 1997), in LAFFITE SOCIETY CHRONICLES, July, 1997, at 5–7.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

Associates would filibuster¹²¹, smuggle, and use outright piracy as tactics against the Mexicans.¹²²

Aury arrived at Galveston on August 3, 1816 in the ship *Belonia*.¹²³ On August 8, Aury's other vessels appeared and the nautical disasters began. Different ships got caught on a shoal and did not get brought into the harbor, and before getting the message of the shoal to another captain, the *Felix* joined the other shipwrecked boats.¹²⁴ On August 10, the ship Malaga tried to get through from the south and ended up on the beach.¹²⁵ Even after all of these miscues, a brig and another ship were added to the disaster.¹²⁶ The only ships that actually survived were the *Belonia* in her damaged condition and the *Centinela*.¹²⁷

Aury made his crew try to salvage the damaged vessels, but disgruntled with the task and no prize money, they mutinied, shot Aury, and set fire to the *Belonia*.¹²⁸ They took the rest of the

¹²¹ Filibustering today refers to the delay tactic used in legislative sessions; however, in the 1800's, filibusters referred to a group of private individuals who tried to assume power in territories controlled by other nations. *See* THE FILIBUSTER MOVEMENT, PBS, <http://www.pbs.org/opb/historydetectives/feature/the-filibuster-movement/> (last visited Jan. 2, 2014). These private individuals did not have the consent of the U.S. government, and despite existing neutrality laws engaged in warfare with citizens of other countries. *Id.* Filibustering in Florida, Texas, and Louisiana was a major concern for the Spanish government. *See* J.C.A. STAGG, BORDERLINES IN BORDERLANDS 193 (1ST ed. 2009). During negotiations between Secretary of State Adams and Spanish Minister Luis de Onís for the acquisition of Florida, filibustering became a major focal point. *Id.* Onís demanded that the administration take further steps to suppress filibustering expeditions against Mexico and to close American ports to all vessels, including those belonging to pirates, sailing to and from Spain's rebellious colonies. *Id.* The actions of MacGregor on Amelia Island and Luis Aury in Galveston, Texas are considered filibustering and concerned Spain to a large degree.

¹²² Epperson, *supra* note 117.

¹²³ Epperson, *supra* note 117.

¹²⁴ Epperson, *supra* note 117.

¹²⁵ Epperson, *supra* note 117.

¹²⁶ Epperson, *supra* note 117.

¹²⁷ Epperson, *supra* note 117.

¹²⁸ Epperson, *supra* note 117.

ships and took off for Haiti.¹²⁹ However, Aury's wounds were not serious and on September 10, Jose Manuel de Herrera, ambassador of the Mexican Republicans, joined him in Galveston.¹³⁰ The "New Orleans Associates" sent Herrera to take possession of Galveston and establish a prize court. He was to remain with Aury as resident commissioner.¹³¹ Herrera arrived with Henry Perry, an ex-quartermaster of the United States Army, who brought 120 men with him.¹³² On September 13, the Mexican Republican flag was raised and Herrera issued a proclamation that the island belonged to the Mexican Republic.¹³³

Jean Laffite arrived in Galveston on March 23, 1817; he noted in his diary that on April 8, seeing that Aury had abandoned Galveston, he and his men established a new administration. Jean Laffite left Galveston for New Orleans on April 18, and Aury went back to try to establish a base of operations in his absence.¹³⁴ However, Pierre Laffite, Jean's brother, convinced much of Aury's old crew to flip allegiances.¹³⁵ Pierre was so successful that Aury abandoned Galveston for good renouncing his commission to govern the island.¹³⁶

Pierre and Jean Laffite's occupation of Galveston continued from 1817-1820. Jean Lafitte, as self-proclaimed governor of Galveston built a fortress, and at its peak, a thousand people inhabited the island. Sea raiders went to the island to take advantage of the Laffites' maritime prize court and distribution of letters of marque, disregarding the fact that the Laffites' had no authority from any legitimate government to participate in these activities.¹³⁷ The Laffites were

¹²⁹ Epperson, *supra* note 117.

¹³⁰ Epperson, *supra* note 117.

¹³¹ Epperson, *supra* note 117.

¹³² Epperson, *supra* note 117.

¹³³ Epperson, *supra* note 117.

¹³⁴ Epperson, *supra* note 117.

¹³⁵ Epperson, *supra* note 117.

¹³⁶ Epperson, *supra* note 117.

¹³⁷ Epperson, *supra* note 117.

in the pay of the Spanish government as spies while preying on Spanish and English shipping. Much of their actions were duplicitous in nature.¹³⁸

French exiles led by old Napoleonic soldiers came to Galveston in 1818, and Jean Laffite helped them create a camp.¹³⁹ Colonel George Mason Graham, a troubleshooter for the acting Secretary of War, James Monroe, arrived at Galveston and declared that the United States was claiming the land and that Laffite must leave the island.¹⁴⁰ In September of 1818, a hurricane destroyed the commune and many lives were lost.¹⁴¹ By 1820, the United States ordered Laffite to leave again, and this time, Jean burned his camp and sailed away leaving the island in U.S. control.¹⁴²

III. *THE SANTA MARIA*

In the turmoil of Andrew Jackson invading Florida, neutrality laws changing, Laffite taking over Galveston, and Spanish discontent, the *Patriota* set sail from Baltimore. The attitude of the Court towards privateering and piracy changed over time. By 1820, Justice Story emphasized the piracy problem that sprung up as a result of the economic restrictions imposed by the War of 1812 and the turbulent political conditions of the Latin America independence movements.¹⁴³ The new “republics” formed in this region provided bases for ships and crews who looked to take advantage of the rebellious colonies and the unstable shipping conditions.¹⁴⁴ Justice Story spoke of the pirates as needy adventurers prowling upon the ocean, who under the

¹³⁸ Epperson, *supra* note 117.

¹³⁹ Epperson, *supra* note 117.

¹⁴⁰ Epperson, *supra* note 117.

¹⁴¹ Epperson, *supra* note 117.

¹⁴² Epperson, *supra* note 117.

¹⁴³ G. EDWARD WHITE, *HISTORY OF THE SUPREME COURT, THE MARSHALL COURT AND CULTURAL CHANGE*, 1815-35, Vol. 3-4, 870 (1st ed. 1991).

¹⁴⁴ *Id.*

pretext of helping the Latin American rebellions attacked the commerce of the neutral world.¹⁴⁵ He referred to them as being “united together by no common tie but the love of plunder.”¹⁴⁶ Justice Story enjoyed maritime law and the specific nature of prize cases. He wrote on the subject extensively and outlined the procedure of prize cases in general.

After the War of 1812, the Court was in the precarious position of deciding international cases while avoiding conferring legitimacy to revolutionary governments but recognizing the fact that hostilities were taking place between the colonies and European nations.¹⁴⁷ Between 1810 and 1825, England, France, Spain, Portugal, the United States, and numerous Latin American republics confronted each other at sea.¹⁴⁸

The *Patriota* sailed out of Baltimore with no commission at all. Based upon the lack of convictions in the previous years to the higher conviction rates in the 1820’s, the attitude of the Court toward these rogue missions turned from an evil that might be overlooked to barbaric acts worthy of hanging. This shift could be due to the conclusion of the Adams-Onis Treaty and the United States’ position internationally. By 1822, when this case was heard, the Adams-Onis Treaty resolved the dispute over the status of Florida and the border between Spanish and U.S. territory.¹⁴⁹ The treaty was ratified in 1821 and President Monroe recognized several of the revolutionary governments in South America shortly after.¹⁵⁰ The diplomatic concern between

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 871.

¹⁴⁷ *Id.* at 905.

¹⁴⁸ *Id.* at 905.

¹⁴⁹ Kevin Arlyck, *Plaintiffs v. Privateers: Litigation and Foreign Affairs in Federal Courts, 1816-1822*, 30 LAW & HIST. REV. 245, 276 (2012).

¹⁵⁰ *Id.*

Spain and the United States was resolved for the most part, and the tolerance toward privateering started to decline.¹⁵¹

A. BEFORE THE CAPTURE

The *Patriota* left Baltimore in 1817, captained by William Joseph Stafford, with twenty men on board.¹⁵² In order to avoid the customs house and questions about the outfitting of the vessel, privateers generally stripped down the vessel and supplied it with means enough to go on a merchant voyage but nothing more.¹⁵³ The ships would normally say they were going on a trip to the U.S. northwest to account for the amount of provisions, but once out of port would stop at a pre-arranged spot in the Chesapeake to meet up with a small schooner bringing additional men and arms.¹⁵⁴ The *Patriota* followed this plan to perfect execution. Even though the *Patriota* left port with only twenty men, at New Point Comfort, a boat, a sloop, and the schooner *Jane* met up with the privateer to bring more men and weapons.¹⁵⁵ The boats brought muskets, pistols, sabers, powder, ammunition, shot, and fourteen carronades: six nine-pounders, six eighteen-pounders, and two thirty-two pounders.¹⁵⁶ What started out as a voyage with twenty men and no guns turned into a pirate cruise with 112 men and fourteen guns.¹⁵⁷

Some men joined privateering cruises for the adventure and drunkenness, some did for independence, and some were unknowingly forced into the situation.¹⁵⁸ The crew of the *Patriota* was a part of the third scenario. They grew angry when they learned that Captain Stafford

¹⁵¹ *Id.*

¹⁵² Head, *supra* note 2, at 277.

¹⁵³ Head, *supra* note 2, at 277.

¹⁵⁴ Head, *supra* note 2, at 277.

¹⁵⁵ Head, *supra* note 2, at 277.

¹⁵⁶ Head, *supra* note 2, at 277.

¹⁵⁷ Head, *supra* note 2, at 277.

¹⁵⁸ Head, *supra* note 2, at 278–79.

planned a pirate cruise rather than a merchant voyage.¹⁵⁹ One member described feeling ‘betrayed,’ and estimated that at least two-thirds of the crew felt likewise. After forty days at sea, a full-scale mutiny erupted.¹⁶⁰ A standoff followed in which Captain Stafford alternated between threatening to blow up the ship and promising his men that he would still make their fortunes.¹⁶¹ After eighteen hours, Stafford won over enough men to force the others into submission.¹⁶² It was in this vein that the crew captured the *Santa Maria*, a Spanish merchant ship carrying sugar cargo.

B. LOWER COURTS

The Santa Maria was a case appealed from the Circuit Court of Maryland.¹⁶³ Originally, the Spanish Consul brought the case on behalf of the Spanish owners of goods captured on the high seas by the privateer *Patriota*.¹⁶⁴ The Spanish Consul alleged that the *Patriota* violated the laws of neutrality when she was illegally armed and outfitted for privateering in Baltimore.¹⁶⁵ Burke, the claimant in the case, contended he had title of the goods as a bona fide purchaser under a condemnation sale in a prize tribunal in “Galveztown.”¹⁶⁶ The District Court of Maryland dismissed the claim and ordered the property restored to the claimant, but the Circuit Court reversed this ruling, and the cause was brought to the Supreme Court.¹⁶⁷

¹⁵⁹ Head, supra note 2, at 279.

¹⁶⁰ Head, supra note 2, at 279.

¹⁶¹ Head, supra note 2, at 279.

¹⁶² Head, supra note 2, at 279.

¹⁶³ *The Santa Maria*, 20 U.S. 490 (1822).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

The evidence in the lower courts established that citizens of the United States owned the privateer and that she was armed.¹⁶⁸ William Winder was the attorney for the appellant, Burke, and David Hoffman and Robert Goodloe Harper were the attorneys for the respondent, Spanish Consul. Justice Livingston was the Supreme Court Judge who heard the appeal.¹⁶⁹

The lawyers in the *Santa Maria* all held much esteem and frequently went against each other in prize court cases. David Hoffman argued on behalf of the Spanish consul and remained on the side of the original owners for much of his career. Hoffman's lasting legacy was his involvement in starting and developing the University of Maryland School of Law.¹⁷⁰ Hoffman was a respected member of the bar and argued in front of the United States District Court and the United States Supreme Court, focusing on admiralty, estates, collections, and insurance cases.¹⁷¹ Hoffman's contemporaries described him as self-absorbed and righteous about championing what he thought was right regardless of the potential consequences.¹⁷² Hoffman tried his hand at other things besides the law, including literature. However, commentators noted that Hoffman's literary efforts served most effectively, "as a means to highlight his own elitist views and growing dissatisfaction with life in America."¹⁷³ Hoffman married the granddaughter of former Pennsylvania Governor Thomas McKean, and served on many boards and associations in Baltimore.¹⁷⁴ He went through a tumultuous period in his personal life when two of his three children died. Hoffman traveled to England on his own to promote emigration to unsettled land

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Bill Sleeman, *Laws and Letters: A Detailed Examination of David Hoffman's Life and Career*, University of Maryland Legal Studies Research Paper No. 2005-29, 3, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=680668.

¹⁷¹ *Id.* at 11.

¹⁷² *Id.* at 17.

¹⁷³ *Id.* at 19.

¹⁷⁴ *Id.* at 21.

in the United States.¹⁷⁵ Unable to secure support for his emigration plans, Hoffman returned to the U.S.¹⁷⁶ He died suddenly in New York in 1854.¹⁷⁷

Robert Goodloe Harper also argued on the side of the Spanish Consul. He was born to a poor, struggling couple near Fredericksburg, Virginia in 1765.¹⁷⁸ He joined a horse troop under General Greene when he was only 15 years old.¹⁷⁹ He graduated from Princeton in 1785 and was introduced to a lawyer who prepared him to practice law in just one year.¹⁸⁰ He wrote many political pieces for newspapers, and was elected to the Legislature of South Carolina in 1794 and the National House of Representatives where he served until 1801.¹⁸¹ He married Catherine, daughter of Charles Carroll, of Carrollton, and moved to Baltimore.¹⁸²

Harper participated in the defense of Baltimore against the British in 1814, and during the war attained the rank of Major General.¹⁸³ In 1815, he was elected to the United States Senate, and remained an active participant.¹⁸⁴ He died suddenly on January 14, 1825, the day after he argued a case in court for three hours showing no signs of any health problems.¹⁸⁵ By all accounts he seemed to be in lively spirits.¹⁸⁶ That morning he was standing reading the newspaper and fell, dying instantly. He left behind a wide circle of friends who respected him as a great lawyer.¹⁸⁷

¹⁷⁵ *Id.* at 24.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 283.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 284.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 294.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

William Winder is probably the most famous lawyer that Somerset County, Maryland never knew it had. He was born on February 18, 1775, and his ancestors were among the earliest Maryland settlers.¹⁸⁸ Although he is best known for his catastrophic battle at Bladensburg, outside of the war, Winder was a highly regarded and respected lawyer.¹⁸⁹ Winder completed his early education at Washington Academy in Somerset County and finished his education at the University of Pennsylvania.¹⁹⁰ He studied the law alongside Roger B. Taney at the office of Gabriel Duval, a future Supreme Court Justice.¹⁹¹ He was described as having a warm, generous nature and captivating manners, and his genteel nature secured him a high place of esteem and affection in the community.¹⁹² He was a Federalist in politics, and after the war, he was elected to the State Senate twice. At the time of his death, his practice was the largest of the Baltimore Bar and one of the largest in the United States Supreme Court.¹⁹³ His contemporaries knew him as a deeply passionate man who learned his craft and applied the principles of the law in an extraordinary way.¹⁹⁴ He died a well respected and admired lawyer, who was loved and honored by those who got to hear his oral arguments and know him as a rival and friend.¹⁹⁵

C. CLAIMANT ARGUMENT

On behalf of Burke, the claimant, Winder argued that there was no proof that the goods in question were taken out of the Santa Maria, or any other Spanish ship.¹⁹⁶ He insisted that even if there was no proof from the claimant that he was a bona fide purchaser of the goods from a

¹⁸⁸ *Baltimore: Past and Present*, RICHARDSON & BENNETT, 543 (Baltimore, 1817), available at https://openlibrary.org/books/OL23703690M/Baltimore_past_and_present.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* at 544.

¹⁹³ *Id.* at 545.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 546.

¹⁹⁶ *The Santa Maria*, 20 U.S. 490 (1822).

lawful condemnation sale, he had a right to stand on his title as an innocent purchaser, until some better title was shown.¹⁹⁷

D. SPANISH CONSUL ARGUMENT

In opposition, Hoffman argued that the evidence established that the *Patriota* was a privateer vessel owned and outfitted in Baltimore, and all captures made under the taint of an illegal outfit were considered illegal.¹⁹⁸ Consequently, the property taken had to be restored to the original owner.¹⁹⁹ The *Patriota* not only was a privateer illegally outfitted in Baltimore, but it also did not have a commission from any country whatsoever.²⁰⁰ In effect the *Patriota* was a pirate ship. Hoffman argued that without a commission, the taking of the cargo is tortious at best and piratical at worst.²⁰¹ He argued the burden of proving a legitimate seizure lied with the claimant, and if no proof existed, the Court should restore the property to the Spanish owners.²⁰² Even though Burke claimed to hold the property as an innocent bona fide purchaser, without knowing about the libel, Hoffman argued even if it were true, the cargo had to be returned because it came from the spoils of a pirate voyage.²⁰³

Hoffman formed interesting arguments in opposition of the principle of market overt that the Court failed to address in its opinion. He argued, “no right to the spoil vess [sic] in them, no right can be derived from them,” in other words that the tile of the claimant is not anymore persuasive than one from the pirates themselves.²⁰⁴ Essentially, he argued that the rights of a

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

proven bona fide purchase would be no more than the rights of the pirates.²⁰⁵ The market overt principle was an English common law rule that when goods are sold in the market, the buyer acquires a good title of the goods, provided that he buys them in good faith and without notice of any defect on the part of the seller.²⁰⁶ By 1457, the principle of market overt had been adopted and was well recognized as part of English common law.²⁰⁷ The burden of proof is on the person who claims to have acquired title against the owner.²⁰⁸ The sale of market overt vests it in the purchaser, and then the conviction of the thief reverts it in the true owner.²⁰⁹ It would have been an interesting argument for Winder to raise, but most likely he recognized that the principle remained in England and did not have a basis in United States' courts.²¹⁰

However, the argument the Court accepted was that the claimant allegedly was the active and principal owner of the *Patriota*, the pirate vessel.²¹¹ Hoffman relied on testimony from the crewmembers on board the *Patriota* to make his case.²¹² After the attempted mutiny, it comes as no surprise that the crewmembers were willing to turn on the ship's owner and testify on behalf of the Spanish owners. Hoffman pointed out the inconsistencies in the claimant's story. Burke denied all knowledge of the capture of the Santa Maria and every fact stated about the business of the *Patriota*, but he relied on a purchase of the property by his agent Novion, in the regular

²⁰⁵ *Id.*

²⁰⁶ J.G. Pease, *The Change of the Property in Goods by Sale in Market Overt*, 8 COLUM. L. R. 375, 375 (1908).

²⁰⁷ *Id.* at 377.

²⁰⁸ *Id.* at 381.

²⁰⁹ *Id.*

²¹⁰ *See* *Browning v. Magill*, 2 H. & J. 308 (Md. 1808) (holding there is no market overt principle in the state of Maryland); *see also* *Levi and Levi v. Booth*, 58 Md. 305, 311 (1882) (recognizing that the old Saxon institution of market overt has never been recognized in Maryland or any other state in the Union).

²¹¹ *The Santa Maria*, 20 U.S. 490 (1822).

²¹² *Id.*

course of trade after the Santa Maria had been condemned.²¹³ Hoffman asserted that it was the claimant's intention to produce an authenticated record of condemnation, which was abandoned because of the knowledge that Aury's commission at Galveston was a nullity.²¹⁴ The tribunals at Galveston were incompetent to adjudicate even if a condemnation of a competent court could have prevailed.²¹⁵

E. COURT'S HOLDING AND REASONING

In Justice Livingston's short opinion, he stated that in a case of such an obvious disregard for the neutrality laws in fitting out and arming a privateering vessel in an American port, the counsel for the claimant was right in not attempting to justify the capture of the Santa Maria.²¹⁶ He found that in this situation it was immaterial whether or not the ship had commission because it was in such opposition to the law of the United States.²¹⁷ Justice Livingston relied on four witnesses whose relation of the events was so uniform and particular that there was no doubt about any part of the transaction.²¹⁸ Three of them were on board the Patriota at the time of her illegal voyage, and they established the unlawful arming of the vessel in Baltimore, the capture of the Santa Maria, and that the sugars in question were the same ones taken out of the Santa Maria, put on the schooner Harriet, and brought to Baltimore.²¹⁹ Causter, a witness, testified that to his knowledge, the sugars were part of the cargo of the Santa Maria, and the Court took into account the level of detail of his story, and that the level of information was such that it was

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.* at 494.

²¹⁷ *Id.*

²¹⁸ *Id.* at 495.

²¹⁹ *Id.*

impossible he was mistaken.²²⁰ With the witnesses' statements, the court saw no reason to doubt their stories and affirmed the sentence of the Circuit Court.²²¹

Even if Justice Livingston put more emphasis on the authority of the condemnation sale at Galveston, the result would have been the same. In a Supreme Court opinion a year earlier, in the case of cargo of two Spanish ships captured and condemned at Galveston, under the alleged authority of the Mexican Republic, the Court ruled that it did not recognize the existence of any admiralty court at Galveston with the authority to adjudicate captures.²²² The U.S. government did not recognize the Mexican Republic, and the Court could not consider as legal any acts done under the flag and commission of that republic.²²³ In that case, the action was allegedly conducted under the flag of Buenos Aires, so the case was sent back, but in *The Santa Maria*, the privateer did not have a commission.²²⁴ Therefore, any condemnation sale out of Galveston without a commission would be considered ineffective.

IV. RELATED OPINIONS

The interesting part of *The Santa Maria* decision is that the Court did not rule on the substance of law question concerning the bona fide purchaser. However, in the counsel's arguments section, the court acknowledged that the substance of that argument is found in the *Nereyda* case, where the same question arose and the same lawyers argued the facts.²²⁵ In *La Nereyda*, once again the Spanish Consul was the claimant arguing that the privateer *Irresistible*

²²⁰ *Id.*

²²¹ *Id.*

²²² *The Nueva Anna*, 19 U.S. 193 (1821).

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *The Santa Maria*, 20 U.S. 490 (1822).

had captured a public vessel of war belonging to the king of Spain in violation of U.S. neutrality laws.²²⁶

The ultimate question in *La Nereyda* was similar to the one in the *Santa Maria*: whether a regular sentence of condemnation in a court of the captor or his ally would preclude the U.S. courts from restoring it to the original owners, where the capture was made in violation of our laws, treaties, and neutral obligations.²²⁷ Where an order of proof of purchase is made, it is almost invariable practice for the claimant to make proof by his own oath of his proprietary interest, and to explain the other circumstances of the transaction.²²⁸ The absence of such proof and explanation always leads to doubts.

Hoffman started counsels' arguments for the appellant by arguing that even without reference to proof, the captured property should be returned to the original owners because of the breach of neutrality laws of the United States.²²⁹ He maintained this argument in the *Santa Maria* as well and did so with success. Hoffman argued that there was no sufficient proof of the condemnation, which is relied on, and that the Court should require the exhibition of at least the libel in order to show the grounds of the prize proceedings.²³⁰ Hoffman argued that the commission and the genuineness of the sale between the privateer and the South American prize tribunal came into question.²³¹ The question for the court was simply whether those who have gained possession by illegal means were permitted to retain that possession against its original possessors, in the very country whose laws were violated.²³²

²²⁶ The *La Nereyda*, 21 U.S. 108 (1823).

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.* at 110.

²³⁰ *Id.* at 112.

²³¹ *Id.* at 120.

²³² *Id.* at 123.

Winder on the other hand contended that the capture was made under a lawful commission in the port of Venezuela, an ally of Jose Artegas (where the commission came from) in the war with Spain.²³³ The claimant asserted his claim as a bona fide purchaser under that sentence of condemnation.²³⁴ Winder argued that a valid condemnation might be pronounced in the court of the captor's country, where the prize was in the port of an ally.²³⁵

After Winder's argument, Robert Goodloe Harper argued that even if the libel was produced, it had no effect because it came from a sentence of a court that had no jurisdiction.²³⁶ The commission under which the prize was taken was granted by Artegas, as chief of the Orientals, and protector of the Oriental Republic.²³⁷ The Oriental Republic, which if it had any such existence, was distinct from Venezuela where the condemnation sale took place.²³⁸ Harper denied the argument that Venezuela was an ally and that the prize court of an ally may condemn. Artegas had possession of the *Nereyda*, and as it was the possession of the property by the sovereign that gives jurisdiction to his Courts.²³⁹ The question of prize or no prize belongs exclusively to the Courts of the captors' country.²⁴⁰ It follows that the Court of Venezuela did not have jurisdiction to adjudicate.²⁴¹

Justice Story delivered the opinion of the Court. The claimant asserted the sale was made after condemnation.²⁴² The vessel after her seizure showed that she continued to remain in the

²³³ *Id.* at 128.

²³⁴ *Id.*

²³⁵ *Id.* at 129.

²³⁶ *Id.* at 138.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.* at 139.

²⁴⁰ *Id.*

²⁴¹ *Id.* at 145–46.

²⁴² *Id.* at 168.

control, management, and direction of the ones who captured her.²⁴³ Whoever set up a title under a condemnation sale was bound to show that the Court had jurisdiction.²⁴⁴ Justice Story made his conclusion by looking at all of the circumstances of the case including the fact the property remained unchanged in the possession of the captors, the habit of the vessel, the control of the property by the privateer captain, the absence of all proper documentary proof of ownership, instructions, disbursements, and connection with her on the part of the claimant.²⁴⁵ The Court concluded no real sale ever took place, and the property remained with the original captors, unaffected by the asserted transfer of ownership.²⁴⁶ “The positive evidence is completely borne down by the strong and irresistible current of circumstantial evidence which opposes it.”²⁴⁷ Although the actors in *La Neryda* went through more trouble to try to disguise the fraud in the condemnation sale, the outcome was the same as in the *Santa Maria*. In the *Santa Maria*, the Court found that the sugar had been illegally commandeered by the *Patriota*, which the claimant had an interest in, and remained in the hands of the claimant. Similarly, in *La Neryda*, the property remained unchanged in the possession of the captors, and the court decided no real sale took place. In both cases, the court went against the Baltimore privateer and returned the prize to the Spanish.

The case went against the claimant because of the omission of the original libel, or any account for its non-production. The case was insufficient on the part of the claimant because no

²⁴³ *Id.* at 173.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

proof of proprietary interest existed.²⁴⁸ The Court said that it was clear that the original outfit of the privateer was illegal and the property of the *Nereyda* be restored to the King of Spain.²⁴⁹

V. THE END OF PRIVATEERING IN THE 1820's

In response to non-action by the United States government, Spain turned to a strategy of using the courts against the privateers. In court, the lawyers arguing on behalf of Spain attacked the legitimacy of the commissions and slowly started to win cases.²⁵⁰ By winning cases and getting prizes returned to Spain, using the courts proved to be a crucial tool in reducing privateering activity. Criminal prosecutions of privateers rarely resulted in a conviction.²⁵¹ However, the Spanish consuls win rate was much higher; it focused on private claims over the legal status of captured persons, vessels, and goods.²⁵² As mentioned earlier, the timing of these suits came during a period where the U.S. was balancing tense neutrality and the government did not want to make any firm decisions.²⁵³ To counteract this, the Spanish consuls brought their suits as private legal claims advanced in federal court where they could beat their enemies, instead of beating them at international legislation.²⁵⁴

The consuls were the official representatives of sovereign European powers, largely American businessmen trying to promote their political objectives. Even though the consuls were not necessarily trying to create good law, many of their cases reached the Supreme Court.²⁵⁵ Indirectly, the consul suits allowed the federal court to repeatedly define the nation's rights and obligations under treaties and law of nations to determine the sovereignty of the

²⁴⁸ *Id.*

²⁴⁹ *Id.* at 174.

²⁵⁰ Arlyck, *supra* note 149, at 247.

²⁵¹ Arlyck, *supra* note 149, at 247.

²⁵² Arlyck, *supra* note 149, at 247.

²⁵³ Arlyck, *supra* note 149, at 247.

²⁵⁴ Arlyck, *supra* note 149, at 247.

²⁵⁵ Arlyck, *supra* note 149, at 248.

revolutionary states and identify the prohibitions that neutrality imposed on Americans who participated in the Latin American revolutions.²⁵⁶ Consuls were allowed to file a libel on behalf of the Spanish owners because the foreign consul could claim property on behalf of his nationals without specific authorization from the property owners.²⁵⁷ The privateers claimed that the vessels and cargo they captured were legitimate prizes of war and the federal court had no grounds to award restitution to the owners.²⁵⁸ Inevitably, the consul's argument would be that the capture violated the neutrality laws of the United States and the 1795 treaty between Spain and the U.S.²⁵⁹ Based upon the persistent litigation on behalf of the Spanish consuls, it seemed as if the litigation was a political strategy to pressure privateers and their associates as fully as possible, and they did so with much success.²⁶⁰ The consuls had an almost perfect record in Massachusetts, New York, and Virginia; even in Baltimore, consuls won 75% of the time.²⁶¹

The effect of the stricter enforcement of these neutrality laws did much to deter privateering in the 1820's. As a consequence of the neutrality laws, at least 129 men were arrested for piracy during this period, and based on the records available, 31 of those men were found guilty.²⁶² Of those 31, seven of them were executed for piracy.²⁶³ Even though these seven lost their lives, they were the only Baltimore affiliated South American privateers known to suffer real criminal penalties.²⁶⁴ Even though many of the privateers escaped death, in civil

²⁵⁶ Arlyck, *supra* note 149, at 247.

²⁵⁷ Arlyck, *supra* note 149, at 264.

²⁵⁸ Arlyck, *supra* note 149, at 264.

²⁵⁹ Arlyck, *supra* note 149, at 264.

²⁶⁰ Arlyck, *supra* note 149, at 266.

²⁶¹ Arlyck, *supra* note 149, at 266.

²⁶² Arlyck, *supra* note 149, at 266.

²⁶³ Arlyck, *supra* note 149, at 266.

²⁶⁴ Arlyck, *supra* note 149, at 266.

courts, their prizes were repeatedly given back to the original Spanish owners.²⁶⁵ The crack down in civil court ultimately made privateering in South America more risky without the prospect of a great return. Giving back their captured goods and losing vessels deterred ship owners from continuing to invest in privateering ventures.²⁶⁶

Furthermore, the Panic of 1819 did much to reduce the investment in risky privateering cruises. The decline of profits from privateering occurred at the same time of the Panic of 1819, America's first economic depression.²⁶⁷ The root of the panic came from the scandal at the Maryland Branch of the Second Bank of the United States and devastated Baltimore's merchant community.²⁶⁸ Many prominent merchant houses had to close and wealthy men had to put their elaborate Baltimore mansions up for sale.²⁶⁹

VI. CONCLUSION

Privateering from 1815-1820 created a new set of rules in the face of international diplomacy problems, economic disaster, and Latin American revolution. The pirate venture of the *Patriota* came during a time where U.S. neutrality laws were in flux, and the U.S. administration relied on privateers to put indirect pressure on Spanish forces. In that context, the Supreme Court decided, in the *Santa Maria* and explained fully in *La Nereyda*, that in order to prove oneself as a bona fide purchaser, the claimant has to show proof of the proper documents and libel. Without such showing of proof, the prize must go back to the original owners.

²⁶⁵ Head, *supra* note 2, at 283.

²⁶⁶ Head, *supra* note 2, at 283.

²⁶⁷ Head, *supra* note 2, at 284.

²⁶⁸ Head, *supra* note 2, at 284.

²⁶⁹ Head, *supra* note 2, at 284.

Appendix

WILLIAM JOSEPH STAFFORD

William Joseph Stafford was not only the captain of the privateer *Patriota*, but was also the captain of the *Dolphin* during the War of 1812. By all available accounts, William Stafford was born September 12, 1781, the oldest child born to Richard and Catharine Stafford of Frederick County, VA.²⁷⁰ He married Mary Whipple on October 1, 1805 in Baltimore.²⁷¹ They had two children: William Whipple Stafford and Francis Asbury Stafford. His wife Mary died in July of 1809 in Baltimore and William married Mary Lauderman two years later.²⁷² William died somewhere between 1823 and 1830, probably in Baltimore.²⁷³

Captain W. S. Stafford had gone out to sea early in the War of 1812 and went directly for the Spanish and Portuguese Coast.²⁷⁴ With little success, Captain Stafford was about to change his course when on January 25, 1813, in the sight of Cape St. Vincent, a sail was spotted and the *Dolphin* gave chase.²⁷⁵ Soon after, another sail was spotted and the privateer overtook the ships and heavy action began.²⁷⁶ In a short time, both vessels were surrendered, the larger one being the *Hebe*, carrying 16 guns and 25 men, and the smaller vessel, the brig *Three Brothers*, with 10

²⁷⁰ Casey Stafford, *Captain William J. Stafford, War of 1812* (May 22, 2011) available at, <http://genforum.genealogy.com/stafford/messages/4991.html>.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ EDGAR STANTON MACLAY, *A HISTORY OF AMERICAN PRIVATEERS* (D. Appleton and Co., 1899) 465.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

guns and 25 men.²⁷⁷ The *Dolphin* carried 10 guns and a 60-man crew, and only 4 of them were injured. Captain Stafford placed prize crews in the vessels and sailed toward the United States.²⁷⁸

The *Hebe* was recaptured but the *Three Brothers* made it to New York.²⁷⁹ Both ships were coming from Malta and had valuable cargo onboard. Captain Brigham of the *Hebe* declared that after a severe contest, he wanted to make public and gratefully acknowledge the kind and human treatment he and his crew experienced on board the *Dolphin*.²⁸⁰ He hoped that because of the tender sympathy and goodness of Captain Stafford, if he were ever in the hands of the British, he would be treated with similar treatment and respect.²⁸¹

On April 3, 1813 Sir John Warren, had 6 heavily armed ships and appeared off the Rappahannock River, where four American privateers, the *Arab*, *Lynx*, *Racer*, and *Dolphin*, happened to be.²⁸² The British sent 17 boats with a large force of men against them. They were able to attack them separately, and selected the *Arab* first and made for her, but her captain did not give her up so easily; both sides sustained heavy losses in the struggle.²⁸³ After the *Arab* debacle, the British made for the *Lynx*, who after watching the casualties gave up without much resistance.²⁸⁴ The same went for the *Racer*. Now only the *Dolphin* remained, and she would not go down easily.²⁸⁵ “For two hours, Captain Stafford responded gallantly, but in the final boat attack he was compelled to surrender.”²⁸⁶ In the struggle, the British admit a loss of two killed and eleven wounded, but according to American reports, the enemy had fifty killed or

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.* at 466.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

wounded.²⁸⁷ Captain Stafford placed his losses at six killed and ten wounded. The *Dolphin*, along with the *Racer* and *Lynx*, was taken under British command. In consideration of his treatment of the crew of the *Hebe*, Captain Stafford was cordially received by Sir John Warren, and in a few days was released and sent to Baltimore.²⁸⁸

George Coggeshall knew Stafford personally and described him as a modest and unassuming man.²⁸⁹ Coggeshall said, “No one can for a moment doubt his unflinching bravery and gallant bearing when he reflects on the many battles he has gained over the enemies of his country.”²⁹⁰ The *Dolphin* had taken eleven British vessels; one of the prizes was burned at sea and another was recaptured, while the others—including the schooner *Fanny*, valued at 18 thousand dollars were brought into port.²⁹¹ On November 27, 1813, Captain Stafford, while in the command of another privateer, was attacked while off Charleston by five British boats.²⁹² One of the boats was torn to pieces by the privateer, and the others retreated after heavy losses.²⁹³ It is obvious from his bravery that Captain Stafford commanded the respect from all men who knew him.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ GEORGE COGGESHALL, *HISTORY OF THE AMERICAN PRIVATEERS AND LETTERS OF MARQUE* (New York, 1856), 130.

²⁹⁰ *Id.*

²⁹¹ EDGAR STANTON MACLAY, *A HISTORY OF AMERICAN PRIVATEERS* (D. Appleton and Co., 1899) 465.

²⁹² *Id.*

²⁹³ *Id.*