

The *SANTISSIMA TRINIDAD*:

The Role of Baltimore's Privateers with the Independence of the
United Provinces

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FOREWORD

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Abstract

After the War of 1812, the maritime industry began to decline and merchants and mariners began serving as privateers for Latin American colonies ceding from Spain. This paper examines the Supreme Court decision in an action filed on behalf of the Spanish government seeking restitution for cargo seized from a Spanish vessel, the *Santissima Trinidad*, on the high seas by the *Independencia Del Sud*, a public vessel of Buenos Ayres. The Court holds that jurisdiction exists for neutrality violations as the goods were landed at Norfolk, Virginia and the public vessel had an illegal augmentation of force in a U.S. port. The case also set policy limiting a court's inquiry into the examination of title for property held by a foreign sovereign. If the authenticated statements would suffice to prove ownership, the absence of an actual title is not an evidentiary defect.

Disciplines

Admiralty, International Law, Maritime History, U.S. History

Introduction

As the nation began to recover after the War of 1812, and almost three years of war, the mariners in the Baltimore area began looking for fruitful ventures within the maritime industry. Although the Neutrality Act of 1794 provided for the nation's impartiality amongst belligerent nations and prohibited its citizens from assisting belligerents through enlistment in the services or fitting out vessels within the U.S. jurisdiction, many Baltimore mariners willingly violated the Act and caught the attention of the Spanish government.¹ Beginning in January of 1817, the Spanish minister to the United States began corresponding with the Secretary of State, James Monroe, calling attention to the "greatest violations of the respect due to a friendly nation".² Certain U.S. ports, including Baltimore, were suspected of supporting maritime activities aimed at thwarting Spanish commerce.

In the midst of this correspondence, attention turned to seized Spanish-owned goods landed in Norfolk, Virginia by a suspected American commanding a public vessel of Buenos Ayres.³ After the minister's pleas to the government for assistance went unresolved, a Spanish consul in Norfolk filed a civil claim on behalf of the goods' original owners seeking restitution against the commander of the public vessel. This action was appealed all the way to the Supreme Court and became known as the case of the *Santissima Trinidad and the St. An De*, which established that no matter where a

¹ Kevyn Arlyck, *Plaintiffs v. Privateers: Litigation and Foreign Affairs in the Federal Courts, 1816-1822*. Law and History Review, Vol. 30 Issue 1, (February 2012), at 246

² Letter from Don Luis De Onis to Mr. Monroe, dated January 2, 1817 contained in Congressional Serial Set, H.R. Doc. No. 445, 42nd Congress, 2nd Session (1871-1872),(Hereafter Congressional Serial Set)

³ Congressional Serial Set – Letter from Don Luis De Onis to Mr. Rush, March 26, 1817, informing of Independencia arrival at Norfolk

seizure occurs, if it is made in violation of U.S. neutrality laws and the property is landed within the jurisdiction of the U.S., the court may order restitution to its original owner.⁴

Historical and Political Background

A. Role of Privateers

During the 18th and 19th centuries, in addition to the naval forces of the United States, the government relied upon private armed ships, known as privateers, to cripple a belligerent's commerce through the capture and destruction of their merchant vessels.⁵

While warships, or public vessels, were issued documentation of commissioning in the naval service of that nation which authorized the attack on enemy vessels, privateers were issued "letters of marque and reprisal" to act on behalf of the nation.⁶ While the crew of public vessels received only a calculated distribution of the proceeds of prizes taken during service, the privateers had the chance to obtain financial windfalls while assisting the sovereign nation since the prizes that were taken under the letters of marque were not paid to the government, but were dispersed according to contracts that were drafted prior to the voyage.⁷

During the War of 1812, privateering provided profitable opportunities and the port of Baltimore quickly became the center stage for these opportunities. It is estimated that during the War of 1812, 126 private vessels were fitted out in Baltimore and were responsible for capturing almost one-third of all British prizes taken by American public and private vessels, equating to an estimated \$16 million profit.⁸ However, privateering

⁴ *The Santissima Trinidad, and the St. An De*, 20 U.S. (7 Wheat.) 283 (1822).

⁵ DONALD A. PETRIE, *THE PRIZE GAME: LAWFUL LOOTING IN THE DAYS OF FIGHTING SAIL* (Naval Institute Press, 1999)

⁶ *Id.* at 2-3.

⁷ *Id.* at 4-5

⁸ GARY LAWSON BROWNE, *BALTIMORE IN THE NATION, 1789-1861* (The University of N.C. Press, 1980). p. 62-63

not only served as a lucrative business during the War, it also provided an opportunity to serve the nation during a time of need. Baltimore relied heavily on its maritime community since free trade was crucial to the city's continued prosperity, so "Baltimoreans vociferously supported the war against the British because patriotism and their self-interest were one in the same".⁹

When the war ended in 1815, privateering was no longer sanctioned but Baltimore still experienced a flooding of immigrants from around the country since the city was recognized for its commercial prosperity and heroic patriotism.¹⁰ Unfortunately, those looking for work within the maritime industry would soon find that with the arrival of peace came competition in shipping due to the return of European merchant fleets.¹¹ The situation created a need for the merchant marine force and investors to seek new opportunities rather than lose money on ships not engaged in trade; therefore, interests began to shift toward the emerging opportunities created by the Latin American colonies fight for independence from Spain.¹² In early 1816, Thomas Taylor, a Delaware man residing in Buenos Ayres, appeared with six signed privateering licenses in an effort to organize a naval force to assist the colony in its campaign against Spanish maritime commerce.¹³

B. The Neutrality Act and Spanish Relations

With respect to involvement with foreign relations and in an effort to remain independent, the United States took an early stance to remain neutral in foreign conflicts.

This stance led to the Neutrality Act of 1794, which made it a crime for citizens to

⁹ Id. at 64

¹⁰ Id. at 64

¹¹ Id. at 64

¹² Charles Griffin, *Privateering from Baltimore during the Spanish American Wars of Independence*. Maryland Historical Magazine, Vol XXXV, No. 1 (March, 1940) (hereafter PRIVATEERING)

¹³ Id. at 3

participate in hostile expeditions against a foreign country that the United States is at peace with.¹⁴ The Act was the nation's first attempt to provide definitive provisions addressing certain actions considered to violate the laws of neutrality.¹⁵ The Act contained provisions for a multitude of prohibitions to include U.S. citizens from accepting foreign commissions within the jurisdiction, enlisting or hiring other persons to enlist in foreign services, fitting or arming vessels within U.S. ports, and increasing or augmenting the force of a belligerent ship within the territory.¹⁶ There was also a section that conferred jurisdiction to the courts for complaints of capture that occurred within U.S. territorial waters.¹⁷

In addition to the Neutrality Act of 1794, the United States and Spain specifically negotiated the Treaty of Friendship, Limits and Navigation, which was ratified in 1796, in an effort to maintain relations with the Spanish colonies that were located along the Mississippi River and Gulf Coast.¹⁸ The Treaty ended the dispute for the West Florida colony by establishing a border, but also provided protection for vessels of each nation.¹⁹

While it seemed the U.S. could profess neutrality to belligerent nations by enacting legislation, it did not fully prevent citizens from participating in the causes of other nations. In 1815, when the revolutionary war between Spain and its Latin American colonies was at its height and diplomatic relations were in the process of being renewed between Spain and the U.S., the President, out of necessity, issued a proclamation to

¹⁴ Act of June 5, 1794, Ch. 50, 1 Stat 381, 383-84 (1794)

¹⁵ CHARLES G. FENWICK, Ph.D, THE NEUTRALITY LAWS OF THE UNITED STATES (1913), Pg. 26; Hereafter referred to as NEUTRALITY LAWS

¹⁶ Id. at 26-27

¹⁷ Id. at 27

¹⁸ Treaty of Friendship, Limits, and Navigation between Spain and the United States; signed October 27, 1795; ratified by US March 7, 1796. Text of Treaty can be seen at http://avalon.law.yale.edu/18th_century/sp1795.asp

¹⁹ Id. Articles II-IV address boundaries and Articles VI-XII address vessels and commerce

warn citizens to refrain from participating in expeditions that violated laws of neutrality.

²⁰ During that same year, the minister of Spain who resided in the U.S., Luis De Onis, began writing to the Secretary of State, James Monroe, expressing concern toward alleged violations of the Neutrality Act, which involved Americans assisting the belligerent colonies in Latin America. ²¹

On March 3, 1817, Congress supplemented the Act of 1794 using recommendations provided by Secretary of State Monroe on how to further neutrality legislation. ²² The Act would now include a provision allowing the customs collector greater powers to seize, detain, and require a bond for those armed vessels suspected of violations. ²³ In addition, in order to extend the laws to include entities such as the belligerent colonies, which were not recognized as states, the verbiage in the clause was changed by replacing the phrase “foreign prince or state” with “foreign prince, state, colony, district or people” – this change would defeat the defense that a vessel was armed in the service of “insurgent colonies” and not a “foreign prince or state”. ²⁴ The neutrality laws were again modified in 1818 primarily to repeal previous acts and replace with one more clearly articulated version. ²⁵

Even though the U.S. made multiple attempts to proclaim neutrality and clarify neutrality laws due to Spain’s continuous allegations, a group of U.S. citizens remained sympathetic to the belligerent colonies’ cause and found ways to participate. The most frequent methods included arming and fitting the vessel within the U.S but then once

²⁰ NEUTRALITY at 33

²¹ Id. at 34

²² Id. at 37-38

²³ Id. at 37-38

²⁴ Id. at 39

²⁵ David Head. *A Different Kind of Maritime Predation, South American Privateering from Baltimore, 1816-1820*, International Journal of Naval History, Vol 7, No. 2 (August 2008) at 12; Hereafter referred to as: MARITIME PREDATION

cleared by customs and out to sea changing the flags to one of the belligerent colonies, or while in port having U.S. passengers aboard that would later assume the character of officers and seaman in the belligerent's service.²⁶

C. Argentina and the United States

In 1810, Buenos Ayres established itself as the capital of Argentina and the chief port supporting South American commerce with North Atlantic ports.²⁷ Although the belligerent Latin colonies weren't officially recognized as independent nations after announcing independence from Spain in 1816, the U.S. government offered sympathy toward Argentina's rebellion.²⁸ While the U.S. was primarily interested in observing the developing situation in the United Provinces and maintaining neutrality, the leaders of the United Provinces sought more tangible assistance.²⁹

In an effort to extend foreign relations with Argentina during early 1815, the government announced that Thomas Lloyd Halsey, a U.S. citizen working as an importer/exporter for the last eight years in Buenos Ayres, would begin his appointment as consul to maintain commercial relations; however, he would still also maintain his private business.³⁰ Halsey was later relieved of his official position after the government discovered he was making personal profits by taking cuts of the prize money associated with his controlling the distribution of commissions.³¹

In July 1815, the U.S. Treasury Department issued an order that would allow the vessels flying the flags of the South American colonies, including Argentina, legal entry

²⁶ LAWS OF NEUTRALITY at. 36

²⁷ HAROLD F. PETERSON, ARGENTINA AND THE UNITED STATES 1810-1960(University Publisher, Inc. 1964). p. 4 (hereafter ARGENTINA)

²⁸ Id. at 15

²⁹ Id. at 27

³⁰ Halsey was appointed in 1812 but did not assume duties until 1815. Id. at 23

³¹ David Head. *A Different Kind of Maritime Predation, South American Privateering from Baltimore, 1816-1820*, International Journal of Naval History, Vol 7, No. 2 (August 2008)

into U.S. ports.³² This order sparked concern from Spain since it appeared that many of the ships that were operating as South American privateers were actually ships built and fitted within U.S. ports and operating with American crews or officers.³³ The Spanish wanted the U.S. to exclude the vessels of the revolting colonies since Latin American privateers could easily enter U.S. ports by declaring necessity for provisions or repairs, but in reality enter with the intent to market seized Spanish goods.³⁴

The U.S. also appointed commercial agents to Buenos Ayres tasking them with collecting political developments and gathering information about population and resources. Mr. John Devereux, who came to Buenos Ayres as the supercargo aboard the *Mammoth* (later *Independencia Del Sud*) in 1816 and Mr. William G.D. Worthington, the son in law of James Chaytor - the claimant in the case and commander of the *Mammoth* and *Independencia*, found themselves in these types of government positions.³⁵ However, they would both resign after short periods due to “ambition unsuited for diplomatic assignment” – Devereaux for attempting to gain financial loans from the U.S. to support the foreign government and Worthington for his submission of an unauthorized treaty “Respecting Commerce and Seaman between the United States and Buenos Ayres.”³⁶

Narrative of the Facts

³² Id. at 29

³³ Id. at 30

³⁴ Id. at 31

³⁵ Mr. Devereaux’s position as supercargo is found in the documents included in the Appellate Case File - No.1091, *Chaytor v. Chacon*, National Archives Microfilm Publication M214 found at http://www.mdhistory.net/nara_m214/santissima_chaytor_nara_m214_55_1091/html/santissima_chaytor_nara_m214_55_1091-0001.html (Hereafter referred to as Appellate Case File). Facts about Devereaux and Worthington holding the opposition are found in ARGENTINA p. 33. Lyde Goodwin, owner of MAMMOTH, written order to Devereaux dated January 11, 1816. The relationship between Chaytor and Worthington is based on the marriage information taken from http://en.wikipedia.org/wiki/William_Grafton_Delaney_Worthington

³⁶ ARGENTINA at p. 33

A. Background of the *Independencia* and the *Altravida*

The *Independencia Del Sud*, also known as the *Independence of the South*, became a public vessel of Buenos Ayres during May 1816, but prior to the sale, she was known as the American built and owned schooner *Mammoth*.³⁷ The *Mammoth*, built in 1813, was the largest private schooner built in Baltimore at a cost of \$40,000 for John Gooding, Samuel Smith, James Williams, and James A. Buchanan.³⁸ During her first sail during March of 1814, she was mounted with 10 guns and served as a privateer harassing English trade in the Caribbean.³⁹ After the war ended in 1815, the *Mammoth* was sold at auction as a “brig-rigged for merchant service” to a consortium that included Samuel Smith, James A. Buchanan, John Hollins, Michael McBlair, John Smith, Lyde Goodwin, and Henry Didier.⁴⁰ While these partial owners claimed that the later voyage of the *Mammoth* was completely commercial and they had no ties with the vessel once it was sold at Buenos Ayres, many of them would later be linked to owning shares in vessels that were involved with South American privateers.⁴¹ In January of 1816, Lyde Goodwin cleared the *Mammoth* from Baltimore with a cargo of munitions consisting of muskets and powder bound for Buenos Ayres.⁴² Prior to departure, Goodwin provided John Devereaux, the supercargo for the voyage, with a written order of instructions. The instruction stated that Devereaux should head to Buenos Ayres to sell the cargo and the

³⁷ Appellate Case file; Subscribed testimony of James McCulloch, Baltimore Customs Collector on November 2, 1819

³⁸ Biographical note taken from Maryland Historical Society website- the society maintains a collection of log books and journals for the period of 1814-1822 <http://www.mdhs.org/findingaid/finding-aid-schooner-mammoth-logs-1814-and-schooner-independencia-del-sud-november-1817-%E2%80%93>

³⁹ Id.

⁴⁰ Id. for information on sale at auction, but information on all listed owners was provided in the Appellate Case file; McCulloch statement on November 2, 1819

⁴¹ Appellate Case file contains depositions from each of the partial owners stating they had no interest in the vessel after the sale. Involvement of Gooding, Smith, Buchanan, Hollins, Goodwin and Didier is discussed in MARITIME PREDATION, pg. 3-7.

⁴² Appellate Case file; McCulloch statement on November 2, 1819

Mammoth, if he was able to obtain at least \$15,000 for the vessel.⁴³ However, the order also noted that the transaction should proceed only if there was no delay in returning the proceeds of the ship and cargo back to Baltimore, preferably on an American vessel.⁴⁴ If an American vessel was not to be found, then Captain James Chaytor, a Baltimore resident and the commander of the *Mammoth* for the voyage to Buenos Ayres, should be consulted to ensure an appropriate vessel was selected.⁴⁵ The letter also provided information on the profit that Devereaux would collect on completion of the sales, which included not only a percentage of the sale of goods, but also a percentage of the investment of net proceeds.⁴⁶

However, a second letter of instruction was also provided to Mr. Devereux with recorded instructions to proceed to Chile if the vessel could not be sold at Buenos Ayres.⁴⁷ This letter directed Devereaux to execute an arrangement made with Captain Jewett, but it would depend on secretive information received while at Buenos Ayres.⁴⁸ While the letter fails to mention a first name, Captain Daniel Jewett, was known to be a U.S. citizen serving as a privateer aboard the *Heroína* with a commission from the United Provinces- he was later involved with the taking of the Falkland Islands on behalf of Argentina.⁴⁹

⁴³ Appellate Case file; Goodwin's first letter of instruction to Devereux on January 11, 1816

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Appellate Case File; Goodwin's second letter of instruction to Devereaux, dated January 11, 1816.

⁴⁸ Id. Goodwin states "this must depend on information you will be able to collect at Buenos Ayres, and in obtaining this information the utmost circumspection must be observed that your object not be discovered".

⁴⁹ ARGENTINA, p. 102

Upon arrival at Buenos Ayres in March 1816, the vessel was almost immediately sold to Captain Chaytor and two other unnamed persons.⁵⁰ While no documentation was produced to prove ownership, it is believed that Adam Guy, a British merchant living in Buenos Ayres was one of the other owners.⁵¹ Robert Oliver, a well-known, wealthy Baltimorean merchant and ship owner may have been the other since he provided insurance for the *Independencia Del Sud*.⁵² Mr. Oliver was later involved in legal actions for neutrality violations related to the 1816 operations of the Baltimore Mexican Company, which Lyde Goodwin, a partial owner of the *Mammoth*, was one of nine owners of the company.⁵³

On May 6, Chaytor renounced his U.S. citizenship and accepted a commission as a Lieutenant Colonel in the army of the United Provinces.⁵⁴ The certificate of registry for the *Mammoth* was returned to Baltimore as a result of the sale.⁵⁵

In May 1816, the *Independencia Del Sud*, formerly the *Mammoth*, assumed the character of a public vessel and began sailing under orders from Buenos Ayres to patrol off the coast of Spain.⁵⁶ Prior to departing the port, and while the vessel was loading a cargo of tallow bound to return to Baltimore, Chaytor came aboard to announce to the

⁵⁰ Appellate case file; no certificate of ownership was produced in the case; however, Thomas Halsey provided a notarized statement that when the vessel sailed on May 17, 1816 it was known to be a government vessel for Buenos Ayres.

⁵¹ The Maryland Historical Society, which maintains a collection of logs and journals from the *Mammoth* and *Independencia*, has a biographical note on the website that suggests the ownership – found at <http://www.mdhs.org/findingaid/finding-aid-schooner-mammoth-logs-1814-and-schooner-independencia-del-sud-november-1817-%E2%80%93>

⁵² Maritime Predation; Footnote 9 citing Oliver Journal, Dec 1816, Robert Oliver Papers found at the Maryland Historical Society

⁵³ *Gill v. Oliver's Executors*, 52 U.S. (11 How.) 529 (1850)

⁵⁴ Appellate Case file; Chaytor's declaration to Halsey at Buenos Ayres on May 6, 1816 and the commissioning certificate issued by the government of Buenos Ayres

⁵⁵ Appellate Case file; McCulloch statement of November 5, 1818

⁵⁶ Appellate Case file, Chaytor's answer to amended claim dated November 1, 1819, various depositions within the case file also contain information on the cruise

crew that the *Mammoth* was sold at Buenos Ayres for the purpose of a public vessel, and that he accepted a commission in the colony's service.⁵⁷ The cargo was then removed from the vessel and provisions were put aboard for the cruise, the *Mammoth's* former crewmembers, mostly North Americans, continued in the service of the vessel now called the *Independencia Del Sud*.⁵⁸

According to the collector of the port of Baltimore, upon arrival in October of 1816, the *Independencia* entered the port as a public vessel under the flag of Buenos Ayres receiving proper salutes, was boarded by the Revenue Cutter Service, and submitted a report accounting for stores and articles on board.⁵⁹ While in port, the *Independencia* required extensive repairs to include copping and replacement of the main mast so a permit was issued to land guns, ammunition, and cargo - a portion that was approved to be sold- at a public storehouse during the stay.⁶⁰ While the deposition testimony of the crew contradicts the amount of armament that was onboard the *Independencia* on her arrival and departure during this port call, the inspector that was present during the offloading had noted that in the twenty years of employment he had not seen such a vessel "fully and completely armed than was the *Independencia* on her arrival".⁶¹

In December 1816, prior to the departure from port, an inspector was dispatched to the vessel for a customs endorsement and no discrepancies were reported.⁶² The crew of

⁵⁷ Appellate Case file; Deposition of William Amos taken September 25, 1819

⁵⁸ Appellate Case file; Deposition of William Amos and Testimony of James Row, professional seaman aboard *Independencia*, April 21, 1820

⁵⁹ Appellate Case File; McCulloch's statement on March 9, 1820

⁶⁰ Appellate Case File; repairs were attested to by testimony of John Harris taken March 23, 1820 and permits are included in testimony provided by William Lowery Esq, Surveyor of the Port of Baltimore on November 2, 1819

⁶¹ Appellate Case File; contradictory statements to suggest armament may have been added to the vessel during the stay is witnessed in testimony provided by John Harris, March 23, 1820, quote for armory taken from William Hanson, inspector for Customs in Baltimore, dated November 7, 1819

⁶² Appellate Case File; McCulloch's statement on March 9, 1820

the *Independencia* consisted of about 112 men; some were crew from the prior cruise and at least another 30 men enlisted during the stay at Baltimore.⁶³ Captain Chaytor remained as the commander of the vessel and other men known to be Americans served as officers aboard.⁶⁴

Upon leaving Baltimore in December, the *Independencia* rendezvoused with the tender *El Atrevida* or *Atrevida*, previously known as the *Romp*, a vessel that was condemned by the District Court of Virginia for piracy and sold at auction on September 1, 1816 to William W. Weymouth.⁶⁵ It is believed that Captain Weymouth, a commander of packet vessels in the Hampton area, soon learned that the purchase was made on behalf of Thomas Taylor, a well-known U.S. citizen who was serving as a privateer for the United Provinces.⁶⁶

The *Atrevida* arrived at the port of Baltimore flying Buenos Ayres colors on November 1, 1816 and underwent repairs that were paid for by Chaytor prior to the vessel's departure on December 16, 1816.⁶⁷ The *Atrevida* then sailed with the *Independencia* from the Capes of the Chesapeake direct to Port au Prince where more men joined the crews.⁶⁸ It is believed that the *Atrevida* received her commission while in Port au Prince, but the crew of the *Independencia* was made aware that the *Atrevida* was

⁶³ Appellate Case File; testimony of John H. Speck taken April 20, 1820, deposition of John Henry taken October 18, 1818, deposition of Hugh Irvine taken August 22, 1818; deposition of John Harris taken March 23, 1820

⁶⁴ Appellate Case File; deposition of John Harris taken March 23, 1820.

⁶⁵ Appellate Case File; deposition of William Mann, Deputy Marshall for Virginia District Court, taken May 5, 1820.

⁶⁶ Biographical reference for Capt. Weymouth is from Historical Obituary, *American Beacon*, Vol. V, Issue 43, p. 3 Norfolk, VA (September 25, 1817), information related to sale is found in Appellate Case File; Deposition of William Mann, and biographical information regarding Taylor is found in PRIVATEERING, p.3-4

⁶⁷ Appellate Case file; Testimony of Richard M. Ganettson, wharf linger at Baltimore during *Independencia*'s stay, taken February 25, 1820

⁶⁸ Appellate Case file; Deposition of John H. Speck taken April 20, 1820 and Hugh Cagne taken February 28, 1820

to serve as a tender vessel but could not aid, assist, or fire during the taking of Spanish vessels.⁶⁹

Upon leaving Port au Prince, the vessels came across the Spanish owned *Santissima Trinidad* and the *Saint Ander*.⁷⁰

B. The Prize Taking

The *Santissima Trinidad* and the *Saint Ander* laden with Spanish owned cargo were bound from the port of Vera Cruz, Mexico to some other Spanish port, but believed to be Havana, Cuba.⁷¹

On February 17, 1817, while on the high seas near Cuba, the *Independencia*, flying English colors, and the *Atrevida* flying none, pursued the *Santissima* until the *Independencia* fired a single shot causing the *Santissima* to heave to.⁷² Upon stopping the vessel, the *Independencia* sent an officer and four men aboard the *Santissima* to pull down the Spanish flag, collect papers, and accompany the *Santissima*'s captain back to the *Independencia*.⁷³ After the captain was informed that his cargo was being claimed as a prize for Buenos Ayres, approximately 30 men from the *Independencia* and *Atrevida* were sent aboard the *Santissima* to transport all of the vessel's cochineal, other specie and about \$17,000 to the *Independencia*.⁷⁴ Cochineal, which was discovered when Spanish invaded Mexico during 16th Century, are the dried bodies of insects found on cacti used to produce a bright scarlet pigment for dyeing and painting and replaced inferior dye used

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Appellate Case file, testimony by Don Pablo Chacon, Consul for King of Spain, at District Court of Virginia, May 5, 1820

⁷² Appellate Case file; deposition of Naviso Oliver, commander of the *Santissima*, taken May 20, 1818

⁷³ Id.

⁷⁴ Id.

in Europe.⁷⁵ During the time of the *Santissima's* seizure, the production and prices of cochineal were steadily increasing, but the industry would see a major decline during 1818, making the cargo considerably less valuable.⁷⁶

While the crew of the *Independencia* referred to themselves as patriots, the *Santissima* crew noted during the boarding none of the men were Spanish, the majority spoke English, and some crew had claimed to be American.⁷⁷ After one evening of delay, the *Santissima* was released with her crew and remainder of cargo and told to steer southward since the *Independencia* was leaving to pursue other vessels.⁷⁸

Approximately three days later, after taking cargo from an additional unnamed Spanish vessel, the *Independencia* encountered the *Saint Ander* and seized her cargo of cochineal and jalap prior to paroling the vessel and crew.⁷⁹ During the boarding of this vessel, the crew was not allowed to enter certain cabins since women and children believed to be relatives of Governor of Vera Cruz were onboard.⁸⁰

On March 18, 1817, in need of provisions, the *Independencia* and *Atrevida* called on the port of Norfolk, Virginia holding out as public vessels of Buenos Ayres, and

⁷⁵ LaVerne M. Dutton, *Cochineal: A Bright Red Animal Dye*, pg. 18, found at <http://www.cochineal.info/pdf/Ch-3-Spanish-Discovery-Cochineal-Production-Trade-www-cochineal-info.pdf>

⁷⁶ Id. at pg. 38

⁷⁷ Appellate Case file; deposition of Navisio Oliver and deposition of Martin Monet, crew aboard *Santissima*, taken May 18, 1818

⁷⁸ Id.

⁷⁹ Appellate Case file; Claim and Answer filed by Diego Chaytor on April 22, 1817. Also, jalap is a native South American plant with a tuberous root, and was imported in a sliced or whole state to be dried and ground to a powder for use alone as a laxative or combined with other herbal supplements. Found at <http://www.botanical.com/botanical/mgmh/b/binwej40.html> . Jalap may be used to rid the body of intestinal parasites: <http://medicinalherbinformo.org/herbs/Jalap.html>

⁸⁰ Appellate case file; deposition of John Davis, crew aboard *Independencia*, taken July 27, 1819 and Edward Currie taken September 17, 1919

declaring the armament and merchandise onboard, to include the seized cargo.⁸¹ While in Norfolk, and at the request of Chaytor, the seized items were landed at the Customs House for safekeeping until they could be sold to recoup costs of the expedition.⁸²

C. Government Inquiry

On March 22, 1817, Charles K. Mallory, in his position as Collector for the Port of Norfolk, made an inquiry to the Secretary of the Treasury Department requesting to know whether the *Independencia* should be assessed a tonnage duty since cargo was removed from the vessel for the purpose of sale, and it was not known whether the goods were considered prize goods.⁸³ Mr. Mallory noted that the commission and sailing orders appeared to be authenticated and that a thorough review of the vessel's logbook indicated the vessel was recently at Baltimore and took on men in Port au Prince, but did not make note to the entry of other crew or their nationality.⁸⁴ Mallory also mentioned that it was believed most of the officers, one of whom he was acquainted with, and seamen were American.⁸⁵ The Secretary responded to Mallory on April 7, simply stating that tonnage should not be exacted unless the cargo aboard were not prize goods, and in the absence of evidence the goods are presumed to be prizes; therefore, no more of the prize should be sold than that required to pay for the repairs.⁸⁶

On March 26, 1817, Don Luis de Onis wrote to Secretary of State Rush to inform him that the *Independencia* and *Atrevida* arrived in Norfolk for the purpose of landing prize

⁸¹ Appellate Case file, testimony of Alexander Tunstall, Deputy Collector of Norfolk on May 11, 1820 and his written report made upon the *Independencia*'s arrival at Norfolk

⁸² Appellate Case file; Chaytor's statement to the Prize Tribunal at Buenos Ayres when asking for a certificate to prize condemnation as good prize

⁸³ Appellate Case file: Letter from Charles K. Mallory to Honorable William Crawford dated March 22, 1817

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Appellate case file; Honorable William Crawford's letter to Charles K. Mallory, dated April 7, 1817

goods, and that \$60,000 was deposited in the Bank of Norfolk.⁸⁷ The letter also stated that Chaytor was bound next for Baltimore most likely to meet with principal associates and he should be arrested.⁸⁸ This was a realistic concern since sources later confirmed that at least 12 privateer vessels were fitted out in Baltimore between 1816 and 1818.⁸⁹

On March 28, 1817, Acting Secretary of State Richard Rush corresponded with Mr. Mallory to request that an inquiry be completed to determine whether or not the taking of Spanish prizes by the *Independencia* violated any of the U.S. neutrality laws, especially those of the late Act of Congress effective March 3, 1817.⁹⁰ Mr. Mallory addressed the request on April 2, enclosing the information relayed to the Secretary of Treasury on the matter noting he did not have evidence to take action and that the Act did not specifically prohibit the augmentation of force as was known to him.⁹¹

Soon after this correspondence, Mr. Mallory engaged the U.S. Attorney, William Wirt, advising him of the situation with the *Independencia* and requesting interpretation of the Act with regard to the augmentation of force so that action may be taken.⁹² Mr. Wirt's response on April 14, 1817 informed Mallory that the Spanish Consul also engaged Wirt on the issue, offered proof of the violations and would be willing to bring a citation; however, if the Consul did not, then it would be proper for Mallory, as collector of Norfolk to pursue the citation as there was reasonable cause.⁹³

The Claim and Lower Courts

A. The Claim and District Court

⁸⁷ Congressional Serial Set, H. Ex 282, vol iii, no. 12, letter from Don Luis de Onis to Mr. Rush, dated March 26, 1817

⁸⁸ Id.

⁸⁹ PRIVATEERING, p.7

⁹⁰ Appellate Case file; Acting Secretary Richard Rush's letter to Charles K. Mallory, dated March 28, 1817

⁹¹ Appellate Case file; Charles K. Mallory's letter to Acting Secretary Richard Rush, dated April 3, 1817

⁹² Appellate Case file; Charles K. Mallory's letter to U.S. Attorney, William Wirt dated April 10, 1817

⁹³ Appellate Case file; William Wirt's response to Charles K. Mallory, dated April 14, 1817

On April 17, 1817, the Honorable Saint George Tucker of the District Court of Virginia ordered the arrest of *the Independencia's* 87 bales of cochineal and three bales of jalap stored at the Customs House.⁹⁴ The action was brought by Don Pablo Chacon, consul for the King of Spain, against James Chaytor, also known as Diego Chaytor, Commodore of the *Independencia*, seeking restitution on behalf of the Spanish owners of the cargo.⁹⁵ The initial claim alleged that Chaytor should be treated as a pirate since his action of accepting a foreign commission was a violation of the XIV Article of the 1795 Treaty of Friendship, Limits, and Navigation between Spain and the United States.⁹⁶ The claim relied on Articles VI and XIV of the Treaty for the restitution to be granted since these Articles highlighted duties to use “all efforts to recover and cause to be restored to the right owners their vessels and effects taken from them within the extent of their said jurisdiction” and to “rescue out of the hands of any pirates” and “deliver the officers of the port in order to be taken care of and restored”.⁹⁷ While Chaytor claimed that in anticipation of litigation, he employed counsel to file a claim and answer on his behalf,

⁹⁴ Appellate Case file; District Court order signed by court clerk Seth Foster to the Marshall of the District of Virginia dated April 17, 1817. The Honorable St. George Tucker was born in Bermuda but relocated to Virginia, where he attended the College of William and Mary and worked as a lawyer. He was elected to the District Court by James Madison in 1813 and resigned in 1825. Biography History of the Federal Judges found at <http://www.fjc.gov/servlet/nGetInfo?jid=2420&cid=999&ctype=na&instate=na>

⁹⁵ Id

⁹⁶ Treaty of Friendship, Limits, and Navigation between Spain and the United States was ratified by US on March 7, 1796. Article XIV states “No subject of his Catholic Majesty shall apply for or take any commission or letters of marque for arming any Ship or Ships to act as Privateers against the said United States or against the Citizens, People, or inhabitants of the said United States, or against the property of any of the inhabitants of any of them, from any Prince or State with which the said United States shall be at war.”. See the Pleas and Proceedings of the District Court of May 7, 1817 for claim allegations made by Littleton Tazewell, counsel for Don Pablo Chacon.

⁹⁷ Treaty of Friendship, Limits, and Navigation Between Spain and the United States, Article VI and IX, respectively. Pleas and Proceeding of District Court, May 7, 1817 presented by Littleton Tazewell.

he departed the port of Norfolk to continue with his commissioning orders and missed the court ordered deadline to file.⁹⁸

It was not until May 4, 1818, that Chaytor's counsel, Robert B. Taylor, filed a claim and answer protesting the authority and jurisdiction of the Court.⁹⁹ The answer stated that open hostilities existed between Spain and the United Provinces, Chaytor was recognized both as a Lieutenant Colonel in the army of the Provinces and commander of the *Independencia*, and that the prize was taken while on the high seas outside of the jurisdiction of the United States.¹⁰⁰

Two years after the initial claim, the claim was amended to reflect restitution for additional cargo of two more bales of cochineal and a box of vanilla, and also add allegations of neutrality violations since Chacon believed both the *Independencia* and *Altrevida* were armed while in the Chesapeake Bay and the crews were augmented with U.S. citizens.¹⁰¹ Chaytor's response to this amendment continued to protest jurisdiction since the *Independencia* was duly commissioned at Buenos Ayres in 1816, the same time that he expatriated from the United States and that the tribunal at Buenos Ayres already condemned the prize in question.¹⁰²

After days of "some of the most brilliant displays of eloquence ever witnessed at this Bar", the District Court admitted that although the *Independencia's* capture of the

⁹⁸ Appellate Case File; Chaytor's amended claim filed on November 9, 1819 discusses the delay in the initial filing

⁹⁹ Robert Barraud Taylor, after receiving his legal education at the College of William and Mary, quickly earned the reputation as an eminent lawyer. He also served as a brigadier general in the Virginia State Militia during the defense of Norfolk in the War of 1812. Encyclopedia of Virginia Biography, Vol. II at <http://arlisherring.com/tng/getperson.php?personID=I095865>

¹⁰⁰ Appellate Case File, Claim filed by Taylor for Chaytor on May 4, 1818

¹⁰¹ Appellate Case File; District Court amended claim filed by Tazewell on May 8, 1819 to reflect 89 bales of cochineal, 2 bales of jalap, and 1 box of vanilla. District Court amended claim filed by Tazewell on November 16, 1819 with allegations of armament of vessels and augmentation of crew

¹⁰² Appellate Case File; Chaytor's amended claim filed on November 9, 1819

Spanish cargo was valid, restitution was still owed to the Spanish owners based on neutrality violations created by the recruiting and augmentation of the crew within the jurisdiction of the United States.¹⁰³ The court did not make a finding on the allegations of the *Independencia*'s armament within the United States or on Chaytor's citizenship.

B. The Appeal

In May 1821, Circuit Justice Marshall issued his opinion and reaffirmed the District Court's holding for restitution based on augmentation of the crew while in the United States, and further stated that "principles on which prizes made by privateers, have been restored, apply to prizes made by national ships."¹⁰⁴

At the time of this decision, Circuit Justice Marshall was also holding the position as Chief Justice of the Supreme Court, appointed by John Adams in 1801.¹⁰⁵ During Marshall's reign as Chief Justice, law of prize and admiralty jurisdiction began to take shape using principles established under the cases resulting from the War of 1812, especially with regard to jurisdiction and invalidation of seizures due to breaches of municipal regulations.¹⁰⁶ Additionally, the Adams-Onis Treaty between Spain and the United States was finally ratified. The treaty gave West Florida to the United States and also recognized liability for Americans involved with the illegal privateering activity.¹⁰⁷

While Justice Marshall recognized that the determination of a legitimate prize lies within the courts of the captor, he did consider 1) whether the *Independencia* violated the

¹⁰³ Newspaper Article titled *Important Legal Case*, American Beacon (Norfolk, VA), Vol. X, Issue 126, Pg. 3 (Friday May 26, 1820)

¹⁰⁴ Chacon v. Eighty Nine Bales of Cochineal, 5 F.Cas, 390, No. 2568, 1 Brock 478 (1821), p. 397

¹⁰⁵ Timeline of the Justices, found at http://supremecourthistory.org/timeline_marshall.html

¹⁰⁶ HAMPTON L. CARSON, *The HISTORY OF THE SUPREME COURT OF THE UNITED STATES; WITH BIOGRAPHIES OF THE CHIEF AND ASSOCIATE JUSTICES* (1902) P. 223

¹⁰⁷ Acquisition of Florida: Treaty of Adams-Onis (1819) found at <https://history.state.gov/milestones/1801-1829/florida> and Congressional Serial Set, Don Luis De Onis letter to J.Q. Adams, Nov. 16, 1818 contains enclosures listing vessels deemed to be armed or equipped in the US and claims made on behalf of Spanish Commerce

neutrality of the United States as to give the court the jurisdiction of returning the prize and 2) whether the restitution should be required by the judicial, legislative or executive branch.¹⁰⁸ In considering the issue of neutrality violations, Justice Marshall took notice of objections regarding Chaytor's ability to make prizes due to ambiguities arising out of his citizenship and commissioning status but did not remark on them.¹⁰⁹ Due to the narrow opinion issued by the District Court, the issue of crew augmentation within the jurisdiction of the U.S. remained the key factor of the decision while on appeal.

In considering the issue, Marshall begins his analysis as to whether the crew was recruited or augmented with the arrival of the *Independencia* at Baltimore during 1816.¹¹⁰ While considering the Neutrality Act of 1794 and the enlistment of men in the service of a foreign state or prince, Marshall states that "whether Buenos Ayres is a state or not, if she is in a condition to make war, and to claim the character and rights of a belligerent, she is bound to respect the laws of war.... as entirely as if she were an acknowledged state" and she has no right to recruit or employ forces within the United States other than those transient United Provinces citizens temporarily here.¹¹¹ The testimony and depositions of the crew of the *Independencia* combined with Chaytor's lack of evidence to refute the allegations was enough to establish the violation.

While counsel for Chaytor claimed that testimony of the crew with regard to where enlistments occurred was hearsay and not sufficient to establish enlistments within the U.S., Justice Marshall held that the public conversations of the ship's crew, with no motive to lie since they were to receive a piece of the prize, were entitled to

¹⁰⁸ Id. at 393

¹⁰⁹ Id. at 393

¹¹⁰ Id. at 394

¹¹¹ Id. at 394

consideration.¹¹² Although Marshall considered some of the testimony, he did discredit many of the witnesses and reject testimony of others on the basis of contradictions during depositions and inconsistent statements that were eventually proven to be false.¹¹³ For instance, one crewmember states that he is a native to America but then is proven to be French.¹¹⁴ However, even with the contradictions, Marshall was satisfied with the testimony that the majority of the crew on the *Mammoth's* cruise to Buenos Ayres, remained onboard the *Independencia* until the return to Baltimore, and subsequently re-enlisted in its service without changing allegiance to the United States.¹¹⁵ In addition, it was proved that at least 30 more men, not subjects of Buenos Ayres, were enlisted at Baltimore just prior to the cruise that resulted in the prize taking.¹¹⁶

Although Marshall concludes that the government is bound to recognize the claim between the belligerent nations if neutrality laws are violated and the prize is brought within jurisdiction, he struggles with giving the court the authority to grant such restitution.¹¹⁷ Because this case involves a public vessel, Marshall feels that the duty to grant restitution should fall to the executive or legislative branch since the decision “must be regulated by a discretion that courts do not possess, and may be controlled by reasons of state, which do not govern tribunals acting on principles of positive law”.¹¹⁸ Based on the politically charged atmosphere concerning the issues with violations of the Neutrality Act during this period, it appears that this interjection may have been

¹¹² Id. at 394

¹¹³ Id. at 395 – Marshall rejects testimony of Davis, Smith, and M'Donnel due to credibility issues and contradictory statements during depositions

¹¹⁴ Id. at 395, Marshall's reference to John Lewis

¹¹⁵ Id. at 396

¹¹⁶ Id. at 396

¹¹⁷ Id. at 397

¹¹⁸ Id. at 397

Marshall's attempt at having Congress intervene with legislation that would be suitable to government policy during the period.

The Supreme Court Decision

After affirmation of the order in the Circuit Court, the case was appealed by Chaytor to the Supreme Court to be heard during the February Term of 1822.¹¹⁹

A. Counsel's Arguments

Don Pablo Chacon continued representation by Littleton Tazewell, his lawyer in the lower courts, and Daniel Webster. Tazewell was a native Virginian and prominent lawyer who practiced both law and politics. Tazewell had served on the Virginia House of Delegates, was appointed to the sixth Congress upon the resignation of John Marshall, and elected to the General Assembly prior to this case.¹²⁰ During the course of the litigation, he would serve as one of the commissioners for claims under the 1821 treaty with Spain to cede Florida.¹²¹ Webster, a prominent lawyer and prior member of the House of Representatives, was known for favoring a strong government and the encouragement of maritime commerce through his earlier objections to trade embargoes during the War of 1812.¹²²

William H. Winder and David Bayard Ogden argued Chaytor's appeal that was based on the court's lack of jurisdiction to hear the case. At the time, Winder, a local hero of the militia during the War of 1812, was a celebrated lawyer who commonly appeared

¹¹⁹ The *SANTISSIMA TRINIDAD*, and the *ST. AN DE*, 20 U.S. (7 Wheat.) 283 (1822) (Hereafter *Santissima*)

¹²⁰ Biographical Directory of the U.S. Congress - Tazewell, Littleton Waller found at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=T000108>

¹²¹ Biographical Directory of the U.S. Congress - Tazewell, Littleton Waller found at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=T000108>

¹²² Daniel Webster, found at <http://www.britannica.com/EBchecked/topic/638631/Daniel-Webster>

before the courts to represent the interests of privateers.¹²³ Ogden was a New York City lawyer, who began practicing in 1803 after studying under his uncle Abraham Ogden, a U.S. Attorney for District of New Jersey.¹²⁴ Ogden was well-known for his appearances before the Supreme Court.

Winder opened the arguments insisting that the facts of the case did not support a violation of neutrality for illegal armament or augmentation in the force of the *Independencia*.¹²⁵ The basis for this claim was that if there was no violation of neutrality, then Spain could not intervene on behalf of the owners to ask for restitution using the U.S. court jurisdiction. In order to build the case, Winder argued four main points.

The first argument was that even if Chaytor was still considered a U.S. citizen for failure to establish a domicile abroad after his announced expatriation, the capture was not invalidated since the *Independencia* was a public vessel.¹²⁶ Winder relied upon the case of the *Exchange*, to state that the Court may not inquire into the conduct of the vessel any further than needed to determine that she held a valid commission.¹²⁷ In the *Exchange*, the Court held that if a public vessel enters a friendly port under the implied promise, she will not be subject to local jurisdiction while acting in a friendly manner.¹²⁸ The case also cited that that the production of affidavits asserting the fact that the French public vessel did not carry documents related to its ownership by the Emperor Napoleon was sufficient to establish the vessel as a public vessel when combined with the fact that

¹²³ Privateering, pg. 6

¹²⁴ David Bayard Ogden (1774-1849) found at <http://www.jerseyhistory.org/findingaid.php?aid=0897> . Information for Abraham Ogden found at http://en.wikipedia.org/wiki/Abraham_Ogden

¹²⁵ Santissima at 290

¹²⁶ Id at 291

¹²⁷ Id. at

¹²⁸ The Schooner Exchange v. McFaddon and Others, 11 U.S. (7 Cranch) 116 (1812) at 147

it flew the French flag, had a valid commission, and was in the possession of France's officers.¹²⁹

To make a determination for Chaytor's citizenship, consideration should be given to case law establishing that an alien may cruise against his own native country and the fact that Buenos Ayres gives officers of commissioned vessels entitlement to the privileges of citizenship while employed in its service.¹³⁰ It was argued that a treaty operates between contracting parties and cannot interfere with the rights of other nations, which the U.S. would be doing since Buenos Ayres granted the commission that was under attack by the Court.¹³¹ Additionally, while the Treaty affords Spain the right to treat Chaytor as a pirate if deemed appropriate, Congress was silent on what happens if a commission is accepted in a foreign country, as occurred in this case.¹³² Winder argued that the Neutrality Act has been well understood from its development in 1794 to the changes made up until 1819, and nothing has been added at any point to support the inability of foreign governments to grant a commission to a U.S. citizen outside of the U.S; therefore, "where the law stops, the Court of Justice must stop".¹³³

The second argument against a violation of neutrality was that Chaytor actually did expatriate and was a citizen of the United Provinces.¹³⁴ In support of the argument, Winder established that under British law, the mere fact that a foreign seaman serves for at least two years in the service is enough to makes that person a British subject.¹³⁵ But, while length of time in service can establish citizenship, other means can be employed

¹²⁹ Id. at 119

¹³⁰ Santissima at 291

¹³¹ Id. at 292

¹³² Id. at 292

¹³³ Id. at 293

¹³⁴ Id. at 296

¹³⁵ Id. at 296

which instantly manifests the intent to change citizenship.¹³⁶ The record reflects evidence of Chaytor's announced expatriation to the consul at Buenos Ayres and his acceptance of a commission in the service of the United Provinces, so the documents produced should be enough to instantly fix the character of intended change to citizenship.

The third argument suggests U.S. courts can't interfere with prize goods of a foreign sovereign's public vessel, such as the *Independencia*.¹³⁷ Relying on the premise that public vessels are generally exempt from local jurisdiction as held in the *Exchange*, Winder argued both public vessels and their prize goods are property of the sovereign nation; therefore, the exemption of jurisdiction also applies for any attached goods landed ashore with the express permission from the U.S. government.¹³⁸ Winder attempts to establish that the illegal augmentation of force can't forfeit the foreign immunity since it is presumed that the enlistments did not have the assent of the belligerent sovereign; therefore, the question of restitution is best left to diplomatic discussions to resolve the question of the amount of restitution due rather than a court's requirement to award complete restitution.¹³⁹

The final argument against jurisdiction that Winder attempts implies that the condemnation of the prize goods at Buenos Ayres is an issue of *res judicata* since a competent tribunal has already decided the question.¹⁴⁰ Even though the initial complaint was on file in Virginia, Chaytor did leave Norfolk in 1817 to return to Buenos Ayres and

¹³⁶ Id. at 296

¹³⁷ Id. at 297

¹³⁸ Id. at 297

¹³⁹ Id. at 297

¹⁴⁰ Id. at 298

acquire proof that was entered on the record showing that a tribunal previously condemned the prize as a good prize.¹⁴¹

Upon Winder's closing, Tazewell, who had argued the case in the lower courts, began his objections regarding the argument. It is said that Tazewell's speech was "mutilated and condensed in the report", but it was an "admirable specimen of argument on purely legal topics which were to be worked out in the new political relations of the world".¹⁴² During the argument "a large audience, consisting of the ablest lawyers and statesmen of the Union, watched every syllable that fell from his lips, and followed him through the mazes of his mighty plea".¹⁴³ Tazewell countered that the only question of real difficulty in the case was whether jurisdiction existed since before the Court can rightfully exercise it, this jurisdiction must be proven.¹⁴⁴

Tazewell opens his argument with discussion that "all the departments of the government make but one sovereignty" so whether the rights of the belligerent sovereign are looked into and denied by either the executive or judicial department, the interference is still considered to be by the nation as a whole no matter which department decides the matter.¹⁴⁵ He then goes on to discuss that by submitting an answer to a claim is the equivalent of voluntarily submitting to the jurisdiction of the Court since the foreign sovereign could have applied to the tribunal rather than submit to judicature.¹⁴⁶ In the case of the *Exchange*, the suggestion of sovereign rights for Napoleon was by made by the government to avoid the difficulties associated with pleas and proceedings; however,

¹⁴¹ Appellate Case file; Decree dated February 6, 1818 signed by Tribunal of Prizes at Buenos Ayres

¹⁴² Hugh B. Grigsby. *Discourse on the life and Character of the Hon. Littleton Waller Tazewell*. Published by J.D. Ghiselin, Jun. No 6 West Main Street (1860) , p. 44

¹⁴³ *Id.* at 44

¹⁴⁴ *Santissima* at 299

¹⁴⁵ *Id.* at 299

¹⁴⁶ *Id.* at 300-301

this course was not adopted in this instant case and the matter particular to the *Independencia* is now reduced to a question of practice which is too late to amend.¹⁴⁷

When answering the question of what department of the government should be responsible for intervening with foreign relations, it should be considered that the current situation is not a matter of *res integra*.¹⁴⁸ It is an established fact that courts of justice already decide upon rights of the sovereign through the decisions imposed upon private individuals and corporations that are also tightly interwoven with the rights of their sovereign.¹⁴⁹

Tazewell also establishes that the argument for the exemption of a sovereign's rights are not confined only to the rights of the belligerent nation, but must also consider the rights of the injured sovereign since public law establishes that each sovereign is the supreme power at home and all are equal on the high seas.¹⁵⁰ The principle that a neutral tribunal may restore a prize brought within its territory if the prize capture was a result of a violation of neutrality was established in the *Exchange*. Although the Court in that case dismissed the action, the Court did interfere in the class of captures made by illegal armaments on the basis of the nature of the act and the place which it was done rather than the character of the vessel that committed the act.¹⁵¹ This principle is the exact situation in the case of the *Independencia*; therefore, it would not be true to establish foreign sovereign rights are always exempt from judicial interference.¹⁵² Furthermore, it should be considered that the court is the sovereign authority that intervenes whenever

¹⁴⁷ Id. at 302

¹⁴⁸ Id. at 303

¹⁴⁹ Id. at 303

¹⁵⁰ Id. at 308

¹⁵¹ Id. at 309

¹⁵² Id. at 309

individual rights are involved, whether the rights are involved with war, treaties, or municipal regulations.¹⁵³

If the legislature was in fact the true sovereign for determining interference with foreign sovereign rights, the law supports that the property of a sovereign acquired in war, within neutral territory or by means illegally obtained may be subject to adjudication or restoration independent of the vessels characteristic of public or private status.¹⁵⁴

Tazewell argues that the terms of the Neutrality Act of 1794 are broad enough to cover any ship, not just private armed vessels.¹⁵⁵ He argues that although Article VI of the treaty expressly gives authority to the court for private vessels, the terms were included to define territorial jurisdiction, and history and case law prove that the term was not meant as a restriction for courts to hear cases involving other vessels.¹⁵⁶ If in fact legislature meant to restrict the courts, what would happen to the series of adjudications that were imposed both before and after the statute?¹⁵⁷ While the court exercises power independently of the statute, it still uses the statute as authority in defining captures made within U.S. waters, which not only includes the territorial waters, but also expands to include captures on the high seas by a means acquired within the U.S.¹⁵⁸ Although the cases of the *Exchange*, the *Cassius*, and the *Invincible* had differing outcomes, the distinction as to whether the vessel held a public or private status was not considered in determining neutrality violations.¹⁵⁹

¹⁵³ Id. at 309

¹⁵⁴ Id. at 313

¹⁵⁵ Id. at 312

¹⁵⁶ Id. at 312

¹⁵⁷ Id. at 312

¹⁵⁸ Id. at 312

¹⁵⁹ Id. at 315-316

Upon concluding the argument establishing the Court did have jurisdiction to hear the case, Mr. Daniel Webster, co-counsel for Tazewell argued the other points on the case. Webster was born and raised in New Hampshire by a family of frontier farmers. After attending Dartmouth, he studied law and in 1805 received admission to the Massachusetts bar. He also served as a U.S. Representative in New Hampshire and Massachusetts.¹⁶⁰

At the time of the case, Webster was personally suggested to the Spanish Consul Chacon by Tazewell to argue all points that were related to the treaty with Spain since Tazewell considered him to be “excessively clever”.¹⁶¹ Webster argued six key points to counter the arguments of Winder. The first two arguments counter Winder’s claim that the capture was not invalidated due to Chaytor’s citizenship since the *Independencia* was a public vessel, the third point speaks to Chaytor’s supposed expatriation, the fourth counters that courts may interfere with prize goods, and the remaining two speak to the facts in the case and the condemnation of the prize.

The first key point Webster argues against is that there are no principles, books, cases, or dicta to support that examination into the acts of a vessel would interfere with foreign sovereign rights.¹⁶² Although it is established that a Prince cannot be personally sued in his own courts since he administers the justice system, those reasons do not apply in a foreign country, as he has no sovereignty there.¹⁶³ Also, while established doctrine grants express permission to a foreign sovereignty to enter and leave the nation unmolested, the neutral nation granting the license may revoke it if the terms of the

¹⁶⁰ U.S. Department of State ,Office of the Historian. Biographies of the Secretary of State: Daniel Webster found at <http://history.state.gov/departmenthistory/people/webster-daniel>

¹⁶¹ Discourse on Life and Character of Tazewell, p. 45

¹⁶² Santissima, at p. 316

¹⁶³ Id. at 318

license are violated.¹⁶⁴ In this case, it is not contended that the ship itself is subject to local jurisdiction, but that the prize goods held within the U.S. territory are since these goods were seized in violation of the license.¹⁶⁵

The second argument Webster concedes is that Articles VI and XIV of the Treaty are not merely monitory in nature but serve as express reciprocal duties owed to each nation.¹⁶⁶ The interpretation of Article VI providing for restitution requires the U.S. to protect the vessels and effects of the Spanish whenever the objects are within the jurisdiction of the nation, just as Spain does for the U.S. when France has attempted to bring U.S. property into Spanish ports.¹⁶⁷ And, even though it is noted that the English translation of Article XIV appears to only apply to captures of private armed vessels with the inclusion of the express statement “to act as privateers”, the Spanish translation drops the phrase “corsario” and speaks generally which would include public vessels.¹⁶⁸ The article should not only be interpreted to include a personal penalty against U.S. citizens that violate the terms deeming them as pirates, but it should serve to invalidate captures made under commissions that were unlawfully taken.¹⁶⁹ In support of this point, the municipal laws of the U.S., as seen in the provisions for the Act of 1797, 1817, and 1818, declare it unlawful for U.S. citizens to fit out and arm, command, or enter a foreign cruiser that would be employed against the friends of the nation.¹⁷⁰ So, no matter where

¹⁶⁴ Id. at 319

¹⁶⁵ Id. at 319

¹⁶⁶ Id. at 321

¹⁶⁷ Id. at 320

¹⁶⁸ Id. at 321

¹⁶⁹ Id. at 320

¹⁷⁰ Id. at 321

the offense occurs, if the U.S. citizen is involved, the offense is still committed and restitution must be granted under the treaty terms.¹⁷¹

The third argument is that the U.S. has the obligation to restore the property in question since its citizen is claiming a title to property that was acquired in violation of neutrality laws.¹⁷² Although Chaytor claims to have expatriated at Buenos Ayres, Webster claims that Chaytor must have actually changed domicile to take effect.¹⁷³ Webster also notes that the principle established requires that a change in citizenship cannot be effected when it is done in an act to fraudulently evade the laws of the native country, as Chaytor has attempted to do by accepting a commission.¹⁷⁴ The case of the *Bello Corrunes*, established the doctrine that a U.S. citizen may not lay claim to property in U.S. Courts, when that property was captured in an act of war against a nation that the U.S. was at amity with, even when the vessel capturing was fully equipped and commissioned by a foreign service.¹⁷⁵

The fourth argument for the basis that the Court can interfere with the goods relies upon the implied license for foreign vessels to enter the Nation's ports for refreshment or repair without becoming subject to local jurisdiction.¹⁷⁶ While this license allows the vessel to receive necessary provisions and repairs to maintain capacity, Webster argued that it does not follow that the vessel will be entitled to make extraordinary repairs as to change the character of the vessel or to augment the force while in port, like the *Independencia* did.¹⁷⁷ Additionally, while the implied license of not subjecting public

¹⁷¹ Id. at 321

¹⁷² Id. at 321

¹⁷³ Id. at 321

¹⁷⁴ Id. at 322

¹⁷⁵ Id. at 323, referring to *Bella Corrunes*, 6 Wheat Rep. 152, 169

¹⁷⁶ Id. at 324

¹⁷⁷ Id. at 324

vessels to local jurisdiction, detention, and seizure exists to prevent interference with the dignity and safety of a foreign nation's military power, the prize goods and vessels subject to jurisdiction are not necessarily a part of the military force.¹⁷⁸

Webster's fifth and sixth argument are simply stated. The fifth argument is that the facts of the illegal equipment and augmentation of force while in the U.S. as presented in testimony establish material facts that are not contradicted by the claimant's witnesses.

¹⁷⁹ The sixth argument is that although an authorized competent tribunal at Buenos Ayres condemned the prize, Chaytor was not entitled to claim the goods as a prize under his commission since the goods were seized in violation of the neutrality laws.¹⁸⁰ Chaytor should not be allowed to set up condemnation of the prize for his protection no more than he should be able to claim to be a citizen of the United Provinces to cover his crime.¹⁸¹

The closing argument was then delivered by D.B. Ogden, who touched on three major points in contention – the recognition of immunities of privileges due to a public vessel, the forced interpretation of the treaty to require restoration, and the adjudication by the prize court at Buenos Ayres.

Although the question was answered by Marshall in the Circuit Court opinion, Tazewell's argument for jurisdiction again posed the question whether United Provinces was actually a sovereign and independent state deserving of such recognition.¹⁸² In response, Ogden argued that the U.S. has acknowledged a civil war between Spain and her colonies, and the Court has followed the executive government in establishing that the United Provinces are entitled to the rights of war and the term "sovereign state" is

¹⁷⁸ Id. at 324

¹⁷⁹ Id. at 324

¹⁸⁰ Id. at 325

¹⁸¹ Id. at 326

¹⁸² Id. at 306

immaterial.¹⁸³ Citing case law in *U.S. v. Palmer*, that when a civil war occurs within a nation, the Court must recognize the separated part as its own government, and the prize cases of the *Estrella* and the *Divina Pastora* recognizing authority to capture under the new government, Ogden argued that the flag and the commission of the *Independencia* are sufficient to establish the privileges and immunities afforded to a public vessel of a foreign sovereign.¹⁸⁴

With regard to the interpretation of the Article VI, Ogden argued that the interpretation offered by Webster was forced to imply that there was a duty to restore all Spanish goods found within the territory even though the title of the goods may have changed by previous captures on the high seas.¹⁸⁵ Ogden argues that the article itself is confined only to those acts committed within the jurisdiction of the U.S. and is merely a declaratory statement reiterating the pre-existing laws of the nation which binds a sovereign in protecting the property of those the nation is at amity with while within its own jurisdiction.¹⁸⁶ Additionally, the Court should recognize that it is not bound to restore the property on the notion that Chaytor was a citizen of the U. S. since he was serving with a commission of a public vessel during a war and the act of returning the goods could be deemed as reprisal against a foreign belligerent.¹⁸⁷

As a public vessel, the *Independencia* is entitled to immunities and privileges to include the exemption from local jurisdiction, which also extends to the prize goods aboard.¹⁸⁸ Contradicting Webster's argument that the goods are not part of the military

¹⁸³ Id. at 329

¹⁸⁴ Id at 328-330, referring to *U.S. v. Palmer*, 3 Wheat. Rep. 636, *Estrella*, 4 Wheat. Rep. 52, and *Divina Pastora*, 5 Wheat. Rep. 298

¹⁸⁵ Id. at 330

¹⁸⁶ Id. at 330

¹⁸⁷ Id. at 331

¹⁸⁸ Id. at 332

force, Ogden claims the goods were deposited at customs with express permission of the government and the goods were necessary to carry on the war since they may serve as a source of revenue.¹⁸⁹ Furthermore, the law of nations expressly states the privileges of bringing prizes in port to be part of the permissions granted to foreign sovereigns and the cases of the *Invincible* and the *Exchange* repudiate the principles that prize goods within the jurisdiction need to be restored.¹⁹⁰ Finally, the question of whether the property is a good prize lies with the captor's nation and the answer depends on the competent tribunal assigned to determine the matter, which has been done in this case.¹⁹¹

B. Supreme Court Opinion

On the morning of March 12, 1822, the decision was rendered with Justice Joseph Story delivering a unanimous opinion for the Court.¹⁹²

During November 1811, Justice Story, at the age of 32, became the youngest justice ever to be appointed to the Supreme Court.¹⁹³ He quickly made himself a “thorough master” in the realm of Admiralty, Prize, and Instance law and shared his knowledge in drafting and publishing, especially with “elaborate notes to Mr. Wheaton on “Principles and Practice of Prize Courts, On Piracies, and On the Admiralty Jurisdiction”.”¹⁹⁴

While the opinion of the Court may be considered as narrow, several questions were considered and addressed to some degree. The primary questions before the Court were 1) whether the *Independencia* was a public vessel, 2) whether United Provinces were entitled to the privileges and immunities of a sovereign independent government to have its ships recognized as public vessels, 3) whether the property was captured in violation

¹⁸⁹ Id. at 332

¹⁹⁰ Id. at 333

¹⁹¹ Id. at 334

¹⁹² Id. at 355

¹⁹³ SUPREME COURT AND BIOGRAPHIES, p. 236

¹⁹⁴ Id. at 237-238

of the treaty so that restitution should be decreed, and 4) whether the condemnation of the prize at Buenos Ayres affected jurisdiction.

On deciding whether the *Independencia* is a public vessel, the court had to decide whether the failure to produce a bill of sale was an evidentiary defect that would not afford deference.¹⁹⁵ Based on the evidence submitted, the facts suggested that the *Independencia* was sold to Chaytor at Buenos Ayres, she assumed the flag and character of a public vessel of United Provinces as established by the consul, and the crew understood her to be a public vessel.¹⁹⁶ Similar to the finding of the failure to produce such documents as seen in the *Exchange*, this Court held that when no doubt is expressed to the genuineness of the commission or to the other proof to corroborate it, a bill of sale is not necessary and the commission is complete proof of her character.¹⁹⁷ This rule is founded in public policy and convenience and can't be broken without endangering peace since further examination into the title would be exerting authority into the rights of acts of the foreign sovereign nation.¹⁹⁸

Interestingly, while the Court makes note of the “suspicion of lurking American interest” and gives weight to the corroborative testimony of the consul at Buenos Ayres, there is no inquiry made into the other two owners of the *Independencia*.¹⁹⁹ Based on the history of Halsey, the consul at Buenos Ayres who was relieved after it was discovered he had taken cuts of prize money, and the known privateering activities involving American investors within the Baltimore area, it may have been likely that the Court

¹⁹⁵ Santissima, at 335

¹⁹⁶ Id. at 335

¹⁹⁷ Id. at 335-336

¹⁹⁸ Id. at 336

¹⁹⁹ Id. at 336

remained lenient in this principle since the wrong doing was caused by the Americans and not the foreign sovereign.²⁰⁰

The second question of whether the United Provinces was entitled to the privileges and immunities of a sovereign independent government as to have its ships of war recognized as public vessels was answered in the affirmative.²⁰¹ Without citing specific case law, Justice Story states that the Court has already had former occasions to express opinion on this matter, and held that the U.S. government recognizes the civil war between Spain and her colonies, remains neutral with both parties, and affords each sovereign the right of asylum and hospitality.²⁰² A failure to recognize each party would make the U.S. a party to the contest; therefore, all captures by either belligerent nation have the same validity and will be recognized as such by the Courts until Congress prescribes some other rule.²⁰³

While the first two questions were easily answered, the third question as to whether the property was captured in violation of the treaty so that restitution should be decreed required much further discussion since the sufficiency of evidence was in question. The grounds that Chacon relied upon for restitution, based on the testimonial evidence submitted, was that the *Independencia* and *Altrevida* were originally equipped, armed, and manned as vessels of war within the U.S. and that the crews were the result of an illegal augmentation of force.²⁰⁴

In considering the evidence, the Court first looked at multiple depositions and testimony which spoke directly and uniformly to both points, but was shaken by

²⁰⁰ See previous section on US Relations with Argentina

²⁰¹ Id. at 337

²⁰² Id. at 337

²⁰³ Id. at 337

²⁰⁴ Id. at 338

contradictions and falsified facts that should have been obvious to the deponent.²⁰⁵ The Court refers to the doctrine, *falsus in uno, falsus in omnibus*, which allows the fact finder to accept a portion of the testimony and reject other portions, especially when many witnesses concur in proof of material facts.²⁰⁶ Because restitution on the grounds of neutrality requires the violation to be proven beyond a reasonable doubt, the Court not only considers the testimony provided but also looks to independent sources to establish principal proof to include the intention of the original voyage, the return to Baltimore, and Chaytor's failure to submit evidence that he would be privy too.²⁰⁷ When the evidence is viewed in this manner, the illegal augmentation of force is evident and the Court does not need to discuss the illegal armament of the *Independencia*.

Although the Court begins discussing the *Mammoth's* original voyage to Buenos Ayres, which included mostly Americans on a commercial venture, the consideration for the illegal augmentation of force focuses on the cruise from Baltimore that preceded the prize taking.²⁰⁸ When viewing the evidence as a whole, it is reasonable for the Court to conclude that there was a clear augmentation of force within the jurisdiction, to include at least thirty crewmembers if not more, which is even admitted to by Chaytor's own witnesses.²⁰⁹ While Chaytor defends that the persons enlisted at Baltimore represented themselves as citizens of the United Provinces, he fails to offer any evidence of the enlistment or citizenship of the men, and fails to offer testimony of any of the officers of the *Independencia* that would have knowledge of the enlistments.²¹⁰ The Court notes that

²⁰⁵ Id. at 338

²⁰⁶ Id. at 339

²⁰⁷ Id. at 339

²⁰⁸ Id. at 342

²⁰⁹ Id. at 344

²¹⁰ Id. at 342

“no apology is even entered for their absence” and this failure to produce lends a presumption that is unfavorable to the innocence of the transaction.²¹¹

Because of the finding of the illegal augmentation of force on the *Independencia*, the Court only gives a brief commentary on the *Altrevida*. However, the Court quickly establishes that there is no doubt that this vessel was armed and augmented while in the U.S. since the vessel was sold in Virginia and immediately transferred to Baltimore to have her armament mounted and a crew of about 25 placed onboard.²¹²

Once the violation of illegal augmentation of force is proven, the Court must consider the consequences with respect to the property in question. In considering Chacon’s argument that relies upon Articles VI and XIV of the Treaty, the Court holds that even though there is a translation difference in the articles, the Court cannot make the treaty broader than Congress intended, and the language of the treaty does not include public vessels.²¹³

Additionally, because the argument for the application of the treaty is dismissed, the Court renders it unnecessary to discuss Chaytor’s right for expatriation and ability to accept a foreign commission outside of the U.S.²¹⁴ While specifically mentioning that this is not the case to consider the issue, and that the Court offers no opinion with regard to a citizen throwing off allegiance, the Court does side with Webster’s argument that there must be a bona fide change of domicile under circumstances of good faith to effect the change.²¹⁵

²¹¹ Id. at 343-344

²¹² Id. at 345

²¹³ Id. at 346-347

²¹⁴ Id. at 347

²¹⁵ Id. at 347-348

The Court also disagrees with Chaytor’s claim that the violation is not an infraction of the law of nations or neutrality, but is only prohibited by municipal laws, which do not reach the case of restitution.²¹⁶ Justice Story states that there is established doctrine, “cited at the bar, so numerous and uniform, that it would be a waste of time to discuss them”, that hold cruises following the illegal augmentation of force are “violations of laws of nations, neutrality, and municipal regulations that rise to the character of torts justifying and requiring restitution to the party that has been injured by the misconduct”.²¹⁷

In making the distinction between public and private vessels when considering neutrality violations, the Court holds that there is no ground in reason or policy for such a distinction since the injury is the same.²¹⁸ While the *Cassius* and *Invincible* furnished an exemption from local jurisdiction for the detention of public vessels and the arrest of the officers, the exemption does not apply to the prize goods located within U.S. ports.²¹⁹

In discussing the exemption of jurisdiction for public vessels, the Court distinguished the *Independencia* from the case of the *Exchange*, which held that the public ship was not subject to the Courts. The Court explains that allowing a foreign sovereign absolute power in the local jurisdiction of another territory would give that foreign sovereign power beyond its own empire; therefore, while principles of comity and convenience support not subjecting foreign ships coming into port to local jurisdiction, the license issued may be withdrawn at any time.²²⁰ Additionally, the fact that a license implied for peace must not be construed as a license to do wrong to the nation, lends to the idea that

²¹⁶ Id. at 348

²¹⁷ Id. at 348-349

²¹⁸ Id. at 351

²¹⁹ Id. at 351

²²⁰ Id. at 353

that all persons and property within the territorial jurisdiction are amenable to the jurisdiction of the Courts for that wrong.²²¹ Finally, while a foreign sovereign can't be compelled to appear in U.S. courts, nothing in the law prohibits a foreign sovereign from becoming party to a suit, and if he personally comes within the limits he may become liable to the judicial process.²²²

Therefore, no matter the exemption of the public ship, if a proper case can be made for restitution on the basis of neutrality violations, the prize property that is brought in to a U.S. port is liable to jurisdiction for the purpose of judicial inquiry and examination.²²³

Finally, in addressing the fourth question of whether the condemnation of the prize goods at Buenos Ayres defeated U.S. jurisdiction, the Court stated the tribunal's decision did not finalize the entitlement to the goods.²²⁴ Although the condemnation was duly authenticated, it did not remove jurisdiction from the U.S. since Chaytor was divested of the property when it was seized and possessed by the District Court in Virginia before the prize tribunal even considered the decision.²²⁵ Allowing a foreign court to exercise authority over goods that were in the possession of the Court deciding the issue would take away the rights of the sovereign nation attempting to vindicate its own neutrality and justice.²²⁶

The opinion of the Circuit Court was affirmed holding the Court had jurisdiction to hear the case and that restitution should be granted on the basis of illegal augmentation of force.²²⁷

²²¹ Id. at 354

²²² Id. at 354

²²³ Id. at 354

²²⁴ Id. at 355

²²⁵ Id. at 355

²²⁶ Id. at 355

²²⁷ Id. at 355

Effects of the Decision

Although the opinion was rendered in 1822, the holding in the *Santissima Trinidad* is still good law today.²²⁸ The principles discussed in the case have been cited and are still found in many cases, administrative decision, and secondary sources.

International law recognizes the principle that armed ships of nations at war are authorized to enter neutral ports to procure fuel and provisions, make repairs to ensure seaworthiness, or escape perils of the sea due to foul weather.²²⁹ While these vessels may enter U.S. ports, the principle established in the *Santissima* that prohibits its ports to be used in such a way to violate neutrality laws still holds. Almost 100 years after the ruling in *Berg v. British and African Steam Navigation Company* the Court cited the *Santissima* in upholding the authority that illegally captured prizes brought into the U.S., even with express permission from the government, would be invested with the character of a tort entitling the original owners to restitution.²³⁰

With regard to sources for federal procedure on foreign relations, the principles that foreign states are permitted to sue in the courts of the U.S. and that seizures made in violation of U.S. neutrality are subject to jurisdiction and restitution when the property comes within the limits are still applicable.²³¹ Additionally, the holding that foreign documents are admissible in evidence when signed by proper authorities, such as

²²⁸ KeyCiteWestlaw reflects there has been no negative direct history but that the case was distinguished by *El Pueblo v. Martinez*, 13 D.P.R. 249, P.R (Nov. 27, 1907) (case is only available in Spanish so extent could not be determined).

²²⁹ JILL GUSTAFSON, *AMERICAN JURISPRUDENCE, SECOND EDITION*, 78 AM. Jur. 2d. War §128

²³⁰ *Berg v. British & African Steam Nav. Co.*, 243 U.S. 124 (1917) at 153. In this case a German cruiser brought an English steamboat that was captured on the high seas and brought into Virginia wait in the port until the war was over. The safekeeping of the prize was deemed prohibited for the purposes of entering a neutral port and entitled the Court to jurisdiction to award restitution to the original owners.

²³¹ 13A. Fed.Proc., L.Ed, §36:493 General Rule that foreign states can sue and §36:552 Remedies - Restitution

Chaytor's commission and statement of character regarding the *Independencia*, is still a court practice recognized in civil proceedings.²³²

Also, the doctrine of *falsus in uno, falsus in omnibus*, which allows the fact finder to accept portions of testimony while discrediting other portions, is still in use. This doctrine was cited and upheld in 2012 by the U.S. District Court of Illinois for consideration of an Administrative Law Judge's decision during a Social Security Administration hearing to make a finding based on the acceptance of portions of testimony when the witness was found not credible to other aspects.²³³

After the Ruling

After the ruling in the *Santissima*, Chaytor continued his service with the Latin American colonies serving with the United Provinces and Colombia before finally returning to his family in Baltimore, where he lived until his death.²³⁴ As the *Independencia* was held to be a public vessel in the *Santissima*, Chaytor was free to sail with her, but was publicly announced to be associated with patriotic privateering due to the illegal augmentation of force within the U.S, which further stigmatized the naval forces of Buenos Ayres and the United Provinces.²³⁵

Based on the financial circumstances that affected Chaytor after the ruling, one may question the actual character of the *Independencia* as a public vessel of Buenos Ayres. Although Chaytor went back to sea on the *Independencia* in 1822 following the ruling, he complained to his wife of financial hardship since he could not get the Buenos

²³² CYCLOPEDIA OF FEDERAL PROCEDURE, Trial Court Practice in Civil Proceedings Generally, §26:380

²³³ *Thorps v. Astrue*, 873 F.Supp.2d 995 (2012) at 1008

²³⁴ See attached Appendix for Chaytor Biography

²³⁵ Congressional Serial Set, Enclosure for Treaty of 1819 Signed by Luis De Onis at Washington November 16, 1818, also published in newspaper article titled Patriotic Privateers. From the Baltimore Chronicle, 13th Inst. *American Beacon* (Norfolk, VA) July 20, 1819

Ayres government to pay his expenses.²³⁶ In 1824, creditors of the vessel, located in the U.S., sued Chaytor causing him to seek bankruptcy protection against the *Independencia*.

²³⁷

The *Atrevida* encountered unfortunate circumstances soon after the claim for the cochineal was filed. As the vessel was lying at anchor in preparations for departure back to sea with the *Independencia*, her magazine exploded resulting in the death of 23 persons aboard, including an American pilot. The vessel was a complete loss due to sinking.²³⁸

By the time the *Santissima* was decided in 1822, the practice of U.S. citizens involved with privateering was ending. The continued success of foreign consuls, like Chacon, bringing suit and recovering seized property and goods taken in violation of U.S. neutrality laws played a role since the privateers and investors could not enjoy the spoils of the capital intensive business.²³⁹ Additionally, the Transatlantic Treaty, or Adams-Onis Treaty, was signed and although the negotiation of the Florida and the Spanish-U.S. border was the primary goal, the treaty also resolved diplomatic concerns for American privateering.²⁴⁰

Conclusion

During the years of the *Santissima* litigation, the U.S. was still a young nation recovering from political instability while attempting to shape policy for foreign relations

²³⁶ Independence on the Quarterdeck, p. 15

²³⁷ Independence on the Quarterdeck, p.15

²³⁸ Article from the Norfolk Herald of May 7, *Melancholy Catastrophe*, *Alexandria Gazette* (Alexandria, VA) May 17, 1817

²³⁹ Kevyn Arlyck, *Plaintiffs v. Privateers: Litigation and Foreign Affairs in the Federal Courts, 1816-1822*. *Law and History Review*, Vol. 30 Issue 1, (February 2012), 245-278, p. 276

²⁴⁰ *Id.* at 276

with the greater powers in the Atlantic.²⁴¹ The *Santissima* was only one of the many Spanish consular litigations involving privateering cases, but together the cases brought attention to the nation's need to answer political and legal questions of the era regarding neutrality, sovereignty, and legitimacy.²⁴² Many of these cases, like the *Santissima*, reached the highest level of the nation's Court and played an immense role in defining the nation's ability to exercise its authority while upholding the rights and obligations under treaties and the law of nations.²⁴³

²⁴¹ Kevyn Arlyck, *Plaintiffs v. Privateers: Litigation and Foreign Affairs in the Federal Courts, 1816-1822*. *Law and History Review*, Vol. 30 Issue 1, (February 2012), p. 274

²⁴² *Id.* at 248

²⁴³ *Id.* at 249

APPENDIX

James (Diego) Chaytor

Believed to be born in 1775 or 1776, James Chaytor may have been one of the youngest sea captains from the mid-Atlantic region when he served as master aboard the schooner *John* during the year 1800.²⁴⁴ Chaytor had a lengthy career as a mariner and was deemed as “universally respected” and “the oldest and most experienced steamboat commander” in the Baltimore area upon his death in 1846.²⁴⁵

Chaytor lived in Baltimore with his wife Sarah and their two children, daughter Eliza and son James, Jr.²⁴⁶ As an adult, his daughter would marry the Honorable William G.D. Worthington, who was appointed as the U.S. Consul in Buenos Ayres during Chaytor’s commission there.²⁴⁷

Chaytor faithfully served the U.S. during the War of 1812 as a privateer and even relayed intelligence about planned attacks that he was able to gather while he was held aboard a British frigate after his brig was captured off the American coast.²⁴⁸ However, like other mariners in pursuit of fortune after the maritime industry declined when the war came to an end, Chaytor took advantage of the opportunities developing in South America. In 1816, Chaytor served as the master aboard the *Mammoth* on a voyage that would take him from Baltimore to Buenos Ayres and cause him to expatriate from his

²⁴⁴ David Head, “*Independence on the Quarterdeck: Three Baltimore Seafarers, Spanish America, and the Lives of Captains in the Early American Republic*” *The Northern Mariner*, XXIII, No.1, (January 2013), 4. (hereafter: *Independence on the Quarterdeck*) . However, a birth record was not found and conflicting biographical information exists according to http://es.wikipedia.org/wiki/James_Chaytor which cites that no reference is confirmed but declares Chaytor to be born in Baltimore in 1767.

²⁴⁵ Mortuary Notice published by Sun (Baltimore, MD), Vol. XVII, Issue 54, p. 2 (January 19, 1846)

²⁴⁶ *Independence of the Quarterdeck*, p.4

²⁴⁷ Marriage information on http://en.wikipedia.org/wiki/William_Grafton_Delaney_Worthington.

²⁴⁸ Chaytor provided information on planned attacks to the Norfolk and Florida area, Legislative report in the *Federal Republican* (Georgetown, DC), Vol. VII, Issue 930, p. 2

country to help fight for the independence of the United Provinces.²⁴⁹ Although Chaytor's family remained in Baltimore, he faithfully believed in the cause and even adopted the name Diego Chaytor, which he also used when he wrote to his wife.²⁵⁰

In the end, both Chaytor's financial and personal ambitions toward the cause were defeated. Chaytor left Buenos Ayres in 1824 and returned to his family in Baltimore where he also encountered financial issues and was declared an insolvent debtor.²⁵¹ In 1825, Chaytor went back to South America pursuing a career with the Colombian Navy, and even though he rose to a leadership position he permanently returned to Baltimore in 1828, where he was again declared insolvent.²⁵² Although Chaytor was plagued by debt, he continued working in the maritime industry and found a niche acting as an agent for the brokerage of goods, chartering of vessels, and providing information based on his vast knowledge of sailing. Eventually, with the introduction of steamboats, Chaytor expanded his horizons and began a career as a steamboat captain ferrying passengers from Baltimore to Philadelphia via the Chesapeake and Delaware Canal.²⁵³

²⁴⁹ Appellate Case File, Chaytor's claim and answer filed with District Court on April 22, 1817 and Chaytor's notice of expatriation to Thomas Halsey, Consul for Buenos Ayres dated May 16, 1816

²⁵⁰ David Head, *A Different Kind of Maritime Predation- South American Privateering from Baltimore, 1816-1820*. *International Journal of Naval History*, Vol. 7, No.2 (August 2008).

²⁵¹ *Independence on the Quarterdeck*, p.15 and Advertisement in Baltimore Patriot (Baltimore, MD), Vol. XXIV, Issue 50, pg. (August 31, 1824)

²⁵² *Independence on the Quarterdeck*, p.18 and advertisement in the Baltimore Patriot (Baltimore, MD), Vol. XXXIII, Issue 19, pg. 4 (January 22, 1829).

²⁵³ *Independence on the Quarterdeck*, p. 18