

FOREWORD

Title

Manella, Pujals & Co. v. Barry, 7 U.S. 415 (1806)
The Risks of Maritime Trade During Wartime

Author

Nicole Whitecar

Document Type

Article

Publication Date

2014

Keywords

Spanish-American Trade, privateer, Quasi-War, prize law, agent, principal, maritime trade, merchant, tobacco, contraband

Abstract

Manella v. Barry highlights issues of agency and contract interpretation in the international maritime trade context. In the midst of America's entry into the Quasi-War with France, a Baltimore shipping merchant brokered a large tobacco trade with a Spanish firm and experienced the risks of conducting trade over the high seas during wartime. Three out of seven ships were captured, and the Spanish firm sought to recover from the Baltimore merchant for the price of the lost cargo. Both the Circuit Court of Maryland and John Marshall's Supreme Court sided with James Barry, holding that the Baltimore merchant was not liable for the loss because he followed the instructions of the agent sent to broker the deal.

Disciplines

Maritime History, Baltimore History, Prize Law, Agency Law

Manella, Pujals & Co. v. Barry, 7 U.S. 415 (1806)

The Risks of Maritime Trade During Wartime



Nicole Whitecar

J.D. Candidate May, 2016

University of Maryland Francis King Carey School of Law

Legal History Seminar: Baltimore's Maritime Cases in the U.S. Supreme Court

TABLE OF CONTENTS

I. INTRODUCTION.....	4
a. Spanish-American Trade Relations	4
b. The Role of Spanish Consuls.....	6
c. The Chesapeake Tobacco Trade.....	8
II. NARRATIVE OF THE FACTS.....	16
III. THE SUPREME COURT DECISION	23
a. Legal Background	23
b. The Arguments	26
c. The Decision.....	29
d. Analysis	30
III. EFFECT OF THE DECISION	32
IV. WHAT HAPPENED TO THE PEOPLE IN THE STORY	36
V. CONCLUSION	37
VI. APPENDIX	38
a. Profile of James Barry	38

I. INTRODUCTION

a. Spanish-American Trade Relations

Spanish-American trade relations during the American Revolution set the stage for the trading relationship between James Barry and Spanish firm Manella, Pujals & Co. (“Manella”) at issue in *Manella v. Barry*.¹ The Spanish empire at this time was the fourth largest empire in history, and the restrictive economic policies of the crown existed to preserve and later regain that status.² Because of its geographic proximity, Cuba was an attractive and convenient trading partner for American merchants, and was the initial Spanish-American trading venue. Flour was the primary import into Cuba from the Thirteen Colonies, and Spain could not adequately supply the need for flour in Cuba because of problems with transportation and high demand from the other Spanish colonies.³ During the American Revolution, Spanish ships supplying Havana could not be assured safe passage because of vulnerability to privateers between Cuba and Europe, so the Spanish crown had to allow America to trade with Cuba and nearby colonies for flour and other needs. In 1780, the first American ships delivered goods to Cuba, and imports grew from 1780 to 1783.⁴

Spain controlled imports to the colonies through a policy of exclusivism, but could not meet the colonies’ demand for goods during wartime, in part because of losses at the hands of English and French privateers.⁵ The crown was so staunch in its mercantilist economic policy

¹ 7 U.S. 415 (1806).

² <http://basementgeographer.com/counting-down-the-ten-largest-empires-in-history-nos-5-1/>.

³ James A. Lewis, *Anglo-American Entrepreneurs in Havana: The Background and Significance of the Expulsion of 1784 – 1785*, in *THE NORTH AMERICAN ROLE IN THE SPANISH IMPERIAL ECONOMY, 1760-1819*, 112, 116 (Jacques A. Barbier and Allan J. Kuethe, eds., 1984).

⁴ *Id.* at note accompanying Table 38.

⁵ John H. Coatsworth, *American Trade with European Colonies in the Caribbean and South America, 1790 – 1812*, 24 *THE WILLIAM AND MARY QUARTERLY* 243, 243 (1967).

that rather than relax import regulations when demand from the colonies peaked in the 1790s, Spain issued debt and levied taxes to fund government operations during wartime.⁶

Spain's import policy also created a corrupt trading climate rife with unfair competition between domestic merchants. The crown's mercantilistic policies benefitted larger merchants, and smaller merchants could not offer competitive prices under the crown's high taxes. This led smaller merchants to trade illegally outside of the royal monopoly, usually with foreign merchants.⁷ Thus, during the period from 1793 to 1799, American exports to Spanish America rose steadily and peaked at \$8.9 million, accounting for thirty-five percent of U.S. Exports.⁸

This environment of domestic merchants evading government regulation through clandestine trade practices characterized the tobacco industry in particular. The Spanish crown used a royal monopoly to regulate the tobacco industry. In the 1770s, the most popular type of tobacco in Spain, a variety called *cura seca*, was produced in Venezuela.⁹ In 1777, the Spanish crown established a monopoly for Venezuelan tobacco, controlling the amount grown and mandating that the entire crop be sold to the royal monopoly.¹⁰ The tobacco monopoly accounted for twenty percent of the King's revenue, and illustrates the crown's significant dependence on the colonies as a source of income.¹¹ Any surplus tobacco was marketed for sale by the monopoly to North American merchants who had previously been allowed trading privileges.¹² These merchants would sell the tobacco domestically or export it to foreign

⁶ Harold A. Bierck, *Tobacco Marketing in Venezuela, 1798-1799: An Aspect of Spanish Mercantilistic Revisionism*, 39 THE BUSINESS HISTORY REVIEW 494, 490 (1965).

⁷ See Roy F. Nichols, *Trade Relations and the Establishment of the United States Consulates in Spanish America, 1779 – 1809*, 13 HISP. AM. HIST. REV. 289, 289 (1933).

⁸ John H. Coatsworth, *supra* note 5 at 252.

⁹ Harold A. Bierck, *supra* note 6 at 492.

¹⁰ *Id.*

¹¹ DAVID R. RINGROSE, SPAIN, EUROPE, AND THE 'SPANISH MIRACLE', 1700-1900, 113 (Cambridge University Press 1996).

¹² Harold A. Bierck, *supra* note 6 at 493.

countries such as Holland.¹³ Eventually there came to be a tobacco surplus in Venezuela, and in 1796, the tobacco monopoly attempted to sell tobacco to neutral non-American merchants in exchange for trading rights with Spain.¹⁴ These efforts were unsuccessful, so the monopoly looked to the United States for potential sales opportunities, finding great success until 1799 when the crown closed all trade with foreign neutrals.¹⁵

b. The Role of Spanish Consuls

Upon the signing of a treaty negotiated by Thomas Pinkney in 1795, Spain began sending consuls to the United States.¹⁶ By the end of that year, Spain had consuls in eight major American cities.¹⁷ The crown employed merchants as Spanish consuls because merchants had already built trading and social networks with United States merchants, so they had a foundation from which to build ongoing business relationships.¹⁸ The consuls in Cadíz and America forged business relationships on behalf of the crown because they were able to identify merchants on both shores who were willing to buy and sell goods on consignment.¹⁹ These consignment relationships were lucrative for both parties, as evidenced by the records of John Stoughton (c. 1745–1820).²⁰

As Spanish consul for New England from 1795–1820, Stoughton brokered relationships between at least thirty-six Spanish merchants, including Bernardo Lacosta, who was involved in *Manella v. Barry*.²¹ Stoughton's son in law, José de Jáudenes, named Stoughton to his position

¹³ *Id.* at 492.

¹⁴ *Id.* at 494.

¹⁵ *Id.* at 495.

¹⁶ Sean Perrone, *Spanish Consuls and Trade Networks between Spain and the United States, 1795–1820*, 38 J. ASS'N. FOR SPANISH AND PORTUGUESE HIST. STUD., 77 (2013).

¹⁷ *Id.* at 76.

¹⁸ *Id.* at 77.

¹⁹ Harold A. Bierck, *supra* note 6 at 492.

²⁰ Sean Perrone, *supra* note 16 at 75.

²¹ *Id.* at 93.

as Spanish consul to the United States from 1791 – 1795.²² Jáudenes' successor was the Marqués de Casa Irujo, business associate of James Barry.²³ Thus, it is likely that Stoughton and Barry were business associates in the Spanish-American trade networks, though it was Bishop John Carroll who first introduced Barry to Jáudenes and Irujo.²⁴

Merchants initially shipped goods to Cuba through permits controlled by Spanish consuls which required the payment of fees of up to one third the cost of the commodities being traded.²⁵ When Spain reentered the war in 1796, trade policies shifted from a permit system to a monopoly system, but existing relationships between consuls and merchants continued to be the primary avenue for doing business.²⁶ For example, Spanish Minister Irujo called on James Barry to supply 20,000 barrels of flour to Puerto Rico on credit in exchange for permission to trade with Cuba.²⁷ Irujo and Barry had established a business relationship under the permit system, which they continued to leverage despite the change in the crown's import policy. By November of 1797, the royal monopolies could not meet the demand for supplies and the crown opened Cuba and all other Spanish ports to trade with American merchants.²⁸

The period of Spanish prosperity from 1797 – 1799 consisted in part of profits from contraband trade.²⁹ The importation of contraband tobacco was a profitable endeavor because of the high taxes levied by the Crown's Venezuelan tobacco monopoly.³⁰ Contraband trade was significant enough to be included in an accounting of Spain's payments for and income from

²² *Id.* at 77.

²³ Linda K. Salvucci, *Anglo-American Merchants and Stratagems for Success in Spanish Imperial Markets, 1783-1807*, in *THE NORTH AMERICAN ROLE IN THE SPANISH IMPERIAL ECONOMY, 1760-1819*, 127, 129 (Jacques A. Barbier and Allan J. Kuethe, eds., 1984).

²⁴ *See infra* Part VII.

²⁵ Roy F. Nichols, *supra* note 7 at 294.

²⁶ *Id.* at 296.

²⁷ *Id.* at note 23.

²⁸ *Id.*

²⁹ *Id.* at note 25.

³⁰ *See* FREDERICK AUGUSTUS FISCHER, *TRAVELS IN SPAIN IN 1797 AND 1798* (A. Strahan, Printers-Street 1802) (full text available on Google Books); Roy F. Nichols, *supra* note 7 at note 12.

trade with her colonial territories.³¹ From 1797 – 1807, the proportion of Spain’s income from illegal to legal exports from the colonies was over 0.75 to 1.³²

c. The Chesapeake Tobacco Trade

North American merchants became permanently involved in significant business relations in Spain and her colonies during wartime for both Spain and America.³³ In 1798, America had entered the Quasi-War with France, and Spain was at war with England and France during the latter part of the eighteenth century in an effort to regain status as a world power.³⁴ The years from 1793 to 1808 were a period of unprecedented prosperity for United States farmers and merchants as military suppliers to Spain.³⁵ Beginning in 1779, British naval blockades crippled Spanish delivery of supplies to the colonies, leading Spain to have to allow American colonies to trade with Cuba.³⁶ This went against the pervading Spanish economic policy of mercantilism which restricted trade with foreign nations in favor of monopolies on supplies and food heavily taxed by the Crown.³⁷

Tobacco was the primary American agricultural export during the colonial period when exports to England peaked at 100 million pounds in 1776.³⁸ There was a demand for tobacco in America because early British settlers were accustomed and likely addicted to using tobacco in England. Native Americans had their own tobacco habit, but smoked a different type of tobacco,

³¹ Javier Cuenca-Esteban, *Statistics of Spain’s Colonial Trade 1747 – 1820: New Estimates and Comparisons with Great Britain*, 26 J. IBERIAN AND LATIN AM. ECON. HIST. 323, Table 3 (2008).

³² *Id.*

³³ Harold A. Bierck, *supra* note 6 at 493.

³⁴ *Id.* at 490.

³⁵ Javier Cuenca Esteban, *Trends and Cycles in U.S. Trade with Spain and the Spanish Empire, 1790 – 1819*, 44 J. ECON. HIST. 521, 521 (1984).

³⁶ Roy F. Nichols, *supra* note 7 at 293.

³⁷ *See, e.g., id.* at 290.

³⁸ Stuart Allan, *A Marketing History of the U.S. Tobacco Industry: From Colonial Times to the Great Depression*, Florida Atlantic University (1995), <http://faculty.quinnipiac.edu/charm/CHARM%20proceedings/CHARM%20article%20archive%20pdf%20format/VOLUME%207%201995/237%20alan.pdf>.

which English settlers found too harsh compared to Spanish tobacco.³⁹ In the early seventeenth century, Spain enjoyed a monopoly on tobacco, and strong anti-Spanish sentiment among British settlers led them to risk their lives to smuggle seeds into the United States and grow their own tobacco rather than patronize the Spanish crown.⁴⁰

Tobacco, known colloquially as sotweed,⁴¹ was the colonies' principal export during the colonial period, and its production was concentrated in the Chesapeake tidewater region where the crop grew abundantly.⁴² In Maryland and Virginia around the Potomac River, planters grew a common variety of tobacco called orinoco.⁴³ In the Chesapeake during the seventeenth century, ninety percent of exports to Great Britain were tobacco, accounting for half of total colonial exports to the home country.⁴⁴ After John Rolfe first planted tobacco in Jamestown which he smuggled from Venezuela, production exploded from 2,300 pounds in 1615 to 500,000 pounds 1620 and over 15 million pounds in 1670.⁴⁵ This enormous supply went directly to England, because just as Spain had with her colonies, England imposed a policy of mercantilism on exports from the American colonies prior to the Revolution.⁴⁶

However, British consumers were far from being the only end purchasers of Chesapeake tobacco.⁴⁷ In the latter part of the eighteenth century, eighty-five percent of Chesapeake tobacco shipped to England was re-exported to Holland, Germany and France.⁴⁸ Chesapeake tobacco

³⁹ Chesapeake Bay, The Colonial Period, 1607–1780, Mariner's Museum, 2002
<http://www.marinersmuseum.org/sites/micro/cbhf/economy/cbe001.html>.

⁴⁰ Stuart Allen, *supra* note 38 at 240.

⁴¹ Henry Miller, The Lure of Sotweed: Tobacco and Maryland History,
<http://www.hsmcdigshistory.org/pdf/Tobacco.pdf>.

⁴² Gene Borio, Economic Aspects of Tobacco during the Colonial Period 1612–1776,
<http://archive.tobacco.org/History/colonialtobacco.html>.

⁴³ Lorena S. Walsh, *Plantation Management in the Chesapeake, 1620-1820*, J. ECON. HIST., 396 (1989).

⁴⁴ Jacob M. Price, *The Economic Growth of the Chesapeake and the European Market, 1697-1775*, J. ECON. HIST., 496 (1964).

⁴⁵ Miller *supra* note 41; Price *supra* note 44 at 497.

⁴⁶ Miller *supra* note 41.

⁴⁷ Price *supra* note 44 at 499.

⁴⁸ *Id.*

was cheaper than tobacco grown in the Spanish colonies, likely because of the significant taxes levied by the Spanish crown's tobacco monopoly.⁴⁹ Regarding France in particular, it seems unlikely that the French would be involved in trading with Great Britain during a period in which the two countries fought seven wars and imposed economic pressure on one another through exclusionary trading practices.⁵⁰ Nevertheless, it is possible if not likely that in times of peace and in times of war, leading right up to the time of Barry's transaction with Manella, much of the tobacco used in France originated in the Chesapeake.

This could have happened in two ways. During times of war, proceeds from French privateers capturing ships laded with Chesapeake tobacco were enough to meet the full supply of the French tobacco monopoly without having to trade with England.⁵¹ This occurred in the early part of the seventeenth century, and shows that Chesapeake tobacco was specifically sought by French privateers like those who captured the *Minerva* in *Manella v. Barry*.⁵² During peace time, French trade with England was open, and France operated a monopoly on tobacco through John Law's Company of the Indies.⁵³ Until 1744 imported enough tobacco to become the largest re-export market in the world for Chesapeake tobacco.⁵⁴ It is worth noting that James Barry had business ties with Thomas Law's East India Trading Company from his time living in India.⁵⁵ Though this was after John Law's time, Barry's mercantile involvement with the Law family was likely a factor that led to the growth of his business, establishing him as a merchant in the Chesapeake with enough capacity and influence to satisfy an order as large as Manella's.

⁴⁹ *See id* at 500.

⁵⁰ *Id.* at 501.

⁵¹ Price *supra* note 44 at 524.

⁵² *See* chart on p.15 and text accompanying note 112.

⁵³ Price *supra* note 44 at 524.

⁵⁴ *Id.* at 505.

⁵⁵ *See infra* notes 253–254 and accompanying text.

Beyond being a source of revenue from exports to England, tobacco was of great importance domestically. The cash crop served as a form of currency and taxation in the Chesapeake when gold and silver were scarce.⁵⁶ Taxes on tobacco were also a principal source of government revenue in Maryland, yielding \$3,784 per year in 1700.⁵⁷ The principal challenges with tobacco cultivation were the significant labor necessary for cultivation and the exhaustion of a piece of land after three years of growing tobacco.⁵⁸ These factors led Maryland tobacco farmers to invest heavily in slaves and exploit land owned by Native Americans.⁵⁹ These challenges also meant that plantation owners in Maryland and Virginia combined tobacco cultivation with grain and wheat farming, which rose throughout the Chesapeake region beginning in 1730.⁶⁰

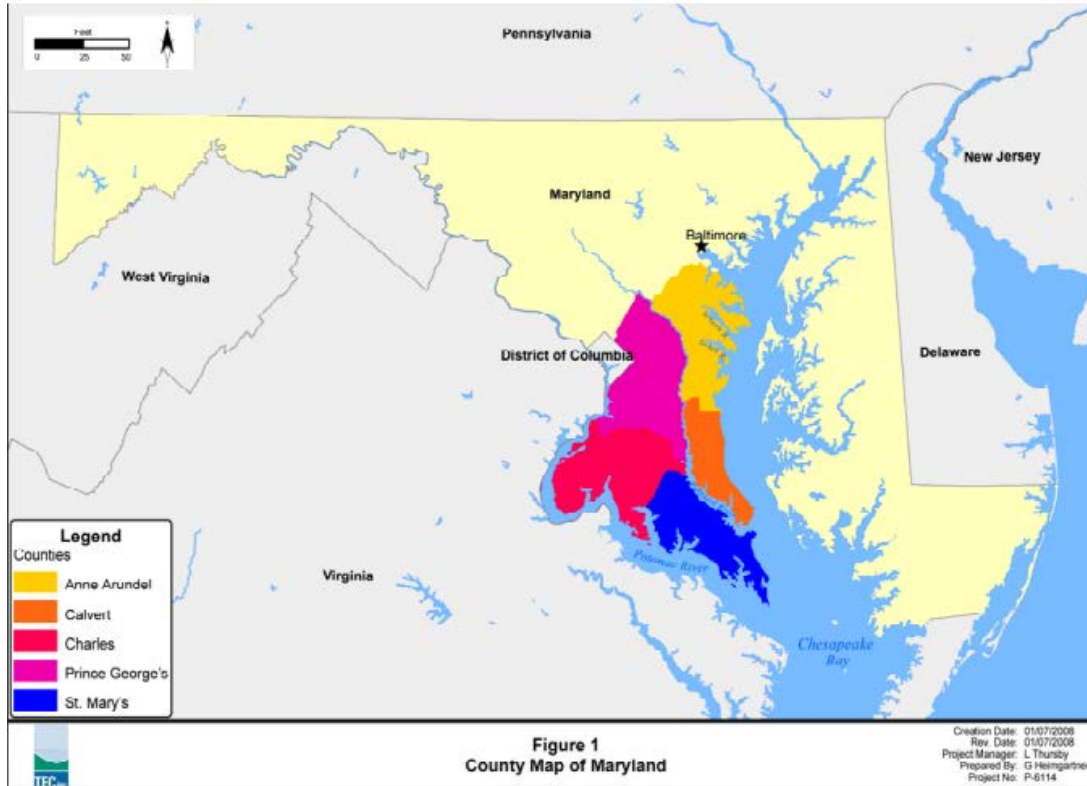
⁵⁶ Miller *supra* note 41.

⁵⁷ *Id.*

⁵⁸ Price *supra* note 44 at 511.

⁵⁹ *Id.* (“In some areas slave populations grew from 7% to 35% of the Chesapeake regions’ population between 1690 – 1750.”); *see also* Lorena S. Walsh, *Plantation Management in the Chesapeake, 1620-1820*, J. ECON. HIST., 393 (1989).

⁶⁰ Walsh *supra* note 43 at 397.



61

The first Maryland tobacco farms were organized around the Potomac river in Southern Maryland.⁶² After the Revolution, tobacco production in the state moved westward, but never matched the scope of early production in Anne Arundel, Calvert, Charles, Prince George's and St. Mary's counties.⁶³ During the colonial period, Catholic families established the state of Maryland as a whole, and these counties in particular, as a haven where Catholics coming from England could find religious toleration.⁶⁴ George Calvert, a Catholic and the first Lord Baltimore, named the state and St. Mary's County for the Catholic queen Henrietta Maria, wife

⁶¹ Map of Southern Maryland counties initially involved in tobacco farming, National Register of Historic Places, United States Department of the Interior National Park Service, 3 (2002), http://www.preservationmaryland.org/uploads/file/Tobacco%20Barns/SoMD%20Tobacco%20Barns%20MPD_Final.pdf.

⁶² National Register of Historic Places, United States Department of the Interior National Park Service, 1 (2002), http://www.preservationmaryland.org/uploads/file/Tobacco%20Barns/SoMD%20Tobacco%20Barns%20MPD_Final.pdf.

⁶³ *Id.* at 2.

⁶⁴ New Advent, Catholic Encyclopedia, Archdiocese of Baltimore, Colonial Period, <http://www.newadvent.org/cathen/02228a.htm>.

of Charles I of England.⁶⁵ Accordingly, land ownership in these counties was dominated by Catholic families. These included the influential family of Daniel Carroll, whose nephew Charles Carroll of Carrollton signed the Declaration of Independence.⁶⁶ Daniel Carroll's own sons also enjoyed prominence, including John Carroll who was named the first Roman Catholic bishop in the United States as Archbishop of Baltimore in 1790.⁶⁷ A close friend of James Barry's, Bishop John Carroll introduced Barry to the Spanish consuls with whom he initially did business.⁶⁸ This introduction eventually led to Barry's involvement in the transaction at issue in *Manella v. Barry*.⁶⁹



70

Three factors during the eighteenth century impacted tobacco production in the Chesapeake and the avenues through which the crop was sold: the Tobacco Inspection Acts of

⁶⁵ *Id.*

⁶⁶ *See e.g.*, Signers of the Declaration of Independence, <http://www.ushistory.org/declaration/signers/carroll.htm>.

⁶⁷ J. THOMAS SCHARF, HISTORY OF MARYLAND, VOL. II, History of Maryland, 220 (Tradition Press, 1967).

⁶⁸ *See infra* notes 233–239 and accompanying text.

⁶⁹ *Id.*

⁷⁰ Tobacco barn in Prince Frederick, Calvert County, Maryland, National Register of Historic Places, United States Department of the Interior National Park Service, 66 (2002), http://www.preservationmaryland.org/uploads/file/Tobacco%20Barns/SoMD%20Tobacco%20Barns%20MPD_Final.pdf.

1747, the American Revolution, and the growth of local urban markets.⁷¹ When issues with comparative tobacco quality arose and demand from England decreased, Virginia and Maryland passed Inspection Acts which required all tobacco being exported to pass through a central warehouse where the tobacco could be inspected.⁷² This led to steadily increasing revenues for tobacco farmers up until the American Revolution, and the concentration of tobacco farming in large plantations which could absorb the increased costs associated with meeting quality requirements.⁷³ The inspection warehouse system also allowed for faster international shipping times and better packaging to preclude spoilage during overseas shipments.⁷⁴

During the Revolution, the Chesapeake experienced an economic depression as many planters were called to military service and plantations experienced debilitating losses from British raids.⁷⁵ Following the Revolution, the Chesapeake tobacco market carried more risk than in the early seventeenth century when farmers could depend on high demand from British importers.⁷⁶ Price fluctuation and falling land prices were common post-Revolution challenges which contributed to the concentration of tobacco farming in larger producers, many from western Maryland.⁷⁷ With the concentration of production in fewer growers also came greater control of the tobacco market by domestic merchants. No longer did British mercantilism control the destiny of Chesapeake tobacco, rather marketing was left to international sales through businessmen with existing trading networks such as James Barry.⁷⁸ In addition, after the Revolution, tobacco growing areas expanded beyond the Chesapeake tidewater region, moving

⁷¹ See Walsh *supra* note 43 at 401.

⁷² Mary McKinney Schweitzer, *Economic Regulation and the Colonial Economy: The Maryland Tobacco Inspection Act of 1747*, J. ECON. HIST., 566 (1980).

⁷³ *Id.*

⁷⁴ *Id.* at 565.

⁷⁵ *Id.*

⁷⁶ Walsh *supra* note 43 at 401.

⁷⁷ *Id.*

⁷⁸ See *infra* Part VII.

to the west and south.⁷⁹ These regions produced different types of tobacco, allowing Maryland and Virginia plantations to accommodate changing tastes in the European market for stronger flavored tobacco.⁸⁰

The expansion of tobacco plantations beyond the tidewater region was one factor that led to the rise of “fall line towns” along the Chesapeake such as Baltimore.⁸¹ The topography of the tidewater and piedmont waterways prohibited ships from passing further inland than the fall line boundary.⁸² The earliest Chesapeake planters established tobacco plantations inside of the fall line where they had ocean access and could ship tobacco directly to England.⁸³ Once plantations expanded beyond the fall lines, growers set up warehouses and shipping centers at the fall lines of the westward flowing rivers so that they had access to waterways for transporting their exports.⁸⁴ This development along the fall line eventually grew into towns including Baltimore, Georgetown and Richmond.⁸⁵ Therefore, by 1798, large shipments of tobacco such as Barry’s would have been sent from Baltimore or other fall line towns rather than directly from the individual planters who sourced the tobacco.

In addition, increased populations in these towns established urban markets for agricultural goods, and increased transportation of cargo by road and water further concentrated agricultural exports in industrialized cities like Baltimore. One factor adding to the industrialization of Baltimore was the growth of the export market for flour. In the late eighteenth century, grain became a focus for Maryland planters responding to increased foreign

⁷⁹ National Register of Historic Places, United States Department of the Interior National Park Service, 13 (2002), http://www.preservationmaryland.org/uploads/file/Tobacco%20Barns/SoMD%20Tobacco%20Barns%20MPD_Final.pdf.

⁸⁰ *Id.*

⁸¹ ARTHUR PIERCE MIDDLETON, *TOBACCO COAST: A MARITIME HISTORY OF CHESAPEAKE BAY IN THE COLONIAL ERA* 49 (Johns Hopkins University Press, 1984).

⁸² *Id.* at 48.

⁸³ *Id.*

⁸⁴ *Id.* at 49.

⁸⁵ *Id.*

demand for flour and easy cultivation in coastal soils.⁸⁶ Flour mills were then concentrated in industrialized centers, coinciding with growth in population and commerce in Baltimore from 1790 – 1812.⁸⁷ Additionally, by 1810 road systems to Baltimore had improved, decreasing shipping times.⁸⁸ This meant that local planters could more easily meet the demand for perishable goods coming from new populations in urban centers.⁸⁹ Thus, with increased industrialization from the milling industry and an increase in overall population, Baltimore became a major shipping center for the Chesapeake region, eventually becoming the third largest port city in the union.⁹⁰



91

II. NARRATIVE OF THE FACTS

A large international purchase of American tobacco began the conflict between plaintiff Manella, Pujals & Co., and defendant James Barry. Manella, a Spanish merchant, sought to

⁸⁶ See, e.g., Pearle Blood, *Factors in the Economic Development of Baltimore, Maryland*, ECONOMIC GEOGRAPHY, 189 (1937).

⁸⁷ *Id.*

⁸⁸ Jo N. Hays, *Overlapping Hinterlands: York, Philadelphia, and Baltimore, 1800-1850*, PENN. MAG. OF HIST. AND BIOG., 301 (1992).

⁸⁹ Walsh *supra* note 43 at 401.

⁹⁰ See, e.g., Ruthella Mory Bibbins, *The City of Baltimore, 1797 – 1850*, in BALTIMORE: ITS HISTORY AND ITS PEOPLE 6, 63 (Lewis Historical Publishing Company, 1912).

⁹¹ Maryland and Virginia were the primary American producers of tobacco in the nineteenth century. This image portrays tobacco farming in Maryland (<https://dutchpipesmoker.wordpress.com/2013/04/>).

purchase 1,528 hogsheads of American tobacco, a quantity worth over \$2.7 million dollars today.⁹² At the time, the Spanish Crown operated a monopoly on the tobacco market, and only sold Venezuelan tobacco.⁹³ In 1798 at the time of this transaction, Spain had reentered the French Revolution as a French ally, following a one year period of neutrality prior to which Spain was engaged in the war on the British side.⁹⁴ Because of the threat of British and French privateering in West Indian waters,⁹⁵ Spain had to procure tobacco from a neutral party. The entire transaction between Manella and Barry occurred because America was a neutral party at the time of the transaction, and the tobacco could be shipped without threat of seizure by an enemy vessel. However, America's neutral status at sea was short lived because by the summer of 1798, the same year the transaction with Manella was initiated, America was engaged in the Quasi-War with France and subject to attacks by French privateers on its merchant ships.



96



97

⁹² Calculation of \$204,077.77 in today's dollars using the Inflation Calculator, <http://www.westegg.com/inflation/infl.cgi>.

⁹³ Harold A. Bierck, *supra* note 9 at 490.

⁹⁴ Roy F. Nichols, *supra* note 7 at 295.

⁹⁵ *Id.* at 293.

⁹⁶ Tobacco was shipped in a wooden barrel called a hogshead, shown in this image. A hogshead could hold up to 1,000 pounds of tobacco (http://amhistory.si.edu/onthewater/exhibition/1_3.html).

To facilitate the tobacco purchase, Manella's associate, Bernardo Lacosta,⁹⁸ wrote a letter in Spanish to his American contact James Barry asking him to secure and ship the tobacco under Barry's name. Barry was to be paid a five percent commission. This type of business contact between Spanish and North American merchant friends who had previously done business together was typical of trade networks of the time period given the trade restrictions that existed.⁹⁹ James Barry had experience doing business with Spanish merchants, beginning with his introduction to Spanish diplomats José de Jaudenes, Marqués de Casa Irujo, and José Ignazio Viar by Bishop John Carroll in the 1790's.¹⁰⁰ This trading relationship began because Barry was able to supply flour on credit to Spain when it could not satisfy the demand from Puerto Rico, a Spanish colony at the time.¹⁰¹



102

In his letter to Barry of January 27, 1798, Bernardo Lacosta clarified Juan Alonzo Menedez Conde's (Menendez) role in the transaction, writing that "Mr. Conde goes to Baltimore

⁹⁷ The tobacco was pressed into the hogshead by plantation workers, sometimes slaves, who would pile the dried leaves into the barrel and use a lever to compress the tobacco (http://amhistory.si.edu/onthewater/exhibition/1_3.html).

⁹⁸ The case papers refer to this man as Bernardo Lacosta, but other sources refer to him as Bernardo La Costa.

⁹⁹ Perrone, Sean, *supra* note 16 at 79.

¹⁰⁰ Linda K. Salvucci, *supra* note 23 at 129.

¹⁰¹ *See infra* Part VII.A.

¹⁰² Portrait of Marqués de Casa Irujo by Gilbert Stuart, from Linda K. Salvucci, *Merchants and Diplomats: Philadelphia's Early Trade with Cuba*, 3 PENNSYLVANIA LEGACIES 6, 8 (2003).

as agent¹⁰³ of the house of Messrs. Manella, Pujals & Co. of this place, principally interested in the importation of tobacco for this kingdom.”¹⁰⁴ The letter enumerated in eleven points exactly how the tobacco was to be shipped: in six to eight vessels, with American captains and with a bill of lading and other papers in James Barry’s name.¹⁰⁵ Included in the ships’ papers was to be a letter from Barry stating that the tobacco was consigned to Lacosta, Manella, and one other firm in Cadíz. Lacosta also stipulated that if the crown would not let the tobacco be unloaded at Cadíz, the ships were to proceed to Genoa.¹⁰⁶ This suggests that Barry’s tobacco was to be sold as contraband since there were instructions from Manella about what to do should the tobacco be restricted from entering Spain at Cadíz. The fifth point indicated that there should be two sets of papers aboard each ship, one showing that the vessel was destined for Cadíz, and one for Genoa.¹⁰⁷ Additionally, Lacosta wrote that the tobacco should not be shipped at more than ten dollars per quintal, but that if none was available at that price, Barry could consult with Menendez about whether they need to go over this price by \$0.25 or \$0.50 so as to prevent delay.¹⁰⁸ Furthermore, Lacosta directed Barry to draw on creditors from Hamburg, London, Amsterdam, and Lisbon.¹⁰⁹ Lacosta also wrote in this letter, “I refer you to the verbal communication of the bearer of this subject who is sent on purpose to superintend the shipment.”¹¹⁰ Menendez delivered the letter to Barry on March 22, 1798, and shortly thereafter Barry began to ship the tobacco.

In accordance with Lacosta’s instructions, Barry shipped the tobacco to Cadíz as follows:

¹⁰³ The word ‘agent’ was underlined in the circuit court record.

¹⁰⁴ *Manella, Pujals, and Co. v. James Barry*, 7 U.S. 415, 416 (1806).

¹⁰⁵ *Id.* at 416–18.

¹⁰⁶ *Id.* at 417.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 418.

¹⁰⁹ *Id.*

¹¹⁰ The word ‘superintend’ was underlined in the circuit court record.

Shipping Date	Vessel Name	Vessel Nationality	Hogsheads of Tobacco	Value of Tobacco (\$)	Shipped To	Shipped on Account of
April 28, 1798	<i>Muqueni</i>	Moorish	62	8,846.36	Messrs. Gahn & Co.	James Barry
May 18, 1798	<i>Minerva</i>	Danish	270	27,868.35	Messrs. Pablo, Greppi, Marliani & Co.	James Barry
May 26, 1798	<i>Polly and Nancy</i>	American	500	60,914.56	Bernardo Lacosta	James Barry
July 10, 1798	<i>Felicity</i>	American	100	13,876.48	Messrs. Gahn & Co.	Don Carlos Longhy
July 23, 1798	<i>Susanna</i>	American	117	17,269.77	Messrs. Pablo, Greppi, Marliani & Co.	Don Carlos Longhy
August 16, 1798	<i>Henrietta</i>	American	288	43,064.54	Bernardo Lacosta	Don Carlos Longhy
November 8, 1798	<i>Fly</i>	American	191		Bernardo Lacosta	James Barry

Of the seven ships sent for Cadíz, the British captured the *Muqueni* and *Henrietta* and the French captured the *Minerva*.¹¹¹ Four out of seven ships arrived safely at their destination.¹¹² At trial, both sides agreed that Menendez was present when Barry chartered the Moorish and Danish ships, and that Menendez approved those vessels because they were of neutral nationality and American vessels were not available.¹¹³ In giving his verbal approval, Menendez showed Robert Barry, nephew and business associate of James Barry, a letter written in Spanish authorizing the

¹¹¹ *Manella*, 7 U.S. at 420.

¹¹² *Id.*

¹¹³ *Id.* at 425.

verbal instructions.¹¹⁴ In two letters dated May 28th and 29th, 1798, Menendez wrote to Barry confirming the shipments.¹¹⁵

Menendez wrote again to Barry on June 14, 1798, expressing concern over America's entry into war with France and the attendant loss of neutrality status.¹¹⁶ Menendez had left America to return to Spain on June 4, 1798 from Alexandria.¹¹⁷ In this letter, Menendez directed the remainder of the shipments to be made on Danish or Swedish vessels to Messrs. Pablo, Greppi, Marliani & Co., with papers in the name of Charles Longhy of Genoa stating explicitly that Barry is acting as Longhy's agent.¹¹⁸ Menendez included in letters to Messrs. Pablo, Greppi, Marliani & Co. that a letter should accompany the shipments of cargo for the sole purpose of explicating the agency relationship between Barry and Longhy.¹¹⁹ Additionally, Menendez provided instructions for making the shipments on American vessels in case Barry had already chartered them.¹²⁰ In this scenario as well, Menendez took pains to ensure that the cargo was safe from capture by the French, even if the vessel itself was taken by a French privateer. Barry received this letter before the shipment on the *Henrietta* was made.¹²¹ Menendez's concerns came to fruition when the British captured the *Henrietta*.

On the same day, Menendez also wrote to Robert Barry, stating that there were to be two separate invoices accompanying the cargo.¹²² One invoice was to be sent and charged to Bernardo Lacosta with a \$2.50 per quintal overcharge, and one with the real costs was to be sent

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 421.

¹¹⁶ *Id.* at 422.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 423.

¹²¹ *Id.* at 424.

¹²² *Id.*

to Mr. Joseph Anthony de Sola, administrator of the king's tobacco stores in Cadíz.¹²³ De Sola was also to receive a copy of the invoice with the overcharges sent to Lacosta.¹²⁴

To recover for the cargo lost at sea to the French and British, Manella sued in the Circuit Court of Maryland for an initial sum of \$100,000, the amount Manella had advanced to Barry to ship the tobacco.¹²⁵ Manella's claim was of trespass on the case, a catchall tort used at the time to recover damages resulting indirectly from the defendant's actions.¹²⁶ The amount claimed was later amended to \$200,000 after Barry failed to appear in court.¹²⁷ It is likely that Barry did not appear in court because he was outside the court's jurisdiction. In 1800 at the time of his trial, Barry had moved to Washington, D.C. and later moved to New York.¹²⁸ In Barry's absence, court marshal David Hopkins called Barry's nephew Robert Barry and Hugh Thompson to appear in court on James Barry's behalf on May 7, 1801.¹²⁹ Attorneys Robert Goodloe Harper and John Purviance represented Manella, and Walter Dorsey, Luther Martin, and William Pinkney represented Barry.¹³⁰ A Petit Jury of twenty before Chief Justice Oliver Ellsworth found for Barry, awarding \$18 in court costs on May 1, 1805.¹³¹

Manella appealed, filing a writ of error with the Supreme Court with two bills of exceptions.¹³² The first contested the translation of the phrase "para presenter la expedición" in Lacosta's letter of January 27, 1798.¹³³ Manella argued that this phrase meant "to be present at,

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ U.S. Circuit Court of Maryland Case Files, http://mdhistory.net/nara_m214/manella_nara_m214_9_244/html/manella_nara_m214_9_244-0005.html.

¹²⁶ <http://legal-dictionary.thefreedictionary.com/Trespass+on+the+case>.

¹²⁷ U.S. Circuit Court of Maryland Case Files, http://mdhistory.net/nara_m214/manella_nara_m214_9_244/html/manella_nara_m214_9_244-0005.html.

¹²⁸ *See infra* text accompanying notes 208–9.

¹²⁹ U.S. Circuit Court of Maryland Case Files, http://mdhistory.net/nara_m214/manella_nara_m214_9_244/html/manella_nara_m214_9_244-0005.html.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Manella, Pujals, and Co. v. James Barry*, 7 U.S. 415, 415 (1806).

¹³³ The contested phrase refers to Menendez's involvement in the shipments of tobacco from Baltimore.

or assist in, the shipments” as opposed to the translation used in the Circuit Court case papers, “to *superintend* the shipments.”¹³⁴ In the second bill of exceptions, Manella argued that the firm was entitled to recover from Barry the value of the cargo on the three ships that were captured, plus the price of tobacco on those vessels above what was stipulated in Lacosta’s written instructions, because Barry had incorrectly relied on Menendez’s verbal instructions.

III. THE SUPREME COURT DECISION

a. Legal Background

Maritime prize doctrine governed the high seas during the Quasi-War between the United States and France.¹³⁵ In wartime, privateers from belligerent nations could capture merchant ships of the enemy at sea and lawfully take the vessel, cargo, or both.¹³⁶ Privateering was valuable both to the privateer crews themselves and to their sovereign states. The privateers stood to earn the full financial value of the capture, and the sovereign states benefitted from the crippling effect privateers had on the war effort of enemy nations.¹³⁷ American privateers had a significant impact on enemy nations, capturing 2,500 British merchant ships during the War of 1812.¹³⁸ These merchant ships were often carrying cargo to supply troops with provisions and munitions, so their capture meant a setback on the ground as well.

With prize law governing the high seas during the time of the tobacco shipment in *Manella v. Barry*, the capture of Barry’s three ships was both unsurprising and most likely legal. Lacosta’s instructions to ship the cargo under a neutral name indicated that Lacosta knew of the risk of seizure at sea. Consistent with Lacosta’s premonition, French privateers captured the

¹³⁴ *Manella*, 7 U.S. at 426.

¹³⁵ DONALD A. PETRIE, *THE PRIZE GAME: LAWFUL LOOTING ON THE HIGH SEAS IN THE DAYS OF FIGHTING SAIL* 5 (Naval Institute Press 1999).

¹³⁶ *Id.* at 2.

¹³⁷ *Id.* at 3.

¹³⁸ *Id.* at 1.

Muqueni and *Minerva*, neutral Moorish and Danish vessels, chartered under James Barry's American name. As long as the French captured these vessels after the United States' entry into the Quasi-War with France in summer of 1798, this was lawful prize taking. Even though the vessels were neutral, the cargo was laded in James Barry's name, so it would have been enemy cargo subject to seizure.

Later, the British captured the *Henrietta*, an American vessel with cargo shipped to Bernardo Lacosta in Spain on account of Don Carlos Longhy of Genoa, Italy. There are several reasons why the British might have captured this vessel, even though during the Quasi-War with France, the U.S. and Great Britain were allied against France. The law of nations stipulated that a country at war had the right to confiscate property of the enemy wherever found, but not the property of an ally.¹³⁹ With regard to neutral vessels, the law stated that "[a] belligerent [could] arrest a neutral vessel on the high seas for any breach of neutrality."¹⁴⁰ Thus, the *Henrietta* was probably not captured because it was American but because its cargo was headed for Spain, which was allied with France against Great Britain in the war. The captors would have initially reviewed the sets of papers on board the *Henrietta*, and discovered that the tobacco was destined for Spain to be sold to Spanish merchant, Bernardo Lacosta. Shipping and admiralty law allowed the likely use of an article to be inferred from its destination.¹⁴¹ Additionally, "[p]roperty belonging to a merchant residing at an enemy's port is liable to condemnation."¹⁴² Finally, the origin of the property could give it hostile character.¹⁴³ For all of these reasons, the *Henrietta* was vulnerable to British privateers because it was American tobacco destined for a Spanish port to be sold to a Spanish merchant.

¹³⁹ ROBERT DESTY, MANUAL OF THE LAW RELATING TO SHIPPING AND ADMIRALTY § 408 (Sumner, Whitney & Co. 1879).

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at § 423.

¹⁴² *Id.*

¹⁴³ *Id.* at § 414.

The tobacco on board all seven ships sent by Barry was also subject to seizure at sea under the law of nations because of the fraudulent papers on board each ship. Shipping and admiralty law included a penalty for carrying contraband goods.¹⁴⁴ All of the tobacco in *Manella v. Pujals* was contraband because at the time as there was a royal monopoly on tobacco in Spain which sourced its tobacco exclusively from Venezuela.¹⁴⁵ The ships were also subject to seizure because where the owner knows about a fraudulent transaction and a ship carrying goods under false papers, the vessel itself and its cargo will be considered lawful prize.¹⁴⁶ Lacosta and Menendez's letters about shipping the cargo under neutral cover indicates that they were aware that Barry's ships were subject to seizure.

In addition to prize law, the law of agency was the basis for the holding in *Manella*, and is rooted in the English common law of contracts.¹⁴⁷ As early as 1389, British courts recognized agency relationships in the mercantile context, holding that a principal was liable for the failure of his apprentice to remit payment.¹⁴⁸ By the 17th and 18th centuries, the word "agent" came into use, and the law of agency became an official part of English common law under Chief Justice Holt of the English Court of Chancery.¹⁴⁹ Chief Justice Holt looked to rules followed in admiralty law with regard to ship owners, masters and merchants to establish the common law rules of agency.¹⁵⁰ In issuing his holding in *Manella* a century later, Chief Justice Marshall asserted that it was an established point of law that an agent must act in furtherance of the

¹⁴⁴ *Id.* at § 425.

¹⁴⁵ Catalina Vizcarra, *Markets and Hierarchies in Late Colonial Spanish America: The Royal Tobacco Monopoly in the Viceroyalty of Peru, 1752-1813*, 63 J. OF ECON. HIST., 541, 541-42 (2003).

¹⁴⁶ Robert Desty, *supra* note 139 at § 425.

¹⁴⁷ SIR FREDERIC POLLOCK & FREDERIC WILLIAM MAITLAND, *THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I*, 228 (The University Press 1899) (full text available at https://play.google.com/store/books/details?id=c_YyAAAAIAAJ&rdid=book-c_YyAAAAIAAJ&rdot=1).

¹⁴⁸ SCHMITTHOFF, CLIVE, *AGENCY IN INTERNATIONAL TRADE, A STUDY IN COMPARATIVE LAW* 115 (full text available at <http://www.trans-lex.org/128700#Footnote-Inline-80fef07a49539136c9df7e7183857d67>).

¹⁴⁹ *Id.* at 128.

¹⁵⁰ *Id.*

principal's interests.¹⁵¹ This is still true today, as agency relationships are a ubiquitous part of doing business in the modern world.¹⁵² Rather, the issue in *Manella* was whether the third party's deviation from the instructions of an agent were justified.¹⁵³

In the arguments for the appellant, there was a discussion of the difference between specific and general agency, and whether that distinction established that Barry should not have relied on Menendez's instructions.¹⁵⁴ The law on specific and general agency stipulates that the entire series of transactions described in Lacosta's January letter to Barry would have been an instance of specific agency because it did not involve a continuity of service.¹⁵⁵ Chief Justice Marshall did not entertain this distinction, but if he did, the entire shipment of tobacco in the seven vessels would likely have been considered one series of transactions, which a specific agent is legally authorized to oversee.

b. The Arguments

Manella's appeal reached the Supreme Court on February 4, 1806 after five years in the Circuit Court system.¹⁵⁶ Representing *Manella*, Robert Goodloe Harper raised two issues: 1) whether Barry had deviated from Lacosta's written instructions and 2) whether Barry was justified to deviate from the letter by Menendez's direction.¹⁵⁷ On the first question, Harper focused on the shipment of goods in non-American ships, and the shipment on the *Henrietta*

¹⁵¹ *Manella, Pujals, and Co. v. James Barry*, 7 U.S. 415, 439 (1806).

¹⁵² See, e.g., HAROLD GILL REUSCHLEIN AND WILLIAM A. GREGORY, AGENCY AND PARTNERSHIP, DUTIES OF AGENT TO PRINCIPAL § 69; Paula J. Dalley, *A Theory of Agency*, 72 U. PITT. L. REV., 495, 495 (2011).

¹⁵³ *Manella*, 7 U.S. at 439.

¹⁵⁴ *Id.* at 431.

¹⁵⁵ HAROLD GILL REUSCHLEIN AND WILLIAM A. GREGORY, AGENCY AND PARTNERSHIP, DUTIES OF AGENT TO PRINCIPAL § 7(b) ("The distinction usually turns upon the continuity of service and not upon the breadth of the agent's authority.").

¹⁵⁶ *Manella*, 7 U.S. at 430.

¹⁵⁷ *Id.* at 428.

which was not in James Barry's own name, but in the name of Carlos Longhy of Genoa.¹⁵⁸ On the second question, Harper focused on Lacosta's letter of January 27, 1798 which gave explicit direction about the shipment, including the price of the tobacco.¹⁵⁹

Harper argued that Barry was not justified in substituting his judgment for Manella's because Lacosta's instructions were explicit. Further, there was no justification to rely on Menendez's direction because there was no evidence to support his role as Manella's agent.¹⁶⁰ If there was any agency relationship between Menendez and Manella, it was one of specific and not general agency.¹⁶¹ Harper further argued that the correct translation of the phrase "para presentaiar la expedición" allowed Menendez to communicate with Barry about the shipment only in accordance with the written instructions, not to control the enterprise as a whole.¹⁶² Harper even alluded in the Supreme Court minutes that Menendez's testimony was the evidence necessary, and perhaps he was being kept away in Spain.¹⁶³

Representing Barry, attorneys William Pinkney and Luther Martin, began by engendering doubt in the Court as to Manella's integrity based on the fraudulent double sets of papers aboard each ship and the explicit attempt to evade the Spanish government by shipping in neutral vessels.¹⁶⁴ Unlike Manella's attorneys, Pinkney and Martin focused their argument around Manella's three claims: 1) the excess in price above the instructions 2) the cargo shipped in Moorish and Danish vessels and 3) the Henrietta's cargo.¹⁶⁵ As to the shipment in Moorish and Danish vessels, Pinkney and Martin argued that the goods were to be shipped in neutral ships, and with America entering into the Quasi-War with France in the midst of the shipments, the

¹⁵⁸ *Id.* at 429.

¹⁵⁹ *Id.* at 430.

¹⁶⁰ *Id.* at 430–31.

¹⁶¹ *Id.* at 431.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 432.

¹⁶⁵ *Id.* at 433.

cargo is no more safe in American ships than in neutral ships generally.¹⁶⁶ Additionally, there was no way for Lacosta to know whether Barry would be able to find six or more American ships for this purpose, so it wouldn't make sense for the foreign merchant to require this in its instructions.¹⁶⁷ The arguments for the defendant closed by highlighting that the shipments on the Moorish and Danish vessels were made in the same manner as those on the *Felicity* and *Susanna*, both of which arrived safely at their destination.¹⁶⁸

The argument around the shipment on the *Henrietta* also centered on America's loss of neutrality status at the time. Pinkney and Martin stressed that the whole point of Barry shipping the goods in his name was because Barry was a neutral party at the time Lacosta wrote his letter. Six months later, Barry's American name was no longer neutral, constituting a material change in circumstances.¹⁶⁹ In carrying out Lacosta's instructions as to the shipment, Barry was bound to trust Menendez regarding any ambiguity. Menendez's verbal instructions were reasonably in furtherance of the enterprise as a whole, and there was no evidence that he had acted fraudulently.¹⁷⁰ As to the question about why Menendez's testimony has not been brought to court, Martin and Pinkney answered that they sent a commission to Spain to examine Menendez, but were unsuccessful.¹⁷¹ The time taken to seek out Menendez could have been a factor in Manella's case languishing in court as long as it did. Martin and Pinkney asked in response why the attorneys for Manella did not seek out Menendez to sue him rather than Barry.¹⁷² This was

¹⁶⁶ *Id.* at 434.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 436.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 436.

¹⁷¹ *Id.*

¹⁷² *Id.*

likely because Menendez did not have a substantial fortune worth seeking in suit, or because it would have been too hard to bring him in for litigation.¹⁷³

In response, attorney Philip Barton Key focused on Barry and Menendez's limited authority regarding the details of the shipment. He did not address America's loss of neutrality status during the time of the seven shipments, and stressed that the letter required the cargo to be shipped in American vessels only. Key argued that Menendez had no authority to deviate from Lacosta's instructions.¹⁷⁴

c. The Decision

On February 26, 1806, Chief Justice John Marshall delivered the opinion of the Court. Marshall distilled the issue in the case down to whether Barry deviated from Lacosta's instructions.¹⁷⁵ Marshall highlighted that Lacosta's letter directed Barry to refer to Menendez's verbal instructions because Menendez was sent to superintend the shipment. The Chief Justice referenced the evidence that, upon dispatching the Moorish and Danish vessels, Menendez approved these shipments since American vessels were not available and America had lost neutrality status.¹⁷⁶ The Court finds that this was a fair interpretation of Lacosta's letter given the circumstances, and that Barry was bound to comply with Menendez's direction. Further, Marshall wrote that the letter was a communication to Barry of instructions from Lacosta to Menendez, not instructions from Lacosta directly to Barry.¹⁷⁷ That Barry could have declined to fulfill the fraudulent transaction entirely, as many American merchants had done, further supported Menendez's power to superintend the shipments.¹⁷⁸ "[I]t seems to the court perfectly

¹⁷³ See Eric Rasmsen, *Agency Law and Contract Formation, Discussion Paper No. 323*, Harvard Law School (2001) (http://www.law.harvard.edu/programs/olin_center/papers/pdf/323.pdf).

¹⁷⁴ *Manella*, 7 U.S. at 438–39.

¹⁷⁵ *Id.* at 439.

¹⁷⁶ *Id.* at 440.

¹⁷⁷ *Id.* at 442.

¹⁷⁸ *Id.* at 442; see also note 27 and accompanying text.

clear, that with respect to the tobacco shipped in the Moorish and Danish vessels, the conduct of the defendant, being sanctioned by Menendez, was free from all exception.”¹⁷⁹

The Court viewed Manella’s claim for the value of cargo shipped on the *Henrietta* as a stronger claim.¹⁸⁰ The evidence showed that Barry deviated from the explicit written directions to ship the goods in his own name, but in defense Barry argued that he justifiably relied on Menendez’s verbal instructions.¹⁸¹ The Court agreed.¹⁸² Chief Justice Marshall emphasized that Lacosta’s letter referenced Menendez’s verbal instructions and his role as agent of the principal,¹⁸³ giving Menendez the right to exercise discretion as to the shipment.¹⁸⁴ Furthermore, all of Menendez’s decisions that deviated from the written instructions in Lacosta’s letter were reasonable given America’s loss of neutrality status during the course of the shipments.¹⁸⁵ Therefore, the judgment of the Circuit Court was affirmed.

d. Analysis

The issue in *Manella* as defined by Chief Justice John Marshall was whether James Barry deviated from Menendez’s instructions.¹⁸⁶ Barry’s alleged deviation with respect to the three captured ships was that the cargo was shipped on Moorish and Danish vessels instead of American vessels, and on account of Bernardo Lacosta instead of in his own name. Given America’s loss of neutrality status during the process of shipping the tobacco and the nature of international trade in the eighteenth century, Chief Justice John Marshall correctly affirmed the lower court’s decision. James Barry rightfully relied on Menendez’s instructions, even though

¹⁷⁹ *Id.* at 443.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 444.

¹⁸² *Id.* (“This reference to the verbal communications of Menendez . . . is a declaration of complete confidence . . . by the plaintiffs and is a full authority given by them to Barry to credit the representations which he should make.”)

¹⁸³ *Id.* at 446 (“The letter warranted the belief that he was the principal and confidential agent of the plaintiffs[.]”).

¹⁸⁴ *Id.* at 445.

¹⁸⁵ *Id.* at 447.

¹⁸⁶ *Id.* at 439.

the instructions deviated from Lacosta's written instructions in the letter of January 27, 1798. Thus, Barry was not liable to Manella for the price of the lost cargo.

Chief Justice Marshall's reasoning rested largely on the change in circumstances between the date of Lacosta's letter and each vessel's shipping date. The United States' entry into Quasi-War with France meant that Barry would have put Manella at risk if Barry insisted on following precisely the instructions in Lacosta's initial letter. What's more, this would have been unreasonable because Menendez was sent as Manella's agent to "superintend the shipment." Regardless of how those words are construed, common sense dictates that Menendez and Barry had to decide how best to ship the cargo so as to ensure safe passage. After all, Manella and Lacosta were an ocean away from Baltimore when the ships were being dispatched. Because of the challenges inherent to international trade at this time, agents were sent to make decisions exactly like those Menendez made. As Chief Justice Marshall wrote, all of Menendez's decisions and all of Barry's actions were reasonable given the change in circumstances, and were in furtherance of Manella's best interests in the enterprise as a whole.

The rule in *Manella* is that a factor transacting with a principal through an agent is justified in relying on the agent's instructions if those instructions are reasonably in furtherance of the principal's interest, even if they conflict with the principal's written instructions. This rule still holds today, but one can imagine the string of emails and cell phone calls which would be made between the principal and agent to confirm a change such as the one made by Menendez. In 1798, these modes of instant communication were unavailable, necessitating the use of agents to effectuate international trade deals. By virtue of his charge as agent to act in the best interests of his principals, Menendez's changes to the original instructions were reasonable, and Barry was justified in relying on them.

IV. EFFECT OF THE DECISION

Manella v. Barry is still good law and is relevant enough to have been cited by secondary sources as recently as 2014. A Legal Encyclopedia update from 2014 cites to the Supreme Court's holding in *Manella* in Section III, Rights and Duties as Between a Factor and Principal. If the factor is referred to a general agent of the principal, the duty of a factor or agent is to obey instructions by a principal, and the factor may justifiably obey orders of the agent, even if they conflict with written instructions from the principal.¹⁸⁷

Manella has also been cited as a part of the evolution of the contra proferentem doctrine of contract interpretation. Appleman's treatise on Insurance Law includes the case in its description of this doctrine.¹⁸⁸ Contra proferentem originated in English common law and was described by Sir Francis Bacon as a rule stating "that a man's deeds and his words shall be taken strongest [sic] against himself" and which is "one of the most common grounds of the law."¹⁸⁹ The Virginia Supreme Court cited this maxim in 1794.¹⁹⁰ Historically, contra proferentem was a last resort doctrine whereby ambiguous contracts were construed "against the drafter" only where a tie-breaker was necessary.¹⁹¹

Manella is an example of an early American case where the contra proferentem doctrine was applied to a business transaction done across a great distance. The distance made negotiations impossible, so the burden of clarity was on the contract drafter.¹⁹² In *Manella*, the ambiguity arose in Menendez's letters subsequent to Lacosta's letter of January 27, 1798, the

¹⁸⁷ Paul Coltoff, J.D., *Rights and Duties as Between Factor and Principal*, 35 C.J.S. *Factors* § 31 (2014).

¹⁸⁸ Jeffery E. Thomas, *Essentials of Insurance Law* § 5.02 (Mathew Bender & Company, Inc., a member of the LexisNexis Group eds. 2014).

¹⁸⁹ *Id.* quoting Francis Bacon, *Maxims of the Law in 4 The Works of Francis Bacon* 21 (New Edition London, William Pickering 1826) (originally published in 1597).

¹⁹⁰ *Id.* at note 19.

¹⁹¹ David Horton, *Flipping the Script: Contra Proferentem and Standard Form Contracts*, 80 U. COLO. L. REV. 431, 436 (2009).

¹⁹² *Id.* at 440; see also Jeffery E. Thomas, *supra* note 188.

only one in which Lacosta specified his instructions. Menendez's subsequent verbal instructions to James and Robert Barry compounded the ambiguity of the letters. The Supreme Court found that Lacosta's instructions to Barry did not require him to send the tobacco in American vessels, only that the vessels be neutral. This broad construction of Lacosta's letter is an example of construing ambiguity against the drafter of a business agreement based on the *contra proferentem* doctrine.

Additionally, *Manella* is cited as an example of Supreme Court references to Muslims, for the description of the Moorish ship *Muqueni* which the British captured while en route to Cadíz.¹⁹³

The case law that followed *Manella* cites the case primarily with regard to agency law.¹⁹⁴ There are cases referencing *Manella* from 1805 to 1891 ranging from a common pleas court up to the United States Circuit Courts of Appeals, all of which reinforced its holding.¹⁹⁵ *Manella's* holding is cited in an 1891 case from the Court of Common Pleas of Pennsylvania for the rule of agency law that an agent who departs from the instructions of his principal assumes the risk of loss.¹⁹⁶ The Supreme Court of Ohio cited *Manella* in holding that an accredited agent must act with fidelity to his copartners.¹⁹⁷ The Supreme Court of Missouri cited *Manella* in 1870 as the strongest authority establishing the proposition that an agent must act in conformity with his instructions.¹⁹⁸ The Supreme Court of Florida cited *Manella* in an 1850 decision related to

¹⁹³ Eric Michael Mazur, *Dar al-Constitution: Islam and the American Constitutional Order*, 11 CONN. PUB. INT. L.J. 183 (2012).

¹⁹⁴ See *Dunbar v. Miller*, 7 F. Cas. 1187, 1190 (1805); *Gould v. Rich*, 48 Mass. 538, 553 (1844).

¹⁹⁵ See, e.g., *Willinks v. Hollingsworth*, 19 U.S. 240, 245 (1821); *Sun Fire Office v. Ermentrout*, 2 Pa. D. 77, 77 (1891).

¹⁹⁶ *Id.*

¹⁹⁷ *Reis v. Hellman*, 25 Ohio St. 180, 183 (1874).

¹⁹⁸ *Rechtscherd v. Accommodation Bank*, 47 Mo. 181, 182 (1870); see also *Yeatman v. Corder*, 38 Mo. 337, 339 (1866).

agency law, supporting the proposition that an agent has a duty to pursue the orders of his principal to the best of his ability.¹⁹⁹

Manella has also been referenced as authority for the evidence through which an agency relationship may be established. In *Page v. Lathrop*, the Missouri Supreme Court cited *Manella* to support the proposition that an agency relationship need not be established directly on a bill sent to a creditor.²⁰⁰ The evidence in *Manella* of Menendez's status as agent came from Lacosta's January 1798 letter, and was not noted directly on the bills to each creditor. That this relationship could arise from such a letter as opposed to a bill was not contested, rather the issue in *Manella* was whether the letter established the agency relationship or not. Thus, the letter separate from the bill draft in *Page* was held to be admissible evidence, and sufficient to establish agency.²⁰¹

In addition to the references to agency law, *Manella* has been cited as one of many early American maritime cases supporting the jurisdiction of the United States Supreme Court over admiralty law where the English admiralty court would not exercise jurisdiction.²⁰²

The United States Seventh Circuit Court of Appeals cited *Manella* in 1857 to establish the limited authority of an agent to act on behalf of the principal.²⁰³ The facts in *The Joseph Grant*, are similar to those in *Manella* and are worth discussion here. In *The Joseph Grant*, Fitzhugh & Littlejohn, a grain company, was purchasing corn in Chicago and shipping it to Oswego, New York on the schooner *Joseph Grant*.²⁰⁴ George M. Chapman was the master onboard the ship, and had duplicate bills of lading consigning the cargo to Fitzhugh &

¹⁹⁹ *Ferguson v. Porter*, 3 Fla. 27, 38 (1850); *see also* *Hays v. Stone*, 7 Hill 128, 135 (N.Y. Sup. Ct. 1845) (“The question in such cases is . . . whether he acted in conformity with his instructions.”).

²⁰⁰ 20 Mo. 589, 589 (1855).

²⁰¹ *Id.*

²⁰² *The Richard Busted*, 20 F. Cas. 683, 685 (D. Mass. 1858).

²⁰³ *The Joseph Grant*, 13 F. Cas. 1141, 1142 (1857) (“An agent of limited powers cannot bind his principal when he exceeds those powers.”).

²⁰⁴ *Id.* at 1141.

Littlejohn.²⁰⁵ In the course of the shipment, Chapman wrote a blank bill of lading drawing on the Marine Bank of Chicago to cover advances on drafts.²⁰⁶ Soon after the receipt of the corn, Fitzhugh & Littlejohn's business failed, and the Marine Bank of Chicago brought suit against the vessel for failing to deliver the cargo described in the blank bill of lading which Chapman filled out.²⁰⁷ The Circuit Court held that Chapman exceeded his authority as Fitzhugh & Littlejohn's agent in writing the bill of lading to the Marine Bank of Chicago, and the suit would not be enforced against the vessel for failing to deliver the cargo.²⁰⁸

This is consistent with the holding in *Manella* because the facts are distinguishable. In both cases, an agent went beyond his principal's stipulations. However in *Manella*, Menendez's actions were consistent with Lacosta's written instructions directing Barry to rely on Menendez's verbal instructions. Additionally, Lacosta wrote in his initial letter to Barry that he may ship tobacco above the price of \$10 per quintal²⁰⁹ so as to expedite the shipment. There is an element of trust built into Lacosta's instructions, both in Barry and in Menendez acting as agent, and the Court found Barry's actions to be reasonable given the circumstances. In contrast, Chapman's actions in *The Joseph Grant* could not bind his principal because they went beyond the scope of the agency relationship. Chapman wrote a blank bill of lading to a creditor that did not have cargo to support it, an action that the principal knew nothing about. The bill of lading was not enforceable against the vessel because the agency relationship was a limited one. Thus, a principal will not be bound to an agent's actions of which he has no knowledge or consent.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 1142.

²⁰⁹ The quintal was the favored unit of mass to measure dry agricultural products in Latin America in the eighteenth century. In Spain the measure was defined as 100 pounds, though other countries defined a quintal as 100 kilograms. *See, e.g.*, FREDERICK ARTHUR HALSEY & SAMUEL SHERMAN DALE, *THE METRIC FALLACY*, 6, (The American Institute of Weights and Measures, 1919).

The United States Circuit Court of Virginia cited *Manella* in 1805, again related to agency law. In *Dunbar v. Miller*, *Manella* was cited in a summary of decisions by United States federal courts relating to a principal and agent, and consignor and consignee.²¹⁰

V. WHAT HAPPENED TO THE PEOPLE IN THE STORY

At the time of his favorable verdict in *Manella v. Barry*, James Barry no longer lived in Baltimore and was near the end of his life. In 1805, Barry and his family had moved from Washington to New York, where Barry lived until his death in 1808.²¹¹ Barry died of influenza in January of 1808, and Archbishop John Carroll expressed concern for Barry's declining health in a letter to Joanna Barry in June of 1806.²¹² Thus, it is unlikely that Barry was involved in the Spanish-American trade networks that led to the conflict in *Manella v. Barry* following adjudication of the case.

As for the Spanish actors in the case, there is little to no reference to them beyond the court records of *Manella v. Barry*. A review of Spanish consuls and their trade networks lists Bernardo Lacosta as one of thirty-six Spanish merchants who received letters from John Stoughton, Spanish Consul to New England between 1795 and 1820.²¹³ In this record, Lacosta's name is spelled "Bernardo La Costa." There is inconsistency in the names of other Spanish actors in the case, likely because of variable translations.²¹⁴ This makes recordkeeping a challenge, but it is not unlikely that Manella, Pujals & Co., the Spanish trading firm illegally importing tobacco could not sustain the \$100,000 loss of cargo onboard the *Muqueni*, *Minerva*, and *Henrietta*, plus the costs of adjudication, and dissolved after paying its creditors.

²¹⁰ *Dunbar v. Miller*, 7 F.Cas. 1185 (1805).

²¹¹ See *infra* note 261 at 8.

²¹² See *infra* note 238.

²¹³ Sean Perrone, *supra* note 16 at 93.

²¹⁴ The Marqu ez de Casa Irujo is alternatively spelled Yrujo.

The merchant ships are also sparsely mentioned in historical records from the time of the case. The *Polly and Nancy*, one of the ships that successfully made it to Cadíz, originated in South Carolina and was built in 1761. It was owned by Daniel Hutchings and Edward Blake.²¹⁵ The dearth of information on the seven merchant ships involved in this case could be because they were subsequently captured on other international trade missions.

VI. CONCLUSION

The conflict between Manella, Pujals & Co. and James Barry in this case demonstrates the risks inherent to overseas trade during wartime. The lucrative nature of the contraband tobacco trade in Spain was enough to compel Manella to brave exposure to French and British privateers in the waters of the Mediterranean. That over half of the ships dispatched by Barry arrived successfully is surprising given the high likelihood of capture by privateers during the Quasi-War with France. In the subsequent Napoleonic Wars between Britain and France and the War of 1812, blockades of the East Coast crippled American trade, and likely kept these same ships from reentering American ports if they had not already been captured.

More than anything, *Manella v. Barry* depicts the intricate Spanish-American maritime trade networks that existed during wartime. The friendships that established the foundation of the trade relationships in this story show that international business trusts began with personal relationships such as that between Archbishop John Carroll and James Barry. That Spanish consuls were sent to reside in America indicates the crown's acknowledgement of the need to establish these relationships. Spanish consuls were further instantiated into American culture as some married into American families.

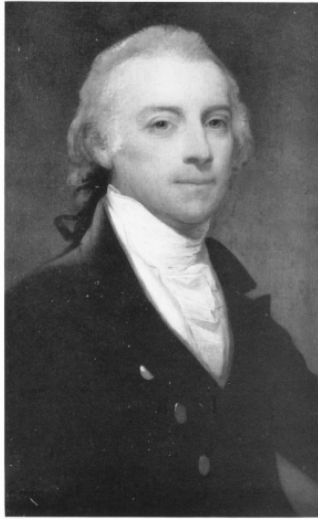
²¹⁵ Annapolis Port of Entry records.

The law coming out of this case on the rules of agency in maritime trading was not new. Chief Justice John Marshall himself acknowledged that it was well-established that a third party must obey the instructions of an agent. What *Manella* added to the law on agency is the scope of an agent's authority in effectuating an overseas trade. The Court put great stake on the fact that Menendez's instructions to Barry were reasonable given America's loss of neutrality status, and in furtherance of the overall enterprise of the principal. This was consistent with the established roles of agent and principal at the time and today. Since the law surrounding this conflict seems straightforward, it is likely that Manella sought recovery from Barry because the firm could not pay its creditors without income from the tobacco, and sued in a last ditch effort to get money from the wealthy American merchant.

VII. APPENDIX

The following biography details the life of James Barry, the central actor in *Manella v. Barry*. This section serves to further develop the background of this historical figure, placing the case in context of the lives involved.

a. Profile of James Barry



JAMES BARRY

From the painting by Gilbert Stuart

216

James Barry (1755? – 1808) was born in Ireland and lived in India and Portugal before arriving with his wife Joanna in Baltimore.²¹⁷ There is some inconsistency as to when Barry first arrived in Baltimore. A biographical sketch of Barry written in 1940 references 1793 as the date he arrived in Baltimore, but a 1979 article in the *Maryland Historical Magazine* notes that Barry was appointed Vice-Counsel of Portugal for Maryland and Virginia in 1791.²¹⁸ All sources agree that Barry served as the Portuguese Counsel.²¹⁹

The first references to Barry as a Baltimore merchant are in *The Maryland Journal and Baltimore Advertiser* in 1794 and Barry is listed as a merchant in the *Baltimore Town and Fell's Point Directory* in 1796 as a merchant of 100 Baltimore street.²²⁰ Barry is also listed as a charter member of the Library Company of Baltimore on December 20, 1795, which merged with the

²¹⁶ Portrait of James Barry by Gilbert Stuart, Allen C. Clark, *Captain James Barry*, Records of the Columbia Historical Society, Washington, D.C., Vol. 42/43 [The 36th separately bound book], 1-16 (1940/1941).

²¹⁷ Letter to Thomas Jefferson from James Barry, 26 September 2801, <http://founders.archives.gov/documents/Jefferson/01-35-02-0278>.

²¹⁸ Allen C. Clark, *Captain James Barry*, Records of the Columbia Historical Society, Washington, D.C., Vol. 42/43 [The 36th separately bound book], 1-16, 1 (1940/1941).

²¹⁹ *Id.*, see also letter to Thomas Jefferson from James Barry, 26 September 1801, founders.archives.gov/documents/Jefferson/01-35-02-0278.

²²⁰ *Id.*

Maryland Historical Society in 1854.²²¹ His name disappears from Baltimore's business and residence directories in 1802 because Barry had moved to Washington D.C. and later to New York.²²² This absence is consistent with the difficulty the Circuit Court of Maryland had in getting Barry to appear in court in May of 1801 during his trial.²²³ In addition to Barry's move to new cities, there are references to Barry losing his fortune.²²⁴ He was likely experiencing financial troubles around the time of his trial and may have ceased to conduct his business activities in Baltimore, accounting for his absence from business records.²²⁵

By all accounts, James Barry was an upstanding gentleman and merchant. Even Robert Goodloe Harper stated at Barry's Supreme Court trial that representing Manella against Barry was the hardest case of his entire career because he had to "urge a claim against an honourable and respectable man."²²⁶ Thomas Law, a friend of Barry's, wrote that he found Mr. Barry a "very gentlemanly man, [who] was extremely civil, offering me, in the most friendly manner, his services during my stay in Baltimore."²²⁷ Indeed a gentleman, Barry was invited to dine with George Washington at Mt. Vernon on October 24, 1797.²²⁸

An interesting diversion from the consistently favorable references to Barry's character was an incident involving a fatal duel. Barry was involved as "second" for Mr. Thomas Hadfield in a duel with David Sterett on Friday April 29, 1791 in Howard Park, in which Mr. Sterett was killed.²²⁹ Barry and William Buchanan were charged with aiding and abetting Sterett's murder, but were granted a nolle prosequi by John Eager Howard, Esq. who presided

²²¹ MD Historical Magazine, December 1917, Vol XII, No. 4, MD Historical Society, MSA SC 5881-1- 48.

²²² *Id.*

²²³ U.S. Circuit Court of Maryland Case Files, http://mdhistory.net/nara_m214/manella_nara_m214_9_244/html/manella_nara_m214_9_244-0012.html

²²⁴ Allen C. Clark, *supra* note 218 at 9.

²²⁵ *Id.*

²²⁶ *Manella, Pujals, and Co. v. James Barry*, 7 U.S. 415, 428 (1806).

²²⁷ Allen C. Clark, *supra* note 218 at 10.

²²⁸ *Id.* at 3.

²²⁹ "Sterett-Hadfield Duel," 6 Maryland Historical Magazine, 79, (1911).

over the case as Governor of Maryland.²³⁰ Luther Martin was Maryland's Attorney General at the time, and brought the case against Barry and Buchanan.²³¹ Martin would later find himself arguing in Barry's defense at the Circuit Court trial of *Manella v. Barry*. Thirty four men petitioned the Court in Barry's favor, and Jas Calhoun wrote a letter attesting to Barry's good character.²³²

James Barry was a Roman Catholic, and it was a religious tie that initially involved him in Spanish-American trading networks.²³³ Bishop John Carroll introduced Barry to Josef de Jáudenes, "the only man with authority to sell trading permits to Cuba in the 1790s" and José Ignacio Viar.²³⁴ This initial connection led Barry to procure crown contracts to supply Spanish troops with flour.²³⁵ Archbishop Carroll corresponded frequently with Mr. and Mrs. Barry, and his letter of June 19, 1806 is cited by the Maryland Historical Society in a Selected Bibliography on Maryland History in Other Journals.²³⁶ Carroll's letters to the Barry family convey with affection and warmth that he saw them as his closest friends.²³⁷ By this time, Joanna and James lived in New York, and Archbishop Carroll expressed interest in visiting and concern for James Barry's health.²³⁸ When Barry's will was executed in New York in 1807, Bishop John Carroll was executor along with Colonel John Eagar Howard, Governor and Senator of Maryland.²³⁹

²³⁰ *Id.*

²³¹ *Id.* at 80.

²³² *Id.* at 85.

²³³ Linda K. Salvucci, *supra* note 23 at 129.

²³⁴ *Id.*

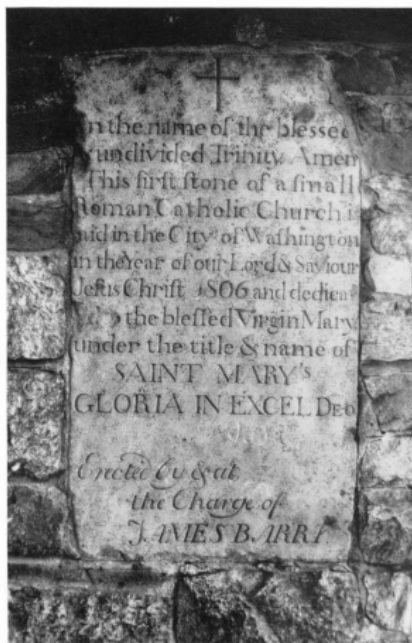
²³⁵ Linda K. Salvucci, *Merchants and Diplomats: Philadelphia's Early Trade with Cuba*, 3 Pennsylvania Legacies 8 (2003).

²³⁶ Dorothy M. Brown and Richard R. Duncan, *A Selected Bibliography of Maryland History in Other Journals*, 69 MARYLAND HISTORICAL MAGAZINE, 300, 315 (Fall 1974).

²³⁷ Annabelle M. Melville, *John Carroll of Baltimore: A Bicentennial Retrospect*, 76 CATH. HIST. REV., 1, 11 –12 (1990); *see also* John J. Tierney, *Another View of the Carroll Papers*, 64 CATH. HIST. REV., 660, 661 (1978).

²³⁸ "Letter of Archbishop Carroll to Mrs. James Barry, 1806," 22 AM. CATH. HIST. SOC. REC., (1911), pp. 101-102.

²³⁹ Allen C. Clark, *supra* note 218 at 12.



240

Beyond the initial introduction between Barry and the Spanish diplomats, Bishop John Carroll's relationship with Barry likely influenced the procurement of the 1,528 hogsheads of tobacco in the transaction at issue in *Manella v. Barry*. John Carroll's father, Daniel Carroll, was a prominent planter and landowner in colonial Maryland whose property included land in Southern Maryland used to cultivate tobacco. As the first Roman Catholic bishop, John Carroll occupied a position of great influence among other Catholics in Maryland during the colonial period, who would have been landowners cultivating tobacco themselves. Whether it was Carroll tobacco that Barry sent to Manella or tobacco from John Carroll's associates, the Catholic Church in Maryland likely profited from Barry's transaction with Manella.

John Carroll's archdiocese could have profited from Barry's transaction in two ways. First, if the tobacco sent to Manella was Carroll tobacco, the family owned plantations would have directly benefitted from the large transaction. A second and more definitive possibility is

²⁴⁰ Cornerstone of Barry's Chapel or St. Mary's Church in Washington D.C. at One Half and P Street, SW, erected 1806, St. Dominic's Church. Paid for with \$2,000 from Mrs. Barry's will.

based on the tobacco tax. Proceeds from this tax went directly to the church.²⁴¹ It was common in the eighteenth century for taxes to be levied on tobacco to build church buildings, and agricultural exports in general were taxed at this time.²⁴² These are both examples of the church benefitting from state legislation in Maryland, a practice known as clericalism which was common at the time.²⁴³ When John Carroll became Archbishop in 1790, he was likely already in the early stages of planning the construction of the Baltimore Basilica, which began in 1806.²⁴⁴ Thus, Archbishop John Carroll would have been interested in potential proceeds from Barry's transaction with Manella, be they direct or indirect, to finance the construction of his Basilica.

Following the initial connection that Archbishop John Carroll made, Barry continued to cultivate trading relationships in Spain. James Barry was one of the first merchants given permission to do business in Cuba after the Spanish reentry into the war in 1796. Upon declaring war, Cuba and Puerto Rico both needed food, and Spain couldn't supply it, so the Spanish Minister, Marqués de Casa Irujo, opened trade on a monopoly basis with certain merchants. James Barry was given a permit to sell 20,000 pounds of flour in Cuba in exchange for having provided food to Puerto Rico on credit.²⁴⁵ Barry and Irujo had established a business partnership in 1797, and they were able to keep close ties as Irujo married into a distinguished Pennsylvania family²⁴⁶ where he lived nearby Barry in Baltimore.²⁴⁷

²⁴¹ Scharf *supra* note 67 at 33 (writing that "the list is endless" in Bacon's Laws of tobacco taxes levied to build church buildings).

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ See, e.g., Archdiocese of Baltimore, <http://www.parishesonline.com/scripts/hostedsites/Org.asp?ID=19288>.

²⁴⁵ Roy F. Nichols, *supra* note 7 at note 22.

²⁴⁶ Letter from Sarah McKean Irujo to Thomas Jefferson, March 24, 1802, <http://founders.archives.gov/documents/Jefferson/01-37-02-0091> (describing the marriage of Sally McKean to Carlos Martinez de Irujo).

²⁴⁷ Linda K. Salvucci, *Atlantic Intersections: Early American Commerce and the Rise of the Spanish West Indies (Cuba)*, 49 BUS. HIST. REV., 781, 798 (2005); James A. Lewis, *Anglo-American Entrepreneurs in Havana: The Background and Significance of the Expulsion of 1784 – 1785*, in THE NORTH AMERICAN ROLE IN THE SPANISH IMPERIAL ECONOMY, 1760-1819, 112, 129 (Jacques A. Barbier and Allan J. Kuethe, eds., 1984).

In June of 1798 during the time of Barry's involvement with the tobacco shipments at issue in *Manella*, Barry was active in Baltimore's maritime business. In preparation for the Quasi-War with France, Barry was selected by his peers with four other merchants in Baltimore to raise funds to build a Ship of War out of Baltimore.²⁴⁸ They raised over \$100,000 which financed the construction of two ships.²⁴⁹ The ships were built in Fell's Point, where Barry owned a wharf and the Baltimore clippers were built.²⁵⁰ In 1800, Barry formed a Baltimore based firm for maritime commerce.²⁵¹ Years later in 1807, Thomas Kemp built a ship for Barry in Fell's Point.²⁵² Barry likely intended this firm to have a grain store in Baltimore in partnership with Thomas Law's agency house from his East India Trading commissions.²⁵³ Barry's relationship with Law began when they lived in East India where they congregated with other foreign born merchants.²⁵⁴ Barry and Law also incorporated the Washington Canal Company with funds they raised beginning in 1803, which became a considerable and respected business.²⁵⁵

Following the conflict with *Manella*, Barry continued to engage in the tobacco trade in Spain. In February of 1799, there was a glut of royal tobacco in Venezuela that needed to be sold to foreign neutrals in order to garner a profit for the royal monopoly which controlled Venezuelan tobacco. In April of that year, Spanish-American ports were closed to neutrals, and Venezuelan tobacco seller Fernández de León sought help from Casa Irujo, Spanish Minister to the United States, to find Americans willing to transport and sell the Spanish tobacco in Holland.

²⁴⁸ Frederick C. Leiner, *The Baltimore Merchants' Warships: Maryland and Patapsco in the Quasi-War with France*, 88 MARYLAND HIST. MAG. 261, 264 (1993).

²⁴⁹ *Id.*

²⁵⁰ *Id.* at note 12.

²⁵¹ Allen C. Clark, *supra* note 218 at 7.

²⁵² 49 Maryland Historical Magazine 276 (1954).

²⁵³ Allen C. Clark, *Greenleaf and Law in the Federal City*, 283 (Press of W.F. Roberts 1901).

²⁵⁴ *Id.* at 261.

²⁵⁵ *Id.*

James Barry agreed to do this, and transported a portion of the excess tobacco to Holland on his ship, the *Fly*. This meant that Barry had to carry false papers and lie about the ownership of the tobacco if captured by British privateers.²⁵⁶ Barry did the same in 1797 when he shipped royal tobacco on the brig *Paramaribo* from Baltimore to Cádiz.²⁵⁷ The ship was stopped by a British blockade, and went to the port of Málaga where it was captured by a French privateer.²⁵⁸

Beyond his career in the maritime shipping business, Barry was also active politically as a member of the Federalist party.²⁵⁹ A bipartisan group elected Barry as President of the First Chamber in the first Washington D.C. local election on May 3, 1802.²⁶⁰ Barry was elected again at the third election in 1804.²⁶¹ Barry declined to serve as a member of the City Council because he was frequently away from the city, both in Baltimore and New York.²⁶² Barry was also elected to the board of trustees of the Public Schools in 1905, but declined to serve for the same reason.²⁶³

In 1800, Barry moved to Washington, and in 1805 to New York where he lived until his death in 1808.²⁶⁴ He appears in New York City directories from 1805 – 1808 as Consul for Maryland and Virginia at Washington, merchant, and Consul for Portugal for the east States and New York.²⁶⁵ The N.Y. Evening Post published notice of Barry's death on Jan. 7, 1808 from a

²⁵⁶ Harold A. Bierck, *supra* note 6 at 494–95.

²⁵⁷ Greg H. Williams, *The French Assault on American Shipping, 1793 – 1813: A History and Comprehensive Record of Merchant Marine Losses*, 275 (McFarland & Co., Inc. 2009) (This source indicates that the tobacco was shipped to Bernard Lacosts, who is likely the same individual as Bernardo Lacosta who ordered the tobacco from Barry in *Manella v. Barry*).

²⁵⁸ *Id.*

²⁵⁹ Allen C. Clark, *supra* note 253 at 283.

²⁶⁰ *Id.*

²⁶¹ Allen C. Clark, *supra* note 218 at 7.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.* at 8.

²⁶⁵ *Id.*

lingering illness due to influenza and tuberculosis caused by stagnant waters in Washington, an illness which also took Joanna and James' daughter Mary.²⁶⁶

The Barry homes in Baltimore and Washington have a storied history. In Baltimore, Patapsco tax records show Barry living in a simple home on Homewood between 1798 and 1801, now the site of Johns Hopkins Homewood Campus. Barry conveyed his Homewood property consisting of half of Merryman's Lot to Charles Carroll on February 12, 1801 after he and his family moved to Washington.²⁶⁷ There the Barry family resided at 1321 Third Street, S.E. which the Barrys put up for sale in 1802 when they moved to New York.²⁶⁸ The proceeds from this sale comprised Barry's estate which he bequeathed to his wife Joanna upon his death. Acting in the strong Catholic faith of the Barry family, Joanna gave \$2,000 to St. Mary's Church which became Barry's Chapel at the intersection of One-Half and P Street, S.W. in Washington.²⁶⁹ Barry and his daughters Ann and Mary were buried beneath the chapel.²⁷⁰ "Many historians . . . assert that Barry Chapel . . . was the first edifice erected for Catholic worship in the City of Washington."²⁷¹ Barry's estate also included seven family portraits by the famous painter Gilbert Stuart.²⁷²

²⁶⁶ *Id.* at 9.

²⁶⁷ William B. Marye, *Baltimore City Place Names, Part 4*, 59 Maryland Historical Magazine, 78 (1964).

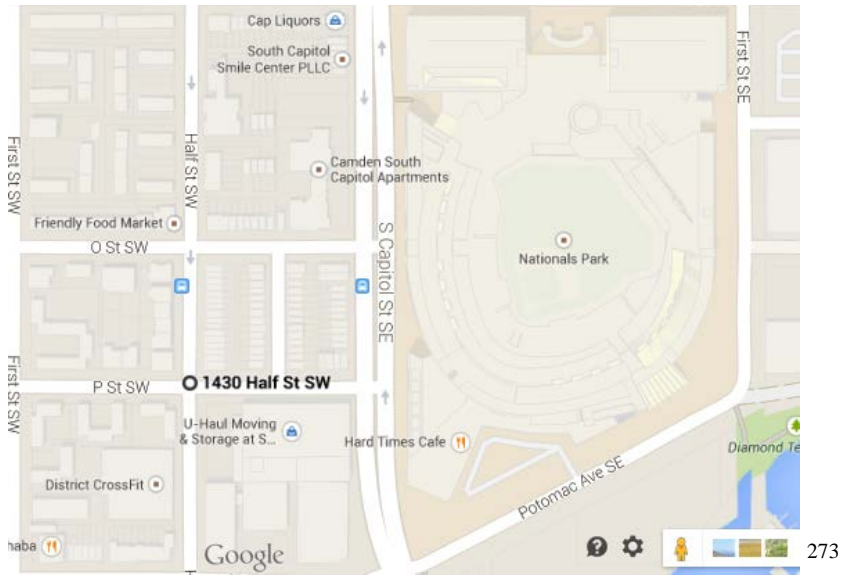
²⁶⁸ Allen C. Clark, *supra* note 218 at 10.

²⁶⁹ *Id.* at 13; *see* image accompanying note 273.

²⁷⁰ *Id.* at 14.

²⁷¹ Margaret Brent Downing, *The Development of the Catholic Church in the District of Columbia from Colonial Times until the Present*, 15 RECORDS OF THE COLUMBIA HISTORICAL SOCIETY, 23, 48 (1912).

²⁷² Allen C. Clark, *supra* note 218 at 12.



²⁷³ Current Google Maps image of the site of Barry’s Chapel at One-Half and P Street S.W. in Washington D.C.