

FOREWORD:

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Abstract

Article follows the case of the ship Warren, which set sail in 1806 to take part in illicit trade with the Spanish colonies, unbeknownst to all on board except for the supercargo. After dealing with the suicide of the captain and capture in Concepcion Bay, Chile, the crew languished for years in Spanish prison. After trying for almost 20 years the proceeds of the ship were finally returned to the owners, and the crew filed petition. Not until 1831 was their libel upheld, and wages from their voyage 25 years earlier to be paid to the crew. This article traces the lead up to the Supreme Court case, and the arguments made, and how the court decided, as well as the aftermath and the difficulty still in recovering what was owed.

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Admiralty law, Contract Law, Law, Maritime History

Sheppard v. Taylor, 5 Peters 675 (1831)
Deception on the High Seas and the Quest for Lost Wages

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2014 Legal History Seminar:
Early Maritime Cases in the Supreme Court

Table of Contents

I. INTRODUCTION	1
II. NARRATIVE OF THE FACTS	1
A. Beginnings	1
B. The Voyage: Two Stories	4
C. The Supercargo's True Intentions.....	11
D. Smuggling.....	14
E. Prison.....	17
III. FILING THE CASE	19
A. Filing of the First Libel.....	19
B. Restitution from the Spanish Delayed	19
C. Insolvent Owners	21
IV. THE SUPREME COURT.....	22
A. Attorneys.....	22
B. Appellant's Argument.....	23
C. Appellee's Argument.....	26
D. The Decision.....	27
E. The Award.....	29
F. Dissent	30
G. Remanded back to Circuit Court	31
H. Returning to the Supreme Court.....	32
I. Collecting on the lien	34
V. EFFECTS OF THE DECISION	35
VI. CONCLUSION.....	37
VII. APPENDIX: SELECTED PROFILES.....	37
A. James Buchanan.....	37
B. Procopio Jacinto Pollock	38
C. Samuel Smith	39
D. Andrew Sterett.....	41
E. Lemuel Taylor.....	43

I. INTRODUCTION

In August 1806, the *Warren* was the most talked about sailing vessel in Baltimore Harbor.¹ The *Warren*, a decommissioned sloop-of-war, was most likely the largest vessel in the harbor. Her maiden voyage as a commercial vessel began as one of great optimism, promising its crew a voyage around the world, and trade in exotic locale. What the men ended up with was a harrowing tale of deception by the ships owners and supercargo, the suicide of their captain, and years in South American prison. When they finally returned, they were not even compensated for their ordeal, culminating in the decision Sheppard v. Taylor 30 U.S. 675 (1831), a case decided twenty-five years after the *Warren* set sail from Baltimore in 1806.

The decision tackles several important areas of maritime law for the time, which provides roots in modern contract law and bankruptcy law. The decision upholds a seaman's right to wages above all other claims owed by a bankrupt debtor, but highlights the contemporary failures of the Supreme Court to enforce its decisions.

II. NARRATIVE OF THE FACTS

A. Beginnings

The *Warren* was built in 1799 in Newburyport, Massachusetts. A three masted, 360 ton copper-sheathed sloop-of-war, she was fitted with 20 guns, and could hold a complement of 160 men.² On 6 July 1799, while she was still under construction, the Secretary of the Navy, Benjamin Stoddert, ordered Master Commandant Timothy Newman to take command of the

¹ Terrence S. McCormack, The Last Voyage of Andrew Sterett, *Naval History Magazine*, Apr. 2012, Vol. 26, Num. 2

² McCormack, The Last Voyage of Andrew Sterett, *supra*.

Warren. She was probably commissioned in either November or December of 1799.³ She was named after the Revolutionary War hero, Dr. Joseph Warren, the third such ship to be christened in his name.⁴ Following the Quasi- War with France, there was little use for the navy to maintain its fleet, and ships like the *Warren* were sold off. The *Warren*, returning to Boston in late 1801 was sold on June 1, 1801 for \$19,737 to the group of three investors.



John Trumbel, “The Death of General Warren at the Battle of Bunker's Hill, 17 June, 1775”(after 1815–before 1831)

In addition to the grandeur of the ship, the ownership group was sure to raise attention. Its members were some of the most prominent merchants in Baltimore. Lemuel Taylor, the primary

³ *Warren*, Dictionary of American Naval Fighting Ships, <http://www.history.navy.mil/danfs/w3/Warren-iii.htm> (December 1, 2014)

⁴ Joseph Warren was a Harvard educated, Boston physician, with ties to Samuel Adams. At the outset of the Revolutionary War he left medicine to join the military, reaching the rank of Major General in June 1775. During the battle of Bunker Hill, Warren rallied the colonial militia at Breed's Hill. Unfortunately, he was shot and killed by a British soldier while engaged in the attempt. The two prior ships to hold the name were commissioned in 1775 and 1776, respectively. Two more ships would hold the name, commissioned in 1827 and 1943, respectively.

⁵ *Warren*, Dictionary of American Naval Fighting Ships, *supra*.

owner and “husband” to the ship, had been active in Baltimore maritime affairs for at least ten years.⁶ He had the task of outfitting the vessel to realize the owners’ vision. Partners Samuel Smith and James A. Buchanan, of Smith & Buchanan, were the most powerful investors. Samuel Smith was a U.S. Senator at the time, and former General in the Maryland Militia was the highest-ranking military officer in Maryland.⁷ James A. Buchanan, his business partner, ran the firm, and was local civic leader, and later became the president of the Baltimore Branch of the Bank of the United States.⁸ The final two investors were John Hollins and Michael McBlair of Hollins & McBlair. Both merchants were immigrants; Hollins emigrated from England following the American Revolution.⁹ He was also the President of the Maryland Insurance company at the time the *Warren* set sail, other directors of the Maryland Insurance Company included, Taylor, Buchanan, and McBlair. McBlair, emigrated from Belfast in 1789, and was the day to day manager of the partnership, which owned some ships and traded all over the world, himself having made many voyages.¹⁰

Due to the high profile of the *Warren* in the Port of Baltimore, it was easy to tap into the imaginations of the seamen, to sell them on the trip. On his first day of recruiting, Captain Andrew Sterett, a decorated naval hero, inducted 12 able seamen and a cook at \$15 per month and advanced each man two months’ pay.¹¹

⁶ *id.*

⁷ Baltimore: Its History and It’s People 226 (1912)
http://archive.org/stream/baltimoreitshist02hall/baltimoreitshist02hall_djvu.txt (December 1, 2014)

⁸ Garret Power, Baltimore After the War of 1812, Digital Commons@UM Carey Law 85,
http://digitalcommons.law.umaryland.edu/mlh_pubs/ (December 1, 2014)

⁹ Sheppard v. Taylor, 30 U.S. 675, 708 (1831)

¹⁰ William G. LeFurgy, Register of the McBlair Papers, 1797-1849, MS 1355, Maryland Historical Society (Dec. 1, 2014) <http://www.mdhs.org/findingaid/mcblair-papers-1797-1849-ms-1355>

¹¹ McCormack, The Last Voyage of Andrew Sterett, *supra*.

A waterfront visitor observing the *Warren* and aware of her owners' influence might wonder whether a military operation was being planned.¹² The *Aurora*, a Philadelphia newspaper, reported that "a large ship [with numerous crew] is fitting out in Baltimore for an expedition" and surmised that it was destined for the West Indies with military stores to aid the rebellions in Latin America.¹³ The *Aurora* expressed hope that local customs officers would detain the ship without deference to the owners (alluding to Senator Samuel Smith).¹⁴

In response, a Baltimore paper, the *American*, claimed to have made its own inquiry about the *Warren* and decided that the *Aurora*'s report could not be justified.¹⁵ Prominent local merchant Robert Oliver¹⁶, considered a different angle and wrote to a Boston colleague opining that as the *Warren* "will be strongly armed, we presume the object is smuggling."¹⁷ Ultimately, while the *Warren* did have plans to smuggle in South America, the *Aurora*'s accusations were unfounded, as the cargo of the *Warren* did not contain military stores, but dry goods fit for trade in the coast of Chile.¹⁸

B. The Voyage: Two Stories

The *Warren* set sail on September 12th, 1806 from Baltimore, Maryland. With a crew of around 90 men¹⁹ the *Warren* embarked on a voyage of trade that would take it around the world. First the *Warren* was to go the Pacific Northwest, where it would trade with the indigenous

¹² *id.*

¹³ *id.*

¹⁴ *id.*

¹⁵ *id.*

¹⁶ Robert Oliver would later become a party to the case as the assignee of Lemuel Taylor.

¹⁷ "Record in the Case of Sheppard and others versus Taylor and others," U.S. Supreme Court, January Term, 1830, 2, Case File #1583, Records of the Supreme Court of the United States, Record Group 267, National Archives, Washington, DC. http://mdhistory.net/nara_supreme_court/m215_2/html/nara_m215_2-0231.html [hereinafter cited as "Record in the Case."]

¹⁸ McCormack, *The Last Voyage of Andrew Sterett*, *supra*.

¹⁹ Individual accounts vary from 80-90 individuals on board.

population, then across the pacific to Canton, China. Finally the voyage would end after returning to the port of Baltimore. All parties agree that this was the intended voyage when the ship left Baltimore. However, from the time the ship began to double Cape Horn, the southernmost tip of the South American Continent, the version of the libellants, who experienced the events first hand, and the defendants, diverge.

From the testimony of the men serving on the ship, the voyage changed, four weeks before they rounded Cape Horn, off the Coast of Rio de La Plata²⁰, Supercargo Pollock produced a sealed order from Lemuel Taylor. In the presence of Murray Gibson, the Captain's body servant and second steward of the ship, Pollock opened the order and read what its contents.²¹ The order stated that once the ship reaches certain latitude, Supercargo Pollock was to assume control of the ship. Further, their mission was to change from trading on the Northwest Coast of America and China, to a smuggling mission off the coast of Chile.²²

Upon being shown the new orders, Captain Sterett stated that "[he] would be damned if he would serve under any such orders"²³ and that before he would do so, he would "either blow out the Supercargoes brains or his own."²⁴ Two or three days later, the captain attempted to kill the supercargo, firing a pistol at him. Some days after this event, the captain appeared to be "deranged", and the other officers though it advisable to take his pistols away.²⁵ Peter Roe, a young seaman who would often say up with Sterett often heard him complain he had been "taken

²⁰ Off the Coast of the city of Buenos Aries

²¹ Record in the Case: Deposition of Murray Gibson

²² Record in the Case: Second Deposition of Peter Roe

²³ Record in the Case: Deposition of Murray Gibson

²⁴ *id.*

²⁵ *id.*

in by the owners” in regard to the voyage.²⁶ For some time Sterett seemed to have gotten better and was returned his pistols. One day, after shaving and dressing himself finely, as if going on shore, Captain Sterett asked Gibson for his writing desk, which was given him. He wrote a letter, sealed it put it into the desk and locked it, and returned the desk and key to Gibson, then went on deck where he shot at some birds, and was seen putting a ball in his pocket out of the armory chest as he returned to his cabin. He remained in his stateroom for a couple hours before he shot himself. Upon hearing what sounded like a gunshot, Gibson, who was in steerage at the time, ran to the stateroom. There he saw the captain lying on a trunk with the pistol in his hand and to his head. The ball entered into one temple and went through the opposite eye.²⁷ Sterett stayed alive for another 13 or 14 days, living in agonizing pain to around December 11, 1806.²⁸ According to the owners, it was severe sickness beginning on October 15, 1806 lasting until his death that led to Sterett’s mental state and incapacity.²⁹

After the letter was revealed it was a matter of general discussion onboard shortly afterward. In general, the crew opposed the proposed change, as it was common knowledge at the time that trade in the Spanish Colonies was “wholly illegal and prohibited by the well-known laws of Spain.”³⁰ The ship continued in great upheaval the whole of that day and continued for three days until Captain Sterett showed that his mind was damaged. However, from Sterett’s death onward, it was no secret on board that they were now being taken on another voyage.³¹

²⁶ Record in the Case: Second Deposition of Peter Roe

²⁷ Record in the Case: Deposition of Murray Gibson

²⁸ Record in the Case: Second Deposition of Peter Roe

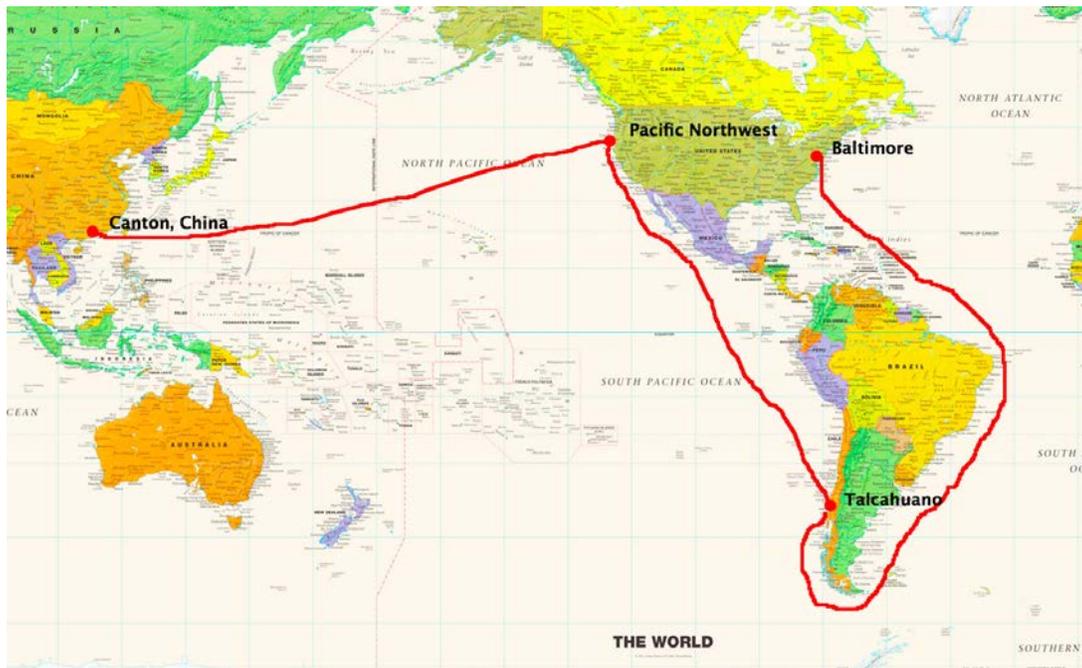
²⁹ Record in the Case: Answer of Lemuel Taylor, Samuel Smith, James A. Buchanan, John Hollins and Michael McBlair.

³⁰ Record in the Case: Second Deposition of Peter Roe

³¹ *id.*

As soon as Sterett passed, Pollock called all hands and asked the company to choose a new captain out of the officers. Samuel Evans, the first mate, was chosen captain. From the outset, unlike, Sterett, Evans appeared to be acting under the direction of Pollock. The men, distraught with this notion, discussed taking action, as they feared being captured and “sent to the mines.”³² However the men did not come to an open dispute with them, as that could have sparked a mutiny. However, Roe claims that third mate, George Parker, did complain, stating that “the voyage was very different and also dangerous, and that they were all taken in.”³³

Map of Proposed Voyage (including stop in Chile)³⁴



³² The fear of being sent to the mines is echoed throughout many of the crews’ testimony. I interpret this to allude to a common myth that the Spanish would send prisoners into the Gold and Silver mines in the colonies, but my research did not lead to any stories or cases of such conduct.

³³ Record in the Case: Second Deposition of Peter Roe

³⁴ “Political World Map- Pacific Rim View” (edited), World Maps Online, http://www.worldmapsonline.com/pacific_view_world_wall_map.htm (last accessed Dec. 1, 2014)

About four weeks later, the *Warren* came to its first port, Talcahuano, Chile³⁵ in Concepcion Bay. Here again the versions of those aboard the ship and the owners diverge. According to the owners, when the ship was around the latitude of Concepcion Bay, the ship was short of water and almost all of the crew was sick with some infection. Because a supply of fresh provisions and water were necessary for the preservation of the lives of the crew, it was determined to enter the port and solicit that supply which they so needed. The ship was accordingly brought to an anchor in the bay about four miles from the village of Talcahuano.³⁶

However, according the depositions taken by the crew, at the time the vessel anchored in Concepcion Bay, she was well manned and well provisioned and had no need to enter port.³⁷ In fact according to Gibson, the ship had “six months provisions below all the cargo,” therefore there was no necessity to go into port at that time.³⁸

Gibson’s testimony as to the location of the cargo and the amount of provisions, together with the testimony of the owners, raises a few questions about the ultimate motive of the voyage. First, the fact that there were enough provisions for another six months supports the owners’ ultimate position that the voyage was never meant for smuggling. However, their statements about the amount of provisions on board, together with the testimony of the crew about why they entered the port contradict this position. The location of the cargo aboard the ship is also of peculiar note, and is something the court does not pick up. Given that trade with the Spanish Colonies was illegal, and they were several months at the very least from the Northwest Coast of America, it raises the question, why would the provisions, which would presumably be used

³⁵ Referred to as “Chili” in court documents

³⁶ Record in the Case: Answer of Lemuel Taylor, Samuel Smith, James A. Buchanan, John Hollins and Michael McBlair.

³⁷ Record in the Case: Deposition of Murray Gibson; John Healy

³⁸ Record in the Case: Deposition of Murray Gibson

before the cargo is unloaded, be below the cargo and harder to get to? If, as suspected the cargo was intended to be smuggled into certain South American ports, it would make sense to have the cargo on top for easy access. Six months of provisions would be adequate for the return to Baltimore after unloading the cargo in South America.

Talcahuano was not known by members of the crew to be hospitable to foreign ships. According to Roe, one chief mate asked John Smith, a member of the crew who had been on prior smuggling runs in the area, about Talcahuano. Smith explained that there were several armed coasters patrolling the bay to prevent smuggling. He also said that there was a small fort and a garrison. The fort had 32-pound cannon. Had the *Warren* come up suddenly upon the garrison, the cannon could cause a great deal of damage. To the Spanish, the *Warren* would be a lawful prize, and the men could be taken to the mines, which the crew believed happened to all other crews taken.³⁹

The *Warren* stayed in the bay all night, from about 7 P.M. until 3-4 A.M. the next morning, when two gunboats commenced firing on the ship, calling out in English for their captain and papers. Captain Evans called all hands on deck. It was decided that Pollock would go to the gunboat, as he was a native Spanish speaker. Pollock took the ship's papers along with four men on the dolly boat and went aboard the gunboat.⁴⁰ He then went to meet the Commandant on shore. The next morning a soldier came on board with instructions for Captain Evans from Pollock. The soldier said he must get the ship underway and go into the harbor. Evans refused, saying he would not do anything until he saw or heard from Pollock. The soldier responded, that if he did not prepare his ship to be brought in within 15 minutes, the commandant would fire on

³⁹ Record in the Case: Second Deposition of Peter Roe

⁴⁰ Record in the Case: Deposition of John Healy

the ship. Evans replied that “[he] didn’t need 15 minutes, that [he] might as well commence firing now, but that if he should hurt the ship or any person on board her, [he] would return the fire.”⁴¹

Two gunboats then came within 50 yards of the ship at the stern. When the *Warren* had a full broadside to the gunboats, they immediately pulled away a considerable distance, and commenced firing. Three shots struck the hull; two damaged the rigging. Soon after another boat came from the shore flying a white handkerchief, causing the gunboats to cease firing. On board the boat was one of the seamen who accompanied Pollock. He claimed to have a message from Pollock, directing Evans to weigh anchor and proceed to shore. Evans asked the man if Pollock seemed to be coerced by fear. He replied that Pollock seemed “lively and at ease.” To which Evans replied “if the Supercargo was determined to bring the ship into the harbor, he must send [me] an order to that effect in writing.” So the seaman retrieved a letter from Pollock directing Evans to enter the harbor guided by the pilot boat.⁴²

Evans obliged, several of the crew went to the captain and said that they were certain that if the ship went in she would never come out again under American colors, and that they were apprehensive about being put into prison, saying they would rather stick to the ship while she would float than take her in. The captain insisted over his officers that the ship would be brought in accordingly. As the ship entered the harbor, it was quickly surrounded. The soldiers, then demanded that 20 of the crew and the commander to come onshore immediately to make an affidavit as to Captain Sterett’s death.⁴³ The officers rounded up the crew, who argued that this was only a pretext to get them out of the ship and that they would most likely be thrown into

⁴¹ Record in the Case: Second Deposition of George Budd

⁴² Record in the Case: Second Deposition of George Budd

⁴³ Record in the Case: Deposition of John Healy

prison, and that if the officers would allow, let them stay on board and defend the ship themselves. The officers declined, alleging that there was no further use in resisting. The men followed instruction and went ashore.⁴⁴

The seamen, with the exception of the petty officers and the ships apprentices, were taken twenty at a time for the purpose of making their affidavit in regards to Captain Sterett's death. No affidavits were ever made.⁴⁵ The men never appeared before a magistrate.⁴⁶

In the owner's version of the *Warren's* encounter with the Spanish, Pollock went ashore to solicit the necessary supplies on application to the Commandant of Talcahuano, Written permission was given to admit the ship, and the ship was then brought into the harbor. In their version, it was only after some misunderstanding on the part of the commander of the gunboat, who, with the belief that the *Warren* was a British ship, had commenced firing on her, and which firing caused retaliation.⁴⁷

They claim that it was improbable for the supercargo to doubt that the ship's reception would be friendly, and that a neutral vessel seeking hospitality in a friendly port would be furnished with the supplies needed for the sickly state of the crew, the want of water, and death of the commander.⁴⁸

C. The Supercargo's True Intentions

⁴⁴ Record in the Case: Second Deposition of George Budd

⁴⁵ Record in the Case: Deposition of John Healy

⁴⁶ Record in the Case: Second Deposition of Peter Roe

⁴⁷ Record in the Case: Answer of Lemuel Taylor, Samuel Smith, James A. Buchanan, John Hollins and Michael McBlair.

⁴⁸ *id.*

In the Interrogatory answered by Lemuel Taylor, Samuel Smith, James Buchanan, John Hollins and Michael McBlair, the group of owners make a point to say that the supercargo and commander of the ship were respectively prohibited by their instruction from entering any Spanish port on any account whatever.⁴⁹ Taylor had drawn up the owners' customary "Letter of Instructions"—binding orders to guide the captain at sea, with directions and advice on financial contacts, markets and destinations, and the permissible discretion allowed. Before the ship left Baltimore, Taylor delivered Letters of Instructions both to Sterett and Pollock. Back at Taylor's counting house, a clerk made a copy and filed it.⁵⁰ Newspapers reported that the *Warren* had cleared for the "North West Coast of America," and then she was at sea.⁵¹ While no record of the original ship papers survives today, they likely included a clause prohibiting Spanish trade. By including such a clause, the owners could protect themselves from the liability of illicit trading by claiming the supercargo or captain breached the original shipping contract. However, outside of the original shipping documents, there was the second set of papers worked out by Pollock and Taylor, and presumably known to the other owners. These papers were likely destroyed before she ship went into Talcahuano. By not having the second set of papers survive, it protects the owners with a degree of plausible deniability.

Because of the lack of documentation concerning the true intent of the voyage, it's hard to fully understand the motives behind supercargo Pollock's actions. From the testimony of the seamen, it is hard to determine whether he was truly acting as the agent of the owners' true intention or whether he had his own agenda. Little is known about his life, as he did not leave

⁴⁹ *id.*

⁵⁰ McCormack, The Last Voyage of Andrew Sterett, *supra*.

⁵¹ *id.*

behind any writings. However, from the accounts of the seamen, and from letters written by Robert Oliver, a clearer picture of him emerges.

Pollock was born in Spanish New Orleans to prominent merchant and Revolutionary War financier, Oliver Pollock. He is of Irish Heritage, but fluent in Spanish, which he used to his advantage dealing with the Spanish officials while serving aboard the *Warren*.⁵² Upon the *Warren*'s initial contact with Spanish authorities, it was Pollock who went forth and spoke to Spanish officials. Pollock and the Spanish Commandant were observed to have been on very friendly terms "as if they had been acquainted all of their lives"⁵³. No record exists of what was discussed between Pollock and the Spanish Commandant, but "there appeared to be a perfect understanding" between the two men.⁵⁴

The commandant and Pollock appeared to act together as two merchants would when trading. Pollock lived at the Commandant's house, where he was treated with great kindness. According to Murray Gibson, who had seen Pollock and the Commandant repeatedly, held the general impression, as did the rest of the crew that the smuggling was carried on between Pollock and the Commandant under some previous arrangement.⁵⁵ There is no evidence, however, that conclusively links the owners to Pollock's illicit trade.

Robert Oliver, who later becomes a party to the case as trustee to Lemuel Taylor, had previously employed Pollock as a supercargo, and spoke of his conduct in correspondence. From these accounts Pollock's dubious past emerges.

⁵² McCormack, *The Last Voyage of Andrew Sterett*, *supra*.

⁵³ Record in the Case: Deposition of Murray Gibson

⁵⁴ *id.*

⁵⁵ Record in the Case: Deposition of Murray Gibson

In the year prior to meeting Taylor, Pollock had traveled twice to Veracruz, Mexico, employed as Robert Oliver's supercargo. There he joined the branch of a leading international firm to act as Oliver's agent.⁵⁶ Oliver was less than impressed with Pollock's work, feeling he had cheated him "out of a large sum of money." He replaced him in April 1806. After his dismissal, Pollock returned to Baltimore, where his father resided, and was hired by Taylor as the *Warren*'s supercargo.⁵⁷ Oliver's opinion of Pollock was not solicited by Taylor, but privately he "regret[ed] exceedingly having anything to do with him."⁵⁸ Pollock therefore had a history of following his own agenda to the detriment of his master.

Pollock was described as "shrewd," extremely guarded, and capable of the most refined deception, and he was "well-acquainted with the Spanish character and language."⁵⁹ From the seamen's recollection, Pollock's top priority was to smuggling the goods on land, not to protecting the crew.

D. Smuggling

Some of the cargo was smuggled at Conception—commencing on the night the *Warren* arrived, and continued for eight nights, so far as the crew is aware. The goods were all carried to the Commandant's house. Murray Gibson, recollects his experience aiding in the smuggling:

"I spoke the language and was directed by Pollock to act with [discretion?] and appease [those] who were engaged in smuggling the cargo. I was in prison part of the day but always taken out at night. In smuggling, a sign was needed which was only known to

⁵⁶ McCormack, The Last Voyage of Andrew Sterett, *supra*.

⁵⁷ *id.*

⁵⁸ Robert Oliver to Matthew L. Murphy, 15 October 1806, Oliver Letterbook.

⁵⁹ Record in the Case: Second Deposition of George Budd

Pollock, the eight Spaniards, the King's guard. When the smuggling was finished, the vessel was stripped, the rudder unhinged, and I, the apprentices who had remained on board, were taken to prison at conception."⁶⁰

Gibson's testimony matches that of his fellow seamen, who agree that they were tricked by Pollock into believing he was looking out for them, rather than his own self interests. Peter Roe recalled that Pollock would come around noon each day with the General of the Marines, and tell the men to "keep your spirit up, you will be on board your ship tomorrow."⁶¹ The men trusted him enough at the time to bring him into their plan to retake the ship.

As the men grew restless, they all agreed to take the chance to retake the ship. The town was small, the garrison was no more than 80 men who were all dispersed throughout. The prison was behind the fort, and it was agreed to thwart the guns of the fort and fight their way to the ship. They were not suspicious of Pollock at the time and agreed to tell him of their plan, even though they felt he was acting strange. Even after a crewman named Kelly, a former captain of a vessel previously condemned for smuggling in the same said "Pollock was gulling us" and that "we would go to the mines and never should get free," the men still agreed to tell Pollock of their plan. Neither they, nor Evans, were aware of any understanding existing between Pollock and the governor.⁶²

Two days later, a very strong breeze of wind came upon the harbor, and it was the opinion of the remaining crew on board, that if they could surprise the Spanish guard, the wind could get them out of the harbor and to safety. Before they began to put the plan in motion,

⁶⁰ Record in the Case: Deposition of Murray Gibson

⁶¹ Record in the Case: Second Deposition of Peter Roe

⁶² *id.*

Pollock came on board, and begged of them “for gods sake not to think of such a thing;” claiming they would be liberated in a few days and they could sail with the whole of the cargo and proceed to Canton. The Spanish took the sails down, but left them aboard the ship.⁶³

Days later, the remaining crew on board were still determined to make a break. However, while talking to Pollock, they got drunk and consequently obliged to stop the plan. Pollock came back on boat with word from the Commandant saying he didn’t place enough confidence in Pollock, which he thought he ought to have done, and he wished if possible that they would get the ship out of the harbor that night, which the crew agreed to attempt.⁶⁴ After he left, a group of men came and unhooked the rudder and took it ashore, to stop the possibility of escape.⁶⁵ Presumably Pollock was humoring the men, biding the time until all the cargo had been unloaded.

As for the men already in prison, upon hearing of their own plot, Pollock told them, “men, be quiet I can do more for you now than god almighty, and in three days I’ll have you on board the ship.”⁶⁶ Pollock then whispered in Spanish something to the General, then left the men. Soldiers later marched a group of the men nine miles to the town of Conception, where they were put into prison and remained there for eight months.⁶⁷

Whether Pollock was acting in the interest of the owners or for himself is unknown. Presumably, given the nature of the cargo, which included dry goods, such as thread, laces, clothes, calicos, silk stockings, boxes of watches, and cutlery, goods ideally suited for the coast of Chile, and not at all suited for the Northwest Coast of America, would mean that from the

⁶³ Record in the Case: Second Deposition of George Budd

⁶⁴ *id.*

⁶⁵ *id.*

⁶⁶ Record in the Case: Second Deposition of Peter Roe

⁶⁷ *id.*

beginning the owners of the ship would have to be involved in outfitting the cargo in the way it was when the *Warren* left Baltimore.

E. Prison

The term of imprisonment varies for each individual seaman, the time of their release and how they returned home varies from man to man, generally from a term of eight months to four years. For example, the captain's servant Gibson, in his deposition, recalls the time he and others spent before they returned home. After waiting in the Talcahuano jail for eight days, they were taken to Conception for eight months, Callas for three months, Lima for 6 month, Guayaquil for two and a half months, Panama for 30-40 days, then to Cadiz for six months, finally to Porto-Castillo for two and a half months where they embarked to Philadelphia on a two month passage. They were employed about five months in traveling to and from places. In total from capture to return to America was three years.⁶⁸

Peter Roe, like Gibson was marched all across South America and says that he "suffered beyond description" in Callas. According to his account, while in Cadiz, he and others were given up by the Spanish to British Rear Admiral Purvis of the HMS *Atlas*.⁶⁹ At the time, Roe claims to have made an application to the American Consul at Cadiz, but the consul offered no help. The men were received by Admiral Collingwood, who accepted them as supernumeraries. The men were then distributed amongst the Toulon Fleet, where Roe claims to have served for eleven months with no pay before returning to the U.S.⁷⁰

⁶⁸ Record in the Case: Deposition of Murray Gibson

⁶⁹ No data could be found to explain why the seamen were transferred to the British.

⁷⁰ Record in the Case: Second Deposition of Peter Roe

Table: Breakdown of Peter Roe's Time on Voyage ⁷¹		
<u>Location</u>	<u>Months</u>	<u>Days</u>
From Baltimore to Talcahuano	4	18
In Prison at Talcahuano		8
In Prison at Concepcion	8	
From Concepcion to Callas	1	
In Prison at Callas	3	16
From Callas to Guayaquil	1	
In Prison at Guayaquil	18	
From Guayaquil to Lima	4	
From Lima to Cadiz	4	15
On Admiral's ship		15
Passage from Cadiz to Toulon and detention at Gibraltar	2	
<u>TOTAL:</u>	47	10

In response to the claims made in the original libel filed in December 1810, the owners acknowledge that the crew of the Warren were confined for some time, but far short of three years, as mentioned in the libel. The owners also argue that during such confinement they were abundantly supplied with the necessities of life and permitted to return home as often as

⁷¹ *id.*

opportunity and accommodation offered, but that some of them voluntarily remained, thereby voiding their claim for compensation for the duration of their time away from the U.S.⁷²

III. FILING THE CASE

A. Filing of the First Libel

In the initial libel of December 1810, filed in personam against the owners in the admiralty court, which alleges that the libellants' (six in number at filing) wages had not been paid for their time on the voyage and subsequent capture. The owners moved to dismiss with costs on March 3, 1811, arguing that under the circumstances set forth, "the libellant has no claim for wages or other compensation." The owners relied on the fact that the condemnation of the vessel and the cargo was an arbitrary act, and against law, that there had not to the best of their knowledge and belief been any violation of any law or regulation of Spain or her colonies, by the supercargo or commander of the ship.⁷³ They further say that they have heard of the condemnation by the Spanish, but they do not have a copy of it.⁷⁴ No further proceedings took place until October 1818, the libellants (in all fifty-seven) filed an amended libel; and in June 1819 another seamen filed a separate amended libel. The only material allegation of these supplements is that the owners had received all or part of the proceeds of the ship and cargo by this time.⁷⁵ However, the proceeds would not be received by the assignees until 1824.⁷⁶

B. Restitution from the Spanish Delayed

⁷² Record in the Case: Answer of Lemuel Taylor, Samuel Smith, James A. Buchanan, John Hollins and Michael McBlair.

⁷³ *id.*

⁷⁴ *id.*

⁷⁵ Sheppard v. Taylor, *supra*. 708

⁷⁶ *id.* 707

On June 13, 1815, the Spanish King issued a royal order of restitution to the money received from the liquidation of the *Warren* to the owners.⁷⁷ The restitution came about after Samuel Smith and the other owners made a complaint before the Maryland State Senate. The Senate, looking only at the original registers of the voyage on file at the customs house, which stated the intended voyage was to China, declared the confiscation unjust, and gave the owners permission to detain by way of indemnity any property owned by the Spanish Crown, based in the United States.⁷⁸ Upon hearing of the decision, Spanish Minister in the U.S., Don Luis de Onis, made an agreement with Smith and his fellow owners that the Spanish would return in capital, the amount of the proceeds of the cargo for the ship *Warren*.⁷⁹ Further, de Onis made special arrangements with Smith to permit the sail of a vessel, laden with a small cargo of licit merchandise and some tobacco, upon which the customary royal duties were to be paid. Upon receipt of their payment, the owners were to acknowledge themselves indemnified for all the losses and expensed resulting from the voyage.⁸⁰

However, the owners would not receive payment in a timely fashion. Due to the impoverished condition of the Spanish Treasury by May 24, 1818, the treasury was not willing to refund such a large amount.⁸¹ The owners then presented memorials for indemnity to the commissioner of the United States appointed under the Florida treaty of February 22, 1819, upon which an award was made on their behalf dated April 24, 1824.⁸² However by that time, the

⁷⁷ *id.* 679

⁷⁸ *id.*

⁷⁹ *id.*

⁸⁰ *id.*

⁸¹ *supra* 682

⁸² *supra* 683

owners were insolvent, and interest in *the Warren*, including the claims against Spain had been assigned to their respective creditors..

C. Insolvent Owners

Beginning around 1919, all of the ship's owners became insolvent. In December 1819, Lemuel Taylor assigned to Robert Oliver his interest in the proceeds of the *Warren* and cargo, whenever recovered; in November 1820, Samuel Smith and James Buchanan assigned their respective interest in the proceeds of the ship and cargo to Jonathan Meredith and Thomas Ellicott, in trust for the Bank of the United States and other creditors and in May 1821, John Hollins and Michael McBlair assigned their interest to the Union Bank; all these assignments were made to secure debts antecedently due.⁸³

In December 1825, the libellants filed a new libel by way of petition against the owners and their assignees, demanding the owners to indemnify and pay them from the award of the proceeds whenever recovered, to the full amount of their wages. Answers were filed by the owners and the assignees; the owners asserting that they no longer held interest in the funds, and the assignees arguing that their assignment gave them exclusive title to the proceeds, and deny all knowledge of any agreement by the owners in respect to the claim of wages, or any other matter in the petition. The district court dismissed the Libel. Libellants appealed to the U.S. Circuit Court for the District of Maryland, who upon hearing the case in the May Term 1828, issued a decree pro forma, affirming the district court, dismissing libels and petition exhibited in

⁸³ *supra.* 707

the cause.⁸⁴ The decision was appealed to the Supreme Court of the United States, where records were received and filed on February 16, 1829.⁸⁵

IV. THE SUPREME COURT

A. Attorneys

At the Supreme Court, the appellees hired two of the most respected Maryland lawyers of the time. Roger Taney and William Wirt. Both men would serve as Attorney General, and Taney would be appointed to the Supreme Court. Born in Bladensburg, Maryland, on November 8, 1772, Wirt was admitted to the bar in 1792. In 1807, President Jefferson appointed him prosecuting attorney in the trial of Aaron Burr. President Monroe appointed Wirt Attorney General in 1817 through 1829. At that time he moved to Baltimore and practiced law until his death on February 18, 1834, making Sheppard one of the few private practice cases taken late in his distinguished career.⁸⁶

Robert Taney was born and raised in Calvert County, Md. He is best remembered for his time served on the Supreme Court, particularly his majority opinion in Dred Scott (1857), serving from 1835 until his death in 1864.⁸⁷ He also served as Secretary of the Treasury, Secretary of War, and Attorney General during the Jacksonian administration, before being nominated to the Supreme Court. He attended Dickinson College, then apprenticed with a

⁸⁴ *supra*. 709.

⁸⁵ Court filings

⁸⁶ *Attorney General: William Wirt*, Department of Justice, <http://www.justice.gov/ag/bio/wirt-william> (last visited December 12, 2014).

⁸⁷ *Roger B. Taney*, The Oyez Project at IIT Chicago-Kent College of Law, http://www.oyez.org/justices/roger_b_taney (last visited December 12, 2014).

lawyer in Annapolis for three years. He served in the Maryland House of Delegates for a term before entering private practice in 1821.⁸⁸

The Appellants retained their own impressive set of lawyers in Charles F. Mayer and David Hoffman. Charles Frederick Mayer, was the longtime attorney for the Baltimore and Ohio Railroad and other corporations. He maintained one of the most successful practices in the city for many years.⁸⁹ His house was a center for all that was intellectual and cultured in the Baltimore of those days.⁹⁰

David Hoffman, born in Baltimore, Md. in 1874 was from a young age one of the most prominent members of the Maryland Bar. As one of the founders of the University of Maryland School of Law, he was appointed law professor in 1816, but did not begin lecturing until 1823. His book, Course of Legal Study was pronounced by Justice Joseph Story to be "by far the most perfect system for the study of the law which has ever been offered to the public."⁹¹ After a falling out with the law school in the 1830s, he moved to Philadelphia in 1843, where he was admitted to the bar.⁹²

B. Appellant's Argument

Hoffman, in a style typical for him, presented a well-researched argument that practically bulged with citations, almost 200 British and American cases. Lawyers for the assignees also

⁸⁸ "The Late Chief Justice Taney." *The Baltimore Sun*, 15 October 1864.

⁸⁹ Alfred Goldsborough Mayor, Biographical Memoir of Alfred Marshall Mayer, 1836-1897, 243(1916) <http://www.nasonline.org/publications/biographical-memoirs/memoir-pdfs/mayer-alfred.pdf> (last accessed December 1, 2014)

⁹⁰ *id.*

⁹¹ Bill Sleeman, "David Hoffman and the Science of Jurisprudence," University of Maryland Special Collections, <http://www.law.umaryland.edu/marshall/hoffman/biosketch.html>

⁹² *id.*

presented a strong case but one that relied on considerably fewer cases, citing only about 40.⁹³ In simplified form, libellants made the following arguments (his citations omitted):

Hoffman's argument begins with what he articulates to be the "true principle" of the seaman's right to wages, where the seaman contracts to serve the owner to insure the safety of the ship, which the owner is to pay if the vessel returns safely. When freight is earned, the seamen ought to have wages. But without the freight, the seaman has not earned his wage.

However, Hoffman points to an exception to the rule when the owner or their agent is at fault in reference to the voyage and have deviated from the voyage specified in the seamen's contract. He argues that the "ship owners are implicated in the supercargo's conduct, even where they do not own the cargo: because the freighter is answerable over to the owners for the supercargo's acts."⁹⁴ It is under this reasoning that the seamen bring the libel.

In regards to the extent of the wages, he argues that a seaman's wages continue as long as he is in service of the vessel, whether he is on the vessel or separated from it. Further, the seamen's claim is not diminished "from any delays, or actual loss of profits of the voyage to the ship owners, in freight, or otherwise."⁹⁵

The appellants claim to be paid the full amount of wages from the commencement of the voyage throughout the whole term of imprisonment, and of absence from the United States. It is contended, that this amount ought to be paid out of the fund now represented in court, "without regard to the pretensions of the holders of it, as respects their assignors; or to the fact of all the holders of the means derived from the treaty, not being before the court in this case."⁹⁶

⁹³ Bill Sleeman, "James Sheppard v. Lemuel Taylor, 1830" University of Maryland Special Collections, <http://www.law.umaryland.edu/marshall/hoffman/sheppard.html>.

⁹⁴ *id.*

⁹⁵ *id.*

⁹⁶ *id.*

He argues that there are numerous resources available for the payment of the wages. They have the ship as security. The seamen's lien on it is special: "a mortgage created by the law; which places the ship in the owner's hands, as a trustee for the seamen's claim."⁹⁷ The seamen's lien on the ship is not an ordinary lien, but one that has "a quasi proprietary interest, co-extensive with their right of wages; and operating as a judgment, binding lands, controls and appropriates the estate in them to the creditor's benefit."⁹⁸

The seaman also has a lien on the freight for his wages, and a lien on the cargo to the extent of freight actually carried, where the owner of the vessel is not the owner of the cargo; or to the extent of what would be a reasonable freight, where the same person is owner of ship and cargo.

In regards to the ability of the owners to assign the property to a bona fide purchaser, Hoffman argues that the owners could assign only an interest equal with their right; and only so far as the seamen's lien gave the subject free to the owners, had they any right. He argues that by nature the seaman's lien is fixed and carries notice of it to all who claim any benefit out of the specific object.

Hoffman further puts forth the common law definition of proceeds, which he states is also a principle of admiralty law. The "proceeds or pecuniary result of the thing is regarded as the representative of the thing; as the thing itself: and that money may be specifically appropriated, and bound, if it can be traced, and, as a fund, identified."⁹⁹

Hoffman concludes by making an argument against an anticipated counterargument; that the royal act in the case is a judicial declaration of the innocence of the owners. He articulates

⁹⁷ *id.*

⁹⁸ *id.*

⁹⁹ *id.*

the claim that the libellants therefore cannot assert a claim directly adverse to the royal decision; and that the libellants cannot contradict that decision because the funds in question draw directly from the outcome of that decision. However, this argument was not made by the appellee, nor discussed in the opinion, so it is omitted.

C. Appellee's Argument

Mr. Taney and Mr. Wirt for the assignees, appellees, stated: that the assignees, for whom they appeared, were not interested in arguing the allegations of the illegality of the *Warren's* voyage, or the fraud charged to made toward the libellants by the owners; Therefore, those points of fact were not contested before the Supreme Court, and were deemed to be conceded to the libellants.¹⁰⁰ In their response to the appeal, the Appellants contend only three points of law:

1. That the fund received by the assignees, under the award of the commissioners, as states in the record, is not liable in their hands for the wages claimed, or any part of them.

2. If the fund is in the hands of the Assignees, be liable for the wages, or any part of them, the Admiralty Court, in its character of an Instance Court has not jurisdiction to compel payment.¹⁰¹

3. If the fund in the hands of the Assignees be liable, and the court of Admiralty has jurisdiction to enforce it, the Libellants are entitled to recover only such proportion of the sum awarded for freight as was given as a compensation for wages.¹⁰²

¹⁰⁰ *Sheppard v. Taylor*, 1831 LEXIS 337, 349-50.

¹⁰¹ Record of the Case: Response of the Appellants,

¹⁰² *id.*

D. The Decision

The Opinion, written by Justice Joseph Story, found in favor of the libellants. In the decision, the court looks at a number of questions, including whether the libellant had substantially sustained injury, whether lien may attaché to the proceeds of the ship, freight, or cargo, whether the admiralty court has jurisdiction, and whether the assignees have exclusive right to proceeds as bona fide purchaser.

The first question, whether in point of fact, have the libellants substantially sustained the allegations in the libels and petition in respect to the voyage; to their ignorance of the intended illicit race; to the seizure of the ship and to their own imprisonment and separation from it: which is necessary to maintain their claim of wages, the court the court found that the seamen were victims under the circumstances and had the right to bring claim.

The court looked to the general rule in courts of admiralty in cases where either libel seeks nothing beyond compensation in the nature of wages. Under the rule, seamen are entitled to full wages from the time of their shipping off on the voyage, to the time of their return to the United States; deducting their advance wages, and whatever they have earned in any intimidate employment.¹⁰³ To this extend the seamen are entitled to a degree against the owners.

Although the owners are insolvent, the court finds that the lien continues against the assignees of the ship, reasoning, “a seaman’s wage lien is so sacred and indelible, that it has, on more than one occasion, been expressively said that it adheres to the last plank of the ship.”¹⁰⁴ The court holds that there is no difference between the case of restitution in specie in the ship itself, and restitution in value. The lean attaches to the thing and to whatever is substituted for it.

¹⁰³ *id.*

¹⁰⁴ *id.* 710.

The court does not cite any particular principle of admiralty law here, saying only that it is “found incorporated into the doctrines of courts of common law and equity.”¹⁰⁵ Therefore the court has no issue in affirming the lien against the proceeds of the ship.

The court also holds that the seamen have a right to the proceeds of the freight, stating, “There is an ultimate connection between the freight and the wages’ that the right to the one is generally, though not universally, dependent upon the others.”¹⁰⁶ Again the court does not cite any specific doctrine of maritime law, only stating that it is “doctrine familiar to all those who are conversant with maritime law.”¹⁰⁷ Therefore if the proceeds of the ship are exhausted without satisfying the amount of the wages, under the general doctrine of maritime law, the seamen may justly assert a claim on the freight.¹⁰⁸

However, The Court holds that there is no right to the proceeds of cargo, “as that is not in any matter hypothecated, or subject to the claims of wages.”¹⁰⁹

Second, the court looks at the question of jurisdiction. Appellees argue that the admiralty has no jurisdiction in the case. The court holds this to be unfounded. Over the subject of seamen’s wages, the find, “the admiralty has undisputed jurisdiction, in rem, as well as in personam; and wherever the lien for the wages exists and attaches upon proceeds.”¹¹⁰ Known in the cases of “prize, and bottomry, and salvage” and is equally applicable in the case of wages.¹¹¹

Finally in regards to the assignees claim that they may hold the proceeds for their exclusive use as bona fide purchasers, the court decides in favor of the libellants. With respect to

¹⁰⁵ *id.*

¹⁰⁶ *id.*

¹⁰⁷ *id.*

¹⁰⁸ *id.* 711.

¹⁰⁹ *id.* 712.

¹¹⁰ *id.* 711.

¹¹¹ *id.*

the ship and freight, they stand in no better position as the owners, as they take title cum onere. The lien falls the ship and its proceeds into whosever hands they may come by title. As for the freight, because the assignees took their assignments as mere securities for antecedent debts, they either had actual or constrictive notice of the claims of the seamen, when they received their conveyances.¹¹²

The court remanded the case to the Circuit court to hear the case on the merits, to determine by commissioner the precise amounts to which each libellant is entitled.¹¹³

E. The Award

“The libellants are entitled to full wages according to the terms of their original shipping articles or contract, from the time of their original shipping articles or contract, from the time of their shipping until their return and arrival in the United State, after the seizure of the said ship *Warren* and cargo.”¹¹⁴ Appellee was required to make payment from the funds and proceeds (but not exceeding the finds, and proceeds) of the ship *Warren* and the freight received by them under the assignments and awards of the commissioners under the treaty with Spain.¹¹⁵

The decision also awarded the libellants interest on their claims from the filing date of the petition on December 1, 1825. The court reasons that the previous delay was “either a voluntary delay, assented to by all parties; or else, under the circumstances of so much doubt as to the nature of the as to the nature of and extent of the claim, as out to preclude any claim for interest.”¹¹⁶ The court reasons that the assignees have had possession of the funds since the filing

¹¹² *id.* 710-11.

¹¹³ *id.* 713.

¹¹⁴ *id.* 714.

¹¹⁵ *id.* 715.

¹¹⁶ *id.* 713.

of the petition, and therefore, the court presumes, has collected interest on it. Therefore no hardship exists in holding them liable in paying interest to the libellants.

Because the case had not been heard upon the merits in either the district or circuit court, the Supreme Court could not ascertain on its own, the precise amount owed to each individual libellant, as the service time, and pay differed for each man. Therefore, the court remanded the case to the circuit court with explicit instructions.¹¹⁷

F .Dissent

Justice Henry Baldwin dissented from the order of the court in relation to the proceedings in the circuit court, and the allowance of a commission to the defendants.¹¹⁸

Taney, counsel for the assignees, filed a suggestion to the court, which followed the published opinion, directed at the special directions given to the circuit court. He asks that assignees be allowed to offer further proof on a series of matters:

1. The expenses occurred by the owners in prosecuting this claim in Spain, in order to procure restoration
2. The expenses of the assignees in prosecuting the claim before the commissioners under the Florida treaty
3. The amount of the compensation to which the assignees are entitled for their services, as general agents for those interested in the fund.
4. The records of the proceedings against them in both Circuit and Supreme Court, sitting as a court of chancery, in relation to the fund now in question.

¹¹⁷ *id.* 715-16

¹¹⁸ *id.* 718.

5. The record of the proceeding in the chancery court of Maryland, in relation to a part of the said fund, so that if they should find a conflict of the jurisdiction, they may not be made liable to pay amount due in both courts.¹¹⁹

G. Remanded back to Circuit Court

Under the directions of the Supreme Court, the circuit court was instructed to do three things:

To refer it to the commissioner to ascertain, from the evidence, and proceedings, the amount due to each of the libellants, for wages and interest under the principles stated in the Supreme Court decision. As soon as each libellant's amount was calculated, the circuit court was to issue a separate and several decree for each individual libellant. Therefore no individual would have to wait for any final decree upon claims of others.

In cases where the exact time of return of the libellant cannot be ascertained, the commissioner is to make an average estimate of the time, as near as the facts will enable him to do so, and report it accordingly.

In cases where any of the libellants have died while the proceedings in the suit were still pending, no final decree is to be entered for those libellants, until their personal representative becomes party to the suit.¹²⁰

At the circuit court the libellants were adjudged \$32,872 in total to be distributed pro rata to the each man for his wages, respectively. No individual's total claim reached nine hundred

¹¹⁹ *id.* 716-17.

¹²⁰ *id.* 714.

dollars and most fell short of five hundred dollars. A separate decree was entered into the circuit court for the sum found due to each individual respectively.¹²¹

H. Returning to the Supreme Court

The assignees appealed the circuit court decision back to the Supreme Court. They gave the court a several appeal bond, under the appeal of each individual decree, as well as a joint bond, for the whole. The libellants moved for a motion to dismiss, on grounds the grounds that the sum in controversy in each decree is less than two thousand dollars; and as such, insufficient to give the court appellate jurisdiction. The assignees argue that the aggregate of the claims in controversy, when taken together, greatly exceed the threshold value.¹²²

In an opinion again written by Justice Story, the court held in favor for the libellants. As the court reasoned, seamen's wages are unique, in the sense that there is a several and distinct contract with each man, for the voyage, at his own rate of wages. While they all sign the same shipping paper, they are not understood to contract jointly with, or to incur responsibility for any others.¹²³ The shipping articles constitute a several contract with each seaman to all intents and purposes, and contemplated by the actor by congress for the government and regulation of seamen in the merchants' service act of 1790, ch. 29, and has been interpreted as such by courts of justice, as well as merchants and mariners, in all commercial nations of the period.¹²⁴ The

¹²¹ *Oliver v. Alexander* 31 U.S. 143, 145 (1831)

¹²² *id.* 145.

¹²³ *id.*

¹²⁴ *id.*

1790 act of congress declares, “All the seamen or mariners, having cause of complaint of the like kind against the same ship or vessel, shall be joined as complainants.”¹²⁵

According the court, traditionally under common law, a joint action cannot be maintained by a number of seamen, for wages accruing under the same shipping articles for the same law. The reason being that common law will not tolerate a joint action, except by persons who have a joint interest, upon joint contract. However, in the court of admiralty, a different course of action has developed over time regarding seamen’s wages, for the benefit of the seamen and for the efficiency of the courts.¹²⁶ This practice, according to the court, is based at least in some part to the practice of common law of consolidating action against different underwriters, founded upon the same policy of insurance.¹²⁷

The reason for the privilege afforded to the seamen is both wise and humane. It saves the parties from court costs and expenses and enables speedy justice to be administered to all who stand in a similar situation. As the burden of challenging the ship owners for wages would fall primarily on the seamen, who generally have little means, a joint libel shifts this burden to be covered by the many.¹²⁸

Unlike a true joint libel, the contract is always treated in the admiralty according to the truth of each individual case, as each individual seaman holds his own distinct contract. Each is to stand or fall by the merit of his own claim and unaffected by his co-libellants.¹²⁹ If the law were to treat the claim as a traditional joint libel, it would be unfair and unjust to the seamen. The aforementioned impoverished nature of the seamen would still likely necessitate the filing of

¹²⁵ *id.* 147

¹²⁶ *id.* 146.

¹²⁷ *id.* 147.

¹²⁸ *id.* 146

¹²⁹ *id.*

a joint claim, however if any controversy existed as to the claim of a single man, the all others would be dragged with him through appellate tribunals, and incur added expenses, even when their own right or claim has been decided without controversy.

Therefore, while the assignees' appeal failed, as the multiple libellants are not ascertained by a several judgment, and each matter is decided solely in regards to the individual, none of which have a claim exceeding the two thousand dollar threshold.

I. Collecting on the lien

After the case reached the Supreme Court for the second time, and the appellees' motion for appeal denied, the seamen's fight for their wages was still not over. Unfortunately, It is unknown whether the seamen ever collected on the judgment and received their pay. The last record of the case comes from a letter from libellants' attorney David Hoffman to Justice Joseph Story, dated March 23, 1832, written only weeks after the decision in Oliver v. Alexander. In the letter, Hoffman refers to the *Warren* case as "that endless case."¹³⁰

The trouble seemed not be with The Bank of the U.S., nor Oliver, but with "the obstinate Quaker President of the [Union Bank] will not...without execution, hoping to find some difficulty in making a Corporation pay, as they think the only process is by attachment for contempt, and they say the Corporation cannot be attached."¹³¹ Surely there must be some process in our Courts in the nature of *Fieri Facias*. I have looked over the books and can get no

¹³⁰ "Letter to Justice Joseph Story", University of Maryland: Special Collections, <http://www.law.umaryland.edu/marshall/hoffman/story.html>.

¹³¹ *id.*

light, but have found a work somewhat after the fashion of a Fi Fa! Can you give me some advice as the case is now forever out of your jurisdiction?”¹³²

Hoffman muses to Story about the decree of the circuit court commissioner in the case at had wrongly worded the decree as to throw the Costs on the Libellants instead of the Assignees in contradiction to the Courts express written order of December 17th. He sought Justice Duvall’s assistance to order the mistake corrected, as he said, “[Duvall] admits that it is a mere blunder,”¹³³ but Duvall was hesitant to do anything, as he said their was an appeal. Hoffman told him the appeal was wholly on the part of the Assignees and dismissed.

V. EFFECTS OF THE DECISION

Today, Sheppard v. Taylor is still good law. Although it has not been cited in a Supreme Court opinion since Phelps v. U.S. 421 U.S. 330 (1975), and before then in 1898. The John G. Stevens, 170 U.S. 113. Statutes have superceded the holding of both cases. (Phelps by the passage of the Bankruptcy Act of 1975 and Stevens by the passage of the Jones Act of 1920,¹³⁴) neither statute superseded the holding of Sheppard.

The cases that do cite to Sheppard, mainly Federal Circuit Courts, are largely in reference to three points of the decision. First, courts have cited that in the case of wages, the value of an owner’s interest in his ship and freight is to be considered as a substitute for the ship itself.¹³⁵ That “there is no difference between the case of a restitution in specie of the ship itself, and

¹³² *id.*

¹³³ *id.*

¹³⁴ 46 USCS Appx § 688.

¹³⁵ Israndtsen Marine Servs. V. M/V Inagua Tania 93 F.3d 728, 733 (11th Cir. Fla. 1996)

restitution in value, The lien attaches to the thing, and to whatever is substituted for it.”¹³⁶ And that the wages of seamen are a primary lien upon a vessel that “adheres to the last plank.”¹³⁷

In modern cases, the adherence of a lien to the proceeds has been applied to tax liens. Cases like U.S. v. Boardwalk Motor Sports, Ltd. cite Sheppard as a “long standing precedent [that establishes] a tax lien reattaches to “whatever is substituted for the item.”¹³⁸

The other two main reasons courts have cited Sheppard is for the right seamen hold to enforce his rights for wages either in personam against the owner or in rem against the vessel and its proceeds.¹³⁹ Third, that “An owner may not escape liability for wages by transfer of ownership pending fulfillment of articles.”¹⁴⁰

In all Sheppard is rarely cited, most likely due to the nature of the facts of the case. In dealing primarily with admiralty and seamen’s wages, as times change, the subject matter becomes more and more irrelevant. The decline of sailing as a profession, changes in global shipping, and changes in the way people contract for wages, has led to cases of seamen’s wages be brought less and less. Although the case does survive in the footnotes of select modern cases, such as the aforementioned, most notably in cases of tax liens, it is usually demoted to one of many listed in a string citation, with little discussion given to the facts of the case or its specific holding.

¹³⁶ Sheppard *supra* 710, cited by Citibank, N.A. v. Vessel American Maine 865 F.2d 24, 26 (2nd Cir. 1988); Butler v. Ellis 45 F.2d 951, 955 (5th Cir. N.C. 1930).

¹³⁷ *id.*

¹³⁸ 692 F.3d 378, 384 (5th Cir. Tex. 2012); see also Municipal Trust & Sav. Bank v. U.S. 114 F.3d 99, 101 (7th Cir. Ill. 1997).

¹³⁹ Bank of British North America v. The Hutton 137 F. 534, 538 (2d Cir. N.Y. 1905); The A. Heaton 43 F. 592, 595 (C.C.D. Mass 1890).

¹⁴⁰ Farwest Steel Corp. v. Barge Sea-Span 241 828 F.2d 522, 524 (9th Cir. Or. 1987); Everett v. U.S. 284 F. 203, 206 (9th Cir. Wash. 1922).

VI. CONCLUSION

While it may never be known whether the men aboard the *Warren* ever received their pay for their time spent on that ill-fated voyage, the decision did answer questions regarding admiralty law and more specifically, seamen's wages at an early time in the nation's history, which remains good law to this day. The decision took from common law basic rules of admiralty law, such as how a seaman's wages are sacred and hold a super priority lien against both the ship and the freight of the vessel, and a bona fide purchaser of the proceeds cannot supersede such a lien. The case also upholds the right of a seaman to bring suit either against the ship's owner in personam or against the ship in rem, giving the seaman a greater possibility of recover. Although the case may not have much significance today, it is a remarkable story, given the high status of the men involved, the deception and ultimate suicide of Sterett, and the overall length of time the men had to suffer in captivity and then again waiting for their wages to be paid.

VII. APPENDIX: SELECTED PROFILES

A. James Buchanan

James Buchanan was born in 1768 and died in 1840.¹⁴¹ In 1790, he joined Samuel Smith as partners, forming Buchanan and Smith, which he served as managing partner.¹⁴² The firm would become "one of the greatest commercial establishments in the United States."¹⁴³ His father and Smith's father had also previously been partners.¹⁴⁴ He served on the Baltimore City

¹⁴¹ Garret Power, "Baltimore After the War of 1812" University of Maryland Digital Commons, 40 (2012).

¹⁴² David S. Bogen, "The Scandal of Smith and Buchanan" University of Maryland Digital Commons (1985).

¹⁴³ Frank A. Cassell, Merchant Congressman in the Young Republic, 223 (1971)

¹⁴⁴ Edward C. Papenfuse, A Biographical Dictionary of the Maryland Legislature 1635-1789 Vol. 426, Pg. 746.

Counsel, representing the first district, from 1797 through 1807.¹⁴⁵ He was the son in law of Baltimore's first mayor, James Calhoun.¹⁴⁶ In 1817, he was named director of the Baltimore Branch of the Second Bank of the United States. In his position as bank manager, he would use the bank funds as an unlimited line of credit without collateral or oversight by the parent bank.¹⁴⁷ It was under his orders that James McCulloch, as cashier of the Bank, refused to pay the Maryland tax, culminating in the landmark decision McCulloch v. Maryland.¹⁴⁸

In 1819, as financial panic swept the country and Buchanan's practices were exposed; he was indicted on the grounds of conspiracy to defraud the Bank of the U.S.¹⁴⁹ By the end of the year, Smith & Buchanan had failed, after the partners were held joint and severally liable for loans and were unable to pay.¹⁵⁰ Following the ensuing trial and shame culminating from his public fall, Buchanan spent the rest of his life in relative obscurity. No portrait exists, and he died in obscurity, his death only being marked with a notice, not with an obituary.¹⁵¹

B. Procopio Jacinto Pollock

Son of the New Orleans merchant Oliver Pollock, who had been so useful as the financial agent of the Continental Congress in New Orleans, Procopio J. Pollock was born in New Orleans and educated in Europe. Around 1800 he removed to Porto Rico, and engaged in the coffee

¹⁴⁵ John Thomas Scharf, "History of Baltimore City and County, 197 (1881) https://books.google.com/books?id=6tF4AAAAMAAJ&lpg=PA187&ots=tdLZ2z_fKe&dq=%22James%20A.%20Buchanan%22%20baltimore&pg=PA187#v=onepage&q=%22James%20A.%20Buchanan%22%20baltimore&f=false (last accessed December 1, 2014).

¹⁴⁶ Robert Barnes, "James Calhoun: Mayor of Baltimore, 1797-1804. *The Archivist's Bulldog* Vol. 13 No. 6 (March 22, 1999).

¹⁴⁷ Power, *supra* 41.

¹⁴⁸ 17 U.S. (44 Wheat.) 316 (1819); Power, *supra* 51.

¹⁴⁹ Power, *supra* 54.

¹⁵⁰ *id.*

¹⁵¹ *id.* 85.

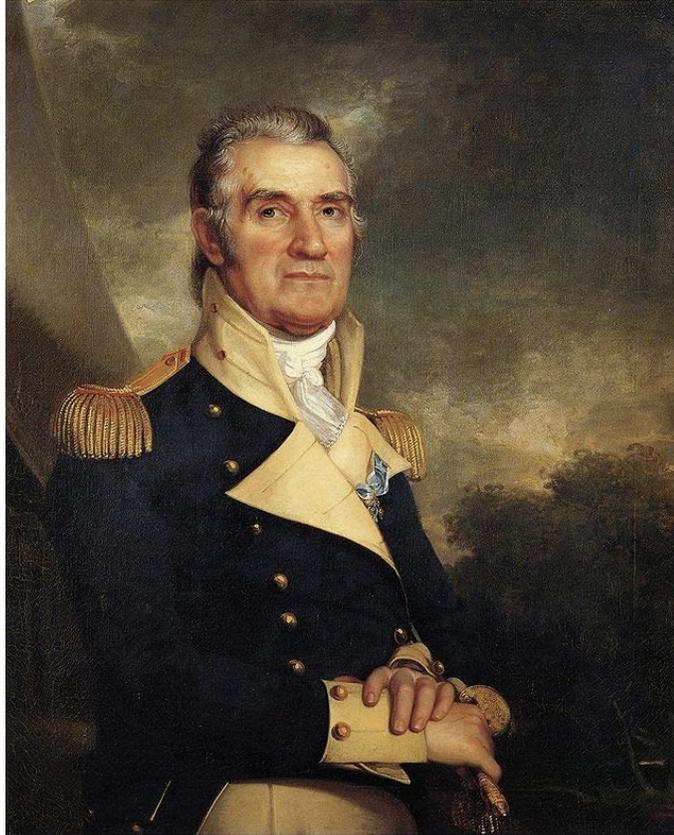
culture. He became very wealthy, but nothing more can be learned of him. He is said once to have lived in St. Petersburg, Russia.¹⁵²

Pollock was appointed the first consular appointment to New Orleans under President Washington. Pollock never left Philadelphia and eventually resigned the office.¹⁵³ Little is known about Pollock after the *Warren* expedition.

C. Samuel Smith

¹⁵² Horace Edwin Hayden *A Biographical Sketch of Oliver Pollock* (1883)
http://archive.org/stream/pollockgenealogy00hayd/pollockgenealogy00hayd_djvu.txt (last accessed December 1, 2014).

¹⁵³ Elizabeth Urban Alexander, *Notorious Women: The Celebrated Case of Myra Clark Gaines* 77 (2001)
http://books.google.com/books?id=kBXwPZfM12cC&pg=PA77&lpg=PA77&dq=procopio+pollock&source=bl&ots=hX0yPIBiUN&sig=BlmPZUyalSWRHie46NidYpE83Vg&hl=en&sa=X&ei=SvZfVJ_XGfTLsATclYGACg&ved=0CEYQ6AEwBg#v=onepage&q=procopio%20pollock&f=false (last accessed December 1, 2014).



“General Samuel Smith,” Rembrandt Peale (1817)

General Samuel Smith, a distinguished soldier of the Revolutionary War, was the highest-ranking officer from the state of Maryland. For forty years he represented the state of Maryland in Congress, divided between the House and the Senate. Born in Pennsylvania, his father had emigrated from Ireland, and settled in Pennsylvania before moving to Baltimore with his family in 1759.¹⁵⁴ Samuel R. Smith married Ann, daughter of Abraham Sitler,¹⁵⁵

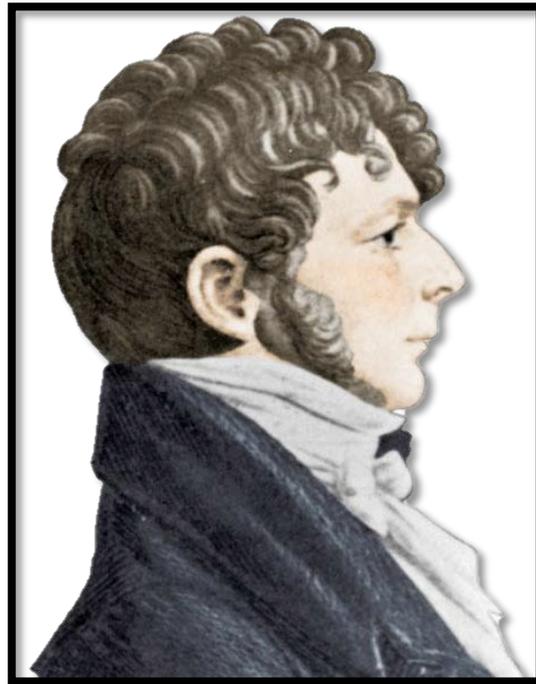
Smith’s Career began when he was made partner in his father’s mercantile business in 1774. Samuel assumed the major responsibility for the business after 1779. In 1790, he took his cousin James A. Buchanan as a partner, who assumed day-to-day control, leaving him free to pursue politics. Together they took their fathers’ mercantile business and ran one of the most

¹⁵⁴ Papenfuse, *supra* 746.

¹⁵⁵ Baltimore: Its History and It’s People, *supra*, at 226 (1912).

successful partnerships in Baltimore.¹⁵⁶ Smith Lost his personal fortune in the collapse of 1819 but was able to return to comfort after managing his wife's estate. In 1822, when William Pinkney dies in office, he was appointed to the senate, where he remained until 1832. After the Bank of the U.S. closed in 1835, and riots ensued, Smith addressed a group and organized the citizenry to patrol the streets of Baltimore to restore calm. His leadership during the riots led to him being elected mayor at age 82, where he served until shortly before his death in 1839 at age 87.¹⁵⁷

D. Andrew Sterett



Portrait of Andrew Sterett (1803)

Born in Baltimore, Maryland, Andrew Sterett was the son of John Sterett, a former Revolutionary War captain and a successful shipping merchant. The fourth of ten children, he

¹⁵⁶ Bogen, *supra*.

¹⁵⁷ *id.*

http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1251&context=fac_pubs. (last accessed Dec. 1, 2014)

nevertheless inherited a sizable amount of money. Despite this, he resolved to join the Navy, and was commissioned as a lieutenant on 25 March 1798 by president Adams.¹⁵⁸

He served as third lieutenant overseeing a gun division aboard the *Constellation*, which successfully battled the French during the Quasi-War. He was promoted to first lieutenant and command of the 12-gun *Enterprise*; he led that schooner to the Mediterranean in 1801. There, off Malta in the Barbary Wars' first encounter, the 23-year-old Sterett routed a better-armed Tripolitan corsair without losing a single man.¹⁵⁹ President Thomas Jefferson wrote to him conveying America's high esteem and asserting, "the enemy cannot meet bravery and skill united."¹⁶⁰ Congress voted to bestow to Sterett a commemorative sword and to give extra pay to his men.

Upon his promotion to master-commandant, Sterett was chosen in 1805 to command the new U.S. brig *Hornet*. However, he was unable to reconcile to the promotion of a junior officer, Stephen Decatur, over him and instead decided to resign. Sterett, in a letter to secretary of Navy Robert Smith stated that it was not compatible with correct principles of honor to serve under Decatur, and submitted his resignation. The secretary regretfully accepted, and observed that Sterett's "high reputation . . . and distinguished energy of character" probably would have raised him "to the highest honors in the Navy."¹⁶¹ Cutting short a bright and promising naval career, Sterett entered the merchant service, serving as captain of the *Warren*, likely guided to the Warrant's owners by Sec. Smith, brother of Samuel Smith.

¹⁵⁸ McCormack, *supra*

¹⁵⁹ *id.*

¹⁶⁰ "Thomas Jefferson to Andrew Sterett", 1 December 1801, Thomas Jefferson Papers, series 1, General Correspondence, 1651–1827,

http://memory.loc.gov/ammem/collections/jefferson_papers/mtjser1.html .

¹⁶¹ McCormack, *supra*

E. Lemuel Taylor

Lemuel Taylor was a Baltimore merchant with offices at 47 S. Gay Street. He also served as a member of the board of directors for the Maryland Insurance Company and the Baltimore Water Company¹⁶²

As the principle Owner of the *Warren*, he was also elected managing partner of the ship by other owners. In this capacity he was in charge of outfitting the vessel.¹⁶³ In addition to the *Warren*, Taylor was part owner of at least five other captured vessels for which his assignees continued to place claims at least until 1827.¹⁶⁴ Taylor lost his fortune in 1816-1818 when he lost several cargoes in his West Indies trade. In 1821 he started fresh and moved to Cuba, where eventually he became owner of Sta Amelia, a sugar plantation in the Cilizo district between Matanzas and Cárdenas.¹⁶⁵

In Cuba, Taylor ran the plantation “dressed like an overseer, with a whip in his hands, going after the negroes under the severe heat of the sun.”¹⁶⁶ However, the plantation itself was described as one of the most accommodating to slaves in all of Cuba.”¹⁶⁷ It was not long after

¹⁶² Founders Online, “To James Madison from Lemuel Taylor, 29 May 1812”, <http://founders.archives.gov/documents/Madison/03-04-02-0454> (last accessed December 1, 2014) *citing* Baltimore Directory for 1810, Shaw and Shoemaker, 174; William Fry, Fry’s Baltimore Directory for the Year 1812, Shaw and Shoemaker, 26, 30-31.

¹⁶³ McCormack, *supra*.

¹⁶⁴ “To James Madison from Lemuel Taylor, 29 May 1812” *supra*; *see also* See John P. Cranwell & William B. Crane, Men Of Marque 371 (1940) (discussing several key Baltimore privateers during the War of 1812 and the vessels they owned).

¹⁶⁵ Robert M. Gray, *Introduction*, STANFORD UNIV., http://ee.stanford.edu/~gray/html/amy/amy_3.html (last accessed December 1, 2014)

¹⁶⁶ Barcia Paz, *supra*, 99.

¹⁶⁷ *id.* 83.

operating the Sta Amelia that Taylor became the owner or co-owner of three coffee plantations.¹⁶⁸

In 1825, several of Taylor's slaves lead a rebellion to try and overthrow many of the Cuban plantation owners.¹⁶⁹ When the rebellion reached Taylor's plantation, Taylor fought the rebels by himself, armed only with a rifle and a four-barreled gun before he escaped on horseback.¹⁷⁰ Later that year, Taylor's old habits had caught up to him, and he was sent to prison for being unable to pay his creditors. While in prison, most of his interests in the plantations were sold to satisfy the debts.¹⁷¹

Taylor disappeared from all historical records in the mid 1820s, which is the case with many Cuban plantation owners during this time period.¹⁷²

¹⁶⁸ *id.* 99.

¹⁶⁹ *id.* 13.

¹⁷⁰ *id.* 86.

¹⁷¹ *id.* 89.

¹⁷² Henry F. Andrews, The Hamlin Family: A Genealogy Of Capt. Giles Hamlin Of Middletown 231 (1900).