

## **Stewart vs. McIntosh, 4 H. & J. 233 (1816)**

### **The Biography of William Bond Martin**

**By**

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Stewart v. M'Intosh was argued during the time period of the Jay Treaty, the Quasi-War, the Haitian Revolution, and the War of 1812. The facts begin at the end of the 18<sup>th</sup> century and extend into the early 19<sup>th</sup> century. The arguments and ruling were based on trade restrictions between United States citizens and territories under French control. The plaintiffs focused their arguments on the specific language of the Congressional acts, which did not directly mention the territories at issue, while the defendants looked at the implications of the acts and the context of the struggles between the United States and France. Though the case only includes the notes and final verdict, a close examination of the intricacies of the arguments and historical context that shaped the world during this time help explain the mindset and political agenda of the justices of the Court of Appeals.

The context of the time period from the early 1790's to 1816, when the case was argued, is extremely important in understanding the facts of the case and the controversial opinion given by the Court. While on the surface, this case seems open-and-shut, the Court may have gotten it wrong. An historical analysis of the world events occurring during this time period may show why the specific verdict was given. This decision most

likely was not reached on the merits of the case; instead, the historical basis of conflicts between the United States and Great Britain and between the United States and France may have shaped the thoughts of the justices and influenced their decisions to rule against the plaintiffs. In essence, their political leanings may be the cause of the controversial opinion.

This case was appealed from the Baltimore County Court and is an action of assumpsit. This is a form of action for the recovery of damages for the breach or non-performance of a contract. From the Latin, “he has undertaken,” actions of assumpsit set forth the defendant’s undertaking or promise, though these forms of action became obsolete after the Federal Rules of Civil Procedure were introduced in the early 20<sup>th</sup> century.<sup>1</sup>

The six counts in the complaint range from goods and services delivered and quantum meruit to common money counts and insimul computassent. In contract law, claims of quantum meruit typically consist of three elements: (1) a showing that the defendant was enriched; (2) a showing that the defendant was enriched at the plaintiff’s expense; and (3) a showing that the situation warrants restitution through equity and good conscience.<sup>2</sup> Finally, insimul computassent claims typically contain running accounts based on a series of prior transactions that are later accounted together with a balance stated. The elements of accounts stated between a creditor and a debtor include: (1) prior transactions between the parties to form the relationship; (2) an express or implied

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<sup>1</sup> Assumpsit. (n.d.). In *Wikipedia*. Retrieved November 12, 2012, from <http://en.wikipedia.org/wiki/Assumpsit>

<sup>2</sup> Quantum meruit. (n.d.). In *Wikipedia*. Retrieved November 12, 2012 from [http://en.wikipedia.org/wiki/Quantum\\_meruit](http://en.wikipedia.org/wiki/Quantum_meruit)

agreement as to the amount owed; and (3) an express or implied promise to pay the debt.<sup>3</sup> These claims often are added to assumpsit causes of action.

In the case at hand, the total amount owed, submitted by the Plaintiffs, David Stewart et al., was \$16,555.59, owed by the firm of Duncan M'Intosh and Wood. David Stewart and Sons had jointly purchased a sailing vessel, named Holstein, with the firm of Hillen & Williams. The ship sailed from Baltimore with a cargo full of flour to the island of Saint Thomas, of the West Indies, where David Stewart & Sons consigned the vessel and cargo to the defendant M'Intosh and Wood. M'Intosh and Wood were then to send the vessel to the firm of Hillen & Williams at Jacquemel, in the island of Hispaniola, where they would manage the ship for other voyages.

For American traders, flour was a valuable item for business to trade in the West Indies. This was not a novel concept when the Holstein set sail in the late 18<sup>th</sup> century. In his book on American agriculture, R. Douglas Hurt described the flour trade between the United States, specifically Baltimore, and the West Indies:

During the 1750's, flour milling began in Baltimore, and in 1758, Henry Stevenson sent the city's first shipload of flour to the West Indies. The international flour trade quickly became important and profitable to colonial farmers and millers. The flour milled in...Baltimore reached the West Indies markets in about a month, about half the time required for shipment from England...Consequently, West Indians became dependent on American farmers for their foodstuffs, particularly flour.<sup>4</sup>

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<sup>3</sup> Account stated. (n.d.). In *Wikipedia*. Retrieved November 12, 2012 from [http://en.wikipedia.org/wiki/Account\\_stated](http://en.wikipedia.org/wiki/Account_stated)

<sup>4</sup> Hurt, R. Douglas. *American Agriculture: A Brief History*. West Lafayette, IN: Purdue UP, 2002. Print.

The island of Saint Thomas, in the West Indies, was purchased by the United States from Denmark in 1917. Previously, Saint Thomas was settled in 1672 by agents of the Danish West India and Guinea company, and Denmark officially took possession in 1754.<sup>5</sup> Jacmel, or Jacmel, is a town in Southern Haiti founded in 1698 as the capital of the southeastern part of the French Colony of Saint-Domingue, which was a French colony of the Caribbean island of Hispaniola from 1659-1809.<sup>6 7</sup> Hispaniola is a major island in the Caribbean that contains Haiti and the Dominican Republic.<sup>8</sup>

The vessel never reached Jacmel, but was sent instead by the defendants to the port of Aux Cayes, in the island of Hispaniola, where Edward Hall, allegedly acting under the authority of Hillen & Williams, one of the plaintiffs, delivered the flour and loaded the ship with coffee and sent her to Saint Thomas, consigning the ship and cargo of coffee back to the defendants. Aux Cayes is the former name of Les Cayes, a town and seaport in southwestern Haiti, and was founded in 1786 by the French colonial administration.<sup>9</sup> The defendants knew that vessel belonged to the plaintiffs, but claimed the plaintiffs were indebted to them in the amount of \$5,655.46, and the plaintiff had directed them to settle the debt with proceeds out of the vessel and cargo. Furthermore, the defendants claimed Hillen & Williams were indebted to Stewart & Sons in an amount greater than the proceeds of these transactions and, therefore, Stewart & Sons had the authority to settle accounts with the defendants from the potential monetary gain that

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<sup>5</sup> Saint Thomas, Virgin Islands. (n.d.). In *Virgin Islands Vacation Guide & Community*. Retrieved November 13, 2012 from <http://www.vinow.com/stthomas/History>

<sup>6</sup> Jacmel. (n.d.). In *Wikipedia*. Retrieved November 13, 2012 from <http://en.wikipedia.org/wiki/Jacmel>

<sup>7</sup> Saint-Domingue. (n.d.). In *Wikipedia*. Retrieved November 13, 2012 from <http://en.wikipedia.org/wiki/Saint-Domingue>

<sup>8</sup> Hispaniola. (n.d.). In *Encyclopedia Britannica*. Retrieved November 13, 2012 from <http://www.britannica.com/EBchecked/topic/266962/Hispaniola>

<sup>9</sup> Les Cayes. (n.d.). In *Wikipedia*. Retrieved November 13, 2012 from [http://en.wikipedia.org/wiki/Les\\_Cayes](http://en.wikipedia.org/wiki/Les_Cayes)

would have been awarded to both plaintiffs. Hillen & Williams would still have been indebted to Stewart & Sons after the former gave up the proceeds from this transaction, so Stewart was, therefore, able to settle their account with the defendants out of both their own and Hillen and Williams' proceeds.

The defendants produced Edward Hall as a witness, who testified that he had acted on behalf on the plaintiffs and purchased coffee at Aux Cayes, provided by the Holstein, at Saint Thomas, and shipped the cargo at the cost and risk of the plaintiffs, and later transmitted this charge to their account. It has been said that Haiti was the most valuable coffee colony in the world during this time period.<sup>10</sup> The defendants asserted that the plaintiffs refused to consider or accept the cargo as their own property and insisted that it was the property of Hall, though the court did not accept this argument.

The defendants further put into evidence conversations that showed that the vessel had been sent from Baltimore by Stewart & Sons, acting on authority from Hillen & Williams, under the name *The Speculation*, to Saint Thomas to adopt Danish flags and character and to continue to the port of Jacquemel, in the island of Hispaniola, for the benefit of the plaintiffs. The ship, with flour on board, sailed from Baltimore in October, 1799, to Saint Thomas, and arrived one month later. Once there, it was consigned to the defendants and put under Danish colors as the property of Jeremiah Vernico, a Danish subject, and was subsequently sent to Jacquemel with orders from the plaintiff and under their guidance and control.

The vessel never reached Jacquemel, but left instead for Aux Cayes, in the island of Hispaniola, and arrived a month later, where it was placed under the direction of

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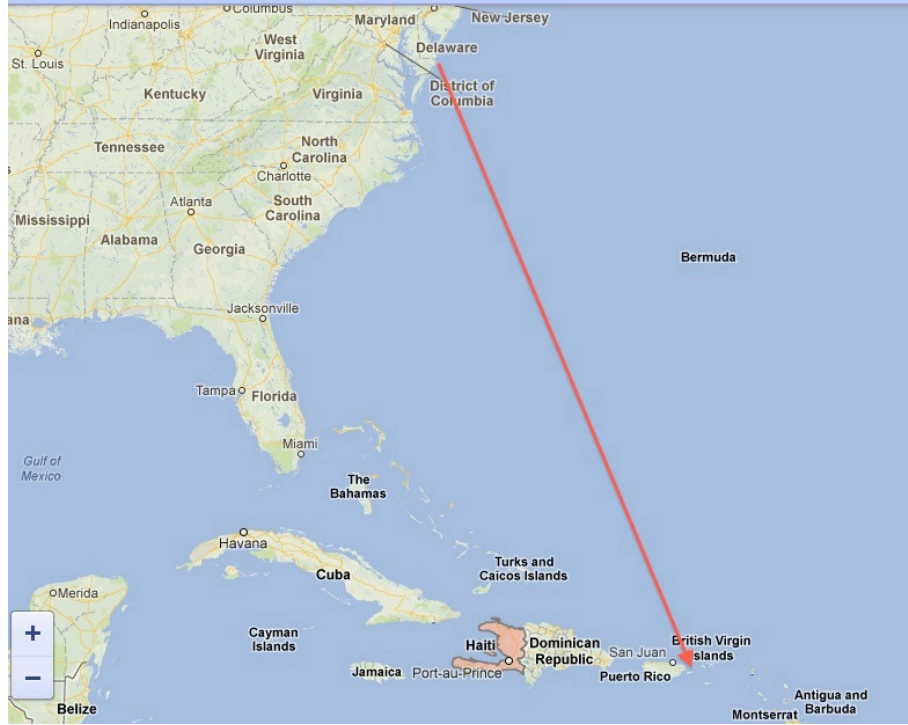
<sup>10</sup> Davis, David Brion. *Inhuman Bondage: The Rise and Fall of Slavery in the New World*. Oxford, England: Oxford UP, 2006. Print.

Edward Hall by Hillen & Williams. The cargo of flour was sold in St. Thomas, while additional cargo was sold in Aux Cayes, both for the benefit of the plaintiffs by Hall. Coffee was purchased in Aux Cayes, and that cargo was subsequently sent to the island of Curacao, under the direction of the plaintiffs, before returning to Aux Cayes in April 1800. Curacao, or Curaçao, is an island in the southern Caribbean Sea, which was heavily involved in the slave trade and changed hands between the Dutch, French, and British in the early 19<sup>th</sup> century, before the Dutch gained control in 1815.<sup>11</sup> Hall, still acting under guidance by Hillen & Williams, purchased a new cargo of coffee at Aux Cayes and directed the vessel back to Saint Thomas, consigned to the plaintiff Wood, as his own property or the property of attorney John Imlay in the case of Wood's absence. The vessel then arrived in Saint Thomas in May 1800 and with the absence of Wood, was taken into possession and sold by Imlay with net proceeds being paid to the defendants with Imlay acting as partner of Wood.

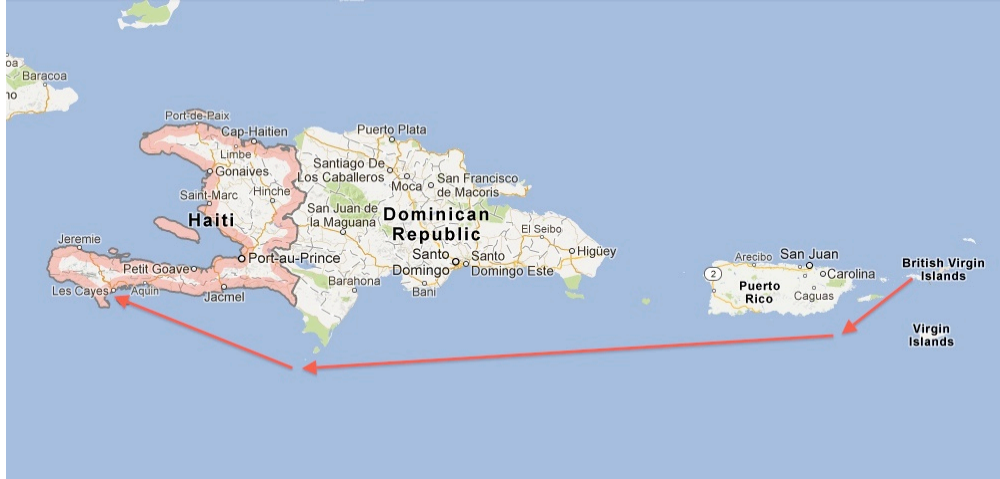
Voyage from Baltimore to Saint Thomas

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<sup>11</sup> Curaçao (n.d.). In *Wikipedia*. Retrieved December 27, 2012 from <http://en.wikipedia.org/wiki/Curaçao>



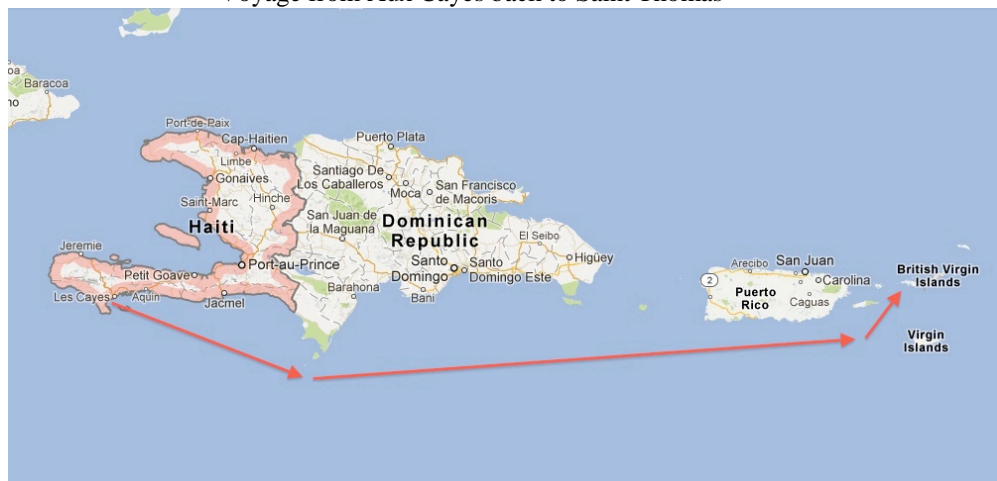
Voyage from Saint Thomas to Aux Cayes



Voyage back and forth from Aux Cayes to Curaçao



Voyage from Aux Cayes back to Saint Thomas



The defendants made note that when the vessel was sent from Baltimore to Saint Thomas, the plaintiffs were citizens of the United States and, thus, the plaintiffs could not recover in action due to the illegality of the voyage under Congressional acts declared around the turn of the century. The mindset of the courts during this time can be shown through a court order years later: “[it] is true that as between the parties to an illegal transaction no suit will lie by one against the other.” Chappell v. Wysham, 4 H. & J. 560, 562 (1819). The United States had been engaged in trade wars with both Great Britain and France, but Congressional acts made trade with French territories illegal in nature.



The Baltimore County Court, accepting the set of facts presented by the defendants, represented by the maps above, ruled in favor of the defendants on this issue, and the plaintiffs appealed.

It is prudent to focus on the argument of the defendants regarding the citizenship and actions of the plaintiff in shipping a vessel from Baltimore to Saint Thomas with the purpose of donning Danish colors to assume a trading voyage for their benefit. The vessel was put under Danish colors as property of a Danish subject and sent off to Aux Cayes under the direction of the plaintiffs to engage in trade that was outlawed by the United States. Specifically, the actions violated the acts of Congress that outlawed commercial transactions with any port or place within the territory of the French republic, or the dependencies thereof, or with any place in the West Indies, or elsewhere under the acknowledged government of France. Therefore, according to the defendants, the plaintiffs could not recover the proceeds of an illegal voyage, and they were entitled to keep the amount in dispute they had in their control. As outlined in subsequent case law, a trade partner is not required to divide out to his associate the proceeds of an illegal transaction. See State v. Baltimore & O.R. Co., 34 Md. 344 (1871) aff'd, 88 U.S. 456 (1874). It is not in dispute that the schooner engaged in trade with the territories described above. It is only in dispute whether those territories were considered French territories that would be included in Congressional legislation previously adopted.

It is understandable why American traders would attempt to circumvent Congressional acts in order to secure coffee from these French territories. Alfred Thayer Mahan discussed the advantage of proximity to the West Indies for this very reason in his

book on the War of 1812, and the struggles between the United States and Great Britain in obtaining valuable trade commodities:

Nevertheless, in their tendencies and in their disposition, Great Britain and the United States at bottom were then not complementary, but rivals. The true complement of both was the West Indies; and for these the advantage of proximity, always great, and especially so with the regard to the special exigencies of the islands, lay with the United States. Hence it came to pass that the trade with the West Indies, which then had almost a monopoly of sugar and coffee production for the world, became the most prominent single factor in the commercial contentions between the two countries, and in the arbitrary commercial ordinances of Great Britain, which step by step led the two nations into war.<sup>12</sup>

The plaintiffs' claims on appeal in the case at hand were threefold: that the voyage that led to the disputed proceeds was not an illegal voyage under the acts of Congress; that the defendant could not have objected to demands for repayment by the plaintiff when the defendant received the proceeds at the island of Saint Thomas, so he cannot object to them here; and the defendant was not party to the original contract, so he cannot keep the proceeds as a nonparty to the agreement.

The plaintiffs argued on the first point that the act of Congress on February 9, 1799, outlawed commercial transactions between a United States citizen and a territory under the governance of France. This declaration had extended the act of Congress on June 13, 1798 before it was set to expire on March 3, 1799. Under the 1799 order, it was

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<sup>12</sup> Mahan, Alfred Thayer. *Sea Power in its Relations to the War of Eighteen Hundred and Twelve, Volume I*. Boston, MA: Little, Brown, and Company, 1905. Print.

determined that the island of Hispaniola was not a territory of France, as it was independent, and the people of the island denied French rule. Since the territory was later specifically included in an act of Congress in 1800, this shows the territory was expressly not included in prior acts. If any of the voyages was deemed legal, the prior court ruling must be reversed.

On the second point, the plaintiffs presented that if the defendant was bound to pay the plaintiff under the laws of Saint Thomas, he was bound to pay the plaintiff here. Their reasoning stemmed from the logic that if he could not defend the voyage as illegal under the laws of Saint Thomas, he could not do so here. He received the proceeds while on Saint Thomas and should be bound by their jurisprudence. “The law of the place where the obligation or cause of action arises is the law that is to govern.” Desobry v. De Laistre, 2 H & J 191. If this common law were followed, the defendants would not have a case to refuse payment.

Finally, the plaintiff presented that the defendant cannot take advantage of the proceeds of an illegal voyage if he is acting as an agent of the plaintiff. As a nonresident of the United States, he could not be affected by the legality or illegality of the transaction. In particular, since the defendants received the goods simply as an agent of the transaction, they were not privy to the contract and, thus, could not retain the proceeds and refuse to give up possession.

In response, the defendants advanced that the doctrine put forward by the plaintiffs would prove unsatisfactory in the future if it were to stand. They argued that it was not up to the Court to decide whether a country in dispute with its motherland has become independent or not. Counsel suggests that other territories that were obviously

under French rule were also in disagreement with France, but the United States still viewed that country as a territory of France. In this instance, the Court should defer to viewing countries that have been conquered and occupied by the French nation, even when they are fighting for independence, as territories of France, which would deem the transaction illegal. Furthermore, the Haitian Revolution did not end until years after these transactions concluded, so, therefore, the territory in question was not independent, and the transaction was illegal.

The Court of Appeals affirmed the judgment of the lower court. While the Court did not specifically address all arguments put forth by the plaintiffs, the defendants were successful in showing that the plaintiffs attempted to circumvent Congressional acts by trading with territories specifically outlawed by legislation in order to profit. They donned Danish colors while in Saint Thomas in order to not only avoid confrontation, but also circumnavigate laws put into place that specifically outlawed transactions with the territories in question. Additionally, they were able to keep the proceeds of the controversial trade, while the plaintiffs were left empty-handed.

Judges Earle, Johnson, and Martin are ruled in favor of the defendants, or Appellee, while Judge Buchanan ruled in favor of the plaintiffs, or Appellants.

Acts of Congress at the turn of the 19<sup>th</sup> Century were principally responsible for the Court's conclusion. While portions of the events happened outside of the various frameworks, the following legislation was in effect during all of the described transactions. The Act of Congress of June 13, 1798, was the introduction of trade restrictions between the United States and French territories. Specifically, this law, in Section 1, stated:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no ship or vessel, owned, hired, or employed, wholly or in part, by any person resident within the United States, and which shall depart therefrom after the first day of July next, shall be allowed to proceed directly, or from any intermediate port or place, to any port or place within the territory of the French Republic, or the dependencies thereof, or to any place in the West Indies, or elsewhere under the acknowledged government of France, or shall be employed in any traffic or commerce with, or for any person resident within the jurisdiction, or under the authority of the French Republic. And if any ship or vessel, in any voyage thereafter commencing, and before her return within the United States, shall be voluntarily carried, or suffered to proceed to any French port or place as aforesaid, or shall be employed as aforesaid, contrary to the intent hereof, every such ship or vessel together with her cargo shall be forfeited, and shall accrue, the one half to the use of the United States, and the other half to the use of any person or persons, citizens of the United States, who will inform and prosecute for the same: and shall be liable to be seized, prosecuted and condemned in any circuit or district court of the United States which shall be holden within or for the district where the seizure shall be made.<sup>13</sup>

These restrictions stemmed from a disagreement with France over the United States' decision to remain neutral during a conflict between France and Great Britain.

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<sup>13</sup> An Act to Suspend the Commercial Intercourse between the United States and France, and the Dependencies Thereof. (n.d.). In *The Avalon Project: Documents in Law, History and Diplomacy*. Retrieved November 13, 2012 from [http://avalon.law.yale.edu/18th\\_century/qw01.asp](http://avalon.law.yale.edu/18th_century/qw01.asp)

After France's allegiance to the U.S. during the American Revolutionary War, it was to be expected that France would assume similar support during its conflict with Great Britain. Instead, the U.S. signed the Jay Treaty, a commercial agreement with Great Britain, which France viewed as a violation of its 1778 treaty with the United States.<sup>14</sup> The Quasi-War with France was the result of this frustration, and it lasted until the turn of the century. Conor Cruise O'Brien describes the reasoning behind the eventual settlement between the United States and France:

Having declared the French Revolution at an end, Bonaparte also wanted to bring the "quasi-war" with America to an end. The great realist saw at once that there was no point in trying to push the Americans around, after the destruction of the French fleet in the Battle of the Nile. Peace negotiations led, on 3 October 1800, to the signature of a Franco-American Convention at Môtrefontaine.<sup>15</sup>

When the Act of Congress of 1798 was approaching its expiration, Congress passed an act to further suspend commercial intercourse between the United States and French territories and dependencies. The language was similar to prior legislation, but also stated:

[E]very ship or vessel that has arrived since the said first day of December, from any port or place in the French Republic, or the dependencies thereof, or which shall hereafter arrive within any port or place of the United States, unless driven by stress of weather or want of

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<sup>14</sup> The Quasi-War: America's First Conflict. (n.d.). In *About.com Military History*. Retrieved November 13, 2012 from <http://militaryhistory.about.com/od/navalbattles16001800/p/quasiwar.htm>

<sup>15</sup> O'Brien, Conor Cruise. *The Long Affair: Thomas Jefferson and the French Revolution, 1785-1800*. Chicago: University of Chicago, 1996. Print.

provisions, shall be liable to be prosecuted and condemned in the same manner and to the same uses as are provided in and by the first section of this act; and like proceedings shall also be had and like forfeitures incurred, as are herein provided with respect to vessels coming from France, and the dependencies thereof, in all cases when any ship or vessel shall arrive in any port or place of the United States, from any port or place, with which all commercial intercourse shall be prohibited by proclamation, according to the intent of this act.<sup>16</sup>

This legislation is at the crux of the legal analysis demonstrated by the Court. Specifically, the Court cited this document as the article in effect during the time of the plaintiffs' transactions. This act was adopted on February 9, 1799. It is hard for the plaintiffs to argue that this legislation would not deem the transactions as illegal. The vessel reached Aux Cayes in December 1799 and returned to Aux Cayes in April, 1800. The commercial intercourse mentioned in the Act was the type of transaction Congress attempted to outlaw. The vessel arrived from French dependencies, so forfeitures should incur. In response, the plaintiff cited the Act of February 29, 1800, in an attempt to differentiate between previously outlawed trade routes and those imposed starting in the new century. Specifically, Section 7 of this act stated:

*And be it further enacted*, That the whole of the island of Hispaniola shad for the purposes of this act be considered as a dependency of the French Republic: Provided, that nothing herein contained shall be deemed to repeal or annul in any part, the order or proclamation of the President of

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<sup>16</sup> An Act Further to Suspend the Commercial Intercourse between the United States and France, and the Dependencies Thereof. (n.d.). In *The Avalon Project: Documents in Law, History and Diplomacy*. Retrieved November 13, 2012 [http://avalon.law.yale.edu/18th\\_century/qw06.asp](http://avalon.law.yale.edu/18th_century/qw06.asp)

the United States, heretofore issued for permitting commercial intercourse with certain ports of that island.<sup>17</sup>

The plaintiffs advanced to the Court that Hispaniola was specifically included in this legislation to differentiate between prior restrictions and those that were now imposed. They argued that French dependencies were mentioned from the initial Congressional act, and any subsequent additions show clear intent to exclude those territories when the original legislation was drafted. In this instance, Hispaniola must not have warranted inclusion for the purposes of the 1798 and 1799 bills, so any trade completed before the act of 1800 was drafted should be deemed legal.

The Court disagreed with the plaintiffs and sided with the defendants, who presented to the court the argument that the United States government must fully evaluate disagreements between mother countries and their territories and to label dependencies in that manner until they are wholly independent from prior rule. The vessel first reached Aux Cayes, in the island of Hispaniola, in December, 1799, and, thus, the illegality of the trade must be evaluated under the Congressional act issued on February 9, 1799. In analyzing the relationship with the natives and the French government, it was clear at the time of the trade that the territories in question were not independent and were only fighting for their independence. Regardless of the specific language of the Congressional act of 1799 and the subsequent inclusion of Hispaniola in 1800, the territories in question were French dependencies.

It is furthermore important to evaluate the historical context of Haiti at the time of these transactions and the political affiliations of the judges, as it is easy to view the

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<sup>17</sup> An Act Further to Suspend the Commercial Intercourse between the United States and France, and the Dependencies Thereof. (n.d.). In *The Avalon Project: Documents in Law, History and Diplomacy*. Retrieved November 13, 2012 from [http://avalon.law.yale.edu/19th\\_century/qw07.asp](http://avalon.law.yale.edu/19th_century/qw07.asp)



opinion of the Court as peculiar. This discussion can provide more particulars as to why the Court reasoned in such a curious manner due to the nature of the conflict in the French territories and the political ideology of the justices.

The Haitian Revolution was a slave revolt in the French colony of Saint-Domingue that lasted from 1791-1804, which coincides with the transactions in question in the case at hand.<sup>18</sup> While there were signs of growing sovereignty by the turn of the century, Haitian independence did not occur until 1804. Since this case was not decided until 1816, the Court had the relevant information to determine the state of Aux Cayes when issuing their opinion. As the defendants advanced, it is not appropriate to evaluate the current condition of a country in the eyes of the aggressors. While Haitians were thwarting French control and attempting to declare themselves as independent from French rule, it is inappropriate to determine their political state from their viewpoint. With independence years away, Haiti was still a French territory during the period in question and, thus, the Court could conclude that the transactions in question were illegal in nature.

Questions still exist regarding the inclusion of Hispaniola in later version of the Congressional acts. If Hispaniola was determined to be a French dependency by the Court when evaluating legislation prior to 1800, why was it specifically included in the Congressional act of 1800? It is possible that the justices used this analysis as a mere pretext to personal opinions on the nature and direction of the United States in a political context.

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<sup>18</sup> Haitian Revolution. (n.d.). In *Wikipedia*. Retrieved on November 26, 2012 from [http://en.wikipedia.org/wiki/Haitian\\_Revolution](http://en.wikipedia.org/wiki/Haitian_Revolution)

The more complicated task of determining political affiliations of the Court justices in order to evaluate whether their opinions were swayed by their political allegiances is necessary in this discussion. It is helpful to look at the bigger picture during this time and, more importantly, the dispute between the Federalists and the Republicans over United States involvement with both Great Britain and France. In the decades leading up to the 1816 court decision, the political debates arising that later shaped the political party system show the occurrences that led to disagreements between the United States and both France and Great Britain, and the consequences of such happenings.

Prior to his presidency, which occurred when this case was heard before the Court, James Madison served as Thomas Jefferson's Secretary of State from 1801-1809.<sup>19</sup> During this time, he helped complete the Louisiana Purchase while Napoleon and the French were occupied in Haiti. Prior to this involvement, though, Madison joined Thomas Jefferson in rejecting the principles of the Federalist party, especially the Jay Treaty, as the Republicans favored a strong relationship with France. In Garry Wills' *James Madison*, Wills describes Madison's thoughts on the Jay Treaty:

But by the end of Washington's second term, it was Madison who was distorting the Constitution, exceeding his own authority, and trying to tear down what he had helped build up. The climax of this process was reached in 1796, during the conflict over the Jay Treaty with England. Madison despised the terms of that treaty and the process by which it was negotiated. So did Jefferson; but he was out of the government by then, having resigned as secretary of state. It was up to Madison, in the House

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<sup>19</sup> James Madison. (n.d.). In *Wikipedia*. Retrieved on November 26, 2012 from [http://en.wikipedia.org/wiki/James\\_Madison](http://en.wikipedia.org/wiki/James_Madison)

of Representatives, to kill the treaty even though it has been ratified by the Senate and confirmed by King George.<sup>20</sup>

Contrasting Madison was the Federalist party, which lasted from the early 1790's until the early 19<sup>th</sup> century.<sup>21</sup> Formed by Alexander Hamilton, the Federalists negotiated the Jay Treaty, advanced positive relations with Great Britain, and vehemently opposed the War of 1812. Their party was built on the principles of a fiscally sound government responsible for the entire nation. As described by Edward I. Sidlow and Beth Henschen, the Federalist party "supported a strong central government that would encourage the development of commerce and manufacturing."<sup>22</sup> Furthermore, the party would promote and advance itself as "a champion of strong national government; decisive executive leadership; domestic order, maintained if necessary by military force; wide-ranging judicial oversight of legislation; a preference for commercial links with Britain; and a deep suspicion of French policies."<sup>23</sup>

Madison, a Republican, may not have openly condoned the actions by the plaintiffs in the case at hand, but he was a proponent of trade negotiations with France and vehemently objected to the same with Great Britain. The Jay Treaty, designed and negotiated by Alexander Hamilton and John Jay, respectively, was a political attempt to weaken the Republican party and strengthen the Federalist party. Madison knew this and the disagreement led to America's first party system.<sup>24</sup> When assessing how the Court of

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<sup>20</sup> Wills, Gerry. *James Madison*. New York: Times, 2002. Print.

<sup>21</sup> Federalist Party. (n.d.). In *Wikipedia*. Retrieved on November 26, 2012 from [http://en.wikipedia.org/wiki/Federalist\\_Party](http://en.wikipedia.org/wiki/Federalist_Party)

<sup>22</sup> Sidlow, Edward and Beth Henschen. *America at Odds*. Belmont, CA: Wadsworth, 2009. Print.

<sup>23</sup> Kazin, Michael, Rebecca Edwards, and Adam Rothman. *The Concise Princeton Encyclopedia of American Political History*. Princeton UP, 2011. Print.

<sup>24</sup> Spingola, Deanna. *The Ruling Elite: A Study in Imperialism, Genocide and Emancipation*. [S.I.]: Trafford Pub., 2011. Print.

Appeals justices may have ruled incorrectly in this case, it is not hard to look at the political shift occurring to understand why political pressures may have swayed their opinions one way or another.

With tensions in place after the signing of the Jay Treaty, a war with France seemed imminent. An American diplomatic commission, led by Charles Cotesworth Pinckney and John Marshall, was commissioned to France in July 1797 in an attempt to resolve present issues.<sup>25</sup> At the same time, disputes arose between the U.S. and Great Britain, even with the signing of the treaty. Matthew Harrington describes the pressure that led to the eventual, intense conflict with Great Britain:

The American government's attempt to pursue a course of neutrality in the years between 1793 and 1796 was soon eclipsed by conflict with England. Over the years, tension with Great Britain over trade and maritime matters steadily increased to the point where many observers believed that war between the United States and her former enemy was unavoidable.<sup>26</sup>

In the election of 1808, Madison defeated Charles Pinckney and watched the disintegration of the Federalist party. This was a huge victory for Madison, Jefferson, and the party as a whole. As a result, the United States was once again at war with Great Britain, culminating with the almost inevitable War of 1812. With Madison's pro-French viewpoints and the atrocities occurring among American ships at the hands of the British navy, the war was not altogether surprising. David Heidler and Jeanne Heidler depict the ongoing feuds with both Great Britain and France:

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<sup>25</sup> XYZ Affair. (n.d.). In *Wikipedia*. Retrieved on November 26, 2012 from [http://en.wikipedia.org/wiki/XYZ\\_Affair](http://en.wikipedia.org/wiki/XYZ_Affair)

<sup>26</sup> Harrington, Matthew P. *Jay and Ellsworth, the First Courts: Justices, Rulings, and Legacy*. Santa Barbara, CA: ABC-CLIO, 2008. Print.

The crisis between the United States and Great Britain that erupted into the War of 1812 stemmed from the European wars of the French Revolution and their successors, the Napoleonic Wars. Americans viewed consequent violations of their neutral rights by both France and Great Britain as a serious blow to national honor.<sup>27</sup>

In the end, disputes with both countries seemed predictable. With such a divide between the Republicans and Federalists, little was accomplished. With the signing of the Jay Treaty and the subsequent Quasi-War, the United States was engaged in conflict with France. With the newly elected Republican candidate who favored French ties and vehemently opposed trade negotiations with Great Britain, the United States was engaged in conflict with the Great Britain with the War of 1812. While there existed definite opposition by the Federalist party, it still wasn't enough to halt the dispute, and the Federalist party began to significantly weaken. The last federalist, Josiah Quincy, passed away in 1864.<sup>28</sup>

Assumptions can be made regarding political affiliations of the judges in the case at hand in determining how their personal opinions may have swayed their decisions. Specifically, it was most likely the former federalists who affirmed the judgment in *Stewart v. M'Intosh*. The Federalists favored Britain over France and, thus, were more likely to impose any trade restrictions with French territories, even if the countries may not have been French dependencies. Even if they could not directly impose such restrictions, they still had the ability to interpret certain legislation against those who

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<sup>27</sup> Heidler, David Stephen, and Jeanne T. Heidler. *Encyclopedia of the War of 1812*. Annapolis, MD: Naval Institute, 2004. Print.

<sup>28</sup> Josiah Quincy III. (n.d.). In *Wikipedia*. Retrieved November 26, 2012 from [http://en.wikipedia.org/wiki/Josiah\\_Quincy\\_III](http://en.wikipedia.org/wiki/Josiah_Quincy_III)

traded with French dependencies. Since the Federalists greatly opposed the war of 1812, which they saw as a way in which Republicans could further their own interests and silence opposition, it follows that the plaintiffs' behavior was seen as a strict violation of the Congressional acts imposed at the turn of the century. Federalists saw the war as a "costly, futile, and partisan venture that was likely to produce little good and much evil" and the best way to bring the conflict to an end "was to oppose it."<sup>29</sup> Those affirming the judgment at hand wanted to pursue a relationship with Great Britain and punish those who were engaged in trade with French territories.

Those of the Jeffersonian-Republican mindset most likely dissented from the decision based on their close ties to France. The opposition to the Jay Treaty and the enthusiasm behind engaging in the War of 1812 were hallmarks of the Republican party in the late 18<sup>th</sup> and early 19<sup>th</sup> centuries. They did not want to punish merchants for their transactions with French territories, especially when the area in question, Hispaniola, was not specifically mentioned by the Congressional acts. Their support of France shows why Judge Buchanan, the lone justice who dissented, most likely wanted the plaintiffs to profit off their trade with French territories. He understood the importance with exchanging flour, the valuable trade item out of Baltimore, for coffee coming from the West Indies and other French dependencies. He did not want to interpret the legislation in question against the plaintiffs.

It seems as though the Court ruled incorrectly on this matter. While personal opinions and political persuasions can, and usually will, dictate behavior, it is truly difficult to view the outcome given as the correct one. The period in question was one of

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<sup>29</sup> Federalist Opposition to the War of 1812. (n.d.). In *Archiving Early America*. Retrieved November 26, 2012 from <http://www.earlyamerica.com/review/winter2000/federalist.html>

great change for the United States. It was a time of anger and disdain, especially in Baltimore, where the mob riots led to the beatings and deaths of many, including Alexander Conte Hanson, James Lingan, and Henry Lee III.<sup>30</sup> With Baltimore as a Republican town, while the rest of the state was more sympathetic to the Federalist cause, it is not altogether surprising that Baltimore citizens were more supportive of trade with French territories. Furthermore, it follows that citizens of the city were more disruptive when certain pro-Federalist minds attempt to advance their position.

In contrast, most struggle with the thought that judges were swayed by political leanings when a matter like the one at hand was so cut and dry. While one could argue a certain interpretation of the Congressional acts may go against the plaintiffs, the defendants made a strong argument. The spirit of the Congressional acts in place outlawed trade with French territories. While the plaintiffs may have gone out of their way to specifically mask their identity in an attempt to fly under the radar, it does not automatically follow that they were breaking a specific provision of the law. Still, obvious connections can be made between the Court's verdict and the political leanings of the justices.

Furthermore, the confusion after reading this case was justified in realizing the defendants were still able to profit from these controversial transactions. While the argument can be made, and it was successfully made in the case at hand, that the plaintiffs violated both the spirit of the law and the specific provisions of the law, the Court, and common law, did explain that the defendants were unable to defend the law on the grounds that their actions took place outside of the United States. If so, questions

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<sup>30</sup> James Lingan. (n.d.). In *Wikipedia*. Retrieved on November 26, 2012 from [http://en.wikipedia.org/wiki/James\\_Lingan](http://en.wikipedia.org/wiki/James_Lingan)

should be raised about their ability to retain the proceeds based on their actions, which must be viewed as illegal in the eyes of the Court.

One of the likely Federalists who affirmed the judgment was William Bond Martin, who was born in 1769 and was appointed Chief Justice of the 4<sup>th</sup> Judicial District in Maryland, which incorporates Caroline, Dorchester, Somerset, and Worcester Counties, on December 13, 1814. He held this title until his death on April 3, 1835 in his home in Cambridge, Maryland.<sup>31</sup> Prior to his judicial appointment, Judge Martin was appointed council to the Governor of Maryland and served in this position from 1812 until 1813.<sup>32</sup>



Judge William Bond Martin

Judge Martin was a member of the old Court of Appeals, where he served alongside representatives from other judicial districts. The six judicial districts, and

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<sup>31</sup> "Historical Obituary." *Baltimore Gazette and Daily Advertiser* 8 Apr. 1835, 13775<sup>th</sup> ed.: 3. Print.

<sup>32</sup> *Governors' Councils*. (n.d.). In *Archives of Maryland Historical List Governors' Councils, 1777-1838*. Retrieved on November 26, 2012 from <http://www.msa.md.gov/msa/speccol/sc2600/sc2685/html/council.html>



Baltimore City, were comprised of three-panel judges, with one chief judge and two associates judges. Serving in this capacity, Judge Martin made a yearly salary of \$2,200, while the associate judges made significantly less.

Judge Martin first married Ms. Susan Martin, who passed in 1809 in her 33<sup>rd</sup> year, before marrying his second wife, Ms. Sarah F. Williams Martin, who outlived her husband over four decades before passing in December of 1878.<sup>33 34</sup> Judge Martin's first son, Robert Nicols Bond, was born to Susan Martin on January 14, 1798, and was admitted to the bar in 1819 to practice law in Princess Anne, Maryland to represent the Eastern Shore in Congress before moving to Baltimore to continue his practice.<sup>35</sup> In 1845, Governor Pratt appointed him Chief Judge of the 5th Judicial District, which encompasses Fredrick, Washington, and Alleghany Counties, where he remained until the office was vacated by the Constitution of 1851.<sup>36</sup> He became judge of the Superior Court of Baltimore in 1859 before teaching international law in the University of Maryland at Baltimore from 1867 until 1870, the year of his death.<sup>37</sup> He was regarded by the profession as "well fitted by learning, patience, and dignified deportment for the important post to which the Governor has called him."<sup>38</sup>

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<sup>33</sup> Susan Martin. (n.d.). In *Find A Grave*. Retrieved on November 12, 2012 from <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=71241441>

<sup>34</sup> Sarah F. Williams Martin. (n.d.). In *Find A Grave*. Retrieved on November 12, 2012 from <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=71241505>

<sup>35</sup> Martin, Robert Nicols. (n.d.). In *Biographical Directory of the United States Congress*. Retrieved on November 12, 2012 from <http://bioguide.congress.gov/scripts/biodisplay.pl?index=M000198>

<sup>36</sup> *Alexandria Gazette* 8 Dec. 1859: 2. Print.

<sup>37</sup> Robert N. Martin. (n.d.). In *Wikipedia*. Retrieved on November 12, 2012 from [http://en.wikipedia.org/wiki/Robert\\_N.\\_Martin](http://en.wikipedia.org/wiki/Robert_N._Martin)

<sup>38</sup> "Judge of the Superior Court." *Easton Gazette* 10 Dec. 1859, Vol. XLII Issue 50: 2. Print.



William Bond Martin, Jr.

Judge Martin's second son, also born to Susan Martin, was given the name William Bond Martin, Jr. Martin, Jr. attended the University of Maryland School of Medicine, where he was shot and killed in a duel with his roommate, Samuel J. Carr, of South Carolina.<sup>39</sup> The disagreement began over an unpaid debt, which led to Carr referring to Martin, Jr. as no gentleman. Some historians have argued that the unpaid debt was merely a pretext for the destroyed friendship, and the actual reason for the dispute was due to the two arguing for the affection of a woman. In response, Martin Jr. challenged the southerner to a duel, which was subsequently accepted. The two agreed to meet at the classic field of Bladensburg and decided on pistols as their weapons of choice. Carr, an expert marksman, tried to resolve the matter prior to the duel and promised to settle the debt, but Martin, Jr.'s older brother, Robert, opposed the idea. Carr

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<sup>39</sup> Historical Sketch of the University of Maryland, School of Medicine (1807-1890). (n.d.). In *openlibrary.org*. Retrieved November 12, 2012 from <http://www31.us.archive.org/stream/historicalsketc00cord#page/n95/mode/2up>

shot Martin, Jr. in the forehead, as he promised, and the deceased dropped into the arms of his older brother. The body was sent via steamer to Cambridge, where Judge Martin waited to accept his son's corpse.

Judge's Martin's daughter, Maria, married Theodore Richard Loockerman on June 8, 1829.<sup>40</sup> Mr. Loockerman was one of the leaders of the bar of Easton, represented his county as a state legislator, and was later President of the Branch Bank at Easton when he died 1851. Maria Martin died in 1886.

Judge William Bond Martin was instrumental in deciding many Maryland Court of Appeals cases, where he often delivered the majority opinion of the Court, in instances such as *Ridgen v. Martin*, 6 H. & J. 403 (1825); *Lammott v. Gist*, 2 H. & G. 433 (1828); *Berry v. Scott*, 2 H. & G. 92 (1827); *Geiser v. Kershner*, 4 G. & J. 305 (1832); and *Turner v. Plowden*, 2 G. & J. 455 (1830).

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<sup>40</sup> Maryland Historical Magazine, Volume 11. (n.d.). In *Google Books*. Retrieved November 12, 2012 from [http://books.google.com/books?id=QvsMAAAAYAAJ&pg=PA297&lpg=PA297&dq=richard+loockerman+%22bond+martin%22&source=bl&ots=Kv69Nst8MW&sig=RVXnjJTjc1pvlOwqvQa6Lw7sQ8A&hl=en&sa=X&ei=7Lq2UL\\_JE4uK0QG5ioCgBQ&ved=0CC4Q6AEwAA#v=onepage&q=richard%20loockerman%20%22bond%20martin%22&f=false](http://books.google.com/books?id=QvsMAAAAYAAJ&pg=PA297&lpg=PA297&dq=richard+loockerman+%22bond+martin%22&source=bl&ots=Kv69Nst8MW&sig=RVXnjJTjc1pvlOwqvQa6Lw7sQ8A&hl=en&sa=X&ei=7Lq2UL_JE4uK0QG5ioCgBQ&ved=0CC4Q6AEwAA#v=onepage&q=richard%20loockerman%20%22bond%20martin%22&f=false)