

# **The Gran Para: The Delicate Dance of South American Privateering From Baltimore**

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## Foreword

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### Abstract

The Consul General of Portugal filed a libel in the District Court of Maryland, alleging silver and gold coin had been taken out of the Portuguese ship, *Gran Para*, and the specie subsequently deposited in the Marine Bank of Baltimore. In 1818, The *Gran Para* was sailing to Lisbon from Rio de Janeiro when the privateer, *La Irresistible*, captained by John Daniel Danels, took her cargo as prize. The lower courts entered decrees in favor of the Consul of Portugal, restoring property to the original owners. The Supreme Court affirmed the lower court decrees, finding it very clear that *La Irresistible* was armed and manned in Baltimore, in violation of the laws and of the neutral obligations of the United States. Chief Justice Marshall delivered the opinion of the court. The Court found *La Irresistible* was not commissioned as a privateer, nor did she attempt to act as one; the size of the crew and the lack of a cargo evidenced the ship's intent to sail against a nation with whom the United States was at peace.

### Disciplines

Maritime history, International politics, United States history, South American history, United States banking history

## I. Introduction

The privateer *La Irresistible*, outfitted in Baltimore, Maryland, captured the Portuguese vessel *Gran Para* in route from Rio de Janeiro to Lisbon, Portugal.<sup>1</sup> *La Irresistible*, initially bearing the name *Vacuina*, departed Baltimore under stealth-like conditions; its owner and captain, John Daniel Danels, joined the cruise after his vessel cleared the Baltimore harbor and the custom house.<sup>2</sup> Danels and *La Irresistible* took from the *Gran Para* specie valued at \$300,000 in silver and gold coin.<sup>3</sup> Danels would deposit the specie in the Marine Bank of Baltimore upon his return to the port city.<sup>4</sup>

Several complications faced American privateers sailing for South American governments. Navigating United States neutrality laws presented a major obstacle. In addition, privateering required an immense amount of capital, generally raised among many investors. Investors demand a return on their investment to compensate for risk and the time value of money. Privateer investors had a strong incentive to insure prizes taken by their sponsored privateer made it back to Baltimore.<sup>5</sup> Once an American privateer captured a Spanish or Portuguese prize he faced another test: what to do with the capture? The *Gran Para* case, decided by the Supreme Court of the United States in 1822, illustrates this problem and illuminates the Baltimore players involved. This paper will explore the general practice of privateering,<sup>6</sup> Baltimore's participation in South American privateering<sup>7</sup> America's foreign

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<sup>1</sup> The *Gran Para*, 20 U.S. 471 (1822).

<sup>2</sup> Fred Hopkins, *For Flag and Profit: the Life of Commodore John Daniel Danels of Baltimore, MD*. HIS. MAG. 392, 395 (1985).

<sup>3</sup> The *Gran Para*, 20 U.S. at 471.

<sup>4</sup> Hopkins, *supra* note 2, at 395.

<sup>5</sup> David Head, *A Different Kind of Maritime Predation South American Privateering from Baltimore, 1816- 1820*, 7 INTER'L JOURNAL OF NAVAL HIS. 2 (2008).

<sup>6</sup> See *infra* Part II.

<sup>7</sup> See *infra* Part III.

policy of neutrality in the early nineteenth century,<sup>8</sup> culminating with a comprehensive review and analysis of *The Gran Para* case.<sup>9</sup>

## II. Background on Privateering

A country with the ability to control the seas holds vast power over commerce and war.<sup>10</sup> The English crown's notorious Royal Navy allowed her to enjoy many years of dominance over the world economy and colonial expansion.<sup>11</sup> A country with fewer resources or with a newer government, lacking a strong navy, needs a way to augment her small navy to compete with the larger navies of her counterparts.<sup>12</sup> Privateers offer a short term answer. The term privateer can be used to describe both the vessel and an individual.<sup>13</sup> At the most basic level, privateering is legally sanctioned pirating.<sup>14</sup> A privateer established the legal authority necessary to attain the status of a privateer by securing, before his voyage, a written license from his government authorizing the attack on vessels of his nation's enemy.<sup>15</sup> This license is known as a "letter of marque and reprisal."<sup>16</sup> The Constitution of the United States grants Congress the express power to issue letters of marque and reprisal.<sup>17</sup> A letter of marque and reprisal allows the privateer to legally capture enemy ships and bring them to a competent court for adjudication.<sup>18</sup> Where a prize court finds a valid prize, the privateer and crew benefit financially from the proceeds of the

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<sup>8</sup> See *infra* Part IV.

<sup>9</sup> See *infra* Part V.

<sup>10</sup> ALFRED T. MAHAN, *THE INFLUENCE OF SEA POWER UPON HISTORY, 1660-1783* 1 (Little, Brown, 1890. Reprint, New York: Dover Publications, 1987). Theodore Roosevelt was an avid naval historian and supporter. He read Mahan's work, writing the author: "It is the clearest and most instructive general work of the kind which I am acquainted."

<sup>11</sup> *Id.*

<sup>12</sup> Theodore Roosevelt championed the argument for a strong and robust American navy. See EDMUND MORRIS, *THE RISE OF THEODORE ROOSEVELT* (Random House, 1979).

<sup>13</sup> DONALD A. PETRIE, *THE PRIZE GAME: LAWFUL LOOTING IN THE DAYS OF FIGHTING SAIL* 1, 5 (Naval Institute Press, 1999).

<sup>14</sup> *Id.* at 68-71.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.* at 2-3.

<sup>17</sup> U.S. Const. art. I, §8, cl. 11: "The Congress shall have Power To ... grant Letters of Marque and Reprisal."

<sup>18</sup> DONALD A. PETRIE, *THE PRIZE GAME: LAWFUL LOOTING IN THE DAYS OF FIGHTING SAIL* 1, 2-5 (Naval Institute Press, 1999).

prize.<sup>19</sup> In certain circumstances a fortune could be made from privateering.<sup>20</sup> However, for the majority of those engaged in the activity, privateering proved unprofitable.<sup>21</sup> That said, the financial incentive existed to attract plentiful amounts of adventurous and risk taking individuals.<sup>22</sup> The high water mark for American privateering occurred during the War of 1812. Privateering activities helped the young American nation defeat the most powerful navy in the world.

### **III. Baltimore's Participation in the South American Revolutions**

At the end of the 18<sup>th</sup> and into the 19<sup>th</sup> century a revolutionary spirit spread throughout the world. Enlightened ideas and concepts of popular sovereignty and inalienable rights influenced revolutionary tendencies. European monarchies faced challenges to their basic organizational structure.<sup>23</sup> In North America, English colonies rebelled against their parent, the English crown. Inspired by the American Revolution, the French revolted against King Louis XVI.<sup>24</sup> Another cause for independence erupts in South America. In less than fifty years we see a South American continent controlled by Spain and Portugal transform into a continent comprised of largely independent governments. Baltimore was the principal port supplying American privateers sailing for revolutionary South American governments.<sup>25</sup> Sailors who cruised under the flags of revolutionary governments in South America were known as “patriot privateers.”<sup>26</sup>

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<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 3-4.

<sup>22</sup> Charles C. Griffin, *Privateering from Baltimore During the Spanish American Wars of Independence*, 35 MD. HIS. MAG. 1, 5 (1940).

<sup>23</sup> *French Revolution*, HISTORY, (Nov. 30, 2014, 9:48 PM), <http://www.history.com/topics/french-revolution>.

<sup>24</sup> *Id.*

<sup>25</sup> Griffin, *supra* note 22, at 1.

<sup>26</sup> Griffin, *supra* note 22, at 2.

Baltimore experienced an economic boom leading up to and during the War of 1812.<sup>27</sup> Baltimore's port and shipbuilding capabilities gave it a competitive advantage compared with other port cities.<sup>28</sup> With the end of the War of 1812, and peace with Britain, Baltimore's merchant community began to feel numerous economic pressures.<sup>29</sup> The fast growth of the Baltimore business community during the early 19<sup>th</sup> century slowed, causing alarm. Peace brought competition from European shipping companies which utilized larger bulk carriers enabling a commercial edge over freight costs. Europe's bulk carriers could haul more, therefore offer a lower price per unit compared with Baltimore's smaller, more maneuverable, clipper ships.<sup>30</sup> Baltimore also began to lose out to her northern sister city ports. The northern ports of Boston, New York, and Philadelphia all proved a much shorter sail to and from Europe.<sup>31</sup>

The Baltimore merchant community sought a new avenue to foster growth. It looked to South America. Baltimore began to trade with South American colonies around 1796 when Spain declared war on Great Britain.<sup>32</sup> Baltimore merchants, ship captains, and ordinary sailors participated in privateering during the War of 1812. Many in Baltimore privateers found success capturing British ships during the war. American privateers took approximately twenty-five hundred British merchant ships during the war.<sup>33</sup> At the end of the war many saw a profitable and thrilling occupation evaporate. The United States now at peace no longer issued letters of marque and reprisal. However, at this time several South American colonies in rebellion began to solicit American sailors, experienced in privateering.<sup>34</sup>

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<sup>27</sup> Fred Hopkins, *For Freedom and For Profit: Baltimore Privateers in the War of South American Independence*, THE NORTHERN MARINER 93, 93-95 (2008).

<sup>28</sup> Griffin, *supra* note 22, at 2.

<sup>29</sup> Griffin, *supra* note 22, at 2-4.

<sup>30</sup> Griffin, *supra* note 22, at 2.

<sup>31</sup> Griffin, *supra* note 22, at 2.

<sup>32</sup> Petrie, *supra* note 18, at 1.

<sup>33</sup> Petrie, *supra* note 18, at 1.

<sup>34</sup> Griffin, *supra* note 22, at 3.

With the American Revolution against the British in recent memory, many in the United States supported the South American colonies' pursuit of independence.<sup>35</sup> The South American revolutions also provided the opportunity for privateers and privateer investors to reenter a speculative business which offered an opportunity to build great wealth. From 1816 to 1820, according to various reports, more than forty privateers sailed from Baltimore to South America to fight for independence.<sup>36</sup> These patriot privateers were also called "Sailors of Fortune."<sup>37</sup> The protagonist of the *Gran Para* case, John Daniel Danels, emerges as the most successful and controversial of the Sailors of Fortune setting sail from Baltimore.<sup>38</sup>

*The Gran Para* case demonstrates Baltimore's participation, directly and indirectly, with the South American revolutions. John Danels, a veteran privateer from the War of 1812, could not shake the privateering itch and returned to the privateering game in 1817 when he sailed south to cruise against Spanish and Portuguese shipping. He obtained letters of marque and reprisal from several different revolutionary governments.<sup>39</sup> His capture of the *Gran Para* stemmed from a commission he received from the revolutionary leader Jose Gervasio Artigas.<sup>40</sup> Danels' actions before, during, and after the capture of the *Gran Para* represented the types of maneuvers Baltimore privateers embarked upon to sail for South American governments. American neutrality laws frustrated American sailors wishing to cruise as a privateer for South American revolutionary governments.

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<sup>35</sup> Hopkins, *supra* note 27, at 94.

<sup>36</sup> Griffin, *supra* note 22, at 7.

<sup>37</sup> Hopkins, *supra* note 2, at 393.

<sup>38</sup> Hopkins, *supra* note 2, at 393.

<sup>39</sup> Hopkins, *supra* note 2, at 393-99.

<sup>40</sup> General Jose Gervasio Artigas was Born June 19, 1764 and died September 23, 1850. He is often referred to as the "Father of Uruguayan nationhood." Artigas supported a federalist system of government. In 1814, he organized the Liga de los Pueblos Libres (League of Free Peoples). As the revolutionary leader of the Banda Oriental he liberated Montevideo (now the capital of Uruguay). Artigas fought for independence against Spain, then Argentina, then Spain again. In 1820 Artigas withdrew to Paraguay.

#### IV. America's Neutrality

In late 1823, President James Monroe articulated the Monroe Doctrine which proffered a new political order, warning European countries from interfering with the affairs of newly independent Latin American states or potential United States territories.<sup>41</sup> Although this statement of American foreign policy occurred a few years after the majority of American privateering ended in South America, it provided insight on how the United States went about protecting its interests in the Americas, yet distanced itself from becoming entangled in European warring. After Napoleon's defeat in 1815, the United States became very concerned with European intentions in the Americas.<sup>42</sup> As a young nation the United States wished to stay a neutral country among world affairs. In particular, the United States wished to continue diplomatic relations with Spain.<sup>43</sup>

American leaders had to decide how they would handle the revolutionary governments in South America.<sup>44</sup> Would they grant them formal diplomatic recognition or not?<sup>45</sup> Public opinion was for the South American revolutionary governments.<sup>46</sup> In contrast some American politicians, especially John Quincy Adams, emphasized the importance of maintaining a "fair and honest neutrality."<sup>47</sup> Adams often spoke of his disdain for Baltimore's privateering reputation. He even expressed his dismay over characters such as John Danels who possessed "ardent spirits" and "rushed off into a conflict without looking for consequences."<sup>48</sup> The former Spanish province of

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<sup>41</sup> *Milestones: 1801-1829, Monroe Doctrine, 1823*, U.S DEPARTMENT OF STATE OFFICE OF THE HISTORIAN, (Nov. 30, 2014 at 11:38 p.m.), <https://history.state.gov/milestones/1801-1829/Monroe>.

<sup>42</sup> Kevin Arlyck, *Plaintiffs v. Privateers: Litigation and Foreign Affairs in Federal Courts, 1816-1822*, 30 LAW & HIS. REV. 245, 250 (2012).

<sup>43</sup> *Id.* at 251.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* (quoting Adams to Peter Paul Francis de Grand, January 21, 1818, in *Writings*, 6:289; Adams to John Adams, December 21, 1817, in *Writings*, 6:276).



Buenos Aires and the rebels under leadership of Jose Gervasio Artigas in the Banda Oriental (Uruguay), were the two main South American governments issuing commissions to American privateers.<sup>49</sup>

Generally, after the War of 1812, American privateering activity in South America was illegal. However, the United States did not strictly enforce standing laws. Congress passed a neutrality law in 1794 which prohibited “the arming or fitting out of any ship to be employed in the service of a foreign state to commit hostilities upon ... a state with which the United States was at peace.”<sup>50</sup> Case law developed in the area and the Supreme Court established the appropriate remedy for captures made in violation of the United States neutrality was restitution.<sup>51</sup>

In 1817, after continued pressure from Spanish authorities, the United States began to change course.<sup>52</sup> The Neutrality Act of 1817, while retaining the original language of the Act of 1794, made it a crime to enter into the service of a foreign colony, district, or people within the United States territory.<sup>53</sup> Then, the 1818 Act foreclosed any possibility for an American to privateer for the revolutionary South American governments.<sup>54</sup> Loopholes once easily navigable by American privateers, completely closed. *The Gran Para* became a controlling authority on the duty of neutrals.

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<sup>49</sup> Arlyck, *supra* note 42 at 252.

<sup>50</sup> Arlyck, *supra* note 42 at 253.

<sup>51</sup> Arlyck, *supra* note 42 at 253.

<sup>52</sup> Arlyck, *supra* note 42 at 253.

<sup>53</sup> Act of June 5, 1794, 1 Stat. 381; and Act of June 14, 1797, 1 Stat. 520. On United States neutrality generally, see Charles G. Fenwick, *The Neutrality Laws of the United States* (Washington, D.C.: Carnegie Endowment for International Peace, 1913).

<sup>54</sup> *Id.*

## V. *The Gran Para*

The privateering activities conducted by John Daniel Danels during the War of 1812 did not prove exceptionally successful.<sup>55</sup> He was captured several times and when he made good prize, the prize did not bring him an abundance of wealth.<sup>56</sup> However, the opportunity of fame, fortune, and dim commercial prospects offered in Baltimore enticed the sea captain to enter the privateer game once again.<sup>57</sup> South America's collective revolutionary state of affairs would propel Danels into Baltimore's most famous South American privateer.<sup>58</sup>

The events and actions which lead to the encounter between Danels' privateer and the *Gran Para* commenced about a year before the meeting in Baltimore. In late 1817, with the proceeds of prizes from the War of 1812, savings, and likely a contribution from the dowry of his wife, Danels commissioned the Ferguson shipyard in Baltimore to construct what would become his South American *le chasseur*,<sup>59</sup> *La Irresistible*.<sup>60</sup> The newly constructed brigantine measured 101 feet in length, a beam of 12 ½ feet, a burthen of 285 tons and twelve guns.<sup>61</sup> When first delivered, Danels named her *Vacunia*. Over the next several years the *Vacunia* would be called by two other names.<sup>62</sup>

Commissioning the *Vacunia* demonstrated a major event in Danels life. Previously, Danels only held the position of ship captain. During the late 18<sup>th</sup> and into the early 19<sup>th</sup> century a captain's profession held a respectable place among society.<sup>63</sup> However, holding an ownership

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<sup>55</sup> Hopkins, *supra* note 2, at 393-95.

<sup>56</sup> Hopkins, *supra* note 2, at 393-95.

<sup>57</sup> Hopkins, *supra* note 2, at 394.

<sup>58</sup> Hopkins, *supra* note 27, at 94.

<sup>59</sup> Petrie, *supra* note 18, at 4 (defining *le chasseur*, the hunter in French).

<sup>60</sup> Hopkins, *supra* note 2, at 395.

<sup>61</sup> Griffin, *supra* note 22, at 14. (evidencing 12 guns)

<sup>62</sup> Hopkins, *supra* note 2, at 395.

<sup>63</sup> David Head, *Independence on the Quarterdeck: Three Baltimore Seafarers, Spanish America, and the Lives of Captain in the Early American Republic*, 23 THE NORTHERN MARINER 1, 5 (2013).

stake in a vessel would propel one unto higher rungs of society.<sup>64</sup> In addition to an enhanced position in society, ownership of a vessel entitled certain additional rights to proceeds stemming from the vessels activities.<sup>65</sup> As captain he would receive a percentage of proceeds, as an owner of a privateer he would receive an even greater portion of the proceeds.<sup>66</sup>

Baltimore shipbuilders were known to construct vessels for speed and maneuverability, which made them exceptional privateers.<sup>67</sup> The construction and fitting out of the ship is an important fact of the case. The *Vacunia* carried twelve guns and many small arms.<sup>68</sup> In April of 1818, *Vacunia* departed Baltimore destined for Tenerife, one of the seven islands comprising the Canary Islands.<sup>69</sup> However, Danels and those aboard the *Vacunia* would never make it to Tenerife, as South America would be the true destination.<sup>70</sup>

A major issue for Danels and other privateers sailing for South American waters involved walking a very thin line between legally sanctioned privateering and the illegal practice of pirating.<sup>71</sup> As presented earlier, American neutrality laws offered Americans wishing to sail for South American revolutionary governments a significant obstacle. Danels, as well as many Baltimore privateers, fashioned a clever and elaborate plan to circumnavigate American neutrality laws to ensure his adventures in South America were legal. His plan, if successful would legitimize his prizes and, more importantly, protect his neck from the anaconda-like grip of a noose.

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<sup>64</sup> Petrie, *supra* note 18, at 5.

<sup>65</sup> Head, *supra* note 63, at 5.

<sup>66</sup> Petrie, *supra* note 18, at 5. In absence of contract, half of the proceeds went to the vessel's owners and the other half was divided among the crew. *Id.*

<sup>67</sup> Hopkins, *supra* note 2, at 393-96.

<sup>68</sup> Griffin, *supra* note 22, at 14. *See* The Gran Para 20 U.S. 471 (1822).

<sup>69</sup> The Gran Para 20 U.S. at 472. Tenerife is the largest and most populous island of the seven Canary Islands. Tenerife also produces a sweet wine with a yellow tint; a favorite of the English. William Shakespeare made a reference to Tenerife wine in some of his work. *See* Shakespeare, *The Merry Wives of Windsor* (3.2.83).

<sup>70</sup> The Gran Para at 472.

<sup>71</sup> Petrie, *supra* note 18, at 68-71.

Danels' plan commenced with the departure of *Vacunia* from Baltimore. As the *Vacunia* cleared Baltimore harbor and headed south, Danels was not on board.<sup>72</sup> When *Vacunia* neared White Rocks at the mouth of Rock Creek on the Patapsco River, Danels approached the brigantine via a pilot boat and took over her control.<sup>73</sup> Danels proceeded to navigate the *Vacunia* down the Chesapeake Bay to the Atlantic. Once on the open ocean of the Atlantic, the twelve cannon fitted out in Baltimore were produced and a course was set for Buenos Aires.<sup>74</sup>

During the sail to Buenos Aires, Danels and the *Vacunia* did not attack any ships.<sup>75</sup> In late April 1818 they arrived at their destination.<sup>76</sup> Danels anchored in the Rio de la Plata, which is the estuary formed by the Uruguay and the Parana River converging between modern day Argentina and Uruguay. Geographically the Rio de la Plata allowed Danels easy access to two major cities from which he effectuated several privateering operations, - Buenos Aires and Montevideo.<sup>77</sup> Danels anchored in the Rio de Plata for approximately four months. At some point during anchorage, Danels gave his men the option of joining him as a Buenos Airean privateer or declining and put ashore.<sup>78</sup> No crewmember declined.<sup>79</sup>

With his crew agreeable to privateering, Danels set in motion the next set of actions to ensure he and his vessel did not violate the numerous neutrality laws enacted by the United States Congress.<sup>80</sup> First, Danels sold the *Vacunia* to the patriot government of Buenos Aires.<sup>81</sup> Then, Danels became a citizen of Buenos Aires.<sup>82</sup> Finally, he repurchased the *Vacunia* and

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<sup>72</sup> Hopkins, *supra* note 2, at 395.

<sup>73</sup> Hopkins, *supra* note 2, at 395.

<sup>74</sup> Hopkins, *supra* note 2, at 395.

<sup>75</sup> The Gran Para 20 U.S. 471 (1822).

<sup>76</sup> *Id.* at 471-73.

<sup>77</sup> *Id.* at 471-73.

<sup>78</sup> *Id.* at 471-73.

<sup>79</sup> *Id.* at 471-73.

<sup>80</sup> *Supra*, note 19 at 395.

<sup>81</sup> *Id.* at 471-73.

<sup>82</sup> *Id.* at 471-73.

changed her name to *Maipu*.<sup>83</sup> With a Buenos Airean commission in hand to sail against Spanish seaborne trade, Danels and the *Maipu* set sail.<sup>84</sup> Importantly, at this stage, with Danels declaring citizenship in Buenos Aires and with a commission in hand from the Buenos Airean government, Danels would likely not violate any neutrality laws set by Congress.<sup>85</sup>

Once the *Maipu* cleared the Rio de la Plata, Danels added another layer of complexity. Danels informed his crew that he also carried a commission from the Banda Oriental government signed by Banda Oriental's revolutionary leader, Jose Artigas.<sup>86</sup> The Buenos Airean commission authorized Danels to attack Spanish shipping and the Banda Oriental commission authorized attacks on Portuguese shipping.<sup>87</sup> The accumulation of the two commissions gave Danels more options; the addition of the Banda Oriental commission possibly provided a special opportunity to privateer against Portuguese shipping.<sup>88</sup> After announcing the Banda Oriental commission to the crew, *Maipu*'s name changed again, receiving her final name—*La Irresistible*.<sup>89</sup>

Possessing two letters of marque and reprisal from two governments violated international law.<sup>90</sup> The securing of two commissions presents several interesting questions. Did Danels intend to sail for the Banda Oriental all along, using the Buenos Airean commission as a paper trail to maneuver around neutrality laws? Was the Buenos Airean commission his true intention but once down south, found too great an opportunity from Banda Oriental? Did Danels simply wish to maximize his pool of potential prizes? Evidence shows Danels may have received the Banda Oriental commission in Baltimore from an agent of the Banda Oriental government.<sup>91</sup>

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<sup>83</sup> *Id.* at 471-73.

<sup>84</sup> *Id.* at 471-73.

<sup>85</sup> Hopkins, *supra* note 27, at 98.

<sup>86</sup> Hopkins, *supra* note 27, at 98.

<sup>87</sup> Hopkins, *supra* note 27, at 98.

<sup>88</sup> Hopkins, *supra* note 27, at 98.

<sup>89</sup> Hopkins, *supra* note 2, at 395.

<sup>90</sup> Hopkins, *supra* note 2, at 395.

<sup>91</sup> Hopkins, *supra* note 2, at 394.

Many agents from South American governments sought out Baltimore for its experienced privateers and vessels.<sup>92</sup> One known such agent, Thomas Taylor, a former resident of Wilmington Delaware, was known to carry six blank letters of marque and reprisal for the patriot government of Buenos Aires in early 1816.<sup>93</sup> Evidence surfaced that dates the commission Danels received from the Banda Oriental as February 14, 1818.<sup>94</sup> Danels and his vessel departed Baltimore about two months later.<sup>95</sup>

Securing a commission in Baltimore would have violated the Neutrality Act of 1817.<sup>96</sup> To disguise this violation of U.S. law, Danels needed to orchestrate a plan where his obtaining of a Banda Oriental commission would not raise suspicion. Sailing to Buenos Aires and obtaining a commission from its government would produce a series of events concealing any possible violation of the Neutrality Act of 1817.

The Buenos Airean government at the time proved to be the stronger and more established government of the two.<sup>97</sup> Danels possibly wanted the security of sailing with a more reputable government. However, Buenos Aires would only give commissions against the Spanish.<sup>98</sup> This would limit the size of the pool of potential captures, as the Portuguese also participated in major trading to that region. In addition, the Buenos Airean government had a structure in place to control privateering activities.<sup>99</sup> Control and limiting privateering activities to Spanish vessels could prove a less desirable situation.<sup>100</sup>

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<sup>92</sup> Hopkins, *supra* note 2, at 394.

<sup>93</sup> Hopkins, *supra* note 2, at 394..

<sup>94</sup> Hopkins, *supra* note 2, at 394.

<sup>95</sup> Hopkins, *supra* note 2, at 395.. Citing to Rene W. Furest, Montevideo, Uruguay, personal letter, September 17, 1983, to Dr. Lawrence A. Larsen, Baltimore MD.

<sup>96</sup> Hopkins, *supra* note 2, at 395.

<sup>97</sup> Hopkins, *supra* note 2, at 394.

<sup>98</sup> Hopkins, *supra* note 27, at 98.

<sup>99</sup> Hopkins, *supra* note 2, at 394.

<sup>100</sup> Hopkins, *supra* note 2, at 394.

Many privateers from Baltimore as well as other ports of the United States sailed south for the opportunity to privateer. Many sailed against the Spanish. Buenos Aires, as the more stable government of the South American patriot governments, found many sailors from North America willing to fight for their cause. With a saturation of privateers sailing against the Spanish, an opportunity to sail against the Portuguese possibly presented a less competitive privateering environment. In order to build a great fortune, one often must engage in contrarian activities. Other Baltimore captains saw success attacking Portuguese shipping.<sup>101</sup> By agreeing to sail for a less stable government, Danels took a riskier venture to see a larger return on his investment. Very little separated privateering from pirate activities. Later, upon learning of Danels two commissions, the Buenos Airean government declared Danels a pirate.<sup>102</sup>

Now named *La Irresistible*, with the Banda Oriental commission dated February 14, 1818 supposedly stating the vessel's name, Danels, now with a Banda Oriental citizenship, sailed *La Irresistible* and her crew away from the Rio de la Plata and into the western Atlantic. After sailing for approximately a month and a half Danels encountered his first prize opportunities.<sup>103</sup> Danels plundered and sank over twenty-six Portuguese merchant vessels during this sail.<sup>104</sup> One of the twenty six vessels captured was the *Globo*.<sup>105</sup> Sailing from Bombay to Lisbon, Danels took prize of spices and specie valued at \$90,000, taking a profit of \$30,000.<sup>106</sup> In addition, Danels took specie totaling \$68,000 from other vessels captured.<sup>107</sup> However, his largest prize arose from the *Gran Para*.<sup>108</sup>

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<sup>101</sup> John O. Chase of Baltimore successfully plundered numerous Portuguese ships. Griffin, *supra* note 22.

<sup>102</sup> Hopkins, *supra* note 2, at 395.

<sup>103</sup> Hopkins, *supra* note 2, at 395.

<sup>104</sup> Hopkins, *supra* note 2, at 395.

<sup>105</sup> Hopkins, *supra* note 2, at 395.

<sup>106</sup> Hopkins, *supra* note 2, at 395.

<sup>107</sup> Hopkins, *supra* note 2, at 395.

<sup>108</sup> Hopkins, *supra* note 2, at 395

The *Gran Para* left Rio de Janeiro destined for Lisbon. On board, the *Gran Para* held \$300,000 in specie.<sup>109</sup> This author did not discover any records describing the actual capture of the *Gran Para*. How the ship was captured, statements from the crew of the *Gran Para*, the ship's papers, none of which were found. The prize adjudication, if one even occurred, under Banda Oriental courts was not found. From the records found, after the capture of the *Gran Para* and several other captures of Portuguese shipping, John Danels began his sail back to Baltimore on *La Irresistible* with the specie taken from the *Gran Para* and other captures.

This initial cruise furnished Danels extraordinary success. He decided he would sail to Baltimore to secure his prize and refit. In September of 1818 Danels and *La Irresistible* returned to Baltimore.<sup>110</sup> However, Danels and *La Irresistible* could not directly sail into an American port without violating American neutrality laws. American neutrality laws permitted vessels from other countries engaged in war to refit in American ports in an emergency.<sup>111</sup> Danels claimed his brigantine was unfit for sail and needed repairs.<sup>112</sup> While back in Baltimore Danels was able to deposit \$488,000 of specie in the Marine Bank of Baltimore. With his vessel refitted, Danels embarked once again for South American waters.<sup>113</sup> This initial cruise, culminating with the capture of the *Gran Para* made John Danels an international figure.<sup>114</sup> His exploits in the south Atlantic made his name better known in Lisbon and Madrid than his adopted hometown of Baltimore.<sup>115</sup>

As Danels brought his Portuguese prizes back to Baltimore, the Portuguese government was well aware of privateering activities taking place by Americans. In addition they recognized

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<sup>109</sup> Hopkins, *supra* note 2, at 395.

<sup>110</sup> Hopkins, *supra* note 27, at 99.

<sup>111</sup> Hopkins, *supra* note 27, at 98.

<sup>112</sup> Hopkins, *supra* note 2, at 396.

<sup>113</sup> Hopkins, *supra* note 2, at 396.

<sup>114</sup> Hopkins, *supra* note 2, at 395.

<sup>115</sup> Hopkins, *supra* note 2, at 395.



the quantity of cargo extracted from Portuguese vessels arriving in Baltimore.<sup>116</sup> In the *Niles Weekly Register*, dated January 22, 1818, the Portuguese offered any Portuguese citizen affected by a captured vessel and/or cargo to contact Dan Joaquim Jose Vasquez, the consul general of the United Kingdom of Portugal.<sup>117</sup> Vasquez was in charge of prosecuting these admiralty claims.<sup>118</sup>

## LOWER COURTS

Shortly after the arrival of the *La Irresistible* in Baltimore, on behalf of those with interests in the *Gran Para* and its cargo, Vasquez, the Portuguese consul, filed a libel in the District Court of Maryland alleging silver and gold coin was taken out of the Portuguese ship.<sup>119</sup> Filing a libel is the admiralty term for a “claim”. Appearing before U.S. District Court Judge Theodorick Bland, Don Vasquez argued, through attorney David Hoffman, that Danels outfitted *La Irresistible* in Baltimore in violation of United States neutrality laws.<sup>120</sup> Danels’ lawyers argued that Danels and his ship did not become a privateer until reaching the Rio de la Plata and that in addition, he was now a citizen of the Banda Oriental. Judge Bland awarded the Portuguese Consul *Gran Para* specie, worth \$300,000.<sup>121</sup> Supported by the Marine Bank of Baltimore, which held the specie, Danels appealed Judge Bland’s decision to the Circuit Court. The Circuit Court, with Justice Duvall presiding, affirmed the District Courts opinion, prompting an appeal to the Supreme Court.<sup>122</sup> The judges and attorneys involved in the litigation over the *Gran Para* all were well-known figures in the legal community. David Hoffman and Robert

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<sup>116</sup> *The Niles Weekly Register*, January 22, 1818.

<sup>117</sup> *The Gran Para*, 20 U.S. 471 (1822).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> District Court papers.

Harper argued for the Portuguese and William Winder and William Pinkney argued for Danels interests.

### **CLAIMANT'S ARGUMENT**

Winder, on behalf of Danels, argued *La Irresistible* left the port of Baltimore without violating any statutes of Congress, or neutral obligations of the United States by the law of nations.<sup>123</sup> The fact that the Oriental Republic took a ship like *La Irresistible* into their service did not conflict with the law of nations.<sup>124</sup> Danels' action was not contrary to the law of nations nor in violation of the duties of neutrality imposed on the United States.<sup>125</sup> Finally, even if proved wrong, and Danels' action did violate a statute of Congress or the law of nations, no evidence the money deposited at the Marine Bank came from the *Gran Para*.<sup>126</sup>

### **PORTUGUESE CONSUL ARGUMENT**

In opposition, Hoffman deployed the argument he successfully argued in the lower courts; he attempted to establish the American ownership and illegal outfit of the *La Irresistible* at Baltimore.<sup>127</sup> Hoffman first established the proposition that because neutrality laws of United States were violated, the Court should decree restitution in favor of the Portuguese vessel owners.<sup>128</sup> *La Irresistible* violated United States neutrality laws when she was illegally outfitted in Baltimore and held no legally recognizable commission from any country.<sup>129</sup> The gold and silver coin taken from *Gran Para* must be put back to the original owners of the cargo.<sup>130</sup>

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<sup>123</sup> The *Gran Para*, 20 U.S. at 473.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 474.

<sup>129</sup> *Id.* at 474.

<sup>130</sup> *Id.*

After establishing the overarching argument, Hoffman described the general rule regarding a neutral country's role in adjudicating a captor's prize.<sup>131</sup> In the United States, as a general matter, a neutral court had no power to adjudicate a belligerent capture.<sup>132</sup> Hoffman stated, "The inquiry as to the validity and efficiency of a belligerent capture, is referred to the Courts of the Captors."<sup>133</sup> However, certain exceptions existed allowing a neutral court to decide a case of this type.<sup>134</sup> Where a capture occurred on the high seas, a neutral court will inquire into the taking to determine whether it were lawful or piratical.<sup>135</sup> If no commission existed, the taking was piracy *de facto* and *de jure*.<sup>136</sup> Establishing no commission at the time of the taking was very important to Hoffman's argument; no commission made the capture an illegitimate pirate activity. Hoffman then set forth the necessary inquiry.<sup>137</sup> First, the court determines whether a commission exists; and then the competency of the power granting the commission.<sup>138</sup> The inquiry is a conjunctive test; if one part found absent, the capture will constitute piracy.<sup>139</sup> Hoffman then moved to establish the Courts power to restore the property.<sup>140</sup> He again referenced the general rule in the United States, that neutral courts did not adjudicate belligerents capture; but, put forth the exception which allowed the Court of a neutral to restore the capture to the original owner.<sup>141</sup> The exception contained two parts: (1) "Where the capture was made within a neutral territory"; and (2) "where the capturing vessel was in the whole, or in any part, owned or equipped, or her force in any degree augmented within the dominions of such neutral

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<sup>131</sup> *Id.* at 474-75.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 475.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 475.

<sup>141</sup> *Id.*

state,” the court will award restitution to the original owners, of the property taken.<sup>142</sup> Hoffman asserted the facts of the *Gran Para* strongly evidence satisfaction of the exception which would allow a neutral court to decide the question of prize or no prize.<sup>143</sup>

Hoffman next established the Court’s competency to restore property to the original owners. Due to the fact that the taking was without commission; as the granting party did not represent a state or nation which had the power to grant such a commission to war against Portugal, no valid commission existed.<sup>144</sup> Hoffman delivered a clever argument explaining why the commission granted by the Banda Oriental to John Daniel Danels cannot be recognized.<sup>145</sup> Hoffman declared that the government of the United States did not recognize general Artigas as engaged in a civil war with Spain, nor any kind of war with Portugal.<sup>146</sup> Artigas therefore, was incompetent to issue commissions of prize, as much as any other individual in the Spanish provinces.<sup>147</sup> Hoffman stressed the question, what gives this revolutionary leader the power to grant such a powerful declaration? If Artigas’ commission were to be recognized by other countries what would stop other individuals, claiming independence, from issuing commissions.<sup>148</sup>

Next, Hoffman postulated, even if it is admitted that the Banda Oriental was a South American province, engaged in civil war with Spain, what gave its leader the power to wage war against a nation with no practical connection with Spain?<sup>149</sup> Hoffman emphasized the principle that when a colony enters hostilities against its parent, the rebelling faction does not instantly

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<sup>142</sup> *Id.* at 476.

<sup>143</sup> *Id.* at 476.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 476 - 83.

<sup>146</sup> *Id.* at 477.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 477- 79.

<sup>149</sup> *Id.* at 479-80.

become a nation entrusted and given all the privileges of sovereignty.<sup>150</sup> If such were the case, what would stop any rebellion against a parent from declaring sovereignty of an insignificant amount of land and demanding other countries recognize their existence?<sup>151</sup> Admitting that the Banda Oriental had the ability to wage civil war against Spain, did not give them any additional power to war with other nations.<sup>152</sup>

Finally, Hoffman argued that Courts are bound to regard “the ancient state of things as remaining; until there be a recognition by the proper authority.”<sup>153</sup> The Court did not have the power to recognize the Banda Oriental as a state. Courts cannot declare that people do not constitute a state, therefore, they cannot declare a people make up a state.<sup>154</sup> The power to recognize a sovereign is delegated to Congress. Until the United States government recognized the Banda Oriental as a sovereign, the courts could not.<sup>155</sup> Therefore, the Banda Oriental did not have the required competency to issue commissions.<sup>156</sup> No commission could be issued from Artigas to Danels. The seizure of the cargo aboard the *Gran Para* was piracy *de facto* and *de jure*.<sup>157</sup>

Upon completion of his astute argument on why the Banda Oriental did not have the power to issue a commission, Hoffman turned to Danels’ standing as a claimant.<sup>158</sup> Hoffman proclaimed Danels is “an *unworthy* claimant” because he cannot claim property which he

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<sup>150</sup> *Id.* at 480.

<sup>151</sup> *Id.* at 480-82.

<sup>152</sup> *Id.* at 482.

<sup>153</sup> *Id.* at 482.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 483.

obtained in an unlawful way.<sup>159</sup> Hoffman quotes Sir William Scott as stating, “A claim founded on piracy, or any other act... , be rejected in any Court on *that ground alone*.”<sup>160</sup>

## COURT’S HOLDING AND REASONING

In Chief Justice John Marshall’s short opinion, he unequivocally declared that prizes made by vessels which violated acts made by Congress, which were enacted to preserve and promulgate neutrality of the United States, if brought within American ports, would be restored.<sup>161</sup> Instead of delving directly into the argument made by Hoffman regarding the status of the *Banda Oriental* and its competency to declare commissions; Marshall focused on the question of whether a fitting out in Baltimore occurred. If a fitting out did occur then Danels would have violated the neutrality act of June, 1794, c. 296.<sup>162</sup>

As the main subject of his analysis, Chief Justice Marshall utilized the facts proffered in the District Court regarding the fitting out of *La Irresistible* in Baltimore.<sup>163</sup> Marshall found it clear that *La Irresistible* was purchased, armed, and manned in Baltimore as a vessel of war, for the purpose of being employed as a cruiser against a nation with whom the United States were at peace.<sup>164</sup> Marshall found the totality of the facts surrounding the fitting out demonstrated a violation of United States neutrality laws. Constructed for speed and maneuverability, the vessel was built for war not commerce.<sup>165</sup> The facts which lead to this determination were: the vessel held no cargo on its outbound sail and the crew were too numerous for a merchantman, but sufficient for a privateer.<sup>166</sup> Marshall believed these facts made the true intentions of *La Irresistible* obvious to anyone. He stated that no individual of the crew could believe what they

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<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 483; see *The Diana*, 1 Dodson, 95.100.

<sup>161</sup> *Id.* at 486.

<sup>162</sup> *Id.* at 486-88.

<sup>163</sup> *Id.* at 486.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

would be embarking on was a commercial voyage.<sup>167</sup> Marshall then asks, “For what other purpose could they have undertaken?”<sup>168</sup> The act of June, 1794, c. 296 declares:

if any person shall, within the territory or jurisdiction of the US, hire or retain another person to go beyond the limits or jurisdiction of the US, with intent to be enlisted or entered in the service of any foreign prince or state as soldier, or as a mariner, or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending, shall be guilty of a high misdemeanor.<sup>169</sup>

The third section of the act makes it illegal to: “knowingly . . . , fitting out, or arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, to cruise.”<sup>170</sup> Marshall found it clear that *La Irresistible* was armed and manned in Baltimore in violation of the laws and of the neutral obligations of the United States.

Marshall dismissed the argument raised by Winder, which upon entering the River La Plata her offense was deposited there.<sup>171</sup> If Marshall allowed this argument to survive he possibly opened the door for others to use this tactic, ultimately endangering American neutrality laws.<sup>172</sup> If a vessel was fitted out in an American port and sailed, without incident to a belligerent port, and there obtained a commission, and went through the process of re-enlisting a crew and becoming a citizen of the belligerent, a system could be effectuated that promotes a fraudulent neutrality.<sup>173</sup> In the pursuit of protecting America’s strategy of global neutrality, Marshall and

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<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 488.

<sup>170</sup> *Id.* at 489.

<sup>171</sup> *Id.* at 489.

<sup>172</sup> *Id.* at 489.

<sup>173</sup> *Id.* at 489.

the Court disapproved of the maneuvers taken by Danels and *La Irresistible* and found a violation of American neutrality laws. The Court affirmed the decree with costs.<sup>174</sup>

## **AFTER THE CASE**

Looking behind the case we see a very interesting dynamic among the persons involved. The Marine Bank of Baltimore and Nicholas Stansbury, one of its directors, assert and defend John Daniel Danels interests in the *Gran Para* prize. The Bank and its directors appear eager and interested in a positive outcome. When the lower courts find against Danels and award the Portuguese Consul restitution, the Bank and Stansbury, as Danels agent, continue the fight in Court all the way up to the Supreme Court. In all, Danels deposited approximately Four Hundred Eighty-Eight Thousand Dollars in specie in the Marine Bank of Baltimore, of which Three Hundred Thousand Dollars came out of the *Gran Para*. In the 1820's Three Hundred Thousand Dollars was a very substantial amount of money. To put the number in perspective, the Marine Bank of Baltimore in the 1820's was capitalized with about Six Hundred Thousand Dollars.<sup>175</sup> Losing Three Hundred Thousand Dollars in deposits would greatly affect the Marine Bank. If required to give restitution to the Portuguese the Marine Bank would see their Bank capitalization drop in half. Banks use deposits to make loans, deposits depleting in half would dry up capital available to make loans. Losing such a sum of deposits would also create an uneasiness in the community. Confidence in a bank is an essential foundation for a functioning banking economy. At any one time, if all the customers of a bank called their deposits, the bank would not have the required funds to cover those requests.

Throughout the history of the United States republic, the American banking system has experienced many bank panics resulting in several recessions and depressions. In 1819, the

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<sup>174</sup> *Id.* at 471.

<sup>175</sup> JOHN T. SCHARF, HISTORY OF BALTIMORE CITY AND COUNTY, FROM THE EARLIEST PERIOD TO THE PRESENT DAY, INCLUDING BIOGRAPHICAL SKETCHES OF THEIR REPRESENTATIVE MEN 450 (1881).



United States economy faced a depression culminating with countless bank failures.<sup>176</sup> In early 1819 credit began to dry-up. The main culprit involved depletion of specie reserves.<sup>177</sup> Banks with limited specie failed.<sup>178</sup> The panic of 1819 and depression were a result of huge monetary inflation, stoked by the Bank of the United States.<sup>179</sup> With the resolution of the War of 1812 America saw a boom in economic growth as chartered state banks issued redeemable notes far in excess to the specie they held.<sup>180</sup> In 1815, bank notes increased from \$46 million to \$68 million.<sup>181</sup>

The directors of the Marine Bank of Baltimore held a great interest in the outcome of a case which could potentially require removal of substantial amount of specie from utilization. As a specie shortage plagued American banks during this time, the Three Hundred Thousand Dollars of specie from the *Gran Para* potentially increased the financial health of the bank. The Marine Bank of Baltimore was incorporated in 1809 with capital of \$235,000.<sup>182</sup> The capital of the bank grew to \$600,000 by 1815.<sup>183</sup>

The leaders of the bank, the board of directors, held strong ties to Baltimore politics, business, and community affairs. Fourteen men of Baltimore comprised the board of directors.<sup>184</sup> Hezekiah Waters was the president.<sup>185</sup> Characterized as one of the leading citizens of Baltimore, Mr. Waters held many positions throughout the community. He was elected officer of the

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<sup>176</sup> MURRAY ROTHABARD, *THE PANIC OF 1819, REACTIONS AND POLICIES* (BN Publishing 2012).

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> JOHN HAZLEHURST, *PICTURE OF BALTIMORE* JOHN HAZLEHURST 109.

<sup>183</sup> *Baltimore Directory and Register for 1814-15.*

<sup>184</sup> *Id.* at 276.

<sup>185</sup> *Id.* at 276.

Deptford volunteer firemen in 1806.<sup>186</sup> Records also show Mr. Waters as clerk to special commissioners and starting in 1808 as a city commissioner.<sup>187</sup>

The other directors of the Marine Bank of Baltimore included: Archibald Kerr, Thorndick Chase, Baptist Mezick, Job Smith, Frederick Shaffer, William Mondel, Joel Vickers, Nicholas Stansbury, John Coulter, Patrick Bennet, Beale Randall, Thomas Johnson, Samuel Beck, and Theophilus Norman.<sup>188</sup> Each director held important roles in the community and ties with other powerful Baltimore individuals. For example, Job Smith was an associate judge of criminal court and a Justice of the Peace for Baltimore County; Joel Vickers was on the board of directors of the Universal Insurance Company of which John Hollins also held a position. Thorndick Chase was a merchant in Fells Point; John Coulter was a physician; and Thomas Johnson was a Justice of the Peace and president of the Falls Turnpike Road.<sup>189</sup>

Importantly, Nicholas Stansbury, John Daniel Danels' agent in the case of the *Gran Para* also acted as a director of the Marine Bank of Baltimore.<sup>190</sup> Stansbury held many positions: Chandler, grocer, merchant, ship owner, and some speculate, investor in *La Irresistible*. In addition to the deposit made by Danels, evidence shows the Marine Bank of Baltimore accepted other South American privateering deposits, particularly Portuguese.<sup>191</sup> The Marine Bank of Baltimore had an incentive to see a positive outcome in the *Gran Para* case not just for its stake in the specie from the *Gran Para*, but protecting other assets deriving from South American privateering. The finding of an invalid prize derived from South American privateering had the potential to jeopardize other assets held by the bank.

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<sup>186</sup> *Id.* at 276.

<sup>187</sup> *Id.* at 276.

<sup>188</sup> *Id.* at 276.

<sup>189</sup> *Id.* at 276.

<sup>190</sup> *Id.* at 276.

<sup>191</sup> The Marine Bank of Baltimore also held deposits from John O. Chase. Chase deposited in the Marine Bank and Union Bank more than \$100,000 in cash from the proceeds of plundering over twenty Portuguese ships. Griffin, *supra* note 22, at 24.

## GRAN PARA PART II

Did the Portuguese ever collect the specie deposited at the Marine Bank? Approximately three years after the Supreme Court decree in the original case, *Gran Para* litigation again surfaced in the February Term of 1825.<sup>192</sup> Hence, we see the *Gran Para* reach the Supreme Court in *The Gran Para*, 23 U.S. 497 (1825) (the “Gran Para II”). The Portuguese, with a decree against Danels for the specie taken from the *Gran Para*, attempted to perform an execution against Daniels for the collection of that certain property. Given the large amount of money involved, litigants in prize disputes regularly hired the best legal talent.<sup>193</sup>

As we have seen from *The Gran Para*, many of the leading members of the Supreme Court bar argued cases involved with privateer captures.<sup>194</sup> Mr. Hoffman again argues for the Portuguese General Consul, this time as an appellant; however, the attorneys for Danels, now comprised the Attorney General and Mr. Roger Brooke Taney.<sup>195</sup>

During the mid to late 1820’s Taney distinguished himself at the bar; making him a sought after practitioner before the Supreme Court. He also served as director of the Fredrick County Bank. During his time in President Andrew Jackson’s cabinet, Taney became one of President Jackson’s main supporters and advancers of the abolishment of the Second Bank of the United States.<sup>196</sup> Between 1824-25, when preparing and arguing the second leg of the *Gran Para* saga, Taney would have been well versed in banking affairs.

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<sup>192</sup> *The Gran Para*, 23 U.S. 497 (1825).

<sup>193</sup> Arlyck, *supra* note 42 at 253.

<sup>194</sup> Arlyck, *supra* note 42 at 253.

<sup>195</sup> *The Gran Para*, 23 U.S. 497 (1825); see *Lehrman Institute, History Essays Removal of Deposits by Rodger Taney*, <http://lehrmaninstitute.org/history/Andrew-Jackson-1837.asp> (Nov. 30, 11:50 PM).

<sup>196</sup> In 1833, with other avenues not showing any success, President Jackson, with the help of Taney, attempted to dismantle the Second Bank of the United States. On September 23, 1833, Jackson appointed then Attorney General Taney as Secretary of the Treasury. Three days later Taney ordered all revenues thereafter accruing be deposited, not with the Bank of the United States, but with certain state banks selected by the Treasury Secretary, these banks later earned the nickname Taney’s “pet banks.” With revenues being deposited in other banks, expenses incurred by the government would draw upon the reserves deposited at Bank of the United States until exhausted. This action

In an attempt to enforce the Portuguese right to the specie deposited at the Marine Bank from the Gran Para, the Gran Para II revolved around the collection of the specie. After the Supreme Court affirmed the District Court's decree, in the first *Gran Para case*, the Portuguese set about to collect the *Gran Para* specie from the Marine Bank of Baltimore. After a decree was entered in the Supreme Court for the first *Gran Para* case, the Portuguese requested an execution, in the District Court of Maryland, be issued against John Daniel Danels, to whom the property had been delivered, on a stipulation signed by others. In general, an execution of process is issued, where attachment is trying to be made, and it appears the defendant (Danels) cannot be found within the district.<sup>197</sup>

Pending the proceedings in the initial *Gran Para* case, Nicholas Stansbury, asserting himself as "agent and attorney in fact," of Danels, as well as a director of the Marine Bank, applied for delivery of the property in question upon stipulation.<sup>198</sup> Prize property could have been delivered to a claimant on stipulation, as long as four requirements were met.<sup>199</sup> The stipulation, approved by the court, allowed Danels to draw for, and the president and directors of the Marine Bank to pay, the money in controversy.<sup>200</sup> The stipulation provided for \$23,000, with

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caused officers of the Bank of the United States to call in loans causing immediate distress in the financial markets prompting a bank panic. *Lehrman Institute, History Essays Removal of Deposits by Rodger Taney*, <http://lehrmaninstitute.org/history/Andrew-Jackson-1837.asp> (Nov. 30, 11:50 PM).

<sup>197</sup> USCS Admiralty and Maritime Claims R E.

<sup>198</sup> *The Gran Para*, 23 U.S. 497, 498 (1825).

<sup>199</sup> 10 U.S. Code § 7664. "10 U.S. Code § 7664 - Delivery of property on stipulation:

(a) Prize property may be delivered to a claimant on stipulation, deposit, or other security, if—

(1) the claimant satisfies the court that the property has a peculiar and intrinsic value to him, independent of its market value;

(2) the court is satisfied that the rights and interests of the United States or of other claimants will not be prejudiced;

(3) an opportunity is given to the United States attorney and the naval prize commissioner or the naval special prize commissioner to be heard as to the appointment of appraisers; and

(4) a satisfactory appraisal is made.

(b) Money collected on a stipulation, or deposited instead of it, that does not represent costs shall be deposited with the Treasurer of the United States or a public depository in the same manner as proceeds of a sale."

*Id.*

<sup>200</sup> *The Gran Para* 23 U.S. at 498-99.

the guarantors approved by the libellant's (Portuguese) proctors.<sup>201</sup> In an admiralty suit, a stipulation is considered a mere substitute for the actual thing taken.<sup>202</sup> The approved guarantors included: Stansbury, Thomas Sheppard, and Henry Didier, Jr.<sup>203</sup>

The sureties of the stipulation offer a view of business associates of John Daniel Danels. A personal guaranty of payment represents a significant responsibility; one which a reasonable person would not enter unless they themselves held an advantageous interest in the underlying property in controversy. As we saw earlier, Danels started his merchant activity out of Baltimore sailing for the merchant house of Henry Didier, Jr. Thomas Sheppard held a seat from Ward 8 on the Baltimore City Counsel, he was a flour merchant and ship owner, a director of the Mechanic's Bank, and suspected participant in the slave trade evidenced in the case *The Plattsburgh*.<sup>204</sup> A web of connections surfaces among many of the prominent Baltimore merchants with a connection to the *Gran Para* and Baltimore's South American privateering. In the instant case, Justice Story found that because Danels was not a party to the stipulation; any remedy on the stipulation was exclusively against the sureties.<sup>205</sup> The remedy against Danels for the property, or its proceeds, had to be sought on the ground that he had actual or constructive possession. Justice Story left open the possibility that the Portuguese could issue a monition against Danels in the circuit court, according to Admiralty process.<sup>206</sup> Once again, a case in the Portuguese favor did not result in a finalization event. The Portuguese would need to continue its

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<sup>201</sup> *Id.* at 498.

<sup>202</sup> The Palmyra, 12 Wheat. 1. Whenever a stipulation is taken in an admiralty suit for the property subjected to legal process and condemnation, the stipulation is deemed a mere substitute for the thing itself, and the stipulators liable to the exercise of all those powers on the part of the court which it could properly exercise if the thing itself were still in custody. (The Palmyra, 12 Wheat. 1.)

<sup>203</sup> 23 U.S. at 498-99.

<sup>204</sup> *The Plattsburgh*, 23 U.S. 133 (1825).

<sup>205</sup> The Gran Para 23 U.S. at 500. *See also* The Lynchburg, 1861 U.S. Dist. LEXIS 67 (S.D.N.Y. 1861) (asserting a monition would be a proper action against claimant).

<sup>206</sup> *Id.* at 500-01.

legal battle to recover the \$300,000 taken from the *Gran Para*. This author was not able to determine if the Portuguese ultimately recovered the specie taken from the *Gran Para*.

## **VI. Conclusion**

Around the same time the Supreme Court decided *The Gran Para*, privateering from the United States to South America generally stopped.<sup>207</sup> The capture of *Gran Para* came at a time in United State history when a neutral position in world affairs was of great importance to the young United States of America. The Supreme Court in the *Gran Para* judicially approved of and protected neutrality laws. In addition, the case showed to the world loopholes in laws regarding neutrality would no longer be exploited. The *Gran Para* represents the Court and nation's firm stance against privateering. The elaborate song and dance entrepreneurs and adventure men once concocted to circumnavigate neutrality laws vanished.

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<sup>207</sup> Hopkins, *supra* note 27, at 104.

## APPENDIX

### JOHN DANIEL DANELS

John Daniel Danels' commercial pursuits represent classic early nineteenth century American entrepreneurial ambitions.<sup>208</sup> Born December 19, 1783 in Maine, Danels eventually migrates to Baltimore hoping to seize upon the many opportunities the city offered merchants and sailors of the time.<sup>209</sup> Records indicate just before 1812 Danels served as a merchant captain for the firm D'Arcy and Didier.<sup>210</sup> In 1811 Danels married an émigré from Santo Domingo named Eugenia.<sup>211</sup> His marriage to Eugenia brought him some wealth due to a sizable dowry, this source of money would later help him finance later commercial activity.<sup>212</sup> Before war broke out against Britain, Danels maintained himself as a capable merchant captain.

During the War of 1812, Baltimore provided many of the ships, captains, and sailors that would participate in the cause against the British navy sailing as privateers.<sup>213</sup> This included John Danels.<sup>214</sup> Danels was one of the first to sail from Baltimore bearing commission number six in the letter-of-marque trader, *Eagle*, bound for Haiti.<sup>215</sup> During the War of 1812 Danels captained three different ships bearing four different names: the *Eagle*; the *Rossie*; and the *Delille*, later renamed the *Syren*.<sup>216</sup> In the earlier goings as a privateer, Danels found little success. He was even captured several times by the British and exchanged. While sailing the *Eagle* he was captured by the British brig *Sophia* and captured again while sailing the *Rossie* for

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<sup>208</sup> Hopkins, *supra* note 2.

<sup>209</sup> *Id.*

<sup>210</sup> Hopkins, *supra*, note 2, at 393. See also Records of the Collector of Customs at Baltimore, Record Group 36, Entrances and Clearances (Washington, D.C.: Legislative, Judicial, and Fiscal Branch, National Archives and Records Administration).

<sup>211</sup> Hopkins, *supra* note 2.

<sup>212</sup> Hopkins, *supra* note 2.

<sup>213</sup> Hopkins, *supra* note 2.

<sup>214</sup> Hopkins, *supra* note 2.

<sup>215</sup> Hopkins, *supra* note 2.

<sup>216</sup> Hopkins, *supra* note 2.

Bordeaux. His luck began to turn in the spring of 1814 sailing the *Delille*. Sailing from New Orleans to New York, he managed to capture five small vessels and successfully engaged the British brig *Surprise* off the coast of Cuba.<sup>217</sup> Upon returning to the States, Danels had a few more successful bouts of privateering mostly sailing between New York and the English Channel.<sup>218</sup> But then, on December 24, 1814 the Treaty of Ghent ended hostilities of United States and the United Kingdom of Great Britain and Ireland, ending his War of 1812 privateering. His ambition demons could not keep him in Baltimore for long; soon we see him privateering once again.<sup>219</sup>

In addition to the *Gran Para* Danels had several other prizes under Supreme Court review.<sup>220</sup> He also faced criminal charges of privateering brought by Elias Glenn upon pressure from John Quincy Adams.<sup>221</sup> He was acquitted of the criminal charges.<sup>222</sup> Danels would spend most of the 1820's sailing for South American governments. He joined Simon Bolivar's navy to help their cause; became a commodore in Bolivar's navy and attained Venezuelan citizenship. After many years of service to the South American cause, he returned to his family in Baltimore. In retirement Danels dabbled in many activities: commerce, charity, religion, even became a partner in a brewery.<sup>223</sup> His South American privateering brought wealth to his family. Danels would remain at his Baltimore residence located at 53 Albemarle Street for the remainder of his life, dying in 1855.<sup>224</sup>

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<sup>217</sup> Hopkins, *supra* note 2.

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<sup>219</sup> Hopkins, *supra* note 2.

<sup>220</sup> Head, *supra* note 27.

<sup>221</sup> Head, *supra* note 27.

<sup>222</sup> Head, *supra* note 63, at 19.

<sup>223</sup> Head, *supra* note 63, at 19.

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