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Abstract

The Bellona Gunpowder Company of Maryland was one of Maryland's most prominent gunpowder manufactories during the early nineteenth century. Founded in 1801, the gunpowder company became the second leading gunpowder producer for the American government, and supplied almost one-fifth of American domestic gunpowder. In 1828, the Baltimore and Susquehanna Railroad Company was incorporated by the State of Maryland to construct a railroad that would connect the City of Baltimore to the Susquehanna River. The legislature authorized the railroad company to initiate condemnation proceedings against private property owners, if it was unable to negotiate for the sale of such land. In 1831, the Baltimore and Susquehanna Railroad attempted to obtain a right of way across the Bellona Gunpowder Company of Maryland's property. When negotiations failed, the railroad company initiated a condemnation proceeding in the Baltimore County Court in order to acquire the right of way. The Bellona Gunpowder Company of Maryland fought this condemnation proceeding, and the parties litigated the issue in the Chancery Court of Maryland. This Article analyzes the gunpowder industry in revolutionary and post-revolutionary America. It also discusses the City of Baltimore's efforts to secure the trade of the Susquehanna River Valley. Finally, this Article analyzes the opinion of Chancellor Bland, and applies a Coase analysis of the two incompatible land uses of the parties.

Disciplines

Law, Legal History, Constitutional Law

The Bellona Company’s Case, 3 Bland 442 (1832)

I. Introduction

On February 13, 1828, the General Assembly of Maryland passed the Act of 1827, chapter 72, which granted a corporate charter to the Baltimore and Susquehanna Railroad Company (“B&S Railroad”). This charter authorized the B&S Railroad to construct a railroad to connect the City of Baltimore to the Susquehanna River, with the hope of securing the trade in the Susquehanna Valley.¹

The legislature recognized that the B&S Railroad would need to acquire a large, continuous right of way between the two endpoints to construct its railroad. The Maryland legislature required the B&S Railroad to negotiate with private landowners on the proposed route for the sale or use of their property. However, the General Assembly anticipated that many landowners would holdout to achieve financial gain, or would be unwilling to sell their property for any price. In response to this concern, the legislature granted the B&S Railroad authority to initiate condemnation proceedings in county courts to acquire land to construct its railroad that it could not reasonably purchase.²

The B&S Railroad failed to successfully negotiate with for a right of way across the Bellona Gunpowder Company of Maryland’s (“Bellona Gunpowder”) property. Therefore, the B&S Railroad initiated a condemnation proceeding in the Baltimore County Court as authorized under charter. Bellona Gunpowder feared that the B&S Railroad’s proposed right of way would force the company to relocate, or close its manufactory. Due to this concern, Bellona

¹ Act of 1827, ch. 72.

² Act of 1827, ch. 72, sec. 15.

Gunpowder filed a Motion for Injunction in the Baltimore County Court to enjoin the B&S Railroad from constructing its right of way as proposed.

This paper discusses and analyzes historical facts and factors that led to the litigation between the B&S Railroad and Bellona Gunpowder. Part II A of this Article discusses the American gunpowder industry during the American Revolutionary War, and into the early 19th Century. Part II B of this Article discusses the City of Baltimore's attempts to secure the Susquehanna Valley trade, concluding with the incorporation of the B&S Railroad. Part III of this Article discusses Chancellor Theodorick Bland's Chancery Court of Maryland opinion for *The Bellona Company's Case*. Part IV provides a discussion of Ronald H. Coase's "The Problems of Social Cost" as it relates to this court's decision between two incompatible land uses.

II. The Early American Gunpowder Industry

A. The Revolutionary and Post-Revolutionary Gunpowder Market

In 1775, the thirteen American colonies were in the early stages of the American Revolutionary War against Great Britain, but faced a substantial barrier to achieving their independence. The colonists were primarily devoted to the agricultural trade, which meant that industries such as gunpowder manufactories were virtually non-existent.³ In 1775, the American colonies only had one "major" domestic gunpowder mill, the Frankford Mill, which was located

³ *The Supply of Gunpowder in 1776*, 30 AM. HIST. REV. 271 (1925),

http://penelope.uchicago.edu/Thayer/E/Journals/AHR/30/2/Supply_of_Gunpowder_in_1776.html.

just outside of Philadelphia, Pennsylvania.⁴ The individual colonists also produced gunpowder however, its quality was extremely poor, and its quantity was insufficient to meet the demands of war.

The American colonies are estimated to have had a total of 80,000 pounds of gunpowder in domestic storage at the beginning of the war.⁵ After only nine months at war, virtually all of this gunpowder, as well as all additional imported gunpowder, had been exhausted.⁶ During the summer of 1775, the Second Continental Congress met and considered the issues surrounding

⁴ Jimmy Dick, *The Gunpowder Shortage*, J. AM. REVOLUTION (Sept. 9, 2013)

<http://allthingsliberty.com/2013/09/the-gunpowder-shortage/>. Two other small powder mills also existed at the time, the Pickeland Powder Mill located approximately thirty miles northwest of Philadelphia, and the New Jersey Revolutionary War Powder Mill, owned by Jacob Ford, Jr. and located outside of Morristown, New Jersey. Harry Schenawolf, *Gunpowder and its Supply in the American Revolutionary War*, WEAPONRY & MUNITIONS (Oct. 4, 2012), <http://www.harryschenawolf.com/211/>.

⁵ *The Supply of Gunpowder in 1776*, 30 AM. HIST. REV. 271 (1925),

http://penelope.uchicago.edu/Thayer/E/Journals/AHR/30/2/Supply_of_Gunpowder_in_1776.html.

⁶ *Id.* In December 1775, George Washington wrote “Our want of powder is inconceivable. A daily waste and no supply administers a gloomy prospect.” GEORGE WASHINGTON, THE WRITINGS OF GEORGE WASHINGTON VOL. III (1775-1776) 299 (Ford ed. 1889), <http://oll.libertyfund.org/titles/2378>.

the shortage of domestic gunpowder.⁷ The Congress ultimately concluded that the manufacture of gunpowder should be an issue left to the colonial governments.⁸ However, the Congress did send printed papers to the colonial governments that described the gunpowder manufacturing process, and urged their immediate attention to the issue.⁹

Each colonial legislature, with the exception of Georgia, responded to the Congress, and initiated legislation to promote the manufacture of gunpowder.¹⁰ Each legislature promulgated a rule, which encouraged the development of gunpowder manufactories through guaranteed financial support, and bounties when specified quantities of gunpowder were produced.¹¹ Virginia's legislature promulgated their rule in March, 1775; Connecticut in May, 1775; New Hampshire, Rhode Island, Pennsylvania, and South Carolina in June, 1775; North Carolina in September, 1775; Maryland in December, 1775; and finally New York and New Jersey in March 1776.¹²

⁷ *The Supply of Gunpowder in 1776*, 30 AM. HIST. REV. 271 (1925),

http://penelope.uchicago.edu/Thayer/E/Journals/AHR/30/2/Supply_of_Gunpowder_in_1776.html.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* The Massachusetts colony needed no urging from Congress, as their legislature had manifested official interest in promoting the development of gunpowder manufactories as early as December, 1774. *Id.*

¹¹ *Id.*

¹² *Id.*

Even with the quick response of colonial governments, the American colonies imported more than ninety-percent of their gunpowder supply during the first two and one-half years of the war.¹³ The substantial majority of this imported gunpowder came from the West Indies, and was transported by French ships.¹⁴ In total, the American colonies imported approximately 478,000 pounds of saltpetre, and 1,454,210 pounds of gunpowder, during the first two and one-half years of the war.¹⁵

On July 26, 1775, the Maryland Convention adopted the “Articles of Association of the Freemen of Maryland,” which in essence, declared the colony’s independence.¹⁶ As a result of this declaration, each county elected individuals to Committees of Observation in order to carry out the purposes of the Maryland Convention.¹⁷ On December 28, 1775, the Maryland

¹³ See *The Supply of Gunpowder in 1776*, 30 AM. HIST. REV. 271 (1925),

http://penelope.uchicago.edu/Thayer/E/Journals/AHR/30/2/Supply_of_Gunpowder_in_1776.html (summarizing the pounds of saltpetre and gunpowder that individual states imported during the first two and one-half years of the war, and concluding that over ninety-percent of the powder used was imported).

¹⁴ *Id.*

¹⁵ *Id.* This imported quantity of saltpetre—the primary ingredient in gunpowder—produced approximately 700,000 pounds of gunpowder. *Id.*

¹⁶ THOMAS SCHARF, HISTORY OF BALTIMORE CITY AND COUNTY 71 (J.B. Lippincott & Co. ed. 1881), <https://archive.org/details/historyofbaltimo01scha>.

¹⁷ *Id.*

Convention authorized a loan of 1,000 pounds to the Baltimore Committee of Observation for the purpose of establishing gunpowder mills near the City of Baltimore.¹⁸

The first major Maryland gunpowder manufactory did not begin construction until 1790.¹⁹ In 1790, a company, led by Robert Gilmore, was formed to construct a gunpowder manufactory on the Gwynns Falls, less than three miles from the City of Baltimore.²⁰ The successes of this mill attracted the attention of E. I. du Pont by March, 1808.²¹ However, on September 17, 1812, this mill suffered a substantial explosion, which caused the destruction of several manufactory buildings.²² This accident caused the owners of the company to lose \$20,000, and they permanently shut down their operation.²³ Accidental explosions of this nature were common in the gunpowder manufactory industry and owners were constantly forced to make monetary expenditures to keep their operations in business.

¹⁸ *Id.* at 72. This is an example of the colonial government of Maryland “manifesting official interest” in the development of gunpowder manufactories, discussed above. *See supra* notes 11-13, and accompanying text.

¹⁹ A.K. Gilbert, *Gunpowder Production in Post Revolutionary Maryland*, 52 MD. HIST. MAG. 3, 188 (Sept. 1957). This mill exploded in April, 1792, which caused the owners to explicitly exclude any individuals from entering the premises as a precautionary measure. *Id.*

²⁰ *Id.* at 189; *see also* SCHARF *supra* note 16, at 433.

²¹ A.K. Gilbert, *Gunpowder Production in Post Revolutionary Maryland*, 52 MD. HIST. MAG. 3, 189 (Sept. 1957).

²² *Id.* at 189–92.

²³ *Id.* at 192.

One of the most prominent and long lasting gunpowder manufactories of this era was the Bellona Gunpowder Company of Maryland (“Bellona Gunpowder”).²⁴ Bellona Gunpowder was established in 1801.²⁵ During March of that year, Michael Young sold fourteen acres of land adjacent to the Jones Falls to Alexander McDonald, Nicholas G. Ridgely, and Noah Nelms, for 560 pounds.²⁶ The land was located in the Roland Run Valley, at the junction of Roland Run and the Jones Falls.²⁷ The entrepreneurs found this location ideal for the establishment of a gunpowder manufactory. The location contained an already constructed millrace, and an adequate supply of fresh moving water to power the manufacturing operation.²⁸ This area is located between seven and eight miles north of the City of Baltimore, in what is now known as Ruxton, Maryland.²⁹

Bellona Gunpowder suffered its first accidental explosion in 1801.³⁰ The gunpowder company’s mill house exploded, which leveled the building and injured at least one worker.³¹

²⁴ At Bellona Gunpowder’s peak, it occupied 350 acres of land, had almost fifty employees, and supplied one-fifth of the American market’s gunpowder supply. JOSEPH M. COALE III, MIDDLING PLANTERS OF RUXTON 1694-1850, 31 (1996).

²⁵ Bellona was an Ancient Roman goddess of war.

²⁶ JOSEPH M. COALE III, MIDDLING PLANTERS OF RUXTON 1694-1850, 24 (1996).

²⁷ *Id.* at 30.

²⁸ *Id.* at 30.

²⁹ *Id.* at 1.

³⁰ A.K. Gilbert, *Gunpowder Production in Post Revolutionary Maryland*, 52 MD. HIST. MAG. 3, 193 (Sept. 1957).

³¹ COALE, *supra* note 26, at 1.

However, the entrepreneurs were not discouraged, and decided to rebuild the mill house. In fact, they decided to expand their operations, and in 1803 the entrepreneurs purchased additional acres of land from Michael Young.³² By 1810, Bellona Gunpowder was the second largest producer of gunpowder for the United States Government, when it produced one-fifth of the government's gunpowder supply.³³

However, in 1812, one of Bellona Gunpowder's refineries caught fire, and sent sparks to four adjacent powder mills that caused all four to explode.³⁴ Nevertheless, in 1814, Bellona Gunpowder assisted the City of Baltimore in the defense of Fort McHenry against British attacks. Bellona Gunpowder supplied 200 barrels of gunpowder to Fort McHenry, which were placed its magazines.³⁵

³² *Id.* at 25.

³³ JAMES WALTER PEIRCE, *A GUIDE TO PATAPSCO VALLEY MILL SITES: OUR VALLEY'S CONTRIBUTION TO MARYLAND'S INDUSTRIAL REVOLUTION* (2004).

³⁴ A.K. Gilbert, *Gunpowder Production in Post Revolutionary Maryland*, 52 MD. HIST. MAG. 3, 193 (Sept. 1957).

³⁵ COALE, *supra* note 26, at 31.

Figure 1: A Marker on The Star Spangled National Historic Trail Identifying the Bellona Gunpowder Company's Contribution to The War of 1812. Photo Courtesy of <http://www.hmdb.org/PhotoFullSize.asp?PhotoID=290126>



By 1814, Bellona Gunpowder was owned by nine individuals: Noah Nelms, Nathan Levering, Peter Levering, Enoch Levering, Jesse Levering, Alexander McDonald, Nicholas G. Ridgely, and most importantly, James Beatty.³⁶ During April of that year, their gunpowder product was “warranted to be fully equal . . . to any at Market.”³⁷ In December, 1814, the owners decided to incorporate Bellona Gunpowder.³⁸

³⁶ *Id.*

³⁷ A.K. Gilbert, *Gunpowder Production in Post Revolutionary Maryland*, 52 MD. HIST. MAG. 3, 193 (Sept. 1957) (quoting SENTINEL OF FREEDOM, Apr. 19, 1814).

³⁸ COALE, *supra* note 26, at 30.

EXPLOSION. Yesterday morning, about 9 o'clock, the powder in the drying house attached to Mr. James Beatty's powder mill, seven miles from the city, on the Falls road, exploded. There were about 60 kegs of powder in the house at the time, and the explosion was so violent that the house, which was built of stone, was levelled with the ground, the stones thrown in every direction, fences demolished, all the plastering shaken from the walls of a newly finished house in the neighborhood, and the glass shattered from the windows of a house a quarter of a mile distant. The concussion was distinctly felt in this city. Had it not been for the strong southerly-wind, there is a probability that the graining house, in which there was about a ton of powder, would also have been blown up. Fortunately no lives were lost. The superintendant had not left the drying house more than fifteen minutes before the occurrence took place, and one of the workmen was on his way to the spot at the instant of the explosion. He was knocked down but received no injury. The accident, it is said, occurred in consequence of the powder being dried by the old and dangerous plan of heating the room by a stove, instead of steam, according to the modern practice.

BLACKGUARDS AT CHURCH.—The recent re-

Figure 2 A Baltimore Sun Article from the Day Following an Explosion at Bellona Gunpowder in 1840

On January 15, 1815, the General Assembly of Maryland passed the Act of 1814, chapter 78, which granted a charter to the company, now officially named The Bellona Gunpowder Company of Maryland. Bellona Gunpowder's charter granted it authority for "the manufacturing and vending of gunpowder, and the carrying on of any other branches of manufacture in their discretion, for which purposes they are hereby authorized to purchase and hold lands . . . not exceeding one thousand acres at a time, and to erect thereon all needful and convenient buildings."³⁹

Around 1815, James Beatty became the sole proprietor of Bellona Gunpowder, which caused him financial hardship for the rest of his life.⁴⁰ This same year E.I. du Pont stated that "one of our principal motives is to strive against the competition of the Baltimore factories."⁴¹ Under the ownership of James Beatty, Bellona Gunpowder continued to grow in size, purchasing additional acreage from Michael Young's family in 1817 and 1819. James Beatty was caused to spend excessive amounts of money to continue Bellona Gunpowder's operations.⁴² On August

³⁹ Act of 1814, ch. 78, sec. 2.

⁴⁰ COALE, *supra* note 26, at 30.

⁴¹ A.K. Gilbert, *Gunpowder Production in Post Revolutionary Maryland*, 52 MD. HIST. MAG. 3, 193 (Sept. 1957).

⁴² *See id.* at 194 (noting that on the 1820 census, James Beatty "listed his profit as variable due to 'casualties in the Machinery & Buildings'") (citing Fourth United States Census, 1820).

29, 1820, Bellona Gunpowder suffered an accidental explosion that was so severe, it was said to have been heard as far away as Washington D.C.⁴³ This force of this explosion caused the death of three employees, and destroyed four of Bellona Gunpowder's buildings.⁴⁴ Although skeptical and discouraged, James Beatty rebuilt the buildings to keep Bellona Gunpowder in operation.⁴⁵

On October 15, 1821, before the company finished the rebuilding, another explosion occurred that killed four employees.⁴⁶ Despite the significant reoccurring costs, James Beatty refused to leave the Baltimore gunpowder market, and continued to rebuild and expand the Bellona Gunpowder operations. In 1827, Bellona Gunpowder entered into its largest ever land transaction, where it purchased 196 acres of land from the Young family.⁴⁷

B. The City of Baltimore Attempts to Secure the Susquehanna Valley Trade Market

From the late 1700s, until 1827 the City of Baltimore undertook multiple projects in an effort to secure the trade of the Susquehanna River Valley.⁴⁸ In 1783, the General Assembly of Maryland granted a charter to the Susquehanna Canal Company.⁴⁹ The company was authorized

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See id.* (noting that for the 1820 census, James Beatty “listed his profit as variable due to ‘casualties in the Machinery & Buildings’”) (*citing* Fourth United States Census, 1820).

⁴⁶ *Id.*

⁴⁷ COALE, *supra* note 26, at 25.

⁴⁸ *See* SCHARF, *supra* note 16, at 342-43.

⁴⁹ *Maryland at a Glance: Canals*, MD MANUAL ON-LINE, <http://msa.maryland.gov/msa/mdmanual/01glance/html/canals.html> (last visited 1/27/2016).

to construct a canal along the eastern edge of the Susquehanna River, from the Maryland line, to the area that is now known as Port Deposit.⁵⁰ The ten mile canal was slow to construct, and extremely expensive. It was financed primarily from contributions by the citizens of Baltimore in excess of one million dollars.⁵¹ The canal was never connected to the Erie Canal, as originally planned, and was ultimately auctioned off in 1817, after failing to maintain a profit.⁵²

Although the canal was ultimately deemed a failure, several Baltimoreans experimented with running “arks” across the dangerous rapids of the Susquehanna.⁵³ These experiments resulted in relatively safe travel across the once dangerous rapids of the river. In 1812, Maryland’s Governor Levin Winder officially named this trading point Port Deposit.⁵⁴ Simultaneously, from 1800-1812, traders and businessmen spent large sums of money to improve the landscape and accessibility of the southern shore of the Susquehanna River.⁵⁵ These efforts included improvements to the infrastructure “by means of turnpike roads in every direction, including the interior of Pennsylvania.”⁵⁶

⁵⁰ SCHARF, *supra* note 16, at 342; *Maryland at a Glance: Canals*, MD MANUAL ON-LINE, <http://msa.maryland.gov/msa/mdmanual/01glance/html/canals.html> (last visited 1/27/2015).

⁵¹ SCHARF, *supra* note 16, at 342.

⁵² *Maryland at a Glance: Canals*, MD MANUAL ON-LINE, <http://msa.maryland.gov/msa/mdmanual/01glance/html/canals.html> (last visited 1/27/2015).

⁵³ SCHARF, *supra* note 16, at 343.

⁵⁴ *History*, FORTDEPOSIT.ORG, <http://www.portdeposit.org/about-us> (last visited 1/27/2016).

⁵⁵ SCHARF, *supra* note 16, at 343.

⁵⁶ *Id.*

On February 13, 1828, the General Assembly of Maryland passed the Act of 1827, chapter 72, which granted a charter to the B&S Railroad for the purpose of connecting the City of Baltimore to some suitable point on the Susquehanna River, in an effort to secure the trade of the Susquehanna.⁵⁷ To obtain the large, continuous right of way necessary to create its railroad, the B&S Railroad was to negotiate with landowners for the use or sale their private land.⁵⁸ However, the legislature correctly anticipated that many landowners would be unwilling to sell their land for a reasonable price, and accordingly the Act of 1827, chapter 72, section 15 authorized the B&S Railroad to initiate condemnation proceedings in the county of the sought after property, if the parties were unable to first reach a reasonable agreement.⁵⁹

⁵⁷ Act of 1827, ch. 72, sec. 14.

⁵⁸ Act of 1827, ch. 72, sec. 15.

⁵⁹ Act of 1827, ch. 72, sec. 15.

The path chosen by the B&S Railroad was to pass through York, Pennsylvania, and ultimately reach the southern border of the Susquehanna, at York Haven.⁶⁰ On August 8, 1829, the “corner-stone” was laid at the northern boundary of the City of Baltimore, which marked the starting point of the B&S Railroad.⁶¹ On February 7, 1830, the General Assembly of Maryland



Figure 3 A Map of the Completed Northern Central Railroad (Formerly the B&S Railroad). Note the Westminster Split off the Main Stem at Relay

⁶⁰ SCHARF, *supra* note 16, at 343.

⁶¹ *Id.* at 343–44.

passed the Act of 1830, chapter 49, which amended the B&S Railroad's original charter. This Act authorized the B&S Railroad to simultaneously construct a railroad westward, which would split off from main track, and extend to Westminster, Maryland.⁶² This purpose of this westward portion of the B&S Railroad was to eventually connect Baltimore City to the Monocacy River.⁶³

The B&S Railroad's north/west division occurred at Relay Station on the Jones Falls, situated southeast of Bellona Gunpowder's property.⁶⁴ The B&S Railroad connected the City of Baltimore to Relay Station, and on July 4, 1831 the first cars began to run on this section of the track.⁶⁵ At this time, the Pennsylvania Legislature had yet to incorporate an entity to connect the railroad from the Maryland line, to York Haven.⁶⁶ As a result, the railroad company suspended further work on the main stem, and focused its construction efforts to the western split towards Westminster.⁶⁷

⁶² Act of 1830, ch. 49, sec. 1. Specifically, the Act authorized the B&S Railroad "to construct a branch of said rail road, commencing at some suitable point upon the main stem, to be by them determined, within ten miles from the City of Baltimore, and extending from thence through or across the town of Westminster." *Id.*

⁶³ SCHARF, *supra* note 16, at 344. This western branch of the railroad is also called the Westminster Branch, or the Green Spring Branch.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

The railroad company completed construction of the western branch to the Green Spring Hotel, approximately seven miles from the Relay Station.⁶⁸ This portion of track was opened on May 26, 1832.⁶⁹ By this time, the Pennsylvania legislature had incorporated a company to connect the Susquehanna River to the Maryland line, and the B&S Railroad resumed its efforts on the main stem.⁷⁰ The B&S Railroad never resumed its construction efforts on the western branch of the railroad.⁷¹ The B&S Railroad's main stem was ultimately opened for travel on August 30, 1838, and connected York, Pennsylvania to the City of Baltimore.⁷²

III. The Case

The B&S Railroad's proposed westward route required a right of way across Bellona Gunpowder's property. In 1830, B&S Railroad proposed its initial route across a portion of Bellona Gunpowder's property that was a good deal west of its gunpowder manufacturing operations.⁷³ Therefore, this proposed route was unlikely to hinder, or unduly increase the hazards of the manufactory operations.

⁶⁸ *Id.*

⁶⁹ SCHARF, *supra* note 16, at 344.

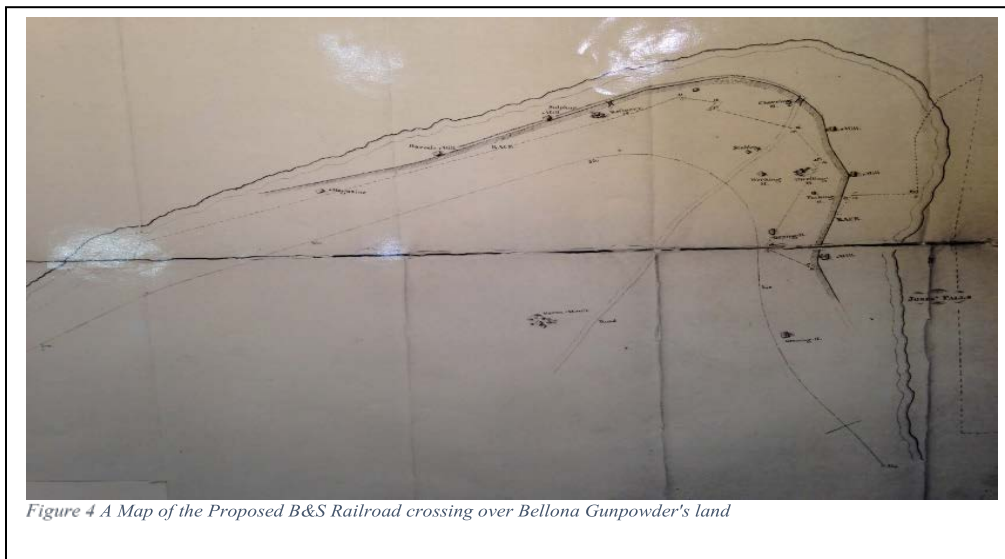
⁷⁰ *Id.*

⁷¹ *Id.* Twenty-five years after the B&S Railroad abandoned its western construction, the Western Maryland Company finally resumed the westward construction. *Id.*

⁷² *Id.*

⁷³ COALE, *supra* note 26, at 32. The gunpowder manufacturing operations were all on the eastern edge of Bellona Gunpowder's property, along the Jones Falls.

However in 1831, the B&S Railroad abruptly changed its proposed route.⁷⁴ The B&S Railroad moved its proposed right of way to the eastern portion of Bellona Gunpowder's property. If the railroad was constructed as proposed, it would travel dangerously close to the gunpowder company's actual manufacturing operations. In fact, the modified right of way would pass so close to one of Bellona Gunpowder's manufacturing buildings that the company would have to tear the building down. Further, the proximity of the proposed route to the remaining buildings would increase the risk of accidental explosions—to the extent that Bellona Gunpowder would likely have to shut down its operations, or relocate the entire manufactory.⁷⁵



The B&S Railroad entered into negotiations with Bellona Gunpowder to obtain a right of way for its proposed route.

The parties were unable to negotiate an acceptable settlement agreement, and therefore, B&S

⁷⁴ The author was unable to determine exactly why the B&S Railroad abruptly altered their proposed route. Presumably, land closer to the Jones Falls had a less significant grade than land farther to the west. Therefore, the B&S Railroad could save money on construction costs by causing its proposed route to travel as close to the falls as possible.

⁷⁵ COALE, *supra* note 26, at 32.

Railroad initiated a condemnation proceeding in the Baltimore County Court in order to acquire its right of way. On August 5, 1831, Bellona Gunpowder filed a Motion for Injunction in the Baltimore County Court to enjoin the B&S Railroad from constructing its right of way as proposed.⁷⁶ The Honorable Thomas Kell of the Baltimore County Court temporarily granted Bellona Gunpowder's injunction, to afford it an opportunity to argue the merits of its case.⁷⁷ On September 16, 1831, the B&S Railroad removed the proceeding from the Baltimore County Court, and subsequently filed a Motion to Dissolve the Injunction in the Chancery Court of Maryland. The Chancellor of Maryland, the Honorable Theodorick Bland, heard the parties' arguments on the merits of the case.

A. The Act of 1827, Chapter 72 Prohibited B&S Railroad's Condemnation Proceeding

Bellona Gunpowder argued that the B&S Railroad, under the Act of 1827, chapter 72, section 15, was not authorized to initiate a condemnation proceeding due to the specific language in the charter, and facts of the case.⁷⁸ B&S Railroad's charter authorized it to initiate a condemnation proceeding, if the parties "cannot agree, *and* if the owner or owners, or any of them, be a feme convert, under age, non compos mentis, or out of the county in which the property wanted may lie, when such land and material may be wanted"⁷⁹

Bellona Gunpowder argued that it was not feme convert, under age, non compos mentis, and was in the county. Therefore, the conjunctive *and* prohibited the B&S Railroad from

⁷⁶ The Bellona Company's Case, 3 Bland 442, 443 (1831).

⁷⁷ *Id.* at 444.

⁷⁸ The Bellona Company's Case, 3 Bland 442, 448 (1831).

⁷⁹ Act of 1827, ch. 72, sec. 15. (emphasis added).

initiating the condemnation proceeding against Bellona Gunpowder.⁸⁰ Further, Bellona Gunpowder claimed that the section must be construed narrowly because the provision ultimately authorized the B&S Railroad to take private property against the will of the owner.⁸¹

Chancellor Bland agreed that the provision must be construed narrowly, but did not limit his analysis to the “four corners” of the relevant section of the charter.⁸² Chancellor Bland determined that a plain reading of the text must be taken together with “the chief and manifest purpose of the law.”⁸³ Therefore, the Chancellor decided to defer to the Legislature’s intent for passing this section of the Act.

In this situation, Chancellor Bland found that the legislature intended to authorize the B&S Railroad to obtain the land it needed to construct its railroad by one of two modes.⁸⁴ First, the B&S Railroad must negotiate with landlord for the sale or use of their private land.⁸⁵ If the parties failed to reach an agreement, *or* if the owner was absent, incapable to contract or refused to agree, the railroad was authorized to initiate a condemnation proceeding in order to obtain the land.⁸⁶

⁸⁰ Bellona, 3 Bland at 448.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ The Bellona Company’s Case, 3 Bland 442, 448 (1831).

⁸⁵ *Id.*

⁸⁶ *Id.*

In essence, the Chancellor decided that the legislature intended to use the conjunctive “or,” even though charter as drafted explicitly used “and.” Chancellor Bland supported his determining by comparing the Act in question to similar sections of other Acts of Incorporation.⁸⁷ Every similar act of incorporation analyzed by the chancellor, with the lone exception of the Act at issue in this case, used the conjunctive “or” instead of “and.”⁸⁸ Chancellor Bland determined that the conjunctive “and” as used in this Act was a drafting error by the legislature, and found that the legislature’s intent in passing this Act was the same as their intent in passing the comparable Acts analyzed.⁸⁹ Therefore, Chancellor Bland rejected Bellona Gunpowder’s argument, and found that the face of the Act did grant B&S Railroad authority to initiate a condemnation proceeding on the facts of this case.

B. Public Use

Bellona Gunpowder argued that the B&S Railroad’s proposed construction was not a public use, within the meaning of the Fifth Amendment.⁹⁰ Without the necessary public use requirement, according to Bellona Gunpowder, the B&S Railroad was prohibited from initiating this condemnation proceeding because it would constitute an unconstitutional taking of its property.

⁸⁷ *Id.* at 449.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ The Bellona Company’s Case, 3 Bland 442, 450 (1831).

The doctrine of eminent domain allows for a taking of private property against the will of the landowner, only if such land will be put to a public use.⁹¹ Bellona Gunpowder claimed that any public benefit derived from B&S Railroad's proposed railroad was too attenuated to be considered a public use as required under the Fifth Amendment. Of course as discussed above, railroad construction is a lengthy endeavor between the processes of acquiring rights for the necessary lands, along with the actual construction process. In fact, the B&S Railroad ultimately took over ten years from the date it was granted its charter, to the date it opened its road for travel between the City of Baltimore and York, Pennsylvania.⁹²

Chancellor Bland rejected the gunpowder company's argument and concluded that the proposed railroad was a public use within the meaning of the Fifth Amendment.⁹³ The Chancellor found that the Fifth Amendment's public use requirement was not limited to cases where private property was taken "to be applied immediately, directly, and exclusively to some public use."⁹⁴ Rather, a taking of private property was constitutional as long as the proposed use lead to a "material public benefit which would not otherwise be so immediately and effectually produced."⁹⁵ In this case, Chancellor Bland easily found that the B&S Railroad's proposed

⁹¹ *Id.* at 451 ("It is the public good alone which can sanction such a compulsory alienation of the property of a citizen.").

⁹² SCHARF, *supra* note 16, at 344.

⁹³ The Bellona Company's Case, 3 Bland 442, 452 (1831).

⁹⁴ *Id.* at 451.

⁹⁵ *Id.*

construction would provide a material benefit to the public, which would not otherwise be “so immediately and effectually produced.”⁹⁶

C. The Taking Would Infringe Bellona Gunpowder’s Contract with the State

Finally, Bellona Gunpowder argued that its Act of Incorporation was a contract with the State of Maryland, and as such, it could not be infringed upon by subsequent act of the State.⁹⁷ The United States Constitution states that “no State shall pass any law impairing the obligation of contracts.”⁹⁸ Therefore, according to Bellona Gunpowder, the General Assembly could not authorize the B&S Railroad initiate condemnation proceedings to take the gunpowder company’s land, because the land was held under a contract with the State.⁹⁹ Any such State authorization would breach the State’s contract with Bellona Gunpowder, in violation of the Constitution.¹⁰⁰

Bellona Gunpowder was correct in that its charter was a contract with the state, which granted legal rights and privileges to the corporation. Just over ten years before *The Bellona Company’s Case*, the Supreme Court of the United States discussed the very issue of state impairments to the Contract Clause. In *Trustees of Dartmouth College v. Woodward*, the Court

⁹⁶ *Id.* at 452. For example, the railroad as proposed would cut travel time from the Baltimore County area around Bellona Gunpowder to Baltimore City from three hours to less than one. COALE, *supra* note 26, at 70.

⁹⁷ *The Bellona Company’s Case*, 3 Bland 442, 449 (1831).

⁹⁸ U.S. CONST. art. 1 § 10.

⁹⁹ *Bellona*, 3 Bland at 450.

¹⁰⁰ *Bellona Gunpowder* appears argue that section 2 of its Act of Incorporation: “for which purpose they are hereby authorized *to purchase and hold lands in fee simple . . .* and to erect thereon all needful and convenient buildings” grants it an inalienable right to hold the land.

stressed that a corporate charter was a contract between the state and the members of the corporation created by it.¹⁰¹ In that case, the Court found that the State of New Hampshire impaired the Contract Clause of the Constitution when it unilaterally amended a corporate charter, without the consent of the protected members of the grantees of the charter.¹⁰²

Chancellor Bland was quick to admit that the charter granted by the Maryland legislature was a contract between the State and Bellona Gunpowder for the purposes of the Constitution.¹⁰³ However, Chancellor Bland chose to rephrase the pertinent issue as: “does the taking of the [Bellona Gunpowder’s] land, in the manner proposed, in the smallest degree impair the obligation of the contract between them and the State?”¹⁰⁴ Chancellor Bland answered the question in the negative, and found that the legislature’s grant authorizing the B&S Railroad to initiate condemnation proceedings to acquire a right of way across Bellona Gunpowder’s property, did not impair any of its rights or obligations under the contract with the state.¹⁰⁵

After examining the charter, the Chancellor explained that the only rights and obligations granted to Bellona Gunpowder, were the rights to take authorized actions as though it were an

¹⁰¹ Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 616 (1819) (“We contend that this charter is a contract between the government and the members of the corporation created by it. It is a contract, because it is as grant of valuable rights and privileges; and every grant implies a contract not to resume the thing granted.”).

¹⁰² *Id.* at 623.

¹⁰³ Bellona, 3 Bland at 449.

¹⁰⁴ *Id.* at 450.

¹⁰⁵ The Bellona Company’s Case, 3 Bland 442, 450 (1831).

individual.¹⁰⁶ In this specific instance, the legislature granted the gunpowder company the right to purchase and hold lands, for the production of gunpowder as though it were an individual. Therefore, the B&S Railroad was authorized to initiate condemnation proceedings against Bellona Gunpowder, in the same manner as it could an individual, and constitutionally take the land necessary to construct its right of way by providing just compensation.¹⁰⁷

D. The Conclusion of the Case

Chancellor Bland rejected each of Bellona Gunpowder's arguments to permanently enjoin the B&S Railroad from taking a portion of its land. The court subsequently required both parties to submit affidavits to the Baltimore County Court to determine the feasibility of modifying the B&S Railroad's proposed right of way, in order to avoid undue hazards to the Bellona Gunpowder's property and its workers. The injunction was lifted, but the B&S Railroad was ordered to construct its right of way across the originally proposed route.¹⁰⁸ Additionally, the B&S Railroad was ordered to pay just compensation of \$1,200.00 to Bellona Gunpowder. In exchange for this just compensation, the B&S Railroad received the necessary property rights to construct its seven and one-half acre right of way across Bellona Gunpowder's property.¹⁰⁹

¹⁰⁶ *Id.*

¹⁰⁷ *See Id.* (noting that the State "could not enact, or covenant with [Bellona Gunpowder], that the land held by them should be considered as an estate more favored and sacred than that of any individual citizen . . .").

¹⁰⁸ COALE, *supra* note 26, at 33.

¹⁰⁹ *Id.*

James Beatty continued managing the operations of the Bellona Gunpowder until his death in October 1851, at the age of eighty years old.¹¹⁰ Charles Beatty, the son of James Beatty, took over the management of Bellona Gunpowder until 1853. At that time, the City of Baltimore purchased a majority of Bellona Gunpowder's land for a total sale price of \$17,500.00. The City of Baltimore initially used the land for a water works, to supply fresh water to the city.¹¹¹ Lake Roland, in Lake Roland Park, Baltimore County now covers a large portion of what was formerly Bellona Gunpowder's land, although it is no longer used as a reservoir for the city.¹¹²

IV. Analysis

The Chancellor of Maryland came to the correct conclusion in *The Bellona Company's Case*. Chancellor Bland was faced with a situation in which two entities wanted to use the same piece of land in incompatible ways. The Chancellor reached a compromise and granted the B&S Railroad a right of way across Bellona Gunpowder's property, but required the railroad to construct this right of way in a manner that did not unduly hinder the gunpowder company's operations.

In *The Problem of Social Cost*, Ronald H. Coase discussed the issue of two incompatible land uses in depth.¹¹³ Coase's primary argument is that in a world of sufficiently low transaction costs, the market will achieve maximum production without the need for legal rules. Of course

¹¹⁰ *Id.*

¹¹¹ A.K. Gilbert, *Gunpowder Production in Post Revolutionary Maryland*, 52 MD. HIST. MAG. 3, 195 (Sept. 1957).

¹¹² *History of the Park*, Lake Roland Nature Council (2015), <http://lakeroland.org/committee/history-of-the-park/>.

the real world has transaction costs, so Coase discusses the possible ways that legal rules can deal with negative externalities.

Coase provides a railroad hypothetical, which is similar to *The Bellona Company's Case*.¹¹⁴ In this hypothetical, Coase discusses the effects of legal rules that regulate who must pay for damages caused by railroad sparks. Coase suggests a situation in which a railroad passes through agricultural land, with the risk of emitting sparks that could damage crops.¹¹⁵

The railroad is determining the optimal number of trains to run on this track. If the railroad is not liable to pay for fire damage, it will operate in a way that maximizes its total production, without regard to the ancillary costs that the crop damage will cause the farmer.¹¹⁶ Therefore, it appears as though the railroad should be made liable for fire damage so that it will take into account the ancillary damage caused to the farmer when it calculates the optimal number of trains to operate.

However, Coase argues that if the railroad is liable for fire damage, the farmer will act indifferently as to whether his crops are sold or destroyed by fire.¹¹⁷ The farmer will therefore farm a greater amount of land, including high risk areas, to achieve his maximum total

¹¹³ R. H. Coase, *The Problem of Social Cost*, 3 J. L. & ECON. 1 (1960).

¹¹⁴ *Id.* at 29–34.

¹¹⁵ *Id.* at 31.

¹¹⁶ *Id.* at 32.

¹¹⁷ *Id.* at 32.

production.¹¹⁸ The farmer's actions will in turn lower the number of trains the railroad operates because it must now factor in a greater amount of fire damage in its calculations.

Coase argues that in some situations, a farmer may increase his production, without regard to the risk of crop destruction, to such extent that the railroad would be unable to operate at a profit.¹¹⁹ In this case, the farmer will achieve maximum production, but the railroad will shut down.¹²⁰ In this situation, the value of the transportation services by the railroad company are lost, and the value of the total production between the railroad and farmer may not reach the optimal level.¹²¹

However, if the farmer is liable for his crop damages, he will farm his fields in a risk averse manner. This will limit the crop damage caused by fire, and possibly allow the railroad to operate at a profit, and provide valuable transportation services.¹²² While the farmer will not achieve his maximum production value, the overall net production value to society as a whole may increase when the railroad operates.¹²³

Coase's hypothetical highlights the difficulties in choosing between two incompatible land uses. In *The Bellona Company's Case*, if the railroad is not liable for damages emitted by sparks from its trains, it will construct its right of way in a manner that will minimize

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 33.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

construction costs, without regard to any ancillary damage to Bellona Gunpowder. Bellona Gunpowder will be left with only a few poor options.

Bellona Gunpowder could pay the railroad company to move its proposed right of way farther away from its operations. This payment would likely be equal to, if not greater than the increased construction costs to the railroad. Bellona Gunpowder could relocate its gunpowder operations to a different site, or simply shut down. Or, the gunpowder company could do nothing, and operate its manufactory as is, with the increased risk of accidental explosions. Given Bellona Gunpowder's financial struggles, and the high probability that a railroad spark would cause an accidental explosion, the gunpowder company likely found none of these options ideal.

Even if B&S Railroad was liable for damages, Bellona Gunpowder's options might not have changed. Given the extremely heightened risk of accidental explosion due to a railroad spark, Bellona Gunpowder would likely have extreme difficulty finding employees to work under those circumstances. As discussed in Part II B above, accidental explosions routinely killed the manufactories' workers. Even if Bellona Gunpowder was not liable for damages caused by a fire, it would be unlikely to be able to operate at a profit for any significant period of time. Therefore, Bellona Gunpowder's only real option was to enjoin B&S Railroad from constructing their right of way as close to its operation as proposed.

The case came before Chancellor Bland, who was faced with the task of how to resolve these two incompatible land uses, one use having occupied the land for thirty years, while the other could provide a substantial benefit to the public in the future. Chancellor Bland determined that the B&S Railroad had statutory authority to initiate a condemnation proceeding in order to construct its right of way across the gunpowder company's property. However, the court

ultimately made an equitable decree and ordered the parties submit affidavits regarding the feasibility of relocating the right of way. As the court knew that the B&S Railroad's original right of way crossed to the west of the gunpowder operations, this order was likely an equitable compromise that would allow both parties to continue their operations.

Appendix

Biography

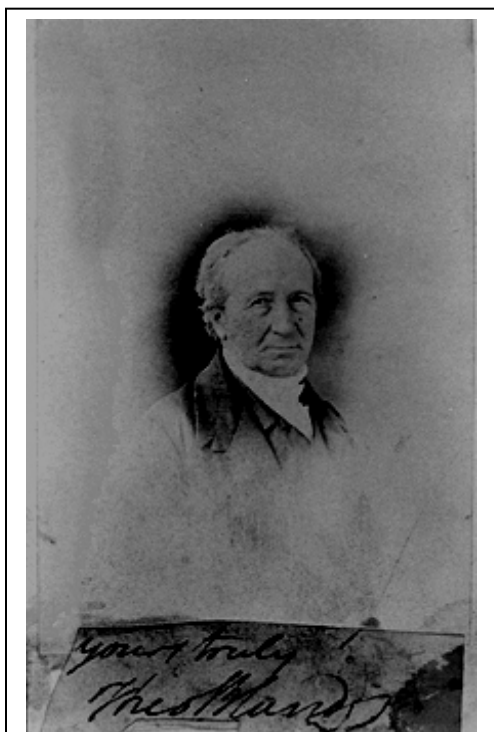


Figure 6 Photograph of Theodorick Bland, James F. Schneider Collection, Maryland State Archives SC 5596

Theodorick Bland (1776-1846) served on the Chancery Court of Maryland as the Chancellor of Maryland, from 1824 until the time of his death in 1846. Chancellor Bland heard the arguments and issued the final order dissolving the injunction against the B&S Railroad, which enjoined it from condemning a tract of

Bellona Gunpowder's land in Baltimore County in *The Bellona Company's Case*.¹²⁴

Theodorick Bland was born in Dinwiddie County, Virginia in 1776. He was elected to the Maryland House of Delegates in 1808, and served as a member until 1810. On October 10, 1812, Theodorick Bland was appointed as an Associate Judge of the Sixth Judicial District (Baltimore County and Harford County). Judge Bland served as an Associate Judge until the year 1819. From 1817-1819, Theodorick Bland served as one of three Commissioners to the South American Republic, as appointed by President James Monroe.

In 1819, Theodorick Bland was appointed as a United States Judge for the District of Maryland. The Honorable Theodorick Bland served as District Judge of the United States from his appointment in 1819 until 1824. On August 16, 1824, Judge Theodorick Bland was appointed Chancellor of the State of Maryland. Chancellor Theodorick Bland held this position until the time of his death on November 16, 1846. Chancellor Bland compiled three volumes of reports during his time as Chancellor of Maryland.¹²⁵ Chancellor Bland was known for his rather lengthy opinions that often displayed his wide spectrum of knowledge, both legal, and in other areas such as English Classic Literature.¹²⁶

¹²⁴ *The Bellona Company's Case*, 3 Bland 442 (1831).

¹²⁵ Maryland State Archives Biographical Series, SC 3520-1949.

¹²⁶ William Marbury, *High Court of Chancery and Chancellors of Maryland*, Maryland State Bar Association, 139 (1905).