

Baltimore's Piratical Patriot Privateers

The Arrogante Barcelones, 20 U.S. 496 (1822).

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FOREWORD

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Abstract

The case of *The Arrogante Barcelones* involved a complicated story of facts, due in part to the cunningness of one of the main players, Joseph Almeida. Almeida's maneuvers make sense when viewed through the lens of nineteenth century Baltimore, the War of 1812, and U.S. citizens' involvement in South American privateering. At first glance, this case seems to hinge on issues regarding the validity of Almeida's commission, the authority of the condemnation, and the sufficiency of the documentation produced to prove it. However, the United States Supreme Court ultimately avoids untangling those maritime issues and instead bases its opinion in a more unusual category of law, opening up issues still relevant to that subject today.

Disciplines

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I. Introduction

The case of *The Arrogante Barcelones* involved a complicated story of facts, due in part to the cunningness of one of the main players, Joseph Almeida.¹ Unraveling the circumstances² of how the case came to the United States Supreme Court has more to do with the antics of Joseph Almeida, than other typical captures at sea. However, Almeida's maneuvers are easier to follow with an understanding of nineteenth century Baltimore, the War of 1812, and U.S. citizens' involvement in South American privateering.³ At first glance, this case appeared to focus on issues that were raised regarding the validity of Almeida's commission, the authority of the condemnation, and the sufficiency of the documentation produced to prove it.⁴ However, the United States Supreme Court ultimately avoids untangling those maritime issues and instead bases its opinion in a more unusual category of law,⁵ opening up issues still relevant to that subject today.⁶

II. Background

To understand the setting that leads to the United States Supreme Court case, *The Arrogante Barcelones*,⁷ it is necessary to explore the growth of Baltimore and its merchants,⁸ the role in the War of 1812,⁹ and its privateersmen in international maritime presence¹⁰.

A. Baltimore's Ascension to an American Trading Power

Having more than doubled in population and increased exports over sevenfold between the first federal census in 1790 and the second in 1800, Baltimore became the third commercial

¹ *Infra* Part VIII.

² *Infra* Part III.; *Infra* Part IV.

³ *Infra* Part II.

⁴ *Infra* Part IV.; *Infra* Part V.A.; *Infra* Part V.B.; *Infra* Part V.C.

⁵ *Infra* Part V.D.

⁶ *Infra* Part VI.

⁷ *The Arrogante Barcelones*, 20 U.S. 496 (1822).

⁸ *Infra* Part II.A.

⁹ *Infra* Part II.B.

¹⁰ *Infra* Part II.C.

port of the Union.¹¹ Baltimore became a chartered city on December 31, 1796.¹² This new charter allowed the municipal authority to enact ordinances that helped to effectuate progress, preservation, and deepening in the inner harbor.¹³ Among all the necessities of expansion facing the blooming city, the chief objective on citizen's minds was the harbor.¹⁴ While the entire city developed, the "small circumscribed area of sixty acres was to prove the nucleus of the future great port, the maritime City of Baltimore."¹⁵ Thus, at the turn of the century, Baltimore was the youngest of the chief commercial cities on the eastern seaboard.¹⁶

Merchants were not only interested in the import and export business flourishing in the Baltimore Harbor, but also investing in shipbuilding. Merchants were interested both in investing in the endeavor, and also in financing their own ships. Baltimore merchants accounted for approximately fifty-six percent of the investments in ships, where non-merchants only made up for twenty-six percent.¹⁷ One of the factors that contributed very heavily to Baltimore's reputation in the maritime industry was the superior construction and sailing abilities of its schooners, which became known as the world famous "Baltimore clippers."¹⁸ The Baltimore clipper first appeared in the Revolutionary War. By 1800 the Baltimore clipper was extremely popular with privateersmen, slavers, smugglers, and almost anyone who wished to conduct business privately.¹⁹ It is on brink of Baltimore booming into the maritime industry that Joseph

¹¹ CLAYTON COLMAN HALL, *BALTIMORE: ITS HISTORY AND ITS PEOPLE* 63 (1912).

¹² *Id.*

¹³ *Id.* at 64.

¹⁴ *Id.* This was a time when tobacco was the principal export into the United States. *Id.*

¹⁵ *Id.* at 66.

¹⁶ *Id.* at 63.

¹⁷ Geoffrey Gilbert, *THE BUSINESS HISTORY REVIEW, Maritime Enterprise in the New Republic: Investment in Baltimore Shipping, 1789-1793* 18 (1984).

¹⁸ JOHN PHILIPS CRANWELL & WILLIAM BOWERS CRANE, *MEN OF MARQUE: A HISTORY OF PRIVATE ARMED VESSELS OUT OF BALTIMORE DURING THE WAR OF 1812*, 37 (W. W. NORTON & CO. INC. 1940).

¹⁹ *Id.* "The chief characteristics of these craft were long, light, and extremely raking masts; very little rigging; low freeboard; great rake to stem and stern posts, with a great deal of drag to the keel. . . . Their deadrise was great and bilges slack. The beam was usually great for their length. Nearly always flush-decked, they had wide, clear decks,

Almeida arrived in Baltimore and quickly built a reputation as a skilled seaman.²⁰

B. Baltimore Merchants' Role in the War of 1812

While the Embargo Act of April 4, 1812 had cut back on trade, the declaration of the War of 1812 brought a new daring enterprise to Baltimore: privateering.²¹ The purpose of the embargo act was twofold.²² First, it shielded American ships from enemy capture once war was declared.²³ Secondly, it prevented food from being shipped to British troops on the Iberian Peninsula.²⁴ However, the farsighted Baltimore businessmen better understood what the embargo meant to business, and anticipated commissions from President Madison.²⁵ Some Baltimore businessmen had even begun converting their fastest vessels from merchantmen to commerce raiders.²⁶

“That act of Congress turned Baltimore from a peaceful trading center into a hive of privateering activity which ceased only with the end of the war.”²⁷ More privateers were commissioned out of Baltimore than any other port in the United States, and Baltimore was known for producing privateers instrumental to the cause.²⁸ By August 18, 1812, there were fifty-six privateers at sea from the United States and of those thirteen were from Baltimore.²⁹ Baltimore privateers were more numerous than those from any other port and usually surpassed others in the havoc they wrecked on enemy commerce.³⁰ “The city’s location made it an

suitable for working the ships and handling the guns. When engaged in privateering, they often had high bulwarks, particularly in vessels of the larger class." *Id.* (quoting Howard I. Chappelle from his book, *The Baltimore Clipper*).

²⁰ Jeffrey Orenstein, *Joseph Almeida: Portrait of a Privateer, Pirate & Plaintiff, Part II*, 12 GREEN BAG 2D 35 (2008) [hereinafter *Orenstein Part II*].

²¹ Sherry Olson, *Commerce is the Mainspring*, 41-70, 46.

²² Cranwell & Crane, *supra* note 18, at 24-25.

²³ *Id.*

²⁴ *Id.*

²⁵ Cranwell & Crane, *supra* note 18, at 15.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Olson, *supra* note 21, at 46.

²⁹ Cranwell & Crane, *supra* note 18, at 34.

³⁰ *Id.*

important port; Baltimore vessels were numerous and well manned; her merchants were used to taking chances...; and the spirit of the men who made their living either directly or indirectly from the sea was very much in favor of a vigorous prosecution of the war.”³¹ Another one of the factors that largely contributed to Baltimore’s impact on the War of 1812 was the superior construction, sailing quality, speed, and maneuverability of the “Baltimore clippers.”³²

Privateers were essentially licensed predators, which were equipped precisely for commerce raiding.³³ While privateers lacked considerable cargo-carrying capability, they were heavily armed and manned for combat situations.³⁴ Even more unique was that the crew did not earn a salary, but instead were often compensated solely from the prize proceeds.³⁵ In order to be a sanctioned privateer, one needed a commission or a letter of marque.³⁶ In the United States, the U.S. Constitution vested the power to commission privateers in the Congress.³⁷ Congress in turn delegated that power to officials of the State Department.³⁸ Commissions would generally include the essential privateer information including the rig, tonnage, names of the vessel, owners, captain, number of guns, and size of the crew.³⁹ Commissions were additionally accompanied by instructions to privateers, or written orders by the United States government.⁴⁰ The instructions were meant to confine the conduct of privateers to those acceptable under the law of nations, but also shield the United States from any embarrassing claims by neutral

³¹ *Id.* at 35.

³² *Id.* at 37.

³³ Donald A. Petrie, *The Prize Game: Lawful Looting on the High Seas in the Days of Fighting Sail*, NAVAL INSTITUTE PRESS, 4 (1999).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 9.

³⁷ *Id.* at 10.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

countries.⁴¹ If a privateer was violated of the instructions or neutrality laws, they could stand to lose their prize, bonds, commissions, and possibly even have to pay damages.⁴²

While it was ultimately the captor's master who selected the port and prize court once a belligerent ship was captured, she was usually brought to the nearest port.⁴³ Generally, the captor had some discretion in determining the prize court,⁴⁴ but the law of nations required the captor to consider the convenience to the captured vessel's owners or cargo shippers.⁴⁵ A blatant neglect for the convenience of claimant could result in a loss of the prize in court and assessment of damages against the captors.⁴⁶ Similarly, an unlawful capture of a ship (either by a privateer with false papers or of a neutral) could lead to negative results in court.⁴⁷

The law of nations designed the maritime judicial process to allow seafarers to play their part and depart early on from court proceedings.⁴⁸ When possible, courts used exclusively the ships documents and both crews' testimonies to promptly determine whether there was a lawful prize.⁴⁹ To be efficient, crewmembers' testimony was taken by standing interrogatories—the approved forms of judicial questionnaires.⁵⁰ These testimonies were taken before the commissioners of the court in isolated areas to quickly and privately streamline the process.⁵¹ If the ship was deemed a lawful and good prize based on the documents provided, the ship and the cargo were condemned and sold, leaving the court to hold the proceeds.⁵² The court first distributed the proceeds to valid neutral claim. If the prize was captured by a navy warship, the

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 153.

⁴⁴ The captor was able to consider the weather, the condition of the chase, and the chances of enemy interception in his decision on which port, and court, to direct the captured vessel. *Id.* at 154.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 159.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 160.

⁵² *Id.* at 161.

remaining proceeds were distributed amongst the captor's sovereign. However, if the captor was a civilian privateer, the sovereign waived its share and the proceeds were distributed amongst only the captor's crew.⁵³

Baltimore became a standout during the War of 1812, but so did Almeida. During the War of 1812 Almeida was captain of the schooner *Caroline*, and subsequently of the schooner *Kemp*.⁵⁴ While captain of those vessels, Almeida captured no fewer than thirty-five British ships and made almost \$300,000 in net prize proceeds.⁵⁵ Almeida's skill as a sailor and strategist not only increased his value to his financier-partners, but also made him a war hero.⁵⁶ For example, on the morning of December 1, 1814, the *Kemp*'s lookout spotted a convoy of nine British vessels.⁵⁷ Though a massive British frigate guarded the fleet, Almeida, in perhaps the brashest move by a Baltimore privateersman, singlehandedly took on the convoy.⁵⁸ The engagement began in the early afternoon and continued well into the next morning.⁵⁹ In the end, Almeida had skillfully out sailed and outfought seven of the vessels, and captured five.⁶⁰ Naval historians have ranked that triumph as one of the great privateer achievements of the War of 1812.⁶¹

When hostilities with Britain ended, Almeida was forced to trade the thrill of privateering for the humdrum of merchant shipping.⁶² While running cargo in the *Friends Hope*, Almeida learned that the Spanish had gained control of what is today Cartagena, Columbia.⁶³ Almeida's merchant experience during the Embargo Act of 1807 had taught him that contraband was the

⁵³ *Id.*

⁵⁴ Cranwell & Crane, *supra* note 18, at 209.

⁵⁵ Jeffrey Orenstein, *Joseph Almeida: Portrait of a Privateer, Pirate & Plaintiff, Part I*, 10 GREEN BAG 2D 307, 312 (2007) [hereinafter *Orenstein Part I*].

⁵⁶ *Id.*

⁵⁷ Cranwell & Crane, *supra* note 18, at 218.

⁵⁸ *Id.*

⁵⁹ *Id.* at 218-220.

⁶⁰ *Id.*

⁶¹ Orenstein Part I, *supra* note 55, at 312.

⁶² *Id.* at 315.

⁶³ *Id.*

most lucrative cargo.⁶⁴ Knowing that trade with Carthage would be banned, Almeida redirected his course to Columbia.⁶⁵ Unfortunately, the Spanish were more deceptive than Almeida anticipated, and the Spanish captured the *Friends Hope* along with her captain and crew.⁶⁶ After excessively brutal treatment by the Spanish, they eventually released Almeida, but kept the *Friends Hope*.⁶⁷

C. Baltimore Privateers Assisting in the South American Revolutions

After the end of the War of 1812 American vessels were offered no opportunities for United States government sanctioned prize taking.⁶⁸ Even though the United States did not engage in war involving attacks on maritime commerce,⁶⁹ Americans were not deterred from prize taking and privateering.⁷⁰ Instead, American privateers found a new cause to support.⁷¹ Some of the unemployed Baltimore vessels harnessed their energies to support the cause of the Spanish-American revolutions.⁷² Unfortunately outfitting vessels and accepting commissions from revolutionary South American Governments at war with Spain directly conflicted with the United States policy of neutrality.⁷³ “Serving the South American republics in this manner was illegal, as U.S. law prohibited any American from owning, commanding, or sailing aboard a foreign privateer that intended to attack a nation at peace with the United States.”⁷⁴ Ultimately, the potential profits from South American privateering ventures were too enticing and substantially outweighed the legal ramifications that faced each shareholder standing to gain a

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Petrie, *supra* note 33, at 140.

⁶⁹ *Id.*

⁷⁰ Olson, *supra* note 21, at 46.

⁷¹ *Id.*

⁷² *Id.*

⁷³ David Head, *A Different Kind of Maritime Predation: South American Privateering from Baltimore, 1816-1820*, 7 INT’L J. NAVAL HIST. (2008) [hereinafter *A Different Kind of Maritime Predation*].

⁷⁴ *Id.*

fortune.⁷⁵

Although the South American privateering clearly violated the United States' neutrality laws, Baltimore privateers were not deterred. In fact, Baltimore became the epicenter for privateering in the service of new republics.⁷⁶ In 1816 a syndicate of very silent partnerships formed in the counting houses of Baltimore to back a fleet of "patriot privateers."⁷⁷ Many "respectable" Baltimore merchants publically disapproved of this activity, but a number did privately participate in "the American Concern."⁷⁸ For example, "politically active Baltimoreans such as General William Winder, attorney William Pinkney, collector of the port James McCulloch, and postmaster John Skinner were involved in the legal defense of the concern."⁷⁹ According to then Secretary of State John Quincy Adams, the business of patriot privateering not only "spread over a large portion of the merchants" in Baltimore, but had also "infected almost every officer of the United States in the place."⁸⁰

"According to Adams, the district attorney, Elias Glenn, in addition to being 'a weak, incompetent man,' had 'a son concerned in the privateers'; the postmaster, John Skinner, had been 'indicted for being concerned in the piratical privateers'; the customs collector, James McCulloch, was 'an enthusiast for the South Americans, and easily duped by knaves'; the 'Inspectors of the Revenue were in the habit of receiving *resents* from the importing merchants'; and somehow, privateers were never caught smuggling their prize goods into Baltimore."⁸¹

The entrance of several other revolutionary governments into privateering increased the activity in South American privateering.⁸² In Baltimore, the more prominent revolutionary government was the United Provinces of Rio de la Plata, which became known as Buenos Aires, and later

⁷⁵ Orenstein Part II, *supra* note 20, at 36.

⁷⁶ Olson, *supra* note 21, at 46-47.

⁷⁷ Orenstein Part I, *supra* note 55, at 36.

⁷⁸ Olson, *supra* note 21, at 47.

⁷⁹ *Id.*

⁸⁰ Orenstein Part I, *supra* note 55, at 322-323 (quoting 4 MEMOIRS OF JOHN QUINCY ADAMS 377 (Charles Francis Adams, ed., 1875)).

⁸¹ *Id.* at 323 (quoting 4 MEMOIRS OF JOHN QUINCY ADAMS 377 (Charles Francis Adams, ed., 1875)).

⁸² Charles C. Giffin, *Privateering from Baltimore During the Spanish American Wars of Independence*, 35 MD. HISTORICAL MAGAZINE 1, 4 (1940).

Argentina.⁸³

Such was the situation in early 1816 when Thomas Taylor⁸⁴ appeared in Baltimore.⁸⁵ He brought with him six privateering licenses signed in blank for the purposes of organizing a campaign against Spanish seaborne commerce, on behalf of the rebellious Buenos Aires government that was incapable of combating the Spanish at sea.⁸⁶ In return for their service, privateer captains would receive a substantial share of the prize proceeds.⁸⁷ Taylor painted an alluring picture of the possibilities awaiting those who took advantage of his offer.⁸⁸ He arrived to Baltimore about the same time Almeida arrived back from his imprisonment in Cartagena angry and distraught.⁸⁹ Providentially, Taylor quickly approached Almeida with his business proposition to assist Buenos Aires in its struggle for liberation by preying on Spanish ships.⁹⁰

In all his time imprisoned by the Spanish, Almeida could not have dreamed of a better offer. This South American privateering opportunity meant that he would “replenish his estate, avenge the indignities he had suffered in Cartagena, avoid the tedium of the merchant trade, and serve the cause of liberty—most likely in that order.”⁹¹ Of the many Baltimoreans who undertook privateering for the South American rebel governments, Almeida was most clear as to

⁸³ *Id.*

⁸⁴ Thomas Taylor was born in Bermuda, but had immigrated to the United States and had become a citizen resident of Wilmington, Delaware. Eventually in 1810 Taylor took up residence in Buenos Aires and sailed for some time a privateer on its behalf. Eventually, Taylor established his connection with Baltimore, Maryland in 1816 when he arrived with six letters of marque and reprisal against Spanish seaborne commerce. Fred Hopkins, *For Freedom and Profit: Baltimore Privateers in the Wars of South American Independence*, XVIII Nos. 3-4 THE NORTHERN MARINER 93, 94 (July–Oct. 2008).

⁸⁵ *Id.* at 3.

⁸⁶ *Id.*

⁸⁷ Orenstein Part I, *supra* note 55, at 316.

⁸⁸ Giffin, *supra* note 82, at 3.

⁸⁹ Orenstein Part I, *supra* note 55, at 315.

⁹⁰ *Id.* at 316.

⁹¹ *Id.*

his motive: revenge.⁹² The excessive cruelty Almeida experienced from the Spanish had embittered him.⁹³ “Cartagena [is] ever memorable to me by the cruelties which I received from [Spanish General] Morillo and his army,” stated Almeida.⁹⁴ He explained that his resentment for his loss of the *Friends Hope* and his personal injuries were what carried him into the South American service.⁹⁵ So, Almeida took Taylor up on his offer.⁹⁶ Taylor provided the commission,⁹⁷ and Almeida became a citizen of the Buenos Aires—a country the United States government had not yet recognized.⁹⁸ With his vendetta against the Spanish arranged, Almeida set off in his first of many cruises against the Spanish.⁹⁹

“After just his first two cruises,¹⁰⁰ “Almeida had successfully interrupted supply lines between Spain and its colonies, intercepted royal communications, and looted Spanish vessels and cargos worth several million dollars.”¹⁰¹ But Almeida may have been too successful, “because the injury and humiliation he heaped upon the Spanish crown was ultimately his undoing.”¹⁰² After being acquitted for violating neutrality laws,¹⁰³ Almeida again set sail for his third cruise on behalf of Buenos Aires in the summer of 1817.¹⁰⁴ His destination was the area between the Azores and the Canary Islands, where several trading routes converged.¹⁰⁵ While

⁹² David Head, *Independence on the Quarterdeck: Three Baltimore Seafarers, Spanish America, and the Lives of Captains in the Early American Republic*, 23 THE NORTHERN MARINER 1, 10 (2013) [hereinafter *Independence on the Quarterdeck*].

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Orenstein Part I, *supra* note 55, at 316.

⁹⁷ *Id.*

⁹⁸ *Id.* at 318.

⁹⁹ *Independence on the Quarterdeck*, *supra* note 92, at 11.

¹⁰⁰ Almeida had cruised first in the West Indies and second off the coast of Spain. Orenstein Part II, *supra* note 20, at 37.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ U.S. v. Orb

¹⁰⁴ Orenstein Part II, *supra* note 20, at 37.

¹⁰⁵ *Id.* at 38.

captain of the *Congreso*, Almeida boarded at least 165 vessels.¹⁰⁶ A majority of the vessels were neutral, and so Almeida let them go.¹⁰⁷ But the twenty-four Spanish vessels Almeida excitedly and excessively pillaged.¹⁰⁸ The most valuable ships were delivered to Buenos Aires and the rest were plundered and torched at sea.¹⁰⁹

III. The Voyage and the Capture

After a rigorous summer cruise, Almeida determined that the *Congreso*'s best days were behind her.¹¹⁰ Instead of enlisting his Baltimore financiers to refit the *Congreso*, Almeida decided to use his prize proceeds and strike out on his own.¹¹¹ He purchased one of his best trophies captured by the *Congreso*, the frigate *Diana*, and rechristened her the *Louisa*.¹¹² Almeida then had the *Louisa* commissioned as a Buenos Airean privateer and set out for Fells Point in Baltimore, Maryland.¹¹³ Since Baltimore was a hotspot for "patriot privateers," it was the best place for Almeida to have the *Louisa* refitted for privateering and to recruit an adequate amount of seasoned crewmen.¹¹⁴ In order to avoid arrest or seizure, with the U.S. legal system cracking down on Almeida, the *Louisa* posed as a merchant ship temporarily commissioned under Ezra Drew, one of Almeida's officers.¹¹⁵ In fact, Almeida hid in the cargo hold when the *Louisa* drifted quietly into Baltimore harbor in April 1818.¹¹⁶ Almeida entered Baltimore without detection, deposited his prize money, visited his family, and slyly equipped the *Louisa* as

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*; *The Arrogante Barcelones*, 20 U.S. 496 (1822).

¹¹³ *The Arrogante Barcelones*, 20 U.S. 496 (1822) *Case Papers* at 1 [hereinafter *Case Papers*]; Orenstein Part II, *supra* note 20, at 38.

¹¹⁴ Orenstein Part II, *supra* note 55, at 39.

¹¹⁵ *Id.*

¹¹⁶ *The Arrogante Barcelones*, 20 U.S. at 496-497; Orenstein Part II, *supra* note 20, at 39-40;

a privateer.¹¹⁷

On August 1, 1818 after four months of work, the *Louisa* appeared in the shadow of Fort McHenry.¹¹⁸ Upon her initial departure, only ten guns and some small arms, and a ninety-six men crew made up of mostly United States citizens, armed the *Louisa*.¹¹⁹ However, the transformation of the *Louisa* was not complete.¹²⁰ About four days out from Baltimore, the *Louisa* anchored at the entrance of the Patuxent River to rendezvous with a pilot boat.¹²¹ That pilot boat delivered: six eighteen-pound gunnades, twenty-six muskets, eighteen pistols, seventeen cutlasses, thirty kegs of powder, eighty round shot, fifty star shot, and two kegs of musket balls.¹²² The *Louisa* was now ready for her maiden cruise as a privateer.

When the *Louisa* originally left Baltimore approximately half of the seaman onboard had signed articles for a sealing voyage to the Northwest coast of America for \$16 a month.¹²³ After the *Louisa* was about fifteen days out to sea, Almeida announced the true mission of the vessel and demanded that the entire crew sign new privateering articles.¹²⁴ Many of the crew refused to sign the privateering articles, but not due to complete outrage of Almeida's deception or fear of legal troubles back in the United States for violating neutrality laws.¹²⁵ Besides, the crew had to have known the true mission when four days into the voyage the *Louisa* received such excessive armory.¹²⁶ Even the *Niles Weekly Register* considered Almeida's cover ridiculously apparent.

¹¹⁷The *Arrogante Barcelones*, 20 U.S. at 496-497; *Orenstein Part II*, *supra* note 20, at 39-40.

¹¹⁸ *Orenstein Part II*, *supra* note 20, at 40.

¹¹⁹ The *Arrogante Barcelones*, 20 U.S. at 497.

¹²⁰ *Orenstein Part II*, *supra* note 20, at 40.

¹²¹ The *Arrogante Barcelones*, 20 U.S. at 497; *Orenstein Part II*, *supra* note 20, at 40.

¹²² Deposition of Lt. Smith, *Bernabeu v. the brig Arrogante Barcelones and her cargo*; *Orenstein Part II*, *supra* note 20, at 40.

¹²³ The *Arrogante Barcelones*, 20 U.S. at 497; *Independence on the Quarterdeck*, *supra* note 92, at 11; *Orenstein Part II*, *supra* note 20, at 40.

¹²⁴ The *Arrogante Barcelones*, 20 U.S. at 497; *Independence on the Quarterdeck*, *supra* note 92, at 11; *Orenstein Part II*, *supra* note 20, at 40.

¹²⁵ The *Arrogante Barcelones*, 20 U.S. at 497; *Independence on the Quarterdeck*, *supra* note 92, at 11; *Orenstein Part II*, *supra* note 20, at 40.

¹²⁶ *Orenstein Part II*, *supra* note 20, at 40.

When they reported, upon Almeida’s request, that the ship *Louisa* was “bound round Cape Horn, on a *sealing voyage!*” they jokingly added that with “16 heavy guns and 101 men,” Almeida would “no doubt do great execution on the coasts of Peru!”¹²⁷ It is speculated that the true reason many of the crew refused to sign the privateering articles is because they felt their negotiating power was so strong at sea that they could stand to gain a greater share of the profits.¹²⁸ However Almeida dispelled the dissenters with grand threats of violence and abandonment to those who refused to sign.¹²⁹ Almeida ordered the few remaining crewmembers who refused to sign the new privateering documents be put in irons—two were even put on board another vessel.¹³⁰

With the captain and crew now on the same page,¹³¹ Almeida continued the *Louisa* on her intended voyage across the Atlantic Ocean.¹³² They proceeded to cruise off Lisbon about nine leagues from Corunna on the northwest coast of Spain.¹³³ On September 9, 1818 Almeida

¹²⁷ *Id.*; NILES’ WEEKLY REGISTER, Sep. 5, 1818.

¹²⁸ Independence on the Quarterdeck, *supra* note 92, at 11; Orenstein Part II, *supra* note 20, at 40.

¹²⁹ Independence on the Quarterdeck, *supra* note 92, at 11; Orenstein Part II, *supra* note 20, at 40-41.

¹³⁰ The Arrogante Barcelones, 20 U.S. at 497; Independence on the Quarterdeck, *supra* note 92, at 11; Orenstein Part II, *supra* note 20, at 40-41.

¹³¹ I believe at this point there were still disgruntled crewmembers, but instead of continuing to push Almeida they laid in wait for the opportunity to strike. This time would come immediately after Almeida left the *Louisa* on a prize ship.

¹³² Orenstein Part II, *supra* note 20, at 41.

¹³³ *Id.*



spotted a brig showing British colors.¹³⁴ He ordered that his own British flag be raised while the *Louisa* stalked the vessel.¹³⁵ Once the vessel was within gunshot, Almeida raised the *Louisa*'s actual Buenos Airean flag and ordered a series of shots from his bowchasers to make the chase heave to.¹³⁶ Almost simultaneously the other brig replaced her British flag with the Royal Spanish flag, but quickly hauled it down after realizing her pursuer.¹³⁷ Captain Almeida boarded the brig and instantly realized his extraordinary prize.¹³⁸

The brig *Arrogante Barcelones* was a magnificent one hundred forty and a half ton vessel,¹³⁹ having proved to be a fast sailor during the *Louisa*'s pursuit.¹⁴⁰ But even more impressive was her cargo.¹⁴¹ The brig had just returned from Caracas with cargo full of coffee, indigo, rum, cotton, copper, \$50,000 in cocoa and a quantity of specie rumored to be between \$150,000 and \$200,000.¹⁴² Such a brilliant prize Almeida simply could not pass up.¹⁴³ Instead

¹³⁴ The *Arrogante Barcelones*, 20 U.S. at 497; Orenstein Part II, *supra* note 20, at 41.

¹³⁵ Orenstein Part II, *supra* note 20, at 41.

¹³⁶ *Id.*

¹³⁷ *Id.*

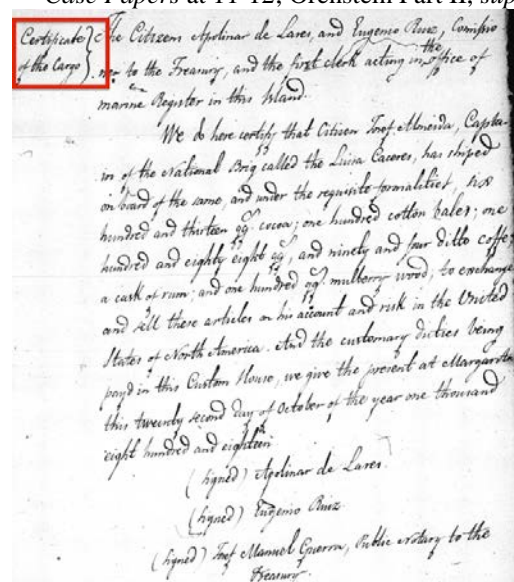
¹³⁸ *Id.*

¹³⁹ *Case Papers* at 3-4.

¹⁴⁰ *Id.*

¹⁴¹ *Case Papers* at 11-12; *Id.*

¹⁴² *Case Papers* at 11-12; Orenstein Part II, *supra* note 20, at 41.



Case Papers at 11.

of sending a prize master and crew aboard the *Arrogante Barcelones* like usual, he personally sailed the brig to the prize court on the Venezuelan island of Margarita¹⁴⁴ that was authorized to adjudicated prizes for Buenos Aires, and delegated the command of the *Louisa* to his first lieutenant Smith.¹⁴⁵

IV. The Legal Battle

In the fall of 1818, Almeida arrived at the port of Juan Griego, in the Venezuelan island of Margarita where proceedings were initiated for organizing for condemnation of the *Arrogante*

¹⁴³ Orenstein Part II, *supra* note 20, at 41.



¹⁴⁴ As the map illustrates, the Venezuelan island of Margarita is hundreds of miles away from Buenos Aires, which we associate today with Argentina. Despite the distance, Almeida and others were able to adjudicate prizes spurned from Buenos Aires commissions in Venezuela. This was likely allowed because both countries were involved in rebellions against the Spanish Empire. Winder even states this in his arguments at the Supreme Court. Not to mention this was a more direct location from where the capture was made, thus leaving less time for recapture by the Spanish, or other failings at sea.

¹⁴⁵ *Id.* Almeida extricated himself from the *Louisa* just in time. *Id.* Shortly after he departed on the *Arrogante Barcelones* for Margarita, the disgruntled *Louisa* crew rose up against Lieutenant Smith. *Id.* at 41. The mutineers locked the offices away in the forecastle and proceeded on one of the most violent piratical cruises in American history. *Id.* at 41–42. They declared war against all nations, plundered America, Russian, British, and French flagged vessels, and murdered many who resisted them. *Id.* at 42. President Monroe eventually gave orders to American authorities, and with the cooperation from Almeida; they were able to hunt down the *Louisa*. *Id.* George Clark and Henry Wolf, the apparent leaders of the mutiny, confessed and were hanged for their crimes. *Id.*

Barcelones and her cargo.¹⁴⁶ On October 12, 1818 the Court of Admiralty condemned the ship and cargo as Spanish property and a lawful prize of war.¹⁴⁷ However, those court documents were “uncommonly bald.”¹⁴⁸ After the condemnation Almeida purchased the brig at public auction.¹⁴⁹ He planned to mimic the path of the *Louisa*, and take the newly commissioned *Arrogante Barcelones* to be refitted in Baltimore where Almeida would again enter the port posing as a merchant.¹⁵⁰ But word of the *Arrogante Barcelones* capture had already reached the Spanish consul in Baltimore, Don Juan Bautista Bernabeu.¹⁵¹ This time, Almeida’s disguise did not fool Bernabeu, who took immediate legal action when Almeida returned to Baltimore.¹⁵²

Almost immediately upon return to Baltimore, a libel was hurled at Almeida.¹⁵³ The libel—initiated by Berabeu—was filed by attorney John Purviance¹⁵⁴ on behalf of the *Arrogante Barcelones*’ rightful owners.¹⁵⁵ In order to avoid the same issues that thwarted District Attorney Elias Glenn in previous cases against Almeida, Purviance prolonged the proceedings in order to obtain his own evidence in the form of depositions to combat Almeida’s abundance of receipts, commissions, condemnation, and other documents manufactured in South America.¹⁵⁶ Judge

¹⁴⁶ The *Arrogante Barcelones*, 20 U.S. at 497; *Case Papers* at 1-3; Orenstein Part II, *supra* note 20, at 42.

¹⁴⁷ The *Arrogante Barcelones*, 20 U.S. at 497; *Case Papers* at 1-3; Orenstein Part II, *supra* note 20, at 42.

¹⁴⁸ *Case Papers* at 2-3.

¹⁴⁹ The *Arrogante Barcelones*, 20 U.S. at 497; *Case Papers* at 1; Orenstein Part II, *supra* note 20, at 42.

¹⁵⁰ *Case Papers* at 9-10; Orenstein Part II, *supra* note 20, at 41-42.

¹⁵¹ Orenstein Part II, *supra* note 20, at 42.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ John Purviance was a prominent lawyer and friend of President Monroe. Orenstein Part II, *supra* note 20, at 43. John Purviance was born in Baltimore, Maryland, attend Dickinson College in Pennsylvania, and eventually returned to Baltimore to study law. *Baltimore: Past and Present*, RICHARDSON & BENNETT, 421 (Baltimore, 1817), available at https://openlibrary.org/books/OL23703690M/Baltimore_past_and_present. He was admitted to the Bar in November 1793 and rapidly advanced. *Id.* During the War or 1812 he was one of the leading counsel in Baltimore’s Federal Courts, and was engaged in almost every prize case in them. *Id.* On May 7, 1833 Purviance was appointed associate Justice of the Sixth Judicial District of Maryland (which consisted of present day Baltimore city and county, and Harford county). *Id.* at 422. Judge Purviance remained in that position for eighteen years “discharging its arduous duties with such ability and impartiality, as to attract the love and confidence of the community, and the respect and esteem of his professional brethren.” *Id.* He left the bench in 1851, and passed away in September 1854 at the age of eighty-one. *Id.*

¹⁵⁵ Orenstein Part II, *supra* note 20, at 42.

¹⁵⁶ *Id.* at 43-44.

James Houston's untimely illness further delayed the proceedings, which gave Purviance more time to gather witness depositions.¹⁵⁷

When Judge Houston did not recover for an extended amount of time, President Monroe appointed Baltimore County Judge Theodorick Bland¹⁵⁸ to take his place on the federal bench.¹⁵⁹ Secretary of State John Quincy Adams was not pleased with Judge Houston's replacement.¹⁶⁰ Several reports had indicated that Judge Bland invested in patriot privateering with Postmaster Skinner, his brother-in-law.¹⁶¹ While Judge Bland proved to be innocent of the more serious allegations, Adams still opposed his elevation to the federal bench in 1819 because "'it was impossible that he should be impartial' with regard to 'the most important cases pending before the Court'."¹⁶²

¹⁵⁷ *Id.* at 45-46.



¹⁵⁸

Theodorick Bland was born on December 6, 1776 in Dinwiddie County, Virginia. He practiced law in Virginia and Kentucky before relocating to Baltimore, Maryland in 1800. In 1809 Bland became a state delegate for Maryland. He was an associate judge for the Maryland Court of Appeals, Sixth Judicial District from 1812-1817. In 1817 President James Monroe sent him on a diplomatic mission to South America. After his return from South America, he received a recess appointment from President Monroe to the seat vacated by Judge James Houston in the U.S. District Court for the District of Maryland. He served there for almost four years, but resigned on August 16, 1824. For the remainder of his life, he served as the Chancellor for the State of Maryland until his death on November 16, 1846. *Bland, Theodorick*, THE FEDERAL JUDICIAL CENTER, <http://www.fjc.gov/servlet/nGetInfo?jid=191&cid=87&ctype=dc&inststate=md> (last visited January 2, 2015).

¹⁵⁹ Orenstein Part II, *supra* note 20, at 46.

¹⁶⁰ Orenstein Part I, *supra* note 55, at 323.

¹⁶¹ *Id.* (referencing 4 MEMOIRS OF JOHN QUINCY ADAMS at 159, 182 (Charles Francis Adams, ed., 1875)).

¹⁶² Orenstein Part I, *supra* note 55, at 323 FN 43 (quoting 4 MEMOIRS OF JOHN QUINCY ADAMS 377 (Charles Francis Adams, ed., 1875)).

Since Judge Bland's intimate and extremely controversial ties to Baltimore's patriot privateering almost defeated his appointment, he eagerly showed his judicial independence from the cause.¹⁶³ Almeida's case was Judge Bland's perfect opportunity. First, Almeida had no major merchants or financial interests backing his most recent enterprise in privateering on the *Louisa* or purchasing the *Arrogante Barcelones*.¹⁶⁴ Secondly, even though Almeida produced a copy of the sentence from the Prize Court at Juan Griego that was certified by the Notary or Secretary of Marine, and whose signature was verified by the certificate of the deputy of the Republic of Colombia to the United States, the United States government had not yet received the Republic of Colombia in that capacity.¹⁶⁵ Not only could Judge Bland avoid upsetting the upper-crust of Baltimore, but the facts of this case seemed on his side. Thus, decrees of restitution of the *Arrogante Barcelones* to her rightful Spanish owners were entered, *pro forma*, in the District and Circuit Courts.¹⁶⁶

V. Appeal to the United States Supreme Court

The lower courts' decisions in favor of the *Arrogante Barcelones*' rightful Spanish owners left Almeida unsatisfied. He initiated a final appeal to the United States Supreme Court hoping for a contrary outcome.

A. Almeida's Arguments

William Winder,¹⁶⁷ a Brigadier General in the War of 1812 and a prominent attorney in

¹⁶³ Orenstein Part II, *supra* note 20, at 46.

¹⁶⁴ The *Arrogante Barcelones*, 20 U.S. at 496; *Case Papers* at 1-3; Orenstein Part II, *supra* note 20, at 38, 42.

¹⁶⁵ The *Arrogante Barcelones*, 20 U.S. at 497;

¹⁶⁶ The *Arrogante Barcelones*, 20 U.S. at 497-498; *Case Papers* at Circuit Court of the United States in the Fourth Circuit and for the District of Maryland at 20; Orenstein Part II, *supra* note 20, at 46.

¹⁶⁷ William Winder was born on February 18, 1775 in Somerset County, Maryland and his ancestors were among the earliest settlers in the state. Baltimore: Past and Present, RICHARDSON & BENNETT, 541 (Baltimore, 1817), available at https://openlibrary.org/books/OL23703690M/Baltimore_past_and_present. Winder attended the Washington Academy and then University of Pennsylvania and eventually read law under Gabriel Duval (who would later become a Supreme Court Justice). *Id.* Up until the War of 1812 "Winder was incessantly occupied with the duties of his profession, and was engaged in almost every case of importance before the courts." *Id.* at 542. He

Baltimore, represented Almeida as his primary attorney on the record.¹⁶⁸ In fact, Winder represented Almeida in a number of other cases throughout his career. Winder first argued that a settled rule of the United States Supreme Court was not to interfere with these types of cases.¹⁶⁹ Specifically he asserted that the evidence in this case was too debatable to justify the Court in denying the captor, Almeida, of the possession, the brig *Arrogante Barcelones*, which he acquired at war.¹⁷⁰ Secondly Winder asserted that even if he was mistaken in his first argument, the capture of the *Arrogante Barcelones* did not violate the United States neutrality laws.¹⁷¹ He stated that the neutrality laws were not violated because the capture was made by the *Louisa*, a lawfully commissioned privateer of Buenos Aires whose title had been confirmed by a regular condemnation in the Prize Court of Venezuela, an ally of Buenos Aires in the war against Spain.¹⁷² Winder asserted as a universal proposition “that a sentence of condemnation by a competent Court is conclusive, as to the proprietary interest in the *res capta*, and upon the mere question of prize or no prize.”¹⁷³ Furthermore, he argued that the United States Supreme Court was a neutral tribunal in the matter and therefore it was precluded “from all inquiry into the precious circumstances under which the capture was made, and whether the capturing vessel had been armed and equipped in violation of [United States’] neutrality.”¹⁷⁴ Winder cautioned the

joined the war effort and by the spring of 1813 had been commissioned as a Brigadier General. When the war ended, Winder resigned his commission and returned to the profession of law in Maryland. *Id.* at 543. During the ten years of his life after the war, he was twice elected to the State Senate and continued to practice law. *Id.* Winder passed away in 1824, and upon his death his practice was the largest at the Baltimore Bar and one of the largest in the U.S. Supreme Court. *Id.*

¹⁶⁸ The *Arrogante Barcelones*, 20 U.S. at 498; *Case Papers* at Circuit Court of the United States in the Fourth Circuit and for the District of Maryland at 20; Orenstein Part II, *supra* note 20, at 44.

¹⁶⁹ The *Arrogante Barcelones*, 20 U.S. at 498.

¹⁷⁰ *Id.*; *See also Case Papers* at Circuit Court of the United States in the Fourth Circuit and for the District of Maryland at 6-9.

¹⁷¹ The *Arrogante Barcelones*, 20 U.S. at 498; *See also Case Papers* at Circuit Court of the United States in the Fourth Circuit and for the District of Maryland at 6-9.

¹⁷² The *Arrogante Barcelones*, 20 U.S. at 498; *See also Case Papers* at Circuit Court of the United States in the Fourth Circuit and for the District of Maryland at 6-9.

¹⁷³ The *Arrogante Barcelones*, 20 U.S. at 498

¹⁷⁴ *Id.* at 498-499.

Court that there must be some limitations on inquiries into the usual sentence of condemnation that quiets the title acquired in war, as designated by the law of nations.¹⁷⁵ He concluded that a decree of restitution in this case would “so far affect the general doctrine of conclusiveness as to disturb the safety of neutral purchasers.”¹⁷⁶

B. The Consul General of Spain’s Arguments

Although Bernabeu had originally hired attorney John Purviance to file the libel against the *Arrogante Barcelones* and her cargo on behalf of her rightful Spanish owners, he was not the primary attorney on the record at the United States Supreme Court.¹⁷⁷ Arguments on behalf of the brig’s rightful Spanish owners were almost entirely entered by attorney David Hoffman.¹⁷⁸ Hoffman presented extensive arguments compared to Almeida’s attorney, Winder.¹⁷⁹

First, Hoffman argued that there was not sufficient evidence of an existing condemnation substantiated in this case.¹⁸⁰ All the court has been provided is the minimal and miniscule sentence by the Court of San Griego stating that the property is Spanish and condemning it as a legal prize.¹⁸¹ Furthermore the Court has not been provided with the libel, nor an abstract of proof.¹⁸² Even more complicating was that the condemnation did not provide the critical evidence required, like the character of the capturing vessel, who commanded the capturing vessel, who commissioned the capturing vessel, who owned or equipped the capturing vessel, the authority of the Court of San Griego to adjudicate that claims, or the connection (if any) between Venezuela and Buenos Aires.¹⁸³ Hoffman asserted that in similarly situated cases, the Court

¹⁷⁵ *Id.* at 499.

¹⁷⁶ *Id.*

¹⁷⁷ *The Arrogante Barcelones*, 20 U.S. at 496; Orenstein Part II, *supra* note 20, at 43-44.

¹⁷⁸ *The Arrogante Barcelones*, 20 U.S. at 499-515.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 499.

¹⁸¹ *The Arrogante Barcelones*, 20 U.S. at 499; *Case Papers* at 1-3.

¹⁸² *The Arrogante Barcelones*, 20 U.S. at 500; *Case Papers* at 1-3.

¹⁸³ *The Arrogante Barcelones*, 20 U.S. at 499.

should adhere to its former rule and require the entire prize proceedings to be produced as evidence.¹⁸⁴ He posited that if the Court chose not to require the entire prize proceedings, it should at a minimum require both the sentence and the libel—the libel proving essential.¹⁸⁵ He argued that this case, more so than any other imagined, required showing the grounds and extent of the proceeding because “it does not appear that Almeida had any commission; and if this be the fact, no condemnation would avail, were it ever so well authenticated.”¹⁸⁶

Second, Hoffman stated that if the condemnation was adequately proved, he contended that the sentence was asserted by a court incompetent to adjudicate the case; that the entire proceeding was *coram non iudice*¹⁸⁷; and that the obligation to inquire into the jurisdiction of another court whose judgments or decrees it is to rely on belonged to all courts.¹⁸⁸ Hoffman stated that under the law of nations an operative sentence of condemnation must come from either the court of the captor sitting in the country of the captor, or the court of the captor held in the country of an ally or co-belligerent.¹⁸⁹ He posited that courts of the ally or co-belligerent were not competent to hold plea of captures made by anyone other than itself.¹⁹⁰ He explained that condemnations in the *port* of an ally or co-belligerent were frequent, but there had never been a case of a condemnation in the *court* of an ally.¹⁹¹ Hoffman stressed that the “very silence

¹⁸⁴ *Id.* at 500.

¹⁸⁵ *Id.* at 500-501. See also, *Fernandis v. D Casta*, (dispensing with only the libel because the plaintiff, by acts of his own, had made it unnecessary to be exhibited.).

¹⁸⁶ *The Arrogante Barcelones*, 20 U.S. at 501.

¹⁸⁷ *Coram non iudice* is a legal term typically used to indicate a legal proceeding without a judge, with improper venue, or without jurisdiction. Any sentence assigned by a court with no legal authority to adjudicate an offense is in clear violation of the law and would be deemed a nullity. "Coram Non Iudice." The Free Dictionary. Farlex, n.d. Web. 23 Nov. 2014. <http://encyclopedia.thefreedictionary.com/Coram+non+iudice>.

¹⁸⁸ *The Arrogante Barcelones*, 20 U.S. at 501.

¹⁸⁹ *Id.* at 501-502.

¹⁹⁰ *Id.* at 502.

¹⁹¹ *Id.* But see Petrie, *supra* note 33, at 101 (stating that there was a lot of support for the notion that the courts of a co-belligerent were eligible to adjudicate prizes as well); see also Nicholas Parrillo, *The De-Privatization of American Warfare: How the U.S. Government Used, Regulated, and Ultimately Abandoned Privateering in the Nineteenth Century*, 19 YALE J.L. & HUMAN. 1, 36-37 (2007) (“Under the law of nations, the courts possessing jurisdiction over a given prize were those located in the nation that commissioned the captor, or in an allied nation...

of the writer on the law of admiralty as to this subject, and the absence of all judicial authority, argues the soundness of the doctrine contended for.”¹⁹²

Additionally, Hoffman presented a compelling policy argument regarding the worldwide importance of judicial inquiry into the regularity of prize proceedings.¹⁹³ He explained that the capturing nation had an interest in knowing that its own prize rules were adhered to, and its own courts were best equipped to ensure that the rules are complied with since they were the most competent on the subject.¹⁹⁴ The country of the captured belligerent has an interest in the property taken in order to compel a party in the wrong to pay retribution, for the principals in the war to settle accounts, and in that it is mutually responsible for the justice and regularity of all hostile acts.¹⁹⁵ Lastly, neutral nations were concerned that the courts of that capturing belligerent refuse to inquire into the regularity and validity of seizures made from them.¹⁹⁶ Hoffman reasoned “there appears to be a moral fitness in the rule which would restrict the power of condemnation to the tribunals of that belligerent by whom the property was actually taken.”¹⁹⁷

In addition to his objections as to the validity and mode of authenticating the condemnation, and the competency of the tribunal pronouncing the condemnation, Hoffman asserted that the Court should be provided with proof of “an alliance or association in arms between Venezuela, the alleged ally, and the power, whatever that may be, under which

Thus, in every prize case, the captor faced a judge of his own country or a friendly country, employed by the state that had commissioned him to raid in its name, or by an allied state. The captive, by contrast, faced at best a stranger and at worst an enemy.”).

¹⁹² *The Arrogante Barcelones*, 20 U.S. at 503. There seem to be accounts of the opposite being true, though I would assume that Hoffman may not have knowledge of any such documentation or judicial opinions on the topic. This is likely due to the lack of technology that we are privileged with today. It could take weeks or months to send word of these situations occurring outside of Maryland, be it lack of urgency or means of transport. Thus, Hoffman may in deed believe that his statements are accurate, although Winder has a contrary opinion to Hoffman, yet fails to back up his counter argument with any authorities.

¹⁹³ *Id.* at 504.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

[Almeida] pretends to have acted.”¹⁹⁸ Hoffman stated that the Court had no evidence that the condemnation was even pronounced by the *court of an ally*, because there had been no commission produced and the barren condemnation did not acknowledge the power granting any commission to Almeida.¹⁹⁹ The necessity of proving the alliance was another added reason for demanding the production of something more than the bare sentence of condemnation.²⁰⁰

Hoffman also contended that if all of his previous objections were deemed unfounded, he maintained that a condemnation by a court of competent jurisdiction did not divest the United States Supreme Court of its power to restore the property to the rightful owners.²⁰¹ He asserted that the exercise of that power is essential to the maintenance of the United States’ own laws and neutrality.²⁰² He reminded the Court that it is within its ability to undo that which has been done in breach of U.S. laws, but only so far as to place both parties into their positions prior to the illegal act.²⁰³ Hoffman explained that the only inquiry needed by the Court was whether or not Almeida acquired the possession of the *Arrogante Barcelones* by means unlawful to the United States.²⁰⁴ If the Court determined that Almeida fraudulently acquired possession of the brig, it was the Court’s duty to restore it to the rightful Spanish owners from whom it has been seized by the illegal instrumentality of our citizens.

Hoffman’s final, and briefest argument was that Almeida was not a neutral purchaser because captured the brig *Arrogante Barcelones* for his own benefit.²⁰⁵ He asserted that Almeida’s eventual possession of the brig was gained from his own wrong and therefore he

¹⁹⁸ *Id.* at 505.

¹⁹⁹ *Id.*; *Case Papers* at 1-3.

²⁰⁰ *The Arrogante Barcelones*, 20 U.S. at 505.

²⁰¹ *Id.*

²⁰² *Id.* at 505-506.

²⁰³ *Id.* at 506-507.

²⁰⁴ *Id.* at 506.

²⁰⁵ *Id.* at 515.

could not, by his own acts, give himself a better title to the brig²⁰⁶. Essentially, the “condemnation could only corroborate the title which [Almeida] had gained, and could not clothe him with a better one.”²⁰⁷

C. Almeida’s Rebuttal Argument

After such expansive arguments by Hoffman, Winder opted to rebut. He denied the rule asserted by Hoffman that it was necessary for the libel to accompany the sentence of condemnation, since the sentence showed what the libel would show.²⁰⁸ Furthermore, he asserted that the U.S. Supreme Court had never inquired further into proceedings and instead had always admitted the conclusiveness of the sentence of condemnation, even as to the collateral effects.²⁰⁹

As for the competency of the Court of Juan Griego, Winder asserted that the connection between all of the revolutionary Spanish provinces was notorious, that even the President had acknowledged the present state of common contest of the provinces against Spain, and that courts generally took those facts into consideration.²¹⁰ He asserted that Venezuela was known to be at war with Spain, and that the brig *Arrogante Barcelones* was the property of Spain, her enemy, brought into her country.²¹¹ He negated Hoffman’s assertion, and stated that there was no positive authority denying the authority of courts of a co-belligerent from condemning prizes captured by its co-belligerent, and thus it was sufficient that “no reason of principle or public policy exists to prevent it.”²¹²

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id. at 516.*

²⁰⁹ *Id.*

²¹⁰ *Id. at 516-517.*

²¹¹ *Id. at 517.*

²¹² *Id.*

D. Justice Johnson's Decision

Oddly enough, as the Supreme Court at time surprises, the decision in this case was not founded in either side's arguments regarding the sufficiency of either the condemnation of the documentation evidence provided.²¹³ Instead, the Supreme Court found Hoffman's final argument persuasive—ultimately basing the majority opinion on it.²¹⁴ After reviewing all the evidence and arguments, Justice Johnson explained the Court's conclusion of the facts. “[Almeida] not only violated the neutrality of [the United States] government, but effected his purpose by practising a flagrant fraud, either upon his crew, or upon the revenue officers of the port of Baltimore; or perhaps upon both.”²¹⁵ Justice Johnson continued by stating that every aspect of the case proved that the sealing voyage around Cape Horn was a mere ruse.²¹⁶ The unquestionable truth was that the crew completely understood the privateering venture from the start.²¹⁷ Their only misled belief was that their artificial ignorance, or the audacity of the scheme, would shield them from punishment for entering into belligerent service.²¹⁸ Although the actions of the were not at issue,²¹⁹ the explanation by Justice Johnson expresses the fraudulent nature of the entire enterprise in this case, and more generally in Baltimore's patriot privateers.

Without all the linguistics, there were only a few arguments made by either party. Winder argued that (1) the neutrality laws were not violated because the *Louisa* was a foreign vessel, commissioned, owned, and outfitted in the United Provinces of Rio de la Plata, a sovereign nation at war with Spain; and (2) that Almeida was the bona fide purchaser of the

²¹³ *Id.* at 518-519.

²¹⁴ *Id.*

²¹⁵ *Id.* at 518.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* at 518-519.

Arrogante Barcelones.²²⁰ In response, Hoffman argued that in fact, the *Louisa* was owned and outfitted in the United States as a privateer to cruise against Spain in violation of the United States' neutrality laws.²²¹ Despite the detailed arguments regarding the sufficiency of the condemnation and the documentation provided at trial, the United States Supreme Court opinion avoids acknowledging or basing its opinion on those grounds.²²² Justice Johnson acknowledged that while there was no question that Almeida was a flagrant offender against the neutrality laws of the United States, the only roadblock in applying the established rule of the Court in cases of illegal outfitting was the condemnation of the vessel and cargo in the Court of Margaritta.²²³ Thus, Justice Johnson circumvented the issue in his opinion by waiving all expression of its opinion on the questions raised upon the validity of the condemnation or the sufficiency of the documentation produced to prove it.²²⁴

Instead, the United States Supreme Court rested its opinion on a "single, and independent ground" for future similar cases to be clearly understood.²²⁵ The United States Supreme Court found the captured property, the brig *Arrogante Barcelones*, to be in the possession of the offender, Almeida, and held it irrelevant through what roundabout or devious course the property returned to him.²²⁶ The Court asserted that Almeida could not claim a legal right to the brig *Arrogante Barcelones* springing out of his own fraudulent actions.²²⁷ Justice Johnson briefly acknowledge Winder's assertion of Almeida's title as a bona fide purchaser, when he explained that while a third party purchaser with a valid and authenticated condemnation without notice of fraud may in many cases hold his purchase free from interest or restitution, Almeida's offensive

²²⁰ *Id.* at 498-499.

²²¹ *Id.* at 499-515.

²²² *Id.* at 518-519.

²²³ *Id.* at 518.

²²⁴ *Id.* at 518-519.

²²⁵ *Id.* at 519.

²²⁶ *Id.* at 519.

²²⁷ *Id.*

touch in this case “restores the taint from which the condemnation may have purified the prize.”²²⁸ Justice Johnson²²⁹ concluded that courts of justice will never yield the right of a party to appear and be heard before a court to the individual who is forced to trace his title through his own criminal acts.²³⁰

VI. Does the *Arrogante Barcelones* Apply Today?

The Arrogante Barcelones is still good case law in that its opinion has not been overturned, however the opinion has not been cited or directly discussed in subsequent case law either. In the Court’s opinion, Justice Johnson briefly referenced the concept of bona fide purchasers.²³¹ Despite its lack of citing history, *The Arrogante Barcelones* addressed an important principle of property law that still exists today—the protected status of bona fide purchasers. It became clear in *The Arrogante Barcelones* that Joseph Almeida was not in fact a

²²⁸ *Id.*

²²⁹ Justice Johnson was born on December 27, 1771 to a humble but proud family in South Carolina. He attended Princeton and graduated first in his class. After graduation he returned to South Carolina to read law. After some time he entered the bar in South Carolina. In South Carolina he was a Republican member in the South Carolina House of Representatives, and later chosen to serve as a judge in South Carolina’s highest court. He was nominated for the position of Associate Justice on March 22, 1804 by Thomas Jefferson, and was the first of Jefferson’s appointments to the Supreme Court. Justice Johnson is known as the United States Supreme Court’s first great dissenter, as he often used his opinions to assert his independence from Chief Justice Marshall. After 30 years, 2 months, 28 days, of service as a Supreme Court Justice, Justice Johnson passed away on August 4, 1834. *William Johnson*, The Oyez Project at IIT Chicago-Kent College of Law, http://www.oyez.org/justices/william_johnson (last visited December 12, 2014).



²³⁰ *The Arrogante Barcelones*, 20 U.S. at 519.

²³¹ *Id.*

bona fide purchaser.²³² As the Court correctly stated, his touch to the title of the brig that he bought at public auction restored the taint of his criminal acts—the illegal capture.²³³

The concept of bona fide purchasers, or good faith purchasers, is one that has evolved with commercial transactions in the United States. In *The U.C.C. Framework: Conveyancing Principles and Property Interests*, John Dolan provides that “the good faith purchase rule permits the taker to receive interests greater than those his transferor possessed.”²³⁴ He explains that courts have rationalized this somewhat illogical principle based on fairness in two different ways.²³⁵ “Some assert that is it a question of the fault or negligence of the true owner or his creditor.”²³⁶ Those cases emphasize the culpability of the true property owner who does not protect his interest in his property.²³⁷ Those cases explain that but for the true property owner’s negligence, the innocent purchaser would not have been misled by the appearance of the property.²³⁸ Other courts focused on purely economic notions, asserting that the good faith purchaser doctrine is economically efficient and commercially convenient.²³⁹ Both doctrines evolved based on perceived needs the United States’ commercial expansion.²⁴⁰ Specifically, “staunch notions that a man should never be stripped of property without his consent flowed naturally from the prairie frontier and from high seas traversed by privateers, and demanded the development of rules upholding security of property in the face of lawless taking.”²⁴¹

By commercial standards today, in general a buyer may be considered a bona fide

²³² *Id.*

²³³ *Id.*

²³⁴ Dolan, John, *The U.C.C. Framework: Conveyancing Principles and Property Interests*, 59 B.U.L. Rev. 811 (1979).

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

purchaser, or good faith purchaser, as long as they have no knowledge that another party has interest or ownership rights to the goods or property in question.²⁴² A good faith purchaser is not specifically defined in the UCC, however, good faith means “honesty in fact in the conduct or transaction concerned.”²⁴³ Merchants have to observe and comply with the reasonable commercial standards of fair dealing in the trade.²⁴⁴ A purchaser is “one who obtains an interest in property through a voluntary transaction.”²⁴⁵ Although bona fide purchasers are not specifically defined, several articles of the Uniformed Commercial Code provide rules to protect bona fide purchasers of certain types of personal property from prior claims to the property.²⁴⁶ Thus the Court in *The Arrogante Barcelones* elicited one of the first judicial opinions regarding bona fide purchasers and criminal acts that can taint ones title.

VII. Conclusion

The case of *The Arrogante Barcelones* involved the cleverness of Joseph Almeida²⁴⁷ and the web of complicated set of circumstance he contrived.²⁴⁸ Almeida’s tactics, are better understood in the context of nineteenth century Baltimore, the War of 1812, and U.S. citizens’ involvement in South American privateering.²⁴⁹ With this set of facts, it would have made sense for the maritime case to hinge on the validity of the commission, condemnation, and documentation evidence.²⁵⁰ Instead, the Supreme Court ignored the arguments and propositions

²⁴² Henry D. Gabriel & Linda J. Rusch, *The ABCs of the UCC: Article 2: Sales*, SECTION OF THE BUSINESS LAW AMERICAN BAR ASSOCIATION, 122 (1997).

²⁴³ Uniformed Commercial Code §§ 1-201(19).

²⁴⁴ *Id.* at §§ 2-103(1)(b).

²⁴⁵ *Id.* at §§ 1-201(32), (33).

²⁴⁶ Russell A. Hakes, *The ABCs of the UCC: (Revised) Article 9: Secured Transactions*, SECTION OF THE BUSINESS LAW AMERICAN BAR ASSOCIATION, 98 (2000).

²⁴⁷ *Infra* Part VIII.

²⁴⁸ *Supra* Part III.; *Supra* Part IV.

²⁴⁹ *Supra* Part II.

²⁵⁰ *Supra* Part IV.; *Supra* Part V.A.; *Supra* Part V.B.; *Supra* Part V.C.

by the attorneys in this case, and grounds its decision in property law principles.²⁵¹ Thus Justice Johnson delivered a sound, yet unexpected, articulation of *bona fide* purchasers²⁵² and their role in property law in privateering cases of the nineteenth century.²⁵³

VIII. Biographical Sketches

A. Joseph Almeida

Joseph Almeida was a man dedicated to the life of a privateer, no matter what country he sailed for. Almeida was not alone in this regard, and many Baltimore merchants undertook new roles as privateers in support of the South American Revolutions. Unfortunately, Almeida's skill was ultimately his undoing—not only with the United States courts, but also with the Republic of Spain.

Joseph Almeida was described as a man with mesmerizing blue eyes, long blonde curls draping over his broad shoulders, and generally sunworn features.²⁵⁴ He emigrated from the Portuguese Azores in 1796 and quickly built a reputation as a seaman.²⁵⁵ In 1803, Almeida became master of the Portuguese brig the *Pastor*.²⁵⁶ While commanding the *Pastor*, Almeida's voyages included frequent stops in Baltimore where he met his first wife Ann, whom he settled down with on Duke Street²⁵⁷ and married.²⁵⁸ In 1805 Almeida became a father, and a United States citizen.²⁵⁹ Unfortunately, Ann died in February 1814 while Almeida was at sea, leaving

²⁵¹ *Supra* Part V.D.

²⁵² *Supra* Part VI.

²⁵³ *Supra* Part V.D.

²⁵⁴ Orenstein Part II, *supra* note 20, at 35.

²⁵⁵ *Id.*

²⁵⁶ Independence on the Quarterdeck, *supra* note 92, at 6.

²⁵⁷ Orenstein Part I, *supra* note 55, at 308.

²⁵⁸ Independence on the Quarterdeck, *supra* note 92, at 6.

²⁵⁹ *Id.*

their four children motherless.²⁶⁰ Nevertheless, Almeida carried on and soon married Teresa, in the summer of 1814.²⁶¹ Together they shared the home on Duke Street while they added more children to the family.²⁶²

Upon his arrival to the United States Almeida labored to purchase his own vessel, which he finally did in 1805.²⁶³ During his time privateering, Almeida owned and commanded numerous brigs including: *Mary, New Mary, Joseph and Mary, Caroline, Kemp, Lousia, Congreso/Orb, Wilson/Bolivar, Pichiucha, Presidentia, Friends Hope*.²⁶⁴ During the War of 1812, Almeida captured no fewer than thirty-five British ships and made almost \$300,000 in net prize proceeds.²⁶⁵ In December 1814, when Almeida spotted a convoy of nine British vessels, he singlehandedly outfought seven of the vessels, and captured five.²⁶⁶

After facing excessively brutal treatment by the Spanish in Carthegena, Almeida was eventually released, but suffered humiliation and the loss of his ship.²⁶⁷ Providentially, in 1816 Thomas Taylor approached him with a business proposition to assist Buenos Aires as a privateersman in its struggle for liberation by preying on Spanish ships.²⁶⁸ To a bitter Almeida, this seemed like the perfect opportunity for revenge.²⁶⁹ In an 1817 letter from Almeida to Mr. President of the Consulate of Cadiz, Almeida expressed his repugnance for the Spanish Empire and announced his vendetta against it.²⁷⁰ During his time as a South American privateer,

²⁶⁰ *Id.* at 7.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ Independence on the Quarterdeck, *supra* note 92, at 6; Orenstein Part I, *supra* note 55, at 311.

²⁶⁴ Cranwell & Crane, *supra* note 18, at 218; Independence on the Quarterdeck, *supra* note 92, at 6-20; Orenstein Part I, *supra* note 55, at 307-325; Orenstein Part II, *supra* note 20, at 35-52.

²⁶⁵ Orenstein Part I, *supra* note 55, at 312.

²⁶⁶ Cranwell & Crane, *supra* note 18, at 218-220.

²⁶⁷ Orenstein Part I, *supra* note 55, at 315.

²⁶⁸ *Id.* at 316.

²⁶⁹ *Id.*

²⁷⁰ 1817 letter from Almeida to Mr. President of the Consulate of Cadiz (reproduced in Orenstein Part I, *supra* note 55, at 413):.

Almeida targeted the Spanish by interrupting supply lines between Spain and its colonies, intercepting royal communications, and viciously pillaging Spanish vessels and cargos worth several million dollars.²⁷¹

While Almeida became infamous to the Spanish as a notorious pirate, he also became very well known in the United States—both judicially and politically. The amount of criminal and civil suits stirred or commenced by Almeida is remarkable, and between 1820-1825 at least three cases involving him reached the United States Supreme Court.²⁷² In fact, “the embarrassing extent to which Almeida flouted federal laws and treaties provoked President Monroe on one occasion to dispatch a navy gunboat and a detachment of U.S. artillerists to rein him in.”²⁷³ He even earned a reputation with Secretary of State John Quincy Adams, whom in 1819 after receiving an unexpected but colorful first-hand account of Almeida’s personal life and career, was so fascinated by Almeida he included the encounter in his memoirs.²⁷⁴

The Schooner Congreso September 12, 1817

Mr. President of the Consulate of Cadiz

My Dear Sir:

If the Government of Spain would have dealt with me as right reason and the law of persons demands, and at the same time, if the Spanish would have recognized the independence of Buenos Aires, I would never have taken up arms against your nation. As for me, they treated me wickedly in Carthagen, seized my brig, treated me with both word and deed, in the end stripping me naked, could I have been treated any worse?

They have treated me like a *Pirate*, and who? The true pirates are the Spanish American Governors appointed by the King... I am not a pirate, I merely defend the rights of the Homeland, and I will continue making war until I shed my blood for its independence.

The various ships that I have taken on these coasts are guarantees of my humanity. It is not my character to hurt the poor, but rather the prideful and zealous Spanish.

In Havana you are holding some of my men prisoner, and if I get word that you try to extort them to the least degree, or that they are not immediately released, I will change my privateering methods, and direct these methods at you, so that you will do your part and release these people.

Your Servant,
Jose Almeйда

²⁷¹ Orenstein Part II, *supra* note 20, at 37.

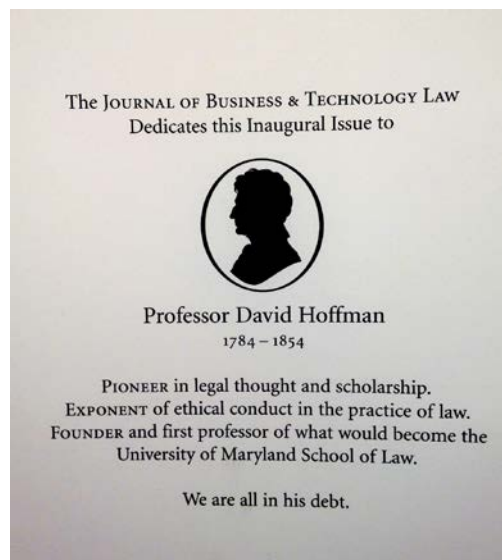
²⁷² Orenstein Part I, *supra* note 55, at 309; *U.S. v. Furlong*, 18 U.S. 184 (1820); *The Arrogante Barcelones*, 20 U.S. 496 (1822); *Manro v. Almeida*, 23 U.S. 473 (1825).

²⁷³ Orenstein Part I, *supra* note 55, at 309.

²⁷⁴ *Id.* at 308-309. “Adams recorded the encounter in his memoirs, and though he likened the moral compass of privateersmen to that of the slave traders, he clearly found Almeida interesting, describing him as a ‘rough,’ yet ‘open-looking, jovial Jack tar.’” *Id.* at 309 (quoting 4 MEMOIRS OF JOHN QUINCY ADAMS 377 (Charles Francis Adams, ed., 1875)).

After increasing harassment by the U.S. law enforcement, Almeida packed up his family and fled to St. Bart's in May 1822.²⁷⁵ For the remainder of his life he continued privateering under commissions for various South American revolutionary governments.²⁷⁶ Due to Almeida's constant persecution of the Spanish Empire, Spain issued a proclamation, and possibly an award, for the "notorious pirate's" arrest.²⁷⁷ The Spanish finally captured Almeida in 1827, thirteen years after his confinement by them in Carthagen.²⁷⁸ They kept Almeida imprisoned in the vaults of "El Morro" for over four years shackled to its sandstone walls.²⁷⁹ Almeida was eventually executed on Valentine's Day 1832.²⁸⁰ He received "all spiritual remedies required" by the Catholic Church before being executed by his Most Catholic Majesty King Ferdinand VII of Spain's soldier's musket shots.²⁸¹

B. David Hoffman



David Hoffman was a prominent lawyer, teacher, and author in nineteenth century

²⁷⁵ Independence on the Quarterdeck, *supra* note 92, at 16.

²⁷⁶ *Id.* at 16-17.

²⁷⁷ *Id.* at 18.

²⁷⁸ *Id.*

²⁷⁹ Orenstein Part I, *supra* note 55, at 307. The "El Morro" is the "menacing fortress that to this day dominates Puerto Rico's northwest coast at San Juan Bay." *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.* at 308.

Baltimore, Maryland.²⁸² He was the founder and first professor at what would come to be, University of Maryland Francis King Carey School of Law.²⁸³ David Hoffman was a “pioneer in legal thought and scholarship” and an “exponent of ethical conduct in the practice of law.”²⁸⁴ His scholarly works were ahead of his time, but are still renowned almost two centuries later.²⁸⁵ While Hoffman built his law career in Baltimore, he grew into a worldly attorney with degrees and publications spanning across the Atlantic.²⁸⁶

David Hoffman was born in Baltimore, Maryland on December 24, 1784.²⁸⁷ David Hoffman was the eleventh of twelve children born to prominent Baltimore merchant Peter Hoffman and his wife Dorothea.²⁸⁸ Instead of going into the family’s dry goods business, David decided to take a different path and pursue a career in law.²⁸⁹ He attended St. John’s University in Annapolis, Maryland for three years, and then returned to Baltimore to “read law.”²⁹⁰ David became a member of the Maryland Bar in the early nineteenth century.²⁹¹ “By 1816, his lucrative practice in bustling Baltimore, the nation’s third largest city, netted him \$9,000 a year, a very healthy sum by the standards of the day.”²⁹²

While David flourished financially in commercial practice, he preferred scholarly

²⁸² *Biographical Sketch of David Hoffman*, THURGOOD MARSHALL LAW LIBRARY, <http://www.law.umaryland.edu/marshall/hoffman/biosketch.html> (last visited, Nov. 30, 2014) (reproduced from The Dictionary of American Biography) [hereinafter *Biographical Sketch*].

²⁸³ *Id.*

²⁸⁴ *Dedication*, 1 J. BUS. & TECH. L. (2006).

²⁸⁵ Biographical Sketch, *supra* note 282.

²⁸⁶ *Id.*

²⁸⁷ *Id.*; Michael Ariens, *Lost and Found: David Hoffman and the History of American Legal Ethics*, 7 https://www.stmarytx.edu/wp-content/uploads/2013/02/Print-Materials_Ariens.pdf [hereinafter *Lost and Found*].

²⁸⁸ Biographical Sketch, *supra* note 282; *David Hoffman of Baltimore: A Profile in Courage*, CALVERT INSTITUTE FOR POLICY RESEARCH, <http://www.calvertinstitute.org/?p=492> (Sept. 1, 1996)[hereinafter *A Profile in Courage*]; *Lost and Found*, *supra* note 287, at 7.

²⁸⁹ *A Profile in Courage*, *supra* note 288.

²⁹⁰ *Id.*; Biographical Sketch, *supra* note 282.

²⁹¹ *Lost and Found*, *supra* note 287, at 8.

²⁹² *A Profile in Courage*, *supra* note 288.

work.²⁹³ In 1816, David accepted a position as professor of law at the University of Maryland Law Institute.²⁹⁴ Since apprenticeship was how an individual ascended to legal practice in 1814, no law courses were being taught in Maryland when David accepted the position.²⁹⁵ However, David was committed to teaching the future lawyers of the United States, and he set aside most of his professional time to develop curriculum for the law school.²⁹⁶ “Hoffman was convinced that his generation of practitioners had become too divorced from the philosophical debates of the nation’s founding to appreciate the vision of law – and of lawyering – required in America.”²⁹⁷ Thus, after years of work, David published, *A Course of Legal Study*, in 1817.²⁹⁸ “*A Course of Legal Study* was immediately and lavishly praised for its learnedness,”²⁹⁹ and Judge Joseph Story even pronounced it “by far the most perfect system for the study of the law which has ever been offered to the public.”³⁰⁰ The publication “elicited the highest encomiums from legal authorities throughout the country” and instantly gave David a national reputation, later leading to the highest foreign honors.³⁰¹

Unfortunately for David, his teaching was ahead of his time, and he finally stopped in 1839.³⁰² In 1843 he officially resigned from University of Maryland, and was graciously thanked by the trustees for all his contributions.³⁰³ That same year he relocated with his family

²⁹³ *Id.*

²⁹⁴ Biographical Sketch, *supra* note 282.

²⁹⁵ Lost and Found, *supra* note 287, at 15.

²⁹⁶ A Profile in Courage, *supra* note 288.

²⁹⁷ *Id.*

²⁹⁸ *Id.*; Lost and Found, *supra* note 287, at 15.

²⁹⁹ Lost and Found, *supra* note 287, at 15.

³⁰⁰ Biographical Sketch, *supra* note 282 (citing *North American Review*, November 1817, p.76).

³⁰¹ *David Hoffman and the Science of Jurisprudence*, THURGOOD MARSHALL LAW LIBRARY, <http://www.law.umaryland.edu/marshall/hoffman/cordell.html> (last visited, Nov. 30, 2014) (excerpted from Eugene F. Cordell, *University of Maryland, 1807 - 1907: Its History, Influence, Equipment and Characteristics*, (New York: The Lewis Publishing Company, 1907)) [hereinafter *Science of Jurisprudence*].

³⁰² Biographical Sketch, *supra* note 282.

³⁰³ *Id.*

to Philadelphia, with the idea to revive his Law Institute there.³⁰⁴ Four years later his scholarly work took him to Europe, where “he published in the London Times a series of articles on political, social, and economic conditions in the United States.”³⁰⁵ David’s return to the United States in 1853 was brief—he passed away in New York City on November 11, 1854 at the age of sixty-nine.³⁰⁶ David was

David married Mary McKean, a woman from a prominent Philadelphia family, in 1816.³⁰⁷ Mary was the granddaughter of Governor Thomas McKean, and was regarded for her beauty and charm.³⁰⁸ They had their first son in 1817, the same year David published his work, *A Course of Legal Study*.³⁰⁹ Of the three children David and Mary Hoffman had, only his daughter survived him.³¹⁰

³⁰⁴ Science of Jurisprudence, *supra* note 301.

³⁰⁵ Biographical Sketch, *supra* note 282.

³⁰⁶ *Id.*

³⁰⁷ Biographical Sketch, *supra* note 282; Lost and Found, *supra* note 287, at 15.

³⁰⁸ Biographical Sketch, *supra* note 282.

³⁰⁹ *Id.*

³¹⁰ Biographical Sketch, *supra* note 282.