



# JOSEPH ALMEIDA

PORTRAIT OF A PRIVATEER, PIRATE & PLAINTIFF, PART II

*Jeffrey Orenstein*

**W**HEN WE LEFT Captain Joseph Almeida, he stood accused of audacious acts of piracy against the Spanish merchant fleet – crimes he undoubtedly committed.<sup>1</sup> It was May 8, 1817, in a makeshift courtroom on the ground floor of Baltimore’s old Masonic Hall,<sup>2</sup> when Almeida faced Supreme Court Justice Gabriel Duvall and a petit jury of the Fourth Circuit. Almeida gazed with mesmeric blue eyes at those who would judge him, his long blond hair and sun-worn features making him conspicuously exotic. Yet, he was no stranger to the people of Baltimore. He had immigrated there in 1796 and quickly built his reputation as a seaman, eventually commanding his own merchant vessel and carrying cargo for prominent patrons such as President Thomas Jefferson.<sup>3</sup> His wife Teresa and five children (he would eventually father ten) lived on Duke Street

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<sup>1</sup> See Jeffrey Orenstein, *Joseph Almeida: Portrait of a Privateer, Pirate & Plaintiff, Part I*, 10 GREEN BAG 2d 307 (2007) (hereinafter, “Part I”).

<sup>2</sup> See CHARLES VARLE, A COMPLETE VIEW OF BALTIMORE 17 (1833).

<sup>3</sup> CALENDER OF THE CORRESPONDENCE OF THOMAS JEFFERSON, PT. III SUPPLEMENTARY 197 (1903) (listing letter of *Williamson & Cowling to Thomas Jefferson* (Jan. 25, 1809), in *Jefferson Papers* (Library of Congress), Series 6, vol. 14, no. 31).

in the affluent Jones' Falls section of Baltimore in a brick house built to Almeida's specifications.<sup>4</sup> And when President James Madison called for private armed vessels to assail British commerce during the War of 1812, Captain Almeida emerged as one of Baltimore's most brilliant privateersmen, with accounts of his daring captures littering every newspaper and advertiser in the city.<sup>5</sup>

Almeida's standing as a war hero, however, was short-lived. As hostilities with Great Britain concluded, Baltimore's merchant class conspired with the juntas in Buenos Aires and Colombia to keep the engines of privateering running, ostensibly for the cause of liberty in Latin America. Federal neutrality laws strictly barred U.S. citizens from assaulting Spanish property,<sup>6</sup> but the potential profits from such ventures were too enticing, with each shareholder standing to gain a fortune in Spanish gold and prizes. And so it was that in 1816 a syndicate of very silent partnerships formed in the counting houses of Baltimore to back a fleet of "patriot privateers." At the fore of this enterprise was the house of D'Arcy & Didier which refitted one of their own vessels from the late war, the schooner *Orb*, and launched her under the alias *Congreso*. They arranged for Connecticut entrepreneur David Curtis DeForest to be her agent in Buenos Aires where, doing business as Don Carlos Cortez de Gueemes, he would oversee the adjudication of prizes and provide political cover.<sup>7</sup> And finally, to command the *Congreso*, they recruited "Don José Almeida," newly naturalized citizen of the United Provinces of Rio de la Plata.

After just two cruises – one in the West Indies and one off the coast of Spain itself – Almeida had successfully interrupted supply

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<sup>4</sup> Duke Street has since been renamed Granby Street.

<sup>5</sup> See, e.g., *Brilliant Cruize!*, TRUE AMERICAN, Jan. 4, 1815; BALTIMORE PATRIOT, Jan. 15, 1815 and Apr. 2, 1815; NILES' WEEKLY REGISTER, Dec. 24, 1814, Apr. 15, 1815 and Jan. 7, 1815; BALTIMORE REPORTER, Apr. 12, 1815.

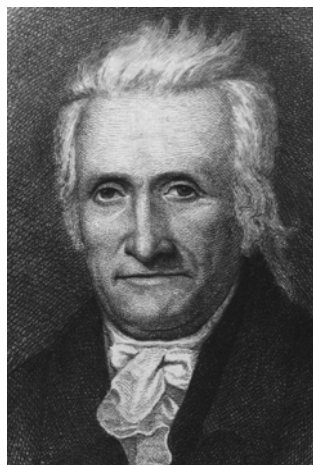
<sup>6</sup> *An Act more effectually to preserve the neutral relations of the United States*, 3 Stat. 370, c. 58 (1817).

<sup>7</sup> BENJAMIN KEEN, DAVID CURTIS DEFOREST AND THE REVOLUTION OF BUENOS AIRES 108 (1947).

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*Supreme Court Justice Gabriel Duvall (left), was sitting on the federal circuit court in Baltimore when he ordered a jury to acquit Joseph Almeida of piracy on May 8, 1817.*



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lines between Spain and its colonies, intercepted royal communications, and looted Spanish vessels and cargos worth several million dollars. He was, perhaps, too successful, because the injury and humiliation he heaped upon the Spanish crown was ultimately his undoing. But not on May 8, 1817. On that day, for reasons unknown, Justice Duvall directed the petit jury to acquit Almeida on all charges, marking the third time in just six weeks that the pirate and his lawyers had scuttled attempts by Spain and the United States to bring him to justice.<sup>8</sup> When the Spanish Foreign Minister, Luis de Onis, heard that Almeida was free yet again, he was incensed, predicting that Almeida would “profit by the first favorable wind to put to sea, and continue with greater fury his atrocities and piracies.”<sup>9</sup> Onis was quite correct.

Heavily armed and with a full complement of men, Almeida re-

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<sup>8</sup> See *BALTIMORE PATRIOT*, May 10, 1817 and *COMMERCIAL ADVERTISER*, May 12, 1817 (reporting Duval’s unpublished decision). The two prior cases are *State v. Rutter*, 12 *NILES’ REGISTER* 115, and *U.S. v. Orb* (1817) (case file at National Archives, Philadelphia).

<sup>9</sup> *Don Luis de Onis to Mr. Rush* (April 18, 1817) in 3 *THE CASE OF GREAT BRITAIN AS LAID BEFORE THE TRIBUNAL OF ARBITRATION CONVENED AT GENEVA 185* (1872) (hereinafter “*GENEVA ARBITRATION*”).

turned to the helm of the schooner *Congreso* and rode the arc of the Gulf Stream to the Portuguese Azores. It was on these volatile, volcanic islands in the middle of the North Atlantic that he was born and raised – a most emblematic origin for Almeida’s turbulent life at sea. The Azores were also an ideal base from which to raid Spanish merchant vessels. Between the Azores and the Canary Islands several lanes of commerce converged. Merchantmen clearing or calling at Spanish ports from Bilbao to Barcelona – whether they were Royal Philippine Company ships rounding the Cape of Good Hope or West Indian merchantmen crossing the Atlantic – were steered through this corridor by the currents and prevailing winds. And so the *Congreso* patrolled these latitudes throughout the summer of 1817. Almeida boarded at least 165 vessels, most of which were neutral – 40 North American, 21 French, 15 Portuguese, 13 Swedish, 3 Danish, 1 Greek, 1 Turkish, 1 German, and 1 Dutch – and these he kindly let go. But 24 of the vessels were Spanish, and these he plundered with great exuberance. The most valuable ships were delivered by carefully chosen prize masters to David DeForest in Buenos Aires. The rest were looted and torched at sea.<sup>10</sup>

### THE SHIP *LOUISA*

With a displacement of 165 tons and a streamlined, copper-covered hull, the schooner *Congreso* had been astonishingly fast and dangerous in her prime. And though she survived Almeida’s rigorous summer cruise intact, her best days were clearly behind her (think the *Millennium Falcon*). Almeida, however, did not ask his financiers in Baltimore to refurbish the *Congreso*. Instead, he used his considerable share of prize proceeds to strike out on his own.<sup>11</sup> At auction he purchased one of his best trophies, the frigate *Diana* and rechristened her the *Louisa*, probably after his infant daughter whom he would soon visit in Baltimore.<sup>12</sup> Only there, in the shipyards of

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<sup>10</sup> HORACIO RODRIGUEZ AND PABLO E. ARGUINDEGUY, *EL CORSO RIOPLATENSE* 138-39 (1996) (translated for the author by Alexander Morris).

<sup>11</sup> See *id.* at 141 and 215.

<sup>12</sup> See Elizabeth Rice Seim, *A History of Joseph Almeida and His Family* (unpublished

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Fells Point, could the *Louisa* be properly refitted and armed in the privateer fashion. And only there could Almeida recruit seasoned crewmen in sufficient numbers.

To avoid a repeat of the arrests and seizures that had plagued Almeida's last return to Baltimore, the *Louisa* was temporarily commissioned under the name of one of Almeida's officers, Ezra Drew, who sailed the *Louisa* north posing as a merchant with a cargo of hides and her true captain in the hold. Such precautions had become increasingly necessary as the U.S. government doubled its efforts to maintain neutrality with Spain. President James Monroe was quite eager to support the emerging republics in South America, but he withheld formal recognition of them for fear of war with Spain and her European allies.<sup>13</sup> At the same time, Secretary of State John Quincy Adams was actively negotiating with the Spanish Foreign Minister, Luis de Onís, for territorial rights to Florida, parts of Texas, and other Spanish domains. Across the bargaining table and in ceaseless correspondence, Onís protested what he perceived as U.S. efforts to destabilize the Spanish colonies by permitting fleets of pirates in Baltimore and New Orleans to cruise against colonial trade.<sup>14</sup> To ease mounting tensions, President Monroe pressured his district attorneys to deny privateers safe harbor in Baltimore and eventually asked Congress to ban foreign armed vessels from Baltimore altogether.<sup>15</sup> In addition, Congress stripped privateers of their "foreign citizenship defense" by amending the piracy laws to make clear that they apply to "all persons" found in the United States, regardless of their nationality.<sup>16</sup> Almeida, however, was undeterred. He drifted quietly into Baltimore harbor without attracting attention to himself, deposited his prize money, visited his family, and

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genealogy by Almeida's great-great-granddaughter on file at the Maryland Historical Society Library).

<sup>13</sup> 4 MEMOIRS OF JOHN QUINCY ADAMS 166-168, 334 (Charles Francis Adams, ed., 1875) (hereinafter "MEMOIRS").

<sup>14</sup> See, e.g., *Don Luis de Onís to John Quincy Adams* (Nov. 2, 1817), in 3 GENEVA ARBITRATION at 201.

<sup>15</sup> See MEMOIRS, at 112, 318 and 509.

<sup>16</sup> Act of Mar. 3, 1819, 3 Stat. 513, c.77, § 5.

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stealthily outfitted the *Louisa* for her maiden cruise as a privateer.

Four months later, on August 1, 1818, the *Louisa* reemerged in the shadow of Fort McHenry. Boatloads of men and supplies arrived day and night alongside her large hull, painted pitch black with a white stripe across the gun deck. About half the men arriving had signed articles for a sealing voyage to the northwest coast of America at \$16 per month. They were 15 days out to sea when Almeida announced their true mission and demanded they sign new privateering articles. Many refused, but few – if any – were sincerely indignant about Almeida’s deception. Any doubts about the nature of their impending cruise were surely erased when, four days out of Baltimore, the *Louisa* anchored at the mouth of the Patuxent River – just under the Calvert Cliffs – to rendezvous with a pilot boat delivering 6 eighteen-pound gunnades, 26 muskets, 18 pistols, 17 cutlasses, 30 kegs of powder, 80 round shot, 50 star shot, and two kegs of musket balls.<sup>17</sup> Indeed, when Almeida asked the *Niles’ Weekly Register* to report that the “ship *Louisa*” was “bound round Cape Horn, on a *sealing voyage!*,” they considered his cover so laughably transparent, they quipped, with “16 heavy guns and 101 men,” Almeida would “no doubt do great execution on the coasts of Peru!”<sup>18</sup>

The real reason that many refused to sign the privateering articles was because they thought their bargaining power was strong enough while at sea to negotiate a larger share of the profits. Almeida, however, also had confidence in his bargaining position. He called all men on deck, ordered the hatches shut, and addressed the crew “armed with a dagger in his right hand and a small ax in his left.”<sup>19</sup> Anyone who was “dissatisfied,” Almeida explained, could be sent home on the first neutral vessel they boarded. Until then, they were put in irons and ordered into “the coal hole, which had been

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<sup>17</sup> Deposition of Lt. Smith, *Bernabeu v. the brig Arrogante Barcelones and her cargo* (case file at National Archives, Philadelphia).

<sup>18</sup> NILES’ WEEKLY REGISTER, Sep. 5, 1818 (emphasis original).

<sup>19</sup> CHARLES FULLERTON, A CIRCUMSTANTIAL ACCOUNT OF THE OCCURRENCES THAT TOOK PLACE DURING THE CRUISE OF THE SHIP *LOUISA* 7 (1820).

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prepared as a prison.” All but nine of the original dissenters capitulated. And as they filed into the hole, Almeida made an example of one of them, smiting his head with the eye of his ax.

With the crew in a more cooperative spirit, the *Louisa* sailed across the Atlantic Ocean. Nine leagues from Corunna on the northwest coast of Spain, Almeida spotted a brig in his telescope with bright white sails. The brig was showing British colors, so Almeida ordered his own British ensign hoisted to the mizzen top as he stalked the vessel. Before long, she was under the *Louisa's* lee beam and within gunshot. Almeida ordered a series of bowchasers from his eighteen-pound gunnades and raised the *Louisa's* true, Buenos Airean colors. The brig had just replaced her union jack with the Royal Spanish flag, but quickly hauled it down, realizing too late who was pursuing her. Captain Almeida hailed the brig in Spanish and discovered immediately upon boarding her that she was an extraordinarily prize.

The brig *Arrogante Barcelones* had just returned from Caracas, with a rich cargo of coffee, indigo, rum, cotton, copper, \$50,000 in cocoa and a quantity of specie rumored to be between \$150,000-200,000. Even the brig itself was impressive, having proved a fast sailor that day. Almeida thus made a fateful decision – one that proved “unfortunate for a great many persons” and “for several nations.”<sup>20</sup> He would sail the *Arrogante Barcelones* and her cargo himself to a prize court on the Venezuelan island of Margaritta, delegating command of the *Louisa* to his first lieutenant, one Mr. Smith. The Venezuelan court was authorized to adjudicate prizes for Buenos Aires, and Almeida sailed the *Arrogante Barcelones* there without incident. Mr. Smith and the *Louisa*, however, met a very different fate.

After Almeida's departure, the disgruntled *Louisa* crew rose up on Lieutenant Smith. Led by the ship's elderly, one-eyed gunner, George Clark, the mutineers locked the officers away in the fore-castle and proceeded on one of the most violent piratical cruises in

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<sup>20</sup> *Letter of Dr. S. M. Doinnet, Surgeon of the Louisa*, published in BALTIMORE PATRIOT & MERCANTILE ADVERTISER, Jan. 23, 1819.

American history. They declared “war with all nations”<sup>21</sup> and plundered British, American, Russian, and French-flagged vessels. They pillaged the isles of May and Bonavista in the Cape Verde archipelago, and murdered many of those who resisted them. The British Navy dispatched the *Lee*, a warship of 22 guns, to bring Almeida in, assuming he was still in command of the *Louisa*. However, acting on orders from President Monroe and with cooperation from Almeida himself, American authorities were the first to hunt down the *Louisa* mutineers. George Clark and a Mr. Henry Wolf, whose confession was included in a popular publication on the piracies, were hanged for their crimes.<sup>22</sup>

The convictions of two other mutineers, David Bowers and Henry Mathews, were appealed to the circuit court in Georgia. That court issued a certificate of division sending the cases to the Supreme Court, where they were consolidated with similar cases under the 1790 Piracy Act. Because Bowers and Mathews were destitute and without counsel, Chief Justice John Marshall was obliged to appoint counsel for them. Thus, in the case of *United States v. Pirates*, the pirates found themselves represented by none other than Daniel Webster. Notwithstanding Webster’s acumen at oral argument, in which he did his best to exploit ambiguities in the Piracy Act,<sup>23</sup> the high court affirmed the convictions and President Monroe promptly authorized their execution.<sup>24</sup>

### THE BRIG ARROGANTE BARCELONES

While the *Louisa* mutineers were terrorizing the Cape Verde Islands, in the autumn of 1818, Almeida was on the island of Margarita arranging for the condemnation, purchase, and commission of the *Arrogante Barcelones*. Like the *Louisa* she would be

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<sup>21</sup> BALTIMORE PATRIOT & MERCANTILE ADVERTISER, Jan. 3, 1820.

<sup>22</sup> FULLERTON, *supra* n. 19.

<sup>23</sup> *U.S. v. Pirates*, 5 Wheat. 184 (1820); MAURICE GLEN BAXTER, DANIEL WEBSTER AND THE SUPREME COURT 41 (1966).

<sup>24</sup> CHARLES WARREN, 2 THE SUPREME COURT IN UNITED STATES HISTORY 40, n. 2 (1823).



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William H. Winder (left), a brigadier general in the War of 1812, represented Almeida in litigation over the *Arrogante Barcelones*. Spain's legal team would eventually include scholar David Hoffman (right), as well as John H. Purviance, a prominent member of the Maryland bar and friend of President James Monroe.

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refitted in Baltimore, and as before, Almeida would enter that port posing as a merchant.<sup>25</sup> This time, though, Almeida's disguise could not shield him from attention. News of the *Arrogante Barcelones* seizure had already reached Don Juan Bautista Bernabeu, the Spanish consul in Baltimore. Once alerted to Almeida's presence, Bernabeu took immediate legal action.

Frustrated by the weak prosecutorial efforts of District Attorney Elias Glenn – a symptom, perhaps, of a city waist-deep in the privateering trade<sup>26</sup> – Bernabeu hired John Purviance, a prominent lawyer and friend of President Monroe, to libel the *Arrogante Barcelones* on behalf of her rightful owners. Purviance would face Judge James Houston, the same judge before whom Glenn had appeared in past Almeida-related litigation, and he would make essentially the same arguments – that the *Louisa* was owned and outfitted in the United

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<sup>25</sup> Almeida renamed the *Arrogante Barcelones* the *Luisa Casares*. However, *Arrogante Barcelones* is used throughout to avoid confusion with the *Louisa*.

<sup>26</sup> See Part I at 322-23.

States to cruise against Spain in violation of the neutrality laws. And again, Almeida's argument, presented by William Winder (a brigadier general during the War of 1812), was that 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. The one new wrinkle in this case was Almeida's claim that he was a bona fide purchaser of the *Arrogante Barcelones*, having acquired her after a lawful condemnation in the Margarita prize court. Where Purviance differed from Glenn was that he did not succumb to the absence of readily available rebuttal evidence when faced with Almeida's flurry of receipts, commissions, condemnations, and other documents contrived in South America. He managed to prolong the proceedings until he could obtain depositions from witnesses like the *Louisa's* Lieutenant Smith.

In the meantime, to Spain's great distress, Almeida was permitted to post a \$9,106 bond to release the *Arrogante Barcelones* from attachment. Within weeks he was ready to set sail with a token cargo of bread cleared with U.S. Customs for shipment to Margarita. When Bernabeu got wind of this, he resorted to District Attorney Glenn who in turn demanded an explanation from Collector of Customs James H. McCulloh. An indignant McCulloh responded that he had kept the *Arrogante Barcelones* "under the constant inspection of an officer," and that "she came here as an armed merchantman, regularly cleared according to the forms of the Spanish authorities from Margarita."<sup>27</sup> Now she was "prepared to sail with the same individual armament she brought in." McCulloh therefore retorted, "if you know of anything in this proceeding forbidden by our laws, I shall be glad to be informed of it that my mistakes may be corrected." In fact, with the *Arrogante Barcelones* out on bail, there was little McCulloh could do to keep Almeida at anchor. There was something Glenn could do, however. He immediately filed a new libel against Almeida's brig, this time attaching her on behalf of the United States for violation of the neutrality laws. Not unlike his

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<sup>27</sup> 1 GENEVA ARBITRATION 496 (1872).

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Spanish adversaries, Almeida had grown weary of the courts, and without the defense and indemnification once provided by the *Congreso's* financiers, he began exploring new remedial options.

One does not typically associate swashbuckling pirates with the lobbying of government officials. Yet, with his brig guarded by a federal marshal and two libels pending against him, that is exactly what Almeida did. He traveled to Washington, D.C. and visited Secretary of the Treasury William Crawford. He tried to persuade Crawford to recommend that Glenn enter a *nolle prosequi* for the U.S. libel against the *Arrogante Barcelones*. It is not clear why Almeida thought the Treasury Department could assist him (perhaps because Almeida had found favor in the past with Collector McCulloh, who reported to Crawford). Still, irregular as Almeida's request was, Crawford did not reject him outright. Instead, he sent Almeida across the street to Secretary of State Adams.

Crawford frequently referred matters touching on foreign affairs to Adams, but in this case one must wonder if Crawford was playing a practical joke. Everyone in the Monroe cabinet knew that Adams detested what he called Baltimore's "piratical privateers," having decried them on many occasions as an "abomination."<sup>28</sup> Now he would find the quintessential Baltimore pirate visiting his office to make a rather impudent request. But Adams did not turn Almeida away either. The two men spoke at length about Almeida's life, his recent exploits, and his legal woes. 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."<sup>29</sup> Adams declined, of course, to recommend the *nolle prosequi*, explaining that he could not take Almeida's version of the facts for granted and interfere with the case. And Almeida accepted this, saying "he must go then as he came," and left "without any appearance of ill humor." As fate would have it, Glenn was forced to withdraw the libel anyway. Judge Houston became gravely ill, de-

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<sup>28</sup> MEMOIRS, at 318.

<sup>29</sup> *Id.* at 377.

laying the proceedings until they were finally discontinued. The *Arrogante Barcelones* was released, and Almeida was finally free to deliver his “cargo of bread.”

Fortune was less kind to Almeida with regard to the libel Bernabeu filed on behalf of the *Arrogante Barcelones*’ original owners. When Judge Houston did not recover, President Monroe appointed Baltimore County Judge Theodorick Bland to replace him on the federal bench. Bland’s appointment was nearly defeated because of his close, highly controversial ties to Baltimore privateering. He was eager, therefore, to prove his judicial independence. With no major merchants backing Almeida’s most recent enterprise, Bland promptly ordered restitution of the *Arrogante Barcelones* to her rightful Spanish owners. The circuit court affirmed and the order was stayed until the final appeal was decided by the Supreme Court in 1822.<sup>30</sup>

Skipping ahead for a moment, the central issue before the Supreme Court was the legal force of the condemnation order Almeida obtained from the Venezuelan prize court. General Winder, representing Almeida, argued that “a sentence of condemnation by a competent Court is conclusive” and, therefore, the Supreme Court was bound to enforce the judgment of the Venezuelan prize court and not inquire “as a neutral tribunal . . . into the previous circumstances under which the capture was made.” This view, however, was effectively rebutted by the counsel for Spain, David Hoffman, future law professor at the University of Maryland (one of the nation’s first law schools) and author of *A Course of Legal Study* (the treatise Joseph Story used as the foundation for his curriculum at Harvard Law School).<sup>31</sup> Hoffman insisted that even if a Venezuelan prize court was competent to condemn Spanish property seized under a Buenos Airean commission, it was impossible to tell from the “uncommonly bald” court order what questions were decided in

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<sup>30</sup> *The Arrogante Barcelones*, 20 U.S. 496 (1822).

<sup>31</sup> DAVID HOFFMAN, *A COURSE OF LEGAL STUDY* (J. Neal 2d ed. 1836); Maxwell Bloomfield, *David Hoffman and the Shaping of a Republican Legal Culture*, 38 MD. L. REV. 673, 686 (1979).

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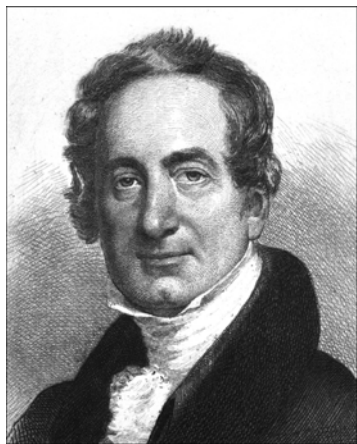
the underlying prize proceeding. According to Hoffman, the real issue was whether “the claimant acquired possession of this property by means unlawful as regards this country.” If, Hoffman posited, Almeida and his collaborators could equip themselves with American arms, ammunition, and crewmen, attack Spanish vessels, and then render their crimes valid simply by obtaining a formal condemnation, “all legislation on the subject of neutrality [would be] but public and solemn mockery.” The Court agreed. In an opinion by Justice William Johnson, the Court announced that Almeida could not “claim a right springing out of his own wrong” – that it was “immaterial through what circuitry of changes [the vessel came] back to him.” A valid condemnation in the hands of a third party would present a very different case. But Almeida’s “touch,” Johnson wrote, “restore[d] the taint from which the condemnation may have purified the prize.”

### THE SCHOONER *ALMEYDA*

The privateer captain George Wilson once bragged that his schooner was so swift the frigates of the “moronic Spanish government” didn’t even bother to chase him anymore – that they “apathetically” stood by as he “took vessels within their sight.”<sup>32</sup> He had been a cunning privateersman during the War of 1812, and subsequently lent his services to Buenos Aires. He took delight in plundering Spanish vessels – an occupation he performed with impudence and bravado. So it was serendipitous that Almeida found this kindred spirit stranded on the island of Margarita in June, 1819 while the *Arrogante Barcelones* case was pending appeal. Wilson’s privateering commission had expired, and his schooner, the *Julia DeForest*, was on the auction block.

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<sup>32</sup> *Jorge Wilson to the Minister of War and Navies of the United Provinces* (October 1817), in Feliciano Gámez Duarte, *El desafío insurgente. Análisis del curso hispanoamericano desde una perspectiva peninsular: 1812-1828* (unpublished doctoral thesis, 2004), [dialnet.unirioja.es/servlet/fichero\\_tesis?articulo=1404456&orden=0](http://dialnet.unirioja.es/servlet/fichero_tesis?articulo=1404456&orden=0).



*Almeida's dispute with Spain over the libel of the Arrogante Barcelones was not resolved until 1822, when the Supreme Court ruled against him. Speaking through Justice William Johnson (left), the Court declared that Almeida could not "claim a right springing out of his own wrong."*

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Almeida and Wilson formed a partnership. The precise terms are not known, but it is clear that Almeida purchased the *Julia De-Forest*, fitted her out for service under the Venezuelan flag, and re-named her the *Almeyda*. The *Arrogante Barcelones* was rechristened the *Wilson* and issued a new commission under the name of Almeida's officer, Ivory Huntress. Wilson would command the *Almeyda*, and Almeida would command the *Wilson*. And if this all sounds very confusing, it was intended to be. Spanish and U.S. authorities were confounded.

The *Wilson* and the *Almeyda* both sailed from Margarita in August, 1819 exposing every vessel on their tack to grave peril. One unfortunate Captain Spilman was sailing with a cargo for Alexandria, Virginia when his schooner, the *Emily*, encountered the brig *Wilson*. Captain Almeida boarded the *Emily* and after he satisfied himself that she was an American vessel, permitted her to proceed. Further en route to Alexandria, a schooner showing 23 long guns persuaded the *Emily* to heave to again. This time it was the *Almeyda*, and Captain Wilson came aboard. He was reportedly quite "civil" to Captain Spilman, but he decided the cargo of sugar, coffee, and hides must be Spanish, so he seized them.<sup>33</sup>

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<sup>33</sup> BALTIMORE PATRIOT & MERCANTILE ADVERTISER, Jan. 3, 1820.

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A far less civil engagement followed when the *Almeyda* fell in with the Spanish king's packet *Leignora del Carmen*, carrying 16 guns and 130 men, including royal soldiers from Vera Cruz. A fire fight ensued that left one of the *Almeyda* crew dead, severely wounded Captain Wilson, and shredded the *Almeyda's* sails and rigging. Wilson had no choice but to retreat to Norfolk, where he could refit and repair. Amazingly, as the *Almeyda* limped towards Virginia, she managed to grab one last prize – the brig *Rayo* with a rich cargo of oil, copal, hides, and callow beans. These were heaped upon the hoard of prize goods in the *Almeyda's* hold for what Wilson hoped would be a lucrative rendezvous in Norfolk with Captain Almeida. But it was not to be.

Shortly after their arrival in Norfolk, Captains Almeida and Wilson were bombarded with lawsuits. Again it was Consul Bernabeu who led the charge. He again hired David Hoffman, who filed libels on November 6, 1819 against the cargo of the brig *Wilson*, the cargo of the schooner *Almeyda*, Captain George Wilson, Captain Joseph Almeida, and Ivory Huntress (who had nominal command of the *Wilson*).<sup>34</sup> The original libel against the *Arrogante Barcelones* was still pending on account of Judge Houston's illness, and in Norfolk the United States brought yet another suit against the brig *Wilson*. Among this raft of charges, the U.S. libel against the *Wilson* was unique because it had nothing to do with Spanish neutrality, and because it raised a then-novel, but now perennial, question of constitutional law.

### THE BRIG WILSON

Every law student begins his or her study of the Commerce Clause with John Marshall's groundbreaking opinion for the Court in the famous steamship case, *Gibbons v. Ogden*.<sup>35</sup> But Marshall's first known opinion on the Commerce Clause was written four years before *Gibbons*, when Almeida appealed the U.S. libel

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<sup>34</sup> Libel, *Bernabeu v. Cargo of the Almeida* and Libel, *Bernabeu v. Cargo of the Wilson* (case files at National Archives, Philadelphia).

<sup>35</sup> 22 U.S. 1 (1824).

against the *Wilson* to the circuit court in Virginia.<sup>36</sup> District Attorney Robert Stannard alleged in the libel that the *Wilson*'s master, Ivory Huntress, had landed in Virginia three crewmen considered "men of colour." A Virginia statute prohibited the importation of free negroes and mulattoes into the state<sup>37</sup> and violation of the state statute was a federal offense under an 1803 act prohibiting the master of any vessel from "import[ing] or bring[ing] ... any negro, mulatto or other person of colour ... into any port ... in any state, which, by law, has prohibited ... [such] importation."<sup>38</sup> Almeida's defense counsel was General Robert Taylor (who had heroically commanded the Virginia Militia during the War of 1812). He argued that the persons of color in question were free crewmen on a foreign vessel – not the illegal "imports" prohibited by law. District Judge Nathaniel Beverley Tucker<sup>39</sup> disagreed, however, and ordered the forfeiture of the *Wilson* and its cargo.

On appeal, Marshall considered the constitutionality of the federal statute. The power of Congress to pass the 1803 Act, Marshall said, was "derived entirely" from the Commerce Clause, but "what," he asked, "is the extent of this power to regulate commerce? Does it not comprehend the navigation of the country? May not the vessels, as well as the articles they bring, be regulated?" Answering these questions in the affirmative, Marshall relied heavily on the Migration and Importation Clause which declares, "the migration or importation of such persons as any of the states, now existing, shall think proper to admit, shall not be prohibited by the

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<sup>36</sup> *The brig Wilson v. United States*, 30 F. Cas. 239 (C.C.D. Va. 1820); CHARLES F. HOBSON, ET AL. ED., 9 THE PAPERS OF JOHN MARSHALL, VOLUME IX 1820-1823, at xvii.

<sup>37</sup> *Act to prevent the migration of free negroes and mulattoes*, 1 REV. CODE VA. 1819 c. 91, §§ 64-66.

<sup>38</sup> *Act to prevent the importation of certain persons into certain states, where, by the laws thereof, their admission is prohibited*, 2 Stat. 205, c. 63 (1803).

<sup>39</sup> Judge Tucker was a secessionist, mentor of Edgar Allan Poe, and "writer of a novel depicting the outbreak of the Civil War twenty-five years before the event." Robert Doares Jr., *The Life and Literature of Nathaniel Beverley Tucker*, available at [www.history.org/Foundation/journal/Autumn01/tucker.cfm](http://www.history.org/Foundation/journal/Autumn01/tucker.cfm).



## Portrait of a Privateer, Pirate & Plaintiff



General Robert B. Taylor (left) represented Almeida in litigation over the brig *Wilson*. Judge Nathaniel Beverley Tucker (right) ruled against Almeida, but his decision was overturned by Chief Justice John Marshall, sitting on circuit.

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congress, prior to the year 1808.”<sup>40</sup> The fact that the framers felt it necessary to limit Congress’s commerce power so that it could not restrict the slave trade prior to 1808 “is certainly evidence,” Marshall argued, that the “power to regulate commerce . . . included the power to prohibit the migration, or importation, of any persons whatever, into the states.”

Having established the constitutionality of the U.S. statute, Marshall determined that the *Wilson*’s crewmen “of colour” did not come ashore in violation of the statute. First, he observed that when mariners disembark “we do not in common language say, that the mariners are ‘imported.’” If a Moorish merchant ship were to call at our ports, Marshall asked, “[w]ould the cruiser be forfeited, should one of the crew come on shore?” Second, the federal statute was not violated because the Virginia statute was not violated: Ship masters who departed with the same free negroes or mulattos whom they brought ashore were expressly exempted, and the *Wilson* was

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<sup>40</sup> U.S. CONST. art. 1, § 9, cl. 1.

libeled before it could depart. Third, even if the *Wilson* had left Norfolk without certain persons of colour, it would not have violated Virginia law because the statute only barred the admission of free negroes and mulattos – not “persons of color,” a class of people differentiated from the others. If the *Wilson* did not violate the Virginia prohibition, Marshall concluded, it did not violate the federal law with which it was coextensive.

In a letter to Justice Joseph Story, Marshall explained why he did not address the constitutionality of the Virginia statute, saying, “I might have considered its constitutionality had I chosen to do so; but it was not absolutely necessary, &, as I am not fond of butting against a wall in sport, I escaped on the construction of the act.”<sup>41</sup> Marshall’s comment is interesting because, by the same token, his construction of the Virginia act provided an equally easy “escape” from consideration of the commerce power.

When District Judge Nathaniel Tucker heard that his decree had been reversed by Chief Justice Marshall, he bitterly noted on his copy of the district court opinion that the brig *Wilson* was now “released & restored” and that “she has since been cruising off our Coast, from Virginia to South Carolina & Georgia, as appears by the papers.”<sup>42</sup> Indeed, once released from federal custody, the brig *Wilson* did not idle at berth. The “papers,” as Tucker noticed, were covering Almeida’s every move now. He had reunited with Captain Wilson, and together in the brig *Wilson* (restyled once again – this time as the brig *Bolivar*) they embarked on a series of shocking endeavors in U.S. waters that produced yet another Supreme Court decision,<sup>43</sup> provoked President Monroe to mobilize his naval forces, and captivated the public with newspaper dispatches published from Savannah, Georgia to Portland, Maine.

*To be continued . . .*

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<sup>41</sup> *John Marshall to Joseph Story* (Sept. 26, 1823), in HOBSON, *supra* n. 36, at 338.

<sup>42</sup> HOBSON, *supra* n. 36, at 338 (citing “Cases in the Courts of the United States, 25 February 1813–November 1824,” No.3, p.134, Tucker-Coleman Papers, College of William & Mary).

<sup>43</sup> *Manro v. Almeida*, 23 U.S. 473 (1825).