

41.13

32 1/4 pds

John F. Kennedy use of
Lemuel Taylor and
John Hollins.

against

The Baltimore Insurance
Company

Transcript

Filed the 18th June 1810

Dec. 1813

Cost \$25.75

Records and proceedings sent

Cap. for atty.

State of Maryland Baltimore County to wit

At a County Court of the Sixth Judicial District of The State of Maryland begun and held at the Court house in the City of Baltimore in and for the County aforesaid on the fourth Monday in March in the year of our lord one thousand eight hundred and Ten

Present

Joseph H Nicholson Esquire Chief Judge

Zebulon Hollingsworth and Thomas Jones Esquires Associate Judges.

William Merryman Esquire Sheriff William Gibson Clerk

Among other were the following proceedings to wit.

John F Kennedy use of Lemuel Taylor and John Hollins.

against

The Baltimore Insurance Company

Be it remembered that heretofore to wit on the first day of October in the year of our Lord one thousand eight hundred and eight John F Kennedy by John Purviance his Attorney sued forth out of the County Court here a summons of The State of Maryland against the Baltimore Insurance Company

directed to the Sheriff of Baltimore County in form following to wit.

State of Maryland To the Sheriff of Baltimore County Greeting We Command you that you summon the Baltimore Insurance Company that they be and appear before the Judges of Baltimore County Court at the Court house in the same County on the first Tuesday in October Instant to answer unto John F Kennedy of a plea of trespass on the case and so forth - Hereof fail not at your Peril and have you then and there this writ Witness Joseph H Nicholson Esq Chief Judge of our said Court the twenty third day of July in the year of our Lord Eighteen hundred and eight

William Gibson Clerk

W.P. Issued first day of October 1808.

At which said first Tuesday in October in the year of our Lord one thousand eight hundred and eight being the day of the return of the aforesaid summons comes into the County Court here the said John F Kennedy by his Attorney aforesaid And the Sheriff of Baltimore County to whom the said summons was in form aforesaid directed to wit John Hunter gentleman likewise comes and makes return thereof to the Court here

thus endorsed to wit

Summoned the President thereof

John Hunter Shff

And the said Baltimore Insurance Company being called appeared in Court here by Walter Corsey their Attorney and pray that the said John F Kennedy may declare against them the said Baltimore Insurance Company in the plea aforesaid - Whereupon it is ruled by the Court here that the said John F Kennedy declare against the said Baltimore Insurance Company in the plea aforesaid and if the said John F Kennedy does not declare against the said Baltimore Insurance Company in the plea aforesaid judgment will be rendered against him by default And the said John F Kennedy by his said Attorney prays leave of the Court here to implead until the fourth Monday in March next to declare against the said Baltimore Insurance Company in the plea aforesaid and he hath it and the same day is given to the said Baltimore Insurance Company also

At which said fourth Monday in March in the year of our Lord one thousand eight hundred and nine until which day the said John F Kennedy had leave to implead and then to declare against the said Baltimore Insurance Company in the plea aforesaid come again into the County Court here as well the said John F Kennedy by his Attorney aforesaid as the said Baltimore Insurance Company by their Attorney aforesaid and the said John F Kennedy by his Attorney aforesaid prays leave of the Court here further to implead until the first Tuesday in October next and then to declare against the said Baltimore Insurance Company in the plea aforesaid and he hath it and the same day is given to the said Baltimore Insurance Company also

At which said first Tuesday in October in the year of our Lord one thousand eight hundred and nine aforesaid until which day the said John F Kennedy had leave to implead and then to declare against the said Baltimore Insurance Company in the plea aforesaid come again into the County Court here as well the said John F Kennedy by his Attorney aforesaid as the said Baltimore Insurance Company by their Attorney aforesaid Thereupon further process of and upon the premises aforesaid between the parties aforesaid by consent of the said parties and their Attornies aforesaid and by order of the Court here thereupon is further continued until the fourth Monday in March next And now at this day to wit the fourth Monday in March in the year of our Lord one thousand eight hundred and Ten come again into the County Court here as well the said John F Kennedy by his Attorney

aforesaid as the said Baltimore Insurance Company by their Attorney
aforesaid - And the said John F. Kennedy by his Attorney aforesaid declares
against the said (Baltimore Insurance Company) in the plea aforesaid
as follows that is to say

Baltimore County 15th (The Baltimore Insurance Company were
summoned to answer unto John F. Kennedy of a plea of trespass on
the case and so forth. And Whereupon the said John F. Kennedy
by John Curvance his Attorney complains that whereas the said
Baltimore Insurance Company on the day of in the
Year of our Lord one thousand eight hundred and eight to wit at
the County aforesaid were indebted unto the said John F. Kennedy
in the sum of Ten Thousand Dollars lawful money of the United States
for money by the said Baltimore Insurance Company before that time
had and received to and for the use of the said John F. Kennedy
and being so indebted the said Baltimore Insurance Company
in consideration thereof afterwards to wit on the day and year aforesaid
at the County aforesaid undertook and then and there faithfully
promised the said John F. Kennedy to pay him the said sum of money
when the said Baltimore Insurance Company should be thereunto
afterwards requested - And whereas the said Baltimore Insurance
Company afterwards to wit on the day and year aforesaid at the County
aforesaid were indebted unto the said John F. Kennedy in another
sum of Ten Thousand Dollars of the like lawful money aforesaid
for money by the said John F. Kennedy before that time lent and
advanced to the said Baltimore Insurance Company and at their
Special instance and request. and being so indebted the said Baltimore
Insurance Company in consideration thereof afterwards to wit on the day
and year aforesaid at the County aforesaid undertook and then and there
faithfully promised the said John F. Kennedy to pay him the said last
mentioned sum of money when the said Baltimore Insurance Company
should be thereunto afterwards requested - And whereas the said Baltimore
Insurance Company afterwards to wit on the day and year aforesaid
at the County aforesaid were indebted unto the said John F. Kennedy
in another sum of ten Thousand Dollars lawful money of the United
States for money by the said John F. Kennedy before then laid out
expended and paid for the said Baltimore Insurance Company and
at their Special Instance and request and being so indebted the said
Baltimore Insurance Company in consideration thereof afterwards to wit
on the day and year aforesaid ^{at the County aforesaid} undertook and then and there faithfully

promised the said John F. Kennedy to pay him the said sum of money
when the said Baltimore Insurance Company should be thereto after-
wards requested. And whereas the said Baltimore Insurance Company
afterwards to wit on the day and year aforesaid at the County aforesaid
accounted together with the said John F. Kennedy of and concerning
divers other sums of money from the said Baltimore Insurance
Company to the said John F. Kennedy before that time due and owing
and then being in arrear and unpaid and upon that account the
said Baltimore Insurance Company were then and there found to
be in arrear and indebted to the said John F. Kennedy in other
sum of Ten Thousand Dollars of like lawful money aforesaid and
being so found in arrear and indebted the said Baltimore Insurance
Company in consideration thereof afterwards to wit on the day and
year aforesaid at the County aforesaid undertook and then and
there faithfully promised the said John F. Kennedy to pay him the
said last mentioned sum of money when the said Baltimore
Insurance Company should be thereto afterwards requested
Yet the said Baltimore Insurance Company (although requested
by the said John F. Kennedy afterwards to wit on the day and year
aforesaid and after afterwards at the County aforesaid have not
yet paid the aforesaid several sums of money or either of them or
any part thereof to the said John F. Kennedy but to pay the same
or any part thereof to the said John F. Kennedy the said Baltimore
Insurance — have hitherto wholly refused and still refuse so
to do to the damage of the said John F. Kennedy Twenty thousand
Dollars of like ^{lawful} money aforesaid and therefore he brings suit and so forth

John Purviance Plaintiff, Atty. pledges of prosecution John Doe &
Richard Roe
Whereupon the said John F. Kennedy by his Attorney aforesaid prays
that the said Baltimore Insurance Company may answer to the
declaration aforesaid of him the said John F. Kennedy in the plea
aforesaid and the said Baltimore Insurance Company by their
Attorney aforesaid as before defends the force and injury when and so
forth and say that they did not assume upon themselves in manner
and form as the aforesaid John F. Kennedy above against them hath
complained and of this they put themselves upon the country and
the said John F. Kennedy in like manner and so forth. Whereupon
for trying the issue aforesaid above joined between the parties aforesaid
it is ordered by the Court here that twenty persons from the panel
of Jurors returned to the Court here by the Sheriff of the County aforesaid
be drawn by ballot according to the Act of Assembly in such Case

made and provided. And Thereupon the said twenty persons being so drawn by ballot and written upon two lists one of which said lists is delivered to the Counsel for each of the respective parties and the counsel for each of the said parties having struck out four persons from the said lists Thereupon the remaining twelve persons being called come to wit James Ellicott, William Reany John Doctol James Taylor, Derrick Keyser, Jesse Tyson, Lewis Foulk, Frederick Schaeffer Randall H. Moale John Ogston Samuel Stump and Daniel Evans who being empannelled affirmed and sworn to say the truth in the premises upon their affirmations or Oaths do say that the said Baltimore Insurance Company did not assume upon themselves in manner and form as the aforesaid John F. Kennedy within against them hath complained - Therefore it is considered by the Court here that the said John F. Kennedy taking nothing by his writ and declaration aforesaid but that he be in mercy H^d for his false clamour and that the said Baltimore Insurance Company go thereof without day H^d And it is also considered by the Court here that the said Baltimore Insurance Company recover against the said John F. Kennedy the Sum of Ten Dollars & Forty three Cents. by the Court here unto the said Baltimore Insurance Company on their apent (as judged) for their costs and charges by them about their defence in this behalf laid out and expended and that they have thereof their Execution against the aforesaid John F. Kennedy and so forth

Memorandum. before the Jurors aforesaid withdrew from the Bar of the Court here the said John F. Kennedy by his Attorney aforesaid tendered to the Court here his Bill of exceptions and which was by the Court here signed and sealed and which is in form following to wit.

John F. Kennedy
against

The Baltimore Insurance Company

At the trial of this cause the plaintiff in order to maintain the issue on his part gave in evidence

that he was the owner of the Ship or Vessel called the Arethusa which he had caused

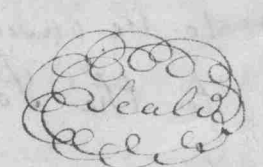
to be insured by the Defendants on a Voyage from the Island of St. Domingo to the Port of Baltimore and that in the prosecution of the said Voyage the said Ship was captured by a British Vessel of War and carried into the Island of Bermuda where on her arrival the said Vessel together with her cargo on board were libelled in the Vice admiralty

Court there established as prize of war that further proceedings thereon took place until the sentence of the said Court was pronounced which liberated the said vessel but condemned the Cargo as lawful prize that an appeal was interposed from the said sentence to the High Court of Appeals in Great Britain by the Captors so far as regarded the restoration of the said vessel (and on behalf of the claimants of the Cargo so far as the said sentence regarded the condemnation of the said Cargo that the said appeals were regularly prosecuted before the said High Court of Appeals (and the said sentence in relation to the said vessel was affirmed (and freight ordered to be paid by the claimant of the Cargo (and that the said sentence of condemnation of the Cargo was reversed (and the same was ordered to be restored to the claimants thereof - The plaintiff further gave in evidence

that Anthony Mangin of the City of London Merchant acted as the agent of the Defendants in attending to the prosecution of appeals before the High Court of Appeals in England and in receiving whatever Sums of Money might be awarded to them in virtue of the decrees or Orders of the said Court

The Plaintiff further gave in evidence that the said Anthony Mangin received from the claimants of the said Cargo the sum of twelve hundred (and thirty pounds Sterling) Money of Great Britain being the amount of freight so awarded in manner aforesaid

The Plaintiff further gave in evidence that immediately after hearing of the capture of the said ^{Ship} Arethusa he abandoned the said Ship to the Defendants (and claimed as for a total loss & which was accordingly paid to him - Whereupon the Counsel for the Defendant - moved the Court to direct the Jury that the plaintiff under the aforesaid evidence could not maintain an action of Indebitatus - Assumpsit against the Defendants as a Corporation which direction the Court gave - Whereupon the ~~counsel~~ plaintiff by his Counsel excepted (and prayed the Court to sign (and seal this his Bill of exceptions which is accordingly done this 24th April 1810 -

J. A. Nicholson. 

And Thereupon the aforesaid John F. Kennedy by his Attorney aforesaid prays an appeal from the Judgment aforesaid so as aforesaid rendered to the High Court of Appeals (and the same

is granted him - It is thereupon ordered by the Court here that
the record (and proceedings in the plea aforesaid with all things
thereunto relating) be transmitted to the high Court of Appeals.
(and the same are transmitted to the high Court of Appeals accordingly
Test Wm Gibson Clk.

In Testimony that the aforesaid is a true copy
taken from the record of proceedings of Baltimore County Court
in the above mentioned cause

I have hereunto set my hand (and
affixed the seal of Baltimore County Court
the fifth day of June in the year of
our Lord one thousand eight hundred and
Ten.

William Gibson Clk of
Baltimore County Court

June 1810 18.

vs. John F. Kennedy use of
Rt. Lemuel Taylor and John Collins

vs

W.D. The Baltimore Insurance Company

Appeal Record
Rule errors
Sub errors, rules
Issues
Alto.

December 1810.. 17

Issues rules arg. and costs.

June 1811 17.

Contd. by consent

December Term 1811. 16.

W. Dorsey, Plaintiff for the Insurance Company
Contd. by consent

May 1812. last Monday ~~27th~~ 25th

Contd.

December 1812. 1st Monday 7th

Contd. by consent

May 1813. 31st

Contd.

December 1813. 6th

Judgment Reversed by the Court with Costs
Proceeds awarded

Judge Nicholson withdraws 16^{as}
Signed 14th Jan'y 1814

Proceedings afo^e to the Clerk of the City Cor^r of Balt^e
with the Court of the State of Maryland of Proceedings
to the said County Court directing them to proceed
in the action afo^e and to a new trial thereof
in the James Mannes as if no trial had taken
place or any appeal had been prosecuted.

The Records of Proceedings afo^e with the said
Court of Proceedings are therefore remitted
to the Clerk of the City Cor^r of ~~Baltimore~~^{Baltimore}, to a
Memorandum. At the argument and decision
of this case in the Cor^r of Appeals the Hon^{ble}
Joseph H. Nicholson Esq^r ^{Judge} withdrew
from the Bench.

Test. W. Harris Clerk

John F. Kennedy
use of Taylor & Hollins
vs J
The Baltimore
Insurance Company
Rgh Off

Maryland &c. At a Court of Appeals of the States of Maryland
one of the United States of America, begun and held
at the City of Annapolis, on the first Monday in
December, being the sixth day of the said month
in the year of our Lord one thousand eight hundred and
thirteen; and in the thirty eighth year of the
Independence of the said United States

Present

The Honble }
} Jeremiah Tomphey Chase Esq. Ch. Judge
} John Buchanan
} Joseph Hopper Nicholas
} Richard Dighe Lewis Carroll } Esqrs Judges
} John Johnson

H. Harris Jewell

In the Records and proceedings of the same
Court among others is the following

John F. Kennedy use of }
Lemuel Taylor and }
John Collier }
against }
The Baltimore }
Insurance Company }
} No it remembered that now
} here on the third Monday in
} June being the eighteenth
} day of the said month
} in the year of our Lord
} 1810, the Chief Judges
} and associate Judges
} of the sixth Judicial

District in pursuance of an act of Assembly
in such case made and provided transmit to
the Court of Appeals here the Record of proceedings
of a plea which was lately depending before them
in the County Court of Baltimore between John
F. Kennedy ^{plaintiff} ~~against~~ ^{and} The Baltimore Insurance Company
Defendants and wherein the said County Court gave

Judgment for the said Baltimore Insurance Company
against the said John F. Kennedy, and from which
said judgment the said John F. Kennedy prayed
an appeal unto the Court of Appeals here the
tenor of which said Record of proceedings is in
form following, to wit:

(Enter County Court Record)

And on this day, to wit, the said third Monday of
June in the year aforesaid, come into the Court
of Appeals here as well the said John F. Kennedy
by John Purviance and Robert Goodloe Harper
his Attornies as the said Baltimore Insurance Company
by Walter Porsey ^{Harper} its attorney: and thereupon ~~the~~
said ~~attorneys~~ on motion of the said ^{Baltimore} ~~attorneys~~
Insurance Company by ^{them} its attorney a^d it is ruled
by the Court here that the said John F. Kennedy
assign the errors in the Record of proceedings
of the Judge a^d brought before the Court here
for the correcting of errors supposed to be therein
or Judgment by the Court here will be entered
against him in default thereof; and the said
John F. Kennedy by his Attornies aforesaid says
that in the Record of proceedings a^d and also in
giving the Judgment a^d there is manifest error
in this to wit, that by the Record of proceedings a^d
it appears that the Judge a^d in the plea a^d
given was given for the said Baltimore Insurance
Company against the said John F. Kennedy whereas
by the law of the land that Judgment ought to
have been given for the said John F. Kennedy
against the said Baltimore Insurance Company

therefore in that there is manifest error and he
prays that the Judgment afd for that error and
others being in the Record & proceedings afd may
be reversed annulled and held entirely void
and that he the said John F. Kennedy may be
restored to all he hath lost by occasion of
the said Judgment. and that the said
Baltimore Insurance Company may rejoin
to the errors afd and so forth. And thereupon
on motion of the said John F. Kennedy by his
attornies afd it is ruled by the Court here that
the said Baltimore Insurance Company
joins in the errors by the said John F.
Kennedy above assigned in the Record
and proceedings of the Judgment afd
or Judgt. by the Court here ^{shall} be
rendered afd ^{Ball^o} and the said Insurance
Company in default thereof. and the
said Baltimore Insurance Company
by ^{their} ~~its~~ said attornies prays a further day in Court
here unto the third Monday in December
next to join in the errors by the said John F.
Kennedy above assigned in the Record and
proceedings afd and the said Company ^{shall} ~~have~~
it; the same day is given to the said
John F. Kennedy, &c.

At which said third Monday in
December being the seventeenth day of the
said month in the year four Last 1810, which
said day was given to the said ^{Baltimore} ~~Company~~ Insurance
Company to join in the errors afd come again

into the Court of Appeals here the parties a^d by their
Attornies a^d; and the said ^{Baltimore} ~~Maryland~~ Insurance
Company by ^{their} ~~its~~ attorney a^d say there is no error in
the Record of proceedings a^d or in the rendition
of the Judge a^d and prays that the Court here
may proceed to the examination as well of the
Records of proceedings a^d as of the matters a^d by
the said John F. Kennedy above for errors
assigned and that the said Judgment may
be in all things affirmed and so forth.
But because the Court here are not
advised to give their Judgment of and upon
the premises a^d day therefore is given
to the parties a^d before the Court here
until the third Monday in June next to
hear their Judgment of and upon the
premises because the Court here thereof
are not advised and so forth.

At which said third Monday in June
being the 17th day of the said month in the
year of our Lord 1811, came again into the
Court of Appeals here the parties a^d by
their Attornies a^d but because the Court
here are not yet advised to give their
Judgment of and upon the premises
day therefore is further given
to the parties a^d with the consent
of the said parties by their attornies a^d
before the Court here until the third
Monday of December next to hear their
(Judgment)

Judgment of and upon the premises because the Court here thereof as yet are not advised H^o

At which said third Monday in December being the 16th day of the said month in the year of our Lord 1811 come again into the Court of Appeals here as well the said John F. Kennedy by his attorneys a^d as the said Baltimore Insurance Company by Walter Dorsey and William Pindley their attorneys; But because the Court here are not yet advised to give their Judgment of and upon the premises day therefore is further given to the parties a^d with the consent of the said parties by their attorneys a^d before the Court here until the last Monday in May next to hear their Judgment of and upon the premises because the Court here thereof as yet are not advised H^o

At which said last Monday in May being the twenty fifth day of the said month in the year of our Lord 1812 come again into the Court of Appeals here the parties a^d by their attorneys a^d Thereupon further process of and upon the premises between the parties a^d is continued in virtue of an act of assembly in such case made and provided until the first Monday in December next, the same day is given to the parties a^d then H^o to hear the Judgment of the Court here of and upon the premises, H^o

At which said first Monday in December being the seventh day of the said month in the year of our Lord 1812 come again into the Court of Appeals here the parties a^d by their attorneys

af.^d; But because the Court here are not yet
advised to give their Judgment af^d and upon the
premises day therefore is further given to the parties
af.^d with the consent of the said parties by their
Attornies af.^d before the Court here until the last
Monday in May next to hear their Judgment of and
upon the premises because the Court here
thereof as yet are not advised, H.C.

At which said last Monday in May
being the 31st day of the said month in the year
of our Lord 1813 come again into the Court of
Appeals here the parties af.^d by their attornies
af.^d Thereupon further process of and upon the
premises between the parties af.^d is ~~continued~~
continued in virtue of an act of assembly in
such case made and provided until the first
Monday in December next, the same day is
given to the parties af.^d then H.C. to hear
the Judgment of the Court here of and upon
the premises, H.C.

And now at this day to wit the first Monday
in December being the sixth day of the said
month in the year of our Lord 1813, come
again into the Court of Appeals here the parties
af.^d by their Attornies af.^d Whereupon
as well the Record and proceedings af.^d
and the Judgment given in favor af.^d as the matters
af.^d by the said John F. Kennedy above for
errors assigned being seen and fully understood
by the Court here and mature deliberation
had thereupon for that it appears to the Court

here that in the Record and proceedings of the
Judge aforesaid as to the opinions of the said County
Court and their direction to the Jury as stated
in the Bill of Exceptions in the Record of
proceedings aforesaid, ~~it~~ it is manifestly
erroneous;—

Therefore it is considered by the Court here
that the Judgment aforesaid in favor aforesaid given
by the said County Court be revoked
annulled and held entirely as void, and
that the said John F. Kennedy be
restored to all things which by
~~reasons~~ reasons of the Judge aforesaid
he hath lost.

It is also considered by the Court
here that the said John F. Kennedy
recover against the said Baltimore Insurance
Company the sum of twenty five Dollars
and seventy five cents current money
for his costs and charges by him laid out and
expended about his prosecution of the said appeal
of and upon the premises; and that the said
said John F. Kennedy have thereof Execution, &c.

And because it clearly appears to the Court
here that justice and the merits of this case
require that there should be a new trial of
the issue aforesaid; Thereupon the Court here
pursuant to the directions of the acts of
assembly in such case made and provided
order and direct a remission of the Record and