Joshua Barney
vs
Samuel Smith
Surviving part of
Samuel & John Smith

BE IT REMEMBERED, That now here on the third Monday in December being the sixteenth day of the said month, in the year of our Lord, one thousand eight hundred and eleven the chief judge and associate judges of the sixth judicial district of Maryland, in pursuance of the 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~~ Samuel Smith ——— plaintiff, and Joshua Barney ——— defendant, and wherein the said county court gave judgment for the said Samuel Smith ——— against the said Joshua Barney ——— and from which said judgment the said Joshua Barney ——— appealed unto the court of appeals here, the tenor of which said record of proceedings is in form following, to wit :

[ENTER RECORD.]

And now come into the Court of Appeals here, as well the said Joshua Barney ——— by Nathaniel Williams and Luther Martin Esquires his attorneys, as the said Samuel Smith by John Purviance Esquire his ——— attorney; and thereupon, on motion of the said Samuel Smith ——— by his attorney, aforesaid, it is ruled by the court here, that the said Joshua Barney ——— assign the errors in the record of proceedings aforesaid, or in the giving the judgment aforesaid, so as aforesaid brought before the Court of Appeals here, for correcting the errors supposed to be therein, or judgment by the Court of Appeals here will be entered against him in default thereof: And the said Joshua Barney ——— by his attorneys aforesaid, says, that in the record of proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in the plea aforesaid given, was given for the said Samuel Smith against the said Joshua Barney when by the law of the land that judgment ought to have been given for the said Joshua Barney ——— against the said Samuel Smith therefore in that there is manifest error; and he prays that the judgment aforesaid for that error, and others, being in the record of proceedings aforesaid, may be reversed, annulled, and held entirely as void, and that he the said Joshua Barney ——— may be restored to all things which he lost by occasion of the said judgment, and that the said Samuel Smith may rejoin to the errors aforesaid, and so forth: And thereupon it is ruled by the Court of Appeals here, that the said Samuel Smith ——— join in the errors by the said Joshua Barney ——— above assigned in the record of proceedings aforesaid, or judgment by the Court of Appeals here will be rendered against him in default thereof. And the said Samuel Smith ——— by his attorney aforesaid, prays that a day may be given to him to join in the errors by the said Joshua Barney ——— above assigned in the record of proceedings aforesaid, until the last Monday in May next; and to him it is granted; the same day is also given to the said Joshua Barney —

At which said last Monday in May — being the twenty fifth day of the said month, in the year of our Lord one thousand eight hundred and twelve which said day was given to the said Samuel Smith — to join in the errors by the said Joshua Barney — above assigned, come again into the Court of Appeals here, the parties aforesaid, by their attornies aforesaid; and the said Samuel Smith — by his attorney aforesaid, says there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid, and he prays that the Court of Appeals here will proceed to the examination as well of the record of proceedings aforesaid, as of the matters aforesaid, by the said Joshua Barney — above, for error assigned, and that the said judgment may be in all things affirmed, and so forth. But because the Court of Appeals here are not advised what judgment to give of and upon the premises, day therefore is given to the parties aforesaid, before the Court of Appeals here, until the first Monday in December next, to hear the judgment of the Court of Appeals here, of and upon the premises, for that the court now here, thereof are not advised, and so forth.

~~At which said first Monday in December, being the seventh day of the said month, in the year of our Lord one thousand eight hundred and come again into the Court of Appeals here, the parties aforesaid, by their attornies aforesaid; thereupon further process of and upon the premises, between the parties aforesaid, is by virtue of an act of assembly in such case made and provided, further continued, before the Court of Appeals here, until the first Monday in December next; the same day is given to the said parties, there then to hear the judgment of the Court of Appeals here, of and upon the said premises, and so forth.~~

At which said first Monday in December being the seventh day of the said month, in the year of our Lord one thousand eight hundred and twelve come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: But because the Court of Appeals here are not yet advised what judgment to give of and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the said parties, by their attornies aforesaid, to come before the Court of Appeals here, on the last Monday in May — next, to hear the judgment of the Court of Appeals here of and upon the premises, for that the court now here as yet are not, &c.

At which said last Monday in May, being the ~~twentieth~~ thirty first day of the said month, in the year of our Lord one thousand eight hundred and thirteen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, is by virtue of an act of assembly in such case made and provided, further continued, before the Court of Appeals here, until the first Monday in December next; the same day is given to the said parties there then to hear the judgment of the Court of Appeals here of and upon the said premises, and so forth.

At which said first Monday in December being the sixth day of the said month, in the year of our Lord one thousand eight hundred and thirteen come again into the Court of Appeals here, ~~the parties aforesaid, by their attornies aforesaid~~: But because the Court of Appeals here are not yet advised what judgment to give in and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the said parties, by their attornies aforesaid, before the Court of Appeals here, until the last Monday in May. next, to hear the judgment of the Court of Appeals here of and upon the premises, for that the court now here as yet are not, &c.

At which said last Monday in May, being the thirtieth day of the said month, in the year of our Lord one thousand eight hundred and fourteen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: Thereupon further process

as well the said Joshua Barney by ~~Luther~~ Luther Martin Nathaniel Williams and John Stephen ~~Esqrs~~ his attorney as the said Samuel Smith by his attorney aforesaid

of and upon the premises aforesaid, between the parties aforesaid, is by virtue of an act of assembly in such case made and provided, further continued, before the Court of Appeals here, until the first Monday in December next; the same day is given to the said parties there then to hear the judgment of the Court of Appeals here of and upon the said premises, and so forth.

(Not to be stricken out)

At which said first Monday in December being the fifth day of the said month, in the year of our Lord one thousand eight hundred and fourteen come again into the Court of Appeals here, ~~the parties aforesaid, by their attornies aforesaid~~: But because ~~the Court of Appeals here~~ are not ~~yet advised what judgment to give~~ of and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the said parties, by their attornies aforesaid, before the Court of Appeals here, until the last Monday in ~~monday~~ May next, to hear the judgment of the Court of Appeals here of and upon the said premises, for that the court now here as yet are not, &c.

And the said Joshua Barney by his attorneys aforesaid say that in the record and proceeds aforesaid ~~and in giving the~~

As well the said Joshua Barney by Luther Martin Nathaniel Williams John Stephen and Walter Dorsey ~~Esquires~~ his attorneys as the said Samuel Smith by Robert Goodloe Harper and John Purviance his attornies and the said Joshua Barney ~~Samuel Smith~~ by his attornies aforesaid suggests to the court of appeals that the record of proceedings aforesaid is deficient in this that is to say (enter suggestions) (in appellate)

At which said last Monday in May, being the twenty ninth day of the said month in the year of our Lord one thousand eight hundred and fifteen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, is by virtue of an act of assembly in such case made and provided, further continued, before the Court of Appeals here, until the first Monday in December next; the same day is given to the said parties there then to hear the judgment of the Court of Appeals here of and upon the said premises, and so forth.

At which said first Monday in December being the [illegible] day of the said month, in [illegible] into the Court of [illegible] the Court of Appeals [illegible] mises, a day th[illegible] parties, by their [illegible] Monday in Ju[illegible] ~~upon the said pre~~[illegible]

At which said second Monday in June being the eighth day of the said month, in the year of our Lord one thousand eight hundred and eighteen into the Court of Appeals here the parties aforesaid, by their attornies aforesaid the Court of Appeals here are not yet advised what judgment to give of and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the parties, by their attornies aforesaid, to come before the Court of Appeals here, until the Monday in December next, to hear the judgment of the Court of Appeals here of and upon the premises, for that the court now here as yet are not, &c.

At which said ~~last~~ first Monday in ~~May~~ December, being the seventh day of the said month, in the year of our Lord one thousand eight hundred and eighteen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, is by virtue of an act of assembly in such case made and provided, further continued, before the Court of Appeals here, until the ~~first~~ second Monday in ~~December~~ June next; the same day is given to the said parties there then to hear the judgment of the Court of Appeals here of and upon the said premises, and so forth.

At which said [illegible] said month, in the year of our Lord one thousand eight hundred and sixteen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: But because the Court of Appeals here are not yet advised what judgment to give of and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the said parties, by their attornies aforesaid, before the Court of Appeals here, until the first Monday in December next, to hear the judgment of the Court of Appeals here of and upon the said premises, for that the court now here as yet are not, &c.

(Not to be left out)

and thereupon the parties aforesaid by their attornies aforesaid file in court here the following agreement to wit (Enter agreement)

At which said ~~last~~ first Monday in ~~May~~ December, being the second day of the said month, in the year of our Lord one thousand eight hundred and sixteen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, is by virtue of an act of

[illegible].

At which said second Monday in June being the eighth day of the said month, in the year of our Lord one thousand eight hundred and eighteen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: But because the Court of Appeals here are not yet advised what judgment to give of and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the said parties, by their attornies aforesaid, to come before the Court of Appeals here, on the first Monday in December next, to hear the judgment of the Court of Appeals here of and upon the premises, for that the court now here as yet are not, &c.

At which said ~~last~~ first Monday in ~~May~~ December, being the seventh day of the said month, in the year of our Lord one thousand eight hundred and eighteen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, is by virtue of an act of assembly in such case made and provided, further continued, before the Court of Appeals here, until the ~~first~~ second Monday in ~~December~~ June next; the same day is given to the said parties there then to hear the judgment of the Court of Appeals here of and upon the said premises, and so forth.

of and upon the premises aforesaid, between the parties aforesaid, is by virtue of an act of assembly in such case made and provided, further continued, before the Court of Appeals here, until the first Monday in December next; the same day is given to the said parties there then to hear the judgment of the Court of Appeals here of and upon the said premises, and so forth.

At which said first Monday in December being the fifth day of the said month, in the year of our Lord one thousand eight hundred and fourteen come again into the Court of Appeals here, ~~the parties aforesaid, by their attornies aforesaid~~: But because the ~~Court of Appeals here~~ are not ~~yet advised what judgment to give~~ of and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the said parties, by their attornies aforesaid, before the Court of Appeals here, until the last Monday in ~~monday~~ May next, to hear the judgment of the Court of Appeals here of and upon the said premises, for that the court now here as yet are not, &c.

(not to be stricken out)

At which said last Monday in May, being the ~~twenty ninth~~ day of the said month in the year of our Lord one thousand eight hundred and fifteen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, is by virtue of an act of assembly in such case made and provided, further continued, before the Court of Appeals here, until the first Monday in December next; the same day is given to the said parties there then to hear the judgment of the Court of Appeals here of and upon the said premises, and so forth.

At which said first Monday in December being the fourth day of the said month, in the year of our Lord one thousand eight hundred and fifteen come again into the Court of Appeals here, the parties aforesaid, by their attornies aforesaid: But because the Court of Appeals here are not yet advised what Judgment to give of and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the said parties, by their attornies aforesaid, before the Court of Appeals here, until the first Monday in June next, to hear the judgment of the Court of Appeals here of and upon the said premises, for that the court now here as yet are not, &c.

At which said ~~last~~ first Monday in ~~May~~ December, being the fourth day of the said month, in the year of our Lord one thousand eight hundred and fifteen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, is by virtue of an act of assembly in such case made and provided, further continued, before the Court of Appeals here, until the first Monday in ~~December~~ June next; the same day is given to the said parties there then to hear the judgment of the Court of Appeals here of and upon the said premises, and so forth.

At which said first Monday in June being the third day of the said month, in the year of our Lord one thousand eight hundred and fifteen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: But because the Court of Appeals here are not yet advised what judgment to give of and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the said parties, by their attornies aforesaid, before the Court of Appeals here, until the first Monday in December next, to hear the judgment of the Court of Appeals here of and upon the said premises, for that the court now here as yet are not, &c.

not to be left out

At which said ~~last~~ first Monday in ~~May~~ December, being the second day of the said month, in the year of our Lord one thousand eight hundred and sixteen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, is by virtue of an act of

And the said Joshua Barney by his attorneys aforesaid say that in the record and proceeds aforesaid ~~and in giving the~~

as well the said Joshua Barney by Luther Martin Nathaniel Williams John Stephen and Walter Dorsey ~~Esquires~~ his attorneys as the said Samuel Smith by Robert Goodloe Harper and John Purviance his attorneys and the said Joshua Barney ~~Samuel Smith~~ by his attorneys aforesaid suggests to the court of appeals that the record of proceedings aforesaid is deficient in this that is to say (setting forth the exceptions by appellee)

and the said Joshua Barney ~~Samuel Smith~~ therefore prays that a writ of diminution be issued to cause to be certified and transmitted to the court of appeals here a full record of the proceedings in the premises and the same is granted by the court of appeals and thereupon a writ of diminution accordingly issues in the words following to wit

(Enter diminution)

the same day is given to the said parties there then and there &c.

and thereupon the parties aforesaid by their attorneys aforesaid file in court here the following agreement to wit

(Enter agreement)

assembly in such case made and provided, further continued, before the Court of Appeals here, until the ~~first~~ second Monday in ~~December~~ June next; the same day is given to the said parties there then to hear the judgment of the Court of Appeals here of and upon the said premises, and so forth.

At which said second Monday in June being the ninth day of the said month, in the year of our Lord one thousand eight hundred and seventeen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: But because the Court of Appeals here are not yet advised what judgment to give of and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the said parties, by their attornies aforesaid, before the Court of Appeals here, until the first Monday in December next, to hear the judgment of the Court of Appeals here of and upon the said premises, for that the court now here as yet are not, &c.

At which said ~~last~~ first Monday in ~~May~~ December, being the first day of the said month, in the year of our Lord one thousand eight hundred and seventeen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid: Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, is by virtue of an act of assembly in such case made and provided, further continued, before the Court of Appeals here, until the ~~first~~ second Monday in ~~December~~ June next; the same day is given to the said parties, there then to hear the judgment of the Court of Appeals here of and upon the said premises, and so forth.

And now at this day, to wit, the said second Monday in June being the fourteenth day of the said month, in the year of our Lord one thousand eight hundred and seventeen come again into the Court of Appeals here the parties aforesaid, by their attornies aforesaid. Whereupon as well the Record and Proceedings aforesaid, and the Judgment given in form aforesaid, as the matters aforesaid by the said Joshua Barney. above for error assigned, being seen, and by the Court of Appeals here fully understood, and mature deliberation thereupon had; for that it appears to the Court of Appeals here that there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid: Therefore it is considered by the Court of Appeals here, that the judgment aforesaid, given in form aforesaid, be in all things affirmed and stand in full force and effect, the said causes for error above assigned and alleged in anywise notwithstanding: And it is further considered by the Court of Appeals here, that the said Samuel Smith have execution against the said Joshua Barney as well for the costs and charges aforesaid adjudged unto him in the said County Court of Baltimore as also the sum of thirty two dollars and thirteen cents adjudged unto the said Samuel Smith by the Court of Appeals here, on his assent for his costs and charges which he hath sustained by occasion of the delay of the execution of the judgment aforesaid, by pretext of the prosecution of the said appeal by the said Joshua Barney of and upon the premises as aforesaid prosecuted, &c.

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said parties
aid premises,

Memorandum at the argument and decision of this case in the court of appeals the Hon Walter Dorsey Judge withdrew from the Bench

Test. Th. Harris clk

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20.76
3.69
1.01⅔
25.46⅔

(87/87)

Joshua Barney

vs

Samuel Smith surviving partner of Samuel and John Smith

Transcript -

Filed Decr term 1811

June 1819

Costs $32.13

Cpd for Atty 86 Sds

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 first Tuesday in October, being the first day of the said month, in the year of our Lord one Thousand eight hundred and Eleven

Present

Joseph H Nicholson, Esquire Chief Judge
Zebulon Hollingsworth Esquire one of the Associate Judges
William Merryman, Esquire Sheriff William Gibson, Clerk

Among other were the following proceedings, to wit,

Samuel Smith Surviving partner of Samuel and John Smith against Joshua Barney

Be it Remembered that heretofore to wit, On the seventeenth day of July in the year of our Lord one Thousand eight hundred and nine, the said Samuel Smith Surviving partner of Samuel Smith and John Smith, by John Purviance his Attorney, prosecuted and sued forth out of the County Court here, the writ of the State of Maryland of Capias ad respondendum directed to the Sheriff of the County aforesaid, in the words and of the tenor following to wit

State of Maryland, To the Sheriff of Baltimore County - Greeting, We Command you that you take Joshua Barney, late of Baltimore County, yeoman, if he shall be found in your Bailiwick, and him so taken you safe keep, so that you have his Body before the Judges of Baltimore County Court, at the Court House, in same County on the first Tuesday in October next to answer unto Samuel Smith of a plea of Trespass on the case and so forth, hereof fail not at your peril, and have you then there this writ, Witness Joseph H Nicholson Esq. chief judge of our said Court the 21st day of June in the year of our Lord eighteen hundred and nine

Issued 17th day of July 1809. Wm Gibson Clk

And the said Samuel Smith by his Attorney aforesaid, on the day of prosecuting and suing forth the writ aforesaid, declared against the said Joshua Barney in the plea aforesaid in manner and form following, to wit, Baltimore County fo. Joshua Barney late of Baltimore County Yeoman was attached to answer unto Samuel Smith in a plea of Trespass on the case and so forth. And whereupon the said Samuel by John Purviance his Attorney, complains that whereas the said Joshua Barney on the first day of August in the year of our Lord one Thousand eight hundred and

six

six, at Baltimore County aforesaid was indebted unto the said Samuel Smith and a certain John Smith in the Life time of the said John Smith (the said Samuel and John being Copartners and joint dealers in Trade and Commerce under the names form and stile of Samuel and John Smith) in the Sum of Eleven Thousand Dollars lawful money of the United States, for money by the said Joshua before that time had and received to and for the use of the said Samuel and John, and being so indebted the said Joshua in consideration thereof afterwards, to wit, on the same day and year aforesaid at the County aforesaid undertook and then and there faithfully promised the said Samuel and John in the life time of the said John to pay them the said Sum of money when the said Joshua should be thereunto afterwards requested ~ And Whereas the said Joshua Barney afterwards to wit, on the day and year aforesaid at the County aforesaid was indebted to the said Samuel and John Smith in the Life time of the said John in other Sum of Eleven Thousand Dollars of like lawful money aforesaid for money by the said Samuel and John Smith before that time laid out expended and paid for the said Joshua and at his Special Instance and request, and being so Indebted, the said Joshua 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 Samuel and John in the Life time of the said John, to pay them the said last mentioned Sum of money when the said Joshua should be thereunto afterwards requested. And whereas the said Joshua afterwards to wit, on the day and year aforesaid at the County aforesaid accounted together with the said Samuel and John in the life time of the said John of and concerning divers other Sums of money from the said Joshua Barney to the said Samuel and John Smith before that time due and owing and then being in arrear and unpaid and upon that account the said Joshua Barney was then and there found to be in arrear and Indebted to the said Samuel and John Smith, in other Sum of Eleven Thousand Dollars of like lawful money aforesaid, and being so found in arrear and Indebted, the said Joshua 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 Samuel and John Smith in the Life time of the said John to pay them the said last mentioned Sum of money when the said Joshua should be thereunto afterwards requested yet the said Joshua, although requested by the said Samuel and John in the life time of the said John, afterwards to wit, on the day and year aforesaid, and by the said Samuel since the death of the said John often afterwards at the County aforesaid hath not yet paid the aforesaid Several sums of money or either of them or any part thereof to the said Samuel and John in the life time of the said John or to the said Samuel since the death of the said John or to either of them: But to pay the same or any part thereof to the said Samuel and John

In

in the life time of the said John, or to the said Samuel since the death of the said John the said Joshua hath hitherto wholly refused and still refuses so to do to the damage of the said Samuel Surviving partner as aforesaid Twenty thousand Dollars lawful money of the United States, and therefore he brings suit and so forth.

John Purviance, Attorney for Plff

A copy of which said Declaration was made and sent with the writ, which issued in the plea aforesaid "To be served on the Defendant."

At which mentioned first Tuesday in October in the year of our Lord one thousand eight hundred and nine, and the day of the return of the aforegoing writ, comes into the County Court here the said Samuel Smith by his Attorney aforesaid and the Sheriff of the County aforesaid, to wit, John Hunter Gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the Court here thus indorsed to wit

Cepi Copy left

John Hunter Shff

And the said Joshua Barney being called appears in Court here by Nathaniel Williams his Attorney, and defends the force and Injury when and so forth and pleads to the declaration of the said Samuel Smith, Surviving partner of Samuel and John Smith as follows, to wit, —

Samuel Smith Surviving partner vs Joshua Barney } Baltimore County ss. And the said Joshua Barney by Nath.l Williams his Attorney comes and defends the wrong and Injury when &c. and saith

that the said Joshua did not undertake or promise in manner & form as the said Samuel Smith Surviving partner as aforesaid hath above complained against him and of this he puts himself upon the Country &c. And the said Joshua with the leave of the Court here first had and obtained according to the form of the Statute in such case made and provided further comes and defends the wrong & Injury when &c. and saith that the said Samuel Surviving partner as aforesaid his action aforesaid against the said Joshua to have or maintain ought not because he saith that the said Joshua did not at any time within three years next before the day of impetrating of the Original writ of the said Samuel in this cause against the said Joshua undertake or promise in manner and form as the said Samuel hath above complained and this the said Joshua is ready to verify wherefore he prays Judgment if the said Samuel ought to have or maintain his aforesaid Action thereof against the said Joshua &c. And for further plea in this behalf the said Joshua by leave of the Court here first had and obtained according to the form of the Statute in such case made and provided, comes and defends the wrong & Injury when &c. and saith, that the said Samuel Surviving partner as aforesaid ought not to have or maintain his Action aforesaid against the said Joshua

because

because he saith that the several causes of action if any he has in the said Declaration of said Samuel mentioned did not nor did either of them accrue to the said Samuel & John in the life time of said John nor since his death to said Samuel at any time within three years next before the day of the impetration of the Original writ of the said Samuel surviving partner as aforesaid and this the said Joshua is ready to verify: wherefore ~~he prays~~ he prays Judgment if the said Samuel his action aforesaid thereof Against the said Joshua to have or maintain ought &c Nathl. Williams, Defs. Atty

Whereupon further process of and upon the premises aforesaid between the parties aforesaid by consent of the said parties and their Attornies and by order of the Court here thereon is continued until the fourth monday in March next

At which said fourth Monday in March in the year of our Lord one Thousand eight hundred and ten comes again into the County Court here as well the said Samuel Smith by his Attorney aforesaid as the said Joshua Barney by Nathaniel Williams and Luther Martin his Attornies whereupon 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 thereon is continued until the first Tuesday in October next

At which said first Tuesday in October in the year last aforesaid comes again into the County Court aforesaid as well the said Samuel Smith by his Attorney aforesaid as the said Joshua Barney by his Attornies last aforesaid, and this cause not being ready for Trial 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 thereon is continued until the fourth monday in March next

At which said fourth monday in March in the year of our Lord one Thousand eight hundred and Eleven comes again into the County Court aforesaid as well the said Samuel Smith by his Attorney aforesaid as the said Joshua Barney by his Attornies aforesaid, whereupon 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 thereon is continued until the first Tuesday in October next

And now at this day to wit the first Tuesday in October in

the

The year last aforesaid comes again into the County Court aforesaid as well the said Samuel Smith by his attorney aforesaid as the said Joshua Barney by his Attornies aforesaid and the said Samuel Smith by his Attorney aforesaid & as to the said plea of the said Joshua Barney by him first above pleaded whereof he hath put himself upon the Country the said Samuel Smith doth the like &c. and as to the said plea of the said Joshua Barney by him secondly above pleaded in Bar the said Samuel Smith says that he by reason of any thing in that plea above alleaged ought not to be barred from having or maintaining his said action against him the said Joshua Barney because he says that the said Joshua did within three years next before the day of impetrating of the Original writ of the said Samuel in this cause against the said Joshua undertake and promise in manner and form as the said Samuel hath above complained against him and this he prays may be enquired of by the Country and the said Joshua Barney doth likewise, and as to the third and last plea of the said Joshua Barney by him above pleaded in Bar the said Samuel Smith says that he by reason of any thing in that plea above alleaged ought not to be precluded from having and maintaining his said action against him the said Joshua Barney because he saith that the said Several causes of action in the said declaration mentioned and each of them did accrue to the said Samuel and John in the life time of the said John and since his death to the said Samuel within three years next before the impetrating and suing forth of the original writ of the said Samuel surviving partner as aforesaid in this cause in manner and form as the said Samuel hath above complained against the said Joshua Barney and this he prays may be enquired of by the Country, and the said Joshua Barney doth likewise, whereupon for trying the issues aforesaid it is ordered by the Court here that Twenty persons from the pannel 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 cases made and provided, and thereupon the twenty persons being so drawn by Ballot and written upon two lists one of which said lists is delivered to the Counsel for the respective parties and the Counsel for each of the said parties having stricken out four persons from the said list thereupon the remaining Twelve being called come to wit

Abraham Worthington, Josias Green, Samuel Owings, Cadwalader Edwards, James Carey, Benjamin Talbott, Benjamin Gatch Richard H. Owen, Christopher Lindenberger, Jeremiah B Howard, Edmond Hocksdale and William Cochran who being empannelled and sworn

or

or affirmed to say the truth in the premises upon their Oath or affirmation do say that the said Joshua Barney did assume upon himself in manner and form as the said Samuel Smith hath within complained against him – The Jurors aforesaid on their Oath or affirmation aforesaid do further say that the said Joshua Barney did within three years next before the day of the impetrating of the Original writ of the said Samuel in this cause against him the said Joshua undertake and promise in manner and form as the said Samuel within by replying hath alledged and the Jurors aforesaid on their oath aforesaid do further say that the said several causes of action in the said declaration mentioned and each of them did accrue to the said Samuel and John in the life time of the said John and since his death to the said Samuel within three years next before the impetrating and suing forth of the Original writ of the said Samuel surviving partner as aforesaid in this cause as the said Samuel within by replying hath alledged and they assess the Damages by reason thereof to the Sum of four Thousand Two hundred and sixty four Dollars and fifty four cents current money – Therefore it is considered by the Court here in virtue of an Authority given them by an Act of the General Assembly begun and held at the City of Annapolis on monday the sixth day of November in the year of our Lord one thousand eight hundred and nine Entitled "an Act concerning the Amendment of Judicial Proceedings," that the said Samuel Smith recover against the said Joshua Barney as well the Sum of Twenty thousand dollars current money as also the sum of Twenty One Dollars and Twenty One Cents – by the Court here unto the said Samuel Smith on his Agent adjudged for his costs and charges by him about his suit in this behalf laid out and expended and the said Joshua Barney in mercy &c –

Judgment was rendered in this cause on the thirtieth day of October in the year of our Lord One thousand eight hundred and eleven for the damages in the Declaration and costs of suit – the said damages to be released on payment of the sum of four thousand two hundred and sixty four dollars and fifty four cents current money with Interest from the thirtieth day of October Eighteen hundred and eleven –

Memorandum before the Jurors aforesaid withdrew from the Bar of the Court here the said Joshua Barney by his Attorney aforesaid tendered to the Court here Two Bills of exceptions which were by the Court here signed and sealed and which are in form following, to wit,

Samuel Smith Survivor of John Smith vs Joshua Barney } Assumpsit

The Plaintiff to support the issue on his part gave in evidence that he together with John Smith deceased

No. 1.

was

was the owner of two American Ships called the Sidney and the Pomona which ships in the year one thousand seven hundred and ninety four were detained in France by the French Government several months, that for the detention of the said Ships the French Government on the application of the Defendant made in the name and on the behalf of the said Samuel ~~and~~ John Smith allowed to the said Samuel and John the sum of thirty nine thousand three hundred and thirty ~~livres~~ lives current money of France which sum the said Government ordered to be included in a General Balance of one hundred and fifty six thousand one hundred and five livres sixteen sous and nine deniers current money aforesaid the residue of which was due to the said Barney on other accounts that for the said General Balance the said Government caused to be issued and delivered to the said Barney a transferable certificate of debt in his own name, which he received and sold at a discount of fifty per cent and converted the money arising from the said sales to his own use, whereupon the Defendant to support the issue on his part produced and read in evidence to the Jury a Letter from the said Samuel Smith to the Honorable Albert Gallatin, Secretary of the Treasury of the United States which here follows in these words and figures —

Dear Sir Baltimore June 20. 1804 —

In a Letter received from you some time past you inclosed a note of Claims substantiated by Capt Barney in the French Bureau and submitted to the American Commissioners the first Item of which to wit, Lt. 156. 105: 16: 9 (you say) is claimed in my name & in the name of other Shippers of Flour under Contract with Fauchet. I owe it to myself to state that I have no claim whatever against the French Nation on that Acct. that I have been fully paid for the contract alluded to & further that I never have authorised any person to claim for me if recovered thereby disclaim every pretention whatever thereto I am Sir

Albert Gallatin Esq.r Washington your Obed.t Serv.t

which said Letter had been furnished to the said Joshua Barney by the said Samuel Smith. and the Plaintiff thereupon in order to explain the said Letter by shewing what was the Tenor of the note therein referred to produced a note or memorandum in his Possession and proved to be in the hand writing of the said Albert Gallatin and offered to read the said note in evidence to the Jury as evidence that it was the note referred to in the said Letter and the note so offered to be read here follows in these words and figures —

Extract from the List of American claims against the French Government" supposed to be proved by the Convention

2.d year Fructidor N.o 40 Joshua Barney Flour delv.d at Bordeaux 156. 105 " 16 - 9

Decree of the 29.th Germenal 10.th year

5 year Floreal 115 Joshua Barney for Bentelou Balance of } 695. 350. 10 - "
Supplies at Cape Francois

do. do. do.

Balance of a Bill from St Domingo 15. 392 — —
6th year Germenal - The Bunglale Joshua Barney freight of a ship 31 . 560 — —
£898. 608 : 6 : 9

But the Defendant by his Counsel objected to the reading of the said Note for the purpose aforesaid which objection the Court overuled and permitted the said Note to be read for the purpose aforesaid which was accordingly done to which opinion and permission the Defendant by his Counsel prayed leave to except and that the Court will sign and seal this his Bill of Exceptions according to the form of the Statute in such case made and provided which is accordingly done this twenty eighth day of October 1811. Joseph H Nicholson (Seal)

Samuel Smith Survivor of John Smith
No. 2. ag.
Joshua Barney

2d/ In the Trial of this cause the Plaintiff in order to support the Issue on his part in addition to the several matters and things stated in the foregoing exception which are hereunto referred to and made part of this exception offered in evidence to the Jury the following award and settlement by the proper Officers of the French Government and a correct transaction of the same which are in the words and figures following to wit. (See the same Annexed to this Record) and further proved that the Ship Sidney and Pomona therein mentioned were the property of the said Samuel Smith and John Smith and that the sum of 21. 850 livres therein mentioned were awarded to the Defendant as agent of the said Samuel & John Smith for demurrage due by the French Republic to them on the Ship Pomona and that the sum of 16. 800. Livres therein mentioned were awarded to the Defendant as the agent of the said Samuel and John Smith for demurrage due by the French Republic to them on the Ship Sidney and further proved that Paul Bentalou as the agent of the said Joshua Barney on the 9th of April 1803. sold the said two claims against the French Government to Robert Fulton at a discount of fifty per cent on the following Terms and Conditions to wit, that the said Robert Fulton should pay to the said Bentalou ten per cent as a deposit on the purchase money and the Balance in 60 & 120 days and should have the power of rescinding the said Contract within thirty days by forfeiting the said deposit and upon this further condition, that the said claims should be rejected by the French Liquidators on revision of the same then and in such case the said Contract to be void and the purchase money refunded by the said Bentalou. and the Plaintiff further proved that the said Robert Fulton did not rescind the said Contract by forfeiting his deposit within the time above mentioned but paid to the said Paul Bentalou the full amount of the purchase within the time so as aforesaid

limited

limited for the payment thereof, and the Plaintiff further read in evidence to the Jury the following Letter from the Plaintiff to the Defendants and the Defendants Answer thereto

Com: Joshua Barney Washington 19th Feby 1805

Sir An examining a list furnished by the Commissioners at Paris to the Department of State I find that an act in your favor originating in the year 2 of the French Republic & had passed the Board & was then before the Minister of France for his Decision before which was known it was deemed improper to carry out the amount, on further enquiry I am informed that one Item of that account is for arbitrage for detention of Ships which brought the flour 14930 Bbls (alluded to in a previous Item) a 8 Q 1130 for Eighty nine thousand four hundred and thirty Livres the Account is dated Paris An: 10 & and signed by you. I presume the Bills will soon begin to arrive from France for such claims. I will therefore be obliged by your forwarding to me a Statement of the proportion due to the Pomona & Sidney which Ships have been employed in carrying that Flour, for their detention so that I may know the precise amount due to Mr S Smith, I observe that an Interest of 6 per Cent will be paid thereon from the 8th Fructidor An 4 — your Answer will greatly oblige yrs &c

Samuel Smith Esqr Baltimore 21 Feby 1805

Sir you wrote on the 29th Novr 1803 on the same Subject as your Letter of 19th Inst: In my answer to your first I gave you every Information I had which Answer you sent forward to your friends at Paris of course must have received a further Statement from them. In answer to your last I have to Inform you that I have never received any Information from my Friends in Paris that any claim of mine had passed the American Board, but on the Contrary that my claims had been rejected by them and I suppose from the Information of some Zealous Partizans in this Country to the Executive who said my claim had been paid and was unfounded & If any claim of mine has been allowed as due in the year Two. no doubt it has been sold previous to the treaty of 1803. as I gave such orders & which I mentioned to you in mine in answer to your Letter of the 29th November 1803. But Sir I had no claim for 8 Q 1130 it was for 156.105.16.9 which sum was mentioned to the Executive by the Commissioners as will fully appear by your Letter to the Secretary of the Treasury dated the 20 January 1804 (a Copy of which I have, and to which I now refer. that letter also explains what claims you can have on the above sum if ever recovered, by me, whenever I receive a full Statement from my Friends in Paris I shall not hesitate to communicate it to any person concerned

and am your Ob: Servt J Barney

And the Defendant thereupon proved that the said French Liquidators in the month of January 1806 upon a revision of the said Claims confirmed the same

and

and further proved that the said claims could not be paid until they had been confirmed by the French Liquidators and the Defendant further proved that the said John Smith died in the month of June Eighteen hundred and five whereupon the Plaintiff produced and offered evidence to the Jury to prove that when he wrote the aforesaid Letter to Albert Gallatin Esq. he was wholly Ignorant that any claim for the Demurrage aforesaid or any part thereof was included in the said Sum of one hundred and fifty six Thousand one hundred and five Livers, sixteen Sols Vnne Deniers mentioned in the aforesaid note - And the Plaintiff also to prove that within three years next before the time of bringing this action the Defendant made anew promise to pay the money so by him received to the use of the Plaintiff. proved in the month of June in the year one Thousand eight hundred and nine there was a suit depending between the Defendant & one John Hollins in the Chancery Court of Maryland in which the said Hollins claimed from the Defendant among other things a certain Sum for the Demurrage of the Ships Adeline and Brig Moggy which had been allowed by the French Government at the same time and in the same manner with the allowance for Demurrage on the Pomona and Sidney and was allowed by the said Hollins to have been received by the Defendant at the same time and in the same manner with the said Demurrage on the Sidney and Pomona, that in the said Suit in Chancery the Plaintiff was examined as a Witness for the said Hollins under a Commission from the Chancery Court to prove the Receipt by the Defendant of the said Demurrage on the Adeline & Moggy That the Defendant being present at the said examination in the month of June 1809. the Plaintiff said to him I suppose you have concluded that I have given up my claim against you meaning as the witness then and ever since believed the claim of Samuel and John Smith for the aforesaid demurrage on the Sidney and Pomona. To which the Defendant without in any manner denying the Debt or refusing to pay it replied No. I suppose you are waiting the result of the suit between Mr. Hollins and me (meaning as the witness understood and believes the claim of the said Hollins for the Demurrage of the Moggy and Adeline aforesaid and also referring as the witness understood and believes to the Question depending between the Defendant and the said Hollins whether the said Hollins should recover from the Defendant the full Sums allowed as aforesaid for Demurrage or the sum only which the Defendant had received from the sale. Whereupon the Plaintiff then said to the Defendant "If you would meet me there could be no difficulty in settling on amicable Terms". To which the Defendant replied "no I have had enough of Arbitrations and now I want Equity, and also for the purpose last aforesaid produced and read in Evidence by the consent of the Defendant a letter to him from the Plaintiff of and concerning the said Demurrage for the Sidney and Pomona which

Letter

bears date on the Twenty fifth Day of January one Thousand eight hundred and nine and here follows in these words and figures

Mr. Joshua Barney — Washington 25th Jany 1809

Sir — In March I mean to make a final Settlement of the affairs of Saml. & John Smith I wd. thank you for your account of Demurrage of their Ships due by the Government of France and which you mentioned to me in the Court House had been settled, & must be paid for — I am Informed of the amount we paid by your Order under the Louisiana Cession but I have no account of the Charges you may have paid thereon nor of the Commissions you are entitled to for your Compensation

I am Sir your Obt. Servt.

And also read in Evidence for the purpose last aforesaid a Letter from the Defendant to the Plaintiff in Answer to the foregoing Letter which answer bears date on the Twenty seventh day of January one Thousand eight hundred and nine which here follows in these words and figures

Samuel Smith Esqr. — Baltimore Jany 27th 1809.

Sir — I have received your Letter of the 25th Inst. in Answer refer you to your Letter of the 20th June 1804 to Mr. Gallatin Secy of the Treasury for any claim you have against me under the Louisiana Treaty of Cession

and am your Obt. Servt. Joshua Barney

And also for the purpose last aforesaid gave in evidence that in the month of March or April in the year one Thousand eight hundred and seven during a Suit between the Defendant and the said Hollins in Baltimore County Court in which the said Hollins claimed from the Defendant by way of Set off the full amount of the sum allowed by the French Government for Demurrage on the Adeline and Moggy as aforesaid. The Defendant did acknowledge and admit that he had received the aforesaid liquedated Certificate for the sum allowed as aforesaid for demurrage including that allowance as aforesaid for the Sidney and Pomerania, and had sold the said Certificate at a discount of fifty per cent as above set forth and had received the purchase money and that the parties respectively intitled to the said Demurrage had aright to receive from him their respective proportions of what he had actually received, but alledged that it was hard for him Hollins to exact from him the full nominal Amount of the said Certificate — Whereupon the Counsel for the Defendant moved the Court to direct the Jury that upon the foregoing evidence if they believed the same the Plaintiff was not entitled to recover which direction the Court refused to give. Whereupon the Defendant by his Counsel excepted and prayed the Court to sign & Seal this his Bill of Exceptions which is accordingly done this 29th Day of October 1811 — Joseph H Nicholson (Seal)

And thereupon the said Joshua Barney by his Attorney aforesaid prays an appeal from the Judgment aforesaid so as aforesaid rendered to the

Court

Court of appeals for the western Shore of Maryland and it is granted him Whereupon the said Joshua Barney by his Attornies aforesaid files in Court here a certain writing Obligatory commonly called an appeal Bond and which is contained in the following words to wit

Know all Men by these presents that we Joshua Barney, William B Barney John Burney and John H Barney all of Baltimore County are held and firmly bound unto Samuel Smith in the just and full Sum of Ten thousand Dollars to be paid to the said Samuel Smith his certain Attorney Executors Administrators or Assigns: To the payment whereof well and truly to be made and done we bind ourselves our Heirs Executors and Administrators jointly and severally firmly by these presents. In Witness whereof we hereunto set our hands and seals this thirty first day of October in the year of our Lord one Thousand eight hundred and Eleven

Whereas the said Samuel Smith did obtain Judgment against the said Joshua Barney for the Sum of four thousand two hundred and Sixty four Dollars fifty four cents Damages as also for Costs of suit in Baltimore County Court at October Term in the year of our Lord one thousand Eight hundred and eleven. And Whereas the said Joshua Barney is about to appeal from the said Judgment to the next Court of Appeals

Now the Condition of the above Obligation is such, "That if the said Joshua Barney shall not pursue the directions of the act of Assembly entitled "an Act for regulating writs of Error and granting appeals from and to the Courts of common Law within this Province" at the next ensuing Court of Appeals which shall be held for the Western shore of Maryland and prosecute the same writ with Effect, and also satisfy and pay to the said Samuel Smith his Executors Administrators or Assigns in case the said Judgment shall be affirmed as well all and singular the Debt Damages and costs adjudged by the County Court aforesaid as also all costs and Damages that shall be awarded by the Court of Appeals aforesaid, then the said Bond to be and remain in full force and virtue otherwise of no effect

Signed sealed and delivered in the presence of

Henry Armstrong

Joshua Barney (Seal)
Wm B Barney (Seal)
John Barney (Seal)
Jno H Barney (Seal)

which

Which being read and heard and the Securities in the said Bond being by the Court here approved. It is Therefore Ordered by the said Court that the Record and proceedings aforesaid in the plea aforesaid with all things thereunto relating be transmitted to the said Court of Appeals, and the same are transmitted to the said Court accordingly

Test William Gibson Clk

The State of Maryland Baltimore County to wit

I do hereby Certify that the aforegoing is a true Copy taken from the record of Proceedings of Baltimore County Court in the aforegoing Cause

In Testimony whereof I have hereto set my hand and affixed the Seal of Baltimore County Court this Tenth day of December Eighteen hundred and Eleven

Wm Gibson Clk of
Baltimore County Court

4me Division
1re Section.

C. Huché
Vérificateur

J. Barney
Créancier.

49

N° 204.

Direction Générale de La Liquidation. —

Le Directeur de la 4me Division, après avoir vû et approuvé le rapport signé du Chef du 1er Bureau de sa division sur la Liquidation de la Créance de — Joshua Barney, Negt Americain pour solde de — fournitures faites en l'an 2 & l'an 3 dans les magasins de la République à Bordeaux, propose le projet d'arrêté suivant. —

Projet d'Arrêté. —

Le conseil General de Liquidation de la Dette publique sur le rapport du Directeur de la 4me Division. —

Vû les pièces jointes au dit rapport au nombre de soixante dix, dont 34 sous la cote A. & 36 sous la Cote B. consistant dans la demande en liquidation du Compte formé par Jmes Swan fondé de pouvoir de Joshua Barney — Compte courant du dit avec l'ancienne commission de Commerce & approvisionnements par lequel, Barney reclame pour solde, une Somme de Deux cens vingt sept mille, deux cens soixante onze livres, treize sols, un Denier. 4 copies de marché pour fourniture de farine. Copie d'un arrêté du Comité de Salut public en date du 27 Vendemiaire an 3. qui autorise la Tresorerie nationale à payer au dit Barney, une Somme de Deux cens mille Livres à compte de Neuf cens trente huit mille cinq cens quatre vingt onze Livres, douze Sols, qui lui sont dues pour versement de 15422 Barils de farine — Jugement du Tribunal du district de Bordeaux qui condamne les Membres du Comité des Neutres à payer à Barney en nature 333 1/3 pièces d'eau de vie. Procès verbal d'estimation des vins à fournir au dit Barney. Estimation des 56 1/2 Tonneaux vin d'Auperie. Certificat de Livraison de 8066 Barils

1 de farine

et 540 Demi-Barils de farine provenant des navires l'Ariadne, la Pomone & l'Harmonie, versés dans les magasins de Bordeaux. Autre pour 1780 quarts et demi de farine de la Nouvelle Angleterre, provenant du Navire l'Apollon, versés dans les magasins de Brest. Autre pour 1487 quarts farine superfine. 62 demi quarts provenant du Navire le Sidney, versés dans les Magasins de L'Orient. Autre pour 1122 quarts & 83 demi quarts farine, provenant du navire le Fame, versés dans les magasins de la Marine à Rochefort. Autre pour 740 quarts provenant du navire le Moggy, versés dans les magasins de Rochefort. Certificat en Langue Anglaise signé de quatre Negociants americains. Copie de Chartes parties passées pour les navires l'ariadne & le Sidney Certificat d'arrivée & du Depart, pour les navires l'Harmonie, La Pomone, l'ariadne, le fame & le Sidney. Copie d'un arreté du comité de Salut Public en date du 12 prairial an 3. lequel ordonne que les reclamations de Joshua Barney pour pilotage des trois navires le Sidney, le fame & le Moggy, ensemble les surestaries de ces trois navires, & celles des navires la Pomone, l'Harmonie & l'ariadne, seront reglés par arbitres respectivement nommés, declaration de Joshua Barney lequel choisit pour son arbitre le Cn Perroten de Nantes, arbitrage revenu par le D. Perroten conjointement avec le Cn Devinck, arbitre pour le Gouvernement lesquels reglent le Pilotage & les surestaries dues à ces 5 navires à 89430 Livres especes. Compte dressé par le Comité des neutres à Bordeaux, duquel il resulte une Balance en faveur de Barney de L 44870. 14. 11
Lettre du même comité aux administrateurs du Departement de la Gironde, concernant le Compte General de Barney avec le Gouvernement français. Demande de Jos. Fenwick ancien Consul americain à Bordeaux, agissant tant en son nom, qu'en celui des anciens membres du Comité des Neutres à Bordeaux, lequel reclame contre Barney une somme de 23669. 2

payable en bon devis, au prix de 1789. soit
£ 42794.15s espèces, suivant accord entre lui
& la ci-devant agence de Bordeaux.
Jugement du Tribunal de Commerce du Dep.t de la
Seine en date du 20 Brumaire an 12 lequel autorise
le Cr. Fenwick à toucher de la Trésorérie nationale
sans les secours ni la presence de Barney la dite
Somme de £ 42794.15s pour la portion à lui
revenant dans la liquidation de J. Barney.
Autre Jugement du Tribunal de 1re instance
du Dep.t de la Seine 3me Section en date du
mercredi 11 Pluviose an 12 lequel donne defaut
contre Barney, & le declare non recevable
dans ses demandes.

Jugement definitif contradictoire rendu
par le Tribunal d'appel, seant à Paris le
28 Germinal an 12 lequel statuant sur l'appel
interjetté par Barney du Jugement rendu par
le Tribunal de Commerce du 24 Brumaire
ordonne que le dit Jugement sortira son plein
et entier effet.

Certificat delivré par les membres de
la Commission americaine, nommée en execu-
tion de la Convention conclue entre la
Republique française, & les Etats unis d'Amé-
rique le 10 floréal an 11. Constatant que
la Créance de Jos.h Barney, pour ce qui lui
reste dû sur les fournitures seulement, doit
être liquidé et payé en Principal & interêts
conformement à la dite Convention. Diverses
notes, Comptes & pièces de Correspondance
relative à la même affaire.

Considérant qu'il resulte des differentes
pièces énoncées ci dessus, que Joshua Barney
est legitime Creancier du Gouvernement français
d'une somme de Cent Cinquante six mille, cent
cinq Livres, seize Sols neuf deniers, numéraire
ci — — — — — — — — — — — — — — £ 156105.16.9

Arrête,

arrete

Art. 1er

La Créance faisant l'objet des pièces & productions sus indiquées est reconnue être de Cent cinquante six mille cent cinq livres, seize sols, neuf deniers en capital. Savoir

Pour solde de la fourniture ci £ 66,675. 16. 9
Pour forfaitaires & indemnités ci 89430. - . -
Somme égale £ 156,105. 16. 9

à quoi ajoutant les Interêts à 6 p°/° de la somme de Soixante six mille six cens soixante quinze livres, seize sols, neuf deniers à compter du 4 Brum.e an 4.e jusqu'au 30 Messidor an 12. ci 34960. 7. 3

total £ 191,066. 4. -

Art. 2.me

Le remboursement de la dite Créance sera opéré conformément aux dispositions de la convention du 10 floréal an 11.

Art 3.e

Les dits remboursements et payement seront faits savoir

La somme de Cent vingt cinq mille huit cens vingt huit livres, deux sols, neuf deniers y compris Douze mille cinq cens vingt livres, un sol, faisant partie de celle de 34960. 7. 3 d'interêts portés en l'article 1.er au Profit de Jos.h Barney, représenté par Jn Swan son fondé de Pouvoir.

Et la somme de Soixante cinq mille deux cens, trente huit livres, un sou trois deniers y compris celle de 22440. 6. 3 faisant le surplus des 34960. 7. 3 d'interêts mentionnés au même article 1.er au profit de Jos. Fenwick demeurant à Paris rue Projettée Choiseul N.o 802, dont il a été reconnu propriétaire par le Jugement du Tribunal d'appel du Dep.t de la Seine en date du 28 Germinal der.r

Faisant toutes les dites sommes, celle totale de Cent quatre vingt onze mille, soixante six livres. quatre sous.

ensemble

Art 4e

Le present arrêté sera inséré au Tableau à presenter, par le Conseiller d'Etat Directeur Général à Sa Majesté Imperiale seant en Conseil d'Etat à la premiere seance du mois prochain.

Signé Moreau. Belaroche. C. Huché

Pour Guillaume.

3 Compre an 12.

Dit.

Le soussigné, Ministre Plenipotentiaire des Etats Unis, certifie que le present ecrit, composé de cinque pages, est une exacte copie de l'original deposé au Tresor public, à Paris; et en vertu duquel la liquidation et le payement ont eu lieu au nom et au profit de M. Joshua Barney, d'après la Convention entre la France et les Etats Unis d'Amerique du 30 Avril 1803.

19 Mars 1807. Paris.

John Armstrong

Nous Soussignés, J.s Devinck Banq.r Neg.t à Paris Boulevard de la Madelaine N.o 243. –

Et Ambroise Perrotin Neg.t de Nantes de present à Paris rue Honoré N.o 1515. Arbitres nommés amiablement, savoir, moi Devinck par le Comm.re des Approvisionnements pour la Republique Française, en Execution de l'arrêté du Comité de Salut Public de la Convention Nationale du 12 Prairial an 3.e Et moi Perrotin par le C. Joshua Barney Neg. Américain, par acte sous son seing du 18 Ventose dernier qui sera joint au present, à l'effet de regler aux termes du dit arrêté, les repétitions du dit C. Barney. –

1.o Pour le Pilotage des Navires le Sidney – la Jama & le Moggy dans leur traversée de Lorient & de Rochefort à Bordeaux.

2.o Pour l'voyages du dit C. Barney de Paris à Bordeaux & retour. –

3.o Pour Surestaries, tant des Navires le Sidney, la Jama & le Moggy: que de ceux l'Ariane, la Pomone & l'Harmonie

Après avoir été saisi de la part du C. Barney des pieces ci après.

1.o D'une Expédition du d'arrêté attestée & signé par le C.n Larochette, Leissien & Dacosta J.ne membres de l'agence des Etats

2.o D'un certificat donné & signé par le Consul à Bordeaux des Etats unis de l'amérique du 24 Nivose an 4.e qui fixe les Epoques de l'arrivée & du Depart des Navires l'Harmonie, la Pomone, l'Ariane la Jama & le Sidney; au pied duquel certificat est une attestation de la vérité du temoignage donné, signé par le C.n

P. Sauvage Courtier patenté à Bordeaux en date du 3 pluviose aussi dernier, l'une & l'autre de ces pièces visées par les autorités Constituées à Bord.x le quatre & Six Pluviose même année.

3.° D'un autre Certificat donné par le C. Desbertrier Receveur aux declarations du Bureau de la Douane de L'Orient en date du 23 Nivose dernier, visé le même jour par le Receveur principal des Douanes du même Bureau, lequel certificat constate que, le C. Jam.s Porter Capn.e du Navire le Sidney a declaré au d.t Bureau le 13 fructidor an 2. Deux mille deux cents Barils de farine venant de Baltimore faisant la totalité de sa Cargaison.

4.° d'un autre certificat donné par le Receveur & Controlleur au Bureau de la Douane de Rochefort en date du 14 fructidor an 3. qui constate que le 11 fructidor de l'an 2. il est entré dans le Port de la Rochelle, le navire la fama de Baltimore Capne. George Stiles chargé de farine, & que le 21 Vend.re an 2. il est entré au même port le navire le Moggy venant de Baltimore aussi chargé de farine.

5.° D'un autre certificat daté à Rochefort le 16 fructidor an 3 donné par le sous chef des Vivres de la marine, & visé par le chef des Vivres qui constate que les Cargaisons en farine des dits navires la fama & le Moggy sont entrées le 18 fructidor an 2 & 26 Vend.re suivant dans les magasins de la République.

6.° De trois actes étant des Chartes parties d'affretement des navires le Sidney, l'ariane & la fama faits par les Capitaines des dits navires avec divers Negociants en date du 19 frimaire, 7 Pluviose & 16 nivose an 3.

7.° Enfin d'une attestation donné par divers Marchands & Capitaines Americains le 7 mars 1796 V.S. certifiée par le Chancelier du Consulat Général à Paris, des Etats Unis de l'Amerique le 21 Ventose an 4.

Nous arbitres après avoir pris respectivement des renseignements sur les faits soumis à notre arbitrage; et après avoir pris les conseils du C. Barthelemi Gramont, Negociant de Bordeaux actuellement à Paris, logé Maison des Landes rue de la Loi, pour nous concilier sur quelques points où nous differons d'avis, nous nous sommes trouvés reunis d'opinion.

En consequence nous avons unanimement fixé ainsi qu'il va être expliqué les repetitions du C. Joshua Barney.

Premierement: Celle pour le Pilotage du navire le Sidney de Lorient à Bordeaux, y compris toutes depenses quelconques à la somme de six cens livres, valeur metallique ci — £ 600.-

Secondement. Celle pour le pilotage des deux navires la Fauna et Moggy de Rochefort à Bordeaux y compris egalement toutes depenses à la somme de trois cens vingt livres valeur metallique ci — 320.-

Troisieme. Celle pour le Voyage du d. Capne Barney de Paris à Bordeaux et retour à la somme de neuf cens soixante livres, y compris tous frais de sejour, et autres aussi valeur metall.que ci — 960.-

£ 1880.-

Tant qu'aux repétitions relatives aux Surestaries des navires le Sidney, l'Ariane, la Fauna, la Pomone l'harmonie, et le Moggy, nous les avons determinés à raison du Tonnelage des navires, et ne les avons calculés que quinze jours après leur arrivée à finir aux epoques donnés, tant par les trois Chartes parties ci devant referés, que par le Certificat du 24 Nivose et 3 Pluviose an 11. aussi sus-mentionnés

En conséquence pour tous frais et droits quelconques nous avons porté les Surestaries aux sommes ci après valeur metallique. Savoir.

1. Pour le navire le Sidney à raison de Cent cinquante livres par jour, à compter depuis le 28 fructidor an 2 jusqu'au 16 Nivose suivant, jour de l'acte de son affretement avec des negociants de Bordeaux ce qui pour 112 jours fait. Seize mille, huit cens Livres, ci — £ 16800

De l'autre part ci — — — — £ 16.800. —

2° Pour le navire l'ariane, à raison de Cent quatre vingt dix livres, par jour à compter depuis le 21 fructidor au 2. quinze jours après son arrivée jusqu'au 19 frimaire jour de l'acte d'affretement du d. navire avec les C.s Toutemoing Chaperon Negociants à Bord.x ce qui pour 92 jours fait Dix sept mille quatre cens quatre vingt Livres ci — 17.480. —

3° Pour le navire la fama à raison de quatre vingt livres, par jour à compter depuis le 26 fructidor au 2. quinze jours après son arrivée, jusqu'au 27 Nivose, jour de l'acte d'affretement avec les C. Sam.l Smith & John Hollins, ce qui fait pour 126 jours Dix mille quatre vingt Livres ci 10,080. —

4° Pour le navire la Pomone, à raison de Cent quatre vingt dix Livres par jour à compter depuis le 9 fructidor au 2. quinze jours après son arrivée, jusqu'au 29 frimaire suivant, jour de son départ suivant le Certificat du Consul à Bordeaux, des Etats unis d'amerique ci-devant mentionné ce qui fait pour 115 jours. Vingt un mille huit cens cinquante Livres ci — 21.850. —

5° Pour le navire l'Harmonie, à raison de Cent cinquante Livres par jour, à compter depuis le 2 fructidor au 2. quinze jours après son arrivée, jusqu'au 29 frimaire suivant jour de son depart suivant même Certificat, ce qui fait pour 122 jours la somme de dix huit mille trois cents Livres. ci — 18.300.

Enfin, pour le navire le moggy à raison de quatre vingt Livres par jour à compter depuis le 6 Brumaire, quinze jours après son arrivée, jusqu'au 14 frimaire suivant ce qui fait pour 38 jours, trois mille quarante Livres, ci — 3,040. —

1. Pour annoncé de son départ.

17.480
21.850
39.330

£ 87,550. —

89/130

Additionnant les sommes par nous fixées au Profit du Cn Barney pour les repetitions mentionnées au dit arrêté du 12 Prairial an 3e elles s'élevent sans erreur à la somme de quatre vingt neuf mille quatre cens trente Livres, valeur metallique.

Tel est notre rapport & avis. Fait à Paris ce 8 fructidor an 4 de la République française une & indivisible, Je avons remis le présent et les pièces au C. Garnier, qui les avont remises au C. Perrotin l'un de nous. Arrêté sous nos seings & celui du C. Gramont. Signé Ambroise Perrotin fils — François Devinck Gramont.

Le Soussigné, Ministre Plenipotentiaire des Etats-Unis, certifie que le present ecrit, composé de cinque pages, est une exacte copie de l'original deposé au Secretariat Public, à Paris; et en vertu dudit la liquidation et le payement ont eu lieu au nom et au profit de M. Joshua Barney, d'après la Convention entre La France et les Etats Unis D'Amerique du 30 avril, 1803.

John Armstrong

19 mars 1807. Paris.

Joshua Barney

v

Saml. Smith

Sugr. Dimn

Filed 21 Decr 1814

John Barney

v.

Samuel Smith
Surviving Partner
of Samuel & John
Smith

The Appellee suggests the following demurrer, and prays the state writ of certiorari to bring up the same. Viz

There is demurrer in this that in one of the Bills of Lenfoir in the record a certain deed in the French language, and a true translation thereof in to english, are recorded

inserted and stated to be correct as facts of the case and are referred to as facts, and that the said transaction is omitted."

Robt. G. Harper
for Appellee.

Joshua Barney

vs } Dim

Saml Smith

Filed 11. June 1816.

Barney
ag^t
Smith.

The Counsel for the Appellant suggests that there is Error in the transcript of the Record in this Cause in this that the translation of the French documents stated in the Bills of Exceptions and Cause is ~~said Record~~, ~~not~~ not transmitted with the record

C W Dorsey.

Agreet.

Barney

v

Smith

Filed 14 June 1816

Samuel Smith

Joshua Barney

vs.

Samuel Smith surviving Partner of Samuel and John Smith

In the court of Appeals.

It is agreed that the papers filed in the Chancery court, in the case of John Hollins against Joshua Barney, and purporting to be true translations of certain papers in the French language, which papers are copies of the original French documents annexed to the record in this case, and referred to therein, shall be and hereby are admitted and received as true ~~copies~~ translations of the original French documents last mentioned, and shall be used as such at the hearing of this cause; and that all objection to the transcript in this case, for or on account of the want of the translations referred to therein, and all claim to any writ of certiorari or demurrer

nation or that account, are hereby warned.

W. Dorsey
for J. Mooney
Rob: G: Walker for
Smith +

Joshua Bainey

vs

Samuel & Jno Smith

Opo. of Judge Johnson

June 1819

Joshua Barney
v.
Samuel R. & Wm Smith

This was an action on the case for money had and received by the defendant below, the appellant, to receive money alleged to have been had and received by the defendant for the use of the plaintiff in which the plaintiffs recovered

The defendant pleaded the general issue, and the act of limitations ~~and to this plea joined issue~~ ~~Two exceptions were taken~~ questions arose on the exception taken to the opinion of the court delivered on the trial of the cause — The first exception was, that the witness relied on, on the part of the ~~plaintiff was not~~ was the witness sufficient to establish the claim on the general issue — In the argument of this cause this exception was not relied on by the appellant and an examination of the proof produced by the plaintiff the court are satisfied that it was

fully adequate to sustain the plaintiffs claim on the general issue, ~~the~~ opinion of the court therefore on the first exception is concerned with

On the second question ~~bill of exceptions~~ the ~~same~~ evidence was relied on on the part of the plaintiff sufficient to take the case out of the operation of the act of limitations — The second question arising on the ~~exceptions~~ case is, whether such declarations or admissions made by the defendant to ~~the plaintiff~~ Samuel and John Smith within three years before a suit brought by them, would if made to Samuel, after the death of John, make Samuel the survivor to recover the partnership debt?

The act of limitations was never intended to prevent the recovery of debts really due, but to protect persons from old claims, when the evidence of their discharge from lapse of time, was supposed to have been lost.

The courts of justice in England
and in Maryland considering, and that
correctly, such to have been the object
of the Statute, have avoided themselves
of any declaration or admission on the
part of debtors, to remove the bar to the
recovery presented by the act of limitations
The decisions of the courts, on the
effect and admission of debtors, made
within the time prescribed by the act
of limitations, that the case was taken
out of the act of limitations, do not go
on the ground of a new cause of action
was thereby created, or that a new promise
was made to pay the old debt.
a promise made within the period
prescribed by the act of limitations, will
authorise a recovery of the original debt,
and in that instance, and in that
alone, would the jury be justified in
finding a verdict for the plaintiff on the
issue joined on the act of limitations
if the position contended for on the part
of the appellant was correct, that it is more

a question of fact than of law, and that therefore a promise made to Samuel Smith, the surviving partner of John Smith, could not support the issue alleging such a promise to have been made to Samuel and John Smith

If nothing but a promise to pay could revive a debt, or remove the act of limitations, then it would seem to follow that such promise must have been made to the plaintiffs themselves, and a promise to one partner after the death of the other would not support the issue on the part of the plaintiff to bar the act of limitations was plead — on the contrary if a promise to pay is not indispensably necessary to support that issue, then may the plaintiff recover, altho the fact of the promise to pay within the prescribed time is not made appear to the jury —

It is most unfortunately established that an acknowledgment of the debt, an offer to come to a settlement, or to refer to arbitration will take the claim out of the act of limitation - Now an acknowledgment of the debt, is not a promise to pay, nor is an offer to come to a settlement, or to refer the matter in contest to referees, a promise to pay the claim, nor can they amount to more than they, and that by implication of law, to pay the sum ~~of~~ proclaimed to be due on the settlement, or the sum awarded - yet all these acts will remove the bar prescribed by the act of limitation; for the admission of the debt, removes all doubts as to its having been discharged, and the offer to come to a settlement or reference, by implicitly admitting the party to be in possession of the evidence & arguments necessary for such adjustments -

But it is contended on the part of the appellant, that before the surviving partner can recover on promises or undertakings made to him, he must plead a special count relying ~~such~~ the promise made to himself —

~~By Laws of Maryland provided to the court of chancery made within promises to testators, and others, acting solely in their representative character can recover a debt, that was barred by the act of limitations~~

It is contended on the part of the appellant, that testators could not recover a debt due to the decedent, relying for such recovery on a promise made to the testator to take it out of the act of limitations without a special count on such promise, and therefore the surviving partner before he can recover must also specially declare on the promise made to him — It appears to me that the decisions made in the case of testators must have been

founded on a supposed necessity for the proof to conform with the issue, to wit, the promise to the decedent — The case before the court is not that of an executor suing to recover a debt due to the testator relying on a promise made to himself, without declaring on it, to avoid the act of limitations — We have seen, that the bar presented by the act of limitations may be removed, without a new promise, and that any declaration made by the defendant, from which it is to be inferred that the demand is just, or that he is in possession of the documents to ~~[illegible]~~ the come to a settlement, are sufficient to remove the act of limitations, ~~[illegible]~~ I am of opinion that the admissions made in the case after the death of John Smith are well suff. on the issue joined on the act of limitations — ~~[illegible]~~

~~[illegible]~~

The award and settlement ~~as~~ referred to in the second bill of exceptions ~~and~~ as annexed to the record and proceedings aforesaid are in ~~form~~ the words following to wit

Mr. Thos. Harris
Clk C. C. Pulaski
Charlotte

Mr. Harris,

Please draw out a bill of costs, and transmit according to Act of Congress, after the record of the case of Joshua Barney

vs.

Saml. Hacker, Sheriff &c

and charge 2/3rds of the costs to John A. Barney & 1/3rd to Saml. Hacker —

Yrs. Nath. Goldsborough

19 Feb. 1820