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Requiem for Harden v. Gordon

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Every admiralty lawyer for the past 200 years has known that sailors are "emphatically the wards of the admiralty." The words come from United States Supreme Court Justice Joseph Story's 1823 opinion in *Harden v. Gordon*.[1] That principle[2] has often affected sailors' rights—for example in the jaundiced view courts take of any release a sailor signs.[3] But last year the Supreme Court signaled the principle's virtual demise, saying that from here on, "the special solicitude to sailors has *only a small role* to play in contemporary maritime law."[4] Before we bury it—and to give it a respectful burial—I aim to describe the people and activity that produced *Harden v. Gordon* some 200 years ago.

Justice Story wrote the *Harden v. Gordon* opinion, but the decision came from the First Circuit, not the Supreme Court. The original report's headnote says that it was the "Fall Circuit," "Maine, October Term, 1823, at Wiscasset [Maine]," and that the Circuit Court was composed of Justice Story and Judge Ashur

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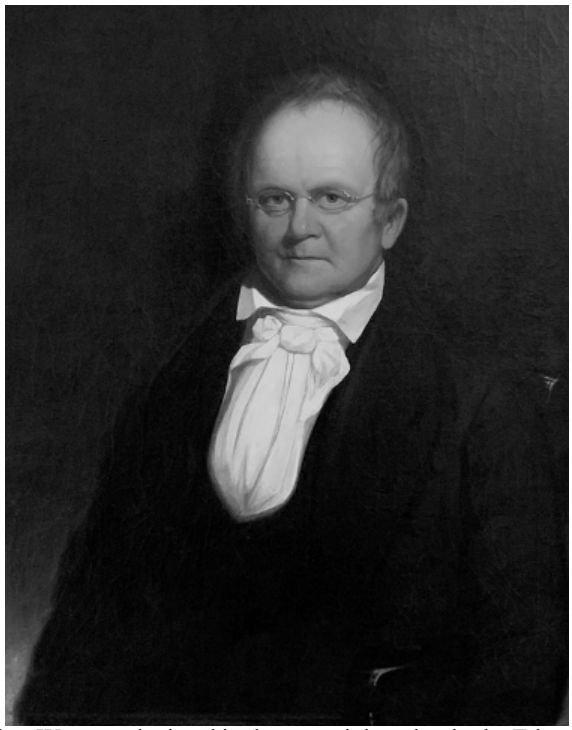
*Senior United States District Judge, District of Maine. Appointed by President G.H.W. Bush in 1990. This article is adapted from a PowerPoint presentation I gave to the Maritime Law Association Board of Directors on August 3, 2018, in Portland Harbor—the port from which the Brig Enterprize sailed in 1820 with mate Harden.

[1]11 F. Cas. 480, 485, 2 Mason 541, 556, 2000 AMC 893, 903 (C.C.D. Me. 1823) (No. 6,047). I primarily use the Federal Cases and American Maritime Cases reporters for my citations to Harden. In a few instances, I rely instead on the Mason reporter, which includes additional reporter's notes not found in the other two.

[2]Maritime law scholars trace the "wards of the admiralty" doctrine to antecedents outside the United States. See, e.g., Martin J. Norris, The Seaman as Ward of the Admiralty, 52 Mich. L. Rev. 479, 480–83 (1954).

[3]See, e.g., id. at 487-88.

[4]The Dutra Group v. Batterton, 139 S. Ct. 2275, 2287, 2019 AMC 1521 (2019) (emphasis added). The Court explained: "while sailors today face hardships not encountered by those who work on land, neither are they as isolated nor as dependent on the master as their predecessors from the age of sail." Id. The principle's new "small role" comes from "these changes and . . . the roles now played by the Judiciary and the political branches in protecting sailors." Id. Legal academics marked the Batterton announcement as "a substantial change for admiralty law." See Gerard Magliocca, Ex-Wards of the Admiralty, PrawfsBlawg (Sept. 28, 2019), https://prawfsblawg.blogs.com/prawfsblawg/2019/09/ex-wards-of-the-admiralty.html.



Judge Ashur Ware, as depicted in the portrait hanging in the Edward T. Gignoux Courthouse in Portland.

Ware.[5] But the opinion tells us nothing about what happened in the district court except in its final sentence, a salve to the district judge being reversed: "In justice to the District Judge it is proper to remark, that the case stands before this court very differently in point of evidence from that which was presented to him."[6]

I am a senior federal judge in the District of Maine, the court where *Harden v. Gordon* originated. One of my predecessors, the eminent admiralty judge Ashur Ware, was the trial judge in the case in 1822. Every morning as I walk down the corridor, the portrait of Judge Ware looks down upon me with a twinkle in his eyes. (See Illustration #1 above). And every day when I enter the courtroom, Judge Ware's bust sculpted by the famous Benjamin Paul Akers

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[5]2 Mason 541, 541. The District of Maine was added to the First Circuit in 1820. Act of March 30, 1820, 3 Stat. 554.

[6]11 F. Cas. at 488, 2000 AMC at 908. New evidence could be presented on appeal. See infra note 21.

peers at me inquisitively. I know he wants me to tell *Harden v. Gordon*'s story before it disappears finally into the mists.

To the facts of the case. In October 1820, sailors William Harden and John Austin (along with others) signed shipping articles in Portland, Maine as mate and ordinary seaman, respectively, to undertake a voyage to and from a market in Guadaloupe,[7] West Indies, on the Brig *Enterprize*. Joshua Gordon was the *Enterprize*'s master and his brother William was its owner. The Gordons agreed to pay Harden $22 per month as mate and Austin $12 per month as ordinary seaman. Carrying fish and potatoes, the *Enterprize* reached Guadaloupe. It successfully returned carrying molasses and fowl,[8] and it discharged seaman Austin in Boston and mate Harden in Portland in mid-February 1821.

But Austin said he had not received his full wages, and Harden said he had incurred expenses for doctors, nurses, and medicines while sick in Guadaloupe. He wanted the *Enterprize* to pay these medical expenses, some of which had been subtracted from his wages. The Gordons refused. So, Harden and Austin filed a libel in admiralty in the District of Maine at Portland on May 20, 1822.

Harden's and Austin's "proctor" was Charles S. Daveis, a well-known Portland lawyer. A classics scholar, he had graduated from Bowdoin College in 1807 and taken a Master's degree in 1810. He read law under Nicholas Emery in Portland and was admitted to the bar in 1810. According to an 1863 observer, Daveis was "[a]mong the best read and most highly cultivated lawyers in Maine" and "a leader in the admiralty and equity practice of the United States courts."[9]

The *Enterprize* owners engaged as their proctor Steven Longfellow, (See Illustration #2 below), father of the poet Henry Wadsworth Longfellow. Stephen Longfellow graduated from Harvard College in 1798, the same class as Justice Story. He read law in Portland under Salmon Chase,[10] and was considered an able advocate of the day. He was elected to Congress in 1822 for one term.[11]

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[7]I use the spellings from the opinion.

[8]I infer its cargoes from trial exhibits that mention these items.

[9]WILLIAM WILLIS, A HISTORY OF THE LAW, THE COURTS, AND THE LAWYERS OF MAINE, 577 (1863). Sadly, I have found no image of Daveis.

[10]Originally from New Hampshire and uncle of the future Supreme Court Chief Justice Salmon P. Chase. See id. at 137-38.

[11]See generally id. at 360-68 for an account of Longfellow.

Steven Longfellow, proctor for the Enterprize's owner and master. Willis, supra note 9, between 360 & 361.

At the time of the lawsuit, the Portland trial bar was small and collegial. Nineteenth century Maine legal historian William Willis recounts a humorous episode involving Longfellow and Daveis:

> Mr. Longfellow, when opposed by a remark or statement from the court, adverse to the position he was arguing, would [frequently] attempt to parry its force, by admitting the principle as stated by the court, and saying, "*But*, your Honors, *there is this distinction* between the case you state and the one before us." This often occasioned a laugh at the bar, and once when a dull argument was going on by a prosy member, the idlers busied themselves writing epitaphs on one another. Mr. Daveis, prompt on such occasions, thus hit Mr. Longfellow's peculiarity:
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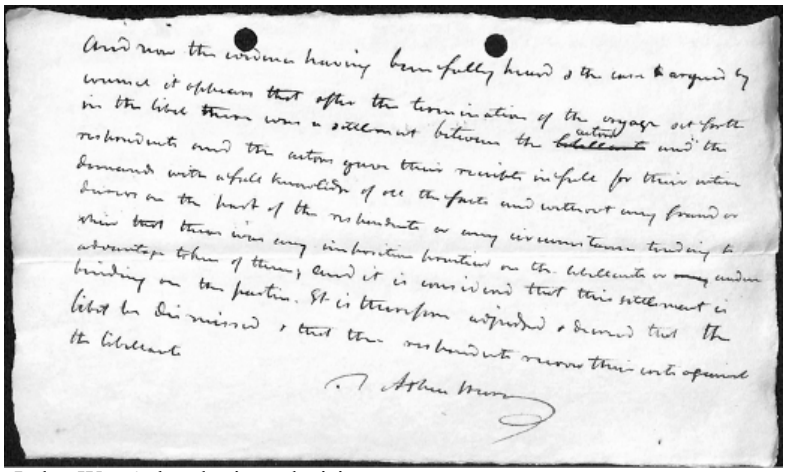
> > "Here repose
> > The mortal remains of Stephen Longfellow:
> > born _____, died ____
> > *But there is this distinction*,
> > That such a man never dies."[12]

[12]Id. at 583–84 (emphasis added).



And now the evidence having been fully heard & the cause argued by counsel it appears that after the termination of the voyage set forth in the libel there was a settlement between the actors and the respondents and the actors gave their receipts in full for their entire demand with a full knowledge of all the facts and without any fraud or duress on the part of the respondents or any circumstances tending to show that there was any imposition practiced on the libellants or undue advantage taken of them; and it is considered

Judge Ware's handwritten decision.

Daveis and Longfellow tried their case in Judge Ware's court in Portland in December 1822, before Longfellow's congressional duties began in 1823.[13] Ware, just 40 years old, had become a federal judge only months earlier in February.

Judge Ware issued a handwritten decision at the close of the trial. (See Illustration #3 above). It took some sleuthing to find it, because it is not included in any of the reports, not even in the reports devoted to Judge Ware.[14] Ultimately one of my law clerks uncovered it in the National Archives Waltham annex several years ago. Judge Ware wrote:

> And now the evidence having been fully heard and the cause argued by counsel it appears that after the termination of the voyage set forth in the libel there was a settlement between the actors and the respondents and the actors gave their receipts in full for their entire demand with a full knowledge of all the facts and without any fraud or duress on the part of the respondents or any circumstances tending to show that there was any imposition practiced on the libellants or undue advantage taken of them; and it is considered

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[13]See Longfellow, Stephen (1775-1849), BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, https://bioguideretro.congress.gov/Home/MemberDetails?memIndex=L000430.

[14]Judge Ware's decisions were collected in a two-volume set of reports, covering cases from 1822 to 1849; the first volume was edited by the judge himself. WILLIS, supra note 9, at 71; see, e.g., The Nimrod, 18 F. Cas. 250, 1 Ware 1 (D. Me. 1822).

> that this settlement is binding on the parties. It is therefore adjudged and ordered that the libel be dismissed and that the respondents recover their costs against the libellants.

In other words, Judge Ware did not deal with the merits of the dispute because he found that after the voyage the parties had settled their disagreements.

Accordingly, Judge Ware ordered that the libel be dismissed and that the Gordons recover their costs. Proctor Daveis "on the same day" took an appeal "to the Circuit Court of the United States for the First Circuit next to be holden at Portland within and for the Maine District on the eighth day of May next." As it turned out, the appeal was heard not in Portland as initially expected, but in Wiscasset at Wiscasset Hall during the October term of the circuit.

The Circuit Courts in 1823 were quite unlike what we are accustomed to today. They did not have incumbent judges but instead were composed of one Supreme Court Justice and one district judge for each case.[15] Joseph Story was the Supreme Court Justice assigned to Maine in the First Circuit. Story, from Marblehead, Massachusetts, had been appointed to the Supreme Court in 1812 at age 32, still today the youngest appointment ever. (See Illustration #4 below). He succeeded Justice William Cushing, who had practiced law in Pownalborough, Maine and had been Lincoln County's first Probate Judge.[16] Story was familiar to Maine lawyers. For example, he charged the first circuit court grand jury in Portland after Maine became a state (1820), delivering a stirring oration that the slave trade "is still carried on with all the implacable ferocity and insatiable rapacity of former times," that "American citizens are steeped up to their very mouths . . . in this stream of iniquity," and that New England is a part of it.[17] In 1823, the year of his *Harden v. Gordon* decision, Story turned 44.

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[15]Act of March 2, 1793, § 1, 1 Stat. 333.

[16]Hornby, Chief Justices of the United States in Maine, 19 Green Bag 2d 241, 242 (2016).

[17]THE MISCELLANEOUS WRITINGS OF JOSEPH STORY 140 (William Story ed., 1852). Justices "utilized charges to the grand juries as opportunities for popular education." Felix Frankfurter & James M. Landis, The Business of the Supreme Court of the United States—A Study in the Federal Judicial System, 38 Harv. L. Rev. 1005, 1024 (1925).

Associate Justice Joseph Story in 1819, four years before he decided Harden v. Gordon. Portrait of Joseph Story (1819) (Harvard Law School Library Legal Portrait Collection), http://library.law.harvard.edu/suites/story/result_single.php?pid=3946.

On Harden's appeal,[18] Story and Ware together served as the Circuit Court to hear the case. Ware wrote nothing. Under the Judiciary Act, the district judge whose decision was on appeal could not vote on the outcome, but could only "assign the reasons" for the decision he had rendered.[19] The Reporter, William Powell Mason, says that "[t]he case was argued at great length, and with great ability" by Daveis and Longfellow, but he omitted their arguments "in consequence of a want of room."[20] So we cannot determine how much of what Story ultimately wrote was suggested by the proctors.

At the time, the circuit courts decided admiralty appeals *de novo*.[21] Story reversed Ware, based on what apparently was new

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[18]Proctor Daveis signed a document entitled "Circuit Court of the United States-Maine [?] May Term-AD.1823" stating that "And now the said John Austin otherwise called John Tandy discontinues his suit under the said libel."

[19]Act of Sept. 24, 1789, § 4, 1 Stat. 73.

[20]2 Mason at 542.

[21]See, e.g., The Marianna Flora, 24 U.S. 1, 18 (1825) (Story, J.) ("It is the common usage, and admitted doctrine of [appellate Courts of admiralty] to permit the parties, upon the appeal, to introduce new allegations, and new proofs. . . ."); Anonymous, 1 F.

evidence. He found that the receipt Harden signed after the voyage was not enough to amount to a settlement or release.[22] On the merits of the dispute, Story ruled that a seaman could enforce in admiralty his claim for medical expenses as part of his contract for wages, just as he could enforce a claim for subsistence while in port, because the services are maritime.[23] Next, Story held that under maritime law the ship is responsible for the expenses of sick seamen, citing the laws of France, Denmark, Sweden, the Hanse Towns, Prussia, Holland and the Italian states as well as the ancient laws of Wisbuy and Oleron.[24] Once Story had disposed of Harden's "release," the precedents easily supported those two points on the merits.

But proctor Longfellow claimed the Gordons had a contractual defense. For the *Enterprize*'s voyage to Guadaloupe, the Gordons had added an extra clause to the printed shipping articles to which the crew members agreed. According to Story: "The clause alluded to appears from the record before the court to be an addition inserted in writing, at the very close of the printed instrument, after the usual in testimonium clause. It is in these words: 'We [the crew members] further agree and bind ourselves to pay for all medicines and medical aid, further than the [ship's] medicine chest affords.'"[25] (See Illustration #5 below). Story flatly rejected the clause's enforceability, stating:

> It is well known, that the shipping paper is always in the possession of the master or owner; and considering the class of persons, whom it respects, and whose rights it controls, it is not too much to expect, that a very material variance from the common articles should be proved by the most satisfactory evidence to have been fully

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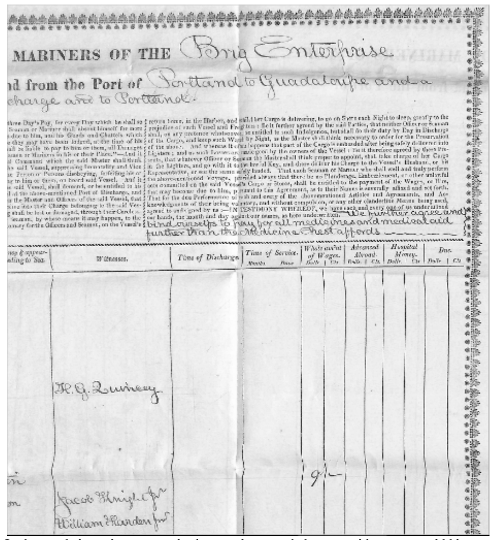
Cas. 996, 997–98 (C.C.D. Mass. 1812) (No. 444) (Story, J.) ("[N]o principle is more exactly settled, than that upon an appeal in an admiralty cause, it is allowable, under certain restrictions, to allege what has not been before alleged, and to prove what has not been before proved.").

[22]"As a receipt, or as a stated account, it presents no bar whatsoever to the controverted claims; and if a final settlement of these claims is to be established upon evidence aliunde, that evidence has not as yet been produced. On the other hand, such a settlement is utterly denied by the oath of the libellant, and that oath is supported by the exception of errors on the settled account. This point of defence may then be dismissed without farther comment, as sustained neither *de facto*, nor *de jure*." Harden, 11 F. Cas. at 488, 2000 AMC at 908.

[23]11 F. Cas. at 482, 2000 AMC at 897.

[24]11 F. Cas. at 482–83, 2000 AMC at 898.

[25]11 F. Cas. at 485, 2000 AMC at 903.



An excerpt of the shipping articles signed by sailors William Harden and John Austin, showing the handwritten insertion.

> explained to the seamen before it should bind them. Every court should watch with jealousy an encroachment upon the rights of seamen, because they are unprotected and need counsel; because they are thoughtless and require indulgence; because they are credulous and complying; and are easily overreached.[26]

Then Story wrote the words so often quoted over the next two centuries[27] and now reduced by *Batterton* to "only a small role":

> [C]ourts of maritime law have been in the constant habit of extending towards [seamen] a peculiar, protecting favour and guardianship. *They are emphatically the wards of the admiralty*; and though not technically incapable of entering into a valid contract, they are treated in the same manner, as courts of equity are accustomed to treat young heirs, dealing with their expectancies,

[26] Id.

[27] A recent search of Westlaw for "wards of the admiralty" and similar variations identified more than 600 state and federal court decisions that used the phrase.

> wards with their guardians, and cestuis que trust with their trustees.[28]

As a result, Story concluded, the handwritten addition to the shipping articles that Harden signed gave the Gordons no defense. Harden obtained judgment against them for the princely sum of $52.62, and his costs.

There endeth the lesson of Harden v. Gordon.[29]

THE DENOUEMENT

The District of Maine had an active admiralty docket and after *Harden v. Gordon*, Ashur Ware went on to have a distinguished

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[28]11 F. Cas. at 485, 2000 AMC at 903 (emphasis added). Story did struggle with whether the navigation acts had supplanted the judicially-developed maritime law:

> The act of congress for the government and regulation of seamen in the merchants' service provides, that American vessels of a certain burthen and crew, bound on foreign voyages, 'shall be provided with a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering the same; and the said medicines shall be examined by the same or some other apothecary once at least in every year, and supplied with fresh medicine in the place of such as shall have been used or spoiled; and *in default of having such medicine chest* so provided and kept fit for use, *the master or commander of such ship or vessel shall provide for and pay for all such advice, medicine, or attendance of physicians*, as any of the crew shall stand in need of, in case of sickness, at every port or place, where the ship or vessel may touch or trade at during the voyage, without any deduction from the wages of such sick seaman or mariner.' Act July 20, 1790, c. 29, § 8 . . . *The argument of the counsel of the respondent is, that these acts create a virtual repeal of the general charge in all cases, in which the medicine chest is duly furnished.*

11 F. Cas. at 483–84, 2000 AMC at 900 (emphasis added). The Gordons introduced evidence that the Enterprize carried such a medicine chest. Story concluded, however, that the legislation added to, and did not supplant, the maritime law. 11 F. Cas. at 484–85, 2000 AMC at 900–02. It appears that nineteenth century Justices, unlike today's Justices, were less diffident of their admiralty lawmaking role.

[29]The importance of the case was immediately recognized. According to Reporter Mason,

> This case would have appeared, in its proper order, in the next volume of the Reports, but the importance of the decision to a large class of our citizens, and its novelty, seemed to require, that it should not be withheld from the public, until another volume might be complete. It is therefore inserted here in the room of a case belonging to the Rhode-Island June Term, 1822.

2 Mason 563.

career in admiralty cases. He also unfortunately saw his judicial chambers destroyed twice by fire, once in 1854 and again in 1866.[30] In 1837, Ware wrote a significant opinion in *Polydore v. Prince* holding that a slave brought into the jurisdiction of Maine on a ship from Guadaloupe lost his status as slave and could sue in his own right.[31] Chief Justice Taney conveniently overlooked the *Polydore* decision in *Dred Scott* when he said that blacks had never had the right to sue in federal court.[32]

Ware and Story disagreed on more than one occasion. For example, in *Veazie v. Wadleigh,*[33] they constituted the circuit court in a Maine case argued by Daniel Webster (later Secretary of State twice) and William Pitt Fessenden (later Secretary of the Treasury during the Civil War).[34] Because Ware and Story couldn't agree, the case was certified to the Supreme Court.[35] There, Story wrote the 1837 Supreme Court opinion dismissing the case over Webster's objection. In a later Maine auction fraud dispute in the circuit court in 1845, Story—who died just a few months after his opinion—declined to grant relief to Webster's client.[36] Ware wrote a lengthy dissent, quoting several times from Story's other writings.[37] In the Supreme Court, Webster now joined by Fessenden asked the Court to reverse Story. It did so in 1850 over three dissents, thereby vindicating Ware.[38] According to Clerk of Court John Mussey: "although no jurist ever existed whose opinion was, with Judge Ware, of so high authority as that of Judge Story, he felt obliged to prepare a dissenting judgment, which upon appeal to the supreme court received the sanction and approval of that tribunal."[39]

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[30]ROBERT K. SLOANE, THE COURTHOUSES OF MAINE 241–43 (1998).

[31]Polydore v. Prince, 19 F. Cas. 950, 955–56 (D. Me. 1837).

[32]Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 404-05, 416-17; see generally PAUL FINKELMAN, AN IMPERFECT UNION: SLAVERY, FEDERALISM, AND COMITY 243–45 (1981).

[33]Veazie v. Wadleigh, 36 U.S. 55 (1837).

[34]JOHN A. POOR, MEMOIR OF HON. REUEL WILLIAMS 39 (1864).

[35]See Act of April 29, 1802, § 6, 2 Stat. 156 (when the circuit court judges disagreed, the question would be certified to the Supreme Court upon request of either party).

[36]Veazie v. Williams, 28 F. Cas. 1124 (C.C.D. Me. 1845) (No. 16,907).

[37]Id. at 1131-35.

[38]Veazie v. Williams, 49 U.S. 134 (1850).

[39]30 Fed. Cas. 1356. These "Resolutions and Other Proceedings Upon the Retirement of Federal Judges" were published in the print version of the Federal Cases

But Ware was faithful in applying Story's *Harden v. Gordon* principle that seamen are wards of the admiralty. At Judge Ware's retirement in 1866 after 44 years as a district judge, a resolution from the Portland bar said:

> The sailor, the proper ward of the admiralty, has found in the humane patience, with which you have listened to the recital of his wrongs, his beatings, his tyings-up, his privations of food and wages, that your guardianship was something more than a maxim.[40]

At Ware's death in 1873, age 91, the encomiums were even more generous. One speaker reported that Justice Story had said "that he regarded Judge Ware as one of the ablest and most learned, if not the ablest and most learned of the then living admiralty lawyers."[41] Clerk Mussey observed:

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reporter available here: https://books.google.com/books?id=HGJQAQAAMAAJ&pg=RA1-PA1349&lpg=RA1-PA1349&dq. To distinguish them from the portions of the Federal Cases that Westlaw and LexisNexis make available, I cite them as "Fed. Cas." rather than "F. Cas."

[40]30 Fed. Cas. 1350. Clerk Mussey said: "on one occasion I remember . . . he having become satisfied that [his rulings or jury instructions] were erroneous, whilst his associate [on the Circuit] was of opinion that they were strictly correct, his honesty of purpose leading him to insist on his ultimate opinion and for the reversal of his rulings at nisi prius . . . ." 30 Fed. Cas. 1356. It is tempting to wonder if that could have been Harden v. Gordon. As Norris, supra note 2, at 486 n.36 points out, in a case before Harden v. Gordon, Ware had shown a concern for seamen similar to Story's. Ware wrote:

> [S]ailors, from the nature of their employment, acquire habits that are somewhat peculiar. Their occupation exposes them to hardships and privations, and accustoms them to dangers; and while it trains them up to habits of intrepid courage, generates also those faults of character which are apt to be associated with fearlessness of personal danger in minds somewhat rude and undisciplined by education, roughness and impetuosity of manners, and hasty and choleric tempers. We must take them as they are, and compound for their bad by their good qualities.

The Nimrod, 18 F. Cas. 250, 253 (D. Me. 1822).

[41]30 Fed. Cas. 1353. At the time, not all district judges received such respect. Jeremiah Mason, formerly a Senator from New Hampshire, wrote Daniel Webster on December 29, 1823: "I make no account of the district judges. When brought to act in matters of serious importance, as members of the circuit court, none of them, as far as I know, have been, or are of any value. Out of their own district courts they do nothing." Frankfurter & Landis, supra note 17, at 1022 n.49 (quoting MEMOIRS OF JEREMIAH MASON 279 (George Stillman Hillard ed. 1873)). Senator Isham Talbot of Kentucky said

> In 1822, . . . Judge Ware, in almost every question of admiralty and maritime law, was compelled to depend on his own researches into the ancient laws of the sea and maritime codes, and his own wisdom and judgment, for his conclusions, as the cases were presented before him for decision.[42]

United States Attorney George F. Talbot emphasized how the changing nature of commerce had required modification of whatever precedents there were:

> At the time Judge Ware took his place upon the bench, the English precedents in admiralty were rare, and only partially applicable to this country, where we had given our admiralty courts a more liberal jurisdiction; and as to the precedents of other countries and treatises, though the work of men of great genius and learning, it must be remembered how soon they would become obsolete, by the expansion and transformation of commerce, through the discovery of new countries, the production of new materials, the invention of more powerful forces of propulsion, and the new commercial usages which would grow out of more frequent and rapid commercial intercommunication.[43]

In other words, American admiralty law was ripe for a judge to develop, and Ashur Ware did not disappoint. One hundred years ago, on Maine's statehood centennial, District of Maine Judge Clarence Hale declared that Ware had "contributed more than any other American judge, yes, perhaps even more than Story,—to make Admiralty law a science."[44]

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in the Senate in 1824: "The salaries that had been given to them had not always brought men of the first legal talents into the office of district judge." Id. (quoting 41 Ann. Cong. 575-576).

[42]30 Fed. Cas. 1355.

[43]30 Fed. Cas. 1352.

[44]Clarence Hale, A Century of the Federal Courts in Maine, in 22 Maine State Bar Ass'n, The First Century of the Bench and Bar of Maine, 1820-1920, at 92 (1921). Ware wasn't perfect. Clerk Mussey recounted: "He frequently presided at jury trials, but his enunciation was not clear and distinct, and his charges were not so fascinating and effective as those of his eminent associate, Mr. Justice Story." 30 Fed. Cas. 1356. But Mussey quickly leavened the criticism: "[H]is rulings and instructions were almost invariably sustained when presented for re-examination." Id.

As for Joseph Story, his seminal Supreme Court decisions like *Martin v. Hunter's Lessee*[45] and *Swift v. Tyson*,[46] and his decision that Hollywood made famous, *The Amistad*,[47] are too well-known to deserve detailed recounting here. After Harden v. Gordon, Story became Dane Professor at Harvard Law School in 1828, age 48,[48] in addition to his Supreme Court duties. At the time, Harvard Law had only one student and one professor, but Story turned the Law School around.[49] In addition to his decisions, Story wrote many legal treatises and articles that were highly influential in his day, especially his Commentaries on the Constitution of the United States.[50]

More pertinent to our tale, Justice Story came to have "a high opinion of [proctor Daveis'] sagacity and learning," and by the time of Story's untimely death in 1845 they were "good friend[s]."[51] Judge Hale said in his statehood centennial address that Daveis was one of Story's "most intimate friends."[52] At the end, upon Story's death, proctor Daveis drew up the resolutions to honor Justice Story at a meeting of the bar of the Circuit, proctor Longfellow presided, and admiralty Judge Ashur Ware gave "an elegant and feeling reply."[53]

A fitting conclusion for the actors in *Harden v. Gordon*.

Requiescant in pace.

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[45]14 U.S. 304 (1816).

[46]41 U.S. 1 (1842).

[47]40 U.S. 518 (1841).

[48]Daniel Coquilette, The "Story" of Harvard Law School, HARVARD LAW TODAY, March 2002, at 4.

[49]Id. In 1833 he persuaded Portland lawyer Simon Greenleaf (previously the Maine Supreme Court's reporter) to take a named professorship at Harvard because Story was so impressed with Greenleaf's knowledge of admiralty law. WILLIS, supra note 9, at 528.

[50]JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES (1833).

[51]WILLIS, supra note 9, at 585, 586.

[52]Hale, supra note 44, at 103.

[53]WILLIS, supra note 9, at 586.