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The Alliance Case

The registry or other custom-house document is only prima facie evidence as to the ownership of a vessel in some cases, but conclusive in none. Property in a ship is a matter to be proved like any other fact by competent testimony.

A vessel driven by stress of weather into a port other than that for which she is destined is not subject to the application of local laws which would render it liable to penalties or unnecessary detention, and damages for its unreasonable detention will be allowed.

Interest allowed on claim from date of its presentation.

BAINBRIDGE, *Commissioner* (for the Commission):

The steamer *Alliance* was built at Curaçao in 1895 for Leonard B. Smith, a native citizen of the United States then domiciled in that island. She was 59 feet 4 inches in length, 12 feet 10 inches in breadth and 5 feet in depth, with a capacity of 41 tons, and cost the sum of $ 12,030.03. Smith registered the *Alliance* as a Dutch ship, and she carried the Dutch flag until February 1897. He then made arrangements to use the ship in the trade between Santo Domingo and Curaçao, but found that it would be necessary to register her as a Dominican ship in order to be permitted to trade along the Dominican coast. The memorialist says:

To comply with said laws still further the papers were taken out in the name of Carlos A. Mota, a citizen of Santo Domingo, who, however, never acquired any real interest in the *Alliance*, his title being purely nominal, and the vessel continued to be still the property of myself solely.

The Dominican registry, given February 20, 1897, is, in part, as follows:

The President of the Republic to all to whom these presents may come, greeting: The citizen Carlos A. Mota, having proved that he is the lawful owner of the Dominican steamer *Alliance*, its captain being at present the citizen, Martin Senior, and said owner, C. A. Mota, having furnished the bond required by law, I, therefore, grant him this letter of marque, etc.

On June 15, 1897, the *Alliance* sailed from Santo Domingo under the Dominican flag with clearance for Curaçao.

On the morning of the 20th she was discovered on the shoals of the bar at Maracaibo flying a signal of distress. Epitasio Ríos, one of the pilots of the port, thus describes her condition at the time:

We descried from San Carlos a vessel with the flag hoisted, asking for assistance, on the shoals of the bar, near the place where the bark *Bremen* lies a wreck. I immediately left to send her the proper assistance, reached where she was at about 8 o'clock in the morning, and at once observed that the vessel, as well as her crew, was running the greatest risk. The vessel is a small steamship, bearing the name *Alliance*; she had the Dominican colors hoisted; her fuel being exhausted it was necessary to break the windows to the cabin, 1 cask and some cots, with which, and even empty bags, her engine could get up 40 pounds of steam, which enabled us to arrive at San Carlos, where the commander of that fortress supplied her with firewood, provisions, and water, of all which elements the vessel was absolutely in want, and with which we could come that very day to Maracaibo. The steamship was at that moment leaking in consequence of the blows she had sustained by touching on the shoals of the bar.

Upon the arrival of the *Alliance* at Maracaibo, she was seized by the collector of the port on suspicion of unlawful traffic in fraud of the revenues of Venezuela. Proceedings were had before the captain of the port and the national court of finance of Maracaibo, which court on August 14, 1897, after a full investigation,

decreed that the *Alliance* and her cargo were freed from sequestration and to be returned to the owners. An appeal from this decree was taken by the Government to the high court at Caracas, which on November 12, confirmed the decree of the lower court. The high court held that " an uncontrollable force drove the *Alliance* into the harbor and that nothing had been adduced to show that there was the slightest intention to violate any of the laws of the Republic or defraud the revenues." This decree of the high court was published in Caracas on December 1, 1897. The *Alliance* was restored to the agent of Mr. Smith on January 11, 1898. In the court proceedings the value of the ship and cargo is stated to be 28,472.40 bolivars, equivalent to $ 5,475.46 United States gold.

On April 15, 1898, a claim was presented to the Government of Venezuela by the United States, through its legation at Caracas, on behalf of Leonard B. Smith as owner of the *Alliance*. The claim was summarized as follows:

Expenses incurred by reason of the seizure and detention of the *Alliance*	$ 3,439.32
Damages to the steamer resulting from detention	2,000.00
Interest on investment at 1 per cent per month during detention . . .	800.00
Total	6,239.32

Leonard B. Smith died intestate at Curaçao December 16, 1898, leaving him surviving his widow, Clara M. Smith, and three sons, Arthur B. Smith, Leonard G. Smith, and Ralph G. Smith, as his only heirs and next of kin, in whose behalf the claim is now presented to this Commission. In addition to the original demand, the sum of $ 1,007 is asked for accrued interest.

Replying on April 26, 1898, to the diplomatic note of the United States legation presenting this claim, the minister of foreign relations of Venezuela interposed two grounds of non-liability:

First. That the *Alliance* was proved to be a Dominican ship, a nationality other than that of the claimant.

Second. That the action taken by the Venezuelan authorities in the seizure and detention of the vessel was in line of the strict performance of their duties under the law of Venezuela for the protection of the revenues, and that no claim can be sustained growing out of the necessary observance of the local law.

The honorable agent for Venezuela refers the Commission to the diplomatic note of the minister of foreign relations as his own answer to the claim.

The first objection is rather suggested than urged by the Venezuelan Government. Nevertheless as touching the jurisdiction of the Commission over the claim, it must be fully considered. The record shows that upon her arrival at Maracaibo, the *Alliance* was carrying the Dominican flag; that she had a Dominican registry, based upon a showing that Carlos A. Mota, a citizen of Santo Domingo, had proved that he was the lawful owner of the Dominican steamer *Alliance*, and as such owner had furnished the bond required by law; that this registry had been obtained with the knowledge and by the connivance of Smith through his agent and representative at Santo Domingo, Jáime Mota. But whatever may have been the morality of this proceeding, it is not conclusive against the American ownership of the vessel:

> The registry or enrollment or other custom-house document is prima facie evidence only as to the ownership of a ship in some cases, but conclusive in none. The law even concedes the possibility of the registry or enrollment existing in the name of one person, whilst the property is really in another, Property in a ship is a matter in pais, to be proved as fact by competent testimony like any other fact. (Wharton, Int. L. Dig., sec. 410, citing U. S. *v.* Pirates, 5 Wheat., 184. U. S. *v.* Amedy, 11 Wheat., 409, and other cases.)

If as a matter of fact the *Alliance* was owned by a citizen of the United States, she was American property and possessed of all the general rights of any property of an American. (*Ibid.*)

The evidence of ownership is to the effect that the *Alliance* was built for L. B. Smith at Curaçao by Felipe Santiago, as shown by the builder's certificate; that the Dominican registry was secured in order to enable the vessel to trade along the Dominican coast; that Carlos A. Mota never acquired any real interest in the ship, his title being purely nominal; that the vessel actually continued to be the sole property of L. B. Smith, and that at the close of the investigation by the Venezuelan court she was returned to Mr. Smith's possession.

The second objection interposed by the Government of Venezuela to this claim is succinctly stated in the following paragraph of the reply of the minister of foreign relations:

> The steamer *Alliance* was detained by the captain of the port in accordance with a provision of the fiscal code which the authorities deemed applicable to the case in view of the manner in which the ship arrived. A ship which enters the waters where a State has jurisdiction, can not, if it is a merchant ship, be exempt from the disposition and rules in regard to Territorial jurisdiction. Fiore recognizes this in his celebrated work (Nouveau Droit International Public, 815), and Calvo is explicit on this point, 451. F. de Martens in his recent treatise on International Law is even more categoric, when he states (Vol. II, 56) that the merchant ships anchored in a port or the waters of a foreign State are subject to the laws and local authorities. The steamer *Alliance*, even though it may have arrived in distress, entered the territory where Venezuelan legislation was in force.

The minister argues that the authorities of the port would have been grossly derelict in their duty if they had not instituted the process and detained the vessel; and that no claim can be sustained for losses growing out of the necessary and proper observance of the local law.

With due respect, however, the vital question presented here is whether the *Alliance*, although within Venezuelan waters, was, under all the circumstances, subject to the laws and local authorities. There can hardly be any doubt that the ship arrived at the bar of Maracaibo in great distress. Her condition at the time is graphically described in the testimony of the pilot, Epitasio Ríos, quoted herein. Furthermore, she bore with her upon her arrival in port the following pass from the commander of the fortress of San Carlos:

> June 21, 1897.
>
> Allowed to go to Maracaibo, having made forcible arrival on account of lack of coal and provisions.
>
> The Commander in chief of the port. Manuel PAREJO

Under these conditions, the exemption of the *Alliance* from Territorial jurisdiction is clear. The identical question here involved was considered in the case of the brig *Enterprise*, decided by the American and British Claims Commission of 1855. The Commissioners, although disagreeing on other grounds, were unanimous upon the proposition that, as a general rule:

> A vessel driven by a stress of weather into a foreign port is not subject to the application of the local laws, so as to render the vessel liable to penalties which would be incurred by having voluntarily come within the local jurisdiction. The reason of this rule is obvious. It would be a manifest injustice to punish foreigners for a breach of certain local laws, unintentionally committed by them, and by reason of circumstances over which they had no control. (Moore, p. 4363.)

In the case of *The Gertrude* (3 Story's Rep., 68), Mr. Justice Ware says:

It can only be a people, who have made but little progress in civilization, that would not permit foreign vessels in distress, to seek safety in their ports, except under the charge of paying import duties on their cargoes, or under penalty of confiscation, where the cargo consisted of prohibited goods * * *.

Nor did the laws of Venezuela impose upon the authorities of the port any duty contrary to the principles of civilized jurisprudence or the dictates of humanity and hospitality. Law XXIV of the Finance Code in force at the date of the arrival of the *Alliance*, and which is the same as Law XXV of the existing code, provides in its first article that:

the formalities prescribed by the law for the entrance of vessels coming from a foreign country into the ports of the republic shall not be enforced in the cases of forcible arrivals, which are the following: Damages on board, sickness of the crew, whether contagious or not, and acts of God absolutely preventing it from proceeding on the voyage.

Articles 2, 7 and 8 of the same law prescribe the formalities that must be pursued by the administrative authorities of the port to obtain the proofs of the real causes of the arrival, and to assist the vessel, passengers, and cargo with all necessary means of protection and security during the enforced stay of the ship in port on account of repairs or other reasons in connection with the forcible arrival. Article 16 orders that —

the motives of the forcible arrival having terminated the administrator of the custom-house shall deliver the license of navigation and other papers to the captain, giving him two hours to sail out.

And article 17 provides that —

in cases where the cause of forcible arrival is not proved any ship coming from a foreign port and found to be anchored, without any justifiable reasons, in a port for which it was not cleared shall be liable to the penalties prescribed by Law XX of said code.

Only in the cases *where the cause of forcible arrival is not proved* and a ship is found to be anchored in a port *without any justifiable reasons* is it the duty of the administrator of the custom-house, in conformity with article 17 above quoted, to pass all documents to the judge of finance in order to initiate the corresponding trial.

In view of the evidence of the pilot Ríos, the wording of the pass given by the commander of San Carlos, the disabled condition of the vessel, and the testimony of the crew, which must have been taken by the captain of the port as required by law, can it be said that the cause of the forcible arrival of the *Alliance* was not proved, or that she was anchored in the port of Maracaibo without any justifiable reasons? And if not, there was no probable cause under the law of the country for the action of the port authorities and the subsequent judicial proceedings. The liability of the Government of Venezuela for the ascertainable loss or injuries resulting from the seizure and detention of the *Alliance* is, both upon reason and authority, established.

The claim is believed to be considerably exaggerated. The board of survey which examined the steamer upon her arrival at Curaçao on January 15, 1898, estimated " the complete repairs of said boat at the amount of two thousand dollars, so as to make her seaworthy." But it is to be remembered that the *Alliance* arrived in port at Maracaibo in a battered and disabled condition. Large sums of money are alleged to have been expended by claimants' intestate because of the seizure, but no vouchers therefor are put in evidence, although the claim was made within two months after the return of the ship to her owner

An award will be made in this claim for the sum of $ 2,500, United States gold, with interest at 3 per cent per annum from April 15, 1898, the date of the presentation of the claim to the Venezuelan Government, to December 31, 1903, the anticipated date of the final award by this Commission.

THE MARK GRAY CASE

Claim disallowed for damages caused by the unavoidable detention of a vessel because of the want of facilities for towage from the harbor when the government had granted a monopoly to a company to perform this service and had subsequently appropriated the only vessel in possession of the company to its own use.

BAINBRIDGE, *Commissioner* (for the Commission):

The United States presents the claim of J. S. Emery & Co., managing owners of the American schooner *Mark Gray*, against the Republic of Venezuela in the sum of $ 1,537.50, and interest amounting to $ 338.25.

The *Mark Gray*, W. A. Sawyer, master, was chartered on October 15, 1895, by Messrs. Kunhardt & Co., to carry a cargo of railroad material from New York to Maracaibo, Venezuela. The charterers agreed to pay all vessel's port charges at Maracaibo, including pilotage, lighterage, consul's fees, interpreter's fees, etc., and towage over the bar, and demurrage, beyond the lay days for loading and discharging cargo, at the rate of $ 30 per day for every day's detention by default of the charterers.

The schooner arrived at Maracaibo on December 11, 1895, finished discharging her cargo on the 28th, and could have left port two days later had she been able to obtain towage; but in the absence of any towboat in the port the vessel was delayed at Maracaibo until February 17, 1896, when she finally got to sea by resorting to the unusual custom of sailing over the bar. When Captain Sawyer, after discharging cargo, inquired of the consignees and the towing agents for a tug, he was informed that the towboat was away in the service of the Government and that no definite information could be given as to when she would return.

On January 18, 1896, the captain wrote to Mr. A. Boncayolo, the charterers' agent at Maracaibo, as follows:

SIR: I beg to call your attention to the fact that for several days past the schooner *Mark Gray*, under my command, has been ready for sea but has been unable to leave for lack of towage. I must appeal to you as consignee of said vessel in this port and as agent of the charterers, Messrs. Kunhardt & Co., of New York, to furnish me with towage as provided for in my charter party. The agreement respecting towage in the charter party is as binding as that providing for the payment of freight or any other consideration specified in that document and the charterers of the vessel are not to be considered as having complied with their obligations until said vessel shall have been towed over the bar. I beg to call your attention, as charterers' agent, to these facts, protesting at the same time against the injury to the vessel's interests caused by this delay.

W. A. SAWYER
Master American Schooner Mark Gray

On January 27, 1896, Captain Sawyer made formal protest before the United States consul at Maracaibo —

against the charterers, Messrs. Kunhardt & Co., of New York, against the contractor for towage at Maracaibo, against the Government of Venezuela, and against all and every person and persons whom it may or doth concern, and against all and every accident, matter, and thing, had and met with as aforesaid, whereby and by reason whereof, the said schooner, or her interests, shall appear to have suffered or sustained damage or injury.