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Owner of the R. T. Roy (United States) v. Great Britain

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"The conditions imposed by the statute cannot, any of them, be regarded as matters a failure to comply with which must be pleaded by the defendant as a statute of limitation. The right of action does not exist independently of the statute, but is conferred by it. There is no right of action on showing merely the payment of the money as duties, and that the payment was more than the law allowed, leaving any statute of limitation to be set up in defence, as in an ordinary suit. But the statute sets out with declaring that the decision of the collector shall be final and conclusive against all persons interested, unless certain things are done. The mere exaction of the duties is, necessarily, the decision of the collector, and, on this being shown in any suit, it stands as conclusive till the plaintiff shows the proper steps to avoid it. These steps include not only protest and appeal, but the bringing of a suit within the time prescribed. They are all successively grouped together in one section, not only in section 14 of the act of 1864, but in section 2931 of the Revised Statutes; and the 'suit' spoken of in those sections is the 'action' given in Revised Statutes, section 3011."

We adopt this reasoning as applicable to these claims.

The plea that the claimants were ignorant of their rights under the law, and consequently entitled to refunds of duties, regardless of the law, through the award of an international tribunal cannot be sustained. Importers, whatever their nationality, must be presumed to know and are bound by the customs laws of the countries with which they are dealing. These claimants in fact dealt through commission brokers and agents in the United States by whom the duties were actually paid.

The submission of the claims to this Tribunal by the Government of the United States constituted no implied waiver and did not operate to take them out from under the ordinary statutory provisions.

Now, therefore :

The award of the Tribunal is that the claims of His Britannic Majesty's Government be disallowed.

OWNER OF THE *R. T. ROY* (UNITED STATES) *v.* GREAT BRITAIN
(*March 19, 1925. Pages 408-410.*)

SEIZURE OF FISHING VESSEL IN LAKE HURON, ESCAPE.—EVIDENCE: PLACE OF SEIZURE. DAMAGE. FAILURE TO CO-OPERATE IN COLLECTING EVIDENCE.—EXHAUSTION OF LOCAL REMEDIES, EQUITY. Seizure of American fishing vessel *R. T. Roy* on June 25, 1908, by Canadian inspector of Fisheries in Lake Huron. Escape of vessel after preliminary examination by inspector of officers and crew at South Bay Mouth on June 27, 1908. Claim presented for damages on account of seizure, detention, loss of catch, destruction of nets. *Held* that, wherever boundary through Lake Huron was then located, evidence not sufficient to determine whether seizure effected on American or on Canadian side of it, and that evidence of damages inconclusive and unsatisfactory. Vessel's escape and its failure, therefore, to submit to orderly legal procedure emphasized. *Held* equitable to disallow claim for failure to exhaust local remedies.

Cross-reference: Am. J. Int. Law, vol. 19 (1925), pp. 800-803.

Bibliography: Nielsen, pp. 406-407.

On June 25, 1908, the *R. T. Roy*, a steam fishing vessel of American ownership and registry, was seized in Lake Huron by a Canadian inspector of Fisheries. The reason alleged for the seizure was that the vessel was at the time fishing in Canadian waters. The inspector took her forthwith, together with the officers and crew, to South Bay Mouth, a Canadian port. There, it appears, a preliminary examination of the officers and crew was conducted by the inspector, and their testimony was reduced to writing. After a lapse of two or three days the inspector set out in another vessel with the *Roy* in tow, the officers and crew still on board, for Sault Ste. Marie, another Canadian port, where the usual legal inquiry looking to the ultimate condemnation or release of the vessel was intended to take place. On the way, the *Roy* ran on a reef in Canadian waters, and, efforts to float her again proving ineffectual, the inspector went on to Sault Ste. Marie in the other boat for the purpose of securing assistance. While he was gone the captain and crew of the *Roy* succeeded in getting her off the reef, and they thereupon took her back to her home American port, Alpena, Michigan, where on the first day of July, 1908, further depositions of the officers and crew covering the circumstances of the seizure were taken before a notary public. These latter depositions are included in the record. The testimony taken at South Bay Mouth, saving that of the captain, has not been produced. The evidence indicates that the papers embodying the South Bay Mouth testimony were left on the *Roy* by the inspector when he left her to go to Sault Ste. Marie, and that they were subsequently carried to Alpena and there disappeared. Some years later, however, the testimony of the captain was produced by one of the attorneys for the claimant at Alpena, on request of the State Department.

At the moment of seizure there was a discussion between the inspector and the captain with regard to the precise location of the *Roy*. The chart carried by the *Roy* was produced, and, while the evidence is not quite clear on the point, it seems probable that the cross found on the chart was placed there by the captain in the course of this discussion, and that this cross represented both the captain's and the inspector's estimate of the place of seizure. It is contended by the Government of the United States that the seizure took place within American waters, and it is contended by His Majesty's Government that the point was in Canadian waters.

Damages are claimed for the seizure and detention of the vessel, for loss of the catch of fish, and for destruction of nets.

The sole issue—one of pure fact—which is sharply raised in the pleadings and has been exhaustively argued by distinguished counsel, is whether, having due regard for the international boundary through Lake Huron as it was then located, the seizure of the *Roy* was effected on the American or on the Canadian side of that boundary.

In the view which we take of this controversy, we do not find it necessary for us to follow the argument in its involutions with respect to the exact location of the boundary through Lake Huron as laid down by the Treaty of Ghent of 1783 and by the decision of the Special Commissioners in 1822, pursuant to the second Treaty of Ghent, executed in 1814. Nor are we inclined to engage upon any detailed analysis of the evidence beyond pointing out its vague and uncertain character. We have been forced to conclude that in the state of the record it is impossible, without indulging unwarranted conjecture, to determine the main question of fact involved. Leaving out of account the complicated problem of the boundary itself, which is of course not physically indicated through Lake Huron, we are faced by an irreconcilable conflict of untested and untestable statements. The location of the point of seizure is at best a mere guess. The captain of the *Roy* is quoted as saying that he "could only make an

estimate or guess as to her location when seized". To check the location by reference to the speed of the *Roy* on her trip to the fishing ground is impracticable because varying estimates of speed were made. The so-called "deep hole", where the nets were set, might have been ascertained with reasonable accuracy, but no evidence on this subject has been adduced. The unexplained disappearance of the best contemporary evidence, namely, the statements taken at South Bay Mouth two days after the seizure for the express purpose of ascertaining the facts, is also a disturbing factor. The evidence of damages is inconclusive and unsatisfactory.

The Tribunal is constrained to emphasize the failure of the claimant to submit to the orderly legal procedure provided for the determination of the issue at the time. The seizure here complained of was the initial step in a procedure which, if it had been permitted to pursue its normal course, would have led to a judicial inquiry in which the very issue here presented would have been considered with full opportunity to elicit all the facts by examination of records and cross-examination of material witnesses. This procedure was interrupted, and its logical completion rendered impossible, by the affirmative act of the claimant's representative in withdrawing the vessel from the only jurisdiction where the matter could be duly and promptly dealt with. The circumstances do not justify us in finding that the Canadian authorities had abandoned the seizure when such withdrawal took place.

Moreover, proceedings might have been taken in the Canadian courts at any time against the Fisheries inspector personally or against the Canadian Government by way of petition of right.

The terms of submission provide that this Tribunal "shall take into account as one of the equities of a claim to such extent as it shall consider just in allowing or disallowing a claim, in whole or in part, any failure on the part of the claimant to obtain satisfaction through legal remedies which are open to him or placed at his disposal".

In the exercise of the discretion thereby conferred, the Tribunal is of the opinion that the claim must be disallowed.

Now, therefore :

The award of the Tribunal is that the claim of the Government of the United States be disallowed.

ADOLPH G. STUDER (UNITED STATES) *v.* GREAT BRITAIN

(March 19, 1925. Pages 548-553.)

ANNEXATION. SUCCESSION OF STATES: PRIVATE RIGHTS ACQUIRED PREVIOUS TO—INTERNATIONAL RESPONSIBILITY FOR DEPENDENT STATE.—EXHAUSTION OF LOCAL REMEDIES.—EVIDENCE: PROOF OF MUNICIPAL LAW.—EXTRAJUDICIAL ACTION. Grant of land made on February 3, 1877, by Sultan of Muar to Mr. Adolph G. Studer, United States citizen. Annexation of Muar in 1878 by Sultan of Johore who, according to Mr. Studer, deprived him of benefit of grant. Assumption by Great Britain of international responsibility for Government of Johore in 1885. Failure of Mr. Studer to submit case to local Courts as agreed to by Sultan. Lack of evidence concerning facts and municipal law obtaining in Muar at time of grant. *Held* that reason why claim not carried before Courts of Johore not sufficiently explained. Claim