

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

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Owner of the Sarah B. Putnam (United States) v. Great Britain

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privilege of the United States which the Permanent Court of Arbitration at The Hague, by its answer to the sixth question in the North Atlantic Coast Fisheries Arbitration, has held to have been unwarranted.

As to the damages, the claim is set forth with unusual precision of detail and is substantiated by affidavits, receipts, and documents as to each item. We are entirely satisfied with this proof and award the sum of \$3,212.98, as claimed.

OWNER OF THE *SARAH B. PUTNAM* (UNITED STATES)
v. GREAT BRITAIN

(November 6, 1925. Pages 568-569.)

RECOGNITION OF FOREIGN FISHING LICENCES.—THREAT TO SEIZE FISHING VESSEL.—INTERPRETATION OF AGREEMENT: MINUTES OF COUNCIL OF NEWFOUNDLAND.—OBLIGATION TO REDUCE DAMAGES.—DAMAGES: LOST PROFITS.—AMENDMENT OF PLEADINGS. *Modus vivendi* entered into between Great Britain and United States on February 15, 1888, under which Newfoundland obliged to recognize Canadian "annual" fishing licences. Difference of opinion concerning meaning of "annual". Interpretative agreement of October 15, 1888, under which Newfoundland undertook to recognize past Canadian licences issued for one year from date of issuance. Failure to instruct Newfoundland customs officials accordingly. Entry in June, 1889, of *Sarah B. Putnam*, an American fishing vessel, in port of Ferryland, Newfoundland. Refusal by local authorities to recognize her Canadian licence expiring on July 25, 1889. Same refusal in two other ports, threat to seize vessel. Return to home port with partial cargo. *Held* that master not bound to pay for Newfoundland licence under protest instead of returning to home port, and that return justified by denial of right to procure bait; that licence of *Sarah B. Putnam* valid in Newfoundland under agreement of October 15, 1888, as interpreted by Tribunal in the light of the minutes of Council of Newfoundland; and that, as to lost profits, United States properly abandoned claim originally put forward for possible second and third voyage (reference made to *Horace B. Parker* and *Thomas F. Bayard* awards, see pp. 153 and 154 *supra*). Claimed amount awarded.

Cross-reference: Am. J. Int. Law, vol. 20 (1926), pp. 377-378.

This is a claim for damages due to refusal of Newfoundland authorities to recognize a fishing licence issued by the Canadian authorities under the terms of a *modus vivendi* agreed to between the Governments of Great Britain and the United States. The *modus vivendi* provided for "annual licences" to be issued either by the Canadian authorities or the Newfoundland authorities, to be recognized by each when issued by either. A difference of opinion developed between the latter Governments as to whether licences should be issued to be valid for one year from their dates or should be made to expire on the 31st of December. Ultimately the Newfoundland Government, as we interpret the minutes of the Council, agreed to recognize past Canadian licences issued to be good for one year from their date, and the Canadian Government agreed for the future to issue licences expiring on December 31. It appears, however, that the Newfoundland customs officials received no orders to recognize Canadian licences, accordingly when the vessel in question, which held a regularly issued Canadian licence expiring on July 25, 1889, presented itself at

the port of Ferryland in Newfoundland in June 1889, the local customs authorities refused to recognize the licence. After trying at two other ports, at each of which the authorities refused to recognize the licence, and after information that the vessel would be seized if attempt was made to act under it, the master gave up fishing and sailed for his home port with a partial cargo.

In the answer it is set up: (*a*) that the master should have paid for a Newfoundland licence under protest and reclaimed the money; (*b*) that it is not shown that the master even if denied his right to procure bait in Newfoundland, could not have procured it elsewhere; (*c*) that the abandonment of the fishery was not a natural or probable result of the refusal of the Newfoundland authorities to recognize the licence; (*d*) that the licence was not valid in Newfoundland; and (*e*) that the damages claimed are "remote, speculative, contingent, and incapable of assessment".

As to the first contention, we find that the master communicated at once by telegraph with the State Department at Washington. Obviously that Government could not acquiesce in the proposition that the terms of the *modus vivendi* should be set aside by requiring two licences where but one annual licence was provided for. We think the master was not bound to proceed in any other way than by asserting his rights under the licence and the *modus vivendi* and referring the matter to his own Government.

Upon the second and third contentions, there seems to us sufficient evidence that denial of the right to procure bait in Newfoundland compelled abandonment of the fishing voyage.

With respect to the fourth contention, quite apart from any question of the binding force of the *modus vivendi* and its provision for "annual licences" to be recognized both in Canada and in Newfoundland, the action of the Council of Newfoundland on October 15, 1888, above referred to, seems to us to be decisive.

As to damages, the questions raised are the same as those considered in the cases of the Horace B. Parker (claim No. 76) and the Thomas F. Bayard (claim No. 77) and call for no further comment.

We award the sum of \$8,625, claimed by the United States for enforced giving up of the voyage. The claim, originally put forward for a possible second and third voyage, which were not attempted, were very properly abandoned by the United States.

F. H. REDWARD AND OTHERS (GREAT BRITAIN)
v. UNITED STATES

(*Hawaiian Claims. November 10, 1925. Pages 160-161.*)

CONQUEST, ANNEXATION, SUCCESSION OF STATES: LIABILITY FOR DELICT. Monarchist rebellion in Hawaii on January 6, 1895. Arrest and imprisonment of British subjects under martial law proclaimed on January 7, 1895, by President of Republic. Choice offered by Government to stand trial by military commission or leave the country. Several chose to leave, others released after investigation. Rejection on December 17, 1897, of claims presented by Great Britain. Annexation of Hawaii by United States on July 7, 1898. Claims brought before Tribunal for wrongful imprisonment etc. *Held* that no general principle of succession to liability for delict exists to which succession through conquest would be exception (reference made to Robert E. Brown award, see p. 120 *supra*).