

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

F. H. Redward and Others (Great Britain) v. United States (Hawaiian Claims)

10 November 1925

VOLUME VI pp. 157-158



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

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*).

Cross-references: Am. J. Int. Law, vol. 20 (1926), pp. 381-382; Annual Digest, 1925-1926. p. 80.

Bibliography: Nielsen, pp. 85-159.

These are claims for wrongful imprisonment, detention in prison, enforced leaving of the country, and other indignities, claimed to have been inflicted upon British subjects by the authorities of the Hawaiian Republic prior to annexation by the United States.

We think the cases are governed by the decision of this tribunal in the case of Robert E. Brown, American and British claims arbitration, claim No. 30.

It is contended on behalf of Great Britain that the Brown case is to be distinguished because in that case the South African Republic had come to an end through conquest, while in these cases there was a voluntary cession by the Hawaiian Republic as shown (so it is said) by the recitals of the Joint Resolution of Annexation. We are unable to accept the distinction contended for. In the first place, it assumes a general principle of succession to liability for delict, to which the case of succession of one state to another through conquest would be an exception. We think there is no such principle. It was denied in the Brown case and has never been contended for to any such extent. The general statements of writers, with respect to succession to obligations, have reference to changes of form of government, where the identity of the legal unit remains, to liability to observe treaties of the extinct state, to contractual liabilities, or at most to quasi-contractual liabilities. Even here, there is much controversy. The analogy of universal succession in private law, which is much relied on by those who argue for a large measure of succession to liability for obligations of the extinct state, even if admitted (and the aptness of the analogy is disputed), would make against succession to liability for delicts. Nor do we see any valid reason for distinguishing termination of a legal unit of international law through conquest from termination by any other mode of merging in, or swallowing up by, some other legal unit. In either case the legal unit which did the wrong no longer exists, and legal liability for the wrong has been extinguished with it.

We decide that these claims must be rejected.

SEVERAL BRITISH SUBJECTS (GREAT BRITAIN) *v.* UNITED STATES

(Iloilo Claims. November 19, 1925. Pages 403-405.)

CESSION OF SOVEREIGNTY. ANNEXATION. SUCCESSION OF STATES.—PROTECTION OF ALIENS AGAINST INSURGENTS.—NECESSARY WAR LOSSES, CONDUCT OF MILITARY OPERATIONS. Cession by Spain to United States of sovereignty over Philippines: treaty signed on December 10, 1898, exchange of ratifications on April 11, 1899. Provision that on exchange of ratifications Spain should evacuate islands. Desire of Spanish commander at Iloilo, Island of Panay, to evacuate earlier. Request on December 14, 1898, by Iloilo business men among whom six of present claimants, to United States commander at Manila to occupy place. Evacuation of Iloilo by Spanish commander on December 24, 1898, immediately followed by occupation by Filipino insurgents. Arrival of United States expeditionary force in Iloilo harbour on December 28, 1898. Declaration of war by so-called Filipino Republic against United States on February 4, 1899. Landing of United States forces