REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Great Britain v. United States (Yukon Lumber case)

18 June 1913

VOLUME VI pp. 17-21

NATIONS UNIES - UNITED NATIONS

Decisions

GREAT BRITAIN *v.* UNITED STATES

(Yukon Lumber case [1]*. June 18, 1913. Pages 438-444.* [2]*)*

ALTERNATIVE CLAIM.—IMPLIED WAIVER OF CLAIM.—CONTRADICTION BETWEEN PRIMARY AND ALTERNATIVE CLAIM. Claim for payment of timber dues or, alternatively, of value of timber. Timber, illegally cut in Canada by Mr. Mountain, was sold by the latter to Mr. Ramsay, and in September 1900 by Mr. Ramsay to United States military authorities in Alaska. Since Canadian authorities never claimed ownership of timber, and for 13 years requested only payment of dues, *held* that alternative claim can no longer be presented. Alternative claim moreover somewhat contradictory, as claim for dues is exclusive of claim for recovery.

PERSONAL OBLIGATION.—CONTRACT.—NEGLIGENCE.—GOOD FAITH. No personal obligation of United States military authorities towards Canadian Government *held* to exist: no contract between them made, nor any negligence committed; United States military authorities dealt with Mr. Ramsay in perfect good faith without assuming debts and engagements of Mr. Mountain.

OBLIGATION *IN REM*.—ENFORCEMENT OF MUNICIPAL LAW ABROAD.—SEIZURE OF STATE PROPERTY. No obligation *in rem*: even if lien on timber had been reserved, lien would be inoperative as (1) its enforcement in United States impossible, and (2) timber State property and, therefore, not subject to seizure.

POSSIBILITY TO AVOID GRIEVANCE. Canadian Government cannot complain now of grievance which was easy to avoid.

Cross-references: Am. J. Int. Law, vol. 7 (1913), pp. 885-890; Jahrb. des V., vol. 2 (1914), pp. 458-462.

At the end of September, 1900, the Dominion Crown Timber and Land Agent at Dawson, Yukon Territory (Canada), Mr. F. X. Gosselin, was aware that a certain quantity of timber, viz., 68,500 feet, had just been cut without permit or authority on the vacant Dominion lands by a certain Howard Mountain, and that the said Mountain had sold the same timber to a certain O. N. Ramsay, who at that time was a contractor for the United States military authorities in Alaska, that the said Ramsay, under a contract of sale for delivery, had delivered the same with other large quantities of timber to the said United States military authorities, and also that the said Ramsay, who had obtained, at the request of the United States military authorities,

[1] In the report of Fred. K. Nielsen referred to on page 3 *supra* this case has been called the *Yukon Lumber Company* case. No such company has, however, been mentioned either in the decision or in the Schedule of Claims reprinted on p. 11 *supra*.

[2] References to page numbers following the date of each decision are to the report of Fred. K. Nielsen referred to in footnote 1.

a permit for 50,000 feet, had cut in trespass 24,570 feet more, and delivered the same to the said authorities.

It appears from a letter from the said Crown Agent, Gosselin, that he met Ramsay and Mountain at that time, but did not claim for recovery of the timber illegally cut and claimed only for payment of the Crown dues at $4 per M. on the said timber as if it had been legally cut.

It is shown (Gosselin's letters December 4, 1900, and July 20, 1901) that, on September 29, 1900, Ramsay paid the Crown dues for the 24,570 feet of timber cut by him in excess of his permit, i.e., in trespass, and that Gosselin then took Mountain's promise that he would pay the same Crown dues for the 68,500 feet also cut in trespass *when he would come to Dawson some time during the winter* (Gosselin's letter December 4, 1900) or *as soon as he had cashed the order from Mr. Ramsay* which he had received for logs (Gosselin's letter July 20, 1901); and that delay was agreed to.

On December 4, 1900, Gosselin informed the Department of the Interior of the above-mentioned facts and on January 17, 1901, the Secretary of that Department, without objecting to anything Gosselin had done, gave an instruction that *if the dues were not paid within a reasonable time*, the matter was to be reported to the officer commanding the Department of North Alaska for advice as to what steps should be taken to recover the amount of dues and expenses, but no reference was made to any claim to the timber or its value.

In the meantime, that is to say on November 15, 1900, January 4, 10, 12, and March 2, 1901, the United States military authorities paid Ramsay for all the timber (300,000 feet) he had sold and delivered under contract.

In May or June, 1901, Gosselin was informed that Mountain had gone away to San Francisco, leaving no property behind him, and that he departed under an assumed name owing several people in the country.

On July 20, 1901, the said Crown Agent Gosselin applied to the United States military authorities for payment of the Crown dues left unpaid by Mountain for the timber sold by him to Ramsay and by Ramsay to the said authorities. The Crown Agent observed that Ramsay had a permit granted to him as a consideration to the United States Government, and that he should have ascertained whether or not Mountain, his vendor, had paid the Crown dues.

The views officially expressed by the Government Legal Adviser in Alaska (British memorial, annex 16) were that it would be the duty of the United States Government to either pay the dues on the 68,500 feet cut by Mountain or to see that Ramsay did.

Thereafter a correspondence was exchanged during the year 1902 between the Canadian Government and the United States military authorities in Alaska and Washington, wherein on one side the views of the Canadian Legal Adviser were communicated and applications were made to obtain from the military authorities the payment of the dues which Mountain failed to pay, and on the other side, the United States military authorities replied that they were not to be held responsible for the dues which Mountain had not paid.

Since 1902 no documents appear in the memorial except two affidavits given apparently for the present case, one of them dated in 1912 and the other without any year mentioned.

The British Government claim at the present time before this Tribunal that the United States Government should either pay the timber dues in question or the value of the timber converted by the Government of the United States to their own use.

The United States Government, on the other hand, contends that the claim is not well founded in fact or in law and asks that it be dismissed and finally barred.

It is clear at the outset that a double trespass was committed in September, 1900, one by Ramsay, who cut 24,570 feet without permit, and the other by Mountain, who cut 68,500 feet without permit.

In such matters the Canadian Government is represented by the Crown Agent, whose duties and powers are defined in an Order in Council of July 7, 1898, article 6 (British memorial, annex 27), in the following terms:

"It shall be the duty of the Crown Timber and Land Agent, subject to the authority of the Commissioner, *to receive and regulate all applications for licenses and permits to cut timber for lumbering purposes* and for fuel, for the purchase of coal lands, for the lease of lands for grazing purposes, and for hay permits; also, subject to regulations to be provided in that behalf, to receive and deal with applications for the purchase of land, but no lease or sale of land shall take place except in accordance with the regulations furnished from the Department."

The Crown Agent dealt with Ramsay and Mountain in the same manner, when he was informed of the trespass; he neither reproached the trespassers for their offense, nor did he claim the timber or its value, about $34.40 per M. (United States answer, exhibit 5), but he claimed only the Crown dues of $4 per M.

The Crown Agent did not, and since that time the Canadian Government did not, claim that the ownership of the timber rested in the Crown; the Canadian Government has considered itself not as the owner of the timber, nor even as the creditor of its value, but only as the creditor of certain dues, called Crown or stumpage dues, of $4 per M., and it is shown that the Crown Agent, after having been paid by the first offender, Ramsay, granted Mountain delay until some time during the winter of 1901. Such a concession of delay implies, in this Tribunal's opinion, the existence of a debt, and not of a claim for repossession.

Not only has this been the attitude of the Crown Agent and the Canadian Government with both Ramsay and Mountain, but also with the United States military authorities.

From the very beginning, that is to say, from September and December, 1900, the Canadian Government and its Agents were perfectly aware that the timber was in the possession of the United States military authorities, but they never claimed for it or for its value. According to the express statement of the Secretary of the Interior (letter, December 9, 1901), it was only when the *Agent* of that Department at Dawson did not succeed in collecting the dues from Mountain and Ramsay, that application was made to the United States authorities to pay the said dues.

Under these circumstances, Mountain sold to Ramsay, and Ramsay sold to the United States military authorities, not a thing belonging to a third person but a thing liable for certain dues remaining unpaid; that is to say, the United States military authorities, whose perfect good faith has never been questioned, did not receive from Ramsay some timber the title to which was still vested in the Canadian Government, but some timber for which Mountain, the original vendor, had not paid the dues.

So the question which arose between the two parties has never been whether or not the ownership in the timber rested in the United States military authorities, but whether those authorities had or had not to pay the dues instead of the vendor of their vendor.

Even now, before this Tribunal, the British Government claim for payment of dues, and they have added only as an alternative a claim for the value of the timber. The opinion of this Tribunal is that it is impossible to admit that after having at the beginning ratified the trespass and claimed during 13 years

for only the payment of dues, and still now claiming for that payment, the British Government is entitled to contend that they retained the ownership of the said timber and claim for its value as representing the thing itself which has been consumed. Moreover, the British Government does not claim first for the value and secondly for the dues, but first for the dues and in the alternative for the value. It seems that this alternative is somewhat contradictory, as it is clear that the claim for the dues is exclusive of a claim for recovery.

Consequently, the question to be decided is not whether or not the United States military authorities are the legal owners of the timber, but whether or not the debt of the Crown dues can be claimed against them, which is quite a different question and the only one to be considered.

In the first place, it is difficult to find any personal obligation of the United States military authorities towards the Canadian Government. The said authorities have made no contract, and have committed no negligence, out of which could arise an obligation. Even supposing that Ramsay's permit had been granted at their request, and that they had some liability as to Ramsay's trespass, they had absolutely nothing to do with Mountain. It is impossible to find in the promise that Ramsay would not in any way abuse the permission given him to cut logs, a caution or a guarantee or some other obligation personally assumed as to the payment of Crown dues by a third person from whom Ramsay may have purchased some timber which was sold *afterwards* to the said military authorities.

The United States military authorities have purchased from Ramsay, and paid him for, the timber in perfect good faith; they had no notice of its origin; they did not assume in any way the debts and engagements which the original provider of their vendor may have assumed towards the Canadian Government in respect of the cutting of the timber; they cannot be held bound and obliged by Mountain's promise made to and agreed to by the Crown Agent to pay the dues at such or such a time, i.e., some time during the winter of 1901.

In the second place the United States military authorities are not bound *in rem*.

It is not contested that the cutting of timber in the Yukon Territory is subject to the Canadian regulations which have full power to provide the Canadian Government with such lien or other securities for guaranteeing the payment of their dues, as well as with the right of legal prosecution against any offender. The right of legal prosecution has not been exercised, and the Canadian Government has never claimed except for the dues.

Even supposing that Canadian legislation reserved a lien on the timber, giving the Crown a title to seize the timber in order to be paid the dues, this lien is inoperative in the present case.

First, because the timber is outside the Canadian Territory, and the lien, if any, enacted by the municipal law can not be enforced in a foreign country against a foreigner unless such a lien is provided for by the law of that country, and can be enforced under that law.

Second, because the timber having become State property is not subject to any seizure.

Finally, the Canadian Government does not seem justified in complaining now of a grievance which easily could have been avoided.

The still wild condition of the country may explain the absence of any efficient control over timber cutting, taking out, and passing the boundary; but the Canadian Government had every opportunity and facility in September, 1900, and at least from November, 1900, to March, 1901, until the final payment for the timber, to claim for the recovery of the timber, or of

its value, to stop the payment of the sums representing that value, when they were in the hands of the United States military authorities.

Under these conditions, the cutting of timber as well by Mountain as by Ramsay having been ratified by the Canadian Government, it remained only a debt of Crown dues. Ramsay's debt was paid by Ramsay himself, and Mountain's debt can not be considered as constituting for the United States military authorities either a personal obligation or an obligation *in rem*. Furthermore the Canadian Government, having been able to avoid the grievance arising from Mountain's acts, does not seem to be entitled now to hold the United States military authorities in any way responsible for it.

On these motives

The decision of the Tribunal is that the claim of the British Government be disallowed.

OWNERS OF THE *LINDISFARNE* (GREAT BRITAIN) *v.* UNITED STATES

(June 18, 1913. Pages 483-488.)

COLLISION OF VESSELS IN NEW YORK HARBOUR.—EVIDENCE: PROOF OF FAULT, BURDEN OF PROOF, UNIVERSALLY ADMITTED RULE OF MARITIME LAW.—INEVITABILITY OF COLLISION, NECESSARY CARE AND MARITIME SKILL, CIRCUMSTANCES, HARBOUR REGULATIONS, BREACH OF DUTY OR LIABILITY OF VESSEL. Universally admitted rule of maritime law that ship under way colliding with ship at anchor has to prove that it was itself not at fault, or that the other ship was at fault. In the present case (*Crook*, under way, on May 23, 1900, collides with *Lindisfarne*, in dock in New York harbour), neither sufficient evidence of inevitability of collision, nor of *Crook's* necessary care and maritime skill. No evidence presented concerning either circumstances of collision, or harbour regulations and their observance, or breach of duty or liability on part of *Lindisfarne*.

ADMISSION OF LIABILITY. By Act of April 7, 1906, United States Congress provided for payment of costs of repairs on assumption of obligation to pay, arising out of liability.

DEMURRAGE. No sufficient evidence that repairs delayed or interrupted commercial operations of *Lindisfarne*. Claim for one day's demurrage yet to be allowed under Terms of Submission.

INTEREST. *Held* equitable to allow interest at 4 % per annum for over ten years.

Cross-references: Am. J. Int. Law, vol. 7 (1913), pp. 875-879; Jahrb. des V., vol. 2 (1914), pp. 450-453.

On the 23nd of May, 1900, the United States Army Transport *Crook*, damaged by collision the British steamship *Lindisfarne*, net tonnage 1944 t. in the harbour of New York. The *Lindisfarne* had to be repaired and the time while the repairs were being carried out was one day. The cost of these repairs was defrayed by the United States Government, and His Britannic Majesty's Government, on behalf of the owners of the said ship, claim a sum of £ 32. 8s. for the one day's demurrage, with interest at 4 % for 11 years, i.e., from the 25th of May, 1901, the date on which His Britannic Majesty's Government first