

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Cunningham and Thompson Company and Others (Great Britain) v. United  
States**

22 December 1925

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CUNNINGHAM AND THOMPSON COMPANY AND OTHERS (GREAT  
BRITAIN) *v.* UNITED STATES

(*Fishing Claims, Group I.*)

COMMERCIAL ACTIVITIES OF FOREIGN FISHING VESSELS IN TERRITORIAL WATERS.

—INTERPRETATION OF TREATY: *RES JUDICATA*.—LIGHT DUES, CUSTOMS DUTIES, SHIPS' EQUIPMENT.—POSTPONEMENT OF AWARD: AGREEMENT BETWEEN AGENTS. Exaction by Newfoundland between 1897 and 1910 of light dues, customs duties, etc., from American fishing vessels engaged, according to Great Britain, in commercial activities in Newfoundland territorial waters. *Held* that purchase of herring by American fishing vessels from independent fishermen in Newfoundland territorial waters is not exercise of fishing privilege belonging to United States under Anglo-American Treaty of October 20, 1818, and that disposing of fishing outfit and gear by such vessels in said waters to Newfoundland fishermen as part of their compensation is not one of customary means and methods reasonably necessary to exercise of that privilege. *Held* also that question of hiring men by American fishing vessels in Newfoundland waters answered by Permanent Court of Arbitration in North Atlantic Coast Fisheries Arbitration and that, on the basis of this arbitration, American vessels were engaged in trading. Determination of recoverable amounts postponed in view of possible agreement between agents. Exemption of ships' equipment. Award made pursuant to agreement between agents.

*Cross-reference:* Am. J. Int. Law, vol. 20 (1926), pp. 397-399.

*Bibliography:* Nielsen, pp. 554-564.

(*Decision, November 6, 1925. Pages 565-566.*)

These are claims for refund of light dues, customs duties, and other charges levied upon vessels engaged, as claimed by the United States, in herring fishing at Bay of Islands and other places upon what, for convenience, may be called the Treaty Coast of Newfoundland. The answer of Great Britain sets up that the vessels in question were exercising commercial privileges by (*a*) purchasing herring; (*b*) hiring men in Newfoundland waters; and (*c*) "selling goods in Newfoundland to employees".

As to the first contention, there is a mass of conflicting evidence on the one hand as to the course pursued by particular American vessels which are claimants, and on the other hand as to the practice of American vessels generally in the herring fishery on the Treaty Coast. Partly the contention involves questions of fact and of the legal interpretation of the facts when found. In part it involves the questions of law raised by the second contention. There can be no doubt that purchase of herring from independent fishermen in Newfoundland waters could not be regarded as an exercise of the fishing privilege belonging to the United States, under the Treaty of 1818. But, for reasons which will appear presently, we do not deem it necessary, with respect to each vessel in question, to determine as a fact whether it was fishing or was buying herring on each occasion for which claim is made.

We think the questions raised by the second contention are disposed of in the answers to the first and second questions in the award of the Permanent Court of Arbitration at The Hague in the North Atlantic Coast Fisheries arbitration.

It remains to consider the third contention.

Under the answer of the Permanent Court of Arbitration at The Hague to the seventh question in the North Atlantic Coast Fisheries arbitration, an American vessel could not exercise fishing privileges and commercial privileges on the same voyage. As to any voyage there must be wholly and purely fishing activities or the vessel must be regarded as trading. Concession of the fishing privilege in the Treaty of 1818 carried with it tacitly (or by implication) the privilege of doing such things as are reasonably necessary to its exercise in view of the nature of the fishery to be carried on. It is contended, on behalf of the United States, that the privilege extends to all customary means and methods of carrying on the fishery. But in our opinion this is true only provided and to the extent that the customary means and methods are reasonably necessary to the exercise of the fishing privilege. We consider that the disposing of fishing outfit and gear to Newfoundland fishermen in Newfoundland waters as a part of their compensation, such outfit and gear remaining their property after use in the employment and entering into the general stock of the country, was not a reasonably necessary mode of or incident of exercising the fishing privilege and must be held to have been trading.

So far as appears, it was quite enough to have given out outfit and gear for the purpose of fishing while in the employ of the vessel, charging it might be for outfit and gear lost or destroyed. A payment or part payment in outfit and gear, so as to come into competition with the trade of Newfoundland in such articles, was not necessary nor was it reasonable. There is nothing to show that an arrangement whereby the outfit and gear, so far as unconsumed, should remain the property of the vessel, was not perfectly feasible and reasonable. There is evidence that Newfoundland fishermen, who employed servants and fished independently, provided nets in this way.

As all the American vessels pursuing the herring fishery on the Treaty Coast regularly disposed of gear and outfit to Newfoundland fisherman so as to leave such articles (if unconsumed) in Newfoundland as the property of those fishermen, we must hold that all of the claimant vessels, at all the times in question, were to that extent engaged in trading and hence were not exclusively exercising fishing privileges.

It is assumed that the agents of the respective parties will be able to agree upon the amounts recoverable in view of the foregoing findings. If not, the Tribunal will proceed to determine them.

*(Order, November 9, 1925. Page 567.)*

With respect to barrels and salt, which went back upon the ships on which they came, were not landed, and were used solely to transport the fish obtained, we are of opinion that they were part of the ships' equipment and were not subject to duty.

*(Award, December, 22 1925. Page 567.)*

The agent for the United States and the associate agent for Great Britain having reached an agreement concerning the amounts to be paid to the United States in the fishing claims in Group I, conformably to the decision of the Tribunal with respect to these claims rendered on November 6, 1925, and the order made with respect to them on November 9, 1925, the Tribunal awards the following sums in these claims pursuant to this agreement:

<i>Number of claim</i>	<i>Name of claimant</i>	<i>Amount \$</i>
45	Cunningham & Thompson Company . . . . .	1,093.70
46	Representatives of Fred L. Davis, deceased . . . . .	452.38
47	Representative of William Parsons, deceased . . . . .	390.95
48	Gorton-Pew Fisheries Company . . . . .	1,089.50
49	Representative of William H. Jordan, deceased . . . . .	37.50
50	Orlando Merchant . . . . .	831.00
51	Representative of Jerome McDonald, deceased . . . . .	304.24
52	John Pew & Son . . . . .	106.62
53	Gorton-Pew Fisheries Company, successor to D. B. Smith & Company . . . . .	882.85
54	Sylvanus Smith & Company, Inc. . . . .	228.23
55	Representative of John Chisholm, deceased . . . . .	249.08
56	Carl C. Young . . . . .	406.70
57	Hugh Parkhurst & Company . . . . .	121.41
58	Almon D. Malloch . . . . .	139.47
59	Thomas M. Nicholson . . . . .	364.44
63	Lemuel E. Spinney . . . . .	151.10
64	William H. Thomas . . . . .	130.56
65	Frank H. Hall . . . . .	56.38
66	M. Walen & Son, Inc. . . . .	313.85
67	Atlantic Maritime Co. . . . .	267.90
68	Waldo I. Wonson . . . . .	341.22
70	Henry Atwood . . . . .	21.00
71	Fred Thompson . . . . .	19.92
TOTAL		\$ 8,000.00

CAYUGA INDIANS (GREAT BRITAIN) *v.* UNITED STATES*(January 22, 1926. Pages 307-331.)*

## TREATY (CONTRACT) WITH INDIAN TRIBE.—SUBJECTS OF INTERNATIONAL LAW.

—LEGAL STATUS, PROTECTING POWER, NATIONALITY, MIGRATION OF INDIAN TRIBE.—RIGHT OF PROTECTING POWER TO SUE. Removal in 1784 of considerable portion of Cayuga Nation, a tribe of the Six Nations, from Buffalo Creek, New York, to Grand River, Canada. Conclusion in 1789, 1790, and 1795 of treaties between New York State and Cayuga Nation: cession of lands to New York State against annuity of \$1,800 forever to the Nation to be paid at Canandaigua, Ontario County, Canada. Payment of annuity to Cayugas living in Canada until 1810, and from then on to Cayugas living in United States. War of 1812 (War of Independence), in which Cayugas in United States and those in Canada took part on side of United States and of Great Britain, respectively. Conclusion in 1814 of Treaty of Ghent between United States and Great Britain obliging United States to restore to Indians with whom it had been at war "all the possessions, rights, and privileges which they may have enjoyed or been entitled to" in 1811 before war (article IX). Presentation of claim before Tribunal for: (1) whole amount of annuity from 1810 to the present; or (2), alternatively, for proportion of