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Owners of the Lindisfarne (Great Britain) v. United States

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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

brought the claim to the notice of the officials of the United States Government, to the 26th of April, 1912, the date of the confirmation of the First Schedule to the Pecuniary Claims Convention, viz., £ 14. 5s. 1d., making a total of £ 46. 13s. 1d.

The Government of the United States denies that it is liable for demurrage on account of the injury sustained by the *Lindisfarne* through such collision, and asks that this claim be dismissed and finally barred.

The facts as to the collision are set forth in a communication of the Secretary of State for the United States, dated January 2, 1902, the text of which is quoted in the British memorial. These facts are admitted by the United States Government in their answer and are as follows:

"The *Crook* was being backed out of Pier No. 22 and was under charge of the Cahill Towing Company, contractors for handling the army transports in New York harbour; that while being backed, another vessel crossed her stern, and Assistant Marine Superintendent Lothrop, who was on the *Crook*, seeing danger of colliding with it, gave orders to stop the *Crook* which caused her bow to swing against the *Lindisfarne* lying alongside, with such force as to damage her."

Further it appears from the documents of the case (letter of the Secretary of State, January 8, 1902), that on the day after the collision, i.e., on May 24th noon to noon May 25, 1900, the necessary repairs to the *Lindisfarne* were made by order of the army transport officials, and after having been made the cost of these repairs was defrayed by an appropriation for that purpose by an Act of Congress approved April 7, 1906.

On May 26, 1901, the shipowners, acting through their agents in New York, Messrs. J. H. Winchester and Company, wrote to the General Superintendent, Army Transport Service, claiming for the one day's demurrage of the ship while undergoing repairs.

On September 3, 1901, the United States military authorities in New York answered that the claim could not legally be paid in the absence of a specific appropriation therefor. It was added that the claimant should apply to Congress wherein appropriations were made for like purposes.

On November 4, 1901, December 10, 1904, and February 27, 1906, the British Government, through their Ambassador at Washington, presented to the Department of State of the United States notes relative to the claim, requesting that the said claim be submitted to Congress.

On January 13, 1902, December 14, 1904, March 14, 1906, and January 6, 1909, the claim was presented to Congress, either with the expression of opinion of the War Department that "*the claim for demurrage is warranted*" or with the statement of the Department of State "*that in view of the recognition given*" this claim "*by one or another of the Departments it is not easy for this Department to give satisfactory reasons why provisions for the payment is not made.*" Favourable reports on this claim were made by the Senate Committee on Foreign Relations, and by the House of Representatives' Committee on Claims. Notwithstanding the pressing notes of the British Embassy at Washington and notwithstanding all these favourable reports, expressions of opinion and recommendations, no conclusive action was taken by Congress.

Under these circumstances the British Government contend that the liability of the United States Government has never been contested, and the failure by Congress to make an appropriation to pay is the only cause of non-payment.

On the other hand, before this Tribunal, the United States Government raises various reasons tending to reject any liability: first, that the collision was caused through the efforts of the *Crook* to avoid running down a third

vessel, and these efforts were conducted with ordinary care and maritime skill; secondly, that the collision was not the result of any negligence on the part of the officer in command of the *Crook*, either in the determination of a course of action or in the handling of the transport, and no negligence on his part can be presumed in view of his manifest duty to avoid colliding with a vessel in motion; thirdly, that the collision was in fact and in law an inevitable accident; and fourthly, that no evidence is presented on behalf of His Britannic Majesty's Government upon which a claim for demurrage can be predicated or the amount of demurrage computed; and fifthly, that the Government of the United States has never admitted any liability for the collision.

Such are the facts of the case and the contentions of the two parties.

I. *As to the liability*:

The United States Government does not deny that it must assume the liability, if any, incurred by the *Crook*.

It is not contested that the collision took place between the *Crook*, which was under way, and the *Lindisfarne* which was lying in dock.

It is a universally admitted rule of maritime law, as well in the United States as elsewhere, that in case of collision between a ship under way and a ship at anchor, it rests with the ship under way to prove that she was not at fault, or that the other ship is at fault.

In the present case no sufficient evidence is afforded in that respect by the United States Government. The mere fact that a third vessel crossed the *Crook's* stern, while she was being backed, and that there was danger of colliding with a third vessel is not sufficient evidence that the collision with the *Lindisfarne* was an inevitable accident. The mere fact that the *Crook* stopped to avoid collision with a third vessel is not sufficient evidence that the *Crook* did use the necessary care and maritime skill. No evidence is presented either as to the speed, handling, and way of the third vessel, or as to the speed of the *Crook*, the lookout on board that ship, the time when the order to stop was given, or as to the hour of the collision, the weather at that time, the tide, currents, and general condition of the waters in the harbour of New York at that time, or as to the harbour's regulations and the due observance of those regulations. No evidence and no contention is presented involving any breach of duty, or any liability on the part of the *Lindisfarne*.

The United States Government contends that some of the State or Congressional papers refer to certain reports (with the text of which the parties have been unable to provide the Tribunal), expressing the opinion that the collision was an accident which could not be foreseen. But it is stated in certain other reports, which have not been furnished to the Tribunal but which are quoted in other State or Congressional papers printed in the memorial, that the fault was entirely that of the *Crook*.

The United States Government contends that it did not admit liability for the collision by the Act of Congress approved April 7, 1906, and entitled "*An Act providing for the payment to the New York Marine Repair Company of Brooklyn, New York, of the cost of the repairs to the steamship* Lindisfarne *necessitated by injuries received from being fouled by the United States Army Transport* Crook, *in May, 1900.*" They maintain that the defraying of these repairs was simply a matter of grace and an unusual liberality. But no evidence is presented showing an intention to do an unusual liberality. Nothing appears in that respect in any of the Congressional papers and documents. On the contrary, the same papers show clearly that the said payment was provided for by Congress on an assumption of an obligation to pay, arising out of a liability.

Under these circumstances the Tribunal is of the opinion that there is no good reason to reject the liability of the United States Government.

II. *As to the nature and amount of the claim*:

The British Government claim for the one day's demurrage while the *Lindisfarne* was repaired.

It is clear that demurrage means some detention or delaying of the ship during a certain time.

In that respect no sufficient evidence is afforded by the British Government that the repairs have delayed or interrupted in any way the commercial operations of the *Lindisfarne*.

But according to clause No. 2 of *Terms of Submission* annexed to the compromise, it has been specially agreed by the two Governments:

"The Arbitral 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 any admission of liability by the Government against whom a claim is put forward."

It has already been shown that on the many occasions when this claim was under consideration neither the United States authorities nor Government objected to the claim for demurrage.

Under these circumstances the Tribunal, acting under the said specially stipulated terms of submission, consider it just not to disallow this claim.

III. *As to interest*:

The claim was presented first on May 25, 1901, to the Army authorities of the United States, and they then explained that it should not be addressed to them but to the United States Congress. It was then presented to Congress through the Department of State, acting at the request of the British Ambassador on January 8, 1902. Since that time there is no evidence to justify why during more than ten years the bills, however favourably presented, reported and recommended, never passed. As the Secretary of State said himself in his letter of March 23, 1906, in view of the recognition given these claims by one or another of the Departments *it is not easy to give satisfactory reasons why provision for the payment has not been made.*

Without referring to other grounds and discussing the United States contention that according to their public law no interest is due on State debts, the Tribunal is authorized by clause No. 4 of the Terms of Submission, annexed to Schedule I of the Compromise, to allow interest at 4 % per annum for the whole or any part of the period between the date when the claim was first brought to the notice of the other party. Taking into consideration the circumstances above mentioned, the Tribunal thinks it is equitable to do so in the present case.

On these motives

The Tribunal decides that the United States Government shall have to pay the British Government the sum of £ 32. 8s. with interest at 4 % since the 8th day of January, 1902, to the 26th day of April, 1912.