

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Great Northwestern Telegraph Company of Canada (Great Britain). v. United  
States**

1 May 1914

VOLUME VI pp. 35-36



NATIONS UNIES - UNITED NATIONS  
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thousand dollars (\$5,000) claimed by the legal representatives of the owners of the *Lord Nelson*, shall be put on record; and further awards that the said sum shall be paid accordingly with interest at four per cent (4%) from February 3, 1819 to April 26, 1912.

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GREAT NORTHWESTERN TELEGRAPH COMPANY OF CANADA  
(GREAT BRITAIN) *v.* UNITED STATES

(May 1, 1914. Pages 436-437.)

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DAMAGE TO TELEGRAPH CABLE IN QUEBEC HARBOUR.—AMENDMENT OF PLEADINGS. Damage caused on July 17, 1904, by United States gunboat *Essex*, in dropping anchor in reserved space. Principal amount and claimed counsel fees reduced during proceedings.

PARTIAL ADMISSION OF LIABILITY.—COUNSEL FEES.—INTEREST.—EVIDENCE. United States admitted liability as to principal amount, denied liability as to counsel fees and interest. On account of insufficient evidence for principal amount which United States accepted to pay, this amount *held* sufficient compensation for any loss incurred. *Held* not equitable to allow interest. *Cross-references* : Am. J. Int. Law, vol. 8 (1914), pp. 662-663.

This is a claim presented by His Britannic Majesty's Government on behalf of the Great Northwestern Telegraph Company of Canada, a British corporation, for one thousand thirty-nine 58/100 dollars (\$1,039.58) as stated in their memorial, which amount was reduced on the oral argument to nine hundred thirty-nine 58/100 dollars (\$939.58), together with interest from July 17, 1904, for damage caused to the telegraph cable of the said company in Quebec Harbour on July 17, 1904, by the United States gunboat *Essex*, in dropping her anchor in a reserved space and fouling that cable.

Both parties agree as to the facts.

It appears from an affidavit of the Superintendent of the company (British memorial, pp. 28-29) that within eight days after the cable was damaged, the damage was examined and estimated to be equal to at least one-third of the original cost of the cable, viz., six hundred seventy-nine 48/100 dollars (\$679.48). It appears further that the actual cost of repairs was one hundred forty-eight 10/100 dollars (\$148.10).

The claim is presented for both those items, being altogether eight hundred twenty-seven 58/100 dollars (\$827.58), to which is added, as a third item, counsel fee for two hundred twelve dollars (\$212)—afterwards reduced to one hundred twelve dollars (\$112)—a total of nine hundred thirty-nine 58/100 dollars (\$939.58).

The United States Government admits its liability for eight hundred twenty-seven 58/100 dollars (\$827.58), but denies any liability as to counsel fees and interest.

The Tribunal cannot but remark that the estimated damage of six hundred seventy-nine 48/100 dollars (\$679.48) is simply the contention of the injured party without being supported by any other evidence than its own statement and that the actual expenses for repairs, being one hundred forty-eight 10/100 dollars (\$148.10) is accounted for separately.

Under these circumstances, and considering section 4 of the Terms of Submission, the Tribunal is of opinion that the sum of eight hundred twenty-seven 58/100 dollars (\$827.58) as accepted by the United States Government

is sufficient compensation for any loss incurred by said damage, and in view of all the circumstances it does not consider it equitable to allow interest.

*On these motives*

The Tribunal decides that the agreement given by the Government of the United States to pay His Britannic Majesty's Government the sum of eight hundred twenty-seven 58/100 dollars (\$827.58) claimed by the Great North-western Telegraph Company of Canada shall be put on record, and further awards that the said sum shall be paid accordingly without interest.

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SIVEWRIGHT, BACON AND CO. (GREAT BRITAIN)  
v. UNITED STATES

(Easstry case. May 1, 1914. Pages 499-504.)

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DAMAGE TO VESSEL AT MANILA BAY.—NATIONALITY OF VESSEL: EVIDENCE, CERTIFICATE OF REGISTRY, TRIBUNAL ACTING *PROPRIO MOTU*. The *Easstry*, belonging to Messrs. Sivewright, Bacon and Co., of Manchester, England, chartered by Mr. Simmons and sublet by him to a company under contract with United States, damaged in June, 1901, at Manila Bay by coal hulks taking off her cargo and belonging to the United States. British nationality of ship shown by certificate of registry, produced at request of Tribunal.

DENIAL OF LIABILITY.—EVIDENCE: COURSE ADOPTED BY LOCAL UNITED STATES MILITARY AUTHORITIES, FAILURE TO DENY LIABILITY PREVIOUSLY. Quartermaster, Chief Quartermaster and Assistant Adjutant General, United States Army Transport Service, Manila, recommended payment of \$6,500, the amount the owners agreed to take in final settlement of their claims for cost of repairs and demurrage. Army Transport Service decided to make only temporary repairs in view of possible additional damages if final repairs were made, and to leave owners to file claim for such damages as had not been repaired. When temporary repairs completed, claim forwarded to War Department, Washington, by Army Transport Service with recommendation for early adjustment. Notification of United States by owners of survey of ship in Liverpool, England, on July 14, 1902, before final repairs took place. The United States never contested its obligation to pay for repairs, either at Manila, or when notified of survey at Liverpool, or later in the course of diplomatic correspondence. Denial of liability before tribunal *held* inconsistent with evidence.

AMOUNT OF CLAIM.—EVIDENCE: BURDEN OF PROOF.—DEMURRAGE. The United States never objected to amount of claim. Therefore, no burden upon Great Britain to prove that dry docking for more than a year after injuries were suffered was necessitated solely for purpose of repairing such injuries. Computation of demurrage according to rate at place of detention.

INTEREST. *Held* equitable to allow interest: no explanation can be given why this claim so frequently recommended and so favorably reported on by United States authorities was not paid.

*Cross-reference*: Am. J. Int. Law, vol. 8 (1914), pp. 650-655.

This is a claim presented by His Britannic Majesty's Government on behalf of Messrs. Sivewright, Bacon and Co., of Manchester, England, against the Government of the United States for the sum of eight hundred forty-nine