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

(December 18, 1920. Pages 447-451.)

SEIZURE OF VESSEL IN PORT ETCHES, HINCHINBROOK ISLAND (ALASKA); MUNICIPAL COURT PROCEEDINGS, RELEASE ON BOND. Seizure of British vessel *Coquitlam* on June 22, 1892, by United States revenue cutter at Port Etches, Hinchinbrook Island (Alaska). On July 5, 1892, libel of information filed by United States District Attorney; on September 17, 1892, release of vessel, cargo, and appurtenances on bond; on September 18, 1893, condemnation by District Court, whose decree on November 16, 1896, reversed by United States Circuit Court of Appeals with dismissal of libel.

GOOD FAITH AND FAIR CONDUCT OF SEIZING OFFICERS, BUT ERROR IN JUDGMENT;—PROBABLE CAUSE OF SEIZURE: SUSPICION OF UNDOUBTEDLY WRONGFUL FACT.—WRONGFUL APPLICATION OF MUNICIPAL LAW BY CUSTOMS AUTHORITIES. Before Tribunal, United States denies all liability on the ground that seizing officer acted in bona fide belief that revenue laws of United States had been infringed, and that for this belief there was probable cause. Good faith and fair conduct of seizing officers unquestionable, yet error in judgment for which United States liable: probable cause of seizure implies the existence of certain facts which, if proved, are undoubtedly wrongful. At time of seizure, however, wrongful character of fact not beyond doubt. Since United States judicial authorities decided that application of Customs Statutes wrong, *held* that liability clearly arises.

DAMAGES: INQUIRY OF AGENTS BY TRIBUNAL. Tribunal made inquiry of agents to determine proper amount to be paid as compensation.

INTEREST.—FAILURE TO REACT ON UNITED STATES DECLARATION. *Held* not equitable to allow interest for periods prior to six months after decision of Court of Appeals, and beyond December 21, 1904, date of declaration that United States was disposed to recommend payment subject to certain conditions and to which Great Britain never reacted.

Cross-references: Am. J. Int. Law, vol. 15 (1921), pp. 301-304; Annual Digest, 1919-1922, pp. 171-172, 192-193.

Bibliography: Nielsen, pp. 445-446; Annual Digest, 1919-1922, p. 193.

This is a claim for $104,709.03 and interest presented by the Government of His Britannic Majesty on behalf of the owners of the cargo of the steamer *Coquitlam*. It arises out of the seizure of that steamer on the 22nd of June, 1892, by the United States cutter *Corwin* in the Behring Sea.

The following facts are admitted: the *Coquitlam* was a British ship owned by the Union Steamship Company, of British Columbia, and registered at the Port of Vancouver, B.C.; her gross registered tonnage was 256.33, her net tonnage 165.67.

In the spring of 1892 a number of British schooners left Victoria, B.C., for the purpose of hunting seals in the North Pacific Ocean. The owners of these vessels belonged to an association known as the Pacific Sealers Association, and at the time they sailed from Victoria it was understood that a ship would be sent out in the following June to convey supplies to the schooners and receive in return their catch of seal skins.

In pursuance of this understanding the *Coquitlam* was chartered on June 4, 1892, for a period of 30 days and fitted out at the Port of Victoria by the Pacific

Sealers Association. She sailed from that port for the North Pacific Ocean on June 8.

It had been arranged that the schooners should rendezvous at Marmot Island, or Tonki Bay, in Afognak Island, or at Port Etches, in Hinchinbrook Island.

The *Coquitlam* arrived at Tonki Bay on June 18, 1892, and next day at the mouth of the bay received from eight sealing schooners 5,835 seal skins and transferred to the other vessels the supplies provided. She left Tonki Bay for the second rendezvous at Port Etches and arrived there on June 22. The same day, before any transfer had been made to or from the schooners, she was seized in the harbour by the United States revenue cutter *Corwin* and taken to Sitka, where she was handed over to the Collector of Customs.

No document or entry in the ship's log has been produced purporting to have been made at the time and stating the circumstances of and reasons for the seizure.

On July 5 the United States District Attorney filed in the District Court of Alaska a libel of information against the *Coquitlam*, its appurtenances and cargo, alleging that she had committed three separate offenses: the first, under sections 2867 and 2868 of the Revised Statutes of the United States, by receiving or unloading merchandise and cargo in the waters and within four leagues of the coast of the United States; the second, under section 3109 of the same Revised Statutes, by transferring merchandise within the said limits without having previously reported and received a permit; the third, under sections 2807, 2808, and 2809, by having no manifest in writing of the cargo brought into an United States harbour.

By order of the District Court of the 17th of September, 1892, the vessel, cargo, and appurtenances were released upon giving bonds for $87,660.95.

Upon the trial of the libel the *Coquitlam*, her cargo and appurtenances were condemned by a decree of the District Court, dated September 18, 1893. But on appeal the United States Circuit Court of Appeals for the Ninth Circuit on the 16th day of November, 1896, reversed the decree of forfeiture made by the District Court and dismissed the libel.

This decision of the judicial authorities of the United States is binding upon the Government. It decides that what sections 2867, 2868 of the Revised Statutes had in view was vessels bound to the United States and that there was no evidence that the *Coquitlam* was so bound—that section 3109 contemplated vessels not merely arriving in the United States waters but intending to proceed further inland, either to unload or take on cargo, and that there was on the record no proof of any such intention—that sections 2807, 2808 and 2809 made liable to forfeiture only such merchandise as is consigned to the master, mate, officers, or crew, and that it was not alleged in this case that any merchandise was so consigned.

The same decision goes on to say that there was no contention "that any injury has been done to the United States by the acts which are complained of in the libel, or that the United States has in any way been defrauded of revenue, or that there was any intention upon the part of the masters or owners of the vessels to evade the provisions of the revenue laws. The merchandise was not bound to the United States, nor was it consigned to any person, nor destined to be delivered at any place in the United States."

I. *As to the liability:*

It appears that shortly after the seizure of the vessel the British Government brought the matter to the attention of the United States Government, but no action was taken during the pendency of the judicial proceedings, the

Coquitlam in the meantime having been released on bond. Subsequently, in a letter of the Secretary of State to the British Ambassador, dated December 21, 1904, the United States Government stated that the Department of State "is disposed to recognize liability and to recommend payment of a reasonable indemnity; but it will be necessary to have submitted to it the proofs showing the nature and extent of the damages suffered by the seizure, in order that the Department may consider the amount of the liability to make a definite recommendation". There is no evidence that the British Government ever complied with the request.

Before this Tribunal the United States Government denies all liability in this case.

It contends that the construction put upon the language of the Statutes by the Circuit Court of Appeals is a very technical construction, while the construction upon which the officer acted in making the seizure had abundant support in decisions of the United States Courts prior to this case, that it is clear when this circumstance is taken in conjunction with the facts as disclosed that the officer acted in the bona fide belief that the revenue laws of the United States had been infringed, and that for this belief there was probable cause.

The good faith and fair conduct of the officers of the *Corwin* are unquestionable, but though this may be taken into account as an explanation given by the same officers to their Government, it can not operate to prevent their action being an error in judgment for which the Government of the United States is liable to a foreign Government.

Further, even supposing that the interpretation of the United States Customs Statutes may have given rise to some doubt, such a doubt can not constitute a probable cause of seizure. Probable cause of seizure, as defined by Chief Justice Marshall, "imports a seizure made under circumstances which warrant suspicison" (Locke *v.* United States, 1813, vii Cranch, 339, at p. 348). It implies the existence of certain facts which *prima facie* create a liability to seizure, facts which there is good reason to believe will be established though they are not yet actually proved. The doubt must be as to the existence of the fact, not as to its wrongful character.

Since in this case there was no doubt as to the circumstances of fact under which the seizure took place, but, according to the United States contention, some possible doubt as to the application of the Statutes, their application was made by the United States naval authorities at the risk of their Government, and since it has been decided by the United States judicial authorities that this application was wrong, liability clearly arises.

II. *As to the consequences of the liability and amount of damages:*

The result of inquiry made by the Tribunal of the agents of both Governments has been to show that a sum of $48,000 represents a proper amount to be paid by the Government of the United States as compensation for the seizure and its consequences.

III. *As to interest:*

It would not be equitable that interest should be allowed for the period prior to six months after the decision of the Circuit Court of Appeals on November 16, 1896, i.e., prior to May 16, 1897. On the other hand, it has been shown that, on December 21, 1904, the United States Government declared that it was disposed to recommend payment on condition that the British Government should submit proof of the nature and extent of the damages. As has been said, there is no evidence that the British Government ever complied with that request.

Taking these circumstances into consideration, this Tribunal is of opinion that interest at 4 % should be allowed from May 16, 1897, to December 21, 1904.

For these reasons

This Tribunal decides that the Government of the United States must pay to the Government of His Britannic Majesty the sum of $48.000 on behalf of the British subjects injured by the seizure of the S.S. *Coquitlam* in June 1892, with interest at 4% from May 16, 1897, to December 21, 1904.

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

(December 18, 1920. Pages 490-494.)

SEIZURE OF FISHING VESSEL IN LIVERPOOL (NOVA SCOTIA) AND NORTH SYDNEY (CAPE BRETON).—SEPARATION OF CLAIMS. Seizure of United States vessel *Tattler* on April 10, 1905, by Canadian authorities in Liverpool (Nova Scotia), and on December 15, 1905, by the same authorities in North Sydney (Cape Breton). Claims presented on account of each seizure argued and decided separately.

RELEASE OF VESSEL.—WAIVER OF CLAIMS BY INTERESTED PARTIES BINDING UPON STATE. Release of vessel on April 16, 1905, subsequent to agreement whereby owners of vessel unconditionally waived all claims on account of its seizure. Owners' waiver *held* binding upon United States as the only right it is supporting is that of the owners.

WRONGFUL APPLICATION OF MUNICIPAL LAW BY CUSTOMS AUTHORITIES.—Refusal in October, 1905, by Canadian authorities in North Sydney, Cape Breton, of licence enabling the *Tattler* to ship additional members of the crew. When the *Tattler*, nevertheless, shipped men and on December 15, 1905, again entered North Sydney, she was seized for violation of the relative Canadian Statute, though in the meantime the Canadian authorities in North Sydney had discovered that their refusal had been based on an error and had issued a licence to the *Tattler*. Vessel not released until December 18, 1905. Great Britain *held* responsible.

AMOUNT OF CLAIM.—LOST PROFITS. Claim for value of herring not caught because of detention. Uncertainty of prospective catch. Indemnity fixed on the basis of trouble undergone by owners, period of detention, and tonnage, equipment and manning of vessel.

INTEREST: POSTPONEMENT OF DECISION.

Cross-references: Am. J. Int. Law, vol. 15 (1921); pp. 297-301; Annual Digest, 1919-1922, pp. 235-236, 172-173.

Bibliography: Annual Digest, 1919-1922, p. 236.

First claim

This is a claim for $2,028.88 with interest, on account of a seizure of the said schooner *Tattler* on April 10, 1925, and its detention for six days, i.e., from April 10 to April 16, 1905, by the Canadian Authorities in Liverpool, Nova Scotia, on a charge of an alleged contravention of the first article of the treaty concluded at London on October 10, 1818, between Great Britain and the United States, and of section 3, paragraph 3, of chapter 94 of the