

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Owners of the Tattler (United States) v. Great Britain**

18 December 1920

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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.)

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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

Revised Statutes of Canada, 1886, entitled: "An Act respecting fishing by foreign vessels."

The record shows that by an agreement made at Liverpool, Nova Scotia, April 15, 1905 (United States memorial, exhibit 19, enclosure 1), the owners entered into the following undertaking:

"In consideration of the release of the American schooner *Tattler* of Gloucester, Mass., now under detention at the port of Liverpool, Nova Scotia (on payment of the fine of five hundred dollars, demanded by the Honourable Minister of Marine and Fisheries of Canada, or by the Collector of Customs at said port), we hereby guarantee His Majesty King Edward the Seventh, his successors and assigns, represented in this behalf by the said Minister, and all whom it doth or may concern, against any and all claims made or to be made on account of or in respect to such detention or for deterioration or otherwise in respect to said vessel or her tackle or apparel, outfits, supplies or voyage, hereby waiving all such claims and right of libel or otherwise before any courts or Tribunal in respect to said detention or to such or any of such claims or for loss or damage in the premises."

It has been observed by the United States Government that on the same day the owners notified the Canadian authorities that the payment of the said sum of \$500 was made under protest.

But neither this protest nor the receipt given by the Canadian authorities for the \$500 contains any reservation to, or protest against, the guarantee given against "any and all claims made or to be made on account of or in respect to such detention". It does not appear, therefore, that the waiver in the undertaking of any claim or right "before any court or tribunal" was subject to any condition available before this tribunal.

It is proved by the documents that the consent of the British Government to the release of the vessel was given on two conditions, first, on payment of \$500, and, second, on the owners undertaking to waive any right or claim before any court, and the protest against the payment does not extend and can not in any way be held by implication to extend to this waiver.

This protest appears to have been a precautionary measure in case the Canadian authorities should have been disposed to reduce the sum. Any protest or reserve as to the waiver of the right to damages would have been plainly inconsistent with the undertaking itself and would have rendered it nugatory if it had been accepted by the other party.

On the other hand, it has been objected that the renunciation of and guarantee against any claims are not binding upon the Government of the United States, which presents the claim.

But in this case the only right the United States Government is supporting is that of its national, and consequently in presenting this claim before this Tribunal, it can rely on no legal ground other than those which would have been open to its national.

#### *For these reasons*

This Tribunal decides that the claim relating to the seizure and detention of the American schooner *Tattler* on and between April 10 and April 16, 1905, must be dismissed.

#### *Second claim*

This is a claim for \$2,100 with interest for the seizure of the same American schooner *Tattler* by the Canadian authorities on December 15, 1905, in the port of North Sydney, Cape Breton, for an alleged violation of the Canadian

Statute 55 and 56 Vict. (1892) chapter 3, entitled: "An Act respecting fishing vessels of the United States."

In October, 1905, the *Tattler* registered at and sailed from Gloucester, Massachusetts, to Newfoundland on a salt herring voyage, proceeding to North Sydney, Cape Breton, and entered that port to obtain a licence from the Canadian authorities under the above-mentioned Canadian Act enabling it to ship additional men as members of the crew.

It is shown by the documents and it is not denied that the Master of the *Tattler* after entering that port went on shore and applied to the Canadian authorities for the said licence; that notwithstanding three separate requests the licence was refused him on the ground that the schooner was on the American register and did not hold an American fishing licence; and that on this refusal the men were shipped without a license.

It is established by a report of the Canadian authorities to the Minister of Marine and Fisheries of Canada dated at Ottawa, December 15, 1905 (British answer, annex 51), that up to that season United States vessels registered as trading vessels visited Newfoundland for the purpose of obtaining cargoes of frozen herring, and were afforded all the ordinary port privileges extended to trading vessels. Newfoundland, however, in that year, i.e., 1905, passed an Act preventing such vessels from procuring bait fishes and herring within the territorial jurisdiction of Newfoundland, and they were forced to catch their cargoes of fish for themselves, and so became fishing vessels. As they had not the necessary crews and could not under the Newfoundland regulations ship them in Newfoundland waters, it became necessary for them either to return home or procure the necessary crews in Canadian ports. In the early part of the season the Canadian local custom officials were not very clear as to the status of these vessels under the changed conditions. The Canadian Government, however, decided that the moment they shipped crews to catch fish they changed their character and became fishing vessels, and as such must procure a Canadian licence, under the Canadian Act. When the Government's decision was made known to the officials, this course was followed.

In the following month, i.e., November, 1905, information was received by the owners of the *Tattler* that the Canadian authorities at North Sydney had discovered their error in regard to the licence requested by and refused to the schooner, and that they were ready to issue the licence on receipt of the proper fee. The owners mailed the amount without delay to the Canadian authorities at North Sydney.

By that time the *Tattler* had returned to Gloucester and sailed again for Newfoundland, and on December 15th owing to bad weather she entered North Sydney for shelter. She was immediately seized on the charge of having, on her previous trip, shipped men without a licence. Telegraphic correspondence took place between the owners and the Canadian authorities to ascertain the facts. But it was not until three days later, i.e., on December 18, 1905 (British answer, annex 53), that her release was obtained.

This Tribunal is of opinion that the British Government is responsible for that detention.

It is difficult to admit that a foreign ship may be seized for not having a certain document when the document has been refused to it by the very authorities who required that it should be obtained.

The British Government in their answer and argument contend that the captain of the schooner had never expressly informed the Canadian Collector of Customs that his vessel was a fishing vessel. But it is to be observed that this same ship, a few months before, sailing under exactly the same conditions

and entering Canadian ports, had been treated as a fishing vessel, blacklisted and seized as one by the Canadian authorities.

That this fact could not have been and was not forgotten is shown by the aforesaid Canadian report of December 16, 1905 (British answer, annex 51).

In any case, it was admitted by the Canadian authorities (*ibid.*) that the officials were at that time insufficiently informed and uncertain as to the exact status of such vessels.

Such an error of judgment by the Canadian officials shall not result in prejudice to the foreign ship in question.

Under these circumstances the *Tattler* is entitled to an indemnity.

*As to the quantum :*

The claim is for the alleged loss of 665 barrels of herring valued at \$2,100, which it is contended the vessel did not catch because of the three days detention.

But no evidence is produced as to the certainty of this prospective catch. Nobody can say whether the vessel would have made such a catch, or whether it would have encountered some mishap of the sea.

Taking into consideration the trouble undergone by the owners, the period of the detention, and the tonnage, equipment and manning of the vessel, this Tribunal thinks that the sum of six hundred and thirty dollars (\$630) is a just indemnity.

*For these reasons*

This Tribunal decides that the Government of His Britannic Majesty must pay to the Government of the United States the sum of six hundred and thirty dollars (\$630) for the seizure and detention of the American schooner *Tattler* on and between December 15 and 18, 1905.

As to the interest, further decision will be given.

## H. J. RANDOLPH HEMMING (GREAT BRITAIN) *v.* UNITED STATES

(December 18, 1920. Pages 620-623.)

**IMPLICIT APPROVAL OF, LIABILITY FOR ACTION TAKEN BY CONSUL.**—Employment of attorney by United States Consul at Bombay in December, 1894, January and February, 1895, for the sole benefit of United States. Whatever the Consul's authority to employ attorney, United States by its implicit approval of employment liable for costs of services rendered.

**AMOUNT OF CLAIM.—INTEREST.** Claim for \$2,000 and interest at 4% per annum for 16 years. No specific fee ever agreed upon. House of Representatives Committee of Claims suggested payment of \$2,000 in full settlement. In consideration of services rendered, expense and trouble undergone by Hemming, and of delay in payment, award made of \$2,500 without interest.

*Cross-references :* Am. J. Int. Law, vol. 15 (1921), pp. 292-294; Annual Digest, 1919-1922, p. 170.

*Bibliography :* Nielsen, pp. 617-619.

This is a claim presented by His Britannic Majesty's Government on behalf of Henry Joseph Randolph Hemming for \$2,000 and \$1,280 for 16 years' interest at 4%, and also for such further compensation as this Tribunal may think right.