

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

H.J.Randolph Hemming (Great Britain) v. United States

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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.

This claim is on account of professional services rendered as a lawyer by H. J. Randolph Hemming at the request of the United States Consul at Bombay in December, 1894, January and February, 1895, in the prosecution of certain persons accused of counterfeiting United States gold coin in India.

The Government of the United States admits the employment of Hemming by its Consul and the rendering by him of some legal services. It does not deny the American Consul's clear right to prevent, if possible, the counterfeiting of American coin in India by setting in motion the machinery of police and prosecution, but it contends that the Consul had no legal authority to employ private counsel on behalf of his Government, for the performance of duties which might well have been carried out by the public officials of the Crown.

As to the facts :

It appears from the documents in the case, that on December 13 and 15, 1894, the United States Consul at Bombay informed the Secretary of State of the counterfeiting of American gold dollars in India and asked for instructions, and that in the absence of any reply he further informed him on December 22, 1894, and January 5 and 26, 1895, of the steps which he was taking to put an end to the counterfeiting and for the prosecuting of the offenders, of the employment of a lawyer, and also of the various legal services and assistance rendered in the matter by the said Hemming.

On January 30, 1895, the Secretary of State in reply forwarded some technical remarks of the Treasury Department as to the counterfeiting and made no objection to or criticism of the steps which had been taken.

On February 2 and May 11, 1895, the Consul forwarded to the Secretary of State further information as to the progress of the prosecution he had initiated and the employment of the attorney and finally communicated to his Government the decision of the Indian Court, and asked for instructions as to an appeal.

By a letter dated July 2, 1895, the Secretary of State, still acting in conjunction with the Secretary of the Treasury, negatived the suggestion of an appeal. As before he made no criticism of, nor did he refer in any way to, the employment of Hemming.

The legal proceedings thus came to an end, and the Consul by a letter dated August 2, 1895, reported to the Secretary of State the request of Hemming for a fee of \$2,000, but recommended a fee of \$500.

It is shown by the documents that the United States Government decided not to pay Hemming the fee recommended by the Consul on the ground that his employment was unauthorized, and would not have been sanctioned. There is no evidence that this decision was communicated to Hemming either by the United States Government, or by its Consul.

In 1904, Hemming, who had in the meantime given up practice in India and returned to England, addressed the American Embassy in London through Merton and Steele, solicitors in London. But it appears from the documents that the United States Government on the receipt through the Embassy of this new request adhered to its decision that as the records did not show any authorization for the employment of counsel, or for the incurring of expense in connection with the case, the claim could not be paid. There is no evidence that this decision was communicated by the United States Government or by its Embassy, either to Hemming or to his solicitors.

In 1908 Hemming went to Washington to endeavour to secure payment. There he obtained the presentation before Congress of some bills which were favorably reported upon, at first for \$500, finally, after hearing Hemming's

explanation, for \$2,000. But they had not passed when the claim was brought before this Tribunal.

It was only in April, 1910, that Hemming appealed to His Britannic Majesty's Government for assistance in procuring redress, and it is said that the claim was accordingly recommended informally to the State Department by the British Ambassador at Washington.

As to the law :

Whatever at the outset was the authority of the United States Consul to employ an attorney at the expense of the United States Government, it is plain from the correspondence referred to above that that Government was perfectly well aware, after its Consul's letter of December 22, 1894, received January 14, 1895, of Hemming's employment in a prosecution initiated solely for its benefit, that it did not object in any way whatever during the progress of the case to the steps taken by its Consul but appeared implicitly at all events to approve of those steps and of Hemming's employment.

This Tribunal is, therefore, of opinion that the United States is bound by the contract entered into, rightly or wrongly, by its Consul for its benefit and ratified by itself.

As to the amount of the claim :

There is no evidence that any specific sum was ever agreed upon as a fee to be paid to Hemming.

As has been shown, the American Consul first recommended a sum of \$500. The same sum was accordingly recommended in 1910 as equitable to the Committee of Claims of the House of Representatives by the Secretary of State and favorably reported upon in 1910 by that committee. Subsequently, in 1912, after a close investigation into Hemming's claim, the same committee suggested a sum of \$2,000 in full settlement.

This Tribunal taking into consideration the services rendered, and the expense and trouble undergone by Hemming as well as the delay in payment, thinks that the sum of two thousand five hundred dollars (\$2,500) is sufficient in full settlement of the claim, without interest.

For these reasons

This Tribunal decides that the Government of the United States must pay to the Government of His Britannic Majesty for the benefit of Henry Joseph Randolph Hemming, the sum of two thousand five hundred dollars (\$2,500) without interest.

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

(November 29, 1921. Pages 453-458.)

COLLISION OF VESSELS ON PATAPSCO RIVER.—NATIONALITY OF VESSEL, EVIDENCE, CERTIFICATE OF REGISTRY. Collision on October 31, 1905, on Patapsco River between British merchant ship *Sidra* and United States Government tug boat *Potomac*. British nationality of *Sidra* shown by certificate of registry.

APPLICABLE LAW: *LEX LOCI DELICTI COMMISSI*.—EVIDENCE: PROOF OF FAULT, BURDEN OF PROOF, RULE OF MARITIME LAW RECOGNIZED IN UNITED STATES AND