REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

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

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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

GREAT BRITAIN. According to well settled rule of international law the *lex loci delicti commissi* must apply. Well settled rule of maritime law recognized both in United States and Great Britain that ship under way colliding with ship at anchor is liable unless it proves that collision is due to fault of the other vessel.

DENSE FOG. ANCHORING AND NAVIGATION, INLAND RULES OF UNITED STATES. In a dense fog, the *Sidra* anchored across the path of navigation, while she could well have anchored clear of the channel. The *Potomac*, upon hearing the bell of the anchored *Sidra*, stopped and instead of keeping stopped and ascertaining the location of the *Sidra* according to the common rule of prudent navigation confirmed by the Inland Rules of the United States, she then altered her course and continued ahead in the narrow channel frequented by numerous ships, without a lookout on the forecastle, at a speed as to make it unable to avoid collision. The *Potomac held* responsible for collision and the *Sidra* as having contributed to it.

EXTENT OF LIABILITY: BOTH SHIPS AT FAULT. According to applicable United States law, when both ships are to blame the damage suffered by each of them must be supported by moiety by the other.

INTEREST: PRESENTATION OF CLAIM. No proper presentation of claim made to United States Government.

Cross-references: Am. J. Int. Law, vol. 16 (1922), pp. 110-114; Annual Digest, 1919-1922, p. 100.

Bibliography: Nielsen, p. 452.

This is a claim presented by His Britannic Majesty's Government for £4,336. 7s. 4d. and £1,127 interest for damages on account of a collision which occurred during a dense fog in the Patapsco River in the approaches of Baltimore Harbor, Maryland, in the territorial waters of the United States on the 31st of October, 1905, between the United States Government tug boat *Potomac* and the British merchant ship *Sidra*.

It appears from her certificate of registry that the *Sidra*, a steam-screw vessel, was in 1905 a British ship of 5,400 tons of displacement, 322 feet long, and drawing 10 to 12 feet.

The *Potomac* was a steam-screw tug boat owned by the United States Government; she was 135 feet in length with a draft of about 15 feet; her displacement was 650 tons.

On October 31, 1905, at 6 o'clock in the morning, the *Sidra*, bound from New York to Baltimore, was proceeding up the channel to Baltimore harbor; the pilot and the captain were on the bridge, a seaman was at the wheel, the chief officer and carpenter were stationed on the forward deck by the anchor, which was ready to let go.

At about 7.30 a.m., soon after passing Fort Carroll, the weather became foggy and the fog became so thick that at 7.45, in the judgment of pilot, it was prudent to anchor. The exact position of the vessel, when anchored, is contested.

Immediately upon anchoring, the *Sidra* rang her bell in conformity with the Inland Rules of the United States, article 15, and, thereafter, hearing the fog-blasts of an approaching steamer, which proved to be the *Potomac*, she continued to ring her bell.

On the same day, October 31, 1905, at about 6 a.m., the United States tug boat *Potomac* had left Annapolis, under orders to proceed to Baltimore to obtain provisions for the North Atlantic Fleet and to return to Annapolis on the afternoon of that same day (United States answer, exhibit 6). The com-

manding officer was on the bridge and with him a government-licensed pilot and the boatswain as lookout. She had no lookout on the forecastle.

At about 8 o'clock in the morning the *Potomac* passed Fort Carroll and proceeded up the river on the starboard side of the channel heading up; at that time the weather was still clear (United States answer, p. 44), but about ten minutes later it suddenly changed and a dense fog shut in upon the water.

Before the fog shut down, the *Potomac* sighted a steamer under way about two miles ahead in the channel and, according to the commanding officer, she was the *Sidra* (United States answer, p. 18).

As soon as the fog shut in, the *Potomac* slowed gradually until going 4 knots (United States answer, p. 44), and blew her whistle in conformity with the regulations. She passed on starboard hand close aboard of one of the buoys marking the starboard side of the channel, then she passed a second one which she ran over, then having altered her course, so as to keep more in the channel, she heard the bell of a ship, which proved to be the *Sidra*. The sound seemed to her to come from dead ahead; her course was altered so as to bring it on the starboard bow. But suddenly the shape of the steamer loomed up dead ahead at about 100 or 150 feet. The *Potomac* immediately reversed the engines full speed astern, but she was unable to check her headway in sufficient time to avoid collision. The *Potomac* collided with the *Sidra* at about right angles, causing her a large amount of damage without damaging herself. At the moment of the collision it was 8.15 a.m.

A few days after the collision occurred, i.e., on November 3,4,6, and 9, 1905, a United States Naval Board of Investigation was convened by the Commander in Chief of the North Atlantic Fleet, to inquire into the circumstances of the collision, and to express an opinion as to which one of the two vessels was responsible for the collision. The conclusion reached by that Board was that the *Sidra* was responsible, as she might have anchored well clear of the channel and she did not.

Before this Tribunal the British Government contend that the collision occurred by the fault of the *Potomac* in that she was proceeding at an excessive rate of speed in fog and did not stop her engines and navigate with caution on hearing forward of her beam the fog signal of a vessel anchored, whose position was not ascertained, and further in that the *Potomac* did not keep within the channel but ran outside thereof, and in that she did not maintain a proper or sufficient lookout.

The United States Government contends that the collision was due to the fault of the *Sidra* in anchoring in the channel and obstructing the path of navigation, while she might, without difficulty and with perfect safety, have been anchored outside and out of the path of other vessels.

According to the well settled Admiralty rule, recognized both in the United States and Great Britain, in case of a collision between two ships, one of them being moving and the other at anchor, the liability is for the vessel under way, unless she proves that the collision is due to the fault of the other vessel.

Consequently, in this case the responsibility lies upon the *Potomac* and the Government of the United States, unless and so far as it is established that the *Sidra* was in fault.

In that respect there is not sufficient evidence to show the exact location of the place where the *Sidra* anchored and the collision took place. It has been stated by the commanding officer of the *Potomac* (United States answer, p. 17) that the *Sidra's* anchor was a little outside the line of buoys on the easterly or starboard side of the channel, the ship herself lying across the channel. Also there is the concurring statement of those on board two other vessels, the *Chicago* and the *Sparrow*. The *Sparrow* said that she saw the *Sidra* lying her portside

parallel with the line of the channel about 50 yards from it, i.e., 160 feet. And the *Chicago* said that she saw the *Sidra* lying from 150 to 200 feet from the channel and at the time the vessel did not project into the channel.

On the other hand, the testimony of the captain of the *Sidra* shows that he took no soundings before or when anchoring (British memorial, p. 41); that he did not know where he anchored from bearings, buoys, etc. *(ibid)*, and that he anchored when he thought he was clear of the channel, but he did not know *(ibid.*, question 31, p. 41; question 79, p. 70; see also p. 76), and that after the collision at 8.20, the tide beginning to change, he used the engines to bring the vessel around quicker, in order not to be laying across the channel, and afterwards changed her anchorage in order not to be "worrying about" vessels passing up and down; furthermore, he admitted that he could have gone at least half a mile further to the northeast with entire safety and that there is three-fourths of a mile between the line of the channel and the shoal water (see British memorial, pp. 64, 65, 70).

No sufficient evidence is afforded by the British Government to contradict the above elements of proof, from which it results that the *Sidra* anchored outside the channel, but being given her 322 feet length, not far enough to prevent her from rounding across the eastern side of the path of navigation. As noted by the United States Board of Inquiry, "prudence would dictate to any vessel finding herself under the necessity of anchoring to choose a position well clear of the channel". This the *Sidra* did not do, and no reason is given why it could not have been done. As it has been shown there was about one-half-mile room farther outside the channel; the *Sidra* said that she rounded one of the buoys marking the channel before anchoring; then she had the possibility of calculating how far she had to go to be certain she was entirely clear of the line. It was so much more her duty to do it, since she heard the whistle of other vessels in the neighborhood (British memorial, p. 66, question 50).

By that lack of prudence, the *Sidra* had, in this Tribunal's opinion, contributed to the collision.

As regards the *Potomac*, this Tribunal regrets not to have before it such important testimonies and documents as the testimony of the chief engineer and the log book of that vessel. But it results from the testimony of the commanding officer that when the vessel heard the bell of the *Sidra* she was going at 4 knots an hour, and that after she had stopped her engines and altered her course to port, again she continued her course ahead under the same speed (United States answer, pp. 16, 32, 46, and 62) without ascertaining the location of that bell.

In dense fog, it is the common rule of prudent navigation not only to stop as soon as a bell is heard, but also to keep stopped until the location of the other vessel ringing the bell and being an obstruction be ascertained, and everybody knows that it is impossible in fog to rely upon the apparent direction of the sound for ascertaining that location (see Marsden, Collisions at Sea, pp. 378, 379).

That rule is confirmed by articles 16 and 23 of the Inland Rules of the United States as they have been construed by various Federal decisions (The *Grenadier* v. the *August Korff*, 74 Fed. Rep., 974, 975).

Furthermore, it must be observed that whatever be her naval orders, the *Potomac* was proceeding in a narrow channel of 600 feet wide, frequented by numerous ships going up and down, and that she knew another steamer was ahead on her way, and she had to be especially cautious as to her speed, and the strict observance of the most prudent navigation. The *Potomac*, as has been shown, had no lookout on the forecastle and she was proceeding in a fog so dense that she was unable to sight the *Sidra* until about 50 feet before colliding

and she was proceeding at such a speed as to make her unable to avoid collision.

For these reasons, the *Potomac* is to be held responsible for the collision, for not navigating with sufficient prudence, and on the other hand, the *Sidra* is to be held as having contributed to the collision by having imprudently anchored too close to the channel.

According to the well settled rule of international law, the collision having occurred in the territorial waters of the United States, the law applicable to the liability is the law of the United States, according to which when both ships are to blame the damage suffered by each of them must be supported by moiety by the other.

It results from the United States inquiry that the *Potomac* suffered no damage, and it is shown by the documents that the damage suffered by the *Sidra* amounted to £ 4,336. 7s. 4d., including £ 750 for demurrage. Consequently, the United States Government, as the owner of the *Potomac*, is liable for £ 2,168. 3s. 8d.

As for the interest, it seems difficult to consider the letter of November 10, 1905, by which the representatives of the *Sidra* asked for the result of the United States naval investigation, as having brought the present claim to the notice of the United States Government.

For these reasons

This Tribunal decides that the United States Government shall pay to His Britannic Majesty's Government for the benefit of the owners of the *Sidra*, the sum of two thousand one hundred and sixty-eight pounds, three shillings and eight pence (£ 2,168. 3s. 8d).

OWNERS OF THE *JESSIE*, THE *THOMAS F. BAYARD* AND THE *PESCAWHA* (GREAT BRITAIN) *v.* UNITED STATES

(December 2, 1921, Pages 479-482.)

SEARCH OF VESSELS ON THE HIGH SEAS; SEALING OF FIREARMS, AMMUNITION.—CONVENTIONAL PROTECTED ZONE OF FUR-SEALING. Seizure of British vessels *Jessie*, *Thomas F. Bayard* and *Pescawha* on June 23, 1909, by United States revenue cutter on high seas near Chirikof Island, North-East Pacific Ocean, while hunting sea otters in conventional protected zone of fur-sealing. Firearms and ammunition found on board placed under seal. Order not to break seals before leaving zone.

FUNDAMENTAL PRINCIPLE OF INTERNATIONAL MARITIME LAW.—DENIAL OF LIABILITY.—GOOD FAITH OF SEARCHING OFFICER, BUT ERROR IN JUDGMENT. Fundamental principle of international maritime law concerning interference with foreign vessels on the high seas. The United States, though admitting illegal and unauthorized character of search, denies liability because of good faith of searching officer, because of insufficient evidence, and because of exaggeration and fraudulent character of claims. United States *held* liable, notwithstanding good faith of naval authorities: responsibility for errors in judgment of officials purporting to act within the scope of their duties and vested with power to enforce their demands. Liability not affected by alleged exaggeration and fraudulent character.

AMOUNT OF CLAIM.—EVIDENCE.—EXAGGERATION, FRAUDULENT CHARACTER, GOOD FAITH OF CLAIMS.—LOST PROFITS.—TROUBLE. Insufficiency of evidence