REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Owners of the Jessie, the Thomas F. Bayard and the Pescawha (Great Britain) v. United States

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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

as to damages and alleged exaggeration of claims do not justify charge that claims are fraudulent: bona fides of claims *held* proven by the mere fact of their presentation by Great Britain. Vessels, caused to leave conventional protected zone of fur-sealing, went fur-sealing in North-West Pacific Ocean. Possibility of such voyage contemplated by owners and captains before departure. No damage suffered on voyage. Profitable catch of fur-seals by vessels No evidence of profits from sea otter hunting lost by interference by United States naval authorities. Expenses in engaging crews specially trained in sea otter hunting wasted. Allowances made for such expenses and for trouble.

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

Cross-references: Am. J. Int. Law, vol. 16 (1922), pp. 114-116; Annual Digest, 1919-1922, pp. 175, 187.

Bibliography: Annual Digest, 1919-1922, pp. 187-188.

These are three claims presented by His Britannic Majesty's Government:

1. For $38,700 on behalf of the British schooner *Jessie;*
2. For $51,628.39 on behalf of the British schooner *Thomas F. Bayard;*
3. For $52,661.60 on behalf of the British schooner *Pescawha*, together with interest from June 23, 1909.

It is admitted that the *Jessie*, the *Thomas F. Bayard*, and the *Pescawha*, all of them British schooners, cleared at Port Victoria, B.C., for sealing and sea otter hunting and were in June, 1909, actually engaged in hunting sea otters in the North Pacific Ocean; that on June 23, 1909, while on the high seas near the north end of Cherikof Islands [1] they were boarded by an officer from the United States revenue cutter *Bear* who, having searched them for sealskins and found none, had the firearms found on board placed under seal, entered his search in the ship's log, and ordered that the seals should not be broken while the vessels remained north of 35° north latitude, and east of 180° west longitude.

The United States Government admits in its answer to the British memorial that there was no agreement in force during the year 1909 specifically authorizing American officers to seal up the arms and ammunition found on board British sealing vessels, and that the action of the commander of the *Bear* in causing the arms of the *Jessie*, the *Thomas F. Bayard*, and the *Pescawha* to be sealed was unauthorized by the Government of the United States.

The United States Government, however, denies any liability in these cases, first, because the boarding officer acted in the bona fide belief that he had authority so to act, and secondly, because there is no evidence on the claims except the declaration of the interested parties, and because these claims are patently of an exaggerated and fraudulent nature.

I. *As to the liability:*

It is a fundamental principle of international maritime law that, except by special convention or in time of war, interference by a cruiser with a foreign vessel pursuing a lawful avocation on the high seas is unwarranted and illegal, and constitutes a violation of the sovereignty of the country whose flag the vessel flies.

It is not contested that at the date and place of interference by the United States naval authorities there was no agreement authorizing those authorities to interfere as they did with the British schooners, and, therefore, a legal

[1] Misprint for Chirikof Island [Note by the Secretariat of the United Nations, Legal Department].

liability on the United States Government was created by the acts of its officers now complained of.

It is unquestionable that the United States naval authorities acted bona fide, but though their bona fides might be invoked by the officers in explanation of their conduct to their own Government, its effect is merely to show that their conduct constituted an error in judgment, and any Government is responsible to other Governments for errors in judgment of its officials purporting to act within the scope of their duties and vested with power to enforce their demands.

The alleged insufficiency of proof as to the damage and the alleged exaggeration and fraudulent character of the claims, do not affect the question of the liability itself. They refer only to its consequences, that is to say, the determination of damages and indemnity.

II. *As to the consequences of the liability:*

It must first be observed that the insufficiency of proof as to damages, and the alleged exaggeration of the claims formulated by the British memorial, are not enough in themselves to justify the charge that they are fraudulent in character. For this Tribunal, the mere fact that the claims are presented by the Government of His Britannic Majesty is sufficient evidence of their complete bona fides.

The three schooners, after their arms and ammunition had been sealed with an order that the seals must not be broken until they were outside the conventional protected zone of fur-sealing, went across the North Pacific Ocean to catch fur-seals alongside the Russian Islands in the western part of that ocean.

It has been submitted by the United States Government that in any event the vessels would have made the same voyage; but of that contention no sufficient evidence has been given.

On the other hand it is shown by the agreements with the crews that the possibility of such a voyage was contemplated by the owners and the captains. It is admitted by counsel for Great Britain that no damage was actually suffered on the voyage by any of the three vessels. Further it is admitted that the catching of fur-seals on the coast of the Russian Islands was profitable, though a request by this Tribunal for some detailed information as to these profits has not been satisfied.

There has been adduced no evidence sufficient to establish that had there been no interference by the United States naval authorities the vessels would have made more or any profit from sea otter hunting in the Bering Sea. It is admitted by the counsel for Great Britain that nothing is so uncertain as the profits of such a venture.

The amount of the demands is based merely on statements made by the interested parties themselves or on statistics and data which afford no sufficient evidence as to the sea otters caught by other British schooners, similarly equipped and manned, hunting during the same period and in the same localities as the three schooners in question intended to hunt.

In these circumstances, this Tribunal is only able to take into consideration the fact of the prohibition itself, by which in violation of the liberty of the high seas the vessels were interfered with in pursuing a lawful, and, it may be, profitable enterprise; but nobody can say whether that enterprise would have been more or less profitable than the one in which they actually engaged on the Russian coast or whether they would have encountered some mishap of the sea. In any case, the result was that the expenses incurred in engaging crews specially trained for this enterprise was unprofitable and wasted.

This Tribunal is of opinion that the following sums will be just and sufficient indemnities for each of the three vessels, viz., for the *Jessie*, $544 for her special expenses and $1,000 for the trouble occasioned by the illegal interference; for the *Thomas F. Bayard*, $750 for her special expenses and $1,000 for the trouble occasioned by the illegal interference; and for the *Pescawha*, $500 for her special expenses and $1,000 for the trouble occasioned by the illegal interference.

As to interest, there is no evidence that any claim was ever presented to the Government of the United States before being entered on the Schedule annexed to the Special Agreement, and according to the Terms of Submission, section four, interest may only be allowed from the date on which any claim has been brought to the notice of the defendant party.

For these reasons

This Tribunal decides that the Government of the United States shall pay to the Government of His Britannic Majesty, the sum of one thousand five hundred and forty-four dollars ($1,544) on behalf of the schooner *Jessie*, the sum of one thousand seven hundred and fifty dollars ($1,750) on behalf of the schooner *Thomas F. Bayard*, and the sum of one thousand five hundred dollars ($1,500) on behalf of the schooner *Pescawha*, in each case without interest.

OWNERS OF THE *ARGONAUT* AND THE *COLONEL JONAS H. FRENCH* (UNITED STATES) *v.* GREAT BRITAIN

(December 2, 1921. Pages 509-514.)

SEIZURE AND CONFISCATION OF BOATS AND SEINES, ARREST OF CREWS IN TERRITORIAL WATERS (THREE-MILE LIMIT).—TIDE. Seizure of boats and seines belonging to United States fishing vessels *Argonaut* and *Colonel Jonas H. French*, and arrest of crews of boats, on July 24, 1887, by Canadian Government cutter in territorial waters surrounding Prince Edward Island (Canada). Boats and seines swept by tide inside three-mile limit while fishing outside.

TERRITORIAL WATERS, FISHING, JURISDICTION.—UNIVERSALLY RECOGNIZED PRINCIPLE OF INTERNATIONAL LAW.—GOOD FAITH, PROPER INTERPRETATION AND APPLICATION OF MUNICIPAL LAW, FORFEITURE.—DECISIONS *EX PARTE* OF MUNICIPAL COURT. By treaty, United States renounced fishing rights in Canadian territorial waters (art. 1, Treaty of London, concluded with Great Britain on October 20, 1818). Universally recognized principle of international law that State has jurisdiction over fishing within its territorial waters, and may apply thereto its municipal law and impose such prohibitions as it thinks fit. Canadian municipal law prohibiting foreigners in foreign vessels from fishing within three-mile limit, and providing for sanctions. So far as these cases stand, the proper interpretation and application of Canadian municipal law by Canadian municipal courts (good faith of fishermen, exact character of their acts) is not a question of international law. On March 6, 1888, two decisions *ex parte* rendered by Vice-Admiralty Court of Prince Edward Island condemning boats and seines to be forfeited. No reopening of cases applied for by owners.

EVIDENCE FURNISHED BY EITHER SIDE.—DOCUMENTS, AFFIDAVITS. According to art. 5, para. 4, of Special Agreement, Tribunal is to decide all claims upon