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RECUEIL DES SENTENCES ARBITRALES

Commission for the Settlement of Claims under the Convention of 7 August 1892
concluded between the United States of America and the Republic of Chile

**Case of South American Steamship Co. v. the United States of America, No. 18,
decision of 17 June 1901**

Commission pour le règlement des réclamations en vertu de la Convention du 7 août 1892
conclue entre les États-Unis d'Amérique et la République du Chili

**Affaire concernant le South American Steamship Co. c. les États-Unis d'Amérique, No
18, décision du 17 juin 1901**

17 June 1901

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Affaire concernant le South American Steamship Co. c. les États-Unis d'Amérique, N° 18, décision du 17 juin 1901²

Right of the vessel's owner (South American Steamship Co.) to maintain its claim for any damages done to the vessel itself, which was under the temporary possession of the provisional government of Chile.

Illegality of the seizure of a Chilean steamship by the authorities of the United States in Chile, after pursuit on the high seas and surrender under duress, for alleged violation of the neutrality law of the United States—territorial limitation of State legislations and State authorities—specific rights of sovereignty, including the power to seize for the infraction of its laws, to be exercised within the territory of the sovereign—recognition of claims for extraordinary repairs of machinery and boilers made necessary by the long voyage caused by the seizure.

Droit du propriétaire du vaisseau (South American Steamship Co.) de maintenir sa réclamation pour tout dommage infligé au vaisseau lui-même, qui se trouvait en possession temporaire du gouvernement provisoire du Chili.

Illégalité de la saisie d'un navire à vapeur chilien par les autorités des États-Unis au Chili, après poursuite en haute-mer et reddition forcée, pour violations alléguées du droit de neutralité des États-Unis—limitation territoriale des législations nationales et autorités étatiques—droits spécifiques de souveraineté, y compris le droit de saisie de l'État souverain en cas d'infraction à ses lois, à exercer sur son territoire—reconnaissance de réclamations pour les réparations extraordinaires des machines et chaudières nécessitées par le long voyage découlant de la saisie.

The questions raised by the demurrer in this case are very important, and have been argued with unusual zeal and ability by the learned counsel on both sides. At present we deem it only necessary to decide whether the steamship *Itata* was the property of the claimant at the time the acts complained of were committed, and whether her alleged seizure by the Government of the United

¹ Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. III, Washington, 1898, Government Printing Office, p. 3067.

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States was illegal. As to the question of ownership, there is a distinct allegation in the memorial that the vessel belonged to the memorialist. That allegation is admitted by the demurrer to be true in so far as it is not contradicted or controlled by the accompanying documents. After a careful examination of those documents, we find nothing inconsistent with the allegation of the memorialist as to ownership; on the contrary, we think they fully sustain its claim. They show that at the time of its seizure the steamship *Itata* was in the temporary possession of the provisional government of Chile. It is immaterial to inquire whether that possession was acquired under a charter party or by virtue of the authority given by the laws of Chile enacted on the 29th of December 1883 and the 1st of February 1888. If the possession was only temporary and the general ownership of the vessel remained in the company, it has, beyond all question, we think, the right to maintain an action *for any damage done to the vessel itself*. It appears that when the libel or information against the *Itata* was filed in the district court of the United States for the southern district of California the captain, in the navy of the Republic of Chile, who commanded her at the time of the seizure, made the following claim:

That he is the commander and in possession of the steamship *Itata*, her tackle, apparel, and furniture, for the Government and Republic of Chile, as charterer thereof under the laws of said republic from the South American Steamship Company, owner of said steamship. Wherefore this claimant prays that this honorable court will be pleased to decree a restitution of the same to him as such commander in possession, and otherwise right and justice to administer in the premises.

But it also appears that Charles R. Flint, intervening as agent for the interest of the South American Steamship Company in the said steamship *Itata*, appeared before the court and made claim to the said steamship and averred:

That said company was the owner of the said steamship at the time of the attachment thereof, and that the said company is the true and *bona fide* owner of the said steamship, and that no other person is the owner thereof.

The record of the suit also shows that there was no contest made by the counsel representing the steamship company and the provisional government of Chile as to the ownership of the said vessel. It seems they were in perfect accord on that subject, and that by an agreement entered into between them and announced in open court the vessel was delivered to the representatives of the provisional government of Chile. Under these circumstances we are unable to assent to the proposition that the South American Steamship Company has forfeited its right to appear before this commission and assert its claim. It may or may not be true that the said company has a valid claim against Chile, and that Chile has a valid claim against the United States, growing out of the seizure of the *Itata*. We do not feel called upon to express any opinion upon that subject. We only decide at present that the memorialist, *as the owner of the steamship "Itata," is entitled to maintain its claim for any damage done to the vessel itself, if such damage has been occasioned by any unjustifiable action*

of the United States. Did the Government of the United States, by the seizure of the *Itata* for an alleged infraction of its neutrality laws, incur any legal liability? The record of the suit referred to shows that the district court of the United States for the southern district of California, after full consideration of all the evidence, documentary and oral, ordered and decreed that the United States should recover nothing by reason of the libel against the steamship *Itata*, and that said libel should be dismissed. The United States took an appeal from this decree, and it was affirmed by the circuit court of appeals, the three judges of that court being unanimously of the opinion that the evidence adduced was not sufficient to justify a decree of forfeiture. It is true they pronounced the seizure to have been justifiable under the circumstances, but as the question of probable cause was not involved in the determination of the question before the court, we do not feel bound by the dictum of the judges on that subject. In view of the occurrences that took place after the original seizure of the *Itata*, we do not deem it necessary at this time to decide whether there was probable cause for that seizure or not.

After stating that on or about the 6th of May 1891, while lying in the harbor of San Diego, the said steamship was boarded by a person who alleged himself to be one Spaulding, an officer of the United States, and in such pretended capacity assumed to take possession of said vessel; that the said Spaulding was unable to exhibit any authority as an officer of the United States, and the officers of the said *Itata*, believing him to be falsely impersonating an officer of the United States, set him on shore, and said *Itata* put to sea, the memorialist proceeds as follows:

Meanwhile the Government of the United States, or the duly authorized and responsible officers thereof, had taken cognizance of the presence of the said *Itata* within the jurisdiction of the United States and the fact of her departure therefrom, and for reasons unknown to your memorialist directed certain of its naval officers to proceed with vessels of war in pursuit of the said *Itata*; to intercept her by force if found on the high seas, and to cause her to return to San Diego.

It became known to the provisional government of Chile, or its duly authorized and empowered representatives, through the medium of the public press, that the steamship *Itata* was charged by the Government of the United States, or by certain of its officers, with an infraction of the neutrality laws of the said United States; that a portion of the United States naval forces were then *en route* to the port of Iquique for the purpose of securing the said *Itata*, and said reports were confirmed by a note to Mr. Isidoro Errázuriz, minister of foreign relations, from Admiral W. P. McCann, in which the latter, in his official capacity as commander in chief of the United States naval forces on that station and as the representative of his government, solemnly asserted and declared without qualification that, in his opinion, the said *Itata*, in procuring her cargo within the waters of the United States, was guilty of a violation of said neutrality laws. Upon these representations of Admiral McCann, made in the manner aforesaid, and because of the demands of the

Government of the United States, accompanied as they were by the presence of a large naval force, the said *Itata*, with her cargo, was surrendered under duress to the representatives of the United States.

The said *Itata* was accordingly taken possession of by said Admiral McCann on the 4th day of June 1891, and departed from Iquique on the 13th day of June 1891, under convoy of the U. S. S. *Charleston*, Captain George C. Remy commanding, by whom she was placed in the custody of the United States marshal at San Diego on or about the 6th day of July 1891.

We find nothing at variance with these statements in the documents accompanying the memorial or in any public document to which we may properly make reference. Assuming it to be true that after the departure of the *Itata* from the port of San Diego she was pursued by the naval authorities of the United States upon the high seas into Chilean waters, induced to surrender by a display of superior force, and brought back under duress, the question arises whether or not such action on the part of the United States was allowed by the laws of nations. After an examination of many authorities on international law and numerous decisions of courts, we are of opinion that the United States committed an act for which they are liable in damages and for which they should be held to answer. Mr. David Dudley Field, in his International Code, sec. 626, says:

“An inmate of a foreign ship who commits an infraction of the criminal law of a nation within its territory can not be pursued beyond its territory into any part of the high seas.”

In the case of the *Apollon*, reported in 9 Wheaton, p. 361, it was decided—

“That the municipal laws of one nation do not extend in their operation beyond its own territory except as regards its own citizens, and that a seizure for a breach of municipal laws of one nation can not be made within the territory of another.”

Mr. Justice Story, in delivering the opinion of the court, says:

“It would be monstrous to suppose that our revenue officers were authorized to enter into foreign ports and territories for the purpose of seizing vessels which had offended against our laws. It can not be presumed that Congress would voluntarily justify such a clear violation of the laws of nations.”

In the case of *Rose v. Himely*, reported in 4 Cranch, p. 239, Chief Justice Marshall, speaking for a majority of the court, says:

“It is conceded that the legislation of every country is territorial; that beyond its own territory it can only affect its own subjects or citizens. It is not easy to conceive a power to execute a municipal law or to enforce obedience to that law without the circle in which that law operates. A power to seize for the infraction of a law is derived from the sovereign and must be exercised, it would seem, within those limits which circumscribe the sovereign power. The rights of war may be exercised on the high seas, because war is carried on upon the high seas; but the specific rights of sovereignty must be exercised within the territory of the sovereign. If these propositions be true, the

seizure of a person not a subject, or of a vessel not belonging to a subject, made on the high seas for the breach of a municipal regulation, is an act which the sovereign can not authorize. The person who makes this seizure, then, makes it on a pretext which, if true, will not justify the act, and is a marine trespasser.”

In view of these authorities and others that might be cited, we are of opinion that the South American Steamship Company *has a claim for extraordinary repairs of machinery and boilers made necessary by the long voyages to and from San Diego*. We do not deem it necessary at this time to examine the other items of the damages claimed. If any single item in the list constitutes a valid claim for damages, the demurrer can not be sustained.

We therefore decide that it should be overruled and the respondent required to answer.