REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Great Britain and Others (Great Britain) v. United States (Canadienne case)

1 May 1914

VOLUME VI pp. 29-32

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the United States in this case, and consequently the Tribunal finds that there was no privity of contract between the United States Government and the owners of the *King Robert*, who were merely contractors with a subcontractor of McCall & Co., who in turn were merely contractors with the United States Government, and not agents for that Government.

The contract of March 8, 1905, between McCall & Co. and the United States Government expressly provides:

"That upon the presentation of the customary bills and the proper evidence of the delivery, inspection, and acceptance of the said article, articles, or services, and within ten days after the warrant shall have been passed by the Secretary of the Treasury, there shall be paid to the said McCall & Co., or to their order, by the Navy paymaster for the port of Philadelphia, Pa., the sum of one hundred and forty-six thousand two hundred and fifty dollars, for all the articles delivered or services performed under this contract: *Provided, however*, that no payments shall be made until all the articles or services shall have been delivered or performed and accepted, except at the option of the Bureau of Supplies and Accounts.

"It is mutually understood and agreed, as aforesaid, that no payment or allowance to said party of the first part will or shall be made by the United States for or on account of this contract except as herein specified."

There is nothing in this case to show that the payments thus provided for have not been made by the United States in exact accordance with these requirements of that contract.

The Tribunal is therefore of the opinion that the owners of the *King Robert* are not entitled to recover interest against the United States Government for delaying until March 6, 1906, before paying to Messrs. McCall & Co. the freight earned by the *King Robert*, and as the other items of the claim are dependent upon this item, they fall with it.

Upon these motives

The decision of the Tribunal in this case is that the claim of the British Government be disallowed.

GREAT BRITAIN AND OTHERS (GREAT BRITAIN) *v.* UNITED STATES

(Canadienne *case. May 1, 1914. Pages 427-431.*)

COLLISION OF VESSELS ON ST. LAWRENCE RIVER.—APPLICABLE LAW: *LEX LOCI DELICTI COMMISSI.*—FAULT AND LIABILITY: INTERNATIONAL RULES OF THE ROAD. Collision on October 29, 1897, on St. Lawrence River between Canadian Government steamship *Canadienne*, chartered by Mr. Lindsay, and United States Government steamship *Yantic*. According to generally recognized rule of international law in United States and in Great Britain the *lex loci delicti commissi* must apply. Fault and liability of ships involved determined under the International Rules of the Road obtaining at time of collision on St. Lawrence River between Montreal and Quebec, and under English law, respectively.

EVIDENCE: PROOF OF FAULT. REPORTS OF INVESTIGATIONS BY PARTIES. Concerning the facts of the collision no other evidence available to Tribunal than reports of two investigations made by Canadian Marine Authorities

at Montreal on November 3 and 8, 1897, and by United States Naval Authorities on November 22, 1897, at Quebec. Tribunal without opportunity to see the witnesses, the ship's papers, or the engineer's log. For some of the items of the charterer's estimate of damages no sufficient proof is given.

EXTENT OF LIABILITY: BOTH SHIPS AT FAULT.—In the opinion of Tribunal both ships are at fault, but in a different proportion. Under applicable English law each ship obliged to pay half the loss of the other. *Held* that, although no claim for damages suffered by the *Yantic* has been presented by United States, the *Yantic's* damage has to be taken into consideration in assessing the amount to which Great Britain is entitled.

INTEREST. *Held* that no allowance of interest justified.

Cross-reference: Am. J. Int. Law, vol. 8 (1914), pp. 655-659.

This is a claim presented by His Britannic Majesty's Government for seven thousand eight hundred sixty-five 59/100 dollars ($7,865.59), for damage to the Canadian Government's steamship *Canadienne* and loss to her charterer, the late Robert Lindsay and his representatives, all of them British subjects, resulting from a collision which occurred in the River St. Lawrence between the steamship *Canadienne* and the United States Government's steamship *Yantic*, on October 29, 1897.

The collision was the subject of two investigations, one made by the Canadian Marine Authorities at Montreal on November 3 and 8, 1897, the other by the United States Naval Authorities on November 22, 1897, at Quebec.

I. *As to the facts:*

The *Canadienne* left Montreal on October 27, 1897, bound for Quebec, Gaspé, and other ports on the lower St. Lawrence. She was fully manned and had an apprentice pilot on board. In the early morning of October 29th she was on her way down nearing Pointe-à-Pizeau or Sillery Point, on the north bank of the river, about three miles above Quebec.

On the same morning the United States steamship *Yantic* left her Quebec anchorage at 4.15 a.m., bound for Montreal, and at 4.30 she stood up the river with a duly licensed Canadian pilot on board.

It appears from the evidence taken at the investigation held by the Canadian Authorities that the *Canadienne*, when approaching Sillery Point, first saw both side lights of another steamer, which subsequently proved to be the *Yantic*, and shortly thereafter, only her green light; afterwards both side lights appeared again, and then the green light disappeared, leaving only the red light visible.

It appears from the inquiry held by the United States Authorities that the *Yantic* came up to and passed Sillery Point without reporting any light ahead; then she changed her course slightly to starboard, and after the ship was steadied on that new course, she reported the masthead and the green light of an approaching steamer, which was the *Canadienne*.

It was found in the United States inquiry that "when the *Canadienne* saw both the Yantic's side lights and afterwards the green only, the latter must have been east of Pizeau Point" (United States answer, p. 29).

It is further stated in the report of the same inquiry that it is probable that the change of course made by the *Yantic* in rounding Sillery Point opened again her two lights and let the green disappear, leaving only the red visible.

After the green light of the *Canadienne* was reported, the *Yantic* finding herself red to green came one-half point to starboard and gave one blast of the whistle to indicate that she was directing her course to starboard.

To this signal the *Canadienne* gave no answer, but kept steadily on her course.

Then the *Yantic* put her helm hard-a-port, reduced her speed, stopped and reversed the engines.

The *Canadienne* continued on her way, full speed ahead.

Almost immediately the collision occurred.

II. *As to the liability:*

At the outset it must be observed that the *International Rules of the Road* applied in 1897 on the St. Lawrence River between Montreal and Quebec.

When the *Canadienne* saw both side lights of the *Yantic*, and particularly when almost immediately afterwards the *Yantic* showed her red light—a clear indication that she was coming to starboard—the *Canadienne* was at fault in taking or keeping her way to cross the *Yantic's* bow so as to pass starboard to starboard, instead of giving way so as to pass port to port according to the Rules of the Road (articles 25, and 18, paras. 1 and 3). There is no evidence in this record showing the existence of any necessity, local conditions, or special rule which would authorize the *Canadienne* to keep the north side of the river (Rules of the Road, article 30). Furthermore the *Canadienne* was about to round a point in the river, and when she saw another steamer rounding the same point in the opposite direction, she was at fault in not indicating her course by sounding her whistle (Rules of the Road, article 28, para. 2).

On the other hand, it is stated in the United States inquiry that the *Yantic*, before reporting the masthead and green light of the *Canadienne*, that is to say, before or when she was rounding Sillery Point, was within sight of and should have reported the lights of the *Canadienne*. The United States officer appointed to make the inquiry said: "As the lights were plainly visible, they should have been seen before" (United States answer, p. 28), and, in fact, at that time the Yantic had already been sighted by the *Canadienne*. Nevertheless, those on board the *Yantic* failed to report the *Canadienne's* lights until after their ship had taken her course to starboard, and it necessarily follows that the *Yantic* did not keep a proper lookout (Rules of the Road, article 29). The same officer also stated that as he had been unable to examine the lookout he could not give any explanation as to why the lights of the *Canadienne* had not been reported.

Whatever may be the reason, right or wrong, why the *Canadienne* took or kept her way toward the north side of the river and was still showing her green light, the failure of the *Yantic* to keep a proper lookout prevented her from seeing the *Canadienne* until they were so close that it was dangerous to try to cross her bow and the *Yantic* should have kept clear of a way in which she was able to see the other steamer was already engaged (Rules of the Road, articles 27 and 29).

The *Canadienne* acted most negligently, after taking or keeping her port way as aforesaid, (*a*) in giving no blast signal and no answer to the starboard blast of the *Yantic*; (*b*) in not reducing her speed; (*c*) in not stopping and reversing as she was approaching nearer and nearer the *Yantic*. And when the collision appeared to be inevitable, she did not take any of the measures prescribed by the Rules of the Road as well as by the most elementary prudence to avert the accident.

Consequently, so far as it is possible to ascertain the facts of a collision after 15 years have elapsed, and without an opportunity to see the witnesses, the ship's papers, or the engineer's log, the Tribunal is of opinion that the *Canadienne* was at fault, but that the *Yantic* was not without reproach, and consequently that both ships are to blame, but in a different proportion.

III. *As to the law and the consequences of the liability:*

According to the generally recognized rule of international law in the United States (Story, Conflict of Laws, ch. 14, sec. 558) and in Great Britain (Marsden, Collisions at Sea, 6th ed., p. 198), in such a case as this the *lex loci delicti commissi* must apply.

The law in force in that respect in Canada in 1897 was the law in force in England (Canada Shipping Act, Rev. St. 1906, ch. 113, sec. 918), and at that time the English rule as reported in Marsden, Collisions at Sea, 6th ed., p. 123, was as follows:

"The law apportions the loss where both ships are in fault by obliging each wrongdoer to pay half the loss of the other. Thus, if the loss on ship A is £1,000 and that on B is £2,000 A can recover £500 against B, and B can recover £1,000 against A."

IV. *As to the amount of the claim:*

His Britannic Majesty's Government give an estimate of four thousand three hundred eight 77/100 dollars ($4,308.77) net for the disbursements of the Dominion of Canada for repairs to the *Canadienne*, dock dues and incidental expenses, and the charterer an estimate of three thousand five hundred fifty-six 82/100 dollars ($3,556.82) net, making the total of seven thousand eight hundred sixty-five 59/100 dollars ($7,865.59) as claimed.

But some of the items in the charterer's estimate represent damages, of which no sufficient proof is given, viz., loss of traffic, two thousand two hundred fifty dollars ($2,250); witnesses and fees of counsel, five hundred dollars ($500); and traveling expenses, two hundred forty-eight dollars ($248), amounting to two thousand nine hundred ninety-eight dollars ($2,998), reducing the total amount to four thousand eight hundred sixty-seven 59/100 dollars ($4,867.59), one-half of which is two thousand four hundred thirty-three 79/100 dollars ($2,433.79).

Although the United States did not claim for damages suffered by the *Yantic*, inasmuch as, according to the law applicable to this case, each vessel is entitled to recover one-half of her own damage, the *Yantic's* damage, which has been estimated by the United States Naval Commissioner at one thousand dollars ($1,000) (United States answer, p. 33), must be taken into consideration.

V. *As to the interest:*

The Tribunal, being entitled under the Terms of Submission to allow or disallow interest as it thinks equitable, is of the opinion that in this case no allowance of interest is justified.

On these motives

The Tribunal decides that in this case the Government of the United States shall pay the Government of His Britannic Majesty the sum of one thousand nine hundred thirty-three 79/100 dollars ($1,933.79) without interest.

HENRY JAMES BETHUNE (GREAT BRITAIN) *v.* UNITED STATES

(Lord Nelson *case. May 1, 1914. Pages 432-435.*)

CAPTURE OF VESSEL PRONOUNCED ILLEGAL AND VOID BY MUNICIPAL COURT.—ADMISSION OF LIABILITY. Capture on June 5, 1812, nearly two weeks before declaration of war between Great Britain and United States, of British