

THE GLASGOW KING SHIPPING COMPANY (LIMITED) (GREAT BRITAIN) *v.* UNITED STATES

(King Robert case. June 18, 1913. Pages 520-523)

Cross-references: Am. J. Int. Law, vol. 7 (1913), pp. 882-885; Jahrb. des V., vol. 2 (1914), pp. 456-458.

Bibliography: Nielsen, p. 520.

This is a claim on behalf of the Glasgow King Shipping Company (Limited) for the sum of £111. 3s. 8d. with interest at 4 % per annum from the 10th of April, 1906, to the 26th of April, 1912, amounting to £26. 13s. 8d., making a total of £137. 17s. 4d. Of this amount £100. 13s. 8d. represents interest at the rate of 6 % per annum from the 17th of November, 1905, to the 7th of March, 1906, on the sum of \$26,486.40 freight earned by the *King Robert* while chartered as below set forth, and £10. 10s. represents the expenses of cables, telegrams, postage, etc., in relation to this claim for interest.

The *King Robert* was employed under an agreement dated June 8, 1905, which is set forth in annex 7 of the British memorial, by which the Glasgow King Shipping Company, owners of the *King Robert*, and Messrs. R. Chapman & Son, of Newcastle-on-Tyne, agreed that in consideration of the said steamer "being nominated by R. Chapman & Son under their contract with the U.S. Bureau of Equipment, Navy Department, Washington, D.C., dated the 11th February, 1905, for the transportation of coal from Norfolk. Newport News, Philadelphia, or Baltimore to Manila, the owners agree to relieve R. Chapman & Son from all responsibility for and in relation to the transportation of a cargo of not less than 5,400 tons, or more than 5,700 tons, from Norfolk, Newport News, Philadelphia, or Baltimore, as ordered, to U.S. Naval Coal Depot, Sangley Point, Manila Bay, under the terms of said contract, copy of which is attached". It was further specified that freight at \$4.80 per ton was to be collected.

The document described in this agreement as R. Chapman & Son's "Contract with the U.S. Bureau of Equipment, Navy Department, Washington, D.C., dated the 11th February, 1905", a copy of which is referred to as attached to that agreement, is set forth in annex 7 of the British memorial. The copy of this document which was annexed to the agreement has also been produced for the inspection of this Tribunal.

This document shows on its face that it is not a contract between R. Chapman & Son with the U.S. Bureau of Equipment, Navy Department, as described in R. Chapman & Son's agreement of June 8th with The Glasgow King Shipping Company. The opening paragraph shows conclusively that the U.S. Bureau of Equipment is not a party to it, the parties being described as Messrs. McCall & Co., by cable authority of Messrs. Wrenn & Co., London agents for Messrs. R. Chapman & Son, steamship owners of Newcastle-on-Tyne; and Messrs. McCall & Co., contractors to the U.S. Bureau of Equipment, Navy Department, Washington, D.C. It is true that at the close of this document the following paragraph appears:

"As agents, by authority of Messrs. Wrenn and Co., London, dated February 9th, 10th. and 11th, agents for Messrs. R. Chapman and Son, Newcastle, and H. N. Manney, Chief Bureau of Equipment, Navy Department, Washington, D.C."

So far, however, as this purports to be a representation that McCall & Co. are agents for H. N. Manney, Chief Bureau of Equipment, Navy Department, it is valueless because McCall & Co.'s signature is not affixed to the document. Moreover, no authority has been shown, and so far as appears there is no justification for any such representation of agency on the part of McCall & Co.

This so-called contract may have been a preliminary memorandum, but at any rate it fails utterly to imply any contracted relation between Messrs. Chapman & Son and the United States Bureau of Equipment of the Navy Department.

In the answer of the United States a signed contract is set forth (exhibit 2), dated the 8th of March, 1905, between "Messrs. McCall & Co., of Baltimore, in the State of Maryland, Md., party of the first part, and the United States, by the Purchasing Pay Officer, United States Navy Pay Office, Baltimore, Md., acting under the direction of the Secretary of the Navy, party of the second part". By this contract McCall & Co. agreed to furnish "transportation of 30,000 tons (10 % more or less) best quality bituminous coal from Baltimore, Md., Philadelphia, Pa., Lambert's Point, Va., or Newport News, Va. (loading port for each cargo at the option of the Bureau of Equipment) to the U.S. Naval Coal Depot, Sangley Point, Manila Bay, Philippine Islands. Rate of freight four dollars eighty-seven and one-half cents (\$4.87 1/2) per ton 2,240 lbs".

There is no sufficient evidence of any other contract with the Government of the United States, and it appears on the contrary that it is under this contract that the United States Government paid to the McCall & Co.) \$26,811.75 on the 6th of March, 1906, freight for 5,506 tons delivered on the 17th of November, 1905 (United States answer, exhibit 1). It will be observed that this payment was for freight at the rate of \$4.87 1/2 per ton as provided in this contract, and not at the rate of \$4.80 per ton as provided in the so-called contract above mentioned of February 11, 1905, a copy of which was annexed to and formed part of the charter party of June 8, 1906, between the owners of the *King Robert* and Chapman & Co., at which lower rate the freight would have amounted to only \$26,428.80, being \$382.55 less than the amount which the McCall-Dinning Company have accounted for to the owners of the *King Robert* for this service.

It is unquestioned that the transportation by the *King Robert* of the cargo delivered in November, 1905, and paid for by the United States Government as above set forth is the same transportation as that upon which this claim is founded (Walker & Co.'s bill of March 30, 1906, British memorial, annex 1).

The Tribunal, therefore, must rely only on this contract of March 8, 1905, between McCall & Co. and the United States in determining the liability of

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.

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