

WILLIAM HARDMAN (GREAT BRITAIN) *v.* UNITED STATES

(June 18, 1913. Pages 495-498.)

Cross-references: Am. J. Int. Law, vol. 7 (1913), pp. 879-882; British Yearbook, vol. 2 (1921-1922), pp. 198-200; Jahrb. des V., vol. 2 (1914), pp. 454-455.

Bibliography: ¹ Sir Cecil Hurst, K.C.B., K.C., "British American Pecuniary Claims Commission", British Yearbook, vol. 2 (1921-1922), pp. 198-200.

On or about July 12, 1898, during the war between the United States and Spain, while the town of Siboney, in Cuba, was occupied by the United States armed forces, certain houses were set on fire and destroyed by the military authorities in consequence of sickness among the troops and from fear of an outbreak of yellow fever. In one of these houses was some furniture and personal property belonging to a certain William Hardman, a British subject, which was entirely destroyed with the house itself.

The British Government claim, on behalf of the said William Hardman, the sum of £ 93, as the value of the said personal property and furniture, together with interest at 4 %, for 13 years from March, 1899, when the claim was brought to the notice of the United States military authorities in Cuba, to the 26th of April, 1912, when the schedule to Pecuniary Claims Agreement, in which the claim was included, was confirmed, i.e. £ 49, the full claim being, therefore, for the total sum of £ 142.

The United States denies that it is liable in damages for the destruction of the personal property of William Hardman, and contends that the United States military authorities who were conducting an active campaign in Cuba had a right in time of war to destroy private property for the preservation of the health of the army of invasion and that such authorized destruction constituted an act of military necessity or an act of war, and did not give rise to any legal obligation to make compensation.

The two parties admit the facts as above related and agree as to those facts. The British Government do not contend that Hardman's nationality entitled him to any special consideration. At the hearing of the case they did not maintain their former contention that there is no sufficient evidence of the same interest to destroy the furniture as the house. They admit that necessary war losses do not give rise to a legal right of compensation. But they contend that the destruction of Hardman's property was not a war loss in that it did not constitute a necessity of war, but a measure for better securing the comfort and health of the United States troops, and that in that respect no private property can be destroyed without compensation.

¹ References in this section are to publications referred to on p. 7 *supra* and to the Annual Digest.

The question to be decided, therefore, is not whether, generally speaking, the United States military authorities had a right in time of war to destroy private property for the preservation of the health of the army, but specially whether, under the circumstances above related, the destruction of the said personal property was or was not a necessity of war, and an act of war.

It is shown by an affidavit of Brigadier-General George H. Torney, Surgeon General, United States Army (United States answer, exhibit 3), who personally was present at that time at Siboney and familiar with the sanitary conditions then existing in that place, that the sanitary conditions at Siboney were such as made it advisable and necessary to destroy by fire all buildings and their contents which might contain the germs of yellow fever. No contrary evidence is presented against this statement, the truth of which is not questioned.

In law, an act of war is an act of defense or attack against the enemy and a necessity of war is an act which is made necessary by the defense or attack and assumes the character of *vis major*.

In the present case, the necessity of war was the occupation of Siboney, and that occupation, which is not criticized in any way by the British Government, involved the necessity, according to the medical authorities above referred to, of taking the said sanitary measures, i.e., the destruction of the houses and their contents.

In other words, the presence of the United States troops at Siboney was a necessity of war and the destruction required for their safety was consequently a necessity of war.

In the opinion of this Tribunal, therefore, the destruction of Hardman's personal property was a necessity of war and, according to the principle accepted by the two Governments, it does not give rise to a legal right of compensation.

On the other hand, notwithstanding the principle generally recognized in international law that necessary acts of war do not imply the belligerent's legal obligation to compensate, there is, nevertheless, a certain humanitarian conduct generally followed by nations to compensate the private war losses as a matter purely of grace and favor, when in their own judgment they feel able to do so, and when the sufferer appears to be specially worthy of interest. Although there is no legal obligation to act in that way, there may be a moral duty which can not be covered by law, because it is grounded only on an inmost sense of human assistance, and because its fulfilment depends on the economical and political condition of the nation, each nation being its own judge in that respect. In this connection the Tribunal can not refrain from pointing out the various benevolent appreciations given by the Department of State in this particular case, and commends them to the favourable consideration of the Government of the United States as a basis for any friendly measure which the special condition of the sufferer may justify.

Upon these motives

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