

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

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

*Cross-reference*: Am. J. Int. Law, vol. 8 (1914), pp. 659-662.

This is a claim for five thousand dollars (\$5,000) and interest from June 5, 1812, presented by His Britannic Majesty's Government on behalf of Henry James Bethune, legal personal representative of James and William Crooks, deceased, the owners of the *Lord Nelson*, a British schooner, on account of the capture of the said schooner by the United States Naval Authorities on June 5, 1812, nearly two weeks before the declaration of war between Great Britain and the United States of America.

The capture of this schooner at the date and under the circumstances above mentioned is not disputed.

Further, it appears that the vessel, after her capture, was acquired by the United States Navy at a valuation of two thousand nine hundred ninety-nine 25/100 dollars (\$2,999.25). She was converted into a war vessel by the United States and used against Great Britain in the War of 1812, and was never returned to her former owners.

It is said that in 1815 the owners applied to the United States Government for redress, but no evidence is offered to show either the date of that application or whether it constituted a claim regularly presented.

On July 11, 1817, by decree of the Court of the Northern District of New York, the capture of the *Lord Nelson* was pronounced to be illegal and void and the proceeds of the sale, i.e., two thousand nine hundred and ninety-nine 25/100 dollars (\$2,999.25), were directed to be paid to the owners; but that direction was not complied with because the funds had meanwhile been embezzled by the clerk of the court.

On February 3, 1819, a regular claim for indemnity was received by the United States Government from the British Government, and subsequently numerous claims, petitions, and applications were presented either by the claimants or by His Britannic Majesty's Government, but no action was taken notwithstanding favorable reports and recommendations on bills introduced in Congress providing for payment of the claim.

On June 24, 1836, on a new petition presented by the claimants, the Committee on Claims of the House of Representatives, considering that the illegality of the capture was established by the said decree of 1817, resolved that an investigation should be made by the Secretary of the Navy as to the real value of the ship at the time of the capture. And on February 11, 1837, the Secretary of the Navy, after an investigation by a special committee, reported that this value should be fixed at five thousand dollars (\$5,000).

This estimate has never been questioned on any of the many occasions when this claim has been under consideration by executive or congressional committees, and the United States Government has admitted before this Tribunal its liability on this claim to the extent of the principal, to wit: five thousand dollars (\$5,000) (United States answer, p. 1).

The only question remaining for decision by this Tribunal is whether or not interest upon the principal should be awarded, and, if so, for what period and at what rate.

On this point it should be observed that from the beginning this claim has never been presented to nor considered by the United States Government as a claim for the payment of a liquidated and ascertained sum of money, but as a claim for indemnity and redress, because the United States Government wrongfully took possession of and used the vessel belonging to the claimant. That plainly appears as well from the application made as aforesaid in 1819 by His Britannic Majesty's Government, as from the valuation made by the United States Government in 1837, and from the admission that the valuation of five thousand dollars (\$5,000) was the real value of the vessel at the time of the capture.

In international law, and according to a generally recognized principle, in case of wrongful possession and use, the amount of indemnity awarded must represent both the value of the property taken and the value of its use (Rutherford's Institutes, bk. 1, ch. XVII, sec. V; VI Moore's International Law Digest, p. 1029; Indian Choctaw's case, Law of Claims against Governments, report 134, 43 Cong., 2nd sess. House of Representatives, Washington, 1875, p. 220, *et seq.*).

This principle applies especially when the Terms of Submission, as in this case, provide for interest and specify the *dies a quo* and the *dies ad quem*, for the allowance of interest, as the Tribunal thinks equitable.

It is admitted in this case that the sum of five thousand dollars (\$5,000) represents only the value of the vessel, and does not cover the use by the United States Government of the vessel or the money equivalent to its value.

Under these considerations it would have been justifiable to allow interest from the time of the capture, i.e., from June 12, 1812 except that according to section IV of the Terms of Submission annexed to the Pecuniary Claims Convention, interest is not to be allowed by this Tribunal previous to the date when the claim was first brought to the notice of the other party, and as above stated that date must be fixed as February 3, 1819.

As to the rate, it is a generally recognized rule of international law that interest is to be paid at the rate current in the place and at the time the principal was due. But in this case, by the Terms of Submission above mentioned, the two parties have agreed that in respect of any claim interest is not to exceed four per cent (4%) per annum, and, in view of all the circumstances, the Tribunal considers that the allowance of interest at this rate is equitable.

#### *On these motives*

The Tribunal decides that the agreement given by the Government of the United States to pay to His Britannic Majesty's Government the sum of five

thousand dollars (\$5,000) claimed by the legal representatives of the owners of the *Lord Nelson*, shall be put on record; and further awards that the said sum shall be paid accordingly with interest at four per cent (4%) from February 3, 1819 to April 26, 1912.

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