SIVEWRIGHT, BACON AND CO. (GREAT BRITAIN) *v.* UNITED STATES

*(*Eastry *case. May 1, 1914. Pages 499-504.)*

Cross-reference: Am. J. Int. Law, vol. 8 (1914), pp. 650-655.

This is a claim presented by His Britannic Majesty's Government on behalf of Messrs. Sivewright, Bacon and Co., of Manchester, England, against the Government of the United States for the sum of eight hundred forty-nine

pounds eight shillings nine pence (£ 849. 8s. 9d.) with interest at four per cent (4%) for nine and a half years, i.e., from December 9, 1902, the date on which His Majesty's Government first brought the claim to the notice of the United States Government, to April 26, 1912, the date of the confirmation of the first schedule of the Pecuniary Claims Convention, viz., three hundred twenty-three pounds (£ 323), making a total of one thousand one hundred seventy-two pounds, eight shillings, nine pence (£ 1,172. 8s. 9d).

By the certificate of registry, produced at the request of this Tribunal, it appears that the steamship *Eastry*, belonging to Messrs. Sivewright, Bacon and Co., was in June, 1901, a British ship.

It is admitted by both parties that, at that date, the *Eastry* was under time charter to one Simmons by whom she had been sublet to the Compañía Marítima, a company then under contract with the United States Government to carry a cargo of coal to be delivered at Manila Bay.

It appears by the logbook of the *Eastry*, and it is not contested, that she arrived and anchored at Cavite, Manila Bay, on June 7, 1901, and that, on the same and following days, i.e., on June 7, 8, 13 and 15, she was damaged by certain coal hulks that come alongside to take off her cargo. It is admitted that the hulks belonged to the United States Government (British memorial, annex 8).

By a letter dated June 17, 1901 (British memorial, annex 8), a Major and Quartermaster, United States Army, in charge of the Army Transport Service, Manila, reported to the Chief Quartermaster, Division of Manila, that after inspecting the damage done the *Eastry* by the coal hulks, the superintending engineer of his office estimated the cost of necessary repairs at four thousand five hundred dollars ($4,500) and the time required to complete these repairs at 20 working days, which at two hundred twenty-five dollars ($225) per day demurrage would make the total cost nine thousand dollars ($9,000).

He stated further that the ship's master had informed the superintending engineer that he, the master, estimated the cost of repairs, including demurrage, at one thousand three hundred pounds (£ 1,300), *i.e.*, six thousand five hundred dollars ($6,500).

In his request for instructions, the Quartermaster said:

"It would therefore appear that it will be to the advantage of the United States Government if the amount of damages as fixed by Captain Carr (the ship's master) could be paid."

The Chief Quartermaster forwarded this letter to the Adjutant General of the Division on June 18, 1901, with an endorsement recommending approval of the expenditure of six thousand five hundred dollars ($6,500), considering that to make the repairs and pay the demurrage "will cost considerably more than $6,500, the amount the owners are willing to take in final settlement."

By another endorsement dated June 19, 1901, *ibid.*, the Assistant Adjutant General expressly approved the recommendation of the Chief Quartermaster.

On June 24, 1901, the ship's master wrote to the Superintendent of the United States Army Transport Service submitting a claim for damages sustained by the *Eastry*, which he estimated at one thousand three hundred pounds (£ 1,300), and he requested payment of this amount. This request was made in consequence of the decision reached by the officers of the Army Transport Service as appears from the endorsements of July 17th and July 24th on that letter, that it would be advisable not to make the final repairs then, but to place the ship, by way of temporary repairs, in such a condition that she could be given a certificate of seaworthiness, leaving the owners to file a claim for such damages as had not been repaired. The reason given in these endorsements for adopting this course was that additional damages would be claimed because

of the delay involved in making all the repairs, and also because of the consequent loss of another charter party which the ship then had.

It is shown by the said endorsement of July 17, 1901, that after a new survey and estimate at the request of the United States authorities, temporary repairs were made at the expense of the United States Government, which repairs were finished on June 24, 1901, and that the United States authorities then informed the master of the *Eastry* that his ship was seaworthy, and a certificate to this effect was furnished him. He was further informed in reply to his letter of June 24th that all claims against the United States Government are adjusted by the War Department in Washington, and that his letter with all papers pertaining to the case would be forwarded with a statement of the matter, recommending that the claim be adjusted as early as practicable (British memorial, annex 9).

In August, September, October, 1901, and May 1902 (British memorial, annexes 11, 12, 13, 14, and 15), some correspondence took place between the owners of the *Eastry* and the United States authorities with reference to the offer made by the owners to accept the payment of one thousand three hundred pounds (£ 1,300) in settlement, in reply to which offer the owners were informed that "there were no funds under the control of the War Department from which claims for damages can be paid, and that Congress alone can grant relief in such cases" (British memorial, annex 15).

On July 11, 1902 (British memorial, annexes 16, 17, 18, and 20), the *Eastry* being in Liverpool, England, the representatives of the owners notified by telegrams and letters both the United States authorities in Washington and the American Embassy in London, that a survey of the ship was to be made and they advertised the fact in the newspapers, so that the United States Government might have full opportunity to be represented.

By a telegram dated at Washington, July 11, 1902 (British memorial, annex 19), the United States authorities notified the owners that the ship having been surveyed in Manila, it was not practicable for their Government to be represented by surveyors at Liverpool.

On July 14, 1902, the survey was made in the absence of any representatives of the United States Government and immediately thereafter the repairs were proceeded with.

The United States Government contends before this Tribunal that it is not liable in damages for the injuries and losses suffered by the *Eastry* because they were due to rough seas, and because the captain alone had authority to determine the time and manner of discharging the cargo. It is further alleged that the captain of the steamer was negligent in that he allowed the work of discharging the cargo to be proceeded with under the circumstances.

This was not the view taken by the United States Military authorities who had control of this case at the time the damages occurred, and who were familiar with all the circumstances. In an endorsement on the records of the case made by the Chief Quartermaster at Manila dated June 18, 1901, within a week after the injuries occurred, he stated "the damages were clearly the fault of the Government and that there is no question as to the Government's responsibility", etc. (British memorial, annex 8). So also the Major and Quartermaster in charge of the Army Transport Service at Manila, stated in a further endorsement, dated July 17, 1901, that "it is thought that the repairs should be made at the expense of the United States Government".

It does not appear from the documents, and there is no evidence, that the captain was ever consulted or asked to agree to the method adopted by the United States authorities in making the temporary repairs. He was merely informed of what had been done.

The United States Government contends before this Tribunal that the temporary repairs at Manila were made as an act of grace. But this contention finds no support either in the documentary or other evidence. All the evidence goes to show that the United States authorities throughout sought to make the most advantageous arrangement for their Government, and the course adopted by the United States authorities, both at the time the injuries occurred, and in making the preliminary repairs, is wholly inconsistent with the contention now made that the United States was not liable for the damages inflicted.

It must be especially noted that, before this claim was submitted to this Tribunal, the United States Government never, either at Manila or afterwards when it was notified of the survey and repairs at Liverpool, or later in the course of the diplomatic correspondence relating to the presentation of the claim, contested its obligation to pay for the repairs.

In view of all the evidence presented in the record and for the reasons above stated, the Tribunal is of the opinion that the United States Government is liable to pay for the damages, which form the basis of this claim.

As to the amount of the claim:

The United States Government contends that the fact that the *Eastry* was not dry-docked at Liverpool for more than a year after the injuries were suffered by the vessel at Manila, imposed a burden upon His Majesty's Government to prove that the dry-docking was necessitated solely for the purpose of repairing such injuries. It is not disputed that to make the repairs required as the result of the occurrences at Manila, nine days were taken in the dry dock. For that period of time the owners of the vessel were deprived of her use by reason of the said occurrences and they are entitled to compensation therefor, and four pence (4d) per gross registered ton per day is the amount claimed for demurrage for the loss of the owners on that account, which is the rate at which demurrage is computed at the place where the detention occurred.

It has been shown that the United States had full opportunity to discuss the nature and amount of the repairs and all matters connected therewith when notified of the survey at Liverpool.

Here, again, it is to be noted that from the time the claim was first transmitted to the United States Government, no objection whatever has been made either to the amount of the claim or to the obligation to pay it. On the contrary, it appears from the congressional public documents that the claim has always been recommended for payment either by the United States War Department, the Secretary of State, or the President, and favorably reported to Congress.

As to interest:

This claim was presented to the United States Government by the British Ambassador at Washington on December 9, 1902. There is no evidence to explain why a claim so frequently recommended and so favorably reported on by the United States authorities was not paid.

By clause No. 4 of the Terms of Submission, annexed to Schedule 1 of the Special Agreement, this Tribunal is authorized to allow interest at four per cent (4%) per annum for the whole or any part of the period between the date when the claim was first brought to the notice of the other party and the date of the confirmation of the first schedule. Taking into consideration the circumstances above mentioned, the Tribunal thinks it is equitable to allow interest in the present case.

On these motives

The Tribunal decides that in this case the United States Government shall pay to His Britannic Majesty's Government the sum of eight hundred forty-

nine pounds eight shillings nine pence (£ 849. 8s. 9d.) with interest at four per cent (4%) from December 9, 1902, to April 26, 1912.
