

OWNER OF THE *R. T. ROY* (UNITED STATES) *v.* GREAT BRITAIN

*(March 19, 1925. Pages 408-410.)*

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On June 25, 1908, the *R. T. Roy*, a steam fishing vessel of American ownership and registry, was seized in Lake Huron by a Canadian inspector of Fisheries. The reason alleged for the seizure was that the vessel was at the time fishing in Canadian waters. The inspector took her forthwith, together with the officers and crew, to South Bay Mouth, a Canadian port. There, it appears, a preliminary examination of the officers and crew was conducted by the inspector, and their testimony was reduced to writing. After a lapse of two or three days the inspector set out in another vessel with the *Roy* in tow, the officers and crew still on board, for Sault Ste. Marie, another Canadian port, where the usual legal inquiry looking to the ultimate condemnation or release of the vessel was intended to take place. On the way, the *Roy* ran on a reef in Canadian waters, and, efforts to float her again proving ineffectual, the inspector went on to Sault Ste. Marie in the other boat for the purpose of securing assistance. While he was gone the captain and crew of the *Roy* succeeded in getting her off the reef, and they thereupon took her back to her home American port, Alpena, Michigan, where on the first day of July, 1908, further depositions of the officers and crew covering the circumstances of the seizure were taken before a notary public. These latter depositions are included in the record. The testimony taken at South Bay Mouth, saving that of the captain, has not been produced. The evidence indicates that the papers embodying the South Bay Mouth testimony were left on the *Roy* by the inspector when he left her to go to Sault Ste. Marie, and that they were subsequently carried to Alpena and there disappeared. Some years later, however, the testimony of the captain was produced by one of the attorneys for the claimant at Alpena, on request of the State Department.

At the moment of seizure there was a discussion between the inspector and the captain with regard to the precise location of the *Roy*. The chart carried by the *Roy* was produced, and, while the evidence is not quite clear on the point, it seems probable that the cross found on the chart was placed there by the captain in the course of this discussion, and that this cross represented both the captain's and the inspector's estimate of the place of seizure. It is contended by the Government of the United States that the seizure took place within American waters, and it is contended by His Majesty's Government that the point was in Canadian waters.

Damages are claimed for the seizure and detention of the vessel, for loss of the catch of fish, and for destruction of nets.

The sole issue—one of pure fact—which is sharply raised in the pleadings and has been exhaustively argued by distinguished counsel, is whether, having due regard for the international boundary through Lake Huron as it was then located, the seizure of the *Roy* was effected on the American or on the Canadian side of that boundary.

In the view which we take of this controversy, we do not find it necessary for us to follow the argument in its involutions with respect to the exact location of the boundary through Lake Huron as laid down by the Treaty of Ghent of 1783 and by the decision of the Special Commissioners in 1822, pursuant to the second Treaty of Ghent, executed in 1814. Nor are we inclined to engage upon any detailed analysis of the evidence beyond pointing out its vague and uncertain character. We have been forced to conclude that in the state of the record it is impossible, without indulging unwarranted conjecture, to determine the main question of fact involved. Leaving out of account the complicated problem of the boundary itself, which is of course not physically indicated through Lake Huron, we are faced by an irreconcilable conflict of untested and untestable statements. The location of the point of seizure is at best a mere guess. The captain of the *Roy* is quoted as saying that he "could only make an

estimate or guess as to her location when seized". To check the location by reference to the speed of the *Roy* on her trip to the fishing ground is impracticable because varying estimates of speed were made. The so-called "deep hole", where the nets were set, might have been ascertained with reasonable accuracy, but no evidence on this subject has been adduced. The unexplained disappearance of the best contemporary evidence, namely, the statements taken at South Bay Mouth two days after the seizure for the express purpose of ascertaining the facts, is also a disturbing factor. The evidence of damages is inconclusive and unsatisfactory.

The Tribunal is constrained to emphasize the failure of the claimant to submit to the orderly legal procedure provided for the determination of the issue at the time. The seizure here complained of was the initial step in a procedure which, if it had been permitted to pursue its normal course, would have led to a judicial inquiry in which the very issue here presented would have been considered with full opportunity to elicit all the facts by examination of records and cross-examination of material witnesses. This procedure was interrupted, and its logical completion rendered impossible, by the affirmative act of the claimant's representative in withdrawing the vessel from the only jurisdiction where the matter could be duly and promptly dealt with. The circumstances do not justify us in finding that the Canadian authorities had abandoned the seizure when such withdrawal took place.

Moreover, proceedings might have been taken in the Canadian courts at any time against the Fisheries inspector personally or against the Canadian Government by way of petition of right.

The terms of submission provide that this Tribunal "shall take into account as one of the equities of a claim to such extent as it shall consider just in allowing or disallowing a claim, in whole or in part, any failure on the part of the claimant to obtain satisfaction through legal remedies which are open to him or placed at his disposal".

In the exercise of the discretion thereby conferred, the Tribunal is of the opinion that the claim must be disallowed.

*Now, therefore :*

The award of the Tribunal is that the claim of the Government of the United States be disallowed.