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MEXICO/U.S.A. (GENERAL CLAIMS COMMISSION)

KATE A. HOFF, ADMINISTRATRIX OF THE ESTATE OF SAMUEL
B. ALLISON, DECEASED (U.S.A.) *v.* UNITED MEXICAN STATES

(April 2, 1929. Pages 174-180.)

Commissioner Nielsen, for the Commission:

Claim in the amount of \$10,000.00 with interest is made in this case by the United States of America in behalf of Kate Allison Hoff, Administratrix of the estate of Samuel B. Allison. The latter was the owner of a small American schooner called the *Rebecca*, which together with its cargo was seized by Mexican authorities at Tampico in 1884. Allegations with respect to the occurrences on which the claim is predicated are made in the Memorial in substance as follows:

The *Rebecca* was built in the United States and registered at Galveston, Texas. Its approximate value was \$5,000.00. In the month of January, 1884, Gilbert F. Dujay, the master of the vessel, loaded it at a small port called Patersonville, nine miles above Morgan City, in the State of Louisiana, with a cargo consisting of six cases of merchandise destined for Brazos Santiago, Texas, and of a consignment of lumber for Tampico, Mexico. The vessel cleared at Brashear City, now known as Morgan City, on the 30th day of January, 1884, bound for Santiago, Texas. When it reached a point off this port the wind and the tide were so high that it was unsafe to enter. While lying off Brazos Santiago, on the 13th of February, waiting for a favorable opportunity to enter the port, an adverse wind from the north became so strong and the sea so rough, that the vessel was driven to the southward before a furious wind and sea, and when the wind abated it was found that the vessel was in a disabled and unsafe condition off the port of Tampico. The master, realizing the dangerous condition of his vessel, entered the port of Tampico as the nearest place of safety for the vessel, cargo and crew. The crew concurred in and advised such action. When the *Rebecca* entered the port she was leaking badly. Her standing rigging had been torn away. The cabin windows were broken. The cooking stove was so badly broken it could not be used. While at sea the vessel began to leak so that the water reached the cases of merchandise, and the crew was compelled to break open the packages and store them so that they would not be ruined by the water.

When the *Rebecca* entered the port the master presented to the Mexican customs official a manifest for the goods destined for Tampico and a so-called "master's manifest" for the consignment for Brazos Santiago, Texas, which met the requirements of the law of the United States. As soon as the vessel reached Tampico, which was on Sunday afternoon, February 17th, it was anchored off the custom house and a protest of distress was immediately entered with A. J. Cassard, the American Consul at that port.

On the day following the arrival at Tampico, February 18, 1884, the Mexican custom house officials demanded from the master of the *Rebecca* the packages of merchandise on board the vessel. The demand was refused and thereupon the packages were taken by force and no receipt or other evidence of possession by the custom house authorities was given.

On the 21st of February the master was arrested on a charge of attempt to smuggle, was placed in the barracks with armed soldiers guarding him, was not permitted to speak to anyone, and was kept in close confinement until the day following, a period of 28 hours, when he was brought before the Judge of the District Court at Tampico, and without the privilege of having counsel, was tried and was acquitted and released. On the 23rd of February the master was again arrested by the Mexican authorities and

was required to give bond for his appearance before the Criminal Court at Tampico to answer a charge of bringing goods into a Mexican port without proper papers. While awaiting trial he remained under bond, but without permission to leave Mexico, until the 24th day of April, a period of over two months. On that date a decree was entered by the court which released the master from bail but assessed treble damages against the merchandise seized, and charged the master with the cost of revenue stamps used in the proceedings. Because of the refusal and inability of the master to pay the penalties thus assessed, the *Rebecca* and its cargo were sold by order of court, and the proceeds were applied to the Federal Treasury, a balance being distributed among certain customs employees.

On the 23rd of February, 1884, Dujay made before August J. Cassard, American Consul at Tampico, a protest against the action of the custom house officials in taking possession of the packages which the master of the *Rebecca* had engaged to deliver at Brazos, Texas, and on April 4, April 9, and April 16, 1884, other protests were made before the Consul against the acts of the Mexican officials.

In the light of the allegations briefly summarized above, the United States contends (1), that the decision of the judge in condemning the vessel and cargo was at variance with the Mexican law applicable to the case, and (2), that the vessel having entered Tampico in distress, was immune from the local jurisdiction as regards the administration of the local customs laws. On behalf of Mexico it was contended that the judge properly applied the local law, and that no fault can be found with his decision. With reliance on the opinion of the Mexican judge, it was argued that it could not be said that the law with respect to distress applied when a vessel entered the port for which it was bound, and that, in view of the character of the ship's papers, there was reason to suppose that the ship's voyage did not include the port of Brazos Santiago. It was also argued that evidence did not show the ship to be in such a condition that it could be considered to be a distress. It was further argued that, in the light of the evidence of international law, it could not be said that at the time of the seizure of this vessel there existed a rule of international law with respect to distress.

The Commission is fortunate in having before it an abundance of evidence from which it is possible to draw definite conclusions with respect to all pertinent considerations. The seizure of the vessel and the arrest of the captain were the subject of extended diplomatic correspondence between Mexico and the United States. Investigations were made by the authorities of both countries of these matters. Copies of the correspondence and records of the investigations have been produced as have also the ship's log and a copy of the court's decision upon which a denial of justice is predicated by the claimant Government.

It is of course well established that, when a merchant vessel belonging to one nation enters the territorial waters of another nation, it becomes amenable to the jurisdiction of the latter and is subject to its laws, except in so far as treaty stipulations may relieve the vessel from the operation of local laws. On the other hand, there appears to be general recognition among the nations of the world of what may doubtless be considered to be an exception, or perhaps it may be said two exceptions, to this general, fundamental rule of subjection to local jurisdiction over vessels in foreign ports.

Recognition has been given to the so-called right of "innocent passage" for vessels through the maritime belt in so far as it forms a part of the high seas for international traffic. Similarly, recognition has also been given—perhaps it may be said in a more concrete and emphatic manner—to the immunity of a ship whose presence in territorial waters is due to a superior force. The principles with respect to the status of a vessel in "distress" find recognition both in domestic laws and in international law. For numerous, interesting precedents of both domestic courts and international courts, see Moore, *Digest*, Vol. II, p. 339 *et seq*; Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, p. 194. *et seq*.

Domestic courts have frequently considered pleas of distress in connection with charges of infringement of customs laws. Interesting cases in which pleas of distress were raised came before American courts in the cases of vessels charged with violation of the interesting American so-called "non-intercourse" acts forbidding trade with French and British possessions. 1 Stat. 565; 2 Stat. 308. In these cases it was endeavored in behalf of the vessels to seek immunity from prosecution under these laws by alleging that the vessels had entered forbidden ports as a result of *vis major*. A Mexican law of 1880 which was cited in the instant case appears to recognize in very comprehensive terms the principles of immunity from local jurisdiction which have so frequently been invoked. *Legislación Mexicana*, Dublán & Lozano, vol. 14, p. 619. *et seq*.

The enlightened principle of comity which exempts a merchant vessel, at least to a certain extent, from the operation of local laws has been generally stated to apply to vessels forced into port by storm, or compelled to seek refuge for vital repairs or for provisioning, or carried into port by mutineers. It has also been asserted in defense of a charge of attempted breach of blockade. It was asserted by as early a writer as Vattel, *The Law of Nations*, p. 128. In the instant case we are concerned simply with distress said to have been occasioned by violent weather.

While recognizing the general principle of immunity of vessels in distress, domestic courts and international courts have frequently given consideration to the question as to the degree of necessity prompting vessels to seek refuge. It has been said that the necessity must be urgent. It seems possible to formulate certain reasonably concrete criteria applicable and controlling in the instant case. Assuredly a ship floundering in distress, resulting either from the weather or from other causes affecting management of the vessel, need not be in such a condition that it is dashed helplessly on the shore or against rocks before a claim of distress can properly be invoked in its behalf. The fact that it may be able to come into port under its own power can obviously not be cited as conclusive evidence that the plea is unjustifiable. If a captain delayed seeking refuge until his ship was wrecked, obviously he would not be using his best judgment with a view to the preservation of the ship, the cargo and the lives of people on board. Clearly an important consideration may be the determination of the question whether there is any evidence in a given case of a fraudulent attempt to circumvent local laws. And even in the absence of any such attempt, it can probably be correctly said that a mere matter of convenience in making repairs or in avoiding a measure of difficulty in navigation can not justify a disregard of local laws.

The *Rebecca* did sail into Tampico, as observed by the judge who condemned the vessel, under its own power. However, it did not enter the port until after it had for three days, in a crippled condition, been contending

with a storm in an attempt to enter the port at Brazos Santiago, Texas. It is therefore certain that the vessel did not by choice abandon its attempt to make port at that place, but only because according to the best judgment of the captain and his crew absolute necessity so required. In such a case a captain's judgment would scarcely seem subject to question. It may also be concluded from the evidence in the case that a well grounded apprehension of the loss of the vessel and cargo and persons on board prompted the captain to turn south towards Tampico. It was argued in behalf of the United States that under the conditions of the weather it could be assumed that no other port of refuge was available. And even if such were not the case, there would seem to be no reason why refuge should not have been sought at Tampico. The fact that the ship had cargo for that place in addition to that consigned to Brazos Santiago, did not make the former any less available as the port of refuge. It may be concluded from the evidence that the captain had no intent to perpetrate a fraud on Mexican customs laws. Indeed his acquittal on the criminal charge preferred against him appears to be conclusive on that point, even if there were no other evidence bearing on the matter which there is. It may also be concluded that the captain had no intent merely as a matter of convenience to flout Mexican laws. This very small vessel had been driven before a strong north wind; its cabin had been damaged; its pumps had been broken and repaired; the cooking stove on the vessel had been rendered useless; there were one and a half to two feet of water in the vessel; and it had been leaking.

It was argued by counsel for the United States forcefully and at considerable length that the Mexican judge in condemning the ship and cargo misapplied Mexican law. The nature of the ship's papers, provisions of Mexican customs laws, and their construction and application by the Mexican judge were discussed in detail. It was contended that there was no violation of those laws. Whatever may be the merits of the contentions advanced, it is unnecessary to discuss this aspect of the case in view of the conclusions reached by the Commission with respect to the conditions under which the vessel entered Tampico. The ship entered the port of Tampico in distress, and the seizure of both the vessel and cargo was wrongful.

Claim is made in the sum of \$10,000.00 with interest from April 24, 1884, until the date of payment of any award rendered in the case. The sum of \$10,000.00 is apparently made up of three items, namely, \$5,000.00 for the vessel; \$2,500.00 for the cargo; and the remainder, "the loss and expense incident" to the confiscation of the ship and cargo. The Memorial contains no allegations or proofs with respect to the ownership of the cargo, and no specific information or proof with respect to the vaguely stated item of "loss and expense incident" to the confiscation. In one place in the brief it is said that the owner of the vessel was also the owner of its cargo. The Mexican Answer contains no challenge with respect to the propriety of these items. However, since the ownership of the cargo is not even alleged in the Memorial and is not proven, and as no information is furnished with regard to the item of incidental losses, these two items must be rejected.

Decision

The United Mexican States shall pay to the United States of America on behalf of Kate A. Hoff the sum of \$5,000.00, with interest at the rate

of six per centum per annum from April 24, 1884, to the date on which the last award is rendered by the Commission.
