

"I'M ALONE" CASE.

**Joint Interim Report of the Commissioners  
dated the 30th June, 1933.**

The Honourable the Secretary of State  
for the United States of America; and  
The Right Honourable  
The Minister of External Affairs for Canada.

**EXCELLENCIES :**

Willis van Devanter and Lyman Poore Duff, the Commissioners appointed respectively by the high contracting parties pursuant to Article 4 of the Convention of the 23rd day of January, 1924, between His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas and the President of the United States of America, beg leave to present the following interim report and recommendations.

In compliance with a direction given on the 28th of January, 1932, the agents and counsel of the high contracting parties respectively have submitted briefs and oral argument in relation to certain preliminary questions which are here set forth; and the Commissioners, in the exercise of their duty under the authority conferred upon them by the appointment aforesaid, have given and do give the answers hereinafter respectively appended to these questions:

The question numbered one is in the following terms:—

The first question is whether the Commissioners may enquire into the beneficial or ultimate ownership of the *I'm Alone* or of the shares of the corporation that owned the ship. If the Commissioners are authorized to make this enquiry, a further question arises as to the effect of indirect ownership and control by citizens of the United States upon the Claim; viz., whether it would be an answer to the Claim under the Convention, or whether it would go to mitigation of damages, or whether it would merely be a circumstance that should actuate the claimant Government in refraining from pressing the claim, in whole or in part.

The answer given to this question is as follows:—

The Commissioners think they may enquire into the beneficial or ultimate ownership of the *I'm Alone* and of the shares of the corporation owning the ship; as well as into the management and control of the ship and the venture in which it was engaged; and that this may be done as a basis for considering the recommendations which they shall make. But the Commissioners reserve for further consideration the extent to which, if at all, the facts of such ownership, management and control may affect particular branches or phases of the claim presented.

The question numbered two is in the following terms:—

The second question relates to the right of hot pursuit. Further, it has two aspects, and it is based upon the assumption that the averments in the Answer with regard to the location and speed of the *I'm Alone* are true. The question in its first aspect is whether the Government of the United States under the Convention has the right of hot pursuit where the offending vessel is within an hour's sailing distance of the shore at the commencement of the pursuit and beyond that distance at its termination. The question in its second aspect is whether the Government of the United States has the right of hot pursuit of a vessel when the pursuit commenced within the distance of twelve miles established by the revenue laws of the United States and was terminated on the high seas beyond that distance.

The answer given to this question is as follows:—

As respects the question in its first aspect, viz., whether the Government of the United States under the Convention has the right of hot pursuit where the offending vessel is within an hour's sailing distance of the shore at the commencement of the pursuit and beyond that distance at its termination,

the Commissioners are as yet not in agreement as to the proper answer, nor have they reached a final disagreement on the matter. The Commissioners, therefore, suggest that the proceeding go forward and that the evidence be produced in an orderly way, leaving the Commissioners free to give further consideration to the matter and to announce their agreement or disagreement thereon as the case may be.

The question in its second aspect need not be answered because the Government of the United States has now withdrawn so much of its answer as led to the propounding of that aspect of the question.

The question numbered three is in the following terms:—

The third question is based upon the assumption that the United States Government had the right of hot pursuit in the circumstances and was entitled to exercise the rights under Article II of the Convention at the time when the *Dexter* joined the *Wolcott* in the pursuit of the *I'm Alone*. It is also based upon the assumption that the averments set forth in paragraph eight of the Answer are true. The question is whether, in the circumstances, the Government of the United States was legally justified in sinking the *I'm Alone*.

The answer given to this question is as follows:—

On the assumptions stated in the question, the United States might, consistently with the Convention, use necessary and reasonable force for the purpose of effecting the objects of boarding, searching, seizing and bringing into port the suspected vessel; and if sinking should occur incidentally, as a result of the exercise of necessary and reasonable force for such purpose, the pursuing vessel might be entirely blameless. But the Commissioners think that, in the circumstances stated in paragraph eight of the Answer, the admittedly intentional sinking of the suspected vessel was not justified by anything in the Convention.

Having thus answered the preliminary questions, the Commissioners have had under consideration the practical application of their answers to the future conduct of the case.

They, accordingly, make to the two Governments the following recommendations:—

*First*: that the agents be instructed by their respective Governments to prepare and submit to the Commissioners separate statements setting forth in detail the contentions of their respective Governments as to the ultimate beneficial interests in the vessel and in the cargo, together with specifications of the documents and witnesses relied upon to substantiate their respective contentions:

*Second*: that the agents be similarly instructed to submit to the Commissioners either a joint statement or separate statements (in either case specifically itemized) of the sums which should be payable by the United States in case the Commissioners finally determine that compensation is payable by that Government.

Upon compliance with the foregoing recommendations the Commissioners will notify the agents by what procedure the resulting issues of fact will be determined and upon such determination will make a final recommendation.

The Commissioners have the honour to be, Excellencies,

Your most humble, obedient servants,

WILLIS VAN DEVANTER.

LYMAN P. DUFF.

30th June, 1933.

**Joint Final Report of the Commissioners in the Case of the "I'm Alone", dated January 5, 1935, and filed with the Secretary of State at Washington and the Minister of External Affairs for Canada at Ottawa, January 9, 1935.**

The Honourable the SECRETARY OF STATE FOR THE UNITED STATES OF AMERICA: and

The Right Honourable the MINISTER OF EXTERNAL AFFAIRS FOR CANADA.

EXCELLENCIES:

The Commissioners appointed respectively by the High Contracting Parties pursuant to Article IV of the Convention of the 23rd of January, 1924, between His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, and the President of the United States of America, did, on the 30th of June, 1933, present an interim report and recommendations concerning the matters submitted to them for consideration.

The interim report and recommendations are before Your Excellencies.

The Commissioners therein returned answers to certain preliminary questions set forth in a direction given by them on the 28th of January, 1932, in relation to which the agents and counsel of the High Contracting Parties had submitted briefs and oral argument.

Only questions numbered One and Three and the answers given thereto are now material. These are stated in the interim report as follows:

"The question numbered one is in the following terms:—

The first question is whether the Commissioners may enquire into the beneficial or ultimate ownership of the *I'm Alone* or of the shares of the corporation that owned the ship. If the Commissioners are authorized to make this enquiry, a further question arises as to the effect of indirect ownership and control by citizens of the United States upon the Claim; viz., whether it would be an answer to the Claim under the Convention, or whether it would go to mitigation of damages, or whether it would merely be a circumstance that should actuate the claimant Government in refraining from pressing the claim, in whole or in part."

"The answer given to this question is as follows:—

The Commissioners think they may enquire into the beneficial or ultimate ownership of the *I'm Alone* and of the shares of the corporation owning the ship; as well as into the management and control of the ship and the venture in which it was engaged; and that this may be done as a basis for considering the recommendations which they shall make. But the Commissioners reserve for further consideration the extent to which, if at all, the facts of such ownership, management and control may affect particular branches or phases of the claim presented"

"The question numbered three is in the following terms:—

The third question is based upon the assumption that the United States Government had the right of hot pursuit in the circumstances and was entitled to exercise the rights under Article II of the Convention at the time when the *Dexter* joined the *Wolcott* in the pursuit of the *I'm Alone*. It is

also based upon the assumption that the averments set forth in paragraph eight of the Answer are true. The question is whether, in the circumstances, the Government of the United States was legally justified in sinking the *I'm Alone*."

"The answer given to this question is as follows:—

On the assumptions stated in the question, the United States might, consistently with the Convention, use necessary and reasonable force for the purpose of effecting the objects of boarding, searching, seizing and bringing into port the suspected vessel; and if sinking should occur incidentally, as a result of the exercise of necessary and reasonable force for such purpose, the pursuing vessel might be entirely blameless. But the Commissioners think that, in the circumstances stated in paragraph eight of the Answer, the admittedly intentional sinking of the suspected vessel was not justified by anything in the Convention."

The preliminary questions having been answered, the Commissioners made the following recommendations as to the future conduct of the case:

"First: that the agents be instructed by their respective Governments to prepare and submit to the Commissioners separate statements setting forth in detail the contentions of their respective Governments as to the ultimate beneficial interests in the vessel and in the cargo, together with specifications of the documents and witnesses relied upon to substantiate their respective contentions:

"Second: that the agents be similarly instructed to submit to the Commissioners either a joint statement or separate statements (in either case specifically itemized) of the sums which should be payable by the United States in case the Commissioners finally determine that compensation is payable by that Government."

Statements were submitted to the Commissioners pursuant to these recommendations; and, on the 28th of December, 1934, the Commissioners convened for the purpose of hearing further evidence and oral argument touching the matters in dispute; and the hearing was concluded on the 3rd of January, 1935. The Commissioners now present their joint final report.

It will be recalled that the *I'm Alone* was sunk on the 22nd day of March, 1929, on the high seas, in the Gulf of Mexico, by the United States revenue cutter *Dexter*. By their interim report the Commissioners found that the sinking of the vessel was not justified by anything in the Convention. The Commissioners now add that it could not be justified by any principle of international law.

The vessel was a British ship of Canadian registry; after her construction she was employed for several years in rum running, the cargo being destined for illegal introduction into, and sale in, the United States. In December, 1928, and during the early months of 1929, down to the sinking of the vessel on the 22nd of March of that year, she was engaged in carrying liquor from Belize, in British Honduras, to an agreed point or points in the Gulf of Mexico, in convenient proximity to the coast of Louisiana, where the liquor was taken from her in smaller craft, smuggled into the United States, and sold there.

We find as a fact that, from September, 1928, down to the date when she was sunk, the *I'm Alone*, although a British ship of Canadian registry, was

*de facto* owned, controlled, and at the critical times, managed, and her movements directed and her cargo dealt with and disposed of, by a group of persons acting in concert who were entirely, or nearly so, citizens of the United States, and who employed her for the purposes mentioned. The possibility that one of the group may not have been of United States nationality we regard as of no importance in the circumstances of this case.

The Commissioners consider that, in view of the facts, no compensation ought to be paid in respect of the loss of the ship or the cargo.

The act of sinking the ship, however, by officers of the United States Coast Guard, was, as we have already indicated, an unlawful act; and the Commissioners consider that the United States ought formally to acknowledge its illegality, and to apologize to His Majesty's Canadian Government therefor; and, further, that as a material amend in respect of the wrong the United States should pay the sum of \$25,000 to His Majesty's Canadian Government; and they recommend accordingly.

The Commissioners have had under consideration the compensation which ought to be paid by the United States to His Majesty's Canadian Government for the benefit of the captain and members of the crew, none of whom was a party to the illegal conspiracy to smuggle liquor into the United States and sell the same there. The Commissioners recommend that compensation be paid as follows:

For the captain, John Thomas Randell, the sum of . . .	\$7,906.00
For John Williams, deceased, to be paid to his proper representatives . . . . .	1,250.50
For Jens Jansen . . . . .	1,098.00
For James Barrett . . . . .	1,032.00
For William Wordsworth, deceased, to be paid to his proper representatives . . . . .	907.00
For Eddy Young . . . . .	999.50
For Chesley Hobbs . . . . .	1,323.50
For Edward Fouchard . . . . .	965.00
For Amanda Mainguy, as compensation in respect of the death of Leon Mainguy, for the benefit of herself and the children of Leon Mainguy (Henriette Mainguy, Jeanne Mainguy and John Mainguy) the sum of . . . . .	10,185.00

In submitting this, their final report,

The Commissioners have the honour to be, Excellencies,

Your most humble, obedient servants,

WILLIS VAN DEVANTER.

LYMAN P. DUFF.

5TH JANUARY, 1935.