

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Several British Subjects (Great Britain) v. United States (Iloilo Claims)

19 November 1925

VOLUME VI pp. 158-160



NATIONS UNIES - UNITED NATIONS
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Cross-references: Am. J. Int. Law, vol. 20 (1926), pp. 381-382; Annual Digest, 1925-1926. p. 80.

Bibliography: Nielsen, pp. 85-159.

These are claims for wrongful imprisonment, detention in prison, enforced leaving of the country, and other indignities, claimed to have been inflicted upon British subjects by the authorities of the Hawaiian Republic prior to annexation by the United States.

We think the cases are governed by the decision of this tribunal in the case of Robert E. Brown, American and British claims arbitration, claim No. 30.

It is contended on behalf of Great Britain that the Brown case is to be distinguished because in that case the South African Republic had come to an end through conquest, while in these cases there was a voluntary cession by the Hawaiian Republic as shown (so it is said) by the recitals of the Joint Resolution of Annexation. We are unable to accept the distinction contended for. In the first place, it assumes a general principle of succession to liability for delict, to which the case of succession of one state to another through conquest would be an exception. We think there is no such principle. It was denied in the Brown case and has never been contended for to any such extent. The general statements of writers, with respect to succession to obligations, have reference to changes of form of government, where the identity of the legal unit remains, to liability to observe treaties of the extinct state, to contractual liabilities, or at most to quasi-contractual liabilities. Even here, there is much controversy. The analogy of universal succession in private law, which is much relied on by those who argue for a large measure of succession to liability for obligations of the extinct state, even if admitted (and the aptness of the analogy is disputed), would make against succession to liability for delicts. Nor do we see any valid reason for distinguishing termination of a legal unit of international law through conquest from termination by any other mode of merging in, or swallowing up by, some other legal unit. In either case the legal unit which did the wrong no longer exists, and legal liability for the wrong has been extinguished with it.

We decide that these claims must be rejected.

SEVERAL BRITISH SUBJECTS (GREAT BRITAIN) *v.* UNITED STATES

(Iloilo Claims. November 19, 1925. Pages 403-405.)

CESSION OF SOVEREIGNTY. ANNEXATION. SUCCESSION OF STATES.—PROTECTION OF ALIENS AGAINST INSURGENTS.—NECESSARY WAR LOSSES, CONDUCT OF MILITARY OPERATIONS. Cession by Spain to United States of sovereignty over Philippines: treaty signed on December 10, 1898, exchange of ratifications on April 11, 1899. Provision that on exchange of ratifications Spain should evacuate islands. Desire of Spanish commander at Iloilo, Island of Panay, to evacuate earlier. Request on December 14, 1898, by Iloilo business men among whom six of present claimants, to United States commander at Manila to occupy place. Evacuation of Iloilo by Spanish commander on December 24, 1898, immediately followed by occupation by Filipino insurgents. Arrival of United States expeditionary force in Iloilo harbour on December 28, 1898. Declaration of war by so-called Filipino Republic against United States on February 4, 1899. Landing of United States forces

in Iloilo on February 11, 1899, occupation of town burned by insurgents. Loss of claimants' property by, or in consequence of, fire. *Held* that no culpable disregard of interests of claimants shown: (1) United States intervention was matter of discretion; (2) delay in landing forces largely due to request by businessmen themselves; and (3) no wanton or intentional destruction of property by United States vessels or troops, Tribunal not competent to criticize conduct of military operations. Claims disallowed.

Cross-reference: Am. J. Int. Law, vol. 20 (1926), pp. 382-384.

Bibliography: Nielsen, pp. 382-402.

These are claims for destruction of property of British subjects on the occasion of the occupation of Iloilo by the forces of the United States during the Philippine Insurrection.

On August 12, 1898, a "Protocol of Agreement" had been entered into between the United States and Spain whereby it was provided that the United States should "occupy and hold the city, bay, and harbour of Manila, pending the conclusion of a treaty which shall determine the control, disposition, and government of the Philippines". On December 10, 1898, a treaty was signed whereby, in article III, Spain ceded the Philippines to the United States. Article v of the treaty provided that on exchange of ratifications Spain should evacuate the islands. Exchange of ratifications did not take place until April 11 following. In the meantime, the Spanish commander at Iloilo, on the island of Panay, the second place of importance in the archipelago, being pressed by Filipino insurgents, desired to evacuate, and seems to have communicated this desire to General Otis, the American commander at Manila. The latter stated that he was without authority to act on the suggestion. On December 14, however, the businessmen of Iloilo having requested General Otis to occupy the place in order to preserve peace and property, the general cabled to Washington asking permission to do so. No answer was sent till December 21. In consequence an expeditionary force could not be dispatched until December 26 and it did not reach Iloilo until December 28. Although General Otis had endeavoured to get word of the expedition to the Spanish commander, he had not succeeded. The place had been evacuated on December 24, and was promptly occupied by a force of Filipino insurgents. General Miller, who commanded the expeditionary force, acting on a petition from the businessmen of Iloilo, which he communicated to General Otis, and on instructions from Manila, and ultimately from Washington, remained in the harbour without landing his force or attempting to take possession until February 11. On that date, pursuant to orders dated February 8, which reached him on February 10, he landed, drove out the insurgents, and occupied the town. From the beginning the insurgents had threatened to burn the town if forcibly driven out, and on February 11 they succeeded in carrying out this threat. The property of the claimants was destroyed by, or lost in consequence of, this fire.

It is contended by Great Britain that there was culpable neglect on the part of the authorities of the United States in three respects: (1) in the delay of a week in answering General Otis's request, so that the Spanish commander had evacuated Iloilo and the insurgents had taken control before the expedition under General Miller arrived; (2) in delaying the occupation of Iloilo after General Miller's arrival, so that the insurgents were able to make and carry out preparations for burning the town; (3) in the manner of landing and occupation when finally made.

As to the first contention, we are of opinion that there was no duty upon the United States under the terms of the Protocol, or of the then unratified

treaty, or otherwise, to assume control at Iloilo. *De jure* there was no sovereignty over the islands until the treaty was ratified. Nor was any *de facto* control over Iloilo assumed until the taking up of hostilities against the United States on the part of the so-called Filipino Republic required it on February 11, 1899. The sending of General Miller's force, at the request of the business men of the place, was an intervention to preserve peace and property. As between the United States and the claimants or their government, it was a matter of discretion whether or not to do this, and no fault can be imputed because of delay in undertaking such an intervention.

As to the second contention, it appears that the delay was, at least, largely due to request of the business men who had originally sought intervention (among them six of the present claimants) who feared the town would be burned and their property destroyed if General Miller attempted to land and to take forcible possession. Even if it is assumed that there was any duty toward the claimants to act promptly, under all the circumstances we can not say that the delay was culpable.

As to the third contention, it appears that the Filipino insurgents, who burned Iloilo, were acting under orders from and professed allegiance to the so-called Filipino Republic, which, on February 4 preceding, had declared war against the United States and had attacked the American forces at Manila, thus bringing on a conflict which lasted over three years. There was no wanton or intentional destruction of property by the vessels or troops of the United States. Indeed, there is evidence that the troops exerted themselves vigorously to put out the fires and to stop looting. The most that is claimed is that, if the operations of landing and taking the town had been carried out in a different way, the burning by the insurgents might have been prevented. But the circumstances were difficult and the general situation was trying. The operations were in charge of experienced officers and we do not feel competent to criticize their judgment as to the conduct of military operations. Considering all the circumstances, we do not think that any culpable disregard of the interests of the claimants has been shown.

We decide that these claims must be rejected.

D. EARNSHAW AND OTHERS (GREAT BRITAIN) *v.* UNITED STATES

(*Zafiro case. November 30, 1925. Pages 579-585.*)

LOOTING, DESTRUCTION OF PRIVATE PROPERTY IN TIME OF WAR. Looting and destruction of private property on May 4, 1898, at Cavite, Philippines, by crew of *Zafiro*, an American merchant vessel acting in Manila Bay as supply ship and part of United States naval forces.

RESPONSIBILITY FOR ACTIONS OF MERCHANT VESSEL IN NAVAL FORCES.—SEA WARFARE: CONVERTED MERCHANTMAN.—PUBLIC VESSEL.—RESPONSIBILITY FOR ACTS ASHORE OF SAILORS. *Held* that United States responsible for actions of *Zafiro* by nature of service and purpose for which employed, irrespective of her not being a "converted merchantman" under Convention VII, Hague Conference 1907. *Held* also highly culpable to let this particular crew go ashore without effective control in circumstances prevailing at the time.

EXTENT OF LIABILITY.—EVIDENCE: BURDEN OF PROOF. United States *held* liable for the whole, though not all of the damage was done by crew of