

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

J. Parsons (Great Britain) v. United States

30 November 1925

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substantial extent and the part chargeable to unknown wrongdoers can not be identified, we are constrained to hold the United States liable for the whole.

In view, however, of our finding that a considerable, though unascertainable, part of the damage is not chargeable to the Chinese crew of the *Zafiro*, we hold that interest on the claims should not be allowed.

We award as follows: to D. Earnshaw, \$4,392 (Mexican); to A. Young, \$1,306.50 (Mexican); to G. Gilchrist, \$458 (Mexican).

LUZON SUGAR REFINING COMPANY, LIMITED (GREAT BRITAIN)
v. UNITED STATES

(November 30, 1925. Page 586.)

NECESSARY WAR LOSSES, CONDUCT OF MILITARY OPERATIONS.—EVIDENCE: REPORT OF MILITARY COMMANDER. United States *held* not responsible for damage done by United States forces to plant of claimant in 1899 during Philippine insurrection; damage incident of military operations as shown by report of commanding United States general.

Cross-references: Am. J. Int. Law, vol. 20 (1926), p. 391; Annual Digest, 1925-1926, pp. 225-226.

Bibliography: Nielsen, p. 586; Annual Digest, 1925-1926, p. 226.

This is a claim for injury to the plant of the claimant during the Philippine insurrection. It appears that the insurgents entrenched about fifty yards on each side of the pumping station of the claimant and that during the operation of driving them out the plant was damaged by shells. It is clear from the report of General Otis that the damage was an incident of the military operations whereby the insurgents were driven from their capital. The foreign residents, whose property unhappily chanced to stand in the field of those operations, have no ground of complaint against the United States which had no choice but to conduct them where the enemy was to be found. No complaint is made that the troops were out of hand or did anything beyond what the operations necessarily involved.

Hence this claim must be rejected and we so decide.

J. PARSONS (GREAT BRITAIN) v. UNITED STATES

(November 30, 1925. Page 587.)

DESTRUCTION OF PRIVATE PROPERTY IN TIME OF WAR.—POLICE MEASURE. United States *held* not responsible for destruction of stock of (poisonous) liquors directed by United States military authorities in 1899 during Philippine insurrection: matter of police.

Cross-reference: Am. J. Int. Law, vol. 20 (1926), p. 385.

Bibliography: Nielsen, p. 587.

This is a claim for the value of a stock of liquors destroyed by order of the Provost Marshal General, under authority of the Military Governor General, at Manila, during the Philippine insurrection. We are satisfied that the destruc-

tion was a matter of police entirely within the powers of the military government and quite justified by the circumstances. Hence, we hold that this claim must be rejected, and it is so decided.

SUCCESSORS OF WILLIAM WEBSTER (UNITED STATES)

v. GREAT BRITAIN

(December 12, 1925. Pages 540-546.)

CESSION OF SOVEREIGNTY, ANNEXATION, SUCCESSION OF STATES: PRIVATE RIGHTS ACQUIRED PREVIOUS TO— Purchase in 1836-1839 by Webster, United States citizen, of certain lands in New Zealand from native chiefs and tribes. Proclamation by Great Britain on January 14 and 29, 1840, of non-recognition of titles to land not derived from or confirmed by Queen. Cession of sovereignty on February 6, 1840, by native chiefs and tribes to Great Britain. Act of June 9, 1841, going less far than proclamations and establishing Commission to examine titles derived from aborigines and recommend Crown grants in lieu thereof to maximum of 2,560 acres per claimant, unless more authorized by Governor and Council. Submission by Webster of his claims to Commission "willing to take his chance with all others". Crown grants made for about 42,000 acres. Claim for compensation presented before Tribunal on the ground that not all native titles were given effect.

JURISDICTION, PRELIMINARY MOTION. Preliminary objection to jurisdiction overruled since: (1) Tribunal unable to decide upon jurisdiction before full hearing of Cayuga Indians claim (see p. 173 *infra*), and (2) since according to rules of procedure award shall be delivered as soon as possible and Tribunal satisfied that claim must be rejected on its merits.

INTERPRETATION OF (PRIMITIVE AND DEVELOPED) MUNICIPAL LAW.—EQUITY. *Held* that under customary native law Webster acquired no more than titles of uncertain scope and content, not extending to full property (*dominium*). Differences listed with Burt's claim (see p. 93 *supra*). *Held* also that Act of June 9, 1841, instead of destroying Webster's imperfect native titles, gave him option of claiming them and insisting they be allowed, for what they were worth, on the basis of international law, or of exchanging them for better title derived from Crown to such lands as should be awarded him, and that he agreed to the latter. *Held* further not equitable that Webster, who was awarded more than sixteen times maximum, should receive full title to whole of large claimed areas.

AWARENESS OF RISK. *Held* that Webster must have known that native titles not marketable unless confirmed, established, or transformed, so that losses due to delay or uncertainty in confirming, etc. (proclamations of January 14 and 29, 1840), were risk of his speculation. Claim disallowed.

Cross-references: Am. J. Int. Law, vol. 20 (1926), pp. 391-397; Annual Digest, 1925-1926, pp. 83-84.

Bibliography: Nielsen, pp. 537-539; Annual Digest, 1925-1926, p. 84.

As described in the memorial, "this claim is for damages resulting from the denial of title to and loss of possession of certain lands in . . . New Zealand" as a consequence of what are claimed to have been "unwarranted and unjustifiable acts of the British authorities after the annexation by the British Crown".