REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

General Claims Commission (United States and Panama) constituted under the Claims Convention of July 28, 1926, modified by the Convention of December 17, 1932 (22 May 1933-29 June 1933)

VOLUME VI pp. 293-386

NATIONS UNIES - UNITED NATIONS

PART III

GENERAL CLAIMS COMMISSION UNITED STATES AND PANAMA CONSTITUTED UNDER THE CLAIMS CONVENTION OF JULY 28, 1926, MODIFIED BY THE CONVENTION OF DECEMBER 17, 1932

PARTIES: United States of America, Panama.

SPECIAL AGREEMENT: July 28, 1926, modified December 17, 1932.

COMMISSIONERS: Dr. Miguel Cruchaga Tocornal (Chile), Presiding Commissioner (1932),
Baron Daniel Wigbold van Heeckeren (Netherlands), Presiding Commissioner (1933),
Joseph R. Baker, American Commissioner (1932), Elihu Root, Jr., American Commissioner (1933),
Horacio F. Alfaro, Panamanian Commissioner (1932-1933).

REPORTS: American and Panamanian General Claims Arbitration under the Conventions between the United States and Panama of July 28, 1926, and December 17, 1932, Report of Bert L. Hunt, Agent for the United States. (United States Government Printing Office, Washington, 1934.)

Comisión General de Reclamaciones entre Panamá y Estados Unidos de América. (Publicación Oficial, Panamá, Imprenta Nacional, 1934.) [1]

[1] A series of separate publications concerning each claim.

HISTORICAL NOTE

The General Claims Arbitration under the Convention concluded on July 28, 1926, between the United States and Panama had for its object virtually all claims arisen on either side since November 3, 1903, when Panama declared its independence from Colombia. Excepted from the arbitration were the so-called Colón fire claims dating back to March 31, 1885, and which the parties hoped it would be possible in the future to submit to arbitration together with Colombia, and claims for compensation on account of damages caused in connexion with the construction of the Panama Canal, which would continue to be disposed of as usually by the Joint Land Commission under the Panama Canal Convention of November 18, 1903. The parties agreed, nevertheless, that two claims of the latter kind, the Caselli and Monteverde claims, would be submitted to the Commission provided for by the Convention of July 28, 1926.

Ratification of the Convention of July 28, 1926, did not take place sooner than September 11, 1931, as far as the United States, and September 25, 1931, as far as Panama is concerned. Ratifications were exchanged on October 3, 1931. According to article II of the Convention, the Commission was to meet for the first time in Washington within six months after the exchange of ratifications of the Convention, i.e., before April 4, 1932. Under Article VI, the Commission was bound to decide within one year from its first meeting all claims filed, i.e., before April 4, 1933.

The first meeting of the Commission actually took place on April 1, 1932. The Commission then adopted its rules, setting August 22, 1932, as the last date on which memorials of claims should be filed, and adjourned to reconvene not before November 21, 1932. When thus it became clear that the work of the Commission could not be completed within the period allowed by the Convention, a second Convention was concluded by the parties on December 17, 1932, modifying the first one by extension of the original time-limit to July 1, 1933. Ratifications of the second Convention were exchanged on March 25, 1933.

After the selection of a new President, Baron D. W. van Heeckeren (Netherlands), who took the place of Dr. Cruchaga Tocornal (Chile) who had become Minister for Foreign Affairs of his country, the Commission from March 2, 1933, met regularly and brought its task to an end on June 29, 1933.

The Commission rendered 19 awards in favour of the United States, awarding $114, 396.25, and four in favour of Panama, awarding $3,150.

BIBLIOGRAPHY

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Convention of December 17, 1932: L.N.T.S., vol. 138, pp. 131-133; U.S. Treaty Ser., No. 860; State Papers, vol. 135, pp. 670-671; de Martens, N.R.G., 3rd series, vol. 27, p. 328.

L. H. Woolsey, "United States-Panama Claims Commission", Am. J. Int. Law, vol. 25 (1931), pp. 520-523.

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Wilhelm Friede, "*Entscheidung der auf Grund der Abkommen zweischen den Vereinigten Staaten von Amerika und Panama vom 28. Juli 1926 und 17. Dezember 1932 eingesetzten General Claims Commission im Falle de Sabla, vom 29. Juni 1933*", Z.a.ö.R.u.V., Band IV (1934), pp. 925-928.

—— "*Die Entscheidungen der auf Grund der Abkommen zwischen den Vereinigten Staaten von Amerika und Panama vom 28. Juli 1926 und 17. Dezember 1932 eingsetzten General Claims Commission*", Z.a.ö.R.u.V., Band V (1935), pp. 452-466.

Conventions

CLAIMS CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND PANAMA

Signed July 28, 1926. Ratifications exchanged October 3, 1931 [1]

The United States of America and the Republic of Panama, desiring to settle and adjust amicably claims by the citizens of each country against the other, have decided to enter into a Convention with this object, and to this end have nominated as their plenipotentiaries:

The President of the United States of America, the Honorable Frank B. Kellogg, Secretary of State of the United States of America; and

The President of the Republic of Panama, the Honorable Doctor Ricardo J. Alfaro, Envoy Extraordinary and Minister Plenipotentiary of Panama to the United States and the Honorable Doctor Eusebio A. Morales, Envoy Extraordinary and Minister Plenipotentiary of Panama on special mission;

Who, after having communicated to each other their respective full powers found to be in due and proper form, have agreed upon the following articles:

ARTICLE I

All claims against the Republic of Panama arising since November 3, 1903, except the so-called Colón Fire Claims hereafter referred to, and which at the time they arose were those of citizens of the United States of America, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties, and all claims against the United States of America arising since November 3, 1903, and which at the time they arose were those of citizens of the Republic of Panama, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties; all claims for losses or damages suffered by citizens of either country, by reason of losses or damages suffered by any corporation, company, association or partnership, in which such citizens have or have had, a substantial and bona fide interest, provided an allotment to the claimant by the corporation, company, association or partnership, of his proportion of the loss or damage suffered is presented by the claimant to the Commission; and all claims for losses or damage originating from acts of officials or others acting for either Government, and resulting in injustice, and which claims may have been presented to either Government for its interposition with the other, and which have remained unsettled, as well as any other such claims which may be filed by either Government within the time hereinafter specified, shall be submitted to a Commission consisting of three members for decision in accordance with the principles of international law, justice and equity. As an exception to the claims to be submitted to such Commission, unless by later specific agreement of the two Contracting Parties,

[1] Source: L.N.T.S., vol. 138, pp. 120-126.

are claims for compensation on account of damages caused in the manner set forth in article VI of the Treaty of November 18, 1903, for the construction of the Panama Canal, which shall continue to be heard and decided by the Joint Commission provided for in that article of the Treaty.

With regard to the exception above made respecting the claims for losses suffered by American citizens as a result of the fire that occurred in the City of Colón on March 31, 1885, the Government of Panama agrees in principle to the arbitration of such claims under a Convention to which the Republic of Colombia shall be invited to become a party and which shall provide for the creation or selection of an arbitral tribunal to determine the following questions: first, whether the Republic of Colombia incurred any liability for losses sustained by American citizens on account of the fire that took place in the City of Colón on the 31st of March 1885; and, second, in case it should be determined in the arbitration that there is an original liability on the part of Colombia, to what extent, if any, the Republic of Panama has succeeded Colombia in such liability on account of her separation from Colombia on November 3, 1903, and the Government of Panama agrees to co-operate with the Government of the United States by means of amicable representations in the negotiation of such arbitral agreement between the three countries.

The hearing and adjudication of particular claims in accordance with their merits in order to determine the amount of damages to be paid, if any, in case a liability is found, shall take place before a special tribunal to be constituted in such form as the circumstances created by the tri-partite arbitration shall demand.

As a specific exception to the limitation of the claims to be submitted to the Commission against the United States of America it is agreed that there shall be submitted to the Commission the claims of Abbondio Caselli, a Swiss citizen, or the Government of Panama, and Jose C. Monteverde, an Italian subject, or the Government of Panama, as their respective interests in such claims may appear, these claims having arisen from land purchased by the Government of Panama from the said Caselli and Monteverde and afterwards expropriated by the Government of the United States, and having formed in each case the subject matter of a decision by the Supreme Court of Panama.

The Commission shall be constituted as follows: One member shall be appointed by the President of the United States; one by the President of the Republic of Panama; and the third, who shall preside over the Commission, shall be selected by mutual agreement between the two Governments. If the two Governments shall not agree within two months from the exchange of ratifications of this Convention in naming such a third member, then he shall be designated by the President of the Permanent Administrative Council of the Permanent Court of Arbitration at The Hague described in article 49 of the Convention for the Pacific Settlement of International Disputes concluded at The Hague October 18, 1907. In case of the death, absence or incapacity of any member of the Commission, or in the event of the member omitting or ceasing to act as such, the same procedure shall be followed for filling the vacancy as was followed in appointing him.

ARTICLE II

The Commissioners so named shall meet at Washington for organization within six months after the exchange of ratifications of this Convention, and each member of the Commission before entering upon his duties, shall make and subscribe a solemn declaration stating that he will carefully and impartially examine and decide according to the best of his judgment and in accordance with

the principles of international law, justice and equity, all claims presented for his decision, and such declaration shall be entered upon the record of the proceedings of the Commission.

The Commission may fix the time and place of its subsequent meetings, either in the United States or in Panama as may be convenient, subject always to the special instructions of the two Governments.

ARTICLE III

The Commission shall have authority by the decision of the majority of its members to adopt such rules for its proceedings as may be deemed expedient and necessary, not in conflict with any of the provisions of this Convention.

Each Government may nominate agents or counsel who will be authorized to present to the Commission orally or in writing, all the arguments deemed expedient in favor of or against any claim. The agents or counsel of either Government may offer to the Commission any documents, affidavits, interrogatories or other evidence desired in favor of or against any claim and shall have the right to examine witnesses under oath or affirmation before the Commission, in accordance with such rules of procedure as the Commission shall adopt.

The decision of the majority of the members of the Commission shall be the decision of the Commission.

The language in which the proceedings shall be conducted and recorded shall be English or Spanish.

ARTICLE IV

The Commission shall keep an accurate record of the claims and cases submitted, and minutes of its proceedings with the dates thereof. To this end, each Government may appoint a Secretary; those Secretaries shall act as joint Secretaries of the Commission and shall be subject to its instructions. Each Government may also appoint and employ, any necessary assistant secretaries and such other assistants as may be deemed necessary. The Commission may also appoint and employ any other persons necessary to assist in the performance of its duties.

ARTICLE V

The High Contracting Parties being desirous of effecting an equitable settlement of the claims of their respective citizens, thereby affording them just and adequate compensation for their losses or damages, agree that no claim shall be disallowed or rejected by the Commission through the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.

ARTICLE VI

Every such claim for loss or damage accruing prior to the signing of this Convention, shall be filed with the Commission within four months from the date of its first meeting, unless in any case reasons for the delay, satisfactory to the majority of the Commissioners, shall be established, and in any such case the period for filing the claim may be extended not to exceed two additional months.

The Commission shall be bound to hear, examine and decide, within one year from the date of its first meeting, all the claims filed.

Three months after the date of the first meeting of the Commissioners and every three months thereafter, the Commission shall submit to each Government a report setting forth in detail its work to date, including a statement of the claims filed, claims heard and claimsdecided. The Commission shall be bound to decide any claim heard and examined, within six months after the conclusion of the hearing of such claim and to record its decision.

ARTICLE VII

The High Contracting Parties agree to consider the decision of the Commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every such claim upon either Government, for loss or damage sustained prior to the exchange of the ratifications of the present Convention. And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such Commission, shall from and after the conclusion of the proceedings of the Commission, be considered and treated as fully settled, barred, and thenceforth inadmissible, provided in the case of the claims filed with the Commission that such claims have been heard and decided.

This provision shall not apply to the so-called Colón Fire Claims, which will be disposed of in the manner provided for in article I of this Convention.

ARTICLE VIII

The total amount awarded in all the cases decided in favor of the citizens of one country shall be deducted from the total amount awarded to the citizens of the other country, and the balance shall be paid at the City of Panama or at Washington, in gold coin or its equivalent within one year from the date of the final meeting of the Commission, to the Government of the country in favor of whose citizens the greater amount may have been awarded.

ARTICLE IX

Each Government shall pay its own Commissioner and bear its own expenses. The expenses of the Commission including the salary of the third Commissioner shall be defrayed in equal proportions by the two Governments.

ARTICLE X

The present Convention shall be ratified by the High Contracting Parties in accordance with their respective Constitutions. Ratifications of this Convention shall be exchanged in Washington as soon as practicable and the Convention shall take effect on the date of the exchange of ratifications.

In witness whereof, the respective plenipotentiaries have signed and affixed their seals to this Convention.

Done in duplicate in Washington this twenty-eighth day of July 1926.

[SEAL] Frank B. KELLOGG
[SEAL] R. J. ALFARO
[SEAL] Eusebio A. MORALES

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND PANAMA MODIFYING CLAIMS CONVENTION OF JULY 28, 1926

Signed December 17, 1932. Ratifications exchanged March 25, 1933. [1]

The United States of America and the Republic of Panama desiring to modify certain provisions of a Convention for the settlement and amicable adjustment of claims presented by the citizens of each country against the other, signed at Washington July 28, 1926, have decided to conclude a Convention for that purpose and have nominated as their plenipotentiaries:

The President of the United States of America, Mr. Roy Tasco Davis, Envoy Extraordinary and Minister Plenipotentiary of the United States to Panama; and

The President of the Republic of Panama, His Excellency Doctor J. Demóstenes Arosemena, Secretary for Foreign Affairs of the Republic of Panama;

Who after having communicated to each other their respective full powers found to be in due and proper form, have agreed upon the following articles:

ARTICLE I

The second paragraph of Article VI of the Convention between the United States of America and the Republic of Panama for the settlement and amicable adjustment of claims by citizens of each country against the other, signed at Washington July 28, 1926, is amended to read as follows:

"The Commission shall be bound to hear, examine and decide, before July 1, 1933, all the claims filed on or before October 1, 1932."

ARTICLE II

Article VIII of the Claims Convention signed at Washington on July 28, 1926, by plenipotentiaries of the United States of America and the Republic of Panama is amended to read as follows:

"The total amount awarded in all the cases decided in favor of the citizens of one country shall be deducted from the total amount awarded to the citizens of the other country, and the balance shall be paid at the city of Panama or at Washington, in gold coin or its equivalent the first of July, 1936, or before, to the Government of the country in favor of whose citizens the greater amount may have been awarded."

ARTICLE III

The present Convention shall be ratified by the High Contracting Parties in accordance with their respective Constitutions. Ratifications of this Convention shall be exchanged in Panama as soon as practicable and the Convention shall take effect on the date of the exchange of ratifications.

In witness whereof, the respective Plenipotentiaries have signed and affixed their seals to this Convention.

Done in duplicate in Panama this seventeenth day of December, 1932.

[SEAL] Roy T. DAVIS
[SEAL] J. D. AROSEMENA

[1] Source: L.N.T.S., vol. 138, pp. 131-133.

Decisions

AGNES EWING BROWN (UNITED STATES) *v.* PANAMA

(May 22, 1933. Pages 92-94.)[1]

CONTRACT.—EVIDENCE: PROOF OF CONTRACT, CLAIMANT'S AFFIDAVIT. PREVIOUS STATEMENT, CORRESPONDENCE.— INTERPRETATION OF MUNICIPAL LAW. Appointment as Directress of school in Panama City by Presidential Decree of May 13, 1918, accepted by claimant on June 10, 1918. Dismissal by Presidential Decree of July 30, 1918. Claim brought before Commission for breach of contract and violation of administrative law. *Held* that, in the absence of other evidence, and against denial of defendant and previous statement made by claimant (letter to editor of newspaper), her affidavit cannot prove existence of contract. *Held* also that claimant was subject to discretionary removal under Panamanian administrative law: her correspondence shows her engaged in political controversy.

Cross-reference: Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la Norteamericana Agnes Ewing Brown, Registro No. 2, (Publicación Oficial, Panamá, 1934.)

Bibliography:[2] Hunt, Report, pp. 94-96; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), p. 466.

After the completion of the pleadings provided for in the rules of procedure, the Agents by consent of the Commission filed memoranda in lieu of oral arguments.

This claim is made against the Republic of Panama by the United States of America, on behalf of Agnes Ewing Brown.

Miss Brown was at all material times, and is now, an American citizen.

During the year 1912-1913 she filled the position of Directress of the Girls' Normal School in Panama City. The recollection of the services then rendered by her induced the President of the Republic of Panama in the spring of 1918, to make her, through the intermediary of the Consul General of the Republic at New York, an offer of reappointment in that position. The conditions offered were: the salary to be $2,400 per year, with an additional allowance of $840 per year for living expenses; the term of the contract to be for five years; claimant to be required to live in the school building; first-class passage to Panama and return fare from Panama to New York to be paid by Panama.

For different reasons the claimant hesitated to accept this offer. Meanwhile, the then Panamanian Secretary of Instruction, Señor Preciado, asked the American Minister in Panama to urge her to accept, which the Minister did by cablegram sent on May 1, 1918.

Miss Brown sailed for Panama in that month. Her passage was paid for by

[1] References to page numbers are to the report of Bert L. Hunt referred to on p. 295 *supra*.

[2] References in this section are to publications referred to on p. 299 *supra*, and to the Annual Digest.

the Panamanian Government, but no contract had been signed. She was appointed by Presidential Decree nr. 60 of May 13, 1918, signed by President Valdés, and officially accepted her appointment on June 10, 1918.

In the month of July certain correspondence took place between the Secretary of Instruction, Señor Andreve, and the directress, which led to her being dismissed by Presidential Decree nr. 116 of July 30, 1918, signed by President Urriola. The claimant alleges that this dismissal was without just cause and in violation of a contract and without any breach thereof on her part.

She claims $5,000 for injury to reputation: $16,200 for salary and living allowance for five years, from which sum she deducts $540 being two months salary and living allowance received for the months [of] June and July 1918, and $4,900 earned by her otherwise, leaving a sum of $10,760; and $106 for cost of transportation from Panama to New York; making a total of $15,866.

A contract has not been produced and the defendant Government denies the alleged contractual relations.

In her affidavit of November 24, 1931, the claimant states: that she was offered a written contract; that she informed the Consul General of Panama at New York that she would accept the contract, if she found the living conditions in the school building desirable; that upon arrival in Panama she found them such; that she received her official appointment and accepted it. She further states that when she was received by President Valdés she communicated to him her satisfaction of the living conditions and her acceptance of the contract and that he expressed his pleasure thereat.

In the absence of other evidence and against the denial of the defendant Government these statements cannot prove that the alleged contract did materialize; moreover, in a letter to the editor, published in the *Panama Weekly News*, and put in evidence by the defendant Government, the claimant mentioned on August 15, 1918, that she had been offered a contract but had refused to accept it.

In the course of the pleadings the American Agent argued that at any rate a contract for one year was entered into by the claimant being appointed on an annual salary and accepting such appointment. There is however nothing to show that Miss Brown's position as Directress of the Girls' Normal School at Panama was governed by other conditions than those resulting from the appointment in the usual form, which she accepted.

It has further been contended on behalf of the claimant that anyhow her dismissal disregarded her rights under that appointment, as she was not subject to discretionary removal under art. 629 sub 18 of the Administrative Code, but was in the class of employees which can only be dismissed for the reasons given in art. 414 of that code. Miss Brown's correspondence however makes it clear, that she was engaged in a political controversy in violation of art. 423, and was subject to removal therefor under art. 424.

The claim must be disallowed.

WALTER A. NOYES (UNITED STATES) *v.* PANAMA

(May 22, 1933, dissenting opinion of Panamanian Commissioner, undated. Pages 190-194.)

JURISDICTION, OBJECTION TO: CLAIMS ARISEN AFTER SIGNATURE OF CLAIMS CONVENTION.—INTERPRETATION OF TREATIES: TERMS. *Held* that Commission has jurisdiction to entertain claims arisen after signature of Claims Convention, July 28, 1926: clear wording of article VII.

PROTECTION OF ALIENS: MOB VIOLENCE, PROSECUTION OF OFFENDERS. Acts of violence committed June 19, 1927, by mob attending political meeting. No increase of police force before crowd became unruly. Active police protection of claimant when attacked. No prosecution of assailants. *Held* that neither mere fact of aggression which could have been averted by sufficient police force, nor failure, in prevailing conditions, to institute prosecution against assailants make government liable for damages under international law.

Cross-references: Annual Digest, 1933-1934, pp. 252-254; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación del Norteamericano Walter A. Noyes, Registro No. 5. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, pp. 196-197, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 67, 73; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 101; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), pp. 453, 460-461.

The Agents, by consent of the Commission, filed memoranda in lieu of oral arguments on the issues raised in the pleadings. Oral arguments were presented on March 23, 1933, on the question of jurisdiction.

In this case a claim is made against the Republic of Panama by the United States of America on behalf of Walter A. Noyes, who was born, and has ever remained, an American citizen. The sum of $1,683 is claimed as an indemnity for the personal injuries and property losses sustained by Mr. Noyes through the attacks made upon him on June 19, 1927, in, and in the neighborhood of, the village of Juan Díaz, situated not far from Panama City. The claim is based upon an alleged failure to provide to the claimant adequate police protection, to exercise due diligence in the maintenance of order and to take adequate measures to apprehend and punish the aggressors.

The facts in this claim occurred after the signing of the convention to which this Commission owes its jurisdiction and the only article of the convention referring to such claims is art. VII, which says:

"The High Contracting Parties agree to consider the decision of the Commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every such claim upon either Government, for loss or damage sustained prior to the exchange of the ratifications of the present Convention. And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such Commission, shall from and after the conclusion of the proceedings of the Commission, be considered and treated as fully settled, barred, and thenceforth inadmissible, provided in the case of the claims filed with the Commission that such claims have been heard and decided.

"The provision shall not apply to the so-called Colón Fire Claims, which will be disposed of in the manner provided for in art. I of this Convention."

Counsel for the United States has argued that the Commission has jurisdiction to decide this claim, because, whereas art. I of the convention fixes the date (November 3, 1903) since which claims must have arisen in order to be within the jurisdiction of the Commission, but is silent on the date before which such claims must have arisen, art. VII shows that claims arising before the exchange of ratifications are within the jurisdiction of the Commission.

The Agent for Panama, whilst recognizing that the Panamanian Govern-

ment has also filed claims arising after the signing of the convention, has contended that the Commission has no jurisdiction with regard to such claims. He referred to the claims convention between the United States and Mexico of September 8, 1923, the wording of which has to a certain extent been followed in the convention between Panama and the United States. Art. VII of the convention of September 8, 1923, contains an express provision giving the Commission constituted under that convention jurisdiction to decide claims arising after the signature of the convention. This provision was not inserted in the draft of the present convention and the Agent submitted that the reference to such claims which is found in art. VIII of the claims convention of September 8, 1923, was inadvertently copied in art. VII of that draft. He admitted however that the draft had been presented by the American Government and that, although, as the result of negotiations between the two Governments, the extent of the jurisdiction of the Commission as foreseen in the draft was modified, the question now under examination was not discussed in the course of these negotiations.

Art. VII of the convention between the United States and Mexico provides that claims for loss or damage accruing after the signing of the convention may be filed at any time during the period fixed in art. VI for the duration of the Commission and it also provides that, should at the end of that same period any such claim or claims not be decided as specified in art. VI, the Government will by agreement extend that period for such time as is necessary to hear, examine and decide such claim or claims. Whereas, therefore, that convention provides a complete machinery for the filing and deciding of claims arising after the signing of the convention, the convention between the United States and Panama contains no provisions on the subject. As, moreover, art. I of this convention confers upon the Commission jurisdiction over claims "filed by either Government within the time hereinafter specified" and as art. VI specifies a time with regard only to claims arising before the signing of the convention, the jurisdiction of the Commission over Mr. Noyes' claim would seem to be excluded by the convention but for the provision of art. VII, to which the Commission has to give effect according to its meaning. It may be conceded that, by reason of the absence of any reference in the preceding articles to claims arising between the signing of the convention and the exchange of the acts of ratification, the inclusion of such claims within the jurisdiction of the Commission is somewhat out of place in this article, but nevertheless the article clearly recognizes such jurisdiction and an interpretation to the contrary would be altogether inconsistent with its wording.

Accordingly the Commission decides that it has jurisdiction to entertain the claim.

The village of Juan Díaz has only a small population, but on June 19, 1927, several hundreds of adherents of the party then in control of the Government had gathered there for a meeting. The police on the spot had not been increased for the occasion; it consisted of the usual three policemen stationed there. In the course of the day the authorities in Panama City learned that the crowd in Juan Díaz had become unruly under the influence of liquor. The chief of the police, General Pretelt, thereupon drove thither with reinforcements.

After a careful examination of the evidence produced by both Agencies the Commission feels no doubt as to the facts concerning the incidents in which Mr. Noyes became involved on that day. These facts can be concisely stated as follows:

At about 3:00 p.m. the claimant passed through the village in his automobile, on his return to Panama City from a trip to the Tapia River bridge. In the

center of the village a crowd blocked the road and Mr. Noyes stopped and sounded his horn, whereupon the crowd slowly opened. Whilst he was progressing very slowly through it, he had to stop again, because somebody lurched against the car and fell upon the running-board. Thereupon members of the crowd smashed the windows of the car and attacked Mr. Noyes, who was stabbed in the wrist and hurt by fragments of glass. A police officer who had been giving orders that gangway should be made for the automobile, but who had not before been able to reach the car, then sprang upon the running-board and remained there, protecting the claimant and urging him to get away as quickly as possible. He remained with Mr. Noyes, until the latter had got clear of the crowd. At some distance from Juan Díaz the claimant was further attacked by members of the same crowd, who pursued him in a bus and who forced him to drive his car off the road and into a ditch. He was then rescued by General Pretelt who, having come from the opposite direction, had, after reaching the plaza of the village, returned upon his way in order to protect Mr. Noyes against his pursuers.

The facts related above show that in both instances the police most actively protected the claimant against his assailants and that in the second instance the protection was due to the fact, that the authorities sent reinforcements from Panama City upon learning that the conditions in Juan Díaz rendered assistance necessary. The contention of the American Agent however is, that the Panamanian Government incurred a liability under international law, because its officials had not taken the precaution of increasing for that day the police force at Juan Díaz, although they knew some time in advance that the meeting would assemble there.

The mere fact that an alien has suffered at the hands of private persons an aggression, which could have been averted by the presence of a sufficient police force on the spot, does not make a government liable for damages under international law. There must be shown special circumstances from which the responsibility of the authorities arises: either their behavior in connection with the particular occurrence, or a general failure to comply with their duty to maintain order, to prevent crimes or to prosecute and punish criminals.

There were no such circumstances in the present case. Accordingly a lack of protection has not been established.

The claim is also based upon the failure of the Panamanian authorities to prosecute the perpetrators of the aggressions upon the claimant. It is a fact that no prosecutions were instituted. Taking into account however the conditions under which the events had taken place, the Commission cannot conclude to a liability of the Panamanian Government in this respect.

The claim is disallowed.

Dissenting opinion of Panamanian Commissioner

The undersigned in concurring in the above decision considers it pertinent to state that he is not able to agree on the question of jurisdiction for the following reasons.

It is unquestionable that the convention of July 28, 1926, contains two provisions which have a contradictory text. According to article VI, damages on which claims are based must have accrued prior to the signing of the convention. Article VII refers to claims for loss or damage sustained prior to the exchange of ratifications of the convention. How this contradiction occurs can only be explained by the fact that the Panama-United States General Claims Convention of 1926 was substantially copied from the Mexico-United States General Claims Convention of September 8, 1923; that the latter compact had an

article, the seventh, which permitted the presentation of claims arising out of damages sustained after the signing of the convention; that such article seventh of the Mexican-American Convention was suppressed in the Panama-United States Convention and that article VIII of the convention between Mexico and the United States, was left in the convention with Panama as article VII, without advertency of the fact that it contained a phrase which was incompatible with the suppression agreed upon.

It would seem, therefore, that if in negotiating the Panama convention, the clause was suppressed which allowed claims for loss or damage accruing after the signing of the compact, the intention of the High Contracting Parties was that claims should be restricted to those in which the loss or damage accrued before such signing and not afterwards.

Moreover, the undersigned Commissioner entertains the opinion that apart from the intention of the parties, as gathered from the antecedents of the convention, the nature of the two conflicting texts would also indicate that article VI should prevail over article VII, because the latter deals with the effect of the proceedings and decisions of the Commission while the former deals with the question of terms. Therefore, in determining the term within which a certain claim must have arisen in order to be admissible, it would appear to be more natural to follow the provision dealing with the general subject of terms than following another provision dealing with some other subject. In support of this reasoning, it may be noted that article VII of the Panama convention would have been more in harmony with the other provisions therein if the phrase above referred to had been omitted.

LETTIE CHARLOTTE DENHAM AND FRANK PARLIN DENHAM (UNITED STATES) *v.* PANAMA

(May 22, 1933. Pages 244-246.)

PROTECTION OF ALIENS: MURDER, PROSECUTION, PUNISHMENT OF OFFENDER. Murder in March, 1918, of employer by discharged employee, promptly sentenced to 18 years and 4 months imprisonment. Release after 3 years and 1 month due to reductions under Panamanian Penal Code and general Panamanian law. *Held* that, though original sentence was not inadequate by international standards, reduction by general law enacted on occasion of Armistice following World War resulted in inadequate punishment for which Panama liable. Damages allowed for each of claimants.

Cross-references: Annual Digest, 1933-1934, pp. 248-249; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de los Norteamericanos Lettie Charlotte Denham y Frank Parlin Denham, Registro No. 6. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, p. 246, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 68-69; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), pp. 101, 102; Friede, "*Die Entscheidungen* . . .", Z.a.ö.R.u.V., Band V (1935), pp. 461-462; Annual Digest, 1933-1934, p. 249.

In March 1918, in the Province of Chiriquí, Panama, Segundo González, a discharged employee of James F. Denham, waylaid and murdered his former employer.

González was promptly arrested, tried and convicted. He was sentenced to imprisonment for 18 years and 4 months. After serving three years and a month

he was released on May 14, 1921, by an executive resolution. The brevity of his actual imprisonment was due to a conditional reduction of the term for which he was sentenced by one third on account of good behavior, in conformity with the Penal Code, and to a further reduction of the original term by one-half under the provisions of a general law enacted by the National Assembly, whereby a partial remission of penalties was granted to prisoners of good conduct, on the occasion of the signing of the armistice at the close of the World War.

The United States claims that Panama is liable to Denham's widow and legitimate son, first, on the ground that Denham's murder resulted from a failure to furnish proper protection to aliens in the Province of Chiriquí; and, second, on the ground that Denham's murderer was not adequately punished.

The Commission finds that the evidence is insufficient to prove that the murder of Denham resulted from a failure on the part of the authorities to afford proper protection to aliens in the Province of Chiriquí, and therefore finds no liability on the first ground asserted by the United States.

It is the opinion of the Commission, however, that González was not adequately punished. The original sentence was not in the opinion of the Commission inadequate by international standards. Nor would the conditional reduction of the term of that sentence by one-third under the provisions of the Penal Code of Panama, have given rise to an international liability. The conclusion of the Commission rests solely upon the result brought about by the act of the National Assembly above referred to. The Commission recognizes that the reduction under that act did not arise from any inclination on the part of the Government to favor this particular prisoner or to extenuate offenses against aliens. But, liability for failure to punish adequately crimes against aliens is not based upon discrimination in favor of the individual offender or upon any breach of the local laws. The international obligation is clearly established and each country has the power of so arranging its interior jurisprudence as to give that obligation effect. The failure of an individual criminal to serve an adequate term may give rise to an international liability even where the original sentence is adequate. *Putnam* v. *Mexico*, 1927, *Opinions of Commissioners* under 1923 Convention, p. 222. It has been held also that a nation is not relieved from its obligation by the fact that the failure to punish results from a general amnesty. *West* v. *Mexico*, 1927, *Opinions of Commissioners* under 1923 Convention, p. 404. In the *West* case the amnesty prevented even the beginning of a prosecution. The Commission sees no logical distinction between that case and a case where an act of the legislature interrupts the service of a sentence before adequate punishment has been inflicted.

In arriving at the measure of the liability, the Commission has taken into account the fact that González was actually imprisoned for a period of slightly more than three years. There was not a total failure to punish.

The Commission decides that the Government of Panama is obligated to pay to the Government of the United States $2,500 in behalf of Lettie Charlotte Denham and $2,500 in behalf of Frank Parlin Denham, without interest.

FRANCISCO AND GREGORIO CASTAÑEDA AND JOSÉ DE LEÓN R. (PANAMA) *v.* UNITED STATES

(May 22, 1933. Pages 676-677.)

JURISDICTION: CLAIMS ARISEN AFTER SIGNATURE OF CLAIMS CONVENTION.—INTERPRETATION OF TREATIES. *Held* that Commission has jurisdiction to

entertain claims arisen after signature of Claims Convention, July 28, 1926: reference to Walter A. Noyes award, p. 308 *supra.*

COLLISION OF VESSELS IN GULF OF PANAMA.—APPLICABLE LAW: INTERNATIONAL RULES OF NAVIGATION.—UNLAWFUL CHANGE OF COURSE. Collision on July 10, 1931, in Gulf of Panama, between United States destroyer *Fulton* and sloop *Estrella Marina. Held* that collision due to change of course by *Estrella Marina* unlawful under International Rules of Navigation.

Cross-references: Annual Digest, 1933-1934, pp. 480-481; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la República de Panamá en su propio nombre y en representación de Francisco y Gregorio Castañeda y José de León R., Registro No. 20. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, p. 677, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 71-72; Friede, "*Die Entscheidungen* . . .", Z.a.ö.R.u.V., Band V (1935), pp. 453, 465; Annual Digest, 1933-1934, p. 481.

This is a claim by the owners of the sloop *Estrella Marina* for the damages which they suffered in a collision between that vessel and the U.S. destroyer *Fulton*. The collision occurred in the Gulf of Panama near Pacheca Island before daylight in the early morning of July 10th, 1931. On the grounds stated in the case of Walter E. Noyes (Registry No. 5) the Commission holds that it has jurisdiction to decide upon this claim. The evidence shows that the *Fulton* was keeping an adequate look-out and that 13 minutes before the collision she sighted a yellow light carried by the sloop. This light as seen from the *Fulton* seemed to be passing to starboard. The *Fulton* changed her course somewhat to port to give a wider clearance when the approaching light suddenly changed direction and a collision occurred. Testimony from the crew of the sloop shows that she changed course sharply to starboard just before the collision, that she was keeping no regular watch and that she did not make out the sailing lights of the destroyer. The testimony of the sloop's captain also indicates that the port light of the sloop was not burning. It is the opinion of the Commission that the collision was due not to any negligence on the part of the *Fulton*, but to an *unlawful* change of course by the *Estrella Marina* just before the collision (International Rules of Navigation, arts. 20, 21).

Decision

The Commission decides that the claim must be dismissed.

JUAN MANZO (PANAMA) *v.* UNITED STATES

(May 26, 1933. Pages 693-694.)

LABOUR ACCIDENT, NEGLIGENCE OF EMPLOYER.—APPLICABLE LAW: CLAIMS CONVENTION.—COMPENSATION: FACTORS. Labour accident in 1905 to youthful water carrier allowed by United States agent to oil heavy machinery in motion. *Held* that allowing him to do so was equivalent to employing him therefore, and that employing him to that end was negligence *per se. Held* also that case governed neither by Panamanian, nor by United States law, but by Claims Convention, July 28, 1926, under article I of which United States responsible. Amount of damages: seriousness of injury, delay of compensation taken into account.

Cross-references: Annual Digest, 1933-1934, pp. 481-482; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la Repúblicá de Panamá en su propio nombre y representación de Juan Manzo, Registro No. 21. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, pp. 695-696, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), p. 71; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 101; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), pp. 462-463; Annual Digest, 1933-1934, pp. 482-483.

In 1905 Juan Manzo, then a boy between 10 and 13 years of age, was working as a water carrier for the Municipal Engineering Division of the Isthmian Canal Commission. The testimony for both parties is in agreement that Manzo was regularly allowed by his superiors to oil the sheaves, through which ran a cable used for hoisting material to a reservoir at Ancon, Canal Zone. It is the opinion of the Commission that the practice of allowing Manzo to oil the sheaves was equivalent to directing or employing him to do so, and that it was negligence *per se* to employ so young a child as an oiler of heavy machinery in motion.

On September 4, 1905, Manzo, while oiling, caught his right hand in one of the sheaves and lost his fingers and half of his palm.

The principal point argued by the parties is whether the case is governed by the municipal law of Panama, which gave private persons a right to sue the Government in tort, or by the municipal law of the United States which did not give such a right. It is the opinion of the Commission that the liability in this case does not depend upon the decision of this question. Manzo's injury was brought on by the negligent conduct of an agent of the Government of the United States. The responsibility for such an injury depends not on the right to maintain an action under the municipal law, but directly upon the terms of the treaty which provides *inter alia* for decision by the Commission upon "all claims for losses or damages originating in acts of officials or others acting for either government and resulting in injustice . . .".

The Commission, taking into account the seriousness of the injury and the length of time for which compensation has been delayed, decides that the Government of the United States is obligated to pay to the Government of Panama, on behalf of Juan Manzo, $2,500, without interest.

JAMES PERRY (UNITED STATES) *v.* PANAMA

(May 27, 1933, dissenting opinion of Panamanian Commissioner, undated. Pages 71-77.)

ARREST, IMPRISONMENT, DETENTION OF ALIEN, INTERPRETATION OF MUNICIPAL LAW.—CRIMINAL PROCEEDINGS AGAINST ALIEN.—PRINCIPLES OF INTERNATIONAL LAW, JUSTICE, EQUITY. Arrest and imprisonment of claimant, October 28, 1910, on charge of theft. Proper order for arrest and provisional detention, November 7, 1910, on ground of grave indications against him. Order, February 14, 1911, that accused should answer on charge in Court. Acquittal of claimant, April 21, 1911. *Held* that there were no undue delays in proceedings. *Held* also that Commission, in view of articles I ("equitable settlement") and V ("principles of international law, justice and equity"), Claims Convention, July 28, 1926, shall be guided by broad rather than by narrow conceptions. *Held* further that evidence did not provide grave indications and, there-

fore, that detention and imprisonment were in violation of Panamanian law. Damages allowed.

Cross-references: Annual Digest, 1933-1934, pp. 477-479; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación del Norteamericano James Perry, Registro No. 1. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, pp. 82-84, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), p. 72; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 102; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), pp. 457-458; Annual Digest, 1933-1934, pp. 479-480.

After the completion of the pleadings provided for in the rules of procedure, the Agents, by consent of the Commission, filed memoranda in lieu of oral arguments.

This claim is made by James Perry, whose American citizenship is not contested, against the Republic of Panama and arises out of an alleged unjust imprisonment which the claimant, who at the time of his arrest was living in Colón, suffered on a charge of having taken some jewels and other objects, belonging to his employer Everhart, from a trunk found broken open in Everhart's room. An amount of $26,250, with interest, is claimed as an indemnity for his imprisonment during 175 days.

A copy of the official record of the criminal proceedings against Perry has been produced and has been thoroughly discussed in the pleadings. Hereafter follows a summary of the proceedings, indicating the evidence collected as to Perry's supposed guilt: the record begins with the denunciation made by Everhart on October 29, 1910, which caused the examining magistrate to start his investigation. In it Everhart said that he suspected Perry of being the perpetrator of the theft, alleging different actions of the latter to show his unreliability. On that same day Everhart confirmed the denunciation; also the depositions of E. H. W. Mayers and William Loud were taken. Mayers testified to certain proposals concerning ways of robbing Everhart which he said Perry made to him on October 27 and of which he informed Everhart in the evening of that day. William Loud, an employee of Perry [*Everhart*], said that he suspected Perry, alleging as his reason for this suspicion that the latter had, two weeks before, taken keys from Everhart's pocket. On November 1, Perry's indagatory declaration was taken. Perry denied that he made the proposals which Mayers said he had made; as to the actions alleged against him by Everhart and Loud, he denied them, stating at the same time that Everhart used to trust him with two of his keys. On being asked whether he knew why he was on bad terms with William Loud, he answered that Loud harbored ill-will against him on account of his having reported to Everhart improper things which Loud had done. On November 7, the magistrate ordered Perry's provisional detention on the ground that there were on record grave indications against him. On November 25 he took the deposition of Maria Weston. According to her testimony Perry had on October 27 asked her when and how often Everhart was accustomed to return to the house during the day and if she herself was accustomed to do so after her work was concluded and she answered him that when she had finished her work at 11 a.m. she did not return until the next day at 8 a.m. On the same day Jack Everhart appeared before the magistrate and stated that his wife had found on November 18 in a clothes closet in the room, where the alleged theft was committed, a twisted screwdriver, which in his opinion had served to break open the trunk wherefrom the valuables were taken. He said that five days before the theft was

committed he had bought from a person whom he did not know, but whom he could identify, three screwdrivers; that he gave one of these to William Loud to do some work and he still had the other two in his desk; that the one he gave to Loud was lost or taken from the latter, from a handbag in which he kept it; and that the screwdriver was in good condition when he bought it and when it was used by Loud. On December 12 the magistrate forwarded the record of these preliminary proceedings to the Second Judge of the Circuit, who on December 18 stated that the case was within the jurisdiction of the Superior Judge, as the value of the stolen goods exceeded 250 balboas. On December 20 the record was transmitted to the Superior Judge, who, on January 12, 1911, ordered that the preliminary proceedings should be completed, *inter alia* by a confrontation between the accused and the witness Mayers and between the accused and the witness Maria Weston, and by a deposition of William Loud stating: the date he received the screwdriver; the day and hour he found he had lost it; whether he was accustomed to lock the handbag in which he kept it; the place where the handbag was, when the screwdriver was taken from it; whether it was true or not that enmity existed between him and Perry. The confrontation with Mayers did not take place, as he was at Gorgona in the Canal Zone; being confronted with Maria Weston on January 25, Perry denied that he asked her the questions which she alleged he had asked; he maintained that denial throughout the confrontation. Loud was interrogated on January 26. He did not remember the date when he received the screwdriver and could not say when he found that he had lost it; the handbag was not locked and was in a cupboard under the bar in Everhart's saloon when the screwdriver was taken from it; there was no enmity between him and Perry to the point that he wished to harm the latter, but he did consider Perry a treacherous and dangerous man. On February 14 the Superior Judge decided that the testimony of Mayers and Maria Weston furnished grave indications that the accused had committed the theft and ordered that Perry should answer in court on that charge; he also gave order for his imprisonment. The proceedings thereupon followed their course, the jury was formed on March 14, and the trial, which resulted in an acquittal, took place on April 21.

The Commission finds that at the outset two irregularities were committed; Perry was arrested and imprisoned in the morning of October 28, 1910, but his indagatory declaration, which should have been taken within 24 hours, was only taken on November 1, and a proper order for his arrest and provisional detention was not issued before November 7. The Commission does not sustain the contention of the American Agency, that there were undue delays in the proceedings.

In order to establish that the Republic of Panama has incurred a liability under international law by the action of her judicial authorities, the American Agency has asserted that upon the evidence of the witnesses Perry's detention and imprisonment were not justified under Panaman law. The Panaman Agency on the other hand has contended that there was just cause for these measures.

Before dealing with these allegations, the Commission thinks it necessary to examine the scope of the provisions of the convention of July 28, 1926, which lay down the law which the Commission shall apply. These provisions are found in arts. I and V. The latter article provides: "The High Contracting Parties being desirous of effecting an equitable settlement of the claims of their respective citizens, thereby affording them just and adequate compensation for their losses or damages, agree that no claim shall be disallowed or rejected by the Commission through the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim." This article is clear, it calls for no

comment, but it may be noted that the High Contracting Parties express as the reason for this provision their desire of effecting an equitable settlement of the claims of their respective citizens, a desire which may be considered significant as to the general trend of the intention of the Parties. However, the article contains a special provision. The general rule is found in art. I, which lays down that the Commission shall decide "in accordance with the principles of international law, justice and equity". There is no reason to scrutinize whether these terms embody an indivisible rule or mean that international law, justice, and equity have to be considered in the order in which they are mentioned, because either of these constructions leads to the conclusion that the Commission shall be guided rather by broad conceptions than by narrow interpretations.

The Commission now comes to the allegations of the Agents with regard to the evidence recorded in the criminal proceedings against the claimant.

Upon examining that evidence, the Commission finds that the testimony of Everhart and Loud did not furnish any indication that Perry had committed the alleged theft. Nor did the finding of the screwdriver in any way connect Perry with the crime, as the object neither belonged to him nor had been seen in his possession. There remains the evidence of Mayers and Maria Weston, on which the judge in his order of February 14, 1911, based his finding that the grave indications, required by the law, did exist. Maria Weston's statements and the negative result of her confrontation with Perry have been related above. Mayer's evidence was taken on October 29. It follows from Perry's indagatory declaration (November 1), that the latter denied that in his conversation with the witness on October 27 he had made the proposals, attributed to him by the witness; the position did not change after that date; the confrontation ordered by the judge on January 12, 1911, did not take place, because Mayers was not in Colón.

The statements of Mayers and Maria Weston, alleging wholly different facts, in no way support each other; they have both been contradicted by the accused and they have no bearing upon the criminal act of which Everhart complained.

The Commission believes that the detention of Perry was a violation of the municipal law of Panama. Under art. 340 of law 105 of 1890, since Perry was not caught in the act, he could only be detained "if there should be against him, at least, the declaration of one competent witness, even though such declaration may not yet have been reduced to writing, or a strong indication *(indicio grave)* that he is the perpetrator, accomplice, abettor or concealer of the criminal act under investigation". (And see Judicial Code, art. 1627, for the same requirements for the order for *plenario* proceedings.) The requirement of the declaration of one competent witness obviously means that of an eyewitness. There was none here, and Perry's detention was expressly put on the ground that there were *indicios graves* against him. But, as has been pointed out above, the testimony upon which the detention was based did not justify the inference that Perry had anything to do with "the criminal act under investigation", which was breaking into Everhart's trunk on the night of October 27 and stealing jewels and other objects therefrom. There was therefore no *indicio grave*, and no right to detain Perry under Panaman law. It may also be noted that even had there been *indicios*, they would have to be *plenamente probados* under art. 1709 of the Judicial Code, and that *plena prueba* can, by art. 1675, be furnished only by the testimony of at least two witnesses who agree as to the act and do not differ notably as to the manner, time, and other circumstances. No two witnesses at any time testified to any act which could be considered an *indicio* of Perry's guilt, and the Panaman authorities concerned in the case should have realized that upon the evidence before them a conviction could not be procured.

The Commission finds that the claimant, after having been arrested and imprisoned without a proper order, remained imprisoned through the failure of the authorities to give to his case proper attention, which failure resulted in a violation of the principle of respect for the personal liberty of the individual recognized by the Panaman law.

The Commission decides that the Republic of Panama is obligated to pay to the United States of America, on behalf of James Perry, the sum of $10,000, without interest, on account of his imprisonment during the period comprised between October 28, 1910, and April 21, 1911.

Dissenting opinion of Panamanian Commissioner

I do not concur in the foregoing decision.

The claimant, James Perry, was arrested for the purpose of being tried, he was tried, and acquitted. He could not be released on bail because the crime for which he was placed on trial did not admit of bail under the law.

The damage is considered to consist in the confinement to which the claimant was necessarily subjected while held for trial.

Responsibility is considered to consist in that the holding of the claimant in confinement was improper in view of the absence of the element of evidence required under article 340 of law 105 of 1890 for decreeing detention, to wit, a declaration of a qualified witness or an *indicio* of being the perpetrator of the criminal act imputed to him.

The law applicable to the claimant (art. 340 above cited) required for the purpose mentioned one of two things:

Either that he be charged with a criminal act in the testimony of a qualified witness, even though the testimony might not have been in writing;

Or that there exist an *indicio grave* against him, sufficient to raise a reasonable suspicion that his guilt or his innocence should be investigated by trial.

When Perry was placed under detention there existed against him the following aggregate of *indicios:*

1st. Everhart's testimony which pointed to Perry as the perpetrator of the robbery and his testimony as to different actions of Perry which brought him under suspicion;

2nd. Mayers' testimony that Perry approached him with proposals to rob Everhart the same day of the robbery, namely, on the 27th day of October, a fact which Mayers communicated to Everhart on the same day;

3rd. Loud's testimony that Perry had taken some keys from Everhart's pocket;

4th. Maria Weston's testimony that Perry had asked her when and how often during the course of the day Everhart was in the habit of going to the house;

5th. The fact that Perry was an employee in Everhart's saloon.

With this aggregate of *indicios*, it was impossible for the judge not to have a reasonable suspicion that Perry might possible have committed the crime and hence that he should be tried.

Against these *indicios* there was only one thing: Perry's denials.

It has been maintained that the *indicios* should be fully proved, that is to say, that regarding each *indicio* there should be two witnesses agreeing as to the manner, the place, and the time.

In the first place, this reasoning is contrary to the nature of this kind of evidence *(indicios)*, which consists essentially of the *aggregate of circumstances*

which they establish. For that reason evidence founded upon *indicios* is very accurately designated in English "circumstantial evidence".

In the second place the *indicios* consist at times of a physical fact or circumstance within the range of the judge's observation or knowledge, and at other times of the testimony of witnesses. In the latter case the *indicio* consists in the *fact* of the testimony of the witness, in which case the testimony is a fact fully proved in itself. As I have stated, the evidence of *indicios* is essentially evidence in the aggregate, that is to say, based upon the concurrence of a number of distinct facts or circumstances which allow only one conclusion; that the individual *is guilty*, when it is the case of a *conviction*, that is, after a full trial; or that an individual *may be guilty* when it is the case of holding him for *trial*.

Let it be observed that a person may be held under confinement (art. 340 of the law cited) when there exists against him *just one declaration* of a qualified witness.

If one declaration is sufficient upon which to base detention for trial, and if moreover one declaration by itself establishes an *indicio*, how can it be maintained that a judge cannot hold an accused person when there exist against him *four declarations of qualfied witnesses* who relate concordant facts pointing to an individual as the probable perpetrator of a crime?

The majority of the Commission considers that a Panaman judge violated the law because, relying upon an aggregate of concordant *indicios* he brought Perry up for criminal trial.

It is an accepted principle of modern penal law that the weighing of evidence is a matter left to the free conscience of the judge. If this principle obtains in pronouncing final sentences, it should be all the more applicable to the mere temporary holding for, and bringing to, trial. International responsibility can be held to exist only when there is a clear and flagrant violation of the law, deliberately committed and in bad faith, as a result of which a person suffers damage. Even assuming that the Panaman judge committed an error in bringing Perry to trial, it is not possible to establish a violation of international law, based only on the value which the judge, in accordance with his conscience, assigned to the circumstantial evidence before him for the sole purpose of bringing the accused to trial.

In this connection it seems pertinent to quote the following passage from the opinion of the eminent Dr. van Vollenhoven in the Chattin case (General Claims Commission between Mexico and the United States, *Decisions of 1927*):

"In Mexican law, as in that of other countries, an accused cannot be convicted unless the judge is convinced of his guilt and has acquired this view from legal evidence. An international tribunal never can replace the important first element, that of the judge's being convinced of the accused's guilt; it can only in extreme cases, and then with great reserve, look into the second element, the legality and sufficiency of the evidence".

I likewise consider pertinent to the Perry case the following conclusions taken from the Dissenting Opinion of the Mexican Commissioner, Licenciate Genaro Fernández MacGregor, also in the Chattin case:

"I consider that this is one of the most delicate cases that has come before the Commission and that its nature is such that it puts to a test the application of principles of international law. It is hardly of any use to proclaim in theory respect for the judiciary of a nation, if, in practice, it is attempted to call the judiciary to account for its minor acts. It is true that sometimes it is difficult to determine when a judicial act is internationally improper and when it is so from a domestic standpoint only. In my opinion the test which consists in ascertaining if the act implies damage, wilful neglect, or palpable deviation from the established customs becomes clearer by having in mind the damage

which the claimant could have suffered. There are certain defects in procedure that can never cause damage which may be estimated separately, and that are blotted out or disappear, to put it thus, if the final decision is just. There are other defects which make it impossible for such decision to be just. The former, as a rule, do not engender international liability; the latter do so, since such liability arises from the decision which is iniquitous because of such defects. To prevent an accused from defending himself, either by refusing to inform him as to the facts imputed to him or by denying him a hearing and the use of remedies; to sentence him without evidence, or to impose upon him disproportionate or unusual penalties, to treat him with cruelty and discrimination; are all acts which *per se* cause damage due to their rendering a just decision impossible. But to delay the proceedings somewhat, to lay aside some evidence, there existing other clear proofs, to fail to comply with the adjective law in its secondary provisions and other deficiencies of this kind, do not cause damage nor violate international law. Counsel for Mexico justly stated that to submit the decisions of a nation to revision in this respect was tantamount to submitting her to a régime of capitulations. All the criticism which has been made of these proceedings, I regret to say, appears to arise from lack of knowledge of the judicial system and practice in Mexico, and, what is more dangerous, from the application thereto of tests belonging to foreign systems of law . . .".

In the case under consideration there was no positive acquittal. Perry's innocence was not demonstrated by establishing an alibi, or by showing that it was another who committed the crime, the existence of which was conclusively proved. Perry was acquitted for the negative reason of there not being sufficient evidence against him. The possibility that he was the culprit subsisted, notwithstanding his being definitely freed from any subsequent penal action for the same crime.

Under the circumstances of this case, the Republic of Panama should have been exonerated. If the Tribunal believes it proper to award Perry damages for simple reasons of equity, as the finding of the majority suggests, and taking into account the fact that he was subjected to confinement without being declared guilty, the award should be moderate and proportional to the damage actually suffered.

The record shows that Perry at the time the facts took place was an employee of a saloon and in charge of certain gambling slot machines which the proprietor was exploiting at different locations in the city of Colón. He had previously been a soldier in the army. From his enlistment papers it is shown that when he enlisted he gave his profession or trade as waiter. The claimant has not tried to establish, as is usual in such cases, the amount of Perry's income at that time.

The amount of the damage resulting from confinement must be determined taking into consideration the position and the earning capacity of the person confined.

For the reasons set forth, I am of the opinion that under law this claim should be disallowed, and that if for reasons of equity alone an award should be allowed, it should be for a considerably smaller amount.

GUST ADAMS (UNITED STATES) *v.* PANAMA

(June 21, 1933. Pages 304-306.)

PROTECTION OF ALIENS: ILL TREATMENT BY POLICE, PROSECUTION, PUNISHMENT OF OFFENDER.—EVIDENCE: CLAIMANT'S AFFIDAVIT, PREVIOUS STATE-

MENTS, INHERENT PROBABILITIES. Ill treatment and alleged robbery of alien on or before May 1, 1921, by policeman whose request for money was refused. Sentence to dismissal of policeman and 30 days' imprisonment by disciplinary Court for breach of police discipline and regulations. Order of June 10, 1921, to enforce sentence. Sending of policeman to criminal Court on June 23, 1921, "detention" in and about police station, institution of criminal proceedings, discontinued on September 27, 1921. *Held* that claim for robbery should be dismissed as unproven: conflicting statements made by claimant shortly after occurrence and in affidavit of October 27, 1931, concerning money he had when attacked, inherent probabilities. *Held* also that policeman not adequately punished and Panama liable. Damages allowed.

Cross-references: Annual Digest, 1933-1934, pp. 246-247; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación del Norteamericano Gust Adams, Registro No. 8. (Publicación Oficial, Panamá 1934.)

Bibliography: Hunt, Report, p. 309, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 67-68; Borchard, "The United States-Panama Claims Arbitration", Am J. Int. Law, vol. 29 (1935), pp. 101, 102; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), p. 462; Annual Digest, 1933-1934, p. 247.

The amount of $7,500, with interest, is claimed by Gust Adams, a citizen of the United States, as compensation for injuries inflicted upon him, and money taken from him, by a Panaman policeman. There is a substantial agreement on the following facts: on or before May 1, 1921, in the course of a journey from Panama City to Boquete, Adams stopped at a bar in the town of David. He found two policemen there and asked them where he could get a horse to continue his journey. They promised to help him, he bought them drinks, and they departed. While he was looking over his money for a small bill to make payment, a third policeman, Manuel Iriarte, asked him for a few pesos. Adams refused, and Iriarte struck him on the forehead with a police club, inflicting an ugly wound and making him unconscious.

As to the request for money, the refusal and the delivery of the blow, Adams and Iriarte are in substantial agreement. As to the other details of the episode they differ, Adams in his affidavit of October 27, 1931, says:

". . . another policeman approached me, grabbed my arm and demanded that I give him five dollars. I started to jerk my arm away and remonstrate with him when he dealt me a severe blow on the head with his club and I fell back in my chair unconscious".

Adams' affidavit also says, "When I was able to check up my money I found that the policeman had robbed me of $12". The statement which the claimant made shortly after the occurrence, and which was on June 1, 1921, forwarded by the American Minister at Panama City to the Panaman Minister of Foreign Affairs *ad interim*, is not before the Commission, nor has the evidence rendered by Adams in the Panaman investigation been produced, but there is an indication in the record that Adams at the time varied in his statements as to the amount of which he was robbed. This evidence of robbery is worthless unless Adams knew with certainty how much money he had when he was attacked. The variation of his own estimates as well as the inherent probabilities cast doubt on this. The Commission dismisses the claim of robbery as unproven.

Iriarte, in a statement made to the police authorities, claims that he had been drinking with Adams before the request for money, that he asked for a loan only, that his request was repulsed with insults and an attack by butting, and

that his own blow was intended to land on Adams' shoulder but hit his head by accident. The Commission disbelieves the story of butting and the accidental nature of the blow, and finds that there was a request for money, that it was refused, perhaps in offensive terms, and that following the refusal, and perhaps in anger at the words used, Iriarte intentionally struck Adams on the head with his club, wounding him and rendering him unconscious.

Iriarte was tried by a police disciplinary court in Panama City on the charge of wounding Adams with his stick because of Adams' refusal to lend him money. He was found guilty and was sentenced to dismissal from the police force and 30 days' imprisonment, not for the crime committed, but for the breach of police discipline and regulations. On June 10, 1921, this sentence was ordered to be enforced. On June 23, 1921, Iriarte was sent to David by the police chief, to be held at the disposal of the municipal judge of that district, for criminal proceedings. After some investigations, the exact facts regarding which are in dispute, the criminal proceedings were, on September 27, 1921, discontinued provisionally. They have never been reopened. After being sent to David and during the investigations there, Iriarte was "detained" in and about the police station at the disposal of the judge for a maximum of 10 weeks.

The Commission has taken into account the fact that Iriarte was dismissed from the force, imprisoned in Panama City for at least 13 days, and detained in David for 10 weeks, and that he may have acted in anger provoked by offensive words. But for a uniformed and armed police officer to demand money of a traveler and fell him with a club when he refuses the demand is a serious matter. The Commission feels that the offender was not adequately punished and that from this arises international liability.

The Commission is not concerned with the formal correctness or incorrectness of the criminal proceedings. As this Commission has said in the case of Denham (Registry No. 6):

". . . liability for failure to punish adequately crimes against aliens is not based upon discrimination in favor of the individual offender or upon any breach of the local laws. The international obligation is clearly established and each country has the power of so arranging its interior jurisprudence as to give that obligation effect".

The Commission finds it unnecessary here to pass upon the question of whether a state is liable for the wrongful act of a police officer irrespective of failure to punish, or of whether the rule regarding liability for the acts of police applies in a case like this where the officer being on duty and in uniform does an act clearly outside of his duty and inconsistent with his duty to protect.

The Commission finds that the Government of Panama is obligated to pay to the Government of the United States, on behalf of Gust Adams, $500, without interest.

Dissenting Opinion of Panamanian Commissioner

It is a proven fact that between the claimant, Gust Adams, an American citizen, and Manuel Iriarte, a former member of the national police, an incident occurred in a saloon in the city of David, Province of Chiriqui, Republic of Panama. As a result of that incident Adams received a wound on the forehead which it has been shown was inflicted by Iriarte. Adams charged that Iriarte had robbed him of a certain amount of money, availing himself of a moment during which he was unconscious as a result of the blow which the latter dealt him with his club and which caused the wound referred to. It has not been possible to clarify the circumstances surrounding the dispute, as it appears

that the participants were completely alone when it occurred. The charge of robbery has been excluded as unfounded by the majority of the Commission, who holds it has been discredited by contradictions in the testimony of the claimant himself.

Regarding the wound which the latter sustained, the majority considers that Iriarte was not properly punished and that for this reason the Republic of Panama has incurred international liability.

The undersigned regrets that he cannot share this opinion because, pursuant to the evidence in this claim, Iriarte was severely punished for the offense he committed, which was a matter of exclusively police character. According to the communication addressed to Iriarte by the captain of the police section of David under date of May 4, 1921, there were drawn against the former charges of violation of the rules and orders of the corps and of having used his club to inflict a wound on the head of the American, Gust Adams. The *Consejo de Calificación y Disciplina* of the National Police Corps held the charges to be fully substantiated and recommended that Iriarte be dismissed from the corps as being unworthy of belonging thereto and he was sentenced to 30 days of incarceration. The sentence was confirmed by the inspector general on June 10.

It is evident that the officials of the police corps who handled this matter considered that the penalties to which Iriarte was subjected constituted adequate punishment for the offense committed.

Nethertheless, in view of Adams' overtures before the police authorities and through the American Legation in Panama, Iriarte was sent to the city of David under arrest and placed at the disposal of the judge of that district on June 23, with the object that the said functionary should initiate the corresponding *sumario* for ascertaining whether, in addition to the violations of an exclusively police character for which he had already been tried and punished with all severity, the former was criminally liable, in view of the possibility that the wound sustained by Adams might have been more serious or that the charge of robbery of some amount of money might be proved.

The proceedings carried out by the judge at David were fruitless and, under the laws of criminal procedure, on September 29 he decreed the provisional discontinuance *(sobreseimiento)* of the case because of lack of evidence for bringing the accused to trial. The corresponding court order sets forth the steps taken and the legal bases for the order. This decision of the judge left open the door to any subsequent investigation under the second section of article 2138 of the Judicial Code which reads:

"Provisional discontinuance *(sobreseimiento)* does not close the process. At any time that new evidence is filed the investigation can be continued against the beneficiaries of such discontinuance *(sobreseimiento)*."

From the evidence which the Commission has before it, it is not proved that through negligence on the part of the judge at David or of any other authority a greater penalty was not assessed against Iriarte and therefore it is not possible to impute international liability to Panama as a result.

The claim of the United States of America on behalf of Gust Adams should be disallowed.

CHARLIE R. RICHESON, GEORGE KLIMP, JAMES LANGDON, *ET AL.*, AND W. A. DAY (UNITED STATES) *v.* PANAMA

(June 26, 1933. Pages 268-273.)

PROTECTION OF ALIENS: FOREIGN TROOPS, MOB VIOLENCE, INADEQUATE POLICE PROTECTION.—DAMAGES: SUPPORT OF DEPENDANTS, PUNITIVE DAMAGES. Disturbances between United States soldiers and Panamanian police and civilians on April 2, 1915, at Colón, resulting in death and wounding of United States military personnel. Assistance of insufficient local police force by *ad hoc* United States provost guard. *Held* that no claim lies against Panama for incidental wounding of Richeson when as an onlooker he came close to group of United States soldiers interfering with action of police: no evidence that the latter overstepped limit of permissible measures for asserting authority. *Held* also that Langdon's death due to inadequate police protection and improper police action: police failed to maintain order notwithstanding United States assistance, and instead of dispersing civilians fired on soldiers; and that, there being no evidence that any of his heirs depended upon deceased for support, no larger amount should be allowed than very minimum of reparation due by one State to another on account of responsibility for death of the latter's citizen. *Held* further that Panama not responsible for wounding of Day by missile just after outbreak of disturbance near military train to which he returned. Claim on behalf of Klimp withdrawn; claims on behalf of Richeson and Day disallowed; damages allowed on behalf of heirs of Langdon.

Cross-references: Annual Digest, 1933-1934, pp. 264-265; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de los Norteamericanos Charlie R. Richeson . . . etc., Registro No. 7. (Publicación Oficial, Panamá. 1934.)

Bibliography: Hunt, Report, pp. 273-274, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 67, 69-70, 73; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 101; Friede, "*Die Entscheidungen* . . .", Z.a.o.R.u.V. Band V (1935), p. 460; Annual Digest, 1933-1934, p. 265.

In this case the United States of America have presented claims of, respectively, $12,500 on behalf of the heirs of Maurice Langdon; $6,000 on behalf of Charlie R. Richeson; $500 on behalf of W. A. Day; $1,000 on behalf of George Klimp. Interest on these amounts is also claimed. In the course of the proceedings the claim on behalf of George Klimp has been withdrawn because the claimant was not an American citizen at the material time. The claims arise out of the events which happened at Colón on April 2, 1915, and are based on an alleged failure to afford police protection, improper conduct of the police and failure to prosecute the offenders.

On the afternoon of April 2, 1915, a game of baseball was played at Colón between the team of the Fifth United States Infantry and the Cristóbal team. The latter was composed of enlisted men of the Coast Artillery Corps stationed at Cristóbal and of civilians, most of whom were employees of the Panama Canal or the Panama Railroad. The game was largely attended by local inhabitants and a special train had brought to Colón between 1,200 and 1,500 soldiers from Camp Otis and the Camp of Empire, both in the Canal Zone. The train was left standing opposite the baseball field. There were also at the game

and in town men from the Coast Artillery Corps at Cristóbal. During the game soldiers left the field and went into town.

The military authorities do not seem to have thought of the possibility of any disturbance occurring during the return of the soldiers to the train after the game or of trouble being caused by soldiers in town. A patrol (see for the status of these patrols the Commission's Opinion in the Baldwin case, Registry No. 9) was only ordered for the night. The authorities of Colón had been equally improvident: the police force on the baseball field consisted of four men under a sublieutenant; the number of spectators, including the soldiers, was about 3,000. The Governor of Colón had noticed, while going to attend the game, that soldiers in the town were drinking and that there was no patrol present. On the field he approached a captain of the Fifth Infantry informing him that he foresaw trouble and requesting that a patrol be provided. The captain thereupon arranged for a patrol of 12 men to be assembled on the field at the end of the game.

While the game was still going on, news reached the field that a soldier had been wounded by the police. This probably referred to the wounding of Richeson and Klimp. The general in command of the Canal Zone forces, who was a spectator at the game, thereupon gave orders that the infantrymen from Camp Otis and from the Camp of Empire should be made to go to the awaiting train. He also ordered the turning out of a provost guard from the Coast Artillery Corps. The provost guard was armed with rifles. There reigned great excitement amongst the soldiers, who nevertheless, although not all of them very willingly, were moving towards the train in obedience to the orders of officers and non-commissioned officers.

Meanwhile, further trouble had arisen when the spectators left the baseball field after the end of the game. It was caused by civilians who interfered with the soldiers. Both sides threw stones and other missiles. The police that came from the field became involved in this fight on the side of the civilians. The sublieutenant of police and one or two of his squad fired their revolvers at the soldiers. The sublieutenant wounded a soldier, who is not a claimant because he lacked American citizenship at the time he received his injury.

The captain in charge of the provost guard had met in the town the Governor, accompanied by the captain of police and a group of policemen. After some explanations had been given it was agreed that the guard should keep the soldiers moving towards the train, and that the police should deal with the civilians. Both the soldiers and the police then approached the place where stones were being showered. The movements of the police thereafter and until the end of the fighting are unknown. A squad of the provost guard, under Corporal Langdon, had advanced close to the street where the train was, when they were fired at from right and left by policemen from street corners. There is also a statement that shots were fired by a civilian in the same way. Corporal Langdon was killed by one of these shots. His own rifle had not been discharged. Men of his patrol had answered the shots of the police, but missed. Shortly afterwards an American lieutenant, accompanied by a soldier who, it was then thought, could identify the policeman who had killed Corporal Langdon, came upon the sublieutenant of police who had been firing at the train. The soldier identified him and the lieutenant requested the captain of the police to arrest him, which he did.

The investigations started after the events were similar in character to those conducted after the disturbances which took place in Panama City on February 14 of the same year (see the Opinion of this Commission in the Baldwin case, Registry No. 9) and the Panaman investigation was similarlyun satisfactory. Different soldiers had stated that they could identify policemen who had fired,

if confronted with them at an early date. The confrontation, when it finally took place, because insisted upon by the American Legation, was doomed to be futile, owing to the lapse of time. The sublieutenant of police was tried for the killing of Corporal Langdon, but his acquittal was a foregone conclusion, as it had long been discovered that the soldier, who identified him on the day of the events, did not identify him as the man who fired the shot that killed Langdon, but as the man who wounded the soldier on the train. Moreover it had also been discovered that Langdon could not have been killed by a shot coming from the direction where the sublieutenant was located. The sublieutenant was not, however, prosecuted for the wounding of the soldier on the train.

In the opinion of the Commission no claim lies against the Republic of Panama for the wounding of Richeson. The policemen were having difficulties with a group of soldiers. The Commission disbelieves the various versions of the soldiers putting the blame on the police. On the other hand the evidence of the soldiers themselves shows that they interfered with the action of the policemen and put the latter in the position of having to defend themselves. Richeson came up very close to the group, but turned and ran when he saw the police draw their revolvers. In the absence of convincing evidence, that the police at that moment overstepped the limit of permissible measures for asserting their authority, the Commission must consider Richeson's case as that of an onlooker, incidentally wounded in the course of the efforts of the police to restore order.

The Commission finds that the death of Corporal Langdon must be attributed to inadequate police protection and improper police action. Whether Langdon was killed by one of the policemen who had been on the baseball field or by some other policeman or by a civilian, the responsibility rests on the Government of Panama whose police failed to maintain order at the scene of the disturbance, although their task was alleviated by the measures taken by the American military authorities, and whose police aggravated the situation by firing on the soldiers instead of dispersing the civilians against whom they could no doubt have asserted their authority of they had used, or even threatened to use, their arms against them.

Claim has been made on behalf of the heirs of Maurice Langdon, being a brother, a half-brother and the descendants of three deceased sisters. There is no evidence that any of them depended upon the deceased for their support. The measure usually adopted in fixing the amount of an award in favor of relations not being the parents of children of the deceased is therefore lacking in this case. The Commission feels that under the circumstances its award should not be for a larger amount than what it considers to express the very minimum of the reparation due by one State to another on account of its responsibility for the death of the latter's citizen.

The claimant William A. Day, together with other non-commissioned officers, had left the baseball field before the end of the game, to carry out the order that all infantrymen in town should be instructed to return to the train. After having discharged this duty, he was himself going to the train when he was struck down by a missile. Some soldiers helped him to the train. His evidence states that the police began to fire at the train shortly after he had gained it; that there was no firing when he saw the police before he was wounded. It is clear from his testimony that he was wounded when the disturbance near the train had just broken out.

Even assuming that the missile that wounded him was thrown by a civilian, of which there is no evidence, the Commission does not find that there is a responsibility upon the Government of Panama for the wounding of the claimant.

Decision

The claims presented on behalf of Charlie R. Richeson and W. A. Day are disallowed.

The Republic of Panama is obligated to pay to the United States of America, on behalf of the heirs of Maurice Langdon, the sum of $2,000, without interest.

CECELIA DEXTER BALDWIN, ADMINISTRATRIX OF THE ESTATE OF HARRY D. BALDWIN, AND OTHERS (UNITED STATES) *v.* PANAMA

(June 26, 1933. Pages 330-339.)

PROTECTION OF ALIENS: FOREIGN TROOPS, MOB VIOLENCE, ILL TREATMENT BY POLICE, INADEQUATE POLICE PROTECTION, MILITARY PATROLS.—TERRITORIAL SOVEREIGN: RESPONSIBILITY FOR MAINTENANCE OF ORDER. Disturbances between United States soldiers and Panamanian police and civilians on February 14, 1915, at Colón, resulting in wounding of United States military personnel. Disarming of soldiers by customary patrol, requested by Panama and provided by United States military authorities, and efforts to separate them from police and civilians. Failure of police to disarm civilians and to contain them likewise. Retreat of most of soldiers to Canal Zone. Illtreatment of soldiers left behind by police and civilians. *Held* that insufficient police protection and improper police action proved: improper conduct of some soldiers can not justify police, sufficient in numbers to master situation quickly, in attacking, or allowing others to attack, soldiers generally. *Held* also that patrol performed task efficiently and that, therefore, Commission has not to consider whether rights of claimants would have been impaired if patrol had been insufficient; moreover, responsibility for maintenance of order rests upon territorial sovereign. Damages allowed.

Cross-reference: Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de los Norteamericanos Cecilia Dexter Baldwin . . ., etc., Registro No. 9. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, pp. 339-340, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 67, 73; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 101; Friede, "*Die Entscheidungen* . . .", Z.a.o.R.u.V., Band V (1935), p. 460.

In this case the United States of America have presented claims of, respectively, $1,250, on behalf of Cecelia Dexter Baldwin, administratrix of the estate of Harry D. Baldwin, also known as Henry G. Baldwin, deceased; $2,500, on behalf of Joseph Balun $700, on behalf of Morris I. Berkowitz; $2,500, on behalf of Everett E. Bowden; $1,250, on behalf of Webster T. Brandon; $4,500, on behalf of Joseph A. Donnelly; $3,750, on behalf of Henry C. Foster; $1,250, on behalf of Charles Jagatich; $700, on behalf of Erich Jeschke; $10,000, on behalf of Augustine A. Kane; $1,250, on behalf of Nathan H. Kelly; $1,000, on behalf of Frank Mosouskie; $2,000, on behalf of Walter Organ; $2,000, on behalf of Oliver G. Reber; $1,350, on behalf of Charles B. Reppert, administrator of the estate of Morris C. Stettler, deceased;

$2,000, on behalf of George Simon; $1,000, on behalf of Joseph Steinbrenner; $1,000, on behalf of Lowndes O. Webb. Interest on these amounts is also claimed.

The claims arise out of events which took place during the carnival in the city of Panama in February 1915. In the course of February 13 a number of soldiers from the American forces in the Canal Zone had come on leave to Panama to witness the celebrations. The American military authorities had provided the customary patrol. Such patrols were not only allowed but welcomed by the Panaman Government, as being effective to prevent disturbances arising out of conflicts between soldiers and civilians or between soldiers and the police. The Government of Panama had insisted on having these patrols, asserting that it disclaimed responsibility for such conflicts if patrols were not provided. The American Government, on the other hand, while desirous to cooperate with the Panaman Government, had maintained that whether such patrols were provided or not, the Panaman Government would be responsible for the maintenance of order and for adequate police protection. It appears from the Banks case (Registry Nr. 4) that as late as 1921 the Panaman and the American authorities had somewhat different conceptions of the exact scope of the duties of the patrols; this might become a source of difficulties in the carrying out of the arrangement, but did not affect the situation in the present case. It is however clear that the most perfect delimitation of the task of the patrols must fail to remove the difficulties inherent in the separate exercise of authority by the police over the civilians and by the patrols over the soldiers, when conflicts arise in an intermingled crowd of civilians and soldiers, unless both the police force and the patrols be adequate and unless each of them, under all circumstances, show by their action that they are determined to have not only their own authority but also that of the other respected. It has to be noted that, whether it was customary for the members of the patrol to carry firearms or not, the allegation that they did so on this occasion is unfounded.

The events happened in the early morning of February 14, 1915, in the so-called Cocoa Grove district of the city. Before midnight there had been the excitement of the celebration, but no unusual incidents. Shortly after midnight some minor disturbance occurred, which rapidly spread and developed into a general fight. The main body of the fighting crowd divided into two groups facing each other, the one consisting almost entirely of American soldiers, the other composed of local civilians and the Panaman police. The lieutenant in command of the patrol dealt with the situation by directing his efforts towards separating the soldiers from their opponents and preventing them from attacking the latter. The police should have seconded his efforts by restraining the civilians; they did not do so but continued to consider these as their allies against the soldiers. Both sides threw stones and other missiles and used firearms. From the side where the police were revolver shots were fired, the arms used by the soldiers were three rifles taken from a shooting gallery which they had broken into for the purpose of arming themselves against the revolver fire from the other side. The lieutenant disarmed the soldiers after they had fired a few shots. He had some contact with the police and made them see that the obvious course of action under the circumstances was for them to keep the civilians under control and for him to contain the soldiers. He also left the rifles in the care of a policeman. The police actually contained the civilians for some time, while the lieutenant forced back the soldiers by means of a cordon formed by those of his patrol who were there and by non-commissioned officers present on the spot whom he ordered to assist him. Those forming the cordon had linked hands and were facing the soldiers; they had their backs turned to the side where the civilians and the police were.

While they were thus placed the throwing of stones and other missiles and the shooting from that side continued. After a while the police no longer kept back the civilians, the mob advanced and the revolver fire increased; heavy firearms were now also used. The lieutenant then ordered a quick retreat to the Canal Zone. During the whole of that retreat and until the Canal Zone was reached the soldiers were under rifle fire.

Not all the soldiers had, however, left the city. When the disorder broke out, the proprietors of the saloons had closed their establishments and those soldiers who were within remained there, waiting for the end of the disturbance. There were also soldiers in other parts of the city. The police accompanied by the civilians broke into the saloons in order to conduct the soldiers found there to the police station. In some cases the soldiers were maltreated by the police and the accompanying civilians, in other cases they were, upon entering the street, left defenseless in the hands of the mob, or they were attacked while being escorted to the police station. Soldiers coming to Cocoa Grove unaware of the disturbances which had happened there, were also attacked and even in places distant from that district soldiers were assaulted.

In the course of the events described above a Nicaraguan civilian was killed by a bullet; a number of American soldiers in addition to those claiming in these proceedings, a number of Panaman policemen and some civilians, amongst them the claimant Baldwin, received injuries, and damage to property was done.

Immediately after the events both the American authorities of the Canal Zone and the Panaman judiciary started investigations and each of them allowed the other to be represented at the taking of evidence. The American authorities took the evidence of a great number of soldiers and some civilians. The Panaman judge examined a number of policemen and some civilians and also received the evidence of the soldiers. The latter's evidence was taken in this way: a Spanish translation of their testimony previously rendered before the Canal Zone authorities was translated back into English to them, whereafter they stated in how far they confirmed their statements as translated to them or wished them amended and they further answered questions which the judge put them. The American investigation tended to find out the circumstances under which the American soldiers and one American civilian received injuries. The Panaman investigation was the ordinary investigation in criminal matters, having for its object to discover criminal acts and the persons responsible therefor under the law of Panama; as it did not lead to the discovery of the person who was responsible for the death of the Nicaraguan civilian, or to the establishing of responsibility for the damage done to property, and as the policeman, who had been seen firing from the street into a closed saloon and against whom criminal proceedings were ordered on December 18, 1916, for the wounding of a female servant of that establishment, died on January 4, 1917, both the criminal proceedings against the policeman and the proceedings as to the other criminal acts were terminated in February 1917.

In the Panaman investigation 18 members of the police force were heard. Included in this number are a lieutenant and a policeman who were at the Central Police Station and the sublieutenant in command and three policemen of the Cocoa Grove station who did not leave the station. Of the remaining 12 only two make mention of efforts of the police to contain the civilians. Another, a mounted lieutenant, saw the soldiers retiring to the Canal Zone and declared that from their direction were coming shots produced by arms of large caliber. The police evidence contains no other reference to what happened after the opposing groups first faced each other. The evidence of the captains of police, whose names are mentioned in different statements, both of

soldiers and policemen, has not been taken. No attempt was made to find out the persons responsible for the injuries suffered by the American civilian Baldwin, since, instead of taking the evidence of the person, who Baldwin had been told was Captain Arias, it was thought sufficient to state that there was at the time no Captain Arias in Panama City.

The Government of the United States has submitted to this Commission claims on behalf of one civilian and 17 soldiers. In the course of the proceedings five claims (those of Joseph Balun Morris I. Berkowitz, Charles Jagatich, Erich Jeschke and Frank Mosouskie) were withdrawn because at the time the claimants received their injuries they had not yet become naturalized American citizens.

The claims are based on an alleged failure of the police to afford protection, improper conduct of the police and failure to prosecute the offenders.

The Commission is of opinion that insufficient police protection and improper police action have been proved. The offending police officers have not been prosecuted. There is no doubt that policemen were roughly handled by soldiers, but the improper conduct of some soldiers can not justify the police in attacking, or allowing others to attack, soldiers generally. There were in Panama City and in the neighbourhood of Cocoa Grove district sufficient police to have mastered the whole situation very quickly, if they had adopted the right attitude. They failed to restore order because they did not assert their authority against the civilians, but turned against the soldiers.

At the hearing the Panaman Agent argued that the patrol, which consisted of a lieutenant with nine men, ought to have been stronger, alleging that it did not at all times keep all the soldiers under control and citing in support of that allegation the statement of the lieutenant that, when the cordon was first formed, soldiers repeatedly broke through (the lieutenant stated however also that he brought them back within the cordon) and the testimony of a soldier that after having arrived at the Canal Zone border he and three others went back to Panama. The Commission is of opinion that the patrol, assisted by the non-commissioned officers, whom the lieutenant had the right to commandeer for such assistance, performed their task efficiently. Consequently the Commission does not have to consider whether the rights of the claimants in these proceedings would have been impaired if the patrol had been insufficient. In the opinion of the Commission responsibility for the maintenance of order rests upon the territorial sovereign.

The Commission finds that all the claimants whose claims have been maintained, with the exception of Joseph Steinbrenner, are entitled to an award and will now deal with the individual claims.

Cecelia D. Baldwin, as administratrix of the estate of Harry D. Baldwin, also known as Henry G. Baldwin, deceased, is awarded the sum of $1,000. Baldwin was beaten by the police while tending to Stettler's wounds in the Panama Athletic Club, and was later beaten by the mob while in the custody of the police. In the first attack, he was punched in the eye by a person alleged to have been Captain Arias, and there is some evidence that this permanently affected his eyesight.

Everett Ezra Bowden is awarded the sum of $1,250. He was watching a moving picture in the Panama Athletic Club, went outside, was locked out, and was clubbed and kicked in the street by several policemen. He suffered scalp, elbow, and knee injuries and was treated at the hospital and [was] sick in quarters for over a month. There is evidence of a permanent leg and hip injury, but the connection between that and the injuries received on this occasion has not been fully established.

Webster T. Brandon is awarded the sum of $250. He formed a part of the cordon on Pedro [de] Obarrio Street, and while there was shot through the fleshy part of the hip, from behind. The wound was not serious.

Joseph A. Donnelly is awarded the sum of $2,500. He was severely beaten, both by the police and by the crowd. He was first clubbed by two policemen near the Panama Athletic Club, then was attacked by a crowd of negroes when he ran away. He hid in a house, where he was found by a policeman who beat him; Donnelly attempted to resist, but desisted when he was clubbed. While in custody, he was again beaten by the crowd, this time into unconsciousness, in spite of the efforts of a mounted policeman to assist him. But Donnelly had been drinking, and his injuries may have resulted in part from his own belligerence. Moreover, though there is evidence of permanent injury to his right ear, the permanent injury to the sight of his right eye, alleged to have resulted, is controverted by his own medical testimony of subsequent eyesight tests.

Henry Foster is awarded the sum of $500. He was in a carriage approaching the Cocoa Grove, which was stopped by the crowd. A policeman arrested him at pistol point, and on the way to the station the crowd struck at him, shots were fired, and Foster started to run. While running he was shot in the hip from behind, fell and was beaten by the crowd. Evidence of permanent injury is slight.

Augustine A. Kane is awarded the sum of $5,000. He was shot in the back apparently at an early stage of the riot, fell unconscious, and while in that condition was terribly kicked and beaten. He is permanently disfigured, and his eyesight permanently impaired. He was the most seriously injured of the claimants, and though he may have been shot before the police arrived on the scene, his condition corroborates a statement in the evidence that he was dragged about the street at a time when the police should have been master of the situation.

Nathan H. Kelly is awarded the sum of $1,250. He ran out of the Panama Athletic Club when the police forced the doors and was beaten unconscious in the street. He received a severe cut in the forehead, and a bayonet wound in the chest. There is no evidence of permanent disability.

Walter Organ is awarded the sum of $500. He was on the way to the Canal Zone and became included in the group of the retreating soldiers. He was hit on the back of the head, but knows neither who nor what hit him. He was knocked unconscious and came to in the hospital. From the contemporaneous medical report, he must have been severely beaten while unconscious. He was permanently disfigured, but suffered no permanent disability. The award is reduced in amount because of the vagueness of the record as to police activities at the time and in the region of his injuries.

Oliver G. Reber is awarded the sum of $250. He was in the carriage with Foster, approaching Cocoa Grove. He was pulled from the carriage, fell, and received a long, shallow cut in the back. The exact cause of the injury is not known, but it was a policeman who stopped the carriage and ordered the occupants to put up their hands. Reber was in custody when injured and entitled to protection.

George Simon is awarded the sum of $1,250. He hid behind the bar in the Panama Athletic Club when the police broke in. One policeman hit him with a rifle and another stuck him with a bayonet, in order to get him out. He went into the street, was chased, was grazed by a bullet fired by a mounted policeman, fell, and was beaten unconscious by the mob. Though he was badly beaten, his injuries are not proven to have caused any serious permanent disability.

The claim of Joseph Steinbrenner is disallowed. His evidence is ambiguous and unconvincing, and seems to indicate that his injuries arose out of a fight with the police in which he was the aggressor. Though he was knocked unconscious, his injuries were not serious, and seem to have all been inflicted in that encounter for which Panama cannot be held accountable.

Charles B. Reppert, administrator of the estate of Morris C. Stettler, deceased, is awarded the sum of $250. Stettler's injury, a bayonet wound in the chest, was received in a fight with the police in which, by his own statement, he was the aggressor, and no award is rendered therefor for that reason. But he was very roughly carried to the police station in a semiconscious condition, after being taken from the Panama Athletic Club where his wound was being tended, and the award is for this rough treatment of a wounded man.

Lowndes O. Webb is awarded the sum of $500. He was in a carriage outside of Cocoa Grove, with several other soldiers. The carriage was attacked by a crowd and the occupants thrown out. Webb ran away, and while running was shot in the back of the leg. Though he saw no police in the crowd, his companions did, and one of them saw police in the crowd shooting. Webb incurred no permanent disability.

The Commission decides that the Republic of Panama is obligated to pay to the United States of America, on behalf of the claimants herein, the sum of $14,500, without interest. This sum is apportioned in the manner indicated above, and all awards are without interest.

JOHN W. BROWNE (UNITED STATES) *v.* PANAMA

(June 26, 1933. Pages 530-531.)

JURISDICTION: CLAIMS ARISEN AFTER SIGNATURE OF CLAIMS CONVENTION.—INTERPRETATION OF TREATIES. *Held* that Commission has jurisdiction to entertain claims arisen after signature of Claims Convention, July 28, 1926: reference to Walter A. Noyes award, p. 308 *supra.*

NEGLIGENCE.—EVIDENCE: PROOF OF DAMAGE.—CONTRACT, INTERPRETATION: REASONABLE CONSTRUCTION.—INTERPRETATION OF MUNICIPAL LAW. Purchase by Panama in 1929 of right of way. Improvement by Panama of existing road. Partial washout of road in October, 1930, whereafter general reconstruction. *Held* that no adequate evidence brought of negligent construction, nor of damage caused during reconstruction as distinguished from damage by washout. *Held* also that certain arrangement between claimant and Panama would have been so unreasonable that, in the absence of contract which has not been put in evidence, it is difficult to believe that parties did agree upon it; additional argument from Panamanian law.

Cross-reference: Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación del Norteamericano John W. Browne, Registro No. 14. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, p. 532; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 103; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), pp. 453, 466.

The facts on which this claim is based happened between the signing and the exchange of ratifications of the convention of July 28, 1926. On the grounds stated in the case of Walter A. Noyes (Registry No. 5) the Commission holds that it has jurisdiction to decide upon the claim.

The Government of Panama in 1929 purchased a right of way through a coffee *finca* belonging to John W. Browne and George A. Browne and improved a road already existing along this right of way. In October, 1930, part of the road was washed out by heavy rains and thereafter there was a general repair reconstruction of the road.

Claim is made for $500. The first ground on which the claim is based is that the washout above referred to was caused by a negligent construction of the road and resulted in damage to claimants' property. The Commission finds no adequate evidence that the washout was the result of negligent construction. The terrain was of that rough and broken type where washouts are difficult to guard against except by a kind of construction which cannot be expected in connection with small country roads.

The second ground on which the claim is based is that in making the general reconstruction of the road after the washout, the workmen rolled rocks onto the property of the claimants. There is no satisfactory evidence as to the damage caused by this action as distinguished from the damage caused by the washout.

The third ground for the claim is that the right of way purchased by the Government was a strip 8 feet in width along its entire length and that in the reconstruction of the road in some places the final road exceeded 8 feet. The contract under which the alleged 8-foot strip was purchased by the Government has not been put in evidence. The Commission is left in doubt whether the right acquired by the Government was to build a road the usable portion of which was to be 8 feet wide or whether the Government's right was to build a road no portion of which, including cuts and fills, should ever exceed 8 feet. The latter arrangement would have been so unreasonable that it is difficult to believe that it occurred, without clear evidence. If the Government was entitled, under its contract, to a usable road 8 feet wide plus necessary cuts and fills, then there is no evidence in the record that the lawful width was exceeded. Moreover, the lands on which the claimants' *finca* was situated were originally *indultado* lands, the grant whereof by the Government to the claimants' predecessor in title reserved the Government's rights for the construction of roads as set forth in art. 102 of law 20 of 1913. Among the rights reserved in this article was that of taking without compensation the right of way necessary for the construction of *caminos de herradura*. There is some question as to whether this phrase includes ordinary country wagon roads or only trails for horses. At any rate, it is clear that the right of the Government under this article extends to whatever property is required for cuts, fills and drains, and it is not shown that the actual road in question after reconstruction exceeded in width a reasonable allowance for a *camino de herradura* under art. 102, with reasonable extensions for cuts and fills.

The Commission decides that the claim must be disallowed.

LETTIE CHARLOTTE DENHAM AND FRANK PARLIN DENHAM (UNITED STATES) *v.* PANAMA

(June 27, 1933. Pages 516-521.)

PROCEDURE: COUNTERACTION.—DENIAL OF JUSTICE: VIOLATION OF LAW, GOOD FAITH.—INTERPRETATION OF MUNICIPAL LAW. Dissolution of conjugal partnership between first claimant and James Fleming Denham by agreement set forth in public instrument executed before Panamanian notary on Novem-

ber 17, 1917, first claimant declaring to be satisfied with half of ganancial property, and waiving all subsequent participation therein. Will made by J. F. Denham before Panamanian notary on March 4, 1918, designating *inter alia* first claimant, her son (second claimant), and five illegitimate children as heirs. Death of J. F. Denham on March 5, 1918. Petition by wife, claiming right to half of estate, to have settlement of ganancial agreement handled in probate proceedings disallowed by Second Circuit Judge of Chiriquí. Recognition by concubine, mother of illegitimate children, on April 11, 1918, in public instrument executed before Panamanian notary, of, *inter alia*, first claimant's half share in ganancial property, first claimant waiving participation made in husband's will. Approval of this agreement on August 13, 1918, by judge who ordered that proper entries be made in public registry. Action brought by concubine before First Circuit Judge of Chiriquí to annul agreement of April 11, 1918, and cancel entries. Judgment of June 27, 1921: agreement declared null, but entries left to stand. Judgment confirmed by Supreme Court. New action brought by concubine to annul order of August 13, 1918, and cancel entries. Counteraction by first claimant to annul agreement of November 17, 1917, and husband's will of March 4, 1918. Judgment of September 12, 1921: counteraction dismissed, order of August 13, 1918, declared null, entries cancelled, new entries ordered in the name of claimants and illegitimate children in equal shares. Judgment confirmed by Supreme Court. *Held* that no denial of justice committed: no manifest violation of law, no manifest bad faith in application of law or weighing evidence.

Cross-reference: Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de los Norteamericanos Lettie Charlotte Denham y Frank Parlin Denham, Registro No. 13. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, p. 521, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), p. 65; Friede, "*Die Entscheidungen* . . .", Z.a.o.R.u.V., Band V (1935), p. 466.

The United States has presented this claim on behalf of Lettie Charlotte Denham and Frank Parlin Denham for the sum of $34,104.10 and interest, for loss and damage which it is alleged the claimants sustained as a result of acts of the authorities of Panama in connection with the estate of James Fleming Denham, the deceased husband and father, respectively, of the claimants.

The citizenship of the claimants is duly established.

In the year 1898 James Fleming Denham left his wife and son in the United States of America and took up his residence in El Boquete, Province of Chiriquí, Republic of Panama. The following year, 1899, his family joined him.

Some time later the child fell seriously ill, wherefore Mrs. Denham decided to return with him to the United States. She subsequently resided alternately with her son in California and with her husband in El Boquete. Along about that time Denham entered into illicit relationship with a native woman named Andrea González, by whom he had five children.

This brought about an estrangement between the husband and wife and for some time their relationship was interrupted. In November, 1917, they decided, by mutual consent and according to the laws in force in Panama, to dissolve the conjugal partnership existing as a result of their marriage. The terms and conditions of the agreement are set forth in public instrument no. 1435 executed before notary no. 1 of the Circuit of Panama. The parties thereto declared their conjugal partnership dissolved and Mrs. Denham declared that she had received to her entire satisfaction the sum of B/11,000.00 in payment of half of her

ganancial interest, as follows: B/5,000.00 which she had already received; B/1,000.00 at the time of signing the instrument; and a promissory note payable in San Francisco, California, on November 15, 1919.

The husband, Denham, took over all the assets and liabilities of the partnership to the exclusion of Mrs. Denham, who waived all subsequent participation in the ganancial interests.

The arrangements accessory to this agreement, such as a proposed divorce, were of a private character and are shown in the correspondence exchanged between the spouses on November 20, 1917. In the letters to which reference is made Mrs. Denham expressly ratified the pact made by the public instrument of November 17 of that year and set forth, in part, the following:

"I also promise and agree that, in no case nor under any circumstances will I ask you to contribute to my support, either through legal channels or privately, and I accept the sum stipulated here, $11,000.00 as my full and complete share of my ganancial property."

Not long afterward Denham returned to El Boquete and his wife proceeded to the United States. On March 3, 1918, at 8 o'clock in the evening Denham was fatally wounded by one Segundo González in the town of Bajo Boquete, Province of Chiriquí. That same night Denham made an open will which it would not have been possible to enforce because it lacked legal requisites.

On the following day, March 4, the wounded man was taken to David for the purpose of sending him, if possible, to the city of Panama.

In the afternoon of the same day Denham made a new will before the notary of the Circuit of Chiriquí and witnesses, as required by law. This will is of record in instrument no. 198 and therein the wife and legitimate child and the five illegitimate children were designated heirs in equal shares, and Andrea González and Manuel Guerra legatees.

Denham died on the morning of March 5 aboard the steamship *David* while *en route* to the city of Panama.

The Second Circuit Judge of Chiriquí, by order of April 6, 1918, opened the testament of James Denham to probate and declared as heirs with equal participation Lettie Charlotte Denham, Frank Parlin Denham, Ana, Virgilia, Roberto, Jaime, and Ricardo González, the last five being children of Andrea González.

Considering that this distribution prejudiced her interests, and believing she had a right to half of the estate, Mrs. Denham made an effort to have the settlement of the ganancial agreement growing out of the conjugal partnership handled in the probate proceedings. The petition to do so was disallowed by the judge, as such a division could only be made separately by way of an ordinary action.

To avoid litigation, Mrs. Denham, in her own right and on behalf of her son, Frank Parlin Denham, as party of one part, and Andrea González, as mother and on behalf of her five minor children, party of the other part, on April 11, 1918, signed instrument no. 335 before the notary of the Circuit of Chiriquí, recognizing Mrs. Denham's half share in the property left by her deceased husband, the other half to be distributed equally among Frank Parlin Denham and the five children of Andrea González. Mrs. Denham waived the participation made in her husband's will; and from the date of the instrument of contract, assumed the administration of the estate until an opportunity should present itself to sell the properties *en masse* or separately. This agreement was, on August 13, 1918, approved by the judge who ordered that the proper entries be made in the public registry.

Believing the rights of her children to be prejudiced by the aforesaid settlement, Andrea González, through her attorney, filed an ordinary civil suit to

annul the contract contained in instrument no. 335 and cancel the entries made in the public registry as a result of the agreement.

The First Circuit Judge of Chiriquí rendered a judgment on June 27, 1921, declaring the agreement of 1918 null, but leaving the entries in the public registry to stand, holding that those entries had been made, not as a result of the agreement, but in obedience to the order of the Second Circuit Judge of August 13, 1918. The Supreme Court of Justice confirmed *in toto* the judgment of the judge of Chiriquí.

The action had as its legal basis the fact that Andrea González had concluded the contract on behalf of her minor children without having obtained the necessary judicial authorization. The claimant has alleged that this omission was remedied by the subsequent approval given by the judge handling the probate proceedings, but the Commission finds such an argument to be unfounded.

On November 7, 1921, Andrea González filed a new action to annul the order of August 13, 1918, rendered in the probate proceedings of the deceased James Fleming Denham's estate, and to cancel the entries made in the property registry as a result of those orders.

The suit was corrected by the plaintiff and when notice was served upon the defendant she answered it and at the same time filed a counteraction to have instrument 1435, and the dissolution of the conjugal partnership incorporated therein, declared null and void; and likewise to have the will, which James Fleming Denham executed before the notary of Chiriquí, instrument no. 198, declared null and void.

To support her action, she alleged, in short, that in the case of the so-called matrimonial capitulations, the inventory of the property belonging to the conjugal partnership as well as other requisites exacted by the Civil Code, had been omitted.

As concerns the will, it was equally alleged that certain essential requisites were omitted and also that the testator could not have possessed the necessary mental capacity for expressing his last will, in view of his serious condition. This litigation gave rise to extended judicial debate, to support which the parties adduced all the evidence they believed pertinent and advanced their respective legal viewpoints. The Circuit Judge of Chiriquí terminated those suits by his judgment of September 12, 1921, in which he declared that the counteraction had not been sustained; that the court order of August 13, 1918, issued in the probate proceedings of the estate of James Fleming Denham, were [*was*] null; that all entries made in the public registry as a result of those orders were cancelled; and, lastly, that the real property registered therein in the name of James Fleming Denham be entered in the name of the heirs, Lettie Charlotte Denham, Frank Parlin Denham, Ana, Virgilia, Roberto, Jaime, and Ricardo González, natural children of Andrea González, to whom the property mentioned belongs in equal shares. This judgment was approved by the Supreme Court of Justice.

The claimants consider that these judgments constitute a denial of justice, as a result of which Panama has incurred international liability.

The Commission has studied carefully all the judicial records of which copies have been presented and does not find evidence of any manifest violation of law or of manifest bad faith in the application of law or in weighing the evidence filed by the parties.

Decision

The Commission decides that this claim should be disallowed.

MARIPOSA DEVELOPMENT COMPANY AND OTHERS (UNITED STATES) *v.* PANAMA

(June 27, 1933. Pages 573-578.)

JURISDICTION, OBJECTION TO—: CLAIMS ARISEN AFTER EXCHANGE OF RATIFICATIONS OF CLAIMS CONVENTION.—INTERPRETATION OF TREATIES: RULE OF EFFECTIVENESS. *Held* that Commission has no jurisdiction to entertain claims arisen after October 3, 1931, date of exchange of ratifications of Claims Convention, July 28, 1926: rule requiring construction of treaty so that no part of it is without effect deemed not applicable in view of prolixity of language of article VII.

EXPROPRIATION: MOMENT AT WHICH CLAIM FOR—ARISES. PRACTICAL COMMON SENSE, *LOCUS PENITENTIÆ*.—PROCEDURE: RESERVATION OF MERITS. Enactment on December 27, 1928, of Panamanian law allowing private persons to sue to recover for State public properties in hands of other private persons who have not legitimately acquired them. Action brought on May 2 or 3, 1929, by Mr. Ramón Morales before First Circuit Judge of Colón to recover tract of land purchased by claimants. Judgment of October 3, 1930: validity of claimants' titles sustained. Judgment reversed by Supreme Court on October 20, 1931: tract declared national property, cancellation directed of claimants' titles. *Held* that ordinarily and in this case, claim for expropriation of property arises when possession of owner is interfered with (actual confiscation), and not when legislation is passed which makes later deprivation of possession possible: practical common sense, *locus penitentiæ;* and that damage from which claim arose was not sustained prior to October 3, 1931, and, consequently, claim is not within Commission's jurisdiction (see *supra*). Reservation of merits.

Cross-references: Annual Digest, 1933-1934, pp. 255-257; Comisión General de Reclamaciones entre Panama y Estados Unidos de América, En representación de la Mariposa Development Company y otros, Registro No. 15. (Publicación Oficial, Panama, 1934.)

Bibliography: Hunt, Report, pp. 578-579, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), p. 73; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), pp. 454-456.

This is a claim on behalf of the Mariposa Development Company and others. It is based on the alleged unlawful expropriation of a tract of land.

The first question presented relates to the jurisdiction of the Commission. The original convention under which this Commission acts was signed on July 28, 1926. The ratifications thereof were exchanged on October 3, 1931. The Republic of Panama contends that the damage upon which the claim is based was not sustained by the claimants prior to the exchange of the ratifications and that the claim is, therefore, not within the jurisdiction of the Commission. The United States contends that the jurisdiction of the Commission is not limited to the consideration of claims for damages sustained prior to the exchange of ratifications but extends to claims for damages suffered at a later date. Article VII of the convention reads as follows:

"The High Contracting Parties agree to consider the decision of the Commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every such claim

upon either Government, for loss or damage sustained prior to the exchange of the ratifications of the present Convention. And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such Commission, shall from and after the conclusion of the proceedings of the Commission, be considered and treated as fully settled, barred, and thenceforth inadmissible, provided in the case of the claims filed with the Commission that such claims have been heard and decided.

"This provision shall not apply to the so-called Colon Fire Claims, which will be disposed of in the manner provided for in article I of this Convention."

It is asserted by the United States that since the second and third sentences of this article provide that all claims for damages sustained prior to the exchange of ratifications are to be considered as disposed of and barred, whether presented to the Commission or not, the first sentence of article VII would be unnecessary and without effect if no claims could be considered arising from damages sustained after the exchange of ratifications and that the rules of interpretation require us to construe the treaty so that no part of it will be without effect. This rule is no stronger than the presumption that the draftsmen of the treaty would not repeat themselves or use unnecessary words. The presumption loses a good deal of its weight when applied to article VII in view of the prolixity of the second and third sentences. The Commission does not feel that it can extend its jurisdiction in order to prevent the first sentence in article VII being superfluous.

A supplementary convention modifying the original convention, was signed on December 17, 1932. Ratifications were exchanged on March 25, 1933. Article I of this supplementary convention provided, *inter alia*, as follows:

"The Commission shall be bound to hear, examine and decide, before July 1, 1933, all the claims filed on or before October 1, 1932."

The United States argues that this provision, by empowering the Commission to deal with all claims filed before October 1, 1932, made it impossible to sustain the plea of no jurisdiction with regard to any of the claims so filed.

The Commission believes that the provision just quoted was merely intended to extend the dates for filing and deciding claims.

The Commission held in the Noyes case, Registry No. 5, that its jurisdiction extended to claims arising down to the date of the exchange of ratifications of the original convention. The Commission now holds that its jurisdiction does not extend to claims arising after that date, that is to say, after October 3, 1931.

We now turn to the question of when the Mariposa claim arose. In 1913 Herbert H. Howe, who is not a claimant herein, purchased a large tract of land, known as El Encanto, in the Republic of Panama, from an owner whose alleged chain of title went back to a conveyance from the King of Spain in 1689. The Mariposa Development Company and the other claimants herein derive their respective interests in this tract from Howe by subsequent purchase or subpurchase.

In 1917 a law was enacted by the legislature of Panama defining a type of public property known as *bienes ocultos*, or hidden properties. Law 62 of 1924 later provided that private persons might sue to recover such properties for the State, and gave the private suitors a 50 per cent interest in any recovery. This law required that before beginning suit the claimant should submit proofs to the Secretary of Hacienda and that the Attorney General of the Nation should be heard.

On June 20, 1928, one Ramón Morales petitioned the Secretary of Hacienda for permission to sue for the recovery of El Encanto as *bienes ocultos*. The Attorney

General being consulted recommended that the petition be denied on the ground that the title was registered and that the property could not therefore be considered *bienes ocultos*. This opinion of the Attorney General was rendered on October 27, 1928. On December 27, 1928, the legislature enacted law 100 of that year, which provided in part as follows:

"Art. 1. National properties in the hands of private persons who have not legitimately acquired them, and which for any reason cannot be considered hidden lands of the State, can be denounced as if they were, and the Nation can, therefore, exercise the action or actions necessary to return them to its domain following the procedure established for hidden properties in Law 62 of 1924."

Relying apparently on this provision, the Secretary of Hacienda and Morales, without further submission to the Attorney General, entered into a contract empowering Morales to sue for the recovery of El Encanto. Pursuant to this contract suit was begun by Morales on May 2 or 3, 1929. The Mariposa Company and the other defendants answered. The case was tried before the First Circuit Judge of Colón, who, on October 3, 1930, rendered a decision in the defendants' favor and sustained the validity of the defendants' title[s].

The decision was promptly appealed. On January 13, 1931, the Attorney General of the Nation rendered an opinion recommending that the decision of the Circuit Judge be affirmed. On October 20, 1931, the Supreme Court handed down a decision reversing the lower court, holding that El Encanto was national property and directing the cancellation of the titles registered in the names of the defendants. It is to be noted that although the decision of the lower court came a year before October 3, 1931, the final decision of the Supreme Court was rendered after that date. Articles 537 and 538 of the Judicial Code, specifying the period within which decisions must be rendered by the Supreme Court, were not complied with; if they had been obeyed, the decision would have been rendered long before the date of the exchange of ratifications of the original convention.

The United States contends that the damage upon which this claim is based [1] was sustained by the claimants when the legislature passed the acts and the Government entered into the contract, which made Morales' suit possible, and when that suit was started, and that the opinion of the Supreme Court must be taken as merely the culminating step in a plan for expropriation, the execution of which was begun long before October, 1931.

It is to be noted that the decision of the lower court was favorable to the Mariposa Company. It was not until the rendition of the Supreme Court's opinion that the possession of the Mariposa Development Company was interfered with and its titles canceled. The Commission does not assert that legislation might not be passed of such a character that its mere enactment would destroy the marketability of private property, render it valueless and give rise forthwith to an international claim, but it is the opinion of the Commission that ordinarily, and in this case, a claim for the expropriation of property must be held to have arisen when the possession of the owner is interfered with and not when the legislation is passed which makes the later deprivation of possession possible.

[2] The contention of the United States was that the claims "arose", within the terms of the convention, when the allegedly confiscatory legislation was enacted and with the Government's consent, applied to claimants' rights by a suit through a government agent to cancel his titles—that the question of the date of the *damages* was not an essential consideration on the question of jurisdiction.—AMERICAN AGENT.

Practical common sense indicates that the mere passage of an act under which private property may later be expropriated without compensation by judicial or executive action should not at once create an international claim on behalf of every alien property holder in the country. There should be a *locus penitentiæ* for diplomatic representation and executive forbearance, and claims should arise only when actual confiscation follows.

The Commission holds that the damage from which the Mariposa claim arose [1] was not sustained prior to October 3, 1931, and that the claim is not within its jurisdiction.

The Commission is not concerned with the merits of the claim. The preceding recitation of facts is made solely with a view to determining the date as of which the damage on which the claim is based was sustained. Nothing in the recitation is to be taken as indicating a belief as to the validity or invalidity of the claim, the legality or illegality of any of the facts recited, or as binding the United States or the Republic of Panama in respect to the facts recited in any subsequent proceeding.

JOSÉ MARÍA VÁSQUEZ DÍAZ, ASSIGNEE OF PABLO ELÍAS VELÁSQUEZ (PANAMA) *v.* UNITED STATES

(June 27, 1933. Pages 651-652.)

JURISDICTION: CLAIMS ARISEN AFTER SIGNATURE OF CLAIMS CONVENTION.—INTERPRETATION OF TREATIES. *Held* that Commission has jurisdiction to entertain claims arisen after signature of Claims Convention, July 28, 1926: reference to Walter A. Noyes award, p. 308 *supra.*

RESPONSIBILITY FOR ACTS ASHORE OF SAILORS.—EVIDENCE: TESTIMONY OF WITNESSES BEFORE MUNICIPAL COURT. Pecuniary loss caused in February, 1931, by sailors of United States navy who during maneuvers landed on island of Casaya. Evidence: testimony of three witnesses before District Judge of Balboa. *Held* that United States liable under international law. Damages allowed.

Cross-references: Annual Digest, 1933-1934, p. 258; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la República de Panamá en su propio nombre y en representación de José María Vásquez Díaz, Registro No. 19. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, pp. 652-653, and "The United States-Panama General Claims Commission", Am; J. Int. Law, vol. 28 (1934), pp. 70-71; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), pp. 101, 103; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), pp. 453, 459; Annual Digest, 1933-1934, pp. 258-259.

The Republic of Panama files this claim in the sum of $270.00 without interest on behalf of José María Vásquez Díaz, assignee of Pablo Elías Velásquez, versus the United States of America, for loss and damage which the claimant alleges he suffered at the hands of sailors of the American Navy, upon a plantation located on Casaya Island, Archipelago of Las Perlas, Republic of Panama.

[1] See footnote on p. 576.—AMERICAN AGENT. (Note of the Secretariat: this volume, p. 340.)

The Panaman nationality of the claimant is established.

The facts on which this claim is based happened between the signing and the exchange of ratifications of the convention of July 28, 1926. On the grounds stated in the case of Walter E. Noyes (Registry No. 5) the Commission holds that it has jurisdiction to decide the claim.

In the month of February, 1931, several American naval units were holding maneuvers in the Archipelago of Las Perlas. A number of sailors from the fleet landed on one of the islands of the archipelago, called Casaya, and trespassed upon the property called "El Cocal de la Punta de Casaya" which, as its name indicates, was made up largely of a cocoanut grove, that is, a plantation of coconut palms. The sailors took the coconuts, both old and new, and drank the milk they contained, causing Velásquez, who had leased the property for the purpose of harvesting and marketing the fruit, a pecuniary loss estimated in the sum for which claim is brought. The loss and damage sustained is established by the testimony of three competent witnesses, rendered before the Judge of the District of Balboa, Republic of Panama.

From investigation made by the Government of the United States through the Secretary of the Navy, it is observed that it was impossible to fix the ensuing responsibility upon the perpetrators, inasmuch as it was not shown to which war vessel or vessels anchored in the archipelago the contingent of sailors who went ashore belonged.

While this point would have shed light upon the situation, the Commission considers that the offense was committed, that as a consequence of the acts of the sailors the claimant suffered loss and damage to his property, and that as a result the Government of the United States is liable under international law.

Decision

The United States of America is obligated to pay to the Republic of Panama, on behalf of José María Vásquez Díaz, assignee of Pablo Elías Velásquez, the sum of one hundred dollars ($100.00) without interest.

GUILLERMO COLUNJE (PANAMA) *v.* UNITED STATES

(June 27, 1933. Pages 746-749.)

ARREST, DETENTION OF ALIEN.—CRIMINAL PROCEEDINGS AGAINST ALIEN.—DAMAGES: FACTORS. Induction of claimant by false pretenses, on September 1, 1917, by Canal Zone detective to come to Zone, where claimant subsequently arrested, brought before District Judge, detained, and released on bond which was returned after hearing on September 15, 1917. *Held* that United States liable for undue exercise of police authority within jurisdiction of Republic of Panama. Amount of damages: short duration of detention, criminal proceedings without delay, and claimant's imprudence taken into account.

Cross-references: Annual Digest, 1933-1934, pp. 250-251; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la República de Panama en su propio nombre y en representación de Guillermo Colunje, Registro No. 24. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, p. 749, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), p. 73; Borchard, "The

United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 101; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), pp. 459-460; Annual Digest, 1933-1934, p. 251.

The Republic of Panama has presented this claim on behalf of Guillermo Colunje in the sum of $36,000.00 for loss and damage which the claimant alleges he sustained because of his illegal arrest by a police agent of the Canal Zone and of subsequent acts of the authorities of the United States in the Zone.

The Panaman citizenship by naturalization of the claimant has been accepted.

In the month of August, 1917, Guillermo Colunje was the editor in chief of the *Diario de Panamá*, a newspaper published in the Capital of the Republic. He published daily therein a column headed "*Charla Cotidiana*" (Daily Chat) under the *nom de plume* of Lino Tipo. For several days during that month there appeared in the *Panama Morning Journal* an advertisement announcing the arrival of Prof. Omer Elling, who, for the sum of $2.00 gold, would remit to the sender a certain famous talisman. Both the *Diario de Panamá* and the *Panama Morning Journal* belonged to the same publishing concern and were registered at the Ancón Post Office as second-class mail matter for circulation in the Canal Zone.

The advertisement attracted the attention of the postal authorities of the Canal Zone. Inspector Stacey C. Russell investigated the matter and ascertained that the supposed professor was Guillermo Colunje. The former had one Mortimer Seale purchase a postal order for $2.00 in favor of Prof. Omer Elling and forward it for the purpose of obtaining the talisman to which the published advertisement referred.

On August 30, 1917, Julio Paz Rodríguez, of the Panama Morning Journal, went to the Ancón Post Office to pay the newspapers' registration fee for circulation in the Canal Zone as second-class mail matter. As a part of the payment of $5.00 he delivered postal order no. 158595 issued by the Post Office at Balboa in favor of Prof. Omer Elling and indorsed by him, and when the former was interrogated by the postal authorities he informed them that he had received that money order from Colunje in payment of the insertion of the aforesaid advertisement in that newspaper.

After some investigation criminal charges against Guillermo Colunje alias Prof. Omer Elling were preferred in the tribunals of the Zone that same day, for violation of section 1707 of the Postal Code of the United States and its regulations, consisting in the use of the United States mail for fraudulent purposes. The judge issued a warrant for the arrest of Guillermo Colunje, which was delivered by Police Captain Jack Phillips to Canal Zone Detective Temistocles Rivera for execution.

It is established that on September 1, 1917, Rivera went to the offices of the *Diario de Panamá* where he found Colunje engaged in his labors and by false pretenses induced the latter to accompany him to the Canal Zone, and upon arrival there he informed Colunje that he was under arrest, thereupon taking him to the Ancón police station. He was thereafter brought before the District Judge who directed that he be held. Colunje was detained for several hours and released on a bond of $200.00.

In a hearing held on September 15, 1917, before the District Court of the Canal Zone, the District Attorney made a motion that the proceedings be *nolle-prossed*, to which the judge who presided over the hearing acceded. Colunje was released and the bond he had furnished was returned to him.

It is evident that the police agent of the Zone by inducing Colunje by false pretenses to come with him to the Zone with the intent of arresting him there unduly exercised authority within the jurisdiction of the Republic of Panama

to the prejudice of a Panaman citizen, who, as a result thereof, suffered the humiliation incident to a criminal proceeding. For this act of a police agent in the performance of his functions, the United States of America should be held liable.

The Commission considers, on the other hand, that Colunje's confinement was of short duration and that the judicial authorities of the Zone proceeded without delay in handling Colunje's case. It likewise considers that the latter should have known that he acted imprudently in publishing the advertisement in question and incorrectly in making use of the postal order which brought about his identification.

Decision

The Commission decides that the United States of America is obliged to pay to the Republic of Panama on behalf of Guillermo Colunje the sum of $500.00 without interest.

JUAN AÑORBES (PANAMA) *v.* UNITED STATES

(June 27, 1933. Pages 762-764.)

LABOUR ACCIDENT, NEGLIGENCE OF EMPLOYER.—APPLICABLE LAW: CLAIMS CONVENTION.—COMPENSATION. Labour accident on October 23, 1911, to claimant while cleaning engine negligently allowed to be put into motion by superiors. Special Act of Congress of June 30, 1930, extending to him, from that date, benefits of 1916 Compensation Act. *Held* that United States responsible: reference made to Juan Manzo award, p. 314 *supra;* but that claim should be disallowed since claimant between 1911 and 1930 sufficiently employed.

Cross-reference: Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la República de Panamá en su propio nombre y en representación de Juan Añorbes, Registro No. 25. (Publicación Oficial. Panamá, 1934.)

Bibliography: Hunt, Report, p. 764; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 101.

This is a claim on behalf of Juan Añorbes for 25,000 balboas. The claimant is a Panamanian by birth.

On October 23, 1911, Añorbes, then a winchman employed by the Division of Dredges of the Panama Canal at a salary of $50 per month, sustained a severe fracture of the right arm while cleaning an engine. This resulted in permanent partial disability. Under the compensation law then in force, he was given free hospital and medical treatment and a year's salary as compensation for his injury. Except for a few very brief interims he was employed by the United States Government from December, 1912, to April, 1915, and from January, 1924, to June, 1933, at rates of salary averaging substantially over $50 per month. By special Act of Congress of June 30, 1930, there were extended to him, from that date, the benefits of the 1916 Compensation Act. He is thereby assured that if his earnings in future drop below $50 per month the deficiency will be made good under the statute.

The Commission holds that the United States is responsible for the injury to the claimant. He was ordered by his superiors to clean an engine, and those superiors allowed the engine to be put in motion while he was cleaning it.

This, unexplained, is sufficient evidence of negligence. The United States is answerable therefor (see the opinion of this Commission in the claim of Juan Manzo, Registry No. 21).

The compensation of a year's salary originally awarded to the claimant seems clearly inadequate, in view of the seriousness of his injury. It is equally clear, however, that if, from the time of his injury, he had been entitled to the benefits of the system of compensation established by the 1916 Act, which was made applicable to him by the special Act of 1930, he would have been justly treated.

The Commission finds that the claimant has not been prejudiced by the fact that he did not receive the protection of the 1916 compensation law until 1930. During the period from his injury until the passage of the Act of June 30, 1930, the Canal Zone authorities took pains to provide him with employment. The amounts received by him from the United States alone during this period total only slightly less than what he would have received if he had gotten a regular monthly compensation of $50 during the entire time.

It is to be noted, moreover, that from 1915 to 1924 the claimant was not employed by the United States. The evidence shows that he was gainfully employed during at least part of that period, by the Government of Panama. And in that interval he was twice offered employment by the United States.

The Commission therefore feels that the facts show that the claimant, in net result, is as well off as he would have been if the present system of compensation had been available to him from the time of his injury. Since that present system is adequate and just, the claimant is not entitled to an award. In reaching this conclusion the Commission assumes that the claimant will in the future continue to enjoy the protection afforded by the 1916 act.

The Commission decides that the claim is disallowed.

JOSÉ AZAEL RUIZ (PANAMA) *v.* UNITED STATES

(June 28, 1933. Pages 636-637.)

JURISDICTION: CLAIMS ARISEN AFTER SIGNATURE OF CLAIMS CONVENTION.—INTERPRETATION OF TREATIES. *Held* that Commission has jurisdiction to entertain claims after signature of Claims Convention, July 28, 1926: reference to Walter A. Noyes award, p. 308 *supra.*

RESPONSIBILITY FOR ACTS ASHORE OF SAILORS.—EVIDENCE: TESTIMONY OF WITNESSES, CERTIFICATE. Pecuniary loss caused in March, 1931, by sailors of United States navy who during maneuvres landed on Saboga Island. Evidence: testimony of witnesses, certificate issued by municipal authority. *Held* that United States liable: reference to J. M. Vásquez Díaz award, p. 341 *supra.* Damages allowed.

Cross-reference: Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la República de Panamá en su propio nombre y en representación de José Azael Ruiz, Registro No. 18. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, p. 637, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 70-71; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 101; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), pp. 453, 459.

The Republic of Panama files this claim in the sum of $125.00 without interest on behalf of José Azael Ruiz versus the United States of America, for loss and damage which the claimant alleges he suffered at the hands of sailors of the American Navy, on a plantation belonging to him, located on Saboga Island, Archipelago of Las Perlas, Republic of Panama.

The Panaman nationality of the claimant is established.

The facts on which this claim is based happened between the signing and the exchange of ratifications of the convention of July 28, 1926. On the grounds stated in the case of Walter A. Noyes (Registry No. 5) the Commission holds that it has jurisdiction to decide the claim.

In the month of March, 1931, several units of the American Navy held maneuvers in the Archipelago of Las Perlas. Some of the sailors of that fleet landed on Saboga Island and trespassed upon the claimant's property and ate ripe fruit which he had intended to harvest and market. The resultant loss and damage are established by the testimony of witnesses and by a certificate issued by the municipal authority of the island.

This is a case analogous to that of José María Vásquez Díaz (Registry No. 19) in which the Commission has decided that the United States is liable.

Decision

The United States of America is obligated to pay to the Republic of Panama, on behalf of José Azael Ruiz, the sum of fifty dollars ($50.00) without interest.

CAROLINE FITZGERALD SHEARER, ADMINISTRATRIX OF THE ESTATE OF GEORGE FITZGERALD (UNITED STATES) *v.* PANAMA

(June 29, 1933. Pages 111-114.)

PRESCRIPTION UNDER MUNICIPAL LAW.—INTERPRETATION, PROOF OF MUNICIPAL LAW.—EVIDENCE: BURDEN OF PROOF. Acquisition of six-tenths of an acre of *baldío* land on beach, in about 1850, by United States citizen. Enactment in 1882 of Panamanian law converting *baldío* lands into *bienes de uso público* not subject to prescription. Acquisition of land above, in 1886 or 1887, by Mr. George Fitzgerald. Enactment in 1904 of Panamanian law regulating adjudication of "tidal lots". Assertion by Governor of Province that Mr. Fitzgerald had no right but to be adjudicated part of tract on conditions defined by this law. *Held* that claimant failed to prove acquisition of ownership by predecessor, prior to coming into force of law of 1882, by alleged ordinary prescription requiring just title: at material time no public instrument of transfer was registered, and claimant did not show that Panamanian law did not require registration of such instrument as condition for beginning of running of period of possession for ordinary prescription.

Cross-reference: Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la Norteamericana Carolina Fitzgerald Shearer, Registro No. 3. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, p. 115; Friede, "*Die Entscheidungen . . .*", Z.a.o.R. u.V., Band V (1935), p. 466.

Claim for $30,000, with interest, is made on behalf of the heirs of George Fitzgerald, deceased. The claimants are American citizens. The claim is based

on the alleged expropriation, without compensation, by the Panaman Government, in 1905, of a property of an area of sixtenths of an acre, occupied by the deceased on the beach of the Island of Carenero, Province of Bocas del Toro. On the property were a wharf and some buildings.

The record of the proceedings before the Commission mentions the chain of persons who had occupied the land since the middle of the nineteenth century until it was acquired in 1886 or 1887 by George Fitzgerald, who on January 12, 1893, sold the property to his brother Charles Fitzgerald, but repurchased it from the latter on November 2, 1894.

When the first holder occupied the plot, it was *baldío* land. According to the Panaman Government it never ceased to be. Consequently, after the National Assembly of Panama in 1904 had enacted a law (no. 62) regulating the adjudication of "tidal lots" in the Province of Bocas del Toro, the Governor of the Province took the view that the only right that Fitzgerald had, was to be adjudicated part of the property, on the conditions defined by that law.

It has been contended on behalf of the claimant that the land subject matter of this claim had become privately owned land by the effect of legislation which conferred ownership of *baldío* lands on persons who cultivated them. The Commission cannot sustain this contention as there is no evidence of cultivation within the meaning of that legislation. The main contention advanced by the Agent of the United States in support of the claim is, however, that ownership had been acquired by prescription, prior to the coming into force of law 48 of 1882 which converted all *baldío* lands into *bienes de uso público* which are not subject to prescription.

In an affidavit of January 5, 1907, George Fitzgerald stated:

"Approximately sixty (60) years ago this property was squatted on by an American named Tinsley who planted thereon coconut trees and built his residence on the said property.

"Tinsley sold during his life to a native of that locality named Taylor. The date of this transaction is not known to me.

"Taylor died approximately forty (40) years ago, and his daughter, Sarah Humphreys, now living in Bocas del Toro, succeeded to the property.

"After succeeding to the property, Sarah Humphreys sold the same to W. C. Downs, who purported to represent the Connecticut Rubber Company. William C. Downs was an American citizen and the conveyance from Sarah Humphreys to him has been recorded in the United States Consular Office of Bocas del Toro, and also recorded in the courts of Bocas del Toro.

"William C. Downs, after his acquisition of the property, invested thereon large sums of money amounting, I am credibly informed, to from $20,000 to $25,000 in the construction of two warehouses on the said property built of timber, one of which is seventy-five feet in length by twenty-five feet in breadth, and the other forty-five feet in length by twenty-four feet in breadth—these warehouses are now standing on the said property—and in the construction of a marine railway for the purpose of hauling ships from the water in order to repair the same, and he carried on at this point a general ship building and repairing business.

"William C. Downs subsequently sold the property to an American named Augustus O. Bourne, and Bourne then sold the property to William Brown, the Deed for the said property having been made before the 'Juez Político Caspar Cervera and L. A. Carnica, Secretary'.

"William Brown died in or about the year 1885, and his widow, who is now living in San José, Costa Rica, succeeded to the property, and sold the same to me for cash about the year 1886. The deed from the Estate of William Brown

was not made out and delivered to me, however, until 1891, and bears the date of March 5th of that year, and this deed has been recorded in the Colombian Consular Office in San José, Costa Rica.

"After purchasing this property, I continued the old business of a ship yard and lumber yard, and have continued the same until I was put out in the manner hereafter to be explained."

and also:

"Approximately ten years ago, the Colombian Government having passed a law requiring those owning lots in the Town of Bocas del Toro to make application for their paper title to the said lots, I applied to the Colombian Government in Bogotá for the papers for certain lots owned by me in Bocas del Toro, and at the same time for the papers for this property on the Island of Carenero. This application was made through my attorney. Dr. Franco, and while the title to the lots within the City of Bocas del Toro was granted me. I was refused papers for the property mentioned herein for the reason that 'the Government would not give papers for any land outside of the Town'. I subsequently again applied through Simon López, but the revolution in Panama having started my papers were never returned."

There is no further evidence of the existence of the deed mentioned in Fitzgerald's affidavit except a statement of the acting American consular agent at Bocas del Toro of December 24, 1904, which enumerates the documents presented to him on that day by Fitzgerald, adding that the latter declared his intention to deliver them to the Governor of the Province, for the purpose of proving and perfecting his titles to the properties to which the documents referred.

The date of the conveyance from Sarah Humphreys to William Downs is unknown. The affidavit says that Sarah Humphreys succeeded to her father, Thomas Taylor, the year of whose death Fitzgerald puts at about 1867, but there is evidence in the record that Taylor's wife lived on the property after her husband's death and that it was to her that Sarah Humphreys succeeded.

The prescription alleged by the American Agent is the ordinary prescription, which requires a just title. The Panaman Agent has argued that such title has not been shown, that the deed by which Sarah Humphreys is alleged to have conveyed the property to Downs was not a public instrument as required for the transfer of real property and that the 10-year period of possession, necessary to acquire real property by ordinary prescription, could not begin to run as from that deed, because only the registration of a public instrument could give possession.

This contention has led to lengthy arguments by both Agents.

The Commission, having given due consideration to all that has been advanced by both sides on the subject, is of opinion that the American Agent has not shown that Panaman law did not at the material time require as a condition for the beginning of the running of the period of possession for ordinary prescription, tradition of the possession through registration of a public instrument.

This claim must, therefore, be disallowed.

HAMPDEN OSBORNE BANKS, HAZEL E. HILTBOLD, LEWIS CRANDALL GOLDER, AND RICHARD JOSEPH LEE (UNITED STATES) *v.* PANAMA

(June 29, 1933, dissenting opinion of Panamanian Commissioner, undated. Pages 148-152.)

PROTECTION OF ALIENS: FOREIGN TROOPS, INTERVENTION OF POLICE WITH NAVAL PATROL, MOB VIOLENCE. INADEQUATE POLICE PROTECTION. Arrest on May 11, 1921, in Panama City, of Engineman Lee by naval patrolman Golder of U.S.S. *Tacoma* to take him back to vessel. Intervention of Panamanian policeman to take Lee to police station, giving rise to incident between police, members of United States forces, and civilians, including attack by civilians upon Golder and Lee, arrest of patrolman Hiltbold, and allowing crowd to assault and severely beat Banks, commander of patrol. *Held* that policeman wrong in trying to take Lee from Golder instead of upholding authority of patrol provided at request of Panama; but that attack upon Golder and Lee, although due to his rash action, could not have been prevented by policeman; that no award justified for action against two patrolmen; but that police clearly failed to protect Banks, who is entitled to damages.

Cross-reference: Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de los Norteamericanos Hampden Osborne Banks . . . etc., Registro No. 4. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, p. 154, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 67, 73; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 101; Friede, "*Die Entscheidungen* . . .", Z.a.ö.R.u.V., Band V (1935), p. 460.

This claim is made by the United States of America on behalf of Hampden Osborne Banks, Mrs. Hazel E. Hiltbold, in representation of herself and her minor children, Richard L. Hiltbold and Robert C. Hiltbold, heirs of Valentine Hiltbold, deceased, Lewis Crandall Golder, and Richard Joseph Lee. All the claimants are American citizens.

Ensign Banks, Chief Petty Officer Hiltbold, Engineman First Class Golder and Engineman Second Class Lee were in May 1921 regular members of the United States Navy and were attached to the U.S.S. *Tacoma*, then lying off the city of Panama.

On May 11, Ensign Banks was on duty in Panama City as commander of a patrol provided from the *Tacoma*, Hiltbold and Golder belonged to his patrol, Lee was on shore leave. Lee was in the Cocoa Grove district where he was not allowed to go by the navy regulations and had been drinking. He hit a woman with his elbow, she protested vigorously and he shoved her against the wall of a house. She called in a policeman and was talking to him, while Lee was standing near them. Patrolman Golder arrested Lee in order to take him to the *Tacoma* according to his instructions. In the first statement which Golder made (July 25, 1921) he said that he found Lee in custody of the policeman, in his second statement (August 8, 1921) that the policeman was standing near Lee, but did not have hold of him. Lee says (July 25, 1921) that the policeman was going to arrest him for striking a woman and that before the policeman said anything to him Golder came up and arrested him. The evidence of the Panaman police has to be gathered from the letters which the American Legation received from the Panaman Government in reply to its complaints concerning the incident. Panama holds that the policeman, Teodoro Hernández, no. 186,

informed Lee that he was under arrest, that Golder objected to Lee's arrest and pulled him from his hands. Golder says that he asked the policeman what the trouble was, but could not understand the answer which was given in Spanish and that he thereupon took Lee's arm and started to walk away with him. It also results from one of the letters of the Panaman Government that the woman declared that she had first made her complaint to the patrolman but that he did nothing more than take Lee with him, that she thereupon complained to the policeman who placed the sailor under arrest and that thereupon the patrolman took Lee by one arm and walked off with him and the policeman.

Considering the above-mentioned declarations made on both sides, the Commission can come to no other conclusion than that Golder and not Hernández first took custody of Lee, and that the latter was under his custody when the conflict happened which started the incidents upon which the claims are based. When Golder was waiting for a conveyance to take him and Lee to the harbor, the policeman intervened. He had realized that Golder was not going to take Lee to the police station. He talked to Golder and finally grabbed Lee's arm. Golder did not give in.

The American version of what follows is based upon the declarations of witnesses, submitted *in extenso*. It can be resumed as follows: Golder and Lee were attacked by civilians. Other policeman and Hiltbold arrived. Lee and the two patrolmen were led to the police station; Hiltbold whose evidence indicates that he took a very reasonable view, saying to Golder that the best would be to go all together to the police station and have the matter out there, was grabbed by the belt by a policeman who conducted him to the station at pistol point. Ensign Banks, who had been warned that sailors were being beaten by the police, came upon the scene and was attacked by civilians. He was rescued by two civilians who hurried him to the police station. Both Hiltbold and Banks stated that they approached the group to inquire the cause of what was happening.

The Panaman Government, whose version is based upon information which is not before the Commission, ignores the attack made by the crowd upon Golder and Lee, asserts that all the claimants and also other members of the United States Navy who it is alleged were present assumed a threatening attitude, that Banks rushed in and tried to carry off Lee and minimizes the attack on Banks by saying that private persons intervened to oppose Banks' joining the others in their resistance to the police and that in the struggle the latter was struck by someone unknown.

The two Governments are in agreement as to what happened within the police station:

In the presence of the night judge, Ensign Banks explained that he was the commander of the patrol and expressed his desire to return to the *Tacoma* and asked for protection during his passage through the town, which he received. Hiltbold and Golder were released and Lee was sentenced to 30 days in jail or 15 balboas fine. He was released on the following day, upon payment of that sum.

The Commission feels that the conflict between Hernández and Golder was largely due to the following circumstances: Golder had orders to arrest and send to the *Tacoma* all seamen found in Cocoa Grove contrary to the navy regulations. In the moment of the conflict with Hernández he understood, however, that the latter wanted Lee to be brought to the police station for having struck a woman. It must be supposed that he opposed this wish, because his orders were in conformity with the view taken by the American military and naval authorities, but not shared at that time by the Panaman Government, that members of the United States forces who had committed minor offenses

under Panaman law, should, if arrested by the patrol, be turned over to the said authorities for trial. The policeman, if he was at all authorized under Panaman law to arrest Lee on the complaint made to him by the woman, was however wrong in trying to take Lee from Golder. He should have upheld the latter's authority, instead of provoking an incident between police, members of the United States forces and civilians, since the patrols were provided, at the request of the Panaman Government, for the express purpose of preventing such incidents.

Having thus, for a trivial reason, raised the conflict, the police maintained the attitude of disregarding the rights of the patrol, treating them as if they had no standing in the matter, arresting Hiltbold for no reason and allowing the crowd to interfere and to assault the commander of the patrol. There is evidence in the record (statements of the eyewitnesses Fournier and Lieutenant Hanchett) indicating that no members of the United States Navy were on the spot other than the four claimants. The policemen have clearly not given their Government a true story.

The Commission thinks that there is no evidence showing that the attack upon Golder and Lee, although due to the rash action of policeman Hernández, could have been prevented by that policeman. According to Golder they were not further attacked, and Hiltbold says he was not attacked at all. Although the action of the police towards the two patrolmen was reprehensible, the Commission does not feel that an award would be justified on that account. There was a clear failure by the police to protect Ensign Banks. He was severely beaten by the crowd and only escaped worse through the assistance of the two civilians who helped him to the police station, the crowd still beating him from behind. He is entitled to an award.

Decision

The claims presented on behalf of Hazel E. Hiltbold, Lewis Crandall Golder and Richard Joseph Lee are disallowed.

The Republic of Panama is obligated to pay to the United States of America, on behalf of Hampden Osborne Banks, the sum of $750, without interest.

Dissenting opinion of Panamanian Commissioner

While in accord with the conclusion relative to claimants Lee, Golder and Hiltbold, I do not agree with the reasoning on which it is based nor with the considerations of the majority of the Commission tending to lay upon the Panaman police the sole responsibility for what occurred, without attaching any to the sailors of the *Tacoma*. It is not presumptuous to maintain that pursuant to the evidence in this claim both shared the responsibility.

The evidence itself shows that the cooperation of the naval and military patrols with the Panaman police has been sought to the end of maintaining order among the sailors and soldiers and preventing their having trouble with the residents of the cities of Panama and Colón. But there is nothing to indicate that because of the agreement under consideration, violations of the laws of Panama by sailors, soldiers and patrols should be immune or exempt from the penal jurisdiction of the Republic. Neither is it possible to consider that the patrols are authorized to snatch from the hands of the Panaman police members of naval or military forces who have been arrested for violating penal or police provisions of the Republic of Panama.

There is evidence that the attitude of Ensign Banks when he penetrated the group formed by the police who were taking the sailor and the patrols as well

as a number of civilians to the police station was not wholly pacific; nor is it clearly established that the policemen nearby did not impart the protection which they could have given. Banks himself testifies that the attack was so unexpected and that events developed in such a way that there are ample grounds to suppose that the police did not have time to come forward and protect him.

For these reasons I am of the opinion that likewise in the case of Hampden Osborne Banks the claim should be disallowed.

The foregoing conclusions are likewise applicable to the cases of Richeson *et al.*, Registry No. 7, and Baldwin *et al.*, Registry No. 9, in which my not having made analogous observations when signing was due to the short time available to the Commission and not because I subscribe to all the reasoning on which they are based. I desire to make of record as I enter this reservation that especially in the case of Richeson, Registry No. 7, there is a superabundance of evidence furnished by American Army officers that the conduct of the soldiers during the train episode was highly reprehensible and aggressive, which doubtlessly contributed largely to the regrettable development of the incident. Nevertheless, this evidence has not even been mentioned in the opinion rendered

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WILLIAM GERALD CHASE (UNITED STATES) *v.* PANAMA

(June 29, 1933, concurring opinion of American Commissioner, undated. Pages 366-374.)

PRIVATE RIGHTS.—DISPUTE, DIPLOMATIC SOLUTION OF—AS BAR TO CLAIM. Purchase by public deeds of September 18, and October 24, 1912, by business partnership, of four-fifths of hereditary rights to certain lands. Transfer of rights to Mr. W. G. Chase by public deed of April 1, 1913, when partnership dissolved. Purchase by Mr. Chase by deed of December 4, 1914, of remaining fifth. Retention by Mr. Chase of considerable part of price of rights to be paid when he should have acquired title of ownership of lands which vendors lacked. Settlement of April 13, 1923, between Mr. Chase and Panamanian authorities negotiated by United States Minister in Panama with full powers from Mr. Chase: comparatively small portion of area lost, but clear title obtained to remainder. *Held* that attitude taken by Panamanian authorities prior to settlement does not give rise to action, and that acting by United States Minister as mediator gave settlement character of diplomatic solution and prevented later bringing of claim.

Cross-references: Annual Digest, 1933-1934, pp. 229-230; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación del Norteamericano William Gerald Chase, Registro No. 10. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, pp. 375-378, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), p. 72; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 103; Friede, "*Die Entscheidungen* . . .", Z.a.ö.R.u.V., Band V (1935), p. 466; Annual Digest, 1933-1934, pp, 230-231.

The United States of America has filed this claim in the amount of $492,622.00 on behalf of William Gerald Chase, an American citizen.

After filing of the written pleadings, the respective Agents have made their oral arguments. The Commission, therefore, proceeds to render judgment in the following terms:

The American nationality of the claimant has been duly established.

In September, 1912, William Gerald Chase in behalf of the business partnership of Field & Chase, bought from some of the heirs of Agustín Jované and Manuela Aguilar y Tábara the hereditary rights they had in respect to the lands known as Hato del Sitio de San Juan. By subsequent purchases. Chase acquired four-fifths of such rights in the above-named lands; the remaining fifth of the rights continued to be vested in Josefa Jované de Obaldía, also an heir of the above-named spouses, Jované—Aguilar. The respective contracts of purchase of hereditary rights are contained in public deeds no. 280 of September 18, 1912, and no. 320 of October 24 of the same year. Later, on April 1, 1913, by public deed no. 78 executed before the notary public of the circuit of Bocas del Toro, the Field & Chase partnership was dissolved, and by virtue of article I of the said deed, William Gerald Chase became the only and exclusive owner of the property of the partnership in the Province of Chiriquí.

The deeds no. 280 and no. 320 are of an equal tenor and differ only in regard to the persons of the vendors and the price of the rights which were the subject matter of the contract. These deeds contain, *inter alia*, the following clauses:

"*First.* That in our capacity as legitimate heirs of those who while living were known as Dr. Agustín Jované and Manuela Aguilar y Tábara de Jované, we do sell forever to Mr. William Gerald Chase who represents the commercial firm of Field and Chase, the hereditary rights that may or might belong to us in the lands known as Hato del Sitio de San Juan which lands belonged to Captain Juan Díaz de la Palma and his successors, of which mention is made in Paragraph 3 of Article 2, of Law 3 of 1909, the notorious possession of which on the part of our ancestors and later ourselves has lasted more than 80 consecutive years;

"*Second.* That we give as boundaries of the lands mentioned: north, the *cordillera* of the Andes; south, the sea; east, the Dupi River in its entire course from the *cordillera* to the sea; and west, the Jacaque River from the *cordillera* to its confluence with the Fonseca River and from said confluence to the sea. There is also included in this sale all of these rights which the sellers have or which may correspond to the shares they sell in the lands known as *La Isleta*, which lands were owned by Mr. Francisco Jované and which are still undivided property;

"*Third.* That the livestock, not only cattle but horses as well, that belong to us in the possessions sold and which may appertain to the shares which we represent, we transfer to Mr. Chase at a price of 35 pesos Panama silver per head, engaging ourselves to deliver to Mr. Chase the said animals ready for branding; the buyer paying for the animals as they are branded 0000000;

"*Fourth.* That these rights, as well as the livestock which we sell, we acquired by legitimate family inheritance;

"*Fifth.* That we effect the sale of the lands and of all our rights with *títulos* (*títulos* means either deeds or titles) and annexes for the sum of 57,619 pesos and 3 cents, Panama silver, in lawful currency or its equivalent thus: $14,404.76 silver at the moment of signing this contract; $14,404.76 silver, six months afterwards, and $28,809.51 silver, when we may be in a position to deliver to the buyer the *títulos* of ownership and domain over the lands which we sell, and these in turn are free from all pretension or rights of third parties, and with the boundaries expressly stipulated in Clause 2nd."

Clause 9 of the deed in reference reads thus:

"That we establish as *títulos* and demarcations the favorable judgment of the National Administrators of Lands whereby our rights may be fully recognized

and whereby there may be adjudicated to us in ownership the lands which we sell and the final judgment of the competent judges which may establish as recognized and legal the traditional boundaries of the Hato del Sitio de San Juan which are the same as have been specified in Clause 2nd of this deed; and we recognize in the purchaser the right to carry on the necessary proceedings to obtain them, the cost of which shall be deductible from the 28,809.51 pesos which are left unpaid until the complete surety of the sale is established."

By deed dated December 4, 1914, Luis Alberto Tovar sold to Chase his rights in the succession of his wife, Josefa Benigna Jované, for the sum of 1,666.66 balboas leaving one-half of that amount in possession of Chase, to be received when the latter should have acquired the documents or resolutions which might guarantee the ownership or domain of the above-named Hato del Sitio de San Juan.

Chase retained in his possession the following sums: 28,809.51 pesos silver, the equivalent of 14,404.78 balboas or U.S. dollars as per deed no. 280; 9,523.80 pesos silver or 4,761.90 balboas or dollars as per deed no. 320; and 833.33 balboas or dollars as per the Tovar deed, which makes a total of B. 19,999.98.

It may be perceived that what the claimant purchased were certain hereditary rights in the lands of San Juan and that he assumed the burden of obtaining the *título* of ownership which the vendors lacked, notwithstanding the possession which they declared they had. That for this purpose he received the proper authorization from the vendors and an adequate amount to meet the expenses.

The American Agency has maintained that the word *títulos* used by the vendors must be understood as the equivalent of public deeds, instruments or documents, in an attempt to reach the conclusion that Chase did actually buy a right of ownership to the lands of San Juan, and that the only thing which remained to be done was to establish such right by means of appropriate documents. The above-quoted declarations by the vendors and by Chase disprove that assertion. On the other hand, it seems obvious that if it had been merely the case of obtaining copies of existing documents or the original documents themselves, it would not have been necessary to leave as surety in the possession of Chase such a considerable amount as 20,000 balboas or 40,000 pesos silver as a guarantee of compliance with a formality which could not imply an expenditure amounting to that relatively enormous sum of money. In that case, the formality should have consisted only of obtaining copies from notarial offices or from the registry office, which places, in accordance with law, keep under their custody all the acts and contracts relative to real property.

No evidence has been submitted of the existence of any document, public deed or instrument in which any person appears as enjoying or exercising the right of ownership in the lands of San Juan prior to the deeds of 1912.

The vendors bound themselves to deliver to the purchaser the titles of ownership and domain in the lands to which the hereditary rights sold referred, and the lands had to be free from all pretension or right of third parties.

In this connection, it is pertinent to remark that Chase executed a document whereby it appears that in addition to the hereditary rights, he bound himself to continue, on his own account, a litigation which was going on between the Jované heirs and Federico Sagel, who was occupying part of the lands of San Juan.

Shortly after the purchase of the hereditary rights and having entered into possession of the lands in question, Chase was involved in a series of lawsuits and controversies which were decided by the respective authorities.

The claimant sets forth the acts or omissions of the authorities which in his opinion were arbitrary or illegal, but he fails to specify what loss or damage resulted therefrom in each case.

It has also been maintained by the American Agency that Chase's right of ownership was recognized by the Supreme Court of the Republic of Panama in a certain judgment rendered on November 17, 1915, in the case of an adjudication made by the Administrator of Lands to Abigail Franceschi. On that occasion, the Supreme Court said:

"So long as the titles of William Gerald Chase which show him as owner of the lands of San Juan with the boundaries specified in the deeds pertaining thereto, be not invalidated by means of an action brought before the judicial power by anyone who may consider himself to have better rights, the lands of which we are treating—in whole or in part—can not be ceded or adjudicated under the special provisions of law relating to such matters."

It has been stressed that this passage amounts to a recognition of a valid title in Chase, but the Commission finds that such allegation is contradicted by the self-same judgment which is invoked, inasmuch as further on the Court says:

"The Court considers that this is not a case for a pronouncement on the rights of Franceschi as a cultivator nor is it the case of determining the intrinsic value of the title of Chase. Apart from the fact that those are not questions to be decided, such pronouncements would not affect those who have not intervened as parties in the present litigation and could only affect those who have litigated."

In another judgment of the Supreme Court rendered in an action instituted by Chase himself in order to have his possession and that of his vendors recognized in court, so as to obtain a possessory title, the Court said:

"On the other hand, Mr. William Gerald Chase having titles which accredit him as owner and possessor of the lands of the Hato del Sitio de San Juan by purchase of the hereditary rights of the descendants of Señor Agustín Jované, owners of the lands and peaceful possessors thereof for more than 50 years, the action instituted is improper *(improcedente)*."

In view of the fact that in the case in which the judgment partially quoted above was rendered, Chase based his action on the fundamental statement that he lacked an ownership title and that his pleading was intended to obtain a possessory title, the Commission is of the opinion that the judgment of the Supreme Court cannot have the meaning attributed to it, and its scope was limited to the declaration that Chase had resorted to a wrong procedure.

Furthermore, it appears that in a subsequent judgment in an action for revindication (also called in the Colombian Code *an action on domain*) brought by Chase against one Federico Sagel who was occupying part of the lands of San Juan, the judgment of the Court was against Chase. The plaintiff had invoked in support of his pretensions the judgment rendered in the Franceschi case above referred to, and in this connection the Court said:

"In the judgment of the Court which is invoked as favorable to the ineterests of Chase, it was expressly said that it was not a case of 'determining the intrinsic value of the title of Chase', inasmuch as the question therein discussed was not that of domain but one very different."

The evidence presented shows beyond any reasonable doubt that the Supreme Court of Panama has never decided any action in which the question of ownership or domain of the lands of San Juan has been the subject matter of

the litigation, and therefore, it seems to the Commission that the contention that the Supreme Court of Panama has recognized Chase as owner in fee simple of the lands of San Juan is untenable.

As causes contributing to the resulting loss, the claimant alleges that through the "slander" of his titles to the San Juan property by the Government of Panama and through its constant and public refusal to recognize his rights, his attempts to sell the lands were frustrated. He also alleges that as a consequence of the continuous persecution by the Government; of its failure to give his property due protection; of the absolute disregard of his ownership rights and of the open threats of which he was the object, he was obliged under coercion to sign the settlement deed of 1923.

Among the acts which the claimant points out as arbitrary and illegal in order to reach the above-stated conclusion, is the marginal note which the Registrar General of Property directed to be put on the inscription entry of the Chase deed in the registry books, which note reads as follows:

"NOTE: The foregoing deed was inscribed with all its defects; such as the sellers not having their right inscribed and also not having titles, as appears in the same deed of sale, because article 136 of decree No. 154 of 1913 orders that 'the titles which transfer, modify, or limit the ownership of immovable property, and those titles in which are constituted, modified or extinguished any rights of mortgage or other encumbrance upon such property, originating after January 1, 1914, cannot be inscribed in the Register if previously there has not been inscribed the corresponding title of ownership of that which constitutes, modifies, transfers or extinguishes the right of which the inscription treats', wherefore those originating prior to January 1, 1914, such as the deeds, with which the reinscription is made, 280 of September 18 and 320 of October 24, 1912, which already had been registered in book 1, volume 4, of folios 48 to 55 and 101 to 108 in the Registro which then existed in the Circuit of David, were reinscribable, in spite of the fact that they contain a contract which can be considered provisional whereby the purchasers are obliged to deliver to the seller the titles which they do not have since they have not shown them."

The claimant brands the act of the Registrar as a gratuitous attack upon his registered titles, inasmuch as no question had arisen before him which made necessary any action on his part. The Commission is of the opinion that this charge is not well-founded, inasmuch as article 1790 of the Civil Code provides the following:

"Whenever the Registrar should notice an error of a kind which he himself cannot rectify he shall direct that a marginal note of warning be put on the entry and he shall make it public in the official paper, and notice thereof shall be posted in the office for the knowledge of the interested parties if they could not be personally notified.

"This marginal note does not annul the inscription; but it restricts the rights of the owner in such a way that while it is not cancelled, or, as the case may be, the necessary rectification is not made, no further transaction can be made with reference to the entry in question. If by error a subsequent transaction should be recorded, it will be null and void."

As may be seen, this article imposes on the Registrar a duty which he could not possibly evade without incurring grave responsibility and without jeopardizing the guarantees which the institution of public registry is called upon to give to members of the community.

Another act of the Government to which the claimant points as injurious to his rights, is the telegram which the Secretary of Government and Justice sent

on September 8, 1920, to the Governor of the Province of Chiriquí, wherein certain instructions were given to the Governor in connection with the dispute between Chase and some residents of the Districts of San Félix and San Lorenzo. The Commission does not find anything objectionable in said instructions. Two purposes are evident in that telegram: first, to give ample protection to American citizens precisely because the American occupation of the Province of Chiriquí had come to an end; and, second, to avoid violence on the part of any person, so as to have all rights in dispute duly decided by the competent judicial authorities.

These instructions were unmistakably aimed at the calming of the situation and the seeking of a peaceful and lawful settlement of the land controversies existing among residents of the said districts.

The claimant also mentions the adjudication of land made in favor of Federico Sagel and other persons, and the refusal of the Governor of Chiriquí to instruct the Alcalde of San Félix to refrain from giving permits to cultivators for transitory cultivations as motives for his complaint that the settlement which was finally concluded with the Government of Panama with the intervention of the Minister of the United States, was effected under coercion.

The claim is for the loss of the claimant's property.

The Commission is of the opinion that Chase's difficulties were not attributable to wrongful acts of the Panamanian authorities. His deeds of purchase show that his ownership was dubious. By the settlement of April 13, 1923, he lost a comparatively small portion of the area which he claimed, but he got a clear title to the remainder. The Commission cannot find that the settlement was in any way disadvantageous for him. It should be noted that for the payment of 18,400 balboas which he had to make to the municipalities of San Félix and San Lorenzo he was covered by the amounts which he had retained from the purchase price precisely for such an eventuality. Moreover, the fact that the Minister of the United States in Panama had acted as mediator on his behalf with full powers from him in the negotiations which led up to the settlement gave that settlement the character of a diplomatic solution and prevented the later bringing of a claim.

The charges made by the claimant that the respondent Government deprived him of his property through the foreclosure of a mortgage thereon by the Banco Nacional de Panamá are unfounded.

The claim must be disallowed.

Concurring opinion of American Commissioner

I concur in the result arrived at by the Commission.

I think that Chase owned San Juan both by prescription and by clear registered title. I think he was injured by the illegal adjudication of part of his land to others, in violation of the ruling of the Supreme Court of Panama in its decision of September 17, 1915, in the case of Wm. G. Chase *v.* Abigail Franceschi, and by the illegal granting of licences to others to cultivate and explore his land. The public authorities did not protect him from trespassers, and when he attempted to protect himself and to have his own agent arrest and remove such trespassers, his agent was prosecuted and wrongfully imprisoned (see the opinion of this Commission in the claim of Abraham Solomon, Registry No. 12). I have the greatest sympathy with Chase in his forlorn and unequal struggle to defend his property.

But whatever may have been his right to redress, I think it was cut off by the settlement agreement of April 13, 1923. While I believe that he was led to that agreement by discouragement and exhaustion, he was not physically coerced. [1] He was free to refuse the agreement and to preserve his claim for injury. He was represented in the negotiation of the agreement by the Minister of the United States. I do not think that the agreement was made under such duress as would invalidate it. Once it was made, it was loyally carried out by the Government of Panama. I think the agreement intended to effect, and did effect, a settlement of the entire controversy regarding San Juan, and that it barred the claim now before us.

MARGUERITE DE JOLY DE SABLA (UNITED STATES) *v.* PANAMA

(June 29, 1933, dissenting opinion of Panamanian Commissioner, undated. Pages 432-450.)

PRIVATE PROPERTY, EXPROPRIATION WITHOUT COMPENSATION, INADEQUATE REMEDY.—DEATH OF CLAIMANT: SUBSISTENCE OF CLAIM, RIGHT TO PRESENT CLAIM ON BEHALF OF EXECUTRIX.—INTERPRETATION OF MUNICIPAL LAW.—EVIDENCE: TITLE PAPERS, MAPS, MEMORIAL, NOTICES, PUBLIC REGISTRATION.—EXHAUSTION OF LOCAL REMEDIES. Adjudication by Panamanian authorities to private individuals, between 1910 and 1930, of 1,362 hectares of privately-owned country estate totaling 3,180 hectares, and granting of temporary cultivator's licences on 309 hectares of remaining part of it to others. Death on October 22, 1914, of owner, immediately succeeded as such by his wife, heiress, and executrix, now claimant. *Held* that United States entitled to present, on behalf of executrix, claim for damages arising out of acts occurring during lifetime of husband: claim belonged to United States and did not lapse on his death. *Held* also that, under Panamanian public land laws, authorities were required to reject all applications for adjudications and licences, even if unopposed, when, as was the case here, they knew that lands were private property instead of public lands; and that machinery of opposition provided by public land laws since 1917 did not constitute adequate remedy to claimant for protection of property (vague description of boundaries in posted and published *edictos* concerning applications for adjudications, no publication of applications for licences, unreasonably brief period for opposition, hardship to oppose each application), and that Panama, therefore, cannot avoid liability because of claimant's failure to oppose each application. Evidence that authorities had full and legally proper notice that estate was private property: title papers and map filed in 1910 before adjudications complained of, similar papers filed, together with memorial, in 1912 before licences complained of, further notices over period of years, inscription of property in public registry, size of estate, length of time during which owned by De Sablas. *Held* further that adjudications and licences were wrongful acts for which Panama interna-

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[1] [See art. 1118 of the Civil Code quoted. *post*, p. 377.—AMERICAN AGENT.]

Note of the Secretariat: The original report, p. 377, quotes the following part of article 1118 of the Civil Code:

"There is intimidation when there is inspired in one of the contracting parties a rational and well-founded fear of suffering an imminent and grave injury to his person *or property*."

tionally responsible: deprivation of alien of property without compensation. *Held* finally that by reason of Claims Convention, article V, it is unnecessary to consider question of local remedies. Damages allowed.

Cross-references: Am. J. Int. Law, vol. 28 (1934), pp. 602-614; Annual Digest, 1933-1934, pp. 241-244; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la Norteamericana Margarita Joly de Sabla, Registro No. 11. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, pp. 454-456, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 62-65; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 103; Friede, "*Entscheidung* . . .", Z.a.o.R.u.V., Band IV (1934), pp. 925-928.

This claim is presented on behalf of Mrs. T. J. de Sabla, the owner of a tract of land known as "Bernardino" in the Province of Panama. The claimant contends that, during the period from 1910 down to the present, officials of the Government of Panama, though having notice that Bernardino was the private property of the De Sablas, have treated the tract as though it were *baldío* land, and have adjudicated over half of its area to private individuals, and granted numerous temporary cultivator's licenses on Bernardino to others, with the result of rendering the entire tract worthless to its owners.

Bernardino has belonged to the De Sabla family since 1843. It was the property of Teodoro Joly de Sabla, the claimant's husband, from 1897 until his death on October 22, 1914. The claimant succeeded to all his property at his death, and has since been the owner of Bernardino. Panama contends that the claimant is not entitled to present any claim for damages arising out of acts occurring during the lifetime of her husband and prior to her own ownership of the property.

The Commission finds that, as to acts committed during the life of Mr. de Sabla, a claim arose on his behalf. This claim belonged to the United States. It did not lapse on the death of Mr. de Sabla. It was competent for the United States to provide that it should be presented on behalf of Mr. de Sabla's executrix. This has been done. The rules of this Commission are clear on this point. article 13 *(f)* provides that "A claim arising from loss or damage alleged to have been suffered by a national who is dead may be filed on behalf of an heir, executor or administrator". The claimant is both the heiress and executrix of her husband, so recognized both by Panama and by the law of her husband's domicile. The rules require no more. Nothing in the rules suggests that an heir must show that a dead claimant's claim, as such, was bequeathed to her, or that such a claim would have survived under the municipal law of Panama.

The ownership of Bernardino by the De Sablas is not contested. Its total area was 3,180 hectares. From 1910 to 1928, the land authorities adjudicated to private individuals 40 separate tracts totaling 1,718 hectares, all of which the claimant contends were on Bernardino (most but not all of this adjudicated area was within the boundaries of Bernardino; see the discussion of damages below); these adjudications conveyed to the grantees full title to the land adjudicated. From 1917 to 1930, the land authorities granted to private individuals a total of 123 temporary licenses to cultivate land on Bernardino, covering 309 hectares in all. These adjudications and grants of temporary licenses purported to be made pursuant to successive public land laws enacted in Panama in the years 1907, 1913, 1917 and 1925. These laws, though they varied in their details, all gave power to the authorities to make such grants only on government land *(baldíos)* and, in defining such lands, uniformly excepted land which had been legitimately acquired under private titles.

Panama asserts that, under the laws, the authorities were required to grant all applications filed unless opposition was made and that consequently the granting of applications on Bernardino was entirely legal on the part of the authorities, and that this system was not confiscatory by international standards because the land laws in question gave the claimant an adequate means of defending herself against these incursions on her property, by permitting her to file an opposition to any application for an adjudication or a license, and thus to prevent the granting of such applications with respect to her property, so that the claimant's loss is attributable entirely to her own fault in failing to file oppositions and thus arrest the process in each individual case.

The United States contends that, on the contrary, the law required the authorities to reject of their own accord applications for land known to be private. The United States further asserts that if Panama were right in the contention that, under the land laws, applications on known private land had to be granted by the authorities unless opposed, then those laws as applied imposed so unreasonable a burden on private landowners as to fall below international standards.

The Commission cannot agree with Panama that the law required the Public Administrator to grant all unopposed applications for adjudications. It seems clear, on the contrary, that the Administrator, if he had notice that Bernardino was private property, should have refused all applications for adjudications thereon, even if unopposed. Since the land laws by their terms contemplated the adjudication only of public lands, and since the result of granting adjudications on private property was to deprive the owner of his property without compensation, the burden of persuasion on this issue is clearly on Panama. She has failed to sustain it. The Commission finds that the legislative intent to have applications for known private lands refused by the authorities of their own accord, is established by the following facts:

(a) All the land laws, beginning in 1907, contemplated the making of a national land map, to demarcate public from private lands. The clear inference from this requirement is that, once such maps were made, adjudications of lands shown thereon to be private, were to be denied. Otherwise, if private owners had to oppose each application even after the map were made, the making of the map, an expensive task, would have been useless and superfluous. The legislative intent clearly was, not that private owners should have to protect their rights by constant oppositions, but that adjudications should be made only on lands shown to be public on the map, and that the Administrators should reject of their own accord applications for lands appearing as private property on the map. That the failure to make the map prevented this protection from being effective can certainly not be adduced by Panama in support of its contention that the *law* intended to put the entire burden on the private owner.

(b) Pursuant to the plan for a general land map, the laws beginning in 1913 directed the Land Commissions to conduct proceedings to demarcate public from private lands. The initiative in these proceedings was to be taken by the Commission under the 1913 law and all subsequent laws. As to the 1913 law, this is established by decree No. 23 of 1913, which determined the demarcation procedure thereunder. The purpose of such demarcation proceedings clearly was to inform the commission as to what land was public and adjudicable. It follows from this, as from the map project, that the intent of the legislature was that, when the commissions thus got the information as to what was public land, no private land should thereafter be adjudicated, without the necessity of oppositions by private owners. Again as in the case of the land map,

the failure of the commissions to take the steps toward demarcation required by the laws, and to summon owners to present their titles for demarcation, cannot be used to support Panama's contention that Administrators were intended by the law to have no power to deny unopposed applications.

(c) Article 6 of decree No. 23 of 1913 admonished the Administrators of Lands that law 20 of 1913 could not destroy vested rights. If the intent of this law had been to put the onus of defending private titles on the owners, through opposition proceedings, as asserted by Panama, this admonition would be pointless.

(d) Resolution No. 59 of December 4, 1916, specifically stated that "the owner of a property is not liable to find himself at any moment in the position of having to oppose petitions which persons may make for part of the land which belongs to him; that it is just and fair . . . that those same owners should be prevented from having to incur the expense and trouble arising from such oppositions". It was therefore ordered that when the Administrator knows that land applied for is the property of another, either because it is so recorded in his office or because the owner has convincingly exhibited his recorded titles, the Administrator shall file away the petition.

(e) Article 51 of law 63 of 1917 continued the provision that the laws on *baldío* lands cannot destroy rights acquired conformably with pre-existing laws.

(f) Article 185 of the Fiscal Code of 1917 specifically empowered the General Administrator of Lands to disapprove any ruling of the Provincial Administrator affecting preferential or vested rights.

The Commission holds, on the basis of the above-recited considerations, that unopposed applications did not have to be granted, and that Administrators were to refuse adjudications of known private lands, even though no oppositions were filed. The Commission holds as a fact that the Administrator through the entire period in question did have notice that Bernardino was private property, and notice of its extent (see *infra*). Thus the most important protection held out to private owners by the law was denied to claimant, and was denied through the fault of government officials, the Provincial Administrators.

Panama also contends, however, that the remedy of opposition did exist, that it was adequate, and that the claimant's losses are her own fault for not availing herself of that remedy. The Commission holds that this contention is not sustained.

In the case of adjudications, opposition procedure was approximately the same under all of the successive land laws. An individual filed an application, giving the boundaries of the land applied for and its area, asserting that it was *baldío,* and supporting his allegations with the declarations of witnesses. This application was filed with the Provincial Administrator of Public Lands, who was during most of the period in question the Governor of the Province. The Administrator then drew up an *edicto* stating the substance of the application, including the boundaries and area of the tract applied for. This *edicto* was posted in his office for 30 days, and published in a newspaper three times during that period. At the end of the 30 days, any interested person was given 15 days in which to oppose the granting of the application. It is this procedure which Panama contends that the claimant should have followed in every case.

It is by no means clear that, under a fair construction of the land laws prior to 1917, the opposition procedure was open to the claimant at all. The structure of the 1907 and 1913 acts seems to indicate that the legislative intent was that a land map of the entire Republic was to be made, and that Land Commissions were to fix the boundaries between public and private lands. Once this obvious-

ly sound procedure was followed, so that the Government knew what lands it could adjudicate and what lands it could not, applications were to be entertained for adjudications of public lands. The opposition procedure was designed, not to accomplish the primary step of preventing private lands from being adjudicated, but to settle disputes where two individuals claimed the right to be adjudicated the same piece of public land.

This inference as to the original purpose of opposition procedure, made from the general structure of the laws, finds specific confirmation in the case of law 20 of 1913. Articles 65 and 66 thereof indicate that oppositions can only be filed by persons claiming to have a preferred right to the adjudication. This is stated to be the case in the Report of the General Administrator of Lands, June 28, 1922, Memoria of Secretary of Hacienda and Treasury, 1922, p. 313. It is further confirmed by the issuance of resolution No. 59 of December 4, 1916, which found it necessary to state that Administrators should not adjudicate lands belonging to private persons, and required an ocular inspection in case of dispute, a special proceeding not granted in case of oppositions.

From 1917 on, however, claimant clearly could have opposed, and she was once permitted to do so under the 1907 law. Indeed the principal strength of the contention of Panama lies in the fact that, on the four occasions when she did oppose, in 1910, in 1920, and twice in 1923, her oppositions were successful, either because the Administrator pigeonholed the petition, or because the petitioner, on examination of the De Sabla titles, voluntarily withdrew.

The United States contends that the opposition procedure was no real protection. This contention is based on three grounds: first, that the notice provided by the law was in fact inadequate; second, that the period allowed for opposition was unreasonably short when the protection of private property was in question; and third, that to be required to oppose every petition is an unreasonable hardship, particularly in a case where applications were as multifarious as in this one.

The assertion of inadequacy of notice is that, although the *edictos* were both posted and published, the boundaries of the land applied for, as described in the applications and consequently in the *edictos*, were customarily so vague that a landowner could not tell whether the land applied for was on his property or not. Indeed the Executive, in resolution No. 59 of December 4, 1916, recognized this to be the case. And even the recorded adjudications are extremely vague as to boundaries and difficult to plot. They commonly refer to the names of adjacent owners, or to being bounded by *baldios*, rather than giving recognizable landmarks.

Panama meets this argument by saying that, if the boundaries of the registered adjudications are sufficiently clear to enable the claimant at the present time to know that they are located on Bernardino, then the boundaries given in the applications, and posted in the *edictos*, must likewise have been clear enough to constitute due notice to the claimant that it was her land that was being applied for. But the boundaries which are now registered did not appear in the applications and *edictos*. The registered boundaries are the result of a survey by the land authorities, made subsequent to the publication of the *edicto*, and the fact that the tracts can be approximately located from their registered boundaries in no way bears on the adequacy of the notice to the claimant contained in the *edictos*. Moreover, it is clearly possible for a stated boundary to be so vague that it does not constitute notice to an owner, upon a bare reading thereof, that the tract applied for is on her land, and yet to be explicit enough so that a licensed surveyor, going over the whole property carefully with that purpose, can testify that the tract is located within the owner's land. This argument of Panama would, if anything, throw doubt on the testimony of the surveyor that the tracts are on Bernardino, rather than on the assertion that the

boundaries in the *edictos* were vague. An examination of the recorded boundaries of the adjudicated tracts sustains the claimant's contention in this regard.

In view of the fact that the result of an adjudication on private land might be the uncompensated loss of private property, the period allowed for opposition by the laws, 15 days after a 30-day posting of the *edicto*, also seems unreasonably brief.

There is great force in the contention of the claimant as to the hardship imposed on her by forcing her to resort to opposition on each application. The facts of the case show that one opposition, even when successful, accomplished no more than to kill the particular application opposed, and did not even prevent subsequent grants to the identical persons who had previously been successfully opposed. Beside the many adjudications actually made, a number of other applications were filed which never went to completion. To protect herself by oppositions the claimant would have had to keep a constant watch over the publication of *edictos* and file an opposition to every application which might, by its terms, possibly envisage the adjudication of part of her lands.

The Commission therefore finds that the machinery of opposition, as actually administered, did not constitute an adequate remedy to the claimant for the protection of her property. The contrary contention of Panama is weakened by the fact that, throughout the period in question, high officials of the Government in charge of administering the land laws repeatedly commented publicly on the deficiencies in those laws as administered, with specific reference to the frequency with which private lands were treated as public, in the manner here complained of.

The analogous issues as to temporary licenses may be briefly disposed of. As to the availability of other remedies than opposition, and the legal compulsion on the Alcaldes to grant unopposed applications, the considerations discussed with reference to adjudications are applicable. The laws all contemplated the grant of such licenses only on national property, and there is nothing in them to show that the Alcaldes did not have discretion to deny applications for licenses to cultivate lands known to be private. That the Alcalde of Arraijan did have such knowledge as to Bernardino is established by the evidence (see *infra*).

As to the adequacy of the remedy of opposition to the licenses, the claimant's case is even stronger than with respect to adjudications. No publication of applications for licenses was required by law. As a result, the first knowledge that licenses had been granted came from actual discovery of the licensees on the land. The fact that oppositions were allowed until the land was sown does not relieve the hardship which this system imposed on private owners having large estates. Small tracts can be sown in a very short time. The cumbersomeness of a system which required the claimant to oppose 123 applications for cultivator's licenses, after discovering the licensees on her land prior to planting, and gave her no general remedy, is obvious.

The Commission therefore finds that the authorities should have afforded the owners of Bernardino protection, by denying applications for grants and licenses thereon, and that Panama cannot avoid liability because of the claimant's failure to oppose each application.

We have stated above that the authorities had notice of the location of Bernardino and of the fact that it was the private property of the De Sablas. Let us consider the evidence on which this conclusion rests. In 1910, before the granting of any of the adjudications complained of, title papers and a map were filed with the Provincial Administrator in connection with a successful opposition to an application for an adjudication of Bernardino lands. In 1912, before the issuance of any of the licenses complained of, similar papers were filed,

together with a memorial, with the Alcalde of Arraijan. Further notices were given over a period of years both to the Administrator and the Alcalde, and similar notice was forcibly given to higher authorities as well. From 1916 on, there was added the constructive notice arising from the inscription of the property in the public registry. Coupled with these facts, the size of Bernardino, located within the respective jurisdictions of the Administrator and of the Alcalde of Arraijan, and the length of time during which it had been owned by the De Sablas, render it most probable that those officials had actual personal knowledge of the facts relating to the property. Indeed the claimant's son states that the status and extent of Bernardino were generally known to the officials whom he consulted.

Without denying these facts, and without denying the claimant's title, Panama does, however, contend, as a matter of law, that the boundaries and area were never brought to the attention of the authorities in the proper manner. This raises an important subsidiary issue, which rests on three arguments—first, that in the course of the chain of title from its earliest known beginning in 1822, successive owners, while only purporting to pass on the estate they had received, in fact altered the boundaries so as to increase the estate, and that such an alteration was of no legal effect unless accomplished by means of statutory delimitation proceedings to which the state was a party; second, that the land law of 1913 specified a means whereby private owners could give the authorities notice of their boundaries, by presenting their titles and having their land demarcated from the public domain, that this law required the owners to take the initiative in these proceedings, and that the claimant never did so; third, that the claimant herself misled the authorities by a registration of the area of her property as 300 hectares in 1916. These contentions will be discussed *seriatim*.

1. *Alteration of boundaries*. This contention is based on a detailed comparison of the boundaries of Bernardino as stated in the successive deeds and registrations from 1822 to date. The first thing to be noted is that the only possible variation in the boundaries of Bernardino, since the earliest deed, is on the north. The tract is bounded on the west by the Bernardino River, and on the east by the Polonia until it flows into the Aguacate and then by the Aguacate until it flows into the Bernardino on the south. The tract is thus bounded on three sides by well-defined landmarks, and has been so bounded from the start. Panama contends, however, as to the northern boundary, that it was first unjustifiably extended to include the headwaters of the rivers, and then further unjustifiably extended so as to give the *cordillera* as the northern boundary.

But the first deed merely says that the lands extend from the Bernardino to the Polonia, and gives no northern boundary. Taken by itself, this description seems logically to include all the land between the two rivers taken in their entirety, and thus the later mention of the headwaters of these rivers was a clearer specification of the old boundaries, and not an extension.

This description, still without specified northern boundary, was substantially repeated in deeds in 1843, 1853, and 1863. In 1869 for the first time a northern boundary is mentioned, as follows:

". . . and on the North, the *cordillera* from the headwaters of the Bernardino and Cope Rivers to the headwaters of Polonia Brook, with all waters flowing South".

In the absence of any evidence that this statement of boundary was erroneous, and in fact extended Bernardino beyond its previous location, the Commission cannot find that such a description of the property, made and regis-

tered in 1869, and standing on the registry for the full prescriptive period prior to 1882, constituted a usurpation of public domain which, after over 40 years, required delimitation proceedings in order to validate the stated boundaries.

Such being the case, the Commission attaches no importance to the slight variations in the successive statements of the boundaries of Bernardino in the public registry established by law 13 of 1913. The first registration, in 1916, though mentioning the 1869 deed, gave as the northern boundary simply *baldíos*. But on February 9, 1920, the Registrar, having examined a copy of the 1869 deed, put on the record a notation that the northern boundary was that quoted above from the 1869 deed. This was confirmed by the record of a formal ocular inspection and judicial decree in 1920 referred to at length below.

Thus Panama's allegation that the boundaries were altered is not sustained by the facts, and the Commission holds that the registration of the boundaries expressed in the 1869 deed was proper.

2. *Demarcation under law 20 of 1913.* This contention has been previously discussed. The 1913 public land law contemplated that the Land Commissions should make a land map, and conduct proceedings to demarcate private property from the public domain. The language of art. 6, which says that owners shall present to the commission their primitive titles "within a reasonable period which it (the Commission) may fix" is ambiguous, taken by itself, as to whether the initiative was to be taken by the commission or the owners. But decree No. 23 of 1913, establishing the procedure to be followed by the Commissions, makes it clear that the plan was for the owners to appear only when summoned by the Commission—a procedure perpetuated in law 63 of 1917.

It cannot therefore be said that the law required the claimant to present her titles to the Land Commissions, and that her failure to do so excuses the adjudications of her property. The law imposed a duty on the Commission, which it never fulfilled, both to make a land map, and to demarcate private from public lands, and it is the failure to perform this duty, over a long period, to which the claimant's troubles are principally attributable.

3. *Alteration in registered area.* When Bernardino was registered in T. J. de Sabla's name in the public registry on September 21, 1916, the boundaries were given, but the area was not. Two days later it was registered in the claimant's name. This inscription largely referred back to that in T. J. de Sabla's name, but gave the area as 300 hectares. There is nothing in the inscription to indicate the source of this figure, though Panama asserts that it must have come from the claimant's own statement in the succession proceedings to her husband's estate. The claimant's son asserts that the figure was a typographical error, and that he first discovered it when he procured a certificate of ownership in 1920, to be attached to a memorial addressed to the Governor. In 1920, after the discovery of the error, ocular inspection proceedings were conducted before the Third Circuit Court, the area was determined to be 3,180 hectares, and the decree of the Court to that effect was recorded in the public registry.

Panama contends first, that during the period of registration at 300 hectares, the authorities are to be excused for making adjudications and grants on Bernardino, because the registry only showed an area of 300 hectares, and the authorities could not know where these 300 were located. The Commission considers this position untenable. The registry stated the boundaries of Bernardino, the property within those boundaries was duly registered in the claimant's name, and no reason is perceived why the number of hectares registered as its area should in any way have induced the authorities to grant petitions for lands falling within the registered boundaries. If we assume that the authori-

ties were guided by the registry, then they should not have made grants within the registered boundaries. If they paid no attention to the registry, as seems more likely, then they were not deceived by the error in area.

Panama's next contention is that the ocular inspection, while stated to be a proceeding merely to rectify an erroneous area, actually was for the purpose of altering the boundaries of the tract. This argument has already been discussed in substance. The Commission finds that the ocular inspection was for the purpose stated, and did not involve an alteration of the true boundaries of Bernardino, as registered.

Such being the case, no defect in substance is perceived in the proceedings. A petition was presented to the judge, stating that the purpose of the proceedings was to establish the area of Bernardino, and notice thereof was, as required by law, served on the Fiscal, representing the Government, and on the adjoining landowners, Arias and Icaza. Experts were appointed, one by the claimant and one by the court. They traveled over all the boundaries of the property, and then declared the area to be 3,180 hectares on the basis of their inspection and of the maps before them.

Panama asserts that it was an error for the experts not to use an official map of Panama, instead of the "maps of the Canal engineers" which they stated they used. But the law does not state what maps shall be used, and the fact that the judge approved the survey containing this statement by the experts, and declared the area accordingly, seems conclusive as to its regularity, in the absence of any evidence to the contrary. There is no evidence to show either the impropriety of the proceedings, or that the area thus determined was erroneous.

Panama has failed to establish that the claimant omitted any steps required of her by law in order to establish the boundaries of Bernardino and bring them to the attention of the authorities. The record shows that the authorities had full and legally proper notice of the claimant's rights.

The Commission concludes that the adjudications and licenses granted by the authorities on Bernardino constituted wrongful acts for which the Government of Panama is responsible internationally. It is axiomatic that acts of a government in depriving an alien of his property without compensation impose international responsibility. Panama has attempted to justify the result reached by asserting that the claimant failed to comply with the duties and take advantage of the remedies created by Panaman law. This justification the Commission, for the reasons stated, finds to be unsustained. In so finding, no imputation of bad faith or discrimination is made against the Government of Panama or its land authorities. As the public statements of its high officials show, it was endeavoring throughout this period to bring order out of a chaotic system of public land administration. In such a period of development and readjustment, it is perhaps inevitable that unfortunate situations like the present one should arise. It is no extreme measure to hold, as this Commission does, that if the process of working out the system results in the loss of the private property of aliens, such loss should be compensated.

By reason of art. V of the convention, it is unnecessary to consider the question of what legal remedies were open to the claimant under the laws of Panama, after the wrongful grants had been made by the Government, to obtain redress for the past wrongs, either against the Government or against the grantees.

It remains only to determine the question of the damages caused to the claimant by the adjudications and licenses.

The question of damages is complicated by the fact that the claimant still retains a registered title to the whole of Bernardino, so far as the record of that property gives any indication. In spite of this fact, since conflicting registered

titles to the adjudicated portions of the property exist in the names of the grantees of these portions, or, in many cases, in the names of their transferees, the Commission must consider that the Bernardino land which has been adjudicated is permanently lost to the claimant. As to this portion, the Commission holds that the proper measure of damages arising from adjudications is to determine the total number of hectares on Bernardino which have been adjudicated, and the value of Bernardino lands per hectare, from the evidence before the Commission, and to award to the claimant the full value of the number of hectares of her property which have been adjudicated.

Accurate determination of the number of hectares on Bernardino which have been adjudicated is difficult. The United States has presented evidence of 40 adjudications totaling 1,718 hectares, all of which it alleges to be on Bernardino. This allegation is supported by a statement by Francisco Moreira, a licensed surveyor of Panama, and by an affidavit by Orlando del Vasto. Both of these witnesses were familiar with the property and both assert actual knowledge of the locations of the adjudicated tracts. Neither one alleges, however, that *all* the adjudications in question are in their entirety on Bernardino. Panama in her pleadings entered a general denial of the United States allegations, but made no specific contentions as to which tracts it claimed to be off Bernardino.

On this state of the record, the Commission, having examined the recorded boundaries of the adjudicated tracts, and entertaining doubts as to whether all of them were on Bernardino, called upon counsel for further explanation. On the basis of that explanation, and giving due weight to the statements of Moreira and del Vasto above mentioned, the Commission finds that 36 of the 40 adjudications in question were on Bernardino, in whole or in part, and that the total area on Bernardino which has been adjudicated is 1,362 hectares.

We turn now from the adjudications to the matter of cultivator's licenses. The evidence indicates that the bulk of the licenses were on the central and southern part of the property, while most of the adjudications were in the northern part. Presumably, the transitory licenses were granted on unadjudicated land. There were granted in all 123 licenses which were certified to be on Bernardino. The aggregate area of these was 309 hectares. The licenses were all temporary, usually for two years, but there is evidence that the licensees often did not leave at the end of the term and did not observe the proper limitations as to area. There is also evidence that these numerous licenses encouraged trespassers to come on the property. There is evidence also that the licensees destroyed the timber and denuded the soil by improper cultivation.

The claimant asserts a constructive total loss of the property because the breaking up of the continuity of the estate by adjudications, coupled with the damage done to forests and soil by the licensees, have rendered impracticable any development of the land.

Much of the evidence as to the value of the land is unsatisfactory. Most of it relates to the value of the timber which was originally on Bernardino. One witness for the claimant valued the land at $250 per hectare, assuming Bernardino to be in its original condition. Another valued it, apparently as of 1922, at $100 per hectare for agricultural purposes. In 1912, Mr. de Sabla refused successive cash offers of $75,000 and $135,000 for the entire tract. It should be noted, however, that the offerer overestimated the area of Bernardino, giving it as 10,000 acres whereas the correct area appears to have been 7,950 acres or 3,180 hectares. The offerer's agent, William McCoy, who subsequently became comptroller of the American Brakeshoe and Foundry Company, states that he examined and re-examined the property, assisted by expert timber cruisers, and that he considered the property to be worth $100 per

hectare. Some light is thrown on value by the fact that the Canal Zone authorities made a practice of leasing land in the Canal Zone at the rate of $5.00 per hectare per year. Carlos Icaza Arosemena, a witness in behalf of Panama and a neighbor of Bernardino, placed the value of 40,000 balboas on Bernardino, apparently in the condition in which it was in 1933. He did not know the extent of the property and disclaimed any knowledge of the value of the forests and even ability to distinguish between different kinds of trees. Ramón Arias F., another witness in behalf of Panama and a neighbor of Bernardino, testified that the lands in Bernardino "may be worth 15 balboas per hectare". He was not acquainted with the lands in their entirety but with that portion of them which adjoined the national highway. He did not know the area.

The higher of the two actual offers made for Bernardino in 1912 was at the rate of $13.50 an acre for the acreage assumed in that offer, and although the would-be purchaser estimated the acreage at too high a figure, this should not affect the value which he ascribed to the property per acre. Taking everything into consideration, the Commission is of the opinion that this offer gives as close an approximation to the true value per acre of Bernardino in its original state as can be reached. On this assumption, converting acres into hectares, we would get a value of $33.75 per hectare.

The Commission concludes that the claimant is entitled to receive $33.75 for each of the 1,362 hectares within Bernardino which have been adjudicated to others and that the balance of Bernardino, amounting to 1,818 hectares, has been deprived of half its value by cultivators licenses and the resulting deforestation and denudation of soil and also by the destruction of continuity resulting from both the adjudications and the cultivators licenses. The result of the computation based on these assumptions fixes the loss of the claimant due to illegal adjudications and licenses at $76,646.25.

The Commission decides that the Republic of Panama is obligated to pay to the United States of America on behalf of Marguerite de Joly de Sabla the sum of $76,646.25 without interest.

Dissenting opinion of Panamanian Commissioner

It is with profound regret I find it impossible to accept the foregoing decision, as I am not in accord with either the grounds upon which it is based nor with the estimate of damages which the Commission considers the claimant has sustained. Lack of time does not permit me to make a detailed analysis of all the arguments given for showing that Panama has incurred international liability for the acts or omissions of Panaman authorities in connection with Mrs. Joly de Sabla's land.

The land laws of Panama, in their aggregate, afford all the guaranties and protection required by landowners; and as recognized by the majority of the Commission the Government of Panama has put forth a continued effort to correct such defects as are inevitable in all legislation, especially in a new country like Panama and one with very limited wealth.

The majority of the Commission places great stress upon the lack of a general map of the real estate of the Republic, the preparation of which was ordered by a number of the National Assembly's enactments. It is to be observed that while such acts of the Assembly had an evidently praiseworthy object, the Assembly itself, doubtless taking into account the scarcity of funds, omitted to include the necessary appropriation in the budget of expenditures for preparing the map, which involves much work and which could not be done in a short time. It is not bold to make the assertion that few countries of the world have such a map and those which they do have in one form or another

are the outgrowth of work covering many years. This being the case, it is not conceived how, under international law, the lack of such a map can be the basis of liability.

The majority of the Commission accepts as valid the allegation of the claimant that because on some occasion or other she furnished the Administrator of Land of the Province of Panama and the Alcalde of Arraijan maps and titles to her property, those officials were obligated to refuse flatly any petitions which they might receive for adjudications or permits which might embrace the claimant's land. In connection therewith, several times citation is made of resolution No. 59 issued by the Secretariat of Hacienda and the Treasury on December 4, 1916. It is proper to observe that this resolution was drawn to cover a special case in which the petitioner gave definite evidence of his right of domain and of the bounds of his property. So that in all events the principle established by that resolution would be applicable only in cases of proprietors in a like situation.

The claimant has not accompanied her claim with any definite evidence of the northern boundary of her property and she attempts with a military map inadequate for determining this point to have this Tribunal decide so momentous a question. So it is inevitable to conclude that the claimant presented also to the authorities of Panama equally deficient records or evidence, and the conclusion is not overdrawn that her not filing with this claim the maps she says she furnished to the authorities aforesaid was because those maps would not have served to support her statements.

It is evident, therefore, that the authorities of Panama did not have proper grounds upon which to proceed as desired by the claimant.

In view of the foregoing the logical assumption is that the authorities of Panama did not overlook any legitimate right to which Mrs. de Sabla was entitled and hence that their acts have not been violatory of international law.

The contention advanced by the claimant that it was a heavy burden upon her to be continually watching the publication of edicts and opposing any petition which might involve an encroachment upon her land is wholly ungrounded and can be held only as a more or less able recourse taken by the claimant's attorney to impress the Commission. Unfortunately it seems that the attorney accomplished his purpose as regards my honorable colleagues who, in this case, make up the majority of the Tribunal, probably because they are unfamiliar with both the formalities surrounding such adjudications and with the terrain to which they refer. To show the palpable lack of any ground for this argument, the undersigned will enumerate the adjudications shown in the record and the dates thereof. During the years 1909, 1910 and 1911, there were only five adjudications. There were none in 1912, 1913 and 1914, and one each year in 1915 and 1916. In 1917 there were twelve, three or four adjudications from 1918 to 1922 inclusive, one a year, and one each year in 1923 and 1924. This enumeration shows that the burden of bringing opposition was not so grievous as the claimant would attempt to make [it] appear and that if during the years prior to 1917 the claimant had exercised reasonable vigilance over her property, certainly the petitions during the years following would not have amounted to the number they did and that the adjudications giving rise to this claim would not have been made.

Regarding permits for transitory cultivation, the same observation may be made. The 123 permits to which the claimant refers did not all cover the same period or occur during the same year. With a little effort and reasonable vigilance, Mrs. Joly de Sabla would have been able to prevent those permits becoming effective, if they had been for the cultivation of crops on her property. It is proper to observe here that in the certificate of the Alcalde de Arraijan

referring to these permits, they are mentioned as being at Bernardino, without signifying that this means that the permits referred to the property of that name, as there is an adjacent *corregimiento* of the same name. There is nothing in the record to clear up this point.

The evidence submitted to establish the area of the adjudications and the amount of the damage is, as the majority of the Commission recognizes, very deficient. The undersigned considers that with this evidence it is not possible to sentence Panama to pay an indemnity and that hence the claim should be disallowed.

The majority of the Commission considers that the absence of certain evidence of Panama is unfavorable to it, that some value should be accorded the evidence of the claimant, and a decision given in the form rendered. The undersigned is not in agreement with this reasoning, as he considers any award in such circumstances as very hazardous.

Such argument runs counter to the general principle of law that the burden of proof lies on the plaintiff and that the defendant is not under obligation to prove negative facts. With such a finding, in the instant case a claim is held to be established, not because the claimant has presented proof of the assertions made, but because the respondent Government has presented no evidence. The *ex-parte* testimony of Orlando del Vasto and the certificate of Moreira on which the Commission had relied to hold that certain adjudications lay within the property of the claimant and to fix the number of hectares they embrace has a very relative probatory value. There is no other evidence in the record and on the contrary there is grave doubt as to its accuracy, inasmuch as it has not been corroborated by the map produced by the claimant.

After this case was closed, the Commission entertained serious doubts in this regard and decided to ask the Agents for such explanations as they could give relative thereto. These explanations were not, in my opinion, productive of any practical results. The outside attorney of the claimant after continued effort for an entire day ended by relying on the testimony of Del Vasto and Moreira.

For these reasons I am of the opinion that this claim should be disallowed.

ABRAHAM SOLOMON (UNITED STATES) *v.* PANAMA

(June 29, 1933, dissenting opinion of Panamanian Commissioner, undated. Pages 476-481.)

PROTECTION OF ALIENS: CONVICTION, SENTENCE. Arrest on May 16, 1920, by claimant, employed on large estate, of known poacher subsequently turned over by him to United States soldier and native who, pending poacher's transfer and surrender to police, locked him up at ranch house from where he escaped on May 18, 1920. Claimant convicted of unlawful detention (article 488, Penal Code) and sentenced to 18 months in prison by Judge of Second Circuit. Confirmation by Supreme Court. Release of claimant after one year for good behaviour. *Held* that claimant unlawfully convicted and sentenced: if he was at all accountable for detention, which is very doubtful, then Courts should have applied different article (article 491, Penal Code) which merely provides a fine, because of claimant's intention to surrender poacher to police. Damages allowed.

Cross-references: Annual Digest, 1933-1934, pp. 244-246; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación del Norteamericano Abraham Solomon, Registro No. 12. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, pp. 488-490, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), p. 66; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law. vol. 29 (1935), p. 102; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), pp. 465-466.

This is a claim on behalf of Abraham Solomon for $30,000 with interest. Solomon was employed by Wm. G. Chase, in the years 1919 and 1920, to live on the Hacienda San Juan, a large estate in Chiriquí Province, and keep order on the property. On May 16, 1920, Solomon arrested Benito Villamonte, a known poacher, whom he found trespassing on the property. Solomon turned his prisoner over to an American soldier and a native, who took him to the San Juan ranch house, 5 hours' journey distant. Solomon remained behind. At the ranch house, Villamonte was locked up, pending his transfer to David to be surrendered to the police. He remained locked up during all of May 17. On this day Solomon also came to the ranch house expecting to accompany Villamonte to David. On the morning of May 18 Villamonte escaped and was not recaptured.

As a result of these occurrences, criminal proceedings were instituted against Solomon before the Judge of the Second Circuit, in Chiriquí. Solomon was convicted and sentenced to 18 months in prison. Both conviction and sentence were affirmed on appeal by the Supreme Court of Panama. Solomon served a year of his term but was relased for the remainder thereof because of good behavior. It is this conviction and sentence which give rise to the claim here presented.

Solomon's arrest of Villamonte, who had been warned to keep off San Juan, seems to have been legal under art. 1575 of the Administrative Code, which allowed the apprehension, by an owner, manager or employee, of a trespasser caught on unfenced property "in which the prohibition to trespass is evident". Indeed Panama conceded this in paragraph IX of her answer, although it was contested on the argument.

But it has been asserted that the detention of Villamonte in the ranch house as opposed to his arrest constituted a crime. Both the opinions of the courts in Panama and the answer of Panama before the Commission indicate that this was the ground on which the conviction was based. The Commission finds that the detention was a not unreasonable incident of the arrest. Villamonte was arrested about 2 o'clock in the afternoon of May 16, arrived at the ranch house at eight in the evening, was held during the 17th, and escaped at breakfast time on the 18th. It was intended to take Villamonte to David, a 12-hour ride. The evidence shows that a day was needed to catch and grainfeed the horses for this journey. Nor was the project of transferring the prisoner to David in itself unreasonable. The evidence shows that the local captain of police followed the same course when he arrested trespassers on San Juan. It is moreover very doubtful if Solomon can be held accountable for the incarceration at the ranch house. This seems to have been ordered by Johnson, the manager of the ranch, and carried into effect by a soldier who was not subject to Solomon's control.

The Commission is therefore of the opinion that there was no criminal act for which Solomon could be held responsible. But assuming for argument that Solomon committed an illegal act, either in arresting Villamonte or in imprison-

ing him, the Commission is nevertheless of the opinion that there was no justification for convicting Solomon for the particular offense of which he was found guilty. The courts held that he had violated art. 488 of the Penal Code, which provides as follows:

"A person who locks up or detains another, depriving him of his liberty, shall be punished with from two to three years *reclusion.*

"The same penalty shall be incurred by him who furnishes the place for the execution of the crime.

"The penalties of this article shall be changed to *presidio,* if injuries have been caused to the detained person, when the crime does not involve a higher penalty."

But art. 491 of the Penal Code provides as follows:

"He who, outside of the cases permitted by the law, shall apprehend a person to turn him over to the authorities, shall be punished by a fine of fifty to one hundred balboas."

The Commission is of the opinion that it was clear from the record before the courts that if Solomon was guilty of any crime, with reference either to the arrest of Villamonte or to his incarceration, he was guilty of a violation of art. 491 only, and not of art. 488. There was no evidence in the record to sustain a finding that Solomon did not intend to turn Villamonte over to the police. There was in the record ample evidence that from the first such was the intention. Solomon, Greenleaf, and Johnson testify to this effect and Villamonte himself swears that he was told that he was to be taken to Horconcitos for punishment.

Solomon's earlier history shows his inclination to co-operate with the authorities. For over a year, from July, 1918, until his employment by Chase in October, 1919, he had been a member of a detachment of American troops stationed in Chiriquí and had repeatedly assisted the police in making arrests. This background was familiar to all who participated in the trial, and was specifically testified to by the David police captain and by Chase. Such a situation emphasizes the unreasonableness of assuming that Solomon arrested Villamonte for any purpose other than to surrender him to the authorities. Incidentally, it should be noted that both the Attorney General of the Republic and the dissenting Justice of the Supreme Court urged that Solomon's sole offense was a violation of art. 491.

The Commission finds that the conviction and imprisonment of the claimant herein constituted a palpable injustice.

The evidence, and particularly that submitted by Panama with its reply brief, establishes beyond question that there was a high state of public sentiment in Panama which had a direct bearing on the prosecution of Solomon. Solomon had been for over a year, just prior to his employment by Chase, one of the best known and most active members of the detachment of American troops under Major Pace which originally went to Chiriquí to supervise the 1918 elections, and remained thereafter to protect Americans residing in that province and to assist the local police in arresting offenders against Americans.

There has been much discussion between the parties hereto as to the functions of this detachment of soldiers. Their functions bear only indirectly on this case, since Solomon was no longer a soldier when he arrested Villamonte. But what does bear on the case is that Panama not only concedes, but vehemently asserts in its pleadings herein, that the presence of these soldiers was extremely distasteful both to the public and to the authorities in Panama. Constant diplomatic efforts were made to have them withdrawn from the

province, and the correspondence and other evidence adduced by Panama shows that popular feeling was intense and that it was shared by the authorities.

Not only Solomon's association with the soldiers but also his employment by Chase was a ground for local enmity. Chase, we know from his claim (Registry No. 10), had been in constant conflict with the authorities since 1912 over the title to San Juan, and was locally unpopular. It is significant that Panama asserts in its reply brief that the real purpose of Pace's detachment in remaining in Chiriquí after the 1918 elections were over, was to protect Chase in his alleged wrongful possession of San Juan. Whether this contention is accurate or not, it must be taken to represent public opinion in Panama, and it accentuates the unpopularity of Solomon's position.

Examples of this hostile state of feeling abound in the record of the trial in Panama. The governor, when asked about the functions of the soldiers, said that as far as he knew they were merely on a pleasure trip, which was obviously not the case.

The fact that four separate investigations were instituted against Solomon, the fact that the charge was changed to illegal imprisonment after an earlier charge of wounding had been dropped for lack of evidence, and that the case was revived after being moribund for months, the unexplained change of trial judges during the final proceedings, the fact that the Fiscal in his address to the lower court denounced the soldiers, emphasized Solomon's connection with them, and quite improperly went out of his way to excite hostility to Solomon by reciting a story about him which had no relation to any evidence in the record, all taken together lend credence to the theory that the proceeding was sustained, not by the ordinary motive of punishing an offense, but by strong local sentiment.

The Commission cannot avoid the conclusion, arising largely out of Panama's own evidence and contentions, that the claimant's conviction was unconsciously influenced by strong popular feeling. So to hold is not to cast any personal aspersions on the judges involved. The unavoidable susceptibility of local judges to local sentiment is a matter of common knowledge. One of the primary purposes of international arbitration is to avoid just such susceptibility, and to remedy its consequences.

The Commission decides that the Republic of Panama is obligated to pay to the United States of America on behalf of Abraham Solomon, the sum of $ 5,000, without interest.

Dissenting opinion of Panamanian Commissioner

The undersigned regrets that he must dissent completely from the decision of the majority of the Commission, since he considers its bases in fact and in law erroneous.

Abraham Solomon, ex-soldier in the American Army, was an employee in the service of W. G. Chase on a farm that the latter had in the San Juan lands, to which Chase had no legal title of domain, for which reason the latter kept up constant disputes with residents or denizens who had settled in that region. On May 16, 1920, Solomon arrested a countryman named Benito Villamonte, on the pretext that he was hunting on the San Juan lands without permission. That was the pretext invoked by Solomon himself in a statement that he made to a newspaper of David called *Ecos del Valle*, and in the first testimony that he gave before the judge. After arresting him, Solomon took him to a house in Galique, where he kept him in his power for some time and then turned him over to an American soldier and a countryman, to be taken to San Juan farm. There Villamonte was kept imprisoned during the whole

night of the 16th, all day and night of the 17th and during the early hours of the 18th, on the morning of which day Villamonte succeeded in escaping from his prison. When Villamonte escaped, Solomon and a soldier started out in pursuit of the fugitive and when Solomon found him in a thicket, he called to him to halt, discharging his firearm. Villamonte later appeared before the authorities with a slight wound on the head, but although the fact of the shots was confessed by Solomon himself, it was not proved legally either that Villamonte's wound was caused by a bullet or that Solomon was to blame for the wound.

For these acts Solomon was indicted as a violator of chapter I, title XIII, book II of the Penal Code in force in 1920, which treats of illegal detention. In the third paragraph of article 488 of that chapter a major penalty is provided when wounds have been caused in making the illegal arrest. The judge consequently had to investigate the accusation made by Villamonte that Solomon had wounded him with a firearm, but as there was not sufficient proof of this he was exonerated of that charge in the decision. On the other hand, considering the fact of illegal arrest and detention fully proved, he declared Solomon guilty and sentenced him to the minimum penalty of two or three years' imprisonment provided by article 488 of the Penal Code, which was, however, reduced by one-fourth, that is, the sentence imposed was one of 18 months.

During the trial, Solomon had his defender and enjoyed the benefit of freedom on bail. Of the 18 months' imprisonment to which his sentence was reduced, he served only one year, at the end of which he was granted conditional liberty for the rest of the sentence and did not serve his sentence in the common jail, as should have done a convict on which the penalty of imprisonment *(reclusión)* had been imposed, but, on account of the mediation of the United States Government in his favor he passed it at the central police barracks, occupying the room of the chief of police and being treated with special consideration, as Solomon himself declares.

The decision on this claim is based on the opinion held by the majority of the Commission that the Panama courts which passed on the case brought against Abraham Solomon should not have sentenced him as guilty and that in case he was guilty they should not have applied article 488 of the Penal Code, but article 491. Both the decision of the court of first instance and that of the Supreme Court of Justice abound in juridical reasoning that has not been refuted, but rather re-enforced, before this Commission, and the grounds for this decision are not in conformity, in the writer's opinion, with the facts brought out in the case.

The majority commits an error in describing Villamonte, the victim of the arrest and illegal detention perpetrated by Solomon, as a "known poacher". In the proceedings is no evidence showing that Villamonte was a poacher. It has been demonstrated, moreover, that poaching, under Panamanian law, does not constitute a crime, and therefore nobody can be arrested for poaching. And the very legal basis that is cited in justification of the arrest by Solomon is article 1575 of the Administrative Code, which does not refer to poachers, but to trespassers.

Neither is there any basis in the proceedings for the statement that is made in the decision of the majority, that Villamonte had been told not to enter the San Juan lands. Those lands did not form a fenced property, nor was there on them "a plain prohibition to enter"; neither Chase nor his employees could make such a prohibition, because he was not the owner of those lands, as is proved by the documents connected with his claim (Register No. 10).

The evidence which appears to have formed the criterion for the majority is evidence *ad hoc*, consisting of affidavits signed by the very persons

responsible for the illegal acts that took place in the Province of Chiriquí under the military occupation which that Province suffered during the years 1918 to 1920. Those persons are, first, the claimant Solomon, his employer *(patrón)* Chase and an employee of Chase named Johnson. These statements are partial on account of personal interest, and their lack of merit is generally demonstrated by the numerous contradictions that there are between those affidavits, prepared *ex profeso* for the benefit of this claim, years after the occurrences, and the documents and statements of those same persons at the time when the acts took place, beginning with the arrest and illegal confinement of Villamonte and ending with the sentencing of Solomon.

The statement made in the decision, that it was intended to take Villamonte to David, and that for that reason he was kept locked up at San Juan for two days, proves that illegal arrest and detention took place. If there really was such intention, there was no justification for it, because it has been proved before this Commission, with quotations from the pertinent provisions of law, that there was no official at David who could have passed judgment as a court of first instance on Villamonte as a "trespasser". If there actually had been "trespassing", Villamonte should have been taken at once before the Alcalde of the District (who was a two or three hours' journey distant from the place of the arrest) by the same person who arrested him and not turned over to other unauthorized persons for the latter to keep him deprived of his liberty as was done, from early in the afternoon of the 16th of May until the morning of the 18th, that is, on three different days. The fact that Johnson or a soldier locked Villamonte up at San Juan, after Solomon had arrested him and had turned him over to a soldier and a peasantman who was a friend of Chase, did not relieve Solomon of responsibility, for although he had helpers in his crime, he continued to be the principal author of it. Solomon committed the offense defined and punished by article 488 of the Penal Code in force in Panama in 1920, and his sentence was therefore perfectly legal. If that sentence can be characterized, by anything, it is by its leniency, since the judge applied only the minimum penalty of two years, further reduced by one fourth.

In the proceedings there is abundant proof that the act performed by Solomon was one of the many acts of intimidation that Chase and his employees carried out under protection of the military occupation, against numerous residents of the Districts of San Félix and San Lorenzo, in his determination to have himself recognized as owner of some lands to which he held no title of domain, acts among which may be cited the burning of dwellings of country people, admitted by Chase himself in his statement before the judge in the case and by Johnson himself in his affidavit.

The conclusion reached by the majority is also erroneous that, in the sentences handed down by the courts of first and second instance in the case conducted against Solomon, a strong popular feeling produced by the military occupation of the Province of Chiriquí unconsciously exerted an influence. In the proceedings there is proof that that occupation had ceased more than a year before the case against Solomon was brought to an end in Chiriquí. That "unconscious influence" is a mere assumption and not a proved fact. Two officials documents appearing in the proceedings, known to the United States Government and never refuted by that Government, refer to the fact that Solomon killed a person named Cruz Jiménez, whom he was pursuing when he was a soldier. The officers of the American troops stationed in Chiriquí stated to officials of the Panamanian Government that the act took place in Costa Rican territory and the Panamanian Government, trusting the word of honor of American military men, refrained from carrying the matter further. If any intention to persecute Solomon had existed on the part of the Panamanian

Government, because of the popular or national feeling on account of the occupation, it would have been easy for it to do so by means of a judicial investigation of that killing. On the other hand, not only the claimant Solomon but his associates Chase and Johnson have declared in their respective affidavits that "the atmosphere of the trial was friendly" and falsely attribute Solomon's sentence to influence of the executive branch on the judge of first instance. But it is to be noted concerning this point that the claimant Government has not proved or even claimed that such influence was exerted in the court of second instance.

The decision cites as an example of "hostile feeling" against Solomon the fact that the Governor of the Province of Chiriquí, when asked what the duties of the soldiers were, said that they were on a pleasure trip. As the decision is not sufficiently explicit on the point, the undesigned Commissioner considers it pertinent to call attention to the fact that the question put to the Governor referred to the American soldiers who *were in San Juan*. The Governor said (and there is no document or statement contradicting it) that the soldiers had given him to understand that they were in San Juan on a pleasure trip.

The writer cannot see how that assertion can be considered an act of hostility.

The affirmation that the charge against Solomon was changed is not correct. Solomon was indicted on one single charge: that of violating the chapter of the Penal Code that treats of illegal detentions. The investigation relative to the alleged wound of Villamonte is included under this charge, in virtue of the provisions of paragraph 3 of article 488 of the Penal Code. Likewise it is to be observed that in mentioning "the unexplained change of judges during the final proceedings" the decision commits a double error. Firstly, there was no change of judge, from the indictment to the passing of sentence, and secondly, because conclusions cannot be based on mere suspicions. There was a change of judge on the Chiriquí Circuit before the case against Solomon was started. If this change were due to an illegal and improper cause, it was the business of the claimant Government to submit positive proof of it, which it has not done. At any rate, there are references in the proceedings to publicly known facts, proving that the change of judge had nothing to do with the case brought against Solomon.

When the decision says that there was a *palpable injustice* in the sentencing and imprisonment of Solomon, a palpable error is committed. As the Mexican-American Commission said in the Chattin case, "an accused person can not be convicted unless the Judge is convinced of his guilt and has acquired this view from legal evidence. An international tribunal can never replace the important first element, that of the Judge's being convinced of the accused's guilt; it can only in extreme cases, and then with great reserve, look into the second element, that is: the legality and sufficiency of the evidence" *(Opinions of the Commission*, p. 436*)*.

Nor can any international responsibility against Panama be deduced, even granting that the Panamanian tribunals did commit an error in condemning Solomon, for the claimant was tried under all the guaranties allowed him by the law.

There is no denial of justice when there is a probable cause or sufficient reason for arresting and trying a person as responsible for an ordinary crime. Denial of justice consists essentially in depriving a person of the means needed for him to defend himself before the courts and that by being deprived of those means of defense he is made to suffer an unjust sentence. "Bad administration of justice alone", says Borchard, "is not enough to cause a government to intervene in behalf of a citizen who claims to have been unjustly treated by the courts in another country" *(Diplomatic Protection of Citizens Abroad*, p. 197).

"Not even a decision based on an erroneous interpretation of the law will permit it. There must be fraud, corruption and denial of legal opportunity to present the case" (Borchard, work cited, p. 332; Moore, *International Arbitrations*, pp. 2134 and 3497).

The decision against the claimant not only was just, but mild. But even if it had been unjust or severe, it is evident, as Borchard says, that "the State is not responsible for the mistakes or errors of its courts" and that "there is no international obligation of the State to see that the decisions of its courts are intrinsically just". It is not possible to admit that foreigners, under pretext of denial of justice, should enjoy the special privilege of having the sentences passed on them by the local tribunals subjected to review by an international tribunal, so that the latter may decide whether the judge's view of the law was correct or not. This proposition is sound, because while local judges may make mistakes, international judges are not exempt from error.

Because of what has been set forth, I consider that this claim should be rejected.

PANAMA AND ABUNDIO CASELLI (PANAMA) *v.* UNITED STATES

(June 29, 1933, dissenting opinion of Panamanian Commissioner, undated. Pages 625-629.)

JURISDICTION, PRESENTATION OF CLAIM: CLAIM BROUGHT BY STATE ON BEHALF OF ALIEN.—INTERPRETATION OF TREATY: INFERENCE FROM SILENCE, OBVIOUS, NATURAL, ORDINARY, REASONABLE MEANING, LANGUAGE IN WHICH DRAFTED AND EXECUTED.—PRIVATE PROPERTY, EXPROPRIATION: MEANING OF EXPRESSIONS. Treaty of 1903 between United States and Panama: transfer of Canal Zone to United States. Executive Agreement of 1904: delimitation of Zone boundaries. Sale in 1909 by Mr. A. Caselli, Swiss citizen, of half interest in tract of land to Panama. Suit brought by Mr. Caselli on October 17, 1913, on the ground that price paid was less than half of true value. Decree of Supreme Court of October 16, 1914, giving Panama option of returning tract or paying balance. Exchange on February 11, 1915, of ratifications of Boundary Convention of 1914 transferring some lands, among which the tract bought from Mr. Caselli, from Panama to Canal Zone, and others from Canal Zone to Panama. *Held* that Commission competent to decide Mr. Caselli's claim: jurisdiction expressly conferred by article I, Claims Convention. *Held* also that, in the absence of any provision to this effect, neither party obligated to make payment for land transferred (no inference of such obligation from mere silence; obvious and natural interpretation of Boundary Convention: exchange of properties); and that tract bought from Mr. Caselli did not continue to be "private property" within meaning of article VI, Canal Treaty of 1903, safeguarding rights of owners of private property: Treaty, drafted and executed in English only, must be interpreted according to ordinary English usage; and that use of term "expropriated" in article I, paragraph 4, Claims Convention, does not amount to admission by United States either of taking of tract other than under Convention of 1914, or of obligation to make compensation in money: passing to United States of perpetual use, occupation and control of tract may be described as "expropriation", and compensation for it may be made by transfer of other property instead of by money payment (obvious and reasonable explanation: "expropriated" used by way of description of claim, not as admission

in regard to merits, facts, in which case parties would have specially submitted to this Commission question of compensation normally and appropriately belonging to Joint Land Commission).

Cross-references: Annual Digest, 1933-1934, pp. 438-441; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la República de Panamá en su propio nombre y en representación de Abundio Caselli, Registro No. 16. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, pp. 632-633, and "The United States Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 65-73; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), p. 457.

This is a claim for 14,969 balboas, with interest, on behalf of Abundio Caselli, or the Government of Panama, as their respective interests may appear. Caselli is a Swiss citizen, but jurisdiction to decide the claim is expressly conferred on the Commission by art. I of the convention under which it acts.

In 1903 the United States entered into a treaty with the Republic of Panama. This treaty transferred the Panama Canal Zone to the United States. The treaty did not transfer title to the Zone; it transferred the use, occupation and control of the Zone in perpetuity, together with such rights as the United States would possess if it were the sovereign thereof. In 1904 the specific boundaries of the Zone were delimited by executive agreement.

Caselli and one Pellas were the owners, *pro indiviso*, of a portion of a tract of land known as El Tivoli, in the city of Panama. For the sake of brevity this portion of the larger tract is hereinafter called simply El Tivoli. In 1909 Caselli sold to the Government of Panama his half-interest in the property, less a small part thereof which he had previously sold to one Abad.

On October 17, 1913, Caselli brought suit against the Government to set aside the sale for *lesión enorme*, the ground for the action being that the price paid by the Government was less than half the true value of the property. The suit was decided in Caselli's favor by the Supreme Court of Panama which, on October 16, 1914, entered a decree giving the Government the option of rescinding the sale and returning the property or paying the balance of the price declared by the Court to be just.

The Government has never rescinded nor returned the property. On February 11, 1915, the Government owned Caselli's former share of El Tivoli subject to no lien or encumbrance in favor of Caselli. On that date, Panama and the United States exchanged ratifications of a boundary convention.

This convention contained no express conveyance of any property by either party to the other; it simply fixed boundaries for the Canal Zone somewhat different from the boundaries fixed in the original Canal Zone treaty of 1903 and delimited in 1904. The result of the Boundary Convention of 1914 was, however, to place in the Canal Zone some lands which had previously been a part of the Republic of Panama, and to place in the Republic of Panama some lands which had been previously in the Canal Zone. Among the lands which passed to the Canal Zone was El Tivoli.

The Boundary Convention of 1914 says nothing about payment by either party for the land transferred by the change in boundaries. When the parties to a document intend to create an obligation to make substantial money payments, they usually say so. We cannot infer an obligation to make payments from mere silence. The obvious and natural interpretation of the convention of 1914 is that it effected an exchange of properties and that each party was compensated by the properties received from the other. This conclusion is reinforced by the fact that the United States has not claimed compensation for the land which the convention of 1914 excluded from the Canal Zone and

returned to Panama, although part of this land had been purchased by the United States from the old French Canal Company, a private person, just as El Tivoli was purchased from Caselli.

But the Boundary Convention of 1914 refers back to the original Canal treaty of 1903, and provides that the rights acquired under the Canal treaty shall not be impaired. Article VI of the Canal treaty contains a provision safeguarding the rights of the owners of private property. This article provides:

"The grants herein contained shall in no manner invalidate the titles or rights of private land holders or owners of private property in the said Zone or in any of the lands or waters granted to the United States by the provisions of any article in this treaty . . ."

The article then goes on to provide for compensation in case private property is taken or damaged. Panama argues that El Tivoli, because it had been purchased from private persons and had not become property of public use, was "private property" when the Boundary Convention of 1914 took effect; that the convention of 1914 transferred to the United States not title but the use, occupation and control of the property in perpetuity; that in spite of the passage of the use, occupation and control, El Tivoli continued to be private property entitled to the protection of article VI of the 1903 treaty; and that when the United States entered upon and used the property it became obligated to make payment to Panama. The Commission does not agree with this reasoning. In the first place, the treaty of 1903 was drafted and executed in English only. Its words must be interpreted according to ordinary English usage. By that usage, private property is property belonging to private persons as contra-distinguished from property belonging to the state. The private nature of property by that usage does not depend upon the nature of the property but upon the nature of the owner. By that usage El Tivoli was public and not private property. It did not fall under article VI. In the second place, there is no evidence in the record that the United States ever entered upon El Tivoli or made any use of it, and, in the third place, had there been evidence of such an entry by the United States, it would not have indicated an assertion of any right in excess of the right of use, occupation and control transferred by the operation of the Boundary Convention of 1914.

At the hearing, reference was made to the terms of the paragraph in article I of the Claims Convention which submits this claim to the Commission. That paragraph reads as follows:

"As a specific exception to the limitation of the claims to be submitted to the Commission against the United States of America it is agreed that there shall be submitted to the Commission the claims of Abbondio *[Abundio]* Caselli, a Swiss citizen, or the Government of Panama and José C. Monteverde, an Italian subject, or the Government of Panama, as their respective interests in such claims may appear, these claims having arisen from land purchased by the Government of Panama from the said Caselli and Monteverde and afterwards expropriated by the Government of the United States, and having formed in each case the subject matter of a decision by the Supreme Court of Panama."

It was suggested that the use of the word "expropriated" in this paragraph amounts to an admission by the United States that there was some sort of a taking by the United States of the property of El Tivoli other than the transfer under the convention of 1914, and that the use of the word "expropriated" also amounts to an admission by the United States that there was an obligation to make compensation in money. It is conceded that the convention of 1914

passed to the United States the use, occupation and control of El Tivoli in perpetuity. That in itself may be described as an expropriation. Nothing further need be inferred in order to make the word "expropriated" appropriate. Nor does the use of the word "expropriated" imply an obligation to make money compensation. There is no reason why compensation for an expropriation should not be made, as apparently it was made under the 1914 convention, by the reciprocal transfer of other property.

The obvious and reasonable explanation of the use of the word "expropriated" in the paragraph from the Claims Convention, quoted above, is that it was used by way of identification and description of the claim and that it was not intended as an admission in regard to the merits of the claim or in regard to any of the facts upon which the claim is based. If an admission of liability had been intended, it is to be assumed that the parties would have stated simply and expressly that they intended to admit liability and submit only the question of compensation.

This conclusion is further strengthened by the consideration that if the use of the word "expropriated" in the Claims Convention had been meant to have the effect of conceding the liability of the United States to make compensation for El Tivoli, there would have been nothing for this Commission to do except to fix the amount of the compensation. In other words, a special submission would have been made to this Commission for the sole purpose of having the Commission do something which normally and appropriately would be done by the Joint Land Commission. Such an assumption does not seem reasonable.

The Commission decides that the claim must be disallowed.

Dissenting opinion of Panamanian Commissioner

This is a case which, in normal circumstances, would have had to be decided by the Mixed Commission to which article VI of the Canal treaty of November 18, 1903, refers. Pursuant to this provision the United States of America was bound to pay the owners of land or private properties for the damage caused to the properties or land which it might be necessary to use in the Canal work. It devolves on said Mixed Commission only to evaluate and adjust the damage referred to. The liability of the American Government in this regard was admitted beforehand by the treaty itself. The authority of the Commission was limited in each case to passing upon the validity of the titles of the claimant and upon the amount of indemnity.

In the General Claims Convention of July 28, 1926, which created this Commission, the high contracting parties incorporated the paragraph of article I which is quoted in the majority opinion.

It is evident that the object of this provision was to give the Commission jurisdiction in two cases in which the claimants were foreigners or could be subrogated by the Government of Panama, and also to extend to this Commission the handling of claims originally under the jurisdiction of the Mixed Commission. It is obvious that in these cases it devolved upon this Commission to proceed conformably with the terms of the treaty which created the Mixed Commission, in the manner set forth.

Notwithstanding the lucid provision quoted, the majority of the Commission has departed from the perfectly clear tenor thereof and, on grounds inapplicable to the question, has decided to disallow the claim, with the result that the stipulation cited has become of no effect whatsoever.

For the reasons set forth, I regret to have to record my inability to agree with the decision of the majority.

PANAMA AND JOSÉ C. MONTEVERDE (PANAMA) *v.* UNITED STATES

(June 29, 1933, dissenting opinion of Panamanian Commissioner, undated. Pages 631-632.)

JURISDICTION PRESENTATION OF CLAIM: CLAIM BROUGHT BY STATE ON BEHALF OF ALIEN.—INTERPRETATION OF TREATY: INFERENCE FROM SILENCE, OBVIOUS, NATURAL, ORDINARY, REASONABLE MEANING, LANGUAGE IN WHICH DRAFTED AND EXECUTED.—PRIVATE PROPERTY, EXPROPRIATION: MEANING OF EXPRESSIONS. Treaty of 1903 between United States and Panama: transfer of Canal Zone to United States. Executive Agreement of 1904: delimitation of Zone boundaries. Sale in 1909 by Mr. Pellas of half-interest in tract of land to Panama. Assignment by Pellas' widow in 1912 of all his rights relating to tract to Mr. J. C. Monteverde, Italian subject. Suit brought by Mr. Monteverde on the ground of *lesión enorme*. Decree of Supreme Court of November 1, 1918, giving Panama option of returning tract or paying balance. Payment of balance by Panama. Exchange on February 11, 1915, of ratifications of Boundary Convention of 1914 transferring some lands, among which the tract bought from Mr. Pellas, from Panama to Canal Zone, and others from Canal Zone to Panama. *Held* that Commission competent to decide Mr. Monteverde's claim: jurisdiction expressly conferred by article I, Claims Convention. *Held* also that claim belongs entirely to Panama. Claim disallowed on identical grounds as claim presented by Panama in its own name and representing Abundio Caselli (see p. 377 *supra*).

Cross-reference: Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la República de Panamá en su propio nombre y como subrogante de José C. Monteverde, Registro No. 17. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, pp. 632-633, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 65, 73; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), p. 457.

This is a claim for 17,634 balboas, on behalf of José C. Monteverde, or the Government of Panama, as their interests may appear. Monteverde is an Italian subject, but jurisdiction to decide the claim is expressly conferred upon the Commission by art. I of the convention under which it acts.

The facts of this case are substantially identical with those in the claim of Abundio Caselli (Registry No. 16). Monteverde is the successor in interest of Pellas who, with Caselli, was in 1909 the owner *pro indiviso* of that part of the El Tivoli property with which both claims are concerned. Like Caselli, Pellas sold his half-interest in the property in 1909 to the Government of Panama. Pellas died, and in 1912 his widow assigned to Monteverde all her rights relating to El Tivoli. Like Caselli, Monteverde brought suit against the Government to rescind for *lesión enorme*. His first suit was unsuccessful, but in his second suit the Supreme Court of Panama, on November 1, 1918, entered a decree in his favor giving the Government the option of returning the property or paying the balance of the price declared by the Court to be just. The Government never returned the property but has chosen the other alternative and paid to Monteverde the price decreed by the Court.

The property, which is the identical tract with which the Commission dealt in the Caselli case, became a part of the Canal Zone by the Boundary Convention of 1914. The only difference between this and the Caselli case is that

here it is even more clear that the claim belongs in its entirety to the Government of Panama.

As to the merits of the claim the considerations are identical with those in the Caselli case. The Commission holds that the claim is unfounded on the authority of its decision in that case.

The Commission decides that the claim must be disallowed.

Dissenting opinion of Panamanian Commissioner

For the same reasons set forth in the case of Panama as substitute for Caselli, Registry No. 16, I am not in agreement with this decision.

COMPAÑÍA DE NAVEGACIÓN NACIONAL (PANAMA) *v.* UNITED STATES

(June 29, 1933, dissenting opinion of Panamanian Commissioner, undated. Pages 812-815.)

TERRITORIAL WATERS OF PANAMA CANAL ZONE: THREE-MILE LIMIT, ORDINARY RULES FOR DELIMITATION, RULE OF INNOCENT PASSAGE, CIVIL ARREST OF MERCHANT VESSELS IN TERRITORIAL WATERS.—EVIDENCE: PROOF OF EXCEPTIONS TO GENERAL RULES OF INTERNATIONAL LAW. Collision on May 11, 1923, between steamer *Yorba Linda*, belonging to General Petroleum Corporation, and steamer *David*, belonging to claimant. Action brought on September 16, 1925, by General Petroleum Corporation before United States District Court for Canal Zone on the ground that collision took place in United States territorial waters and was caused by *David's* negligence. Arrest on September 18, 1925, of *David* by United States marshal off Flamenco Island. *David* released on bond next day. Validity of arrest sustained by Judge of United States District Court on October 27, 1925. Settlement between parties on April 25, 1927. Claim for damages brought before Commission on ground, *inter alia*, that arrest of *David* was beyond jurisdiction of United States District Court and, therefore, illegal. *Held* that article 2, Canal Treaty of 1903, merely fixes boundaries between Panamanian and Canal Zone territorial waters, and not seaward limit of the latter, which is left to operation of rules of international law; and that *David* was arrested at point within three-mile limit according to ordinary rules for measuring territorial waters. *Held* also that rule of innocent passage does not prohibit sovereign from arresting on civil process merchant ships passing through territorial waters: no clear authority to support such exception to clearly established general rule of extension of sovereignty over three-mile zone. Claim disallowed.

Cross-references: Am. J. Int. Law, vol. 28 (1934), pp. 596-599; Annual Digest, 1933-1934, pp. 137-139; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la República de Panamá en su propio nombre y en representación de la Compañía de Navegación Nacional, Registro No. 26. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, pp. 819-820, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), p. 62; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), pp. 103-105; Friede, "*Die Entscheidungen* . . .", Z.a.ö.R.u.V., Band V (1935), pp. 463-465; Annual Digest, 1933-1934, p. 139.

This is a claim on behalf of the Compañía de Navegación Nacional for 27,932.78 balboas, with interest. The claimant is a Panamanian national.

On May 11, 1923, the steamer *Yorba Linda*, belonging to the General Petroleum Corporation, collided with the steamer *David*, belonging to the Compañía de Navegación Nacional.

On June 20, 1924, the Compañía de Navegación Nacional started suit against the General Petroleum Corporation in the First Circuit Court of Panama, claiming that the collision was caused by the *Yorba Linda's* negligence. The General Petroleum Corporation was not a resident of Panama, and apparently had no property in Panama. The suit was not begun by personal service but through service by publication under articles 470-473 of the Judicial Code of Panama. The Petroleum Company never appeared. The Panamanian Court designated an attorney to represent it. The case was tried. Evidence of negligence and of damages was submitted by the plaintiff. No evidence was put in by the defendant, although an argument on the law was made by the attorney appointed to represent it by the court. A judgment was given in favor of the Navegación Company. On September 1, 1925, this judgment was affirmed by the Supreme Court of Panama, the damages being fixed at 27,103.50 balboas, plus attorneys' fees of 383.10 balboas. The judgment was never satisfied. It is conceded that the proceedings which resulted in this judgment, including the method of service, were entirely regular and proper under the law of Panama and that the judgment was valid under that law. It is clear, however, on account of the nature of the service, that the judgment was not valid in the Canal Zone.

On September 16, 1925, fifteen days after the Supreme Court decision in the Panamanian suit, the Petroleum Company filed a libel against the Navegación Company in the United States District Court for the Canal Zone, alleging that the collision took place in territorial waters of the United States and that it was caused by the *David's* negligence. This was a proceeding *in rem*. There was, of course, no personal service.

The filing of the libel was followed on September 18, 1925, by the arrest of the *David* by the United States marshal. On the following day a stockholder of the Navegación Company gave a bond in the sum of $30,000, and the *David* was released. A hearing was held before Judge Martin of the United States District Court regarding the validity of the *David's* arrest. On October 27, 1925, Judge Martin handed down an opinion sustaining the arrest.

The suit proceeded in a leisurely way until, on April 25, 1927, the parties arrived at a settlement agreement. Under this agreement the Petroleum Company paid to the Navegación Company $16,250, the Canal Zone suit was dismissed, the obligation under the Panamanian judgment was canceled, and releases were exchanged.

The claimant before this Commission asserts that the arrest of the *David* was illegal and beyond the jurisdiction of the United States District Court and that this illegal arrest and the resulting necessity of giving a bond and defending the suit in the Canal Zone forced the claimant into a settlement which it would not otherwise have made, and inflicted damages upon it comprising not only the difference between the amount of the Panamanian judgment and the amount of the payment under the settlement agreement, but also the expenses of litigation and the injury to the company's standing resulting from the Canal Zone suit.

The assertion that the arrest was beyond the jurisdiction of the District Court is based upon two theories, first, that the arrest took place outside of the territorial waters of the Canal Zone and, second, that the *David* was exercising

the right of innocent passage and was therefore immune from arrest, even if within Canal Zone waters.

A preponderance of the evidence before the United States District Court showed that the arrest of the *David* was effected within a few hundred yards of Flamenco Island and probably between that island and San José Rock off the Pacific entrance of the Panama Canal.

The claimant contends that the extent of the territorial waters of the Canal Zone was fixed by the treaty of 1903, the executive agreement of 1904, and the treaty of 1914, which respectively cede, delimit and modify the delimitation of the Canal Zone. Article 2 of the treaty of 1903 defines the Canal Zone as extending into the Pacific Ocean to a distance of 3 marine miles from mean low watermark, and then goes on to make a specific grant of the Islands of Perico, Naos, Culebra and Flamenco, from which the claimant concludes that Flamenco must have been considered as outside of the territorial waters previously defined, and that since the arrest of the *David* occurred on the seaward side of Flamenco, that arrest must have occurred outside of territorial waters.

The Commission cannot follow this reasoning. While the treaties undoubtedly fix the boundary between Panamanian territorial waters and the territorial waters of the Canal Zone, it is clear that they do not purport to fix the seaward limit of the territorial waters of the Zone. That is left to the operation of the rules of international law. Both the Island of Flamenco and the point at which the *David* was arrested are within the 3-mile limit according to the ordinary rules for measuring territorial waters, without considering the question of whether the Island of Flamenco, which appears to be a fortified point guarding the entrance of the Canal, would not itself carry its own 3-mile zone clearly including the *situs* of the arrest.

We now turn to the question raised by the assertion that the *David* should have been exempted from arrest under the rule of innocent passage. An exhaustive research was made into the authorities upon this question by the Agents, and the point was argued with great thoroughness. The general rule of the extension of sovereignty over the 3-mile zone is clearly established. Exceptions to the completeness of this sovereignty should be supported by clear authority. There is a clear preponderance of authority to the effect that this sovereignty is qualified by what is known as the right of innocent passage, and that this qualification forbids the sovereign actually to prohibit the innocent passage of alien merchant vessels through its territorial waters.

There is no clear preponderance of authority to the effect that such vessels when passing through territorial waters are exempt from civil arrest. In the absence of such authority, the Commission cannot say that a country may not, under the rules of international law, assert the right to arrest on civil process merchant ships passing through its territorial waters.

Incidentally it may be said that the evidence and maps submitted to the Commission raise a real question as to whether the point at which the *David* was arrested was not in fact a roadstead subject to the rules which pertain to harbors rather than those which pertain to ordinary coastal waters within the 3-mile zone.

The Commission decides that the arrest of the *David* was not in excess of jurisdiction and therefore that the claim must be disallowed.

Dissenting opinion of Panamanian Commissioner

I am not in agreement with the decision of the majority of the Commission. This claim, as set forth in the decision, is based upon two points: the first

that the arrest of the *David* took place outside the territorial waters of the Canal Zone, and the second that, although it is admitted that it took place within such waters, the *David* was in the exercise of the right of innocent passage and was therefore exempt from arrest by the coastal authorities.

The decision of the majority sets aside the first contention by affirming that the place where the arrest took place was within the jurisdictional waters of the Canal Zone; the second by maintaining the theory that although the right of innocent passage exists and even when it is admitted that this right constitutes a limitation of coastal sovereignty, this right of passage does not make the ship exercising it immune to civil arrest.

I am not in accord with either conclusion and I shall take them up separately.

The marginal sea of the Canal Zone in the Pacific was defined by the Canal treaty of 1903 which established that it extended 3 marine miles beginning at mean low watermark. Due to the proximity of territorial waters of the Zone with those of the port of Panama, a specific agreement became necessary to determine the dividing line between the waters of both. This was accomplished by the boundary treaty of 1914. The resultant line fixed the northern boundary of the Canal Zone's marginal sea. But inasmuch as the aforesaid treaty did not attempt to establish the seaward limit of said territorial waters, it is clear that the determination thereof should be made according to the rules of international law, that is, by a line which, in the sea itself, follows as far as possible the sinuosities of the coast.

The Canal Zone District Court did not follow this rule. What Judge Martin did was to take the most salient points of the coast (among them a reef called Pulperia which, at low tide, reaches nearly a mile into the sea) and from these points draw lines parallel to the route of the Canal and run them out 3 miles. Then the Court joined their termini by drawing *straight lines* to the end of the northern boundary fixed by the treaty of 1914. Of course, by using this method the point where the marshal said that he had arrested the *David* was within the territorial waters of the Zone.

The method employed by the court is contrary to international law and also contrary to the application made in practice under the Canal treaty in matters dealing with the territorial waters of the Zone.

It is proper to point out that although there exists the general rule that the acts of the authorities are presumed to be correct, such a presumption does not appear to be tenable when these authorities have taken as a basis for their acts a method contrary to law. The fact that the court undertook the task of delimiting all the marginal sea of the Canal Zone—which was not necessary to decide a case which depended upon the simple fact of whether the point of arrest was more than 3 miles from the coast—and the fact that in doing so it used a method contrary to international law, far from serving as a basis for a presumption in favor of the official so doing, rather lead to the presumption that the place of the arrest would have been found to be beyond his jurisdiction if the correct method had been followed.

Let us pass now to the second question, the so-called right of innocent passage. The opinion of the majority admits, as I have said, the existence of that right; it admits that it constitutes a limitation of territorial sovereignty and that the sovereign cannot impede said passage, but it denies that it carries with it exemption from civil arrest by the territorial authorities.

I am not in accord with this conclusion of the majority which is contrary to the very nature of the right of innocent passage and which considerably abridges it and does not seem to be based upon creditable authorities in international law. It is not necessary to enter into an extended study of the right of innocent passage, as the Agents have already exhausted the subject in the

hearings. Suffice it to say that this right, as is seen from the many citations of authorities made by both parties, has been considered as a necessary appendage to the freedom of navigation on the high seas. To subject a merchant ship sailing coastwise within the 3-mile limit to civil arrest by coastal authorities, violently interrupts such passage and notably abridges the freedom of the seas referred to. There are, on the other hand, authorities of high standing in international law, who expressly establish the lack of jurisdiction by littoral authorities in such cases. See for example the resolutions adopted in 1894 by the Institute of International Law and especially the juridical investigation carried out by the most prominent American international jurists (Research in International Law, Harvard Law School) which served as a basis for the Hague Conference on the Codification of International Law.

It is proper to point out also that the claimant does not maintain that absolute immunity exists from the jurisdiction of the littoral authorities; that it does not allege, for example, lack of jurisdiction in the case of an offense committed within territorial waters in the course of innocent passage, although some writers deny jurisdiction even in such cases; the claimant also accepts that the ship is obliged to comply with orders and maritime regulations which contribute to the safety of navigation, or that are of a sanitary or police character. The claimant maintains only that in case of a civil action growing out of a collision occurring previously beyond the jurisdiction of the littoral authorities, the latter were without jurisdiction later to interfere with the passage of the same ship by means of a civil suit not affecting in any way territorial sovereign interests.

But another important reason obliges me to dissent at this point. An examination of the Canal Treaty of 1903 indicates that with respect to the Canal Zone (including naturally territorial waters) Panama did not grant to the United States absolute sovereignty but only those functions of sovereignty which were necessary for the construction, use, maintenance, and sanitation of the Canal. All authority not included within these functions corresponds to the Republic of Panama by implicit reservation. In my opinion the authority exercised in the case of the *David* has no relation whatsoever with the functions mentioned. Moreover, I believe that the right of passage which pursuant to international law exists in favor of all nations should be applied *a fortiori* when treating of the nation which made the grant in terms which implied a conveyance of relative sovereignty, not absolute, and in circumstances in which the right invoked is vital to the state making the grant, as it cut in two its own territory and left itself obliged to cross territorial waters of the state receiving the grant in order to carry on its coastwise trade.

I am therefore of the opinion that the *David* was arrested outside of the territorial waters of the Zone and, in any case, in violation of the right of innocent passage; that serious damage was sustained by the Compañía de Navegación Nacional as a direct consequence of the arrest, which the United States is obligated to indemnity.