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Mariposa Development Company and Others (United States) v. Panama

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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.

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