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William Gerald Chase (United States) v. Panama

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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*."