

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Panama and José C. Monteverde (Panama) v. U.S**

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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.

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

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

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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 *Torba 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; Borchart, "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.