

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Znamiecki Case—Decision No. 51**

May 1955

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ZNAMIECKI CASE—DECISION No. 51  
OF MAY 1955<sup>1</sup>

Claim for compensation for war damages—Loss of property—Claimant's right of ownership—Whether damaged property belongs to claimants, nationals of United States—Evidence—Evaluation of—

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Demande en indemnité pour dommages de guerre — Perte de biens — Droit de propriété — Question de savoir si les biens endommagés appartiennent aux réclamants, ressortissants des Etats-Unis — Preuve — Moyens de preuve—Appréciation par la Commission.

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The Italian-United States Conciliation Commission composed of Messrs. Alexander J. Matturri, Representative of the Government of the United States of America, Antonio Sorrentino, Honorary Section President of the Council of State, Representative of the Italian Republic and José de Yanguas Messia, Professor of International Law at the University of Madrid, Third Member selected by mutual agreement of the United States and Italian Governments;

On the Petition filed on February 25, 1952 by the Agent of the Government of the United States of America *versus* the Italian Government in behalf of Andrew A. Znamiecki and Sophie Irene Znamiecki Chace.

In this claim the two parties in interest are children of Mrs. Sophie Daniszewski Pietrabissa and of Mr. Alexander Znamiecki, who were divorced on April 25, 1939. Mrs. Sophie Daniszewski was remarried on June 1, 1939 to Mr. Franco Pietrabissa.

On March 9, 1944, fifteen cases, which had been deposited by Mr. Francesco Pietrabissa, an Italian national, in his name in the warehouse of the Otto & Rosoni Company in Rome, were destroyed as the result of an air raid.

Following the destruction, Mrs. Pietrabissa informed the Otto & Rosoni Company that four of the fifteen cases belonged to the United States nationals, Andrew and Sophie Znamiecki, her children by her first marriage.

The evidence exhibited is:

1. Sworn statement of the two claimants, dated August 1949, when both claimants were of age (Exhibit A of the Petition).

2. Sworn statement of Alexander Znamiecki, father of the claimants, dated August 1, 1949 (Annex 3 to Exhibit A of the Petition).

3. Act of Notoriety dated August 21, 1944, executed immediately after the destruction of the property and prior to the end of hostilities (Annex 6 to Exhibit A of the Petition).

4. Sworn statement of Sophie Daniszewski Pietrabissa, mother of the claimants, dated October 22, 1949 (Exhibit C of the Petition).

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<sup>1</sup> *Collection of decisions*, vol. II, case No. 28. The Collection does not indicate the exact date of the decision.

5. Minutes of the oral testimony given under oath on January 21, 1954, by an employee of the Otto & Rosoni Company, the forwarding firm.

6. The notarized statements of Mr. Manlio de Santi and of Mr. Ho Jozef Zadja.

7. Letters of Mr. Edoardo Masi and Mr. Carlo Coraggia.

The question raised by this case reduces itself to an evaluation of the evidence which has been produced.

The Commission decides that the evidence submitted does not prove the allegation of the claimants. The statements numbered 1, 2 and 3 attest that the four cases involved here belonged to Andrew and Sophie Znamiecki. On the other hand, it is stated in the notarized statement of Mr. Manlio de Santi that "in the document containing the property settlement in connexion with the dissolution of the marriage, signed by both parties, Mr. Alexander Znamiecki has expressed his consent to the transfer of his share in the residential co-operative at No. 2/4, Aleja Szucha Street, together with the apartment located in this co-operative, in which there was furniture of Mrs. Pietrabissa, to his former wife, Mrs. Janina-Zofia Pietrabissa; as also to the cession of title to the house in Zakopane under the name 'Jaworowy', to Mrs. Pietrabissa where also was her furniture, under the condition that, on coming of age of the children of the divorced parties, Andrew and Zofia Znamiecki, the share in the residential co-operative and the house 'Jaworowy' in Zakopane will become their property. The apartment in the co-operative building at No. 2/4 Aleja Szucha Street and the house in Zakopane were to be administered by Mr. Franco Pietrabissa together with his wife as the owner." Mr. Zadja made a similar statement.

The transfer which Mr. Alexander Znamiecki made to his children, according to these statements referring to the property settlement at the time of dissolution of the marriage, concerned the transfer of that share of the title which he possessed in the residential co-operative in Szucha Street and of the Zakopane house; no mention is made therein with regard to the ownership of the furniture. On the contrary: mention is made of the transfer to Mrs. Pietrabissa of his share of the title to the residential co-operative and of the house called "Jaworowy" at Zakopane, where Mrs. Pietrabissa's furniture was located, upon the condition that, when they came of age, the children, Andrew and Sophie Znamiecki, would become owners of the residential co-operative and of the "Jaworowy" house. No reference to the furniture except to say that it belongs to Mrs. Pietrabissa.

In his notarized statement, Mr. de Santi adds: "it is also known to me that attorney Tomaszewsky, at the end of June or the beginning of July of the year 1939, took steps for the purpose of carrying out the formalities in the Council of Ministers, indispensable for the transfer of the title of the property in Zakopane to Mrs. Janina-Zofia Pietrabissa, who, after her second marriage, became an alien; but this transfer was not effected until the outbreak of the war. These formalities were essential to the recording of the title in the mortgage records." The sentence refers specifically only to the real property.

The letter of Mr. Masi does not make any distinction with regard to the ownership of the cases and is confined to a statement that he had visited the site of the bombardment several times for the purpose of effecting salvage searches which, although careful, were fruitless because of the violence of the incendiary bombs. The same thing must be said about the letter of Mr. Coraggia.

As for the Act of Notoriety, it is not the direct knowledge of the notary but only an attestation of the statements of witnesses from which can be inferred as certain the single fact of the destruction.

Finally, the oral testimony of an employee of the Otto & Rosoni Company indicates that, before the destruction of the cases, he did not know at all that some of them were owned by Americans and that he received this information after the destruction without being able to recall exactly in what manner. He states: "We had many telephone calls full of anxiety and grief and Mrs. Pietrabissa was out of her mind with anxiety but I can't say exactly. It must have been about March or April."

The Conciliation Commission, by majority vote considers, therefore, that there do not exist sufficient elements in the evidence presented to be able to grant the Petition on behalf of Andrew and Sophie Znamecki, and

Takes note of the declaration made during the discussion by the Hon. Italian Representative, in the name of his Government, according to which Mr. and Mrs. Pietrabissa will be able to submit an appropriate claim, as Italians, to the competent authorities in Italy, in order to obtain compensation for the damages in question under domestic Italian laws, even if the time-limit established for such claims has expired, and

DECIDES:

1. The Petition of the Agent of the United States of America is rejected.
2. This Decision is final and binding.

Rome, May, 1955.

*The Third Member*

JOSÉ DE YANGUAS MESSIA

*The Representative of the  
Italian Republic*

ANTONIO SORRENTINO

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DISSENTING OPINION OF THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA  
IN CASE No. 28, THE UNITED STATES OF AMERICA EX. REL. ANDREW A. ZNAMECKI  
AND SOPHIE IRENE ZNAMECKI CHACE VS. THE ITALIAN REPUBLIC

The Representative of the United States of America considers it necessary to set forth the reasons which compel him to refrain from agreeing with the decision of the Third Member and of the Italian Representative in this case.

The question in this case is a simple question of fact: did Andrew Znamecki and Sophie Znamecki Chace, nationals of the United States of America, own the contents of four cases destroyed on March 9, 1944?

There is not a particle of evidence, nor is any cited in the Decision, that they did *not* own the property for which claim was made.

The Decision itself makes abundantly clear that the two documents of Mr. De Santi and Mr. Zadja which describe the property settlement entered into at the time of the divorce between the parents of the claimants do not refer to personal property but refer only to *real* property. The real property is not in question here.

Although those two documents in no way help us to decide whether or not

the children owned certain of their divorced parents' *personal* property they are cited in the Decision as if they vitiate the documents which refer to the ownership of the personal property by the children ("On the other hand, . . .", etc.) The United States Representative cannot subscribe to the theory that evidence which is irrelevant to the question in the case should affect in any way the evaluation of the relevant evidence.

On the positive side, it is true that there is no documentary evidence antedating the deposit in the warehouse or the destruction from which it can be inferred with certainty that the contents of four of the cases belonged to the children. On the other hand, there is no reason why there should be. First, the children had left for the United States on the eve of the war, and Mr. and Mrs. Pietrabissa were living in Rome, so it was entirely natural for objects belonging to the children to be put in a warehouse, together with his own and his wife's property, by the step-father, the new head of the family, especially as he is Italian himself, and as a member of the Italian diplomatic service, accustomed to the warehousing of household effects. Secondly, and even more conclusively, Italy and the United States were at war, so that if property deposited in a warehouse in Rome had been declared to be owned by Americans, it would have been subject to sequestration as enemy property, under the Italian War Law.

But even though there is no documentary evidence regarding the American ownership which antedates the loss of the property, this fact alone would not defeat the claim. It has been recognized by this Commission (Decision<sup>1</sup> No. 11, Case No. 5, *The United States of America ex rel. Norma Sullo Amabile vs. The Italian Republic*, June 25, 1952) that any statement sworn or unsworn, which concerns the ownership or loss of personal property, although it may have been made after the loss, may be accepted in evidence, with the right reserved to the Commission to weigh such evidence.

It is worthy of note that the Decision in the instant case reaffirms implicitly the principle announced in the Decision on the Amabile Case, accepting in evidence the sworn and unsworn statements regarding the Znamiecki claim.

However, my two colleagues on the Commission give that evidence no weight at all. It is as if eight different people had said nothing at all about the ownership of the four cases here in question.

The eight persons are the two claimants, the mother, the divorced father, and four residents of Rome, each of whom has sworn that the Znamiecki children were the owners of the cases in question.

To deny any value to their sworn statements, in the absence of conflicting evidence, is to say that they are all guilty of perjury. With this, I cannot agree.

The Decision does not even discuss the sworn statements. Instead, it discusses the two irrelevant documents mentioned above which concern the real property and it discusses two letters (those of Mr. Masi and Mr. Coraggia) which are completely irrelevant in that they make no statement concerning ownership.

Even if one wished to reject the affidavits of the two claimants on grounds that they are the parties directly interested in the claim, and even if one wished to reject the affidavit of the mother, for some other supposition (without any explanation, the mother's affidavit is not even listed in the Decision), there would still remain the affidavit of the father, divorced from the mother and not living with the children, with no interest in the claim, who testifies that under the property settlement made at the time of the divorce, the children were given the "entire contents of the apartment".

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<sup>1</sup> *Supra*, p. 115.

I shall not comment on the value of the Act of Notoriety in which four Italian residents of Rome swore before an Italian notary that four of the cases deposited in the warehouse were owned by the claimants, except to note that it was executed on August 21, 1944, long before the Treaty of Peace was signed and hence long before it was known that the American children would have had any right to receive compensation for the loss.

Apart from the sworn statements, the record contains the minutes of the oral testimony, under oath, of an employee of the warehouse. The Decision points out that the witness states that the warehouse firm was not advised of the American ownership of some of the cases prior to their destruction. The Decision does not point out, however, that Rome was then occupied by the German Army, that the Italian War Law was still applicable to American property in Rome, and that therefore the children's property if declared as American property, was subject to sequestration. Nor does the Decision point out that, shortly after the destruction, the claimant's mother notified the warehousing firm, by letter dated May 17, 1944, that "my children American citizens" had suffered damages, along with the ex-Ambassador of Poland at Rome (some of whose property had also been deposited by Mr. Pietrabissa). A copy of that letter of May 17, 1944, was presented to the Commission by the employee of the warehousing firm. Moreover, the employee of the warehousing firm did not testify that the American children did not own the property, but testified instead that the firm was notified immediately after the loss of the property that some of it belonged to the American children of Mrs. Pietrabissa.

The evidence, from 1944 through the affidavits of 1949 up to the oral testimony of the employee of the firm, all tends, in my opinion, to prove ownership by the claimants of the property for which claim is made.

The United States Representative recognizes the necessity of examining with caution *ex parte* Statements, both sworn and unsworn, but he is convinced that, from all of the testimony in the record of this case, as well as from the circumstances surrounding the deposit and the destruction, and from the absence of any evidence to the contrary, it can be inferred that Andrew A. Znamiecki and Sophie Irene Znamiecki Chace were the owners of the contents of four cases destroyed in Rome as a result of the war. In any event, he cannot accept, as a conclusive presumption, that *ex parte* declarations, especially when they have been made under oath, are untruthful, which is the underlying assumption of the Decision of the majority in this case.

*The Representative of the  
United States of America*

Alexander J. MATTURRI

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