

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

D'Annolfo Case—Decision No. 174

25 June 1957

VOLUME XIV pp. 325-327



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the sum of one million and five hundred thousand (1,500,000) lire, in full settlement of her claim, without any reduction of one-third as may be applicable under said Article 78 as amended by the Exchange of Notes of February 24, 1949 between the Government of the United States of America and the Italian Government.

2. The amount stated in the foregoing paragraph shall be paid within sixty (60) days from the date on which a request for payment is presented to the Italian Government by the Government of the United States of America.

This Decision is final and binding and its execution is incumbent on the Government of the Italian Republic.

Rome, May 17, 1957.

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

Antonio SORRENTINO

D'ANNOLFO CASE—DECISION No. 174 OF
25 JUNE 1957¹

Claim for compensation under Article 78 of Peace Treaty—Evidence—Proof of ownership—Burden of—Value of affidavits by claimants as to ownership—Reference to Decision No. 11 rendered in Amabile Case.

Demande en indemnisation au titre de l'article 78 du Traité de Paix — Preuve — Fardeau de la preuve quant à la propriété du bien — Affidavits — Admissibilité en preuve — Référence à la décision n° 11 rendue dans l'affaire Amabile.

The Italian-United States Conciliation Commission, established by the Government of the United States of America and the Government of the Italian Republic pursuant to Article 183 of the Treaty of Peace and composed of Messrs. Alexander J. Maturri, Representative of the United States of America, and Antonio Sorrentino, Representative of the Italian Republic, finds it has jurisdiction to adjudicate the rights and obligations of the parties to this dispute.

The dispute between the two Governments arose out of a claim under Article 78 of the Treaty of Peace and the Agreements supplemental thereto or interpretative thereof, which was submitted on the 18th day of December

¹ *Collection of decisions*, vol. IV, case No. 185.

1951 to the Ministry of the Treasury by Federico and Beniamino d'Annolfo, through the Embassy of the United States of America at Rome.

The Agent of the United States filed a Petition on May 25, 1955 which was subsequently withdrawn. On April 19, 1956, the Agent of the United States filed a Second Petition which contained substantially the same allegations as in the original claim. The Italian Ministry of the Treasury, by letter dated July 20, 1956, informed the Embassy that the claim had been rejected on the grounds that the property in question according to the official records, belongs to persons other than the claimants and there is no documentation of the passage of the property to the claimants. The Agent of the United States then requested the Commission's permission to file additional evidence to establish the claimant's title to the property. By Order dated November 16, 1956, the Commission granted the Agent of the United States 90 days within which to file the said evidence. After the expiration of that period no additional evidence was filed.

CONSIDERATIONS OF LAW:

It is well established that a person who makes a claim of property has the burden of establishing ownership thereof. The Petition states that the claimants were each half owners of a building and two parcels of land. Annex 1 of the original Petition is a copy of the statement of claim filed with the Italian Ministry of the Treasury. It is the only evidence filed in support of the claim.

There are two affidavits, one by each of the claimants, which are a part of Annex 1 and which contain, in substance, identical statements. The only portion thereof which has any reference to ownership is contained in paragraph 2 which states: "In support of such claim and *as proof of ownership* and the extent and nature of the damage suffered, I submit Exhibit 'A'—a detailed description of the property, before and after the war, and appraisal of the damage drawn up by a duly recognized surveyor together with his sworn statement . . ." (emphasis supplied). The Exhibit "A" referred to contains only the following pertinent statement in the opening paragraph (in translation): "It is presumed that the above-named person is the rightful owner of etc." The petitioners' case is based on this evidence alone.

In the first place, the question of probative value of an affidavit was given due consideration by this Commission in its Decision Number 11 (*The United States of America ex rel. Norma Sullo Amabile vs. The Italian Republic*, Case No. 5)¹ and it is not necessary to set forth the entire reasoning of that decision here. Suffice it to say that the said decision accepts as proof the introduction of affidavits into evidence but leaves to the individual case the weight to be given said affidavits, especially in the light of their contents and the availability of other or better evidence. In the instant case it can be said that the affidavits presented are of no value on the question of ownership. Federico and Beniamino d'Annolfo claim to be the owners of the damaged parcels, but, at best, they have made only self serving declarations to establish that fact. They rely on the sworn statement of the surveyor "as proof of ownership" yet that statement contains no more than a presumption that the claimants are the owners of the property.

Furthermore, the best evidence of ownership is an extract of the official real property records of the municipality where the property is located. It is true that said records may have been destroyed, although no such evidence appears in this case, but in that event it would have been incumbent on the

¹ *Supra*, p. 115.

claimants to establish that fact and then come forth with the best evidence in lieu thereof. The claimants have not produced any official real property records nor have they given any explanation for their absence.

The Italian Ministry of the Treasury rejected the claim because the official records show that the property belonged to persons other than the claimants. Thereafter the claimants were given 90 days within which to submit additional evidence of title but after the expiration of that time they did not come forth with any new evidence nor did they make any statement to refute the findings of the Italian Ministry of the Treasury. Their inaction, when combined with the complete inadequacy of the evidence already submitted, leaves the Commission no alternative but to reject their claim for failure of proof. Therefore, the Commission

DECIDES:

1. The Petition submitted by the Agent of the United States of America in behalf of Federico and Beniamino d'Annolfo is rejected.
2. This Decision is final and binding.

Rome, June 25, 1957.

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

Antonio SORRENTINO

FLEGENHEIMER CASE—DECISION No. 182 OF
20 SEPTEMBER 1958¹

Claim under Article 78 of Peace Treaty—Exception of inadmissibility—Nationality of claimant—Status of a “United Nations national”—Applicability of first part of paragraph 9 (a) of Article 78—Exclusive competence of the State in matters of nationality—Power of investigation of international tribunals—Principle of equality of the States parties—Principle of effectivity—Evidence of nationality—Law to be applied—Theory of effective nationality—Theory of apparent nationality—Acquisition and loss of United States nationality—Bancroft treaties—Treaties concluded by a State member of federated States—Effects of war on treaties—Treaties

¹ *Collection of decisions*, vol. V, Case No. 20.

The following abbreviations have been used in this Decision:

Am. J. Int. (*American Journal of International Law*).

Annual Digest (*Annual Digest and Reports of Public International Law Cases*).

Ann. Inst. (*Annuaire de l'Institut de Droit International*).

Moore Arb. (*Moore, International Arbitrations* (1898)).

Rec. Ac. (*Recueil des Cours de l'Académie de Droit International de la Haye*).

Rec. Arb. (A. de la Pradelle et N. Politis, *Recueil des Arbitrages Internationaux*).

Recueil C.P.I.J. (*Recueil des Arrêts de la Cour Permanente de Justice Internationale*).

Rec. C.I.J. (*Recueil des Arrêts de la Cour Internationale de Justice*).

T.A.M. (*Recueil des Décisions des Tribunaux Arbitraux Mixtes institués par les Traités de Paix*).

U.N.R.A. (*Reports of International Arbitral Awards, United Nations*).