

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

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ARBITRALES**

**Arbitral award between Portugal and the United Kingdom, regarding the
dispute about the sovereignty over the Island of Bulama, and over a part of the
mainland opposite to it**

21 April 1870

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PART XI

**Arbitral award between Portugal and the United Kingdom,
regarding the dispute about the sovereignty over the Island
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Decision of 21 April 1870

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Décision du 21 avril 1870

ARBITRAL AWARD OF THE PRESIDENT OF THE UNITED STATES,
REGARDING THE DISPUTE BETWEEN PORTUGAL AND THE
UNITED KINGDOM ABOUT THE SOVEREIGNTY OVER THE
ISLAND OF BULAMA, AND OVER A PART OF THE MAINLAND
OPPOSITE TO IT, DECISION OF 21 APRIL 1870*

SENTENCE ARBITRALE DU PRÉSIDENT DES ETATS-UNIS,
RELATIVE AU DIFFÉREND ENTRE LE PORTUGAL ET LE
ROYAUME-UNI CONCERNANT LA SOUVERAINETÉ SUR L'ÎLE DE
BULAMA ET SUR UNE PARTIE DU TERRITOIRE CONTINENTAL
ADJACENT, DÉCISION DU 21 AVRIL 1870**

Territorial determination – control and sovereignty over the Island of Bulama and certain territory on the mainland coast of West Africa adjacent to it – discovery, formal claim and inhabitation of adjacent mainland territory sufficient to establish sovereign rights – proximity to mainland – cession by indigenous people – use of land for agriculture did not give claim to land since sovereign rights had already been established – lack of acquiescence to subsequent claim of sovereignty.

Délimitation territoriale – contrôle et souveraineté sur l'île de Bulama et le territoire limitrophe de la côte continentale de l'Afrique de l'Ouest – la découverte, la réclamation formelle et l'occupation du territoire continental limitrophe, sont des actes suffisants pour établir des droits souverains – proximité du continent - cession par le peuple autochtone – l'utilisation agricole de la terre n'a pas donné droit au territoire puisque des droits souverains avaient été déjà établis – absence de consentement à la revendication ultérieure de la souveraineté.

* * * * *

**Report Of J.C. Bancroft Davis, Assistant Secretary
of State of the United States**

MEMORANDUM.

[For the President.]

The subject in dispute is the sovereignty over the Island of Bulama, and over a part of the mainland opposite to it.

The island is a low, densely wooded, and unhealthy tract, about twenty miles in length by ten in width, and is situated in latitude 11° 34' N., longitude 15° 33' W. from Greenwich, off the west coast of Africa, at the outlet, on its

* Reprinted from John Basset Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. II, Washington 1898, Government Printing Office, p.1916.

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eastern shore, of the river Rio Grande, and at the outlet on its western shore of the river Jeba; and is so near the mainland that cattle can pass with ease thence to it.

The Portuguese settlement of Bissao is on the island of Bissao on the west bank of the river Jeba, about twenty miles north from Bulama. The settlement of Guinala on the mainland is near the right bank of the Rio Grande about the same distance east of Bulama. The tract of mainland in dispute is contained within a line drawn from one of these settlements to the other, and thence from Guinala nearly due south.

The annexed map*, submitted with the English case, indicates these several points.

The voluminous evidence covers a period from A. D. 1446 to A. D. 1869. The following points may be regarded as admitted or proved.

1st. It is admitted that the island was discovered by the Portuguese in 1446; but it is not shown that this discovery was followed by possession by them before the year 1752.

2nd. It is admitted or shown that in some past time the whole archipelago (of which the island of Bulama forms the most eastern part) as well as the mainland had been occupied or claimed by a native tribe known as the Biafares; that before 1699 another native tribe known as the Bissagoo had driven the Biafares out of the archipelago; and that in 1699 and ever since (except for the acts hereafter stated) the Bissagoo had claimed the archipelago, and the Biafares the mainland. It is also admitted that neither tribe has actually dwelt upon this particular island of Bulama, and that neither had occupied it, except that the Bissagoo had sometimes cultivated a few acres on the western extremity when the rains began.

3rd. It is shown that in 1752 orders were given at Lisbon for the formal occupation of Bulama; that on the 4th of April 1753 possession was formally taken in the name of the King of Portugal; but it does not appear that this was followed by continued occupation, or by any act of sovereignty except the cutting of timber in 1753 for a fortification at Bissao.

4th. It is shown that in 1702 a British colony of 275 persons (having first agreed with the British Government that the acquisition of any territory which they might acquire should be made for and in the name of the King of Great Britain as sovereign), arrived at Bulama; that they obtained from the chief of the Bissagoo for a small sum paid a cession of the island; that they also obtained from the chief of the Biafares for a small consideration paid a relinquishment of the claim of his tribe to the island and also a cession of the portion of the mainland now claimed by Great Britain; that at the time of these cessions there was no Portuguese or other settlement on the island; but that

* Secretariat note: See map No. 2.

there was and for a long time had been a Portuguese settlement at Bissao. It is also admitted that there was a Portuguese settlement at Guinala on the mainland in 1599, and it is shown that this Portuguese settlement continued, and that in 1768 it was a "large village inhabited only by Portuguese who have been there from father to son for a long time." It does not appear, however, that there was any Portuguese settlement on the mainland within the territory between Guinala and the mouth of the river claimed to have been ceded to the British colonists for the benefit of their sovereign.

5th. It is admitted that the British colony remained in Bulama about eighteen months; that during this time the colonists were attacked by the Bissagoo and a large number were killed; that fever and other diseases nearly destroyed the remainder; and that the remnant of the colony was obliged to return to England.

6th. It is shown that in 1814 the governor of Sierra Leone made another attempt on the part of Great Britain to colonize the island of Bulama, and that in less than two years the Bissagoo attacked the settlement, plundered the place, and compelled the colonists to return to Sierra Leone.

7th. It is admitted that between 1824 and 1828 the Portuguese authorities, on several occasions, entered upon the island of Bulama and cut and removed timber without molestation from either native tribe or from Great Britain.

8th. It is admitted that in 1827 the British authorities set up the rights claimed to have been acquired by the two deeds of cession of 1792, and that they have since steadily asserted the same by various hostile acts as against the Portuguese. It also appears that, simultaneously with the revival of the British claim, the governor of Sierra Leone "on behalf of His Majesty the King of the United Kingdom," entered into a treaty with the King of Bulola (Bulama) engaging that no native should be dispossessed of ground in cultivation or actually occupied; and also into a treaty with the Biafares to the same purport. The latter treaty also cedes to Great Britain the sovereignty of Bulama, and the territory on the mainland, and confirms the cessions of 1792.

9th. It is shown that in 1828 the Portuguese obtained from the King of the Canabacs (i. e., Bissagoo) and from the envoys of the Kings of the Biafares, a declaration that they had never sold the island of Bulama to the British.

10th. It is shown that in 1830 the Portuguese established a settlement on the island of Bulama, which has been maintained there from that time to this; and that that settlement now numbers over seven hundred persons of various shades of color, speaking the Portuguese language, and acknowledging the sovereignty of the King of Portugal.

11th. It is claimed by Great Britain, and denied by Portugal, that this settlement was a colorable one, for the purpose of carrying on the slave trade through the factories and estates established there.

12th. It is admitted that this settlement has been often disturbed by armed British cruisers, and that Great Britain has never ceased to assert its claims, both by diplomacy and by force; and most of the acts complained of by Portugal are acts done by Great Britain under claim of title with the avowed object of breaking up the slave trade.

13th. It appears that, in 1804, the question began to be diplomatically discussed between the two powers, and that the discussion resulted in 1869 in the submission to the President of the United States.

It will be observed from the foregoing statement that one important fact is established — viz: that the island of Bulama since the year 1699 is not known to have been actually inhabited by either the Bissagoo or the Biafares, or by any other native tribe.

This fact seems to dispose of all titles on either side derived from deeds, cessions, declarations, or other acts of the native tribes.

Whatever force might be given to such a title in case of actual occupancy of the territory ceded at the time of the cession, to admit the validity of such title when the grantor did not reside upon or permanently possess and occupy the territory ceded, would be contrary to the whole policy of the United States, and to all the rules of public law recognized by it. It is to be presumed that the parties made the submission knowing the American doctrine.¹

This disposes of a large part of the argument and a large part of the case.

The British answer cites with approval certain doctrines from Vattel, which may be regarded as sound so far as applicable to this case. They are these:

I. That all mankind have an equal right to things that have not yet fallen into the hands of anyone, and those things belong to the person who first takes possession of them. When therefore a nation finds a country uninhabited, and without an owner, it may lawfully take possession of it, and after it has sufficiently made known its will in this respect, it can not be deprived of it by another nation. Thus, navigators going on voyages of discovery, and meeting with islands or other lands in a desert state, have taken possession of them in the name of their nations, and this title has been usually respected, *provided it was soon after followed by a real possession.*

II. "It is questioned whether a nation can by the mere act of taking possession, appropriate to itself countries which it really does not occupy, and thus engross a much greater extent of territory than it is able to people or cultivate.

* * *

¹ See correspondence with Great Britain as to the Mosquito coast.

The law of nations will therefore not acknowledge the property and sovereignty of a nation over any uninhabited countries, except those in which it has really taken possession, and in which it has formed settlements, or of which it has made actual use.”

It is to be observed, in qualification of these rules, that countries inhabited by savage tribes may, under well-established rules of public law, be so occupied and possessed by the representatives of a Christian power as to dispossess the native sovereignty and transfer it to the Christian power. The word “uninhabited” in the extract from Vattel must therefore be taken with this limitation.²

It is also to be remarked that islands in the vicinity of the mainland are regarded as its appendages: that the ownership and occupation of the mainland includes the adjacent islands, even though no positive acts of ownership may have been exercised over them.

To apply these principles.

We find that from 1699 to 1768 (how much later does not appear) Portugal had a settlement on the Jeba at Bissao and another at Guinala on the Rio Grande — that she asserted sovereignty over the whole country and over the island of Bulama which lies off the coast between the two; and that on one occasion she took formal possession and exercised acts of sovereignty on the island.

It is not denied that these acts gave her the sovereignty over Bissao. But according to the principles laid down such a continued possession, with claim of dominion, vested in Portugal the sovereignty of the whole of the peninsula between the two rivers, and this sovereignty carried with it, in the absence of anything to the contrary, the dominion over the island which was so near to the mainland.

The continued occupancy of Bissao, and the occupancy of Bulama when not interfered with by Great Britain, perpetuated that sovereignty, and precluded the idea of a voluntary abandonment or disuser of it.

If these views are correct, it will follow that an award is to be made on both points in favor of Portugal.

**Award of the President of the United States
of America, dated 21 April 1870**

Ulysses S. Grant, President of the United States, to whom it shall concern,
Greeting:

The functions of Arbiter having been conferred upon the President of the United States, by virtue of a Protocol of a conference held in Lisbon, in the

² See discussions of the “Oregon” and “Mosquito” questions.

Foreign Office, on the thirteenth day of January, in the year of our Lord eighteen hundred and sixty-eight, between the Minister and Secretary of State for Foreign Affairs of His Most Faithful Majesty the King of Portugal, and Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, whereby it was agreed that the respective claims of His Most Faithful Majesty's Government and of the Government of Her Britannic Majesty, to the Island of Bulama on the Western coast of Africa, and to a certain portion of territory opposite to that Island, on the mainland, should be submitted to the arbitration and award of the President of the United States of America, who should decide thereupon finally and without appeal.

And the written or printed case of each of the two parties, accompanied by the evidence offered in support of the same, having been laid before the Arbiter within six months from the date of the said protocol, and a copy of such case and evidence having been communicated by each party to the other through their respective Ministers at Washington, and each party, after such communication had taken place, having drawn up and laid before the Arbiter a second and definitive statement in reply to the case of the other party so communicated, which said definitive statements were so laid before the Arbiter, and were also mutually communicated, in the same manner as aforesaid, by each party to the other, within six months from the date of laying the first statement before the Arbiter:

And it appearing that neither party desires to apply for any report or document in the exclusive possession of the other party which has been specified or alluded to in any of the cases submitted to the Arbiter, and that neither party desires to be heard by counsel or agent in relation to any of the matters submitted in this arbitration:

And a person named by the Arbiter for that purpose, according to the terms of said Protocol, having carefully considered each of the said written or printed statements so laid before the Arbiter, and the evidence offered in support of each of the same, and each of the said second or definitive statements:

And it appearing that the said Island of Bulama and the said mainland opposite thereto were discovered by a Portuguese navigator in 1446; that long before the year 1792 a Portuguese settlement was made at Bissao on the river Jeba, which said settlement has ever since been maintained under Portuguese sovereignty; that in the year 1699, or about that time, a Portuguese settlement was made at Guinala on the Rio Grande, which last-named settlement, in the year 1778, was "a large village inhabited only by Portuguese who had been there from father to son for a long time;" that the coast line from Bissao to Guinala, after crossing the river Jeba, includes the whole coast on the mainland opposite to the Island of Bulama; that the Island of Bulama is adjacent to the mainland and so near to it that animals cross at low water; that in 1752 formal claim was made by Portugal to the Island of Bulama, which claim has ever since been asserted; that the Island was not inhabited prior to

1792, and was unoccupied, with the exception of a few acres thereof at the west end, which were used by a native tribe for the purpose of raising vegetables; that the British title is derived from an alleged cession by native chiefs in 1792, at which time the sovereignty of Portugal had been established over the mainland and over the Island of Bulama; that the Portuguese Government has not relinquished its claim, and now occupies the Island with a Portuguese settlement of about seven hundred persons; that attempts have been made since 1792 to fortify the British claim by further similar cessions from native chiefs; and that none of the acts done in support of the British title have been acquiesced in by Portugal:

And no further elucidation or evidence with regard to any point contained in the statements so laid before the Arbiter being required:

Now, therefore, I, Ulysses S. Grant, President of the United States, do award and decide that the claims of the Government of His Most Faithful Majesty the King of Portugal to the Island of Bulama on the Western Coast of Africa, and to a certain portion of territory opposite to this Island on the mainland are proved and established.

In testimony whereof I have hereunto set my hand, and have caused the seal of the United States to be hereto affixed.

[SEAL] Done in triplicate, in the city of Washington, on the 21st day of April in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fourth.

U. S. GRANT.

By the President:
HAMILTON FISH,
Secretary of State.