

In the Matter of the Claim of

PANAMA SUGAR, FRUIT & CATTLE CO.

and/or

CHARLES RICHARD WATKINS
Box 687, Route 2
Ferris, California

ocket No. PAN-13

Decision No. 65

Under the Convention between the United
States and Panama, effective October 11,
1950 and the International Claims
Settlement Act of 1949

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$14,748.72 by Charles Richard Watkins and, in the alternative, by the Panama Sugar, Fruit & Cattle Company, and is based on the nullification on October 20, 1931, by a judgment of the Supreme Court of Justice of the Republic of Panama of the Panama Sugar, Fruit & Cattle Company's title to 4161 hectares of land in the so-called "El Encanto Tract," located in the District of Colon, Province of Colon, Panama.

The Panama Sugar, Fruit & Cattle Company, a Panamanian corporation, was the owner of 4161.51 hectares of unimproved land in the El Encanto Tract, when such land was declared the property of the Republic of Panama by a judgment of the Supreme Court of Justice of the Republic of Panama on October 20, 1931. Claimant, Charles Richard Watkins, is a national of the United States, having derived United States citizenship through the naturalization of his father on August 1, 1896. The total share capital of the Panama Sugar, Fruit & Cattle Company, a corporation, is 300,000 shares of common stock of which 299,800 shares are owned by Watkins, who is also secretary-treasurer and a director of the corporation.

Pursuant to the Convention dated October 11, 1950, between the Governments of the United States and Panama the latter, without admission of any liability, agreed to pay to the United States the total sum of \$100,000 in settlement of all claims of American citizens who had acquired land in the El Encanto Tract. It is, therefore, unnecessary for this Commission to inquire into the circumstances or legality of the nullification.

The instant claim has been filed in the alternative by the corporation and by Watkins in order to raise the question as to whether the company, a Panamanian corporation, is eligible to receive an award under the Convention. If it can not, the claim is for Watkins' proportionate share interest in the corporation.

Under Article I (c) of the Convention the Claims settled were "claims of the United States of America" and under Article II (c) the Republic of Panama agreed to pay \$100,000 "with respect to property losses suffered by several nationals of the United States of America in relation to the lands called El Encanto." While the claimant, Watkins, is a United States national and has suffered such property losses as a stockholder, the question posed is whether the claim of a Panamanian corporation, 99.9% of whose stock is owned by a United States national, is a "claim of the United States" within the meaning of Article I.

The expression "claims of the United States of America," as used in Article I, is but a restatement of the classic proposition that, although as between a government and its citizen a claim may be regarded as private, once it is espoused by the government, it becomes international in character, is merged in the government's demand, and subsists as the claim of the government itself. (See Borchard, The Diplomatic Protection of Citizens Abroad, p. 660.) Further, there is hardly a principle of international law which is more firmly settled or more widely accepted than the rule that before it will be diplomatically espoused a claim must at its inception belong to a national of the espousing state; i.e., to

case to whom it owes protection and from whom it is owed allegiance. The claimant company, having been incorporated in Panama, is not a United States national and, consequently, its claim is not a claim which would rightfully be espoused by the United States. Generally the United States espouses only claims of corporations which are incorporated under the laws or those of a continental state. (See Boerhaard, supra, p. 680.) Since there is nothing to indicate that the Convention was intended to be other than an expression of international law and the policy of each government with respect to the claims of each settled therein, we conclude that the claimant corporation, not being a national of the United States, is not eligible to receive an award under the Convention and its claim is denied.

The second question is whether claimant Watkins, an American citizen, owning stock in a Panama corporation, is an eligible claimant. To state the question in different terms, whether his claim was one of the "claims of the United States" embraced within Article I (c) of the Convention.

* The Convention itself is silent as to whether it was intended to place the corporate veil and settle claims by stockholders with respect to the corporation's property. While there is conflict as to whether the claim of stockholders can be espoused under international law, the policy of the United States has been to grant diplomatic intervention where there is a substantial American interest in a foreign corporation (Indenorath, Digest of International Law, Vol. 7, pp. 840-845). The extent to which such claims are espoused is limited to the extent of the American ownership, as stated by Secretary of State Cordell Hull, in a communication to the American Embassy at London on February 15, 1938 (MS, Dept. of State, file 1046.11/38, Indenorath, supra, p. 845):

"Claims sustained by organizations not incorporated in the United States may be the subject of claims by this Government on behalf of American nationals only to the extent of American ownership

of such organizations. For example, if forty percent of the stock of a foreign corporation is owned by American nationals a claim may be filed on behalf of such nationals for forty percent of the losses sustained by the corporation."

In numerous instances, provision has been made for settlement of claims for stockholder interests without regard to the nationality of the corporate entity. In the Conventions establishing a number of Commissions for the adjudication of claims against Mexico, national shareholders in foreign corporations were made eligible claimants. (Faller, The Mexican Claims Commissions, pp. 118 and 119). In the Yugoslav Claims Agreement of 1948 between the Governments of the United States and Yugoslavia, claims by stockholders were specifically recognized in Article 2 (a) which provided for claims "indirectly owned" by United States nationals "through interests direct, or indirect" in a foreign juridical person or persons.

As to the Republic of Panama, it recognized the standing of stockholders as eligible claimants in the Claims Convention of July 28, 1926, establishing the General Claims Commission, United States and Panama. In Article I of the Convention provision is made for the adjudication, *inter alia*, of "all claims for losses or damages suffered by citizens of either country, by reason of losses or damages suffered by any corporation, company, association or partnership, in which such citizens have, or have had, a substantial and bona fide interest, provided an allotment to the association or partnership of his proportion of the loss or damage suffered is presented by the claimant to the Commission."

The principle of allowing claims by stockholders has been recognized, therefore, by both parties to the Convention. We believe that it is clear from this that if the parties had intended to depart from a principle both recognized they would have explicitly inserted a provision excluding stockholders from the terms of the Convention. They did not do so, and we conclude that the claimant, Watkins, has a valid claim for the proportionate interest he has in the corporation

as a stockholder.

A principal issue in this claim, and the 66 other claims before the Commission based upon the taking of land in the El Encanto Tract, is that of value. In the Memorial, filed by the United States with the General Claims Commission, United States and Panama (under the Conventions of July 28, 1926 and December 17, 1932), on behalf of the Mariposa Development Company and 95 other claimants for approximately 114,000 hectares, or approximately 95% of the entire Tract, the land was valued at \$12.50 a hectare. That value was supported by evidence that some 20 parcels had been sold at that price to individual purchasers. There is also evidence of sales at \$10.11 a hectare, \$6.20 a hectare, \$2.70 a hectare, etc. It is also shown that approximately 50,000 hectares, claimed by the Mariposa Development Company, were assessed for tax purposes from 1921 to 1924 at a little less than \$3.00 a hectare; from 1925 to 1928 at \$11.25 a hectare, and from 1929 to 1932 at a little more than \$3.00 a hectare.

After the denial of the claims of the Mariposa Development Company, and others, by the General Claims Commission in 1933, on jurisdictional grounds, extended discussions and negotiations were had between representatives of the Governments of the United States and Panama for the lump sum settlement of all claims of American nationals who had acquired property in the El Encanto Tract. The final sum fixed by the two Governments, in the Convention of October 11, 1930 was \$400,000 for the entire Tract of approximately 120,000 hectares, or about \$3.33 a hectare. No evidence has been filed with the Commission indicating that any of the land in the Tract was improved or that it varied in value.

In consideration of all evidence and data of record, the Commission is of the opinion that all of the land in the El Encanto Tract was worth at least \$4.00 per hectare on October 20, 1931, the

date of the final judgment of the Supreme Court of Panama, and that all numerous claims should be allowed at that value. Inasmuch as there is only the tiny sum of 440,000 available, for the satisfaction of all the claims, less authorized deductions for administration expenses, it is apparent that an award for a larger amount or an award of interest could not be satisfied from the proceeds of such a fund.

The claim filed herein asks \$14,742.72 for claimant's interest in the land. However, we find from all evidence and data of record that the value of claimant Charles Richard Veterans' Interest in the land is \$16,484.53.

The Commission's words prior to July 1, 1953, were limited to the amount claimed. The Commission is now of the opinion that awards should not be so limited but should reflect the value, as nearly as it can be ascertained, of the property taken. ^{*} It is clear from the Commission's records that many claimants have never been in Panama and have never had first hand knowledge regarding the value of the property. Many claimants state that they do not know the value of their property. All claimants were, nevertheless, required to state "the amount of the claim" in their Statement of Claims. We believe it is unjust under such circumstances to hold a claimant to such a statement made adjutantly, as it was in many cases as a mere matter of speculation, when extended discussion and negotiations between representatives of the Government of the United States and Panama has established the value of the property to be in excess of the amount so claimed. This is usually corroborated by the modern liberalization of the rules of pleading to permit amendment after the submission of the evidence to conform the pleadings to the proof. We are directed, moreover, by the law establishing the Commission to apply in the decision of the claims

within our jurisdiction, principles of international law, justice and equity. We are persuaded that justice and equity require the allowance of a claim, if otherwise judicially valid, for the amount found to be the true value of the property taken, even though it had earlier been valued at a smaller amount by a claimant who was unacquainted with the necessary facts. **

DECISION

On the above evidence and grounds the claim of the Panama Sugar, Fruit & Cattle Company is denied, and the claim of Charles Richard Watkins is allowed; and an award is hereby made to Charles Richard Watkins in the amount of \$16,484.53 without interest.

Dated at Washington, D. C.

JUN 30 1954

I hereby certify that the within is a true and correct copy of the original Proposed Decision on file with this Commission.

H. C. Coates
Deputy Clerk of the Commission

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FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D. C.

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FINAL DECISION

Thirty days having elapsed since the Claimant herein was notified of the Proposed Decision of the Commission on the above Claim, and no objections thereto or notice of intention to file brief or request for hearing having been filed, such Proposed Decision is hereby adopted as the Commission's final decision on this Claim.

Dated at Washington, D. C.

AUG 23 1954

I hereby certify that the within is a true and correct copy of the original Final Decision on file with this Commission.


Deputy Clerk of the Commission