

J●HN W. BR●WNE (UNITED STATES) v. PANAMA

(June 26, 1933. Pages 530-531.)

The facts on which this claim is based happened between the signing and the exchange of ratifications of the convention of July 28, 1926. On the grounds stated in the case of Walter A. Noyes (Registry No. 5) the Commission holds that it has jurisdiction to decide upon the claim.

The Government of Panama in 1929 purchased a right of way through a coffee *finca* belonging to John W. Browne and George A. Browne and improved a road already existing along this right of way. In October, 1930, part of the road was washed out by heavy rains and thereafter there was a general repair reconstruction of the road.

Claim is made for \$500. The first ground on which the claim is based is that the washout above referred to was caused by a negligent construction of the road and resulted in damage to claimants' property. The Commission finds no adequate evidence that the washout was the result of negligent construction. The terrain was of that rough and broken type where washouts are difficult to guard against except by a kind of construction which cannot be expected in connection with small country roads.

The second ground on which the claim is based is that in making the general reconstruction of the road after the washout, the workmen rolled rocks onto the property of the claimants. There is no satisfactory evidence as to the damage caused by this action as distinguished from the damage caused by the washout.

The third ground for the claim is that the right of way purchased by the Government was a strip 8 feet in width along its entire length and that in the reconstruction of the road in some places the final road exceeded 8 feet. The contract under which the alleged 8-foot strip was purchased by the Government has not been put in evidence. The Commission is left in doubt whether the right acquired by the Government was to build a road the usable portion of which was to be 8 feet wide or whether the Government's right was to build a road no portion of which, including cuts and fills, should ever exceed 8 feet. The latter arrangement would have been so unreasonable that it is difficult to believe that it occurred, without clear evidence. If the Government was entitled, under its contract, to a usable road 8 feet wide plus necessary cuts and fills, then there is no evidence in the record that the lawful width was exceeded. Moreover, the lands on which the claimants' *finca* was situated were originally *indultado* lands, the grant whereof by the Government to the claimants' predecessor in title reserved the Government's rights for the construction of roads as set forth in art. 102 of law 20 of 1913. Among the rights reserved in this article was that of taking without compensation the right of way necessary for the construction of *caminos de herradura*. There is some question as to whether this phrase includes ordinary country wagon roads or only trails for horses. At any rate, it is clear that the right of the Government under this article extends to whatever property is required for cuts, fills and drains, and it is not shown that the actual road in question after reconstruction exceeded in width a reasonable allowance for a *camino de herradura* under art. 102, with reasonable extensions for cuts and fills.

The Commission decides that the claim must be disallowed.