

GUILLERMO COLUNJE (PANAMA) *v.* UNITED STATES

*(June 27, 1933. Pages 746-749.)*

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The Republic of Panama has presented this claim on behalf of Guillermo Colunje in the sum of \$36,000.00 for loss and damage which the claimant alleges he sustained because of his illegal arrest by a police agent of the Canal Zone and of subsequent acts of the authorities of the United States in the Zone.

The Panaman citizenship by naturalization of the claimant has been accepted.

In the month of August, 1917, Guillermo Colunje was the editor in chief of the *Diario de Panamá*, a newspaper published in the Capital of the Republic. He published daily therein a column headed "*Charla Cotidiana*" (Daily Chat) under the *nom de plume* of Lino Tipo. For several days during that month there appeared in the *Panama Morning Journal* an advertisement announcing the arrival of Prof. Omer Elling, who, for the sum of \$2.00 gold, would remit to the sender a certain famous talisman. Both the *Diario de Panamá* and the *Panama Morning Journal* belonged to the same publishing concern and were registered at the Ancón Post Office as second-class mail matter for circulation in the Canal Zone.

The advertisement attracted the attention of the postal authorities of the Canal Zone. Inspector Stacey C. Russell investigated the matter and ascertained that the supposed professor was Guillermo Colunje. The former had one Mortimer Seale purchase a postal order for \$2.00 in favor of Prof. Omer Elling and forward it for the purpose of obtaining the talisman to which the published advertisement referred.

On August 30, 1917, Julio Paz Rodríguez, of the Panama Morning Journal, went to the Ancón Post Office to pay the newspapers' registration fee for circulation in the Canal Zone as second-class mail matter. As a part of the payment of \$5.00 he delivered postal order no. 158595 issued by the Post Office at Balboa in favor of Prof. Omer Elling and indorsed by him, and when the former was interrogated by the postal authorities he informed them that he had received that money order from Colunje in payment of the insertion of the aforesaid advertisement in that newspaper.

After some investigation criminal charges against Guillermo Colunje alias Prof. Omer Elling were preferred in the tribunals of the Zone that same day, for violation of section 1707 of the Postal Code of the United States and its regulations, consisting in the use of the United States mail for fraudulent purposes. The judge issued a warrant for the arrest of Guillermo Colunje, which was delivered by Police Captain Jack Phillips to Canal Zone Detective Temistocles Rivera for execution.

It is established that on September 1, 1917, Rivera went to the offices of the *Diario de Panamá* where he found Colunje engaged in his labors and by false pretenses induced the latter to accompany him to the Canal Zone, and upon arrival there he informed Colunje that he was under arrest, thereupon taking him to the Ancón police station. He was thereafter brought before the District Judge who directed that he be held. Colunje was detained for several hours and released on a bond of \$200.00.

In a hearing held on September 15, 1917, before the District Court of the Canal Zone, the District Attorney made a motion that the proceedings be *nolle-prossed*, to which the judge who presided over the hearing acceded. Colunje was released and the bond he had furnished was returned to him.

It is evident that the police agent of the Zone by inducing Colunje by false pretenses to come with him to the Zone with the intent of arresting him there unduly exercised authority within the jurisdiction of the Republic of Panama

to the prejudice of a Panaman citizen, who, as a result thereof, suffered the humiliation incident to a criminal proceeding. For this act of a police agent in the performance of his functions, the United States of America should be held liable.

The Commission considers, on the other hand, that Colunje's confinement was of short duration and that the judicial authorities of the Zone proceeded without delay in handling Colunje's case. It likewise considers that the latter should have known that he acted imprudently in publishing the advertisement in question and incorrectly in making use of the postal order which brought about his identification.

*Decision*

The Commission decides that the United States of America is obliged to pay to the Republic of Panama on behalf of Guillermo Colunje the sum of \$500.00 without interest.

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