

LETTIE CHARLOTTE DENHAM AND FRANK PARLIN DENHAM  
(UNITED STATES) *v.* PANAMA

*(June 27, 1933. Pages 516-521.)*

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The United States has presented this claim on behalf of Lettie Charlotte Denham and Frank Parlin Denham for the sum of \$34,104.10 and interest, for loss and damage which it is alleged the claimants sustained as a result of acts of the authorities of Panama in connection with the estate of James Fleming Denham, the deceased husband and father, respectively, of the claimants.

The citizenship of the claimants is duly established.

In the year 1898 James Fleming Denham left his wife and son in the United States of America and took up his residence in El Boquete, Province of Chiriquí, Republic of Panama. The following year, 1899, his family joined him.

Some time later the child fell seriously ill, wherefore Mrs. Denham decided to return with him to the United States. She subsequently resided alternately with her son in California and with her husband in El Boquete. Along about that time Denham entered into illicit relationship with a native woman named Andrea González, by whom he had five children.

This brought about an estrangement between the husband and wife and for some time their relationship was interrupted. In November, 1917, they decided, by mutual consent and according to the laws in force in Panama, to dissolve the conjugal partnership existing as a result of their marriage. The terms and conditions of the agreement are set forth in public instrument no. 1435 executed before notary no. 1 of the Circuit of Panama. The parties thereto declared their conjugal partnership dissolved and Mrs. Denham declared that she had received to her entire satisfaction the sum of B/11,000.00 in payment of half of her

ganancial interest, as follows: B/5,000.00 which she had already received; B/1,000.00 at the time of signing the instrument; and a promissory note payable in San Francisco, California, on November 15, 1919.

The husband, Denham, took over all the assets and liabilities of the partnership to the exclusion of Mrs. Denham, who waived all subsequent participation in the ganancial interests.

The arrangements accessory to this agreement, such as a proposed divorce, were of a private character and are shown in the correspondence exchanged between the spouses on November 20, 1917. In the letters to which reference is made Mrs. Denham expressly ratified the pact made by the public instrument of November 17 of that year and set forth, in part, the following:

"I also promise and agree that, in no case nor under any circumstances will I ask you to contribute to my support, either through legal channels or privately, and I accept the sum stipulated here, \$11,000.00 as my full and complete share of my ganancial property."

Not long afterward Denham returned to El Boquete and his wife proceeded to the United States. On March 3, 1918, at 8 o'clock in the evening Denham was fatally wounded by one Segundo González in the town of Bajo Boquete, Province of Chiriquí. That same night Denham made an open will which it would not have been possible to enforce because it lacked legal requisites.

On the following day, March 4, the wounded man was taken to David for the purpose of sending him, if possible, to the city of Panama.

In the afternoon of the same day Denham made a new will before the notary of the Circuit of Chiriquí and witnesses, as required by law. This will is of record in instrument no. 198 and therein the wife and legitimate child and the five illegitimate children were designated heirs in equal shares, and Andrea González and Manuel Guerra legatees.

Denham died on the morning of March 5 aboard the steamship *David* while *en route* to the city of Panama.

The Second Circuit Judge of Chiriquí, by order of April 6, 1918, opened the testament of James Denham to probate and declared as heirs with equal participation Lettie Charlotte Denham, Frank Parlin Denham, Ana, Virgilia, Roberto, Jaime, and Ricardo González, the last five being children of Andrea González.

Considering that this distribution prejudiced her interests, and believing she had a right to half of the estate, Mrs. Denham made an effort to have the settlement of the ganancial agreement growing out of the conjugal partnership handled in the probate proceedings. The petition to do so was disallowed by the judge, as such a division could only be made separately by way of an ordinary action.

To avoid litigation, Mrs. Denham, in her own right and on behalf of her son, Frank Parlin Denham, as party of one part, and Andrea González, as mother and on behalf of her five minor children, party of the other part, on April 11, 1918, signed instrument no. 335 before the notary of the Circuit of Chiriquí, recognizing Mrs. Denham's half share in the property left by her deceased husband, the other half to be distributed equally among Frank Parlin Denham and the five children of Andrea González. Mrs. Denham waived the participation made in her husband's will; and from the date of the instrument of contract, assumed the administration of the estate until an opportunity should present itself to sell the properties *en masse* or separately. This agreement was, on August 13, 1918, approved by the judge who ordered that the proper entries be made in the public registry.

Believing the rights of her children to be prejudiced by the aforesaid settlement, Andrea González, through her attorney, filed an ordinary civil suit to

annul the contract contained in instrument no. 335 and cancel the entries made in the public registry as a result of the agreement.

The First Circuit Judge of Chiriquí rendered a judgment on June 27, 1921, declaring the agreement of 1918 null, but leaving the entries in the public registry to stand, holding that those entries had been made, not as a result of the agreement, but in obedience to the order of the Second Circuit Judge of August 13, 1918. The Supreme Court of Justice confirmed *in toto* the judgment of the judge of Chiriquí.

The action had as its legal basis the fact that Andrea González had concluded the contract on behalf of her minor children without having obtained the necessary judicial authorization. The claimant has alleged that this omission was remedied by the subsequent approval given by the judge handling the probate proceedings, but the Commission finds such an argument to be unfounded.

On November 7, 1921, Andrea González filed a new action to annul the order of August 13, 1918, rendered in the probate proceedings of the deceased James Fleming Denham's estate, and to cancel the entries made in the property registry as a result of those orders.

The suit was corrected by the plaintiff and when notice was served upon the defendant she answered it and at the same time filed a counteraction to have instrument 1435, and the dissolution of the conjugal partnership incorporated therein, declared null and void; and likewise to have the will, which James Fleming Denham executed before the notary of Chiriquí, instrument no. 198, declared null and void.

To support her action, she alleged, in short, that in the case of the so-called matrimonial capitulations, the inventory of the property belonging to the conjugal partnership as well as other requisites exacted by the Civil Code, had been omitted.

As concerns the will, it was equally alleged that certain essential requisites were omitted and also that the testator could not have possessed the necessary mental capacity for expressing his last will, in view of his serious condition. This litigation gave rise to extended judicial debate, to support which the parties adduced all the evidence they believed pertinent and advanced their respective legal viewpoints. The Circuit Judge of Chiriquí terminated those suits by his judgment of September 12, 1921, in which he declared that the counteraction had not been sustained; that the court order of August 13, 1918, issued in the probate proceedings of the estate of James Fleming Denham, were [*was*] null; that all entries made in the public registry as a result of those orders were cancelled; and, lastly, that the real property registered therein in the name of James Fleming Denham be entered in the name of the heirs, Lettie Charlotte Denham, Frank Parlin Denham, Ana, Virgilia, Roberto, Jaime, and Ricardo González, natural children of Andrea González, to whom the property mentioned belongs in equal shares. This judgment was approved by the Supreme Court of Justice.

The claimants consider that these judgments constitute a denial of justice, as a result of which Panama has incurred international liability.

The Commission has studied carefully all the judicial records of which copies have been presented and does not find evidence of any manifest violation of law or of manifest bad faith in the application of law or in weighing the evidence filed by the parties.

#### *Decision*

The Commission decides that this claim should be disallowed.

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