



GACETA OFICIAL

SEGUNDA EPOCA

Año I

Panamá, 9 de Agosto de 1904

Num 42

DEMETRIO H. BRID

EDITOR OFICIAL

PERMANENTE

Los documentos publicados en la GACETA OFICIAL...

El Subsecretario de Gobierno, DANIEL BALLÉN.

CONTENIDO

PODER EJECUTIVO

SECRETARIA DE GOBIERNO Y RELACIONES EXTERIORES

DOCUMENTOS relacionados con el asunto del puerto de La Boca...

SECRETARIA DE HACIENDA

DECRETO número 25 de 1904 de 9 de Julio...

DECRETO número 22 de 1904 de 23 de Julio...

DECRETO número 20 de 1904 de 20 de Julio...

DECRETO número 18 de 1904 de 18 de Julio...

DECRETO número 17 de 1904 de 17 de Julio...

SECRETARIA DE FOMENTO

DECRETO número 15 de 1904 de 21 de Julio...

DECRETO número 14 de 1904 de 20 de Julio...

DECRETO número 13 de 1904 de 19 de Julio...

DECRETO número 12 de 1904 de 18 de Julio...

RESOLUCION número 11 de 1904 de 17 de Julio...

CONTRATO número 10 de 1904 de 16 de Julio...

TRIBUNAL DE CUENTAS

AUTO número 1 de 1904 de 15 de Julio...

Secretaría de Gobierno y Relaciones Exteriores

Documentos relacionados con el asunto del puerto de La Boca.

Secretaría de Gobierno y Relaciones Exteriores. Departamento de Relaciones Exteriores. Número 82 IV. Panamá, 5 de Julio de 1904.

Por un suelto publicado en la edición del STAR & HERALD...

Se habla arribado al costado del puerto de La Boca...

Se despacha a la autoridad competente...

A dicho vapor y a la vez que me informo...

Aprovecho la oportunidad para reiterar los sentimientos de consideración...

Vale todo muy atencioso servidor.

TOMÁS ARIAS, Gobernador de la Zona del Canal.

Al Señor General George W. Davis, Gobernador de la Zona del Canal.

Estimado Canal Zone. Executive Office. 1904. 1-21 A. Clearances Port of Ancon. Ancon, Julio 5 de 1904.

Recibí de la apudable carta de S. E. de esta misma fecha...

La salida del vapor Loa de Puerto Ancon a La Boca en su viaje de regreso a San Antonio...

Me apresuro a contestar y a informar a usted que en sílaba parada...

concerniente a este vapor, originaria del Puerto de Panamá...

Al Recaudador de Aduana de Puerto Ancon, la cual a mi juicio, obedece a este vapor...

bajo la jurisdicción legal de los Estados Unidos. El documento...

que se hace mención fue presentado al Recaudador de Aduana de Puerto Ancon...

por el señor Agente de la P. S. N. Co. cop a del cual se adjunta para su Gobierno...

No habo correspondencia con el Agente de la Compañía...

ni tampoco comunicación por escrito otra que la de que ahora se hace mérito...

El Recaudador de Aduana, al dar el despacho al vapor para su viaje de regreso...

procedió de acuerdo con mis instrucciones y según mi juicio, estrictamente de acuerdo con las reglas que deben observarse en tales casos.

Hace poco tiempo envié a V. E. copia de una orden expedida por el Presidente de los Estados Unidos...

por la cual se establecen dos Distritos recaudadores en la Zona del Canal...

se autoriza el nombramiento de los Recaudadores. Esto fue con anterioridad de cerca de una semana a la salida del vapor Loa.

Tengo el honor de suscribirme de S. E. muy atento servidor.

Geo. W. Davis, Gobernador.

A Su Excelencia Tomás Arias, Secretario de Estado.

Es traducción.

El Intérprete Oficial de las Secretarías de Estado.

JULIO ARIAS.

República de Panamá. 1904. Panamá. Protocolo Provisional. 1904. Primera Clase. Vale cuarenta centavos. El Tesorero General de la República (firmado) M. Arosemena. Panamá, Julio 5 de 1904.

Señor Agente del Puerto, Señor Jefe del Puerto de Ancon. Panamá.

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Panama ceded in perpetuity to the United States the use, occupation and control of a strip of land and of lands under water for the construction and maintenance, operation, sanitation and protection of a Canal across the Isthmus of Panama connecting the Atlantic and Pacific Oceans, the strip of land or zone being 10 miles wide that is to say 5 miles on either side from a centre line in the projected waterway, said zone starting from a point in the Caribbean Sea 3 miles at mean low water extending across the Isthmus up to a distance of 3 miles at mean low water on the Pacific side, it being expressly provided that the cities of Panama and Colon and parts adjacent thereto comprised within the described zone were not included in the above mentioned concession, and by Art. III of the same Treaty the Republic of Panama ceded to the United States all the rights, power and authority in the afore-mentioned zone, described in Art. II, to be exercised thereby as if it were sovereign of the territory; the use, occupation and control of which were granted by the Republic of Panama; the cities of Panama and Colon and adjacent ports thus remaining beyond the jurisdictional action of the American Government.

The provisions of these clauses are quite to the point, hence the meaning according to the letter should not be disregarded in consulting the spirit in which they are framed.

Moreover, to better explain myself, I beg leave to make certain remarks relative to the meaning of the words "adjacent and parts." The word "adjacent" means close to or near by hence in geographical terms it is quite proper to say that the Balearic and Pitiusas islands are adjacent to the Spanish peninsula. The word "port" is a part of the sea wherein ships find convenient shelter from the heavy seas and winds; wherein water is to be found in sufficient quantity to permit navigation and to allow ships to ride at anchor.

It follows, therefore, that the spot around the islands of Flamenco, Naos and Perico, fronting the city of Panama used as anchorage by ocean steamers, is a port, inasmuch as the steamers find there convenient shelter from the heavy seas and winds; it offers ample room for navigation, and the ships are able to load and discharge therein; and it is in fact adjacent to the city of Panama because it is close to or near by the city.

In accordance, therefore, with the exception provided in Art. II of the Varilla-Hay Treaty, though that spot is comprised within the Zone it does not, however, come within the jurisdictional action of the United States, and it is for this reason that my Government considers that when a ship casts anchor at the mentioned anchorage it comes forthwith under its jurisdiction, it being of course understood that this in no way is to be construed as affecting the rights acquired by the United States over the lands in the islands of Naos, Perico and Flamenco.

The mere fact that in the provisional agreement of demarcation, relative to the cities of Panama and Colon and the Zone, the port referred to was not expressly excepted, cannot be reasonably advanced against the rights claimed by my Government, because, apart from the fact that the agreement of demarcation is not definitive, the contract has the force of law as concerns the parties who signed it, and it can not be altered, modified or otherwise changed except by means of another treaty concluded with the same formalities.

On the other hand the spot to which I refer is the only one situated within the bay of Panama and close by to the city of same name which offers shelter and anchorage for the shipping engaged in the trade between Panama and the ports of North, Central and South America, and if my Government were to acknowledge that said port is not excepted by Art. II of the Treaty so often quoted, Panama would remain by that fact without any port whereby to hold intercourse with the outside world and its maritime commerce would be totally ruined, for the simple reason that the part of the bay comprised between Punta de Chiriqui and Punta de Paiteña is not a port properly speaking but a small open bay, where shipping of fair draught cannot anchor, and it is hardly credible that the American Government could contemplate the idea of inflicting such a serious injury on the Republic of Panama, in the face of the unmistakable interest which it has shown towards the development and progress of this Nation.

Furthermore, if what is expressly provided in Art. II did not exist the omission would in no way make less clear the claims advanced by my Government, since it is a well known principle of law that the acknowledged intentions of the contracting parties shall prevail in preference to what is literally expressed in words, and the intention of the American Government of not exercising jurisdiction at the ports giving access to the Zone is clearly determined in Clause XIII of the Treaty in question as otherwise that article in the Treaty would be superfluous and devoid of value.

Regarding the spot denominated La Boca the Government of the Republic has never considered it a port for international commerce, but simply as a place giving access to the Canal, and in proof thereof I may mention that when the P. R. R. Co. was exonerated from the obligation of extending its line to the islands of Naos, Perico and Flamenco, the Colombian Government declared that the P. R. R. Co. and other Companies working in connection with it might use the maritime channel extending from said islands to La Boca wharf provided the Canal Co. gave permission for doing so, and further that the Government would assume no responsibility nor would otherwise interfere in any controversy relative to said permission.

I sincerely trust, General, that the foregoing remarks may bring about a change in your opinion relative to the matter at issue, and that considering the justice which is clearly on the part of my Government you will kindly cause to be conveyed the necessary orders suspending the further dispatch of vessels from La Boca wharf without appeal to our port authorities and without compliance with our law governing such matters.

My Government, as I have already intimated to you, faithfully fulfills all its treaty obligations undertaken for the benefit of the World at large and more particularly so for the benefit of the noble American Nation, and it trusts that those same sentiments may eventually prevail in your distinguished opinion.

I avail myself of this further opportunity to express to you, General, the assurances of my distinguished consideration.

(Signed.) TOMÁS ARIAS.

Isthmian Canal Zone. — Executive Office. — Ancon, July 11, 1904.

Late on Saturday, the 9th Instant.

I received Your Excellency's appreciated favor of the same date respecting matters touching foreign maritime commerce, in which Your Excellency observes that we do not seem to be in accord.

The clear statement of the position of Your Excellency's Government in respect to this matter which is now before me will be forwarded by the first mail to Washington, to the end that it may be laid before the proper authorities, for I find myself without the power to give the order respecting clearances of vessels from La Boca which Your Excellency asks me to issue, and I regret exceedingly that I am so situated that a favorable response to Your Excellency's is impracticable.

But I have taken every possible means to give the authorities in Washington the earliest information respecting the situation confronting me here in respect to the clearance of vessels.

Learning as I did, on the 8th of this month, that a vessel at anchor within what I consider to be American jurisdiction, was unable to obtain clearance from the authorities of the port of Panama for entry at Ancon, I reported this fact by cable, with all the information I had on the subject.

On the next day I was officially advised by the agent of the steamer in question that he had been denied for his vessel a clearance for the port of Ancon, said agent furnishing me with a copy of the notice he had received from the Captain of the Port of Panama.

This was the subject of another cable on the same date, and yesterday I sent to Admiral Walker in Washington, for reference to the Secretary of State of the United States, a long cable giving the substance of the contents of Your Excellency's appreciated favor of the 9th July, referred to above.

While we were discussing the agreement for the delimitation of the Canal Zone, and feeling uncertain as to the exact construction to be put upon the words "harbors adjacent" with respect to the city of Panama, I made inquiry, and was informed by Admiral Walker that in the opinion of the Secretary of State, Mr. Hay, and the Secretary of War, Mr. Taft, and of himself, the words in the treaty quoted above, respecting the "harbor adjacent" to the city of Panama meant the old harbor of the city, lying between Point Chiriqui and Point Paiteña, and which was used entirely by all vessels prior to the construction of the La Boca wharf. At that time I also had my attention directed to a map of the Isthmus of Panama, published in the year 1858 and reprinted some years later by the old Panama Canal Company, being the work of General Totten, who was the Chief Engineer of the Panama Railroad. Upon this map, the British anchorage and the American anchorage for ocean vessels is marked, and I saw that the waters then used for an anchorage, according to this map, were far away from the Flamenco and Naos anchorage now used, being quite a mile and a half or two miles therefrom and by that distance nearer to the old landing place then used by the city of Panama. I remembered also that in the year 1867 I had personally embarked on a deep sea vessel anchored as described above and proceeded on the ship to San Francisco.

These were considerations which principally caused me to conclude that there was no question as to what was

meant by the reference in the treaty to the "harbor adjacent," and the matter seemed to me to be so plain that it did not occur to me to discuss it with Your Excellency while we were arranging the delimitation agreement. I was, therefore, very much surprised when I learned the views indeed, when I learned the views adopted by Your Excellency's Government were so radically different from those entertained by my own.

Since I first saw the Varilla-Hay treaty, and had an opportunity to study it, I have supposed as a matter of course, indeed as an inevitable necessity, that the United States, as exercising all power in the Zone that a sovereign could exercise, would be obliged to create ports that vessels from any part of the world might, with justice, claim the right to use. It was also evident in my opinion that the United States would consider it to be necessary to establish these ports for another reason, and that was, that the subject of maritime quarantine could be handled more easily and directly than through another, though thoroughly and entirely friendly, Government.

A very large part of the shipping to use the ports at either end of the Canal would be vessels engaged in the ordinary commercial movement that, for many years, has found the Isthmus of Panama a convenient route of transit, and the danger to be incurred from the introduction of contagious and infectious diseases was due very largely to the fact that this trade existed and must be continued, and the means that would best effect the quarantine control of the trade would be the means that could be applied most directly and with least formality.

That such a view of the case widely entertained was also very soon made evident to me by the questions asked, almost as soon as I arrived on the Isthmus, to the effect of "when shall we have ports at either end of the Canal?" and "when will you be ready to receive and clear vessels?"

The situation as respects Panama is different to that which exists at Colon for on the Pacific coast of the Isthmus the Canal channel has already been made and has been many years in use as the regular route of trade and commerce, and La Boca has become an importance place of embarkation. That this importance was bound to continue and to increase was almost self-evident, and while I had not yet received a name as a port entry, the physical remained that it was the principal port on the Pacific coast of the Republic and, as such, has passed under the jurisdiction of the United States.

At Colon, however, the conditions are quite different. There is no Canal port as yet on the Atlantic side, adequate to receive and accommodate the shipping that now frequents the port of Colon, and some time must elapse before like accommodations can exist at Colon to those which now exist on the Pacific coast.

But that a change must soon occur there is almost certain; indeed, inquiries are now before me as to the depth of water in the Folks River, and inquiries as to the facilities there for discharging deep sea steamers and sailing vessels. The Government of the United States is not yet ready to receive large vessels at this point, but in a short time that condition may be changed, when possibly the situation here may be repeated on the Atlantic side.

Your Excellency refers to the grave injury that the Republic would suffer by the loss of her maritime commerce



