COSTA RICA - PANAMA ARBITRATION: MEMORANDUM ON UTI POSSIDETIS

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649302024

Costa Rica - Panama Arbitration: Memorandum on Uti Possidetis by John Bassett Moore

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

JOHN BASSETT MOORE

COSTA RICA - PANAMA ARBITRATION: MEMORANDUM ON UTI POSSIDETIS

Trieste

COSTA RICA- PANAMA ARBITRATION

MEMORANDUM

ON

UTI POSSIDETIS

BY

JOHN BASSETT MOORE

Hamilton Fish Professor of International Law and Diplomacy, Columbia University, New York; Member of the Permanent Court of Arbitration of the Hague; Member of the Institute of International Law; Author of a History and Digest of International Arbitrations, of a Digest of International Law, etc.

UNIV. OF CALIFORNIA

1913.
THE COMMONWEALTH CO., PRINTERS,
ROSSLYN, VA., U. S. A.

PRESERVATION
COPY ADDED
ORIGINAL TO BE
RETAINED

APR 2 8 1993

F1549
B7M6

UNIV. OF
CALIFORNIA

CONTENTS.

I. Origin of the Term Uti Possidetis.

II. Meaning in International Law.

III. Application of Principle to International Boundaries.

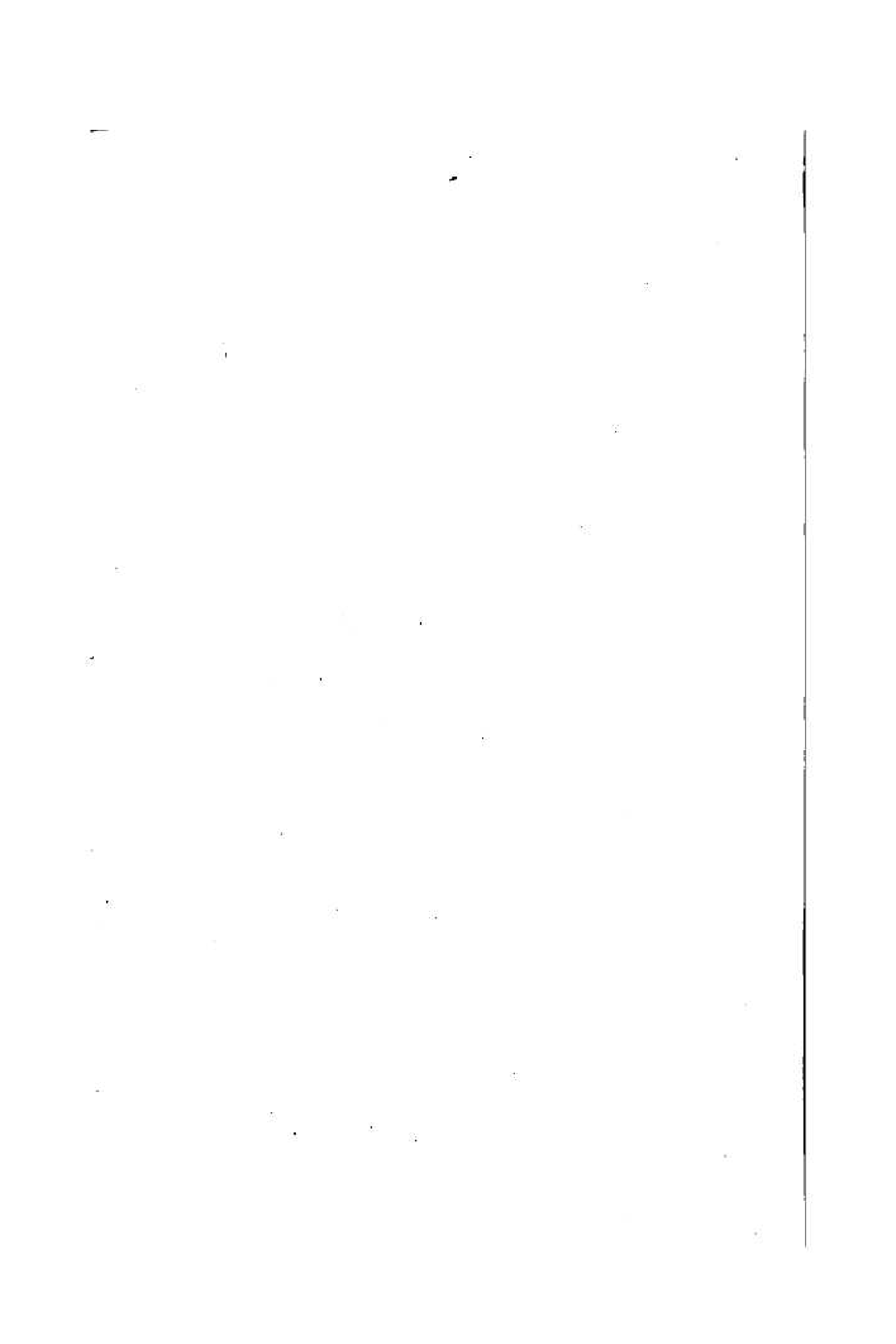
IV. The Principle of Uti Possidetis in Latin-America.

V. Its Application in Spanish-America.

1. *Origin of Spanish-American States.*
2. *Absence of Definite Boundaries.*
3. *Uti Possidetis of the Date of Independence.*
4. *The "Uti Possidetis Juris of 1810."*

VI. Question Between Costa Rica and Panama.

420243



UNIV. OF CALIFORNIA

UTI POSSIDETIS.

In the discussion of the pending question, much prominence has at times been given to the subject of *Uti possidetis.* Especially is this the case with the Arbitration before the President of France, in which the representatives of Colombia (predecessor of Panama) endowed the phrase with an importance altogether factitious, making it, indeed, in the form of the *Uti possidetis juris,* the very foundation of their argument. This was all the more remarkable, because the words *Uti possidetis,* as we shall hereafter more fully show, nowhere occur in the treaties between the two countries. Nevertheless, the use which has been made of the phrase renders it necessary to present the matter in its various aspects.

I. Origin of the Term Uti Possidetis.

The term *Uti possidetis* is derived from the Roman Law, in which it designated an interdict of the Praetor, by which the disturbance of the existing state of possession of immovables, as between two individuals, was forbidden. As to the precise origin of the process, which lay outside the domain of the regular *legis actiones,* writers are not agreed. They also differ as to whether protection of the better right or prevention of a breach of the peace was the primary ground of the magistrate's intervention. Niebuhr, whose view has been widely accepted, finds the origin of the procedure in the measures resorted to for protecting the occupants of public lands, who, although

UNIV. OF CALIFORNIA

they could not show an original title and therefore could not maintain an action founded on ownership, received in their occupancy the recognition and sanction of the State.[1] To the possessor there was awarded, on the strength of his possession, the right to be free from disturbance by his adversary. To this extent the interdict served, in effect, in place of a regular title. In course of time, however, the interdict came to be used as an ancillary process, for the purpose of deciding which of the parties, as possessor, should have the advantage of standing on the defensive in a litigation to determine ownership. The formula employed by the Praetor was: *Uti eas aedes, quibus de agitur, nec vi nec clam nec precario alter ab altero possidetis, quominus ita possideatis, vim fieri veto.*

> "As you possess the house in question, the one not having obtained it by force, clandestinely, or by permission from the other, I forbid force to be used to the end that you may not continue so to possess it."

Or, as translated by an eminent authority:

> "Whichever party has possession of the house in question, without violence, clandestinity or permission in respect of the adversary, the violent disturbance of his possession I prohibit."[2]

The right of the possessor was not affected if his possession was begun by violence, clandestinely or by permission as regards any other person than the

[1] Muirhead, Historical Introduction to the Private Law of Rome, 2nd ed., 1899, p. 206.

[2] Poste, Gaii Institutionum, ed. 1871, p. 505.

adversary; and, as to the latter, there was simply a prohibition to disturb the *status quo,* even the question as to which of the parties was in possession and which was forbidden to interfere being left open.[3]

"In claiming," says Sohm, "an interdict, the juristic possessor claims, at the same time, a declaration recognizing his juristic possession, discontinuance of the disturbance, and damages for the disturbance which has already taken place. No one, however, is deemed a juristic possessor for purposes of this interdict, unless his juristic possession was acquired *nec vi nec clam nec precario ab adversario.* A person who has acquired juristic possession from his adversary in the suit either *vi* (i. e. by force), or *clam* (i. e. clandestinely, anticipating the opposition of his adversary and secretly evading it), or *precario* (i. e. on terms of revocation at will, no binding transaction being concluded with the grantor), is not held to have juristic possession for purposes of the possessory suit, the juristic possession being deemed, on the contrary, to vest in the adversary from whom the thing was acquired *vi, clam,* or *precario.*"[4]

"The interdicts *Uti possidetis* and *Utrubi* are," says Moyle, speaking of the time of Justinian, "for retaining possession, and are employed when two parties claim ownership in anything, in order to determine which shall be defendant and which plaintiff; * * * Where the dispute relates to the possession of land or buildings, the interdict called *Uti possidetis* is employed; * * * In *Uti possidetis* the party in possession at the issue of the interdict was the win-

[3] Muirhead, p. 347.

[4] 1 Sohm, Institutes of Roman Law (1910), p. 310.