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George W. Cook (U.S.A.) v. United Mexican States

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certain stamps without restoring the value of all or the interest on the money which they represented. I believe it to be a sound and helpful practice recognized by authors and international decisions for the Government of the injured person to give the offending Government the opportunity to render justice to the offended party through its own regular and voluntary ways, thus avoiding occasion for international discussion and friction.

4. In view of the foregoing, I am of the opinion that the Mexican Government repaired in part the damage inflicted on the claimant, when it restored the value of certain of his stamps, and that this claim is now proper only for what has not been restored and for the unpaid interest, at the rate of six per cent per annum. The Mexican Government owes the interest on the sum of 262.77 pesos, from November 15, 1914, to September 1, 1921, and on the sum of 43.15 pesos, from September 15, 1915, to September 1, 1921; plus the sum of 1.12 pesos, value of the stamps which did not belong to the "Centenary Issue", which value was never returned, plus the corresponding interest thereon, from November 15, 1914, to the date on which the last award is rendered by the Commission.

G. Fernández MacGregor,
Commissioner.

GEORGE W. COOK (U.S.A.) *v.* UNITED MEXICAN STATES.

(June 3, 1927, concurring opinions by Presiding Commissioner and Mexican Commissioner, June 3, 1927. Pages 318-324.)

Application of Domestic Statute of Limitations. A domestic statute of limitations is not binding on an international tribunal, particularly when claimant demanded payment of respondent Government within prescribed period.

Contract Claims.—Non-Payment of Money Orders.—Effect of Depreciation of Currency.—Computation of Award.—Rates of exchange.—Effect of Domestic Law Governing Payments. Claim for non-payment of money orders issued during Huerta regime *allowed.* A domestic law governing payments of obligations contracted in paper currency *held* not applicable. Award granted on basis of value of Mexican currency as of time of original transaction, when claimant had delivered value for money orders in question.

Cross-references: Am. J. Int. Law, Vol. 22, 1928, p. 189; Annual Digest, 1927-1928, pp. 205, 264.

Comments: Joseph Conrad Fehr, "International Law as applied by U.S.-Mexico Claims Commission," A.B.A. Jour., Vol. 14, 1928, p. 312 at 313.

Nielsen, Commissioner:

1. Claim is made in this case by the United States of America in behalf of George W. Cook to recover the sum of $4,526.58, United States currency, stated to be the equivalent of 9,053.16 Mexican pesos, the aggregate amount

of numerous postal money orders, which are owned by the claimant, and which it is alleged were not paid upon presentation to Mexican postal authorities. The orders were issued in the years 1913 and 1914. A proper allowance of interest is claimed on the said sum of $4,526.58.

2. The Answer of the Mexican Government contains an allegation to the effect that the money orders in question were issued by an illegitimate authority (the administration of General Huerta) which could not bind the United Mexican States. However, no contentions on this point were pressed in view of the decision rendered by the Commission in the *Hopkins* case, Docket No. 39, on March 31, 1926.

3. In the Brief filed by the Mexican Government in the case of the *Parsons Trading Company*, Docket No. 2651, of which use was made in the argument in the instant case, it is alleged that the right to collect a postal money order is subject to a statute of limitations of two years after the date of issue, and that a recovery on the orders in question is now barred by that statute. Finally, it is argued that, if a pecuniary award should be rendered by the Commission the amounts stated in the money orders should be calculated on the basis of the so-called Mexican Law of Payments of April 13, 1918. It is explained that this law had for its object the partial lifting of a general moratorium created by earlier legislation, and that the law established certain specified equivalents in gold currency of obligations contracted in paper currency. It is asserted that money orders are contractual obligations, and that the law of April 13, 1918, as a part of the *lex loci contractus*, is applicable to the payment of such orders.

4. It has sometimes been said that statutes of limitation are not a bar to international reclamations. General statements of this kind have perhaps at times led to some confusion of domestic law with a well-recognized principle of international practice. There is, of course, no rule of international law putting a limitation of time on diplomatic action or upon the presentation of an international claim to an international tribunal. Domestic statutes of limitation take away at the end of prescribed periods the remedy which a litigant has to enforce rights before domestic courts. It is satisfactorily established by evidence that the claimant in the instant case presented his money orders and requested payment within the period during which payment could be made under Mexican law, and that payment was refused by Mexican postal authorities. The United States is not now debarred by any Mexican statute of limitations from recovering money wrongfully withheld from the claimant. The Mexican Government could not by withholding payment for a period prescribed by a domestic statute of limitation relieve itself from an obligation under international law to make restitution of the value of the orders. From a conclusion to this effect it does not follow that international tribunals must always disregard all statutes of limitation prescribing reasonable periods within which remedies may be enforced before domestic tribunals. And it may be further observed that in view of the stipulations of Article V of the Convention of September 8, 1923, no question can arise in this case with respect to the exhaustion of local remedies.

5. The issue determinative of responsibility in this case is a simple one, and when its real character is perceived it is clear that the arguments advanced before the Commission covered a wide range of subjects not relevant to a proper disposition of the case. It is not necessary to take account of the considerations explained by Mexico with respect to economic conditions

in Mexico which prompted the enactment of the law of April 13, 1918. Nor is it necessary to determine whether Mexican money orders must be regarded as contracts, governed in all respects by the *lex loci contractus*, including the law of April 13, 1918, or whether it may more properly be considered that money orders are not commercial transactions, as was said by an American judge with respect to American money orders, but rather the means employed in exercising a governmental power for the public benefit. *Bolognesi et al. v. United States*, 189 Fed. Rep. 335. In a sense it may doubtless be said that a money order of the usual type evidences on the one hand some obligation of the Government that issues it to pay the value of the order, and on the other hand the right of the holder to receive payment. Furthermore, it is not necessary to give application in the present case to the principles asserted by the Commission in the *Hopkins* case, to which counsel for the United States called attention as to the standing of domestic statutes which by their operation on rights of aliens may contravene international law.

6. Obviously, rights and obligations in relation to money orders, the creatures of Mexican law, are governed by that law. But the Commission is not called upon to consider whether, if the Mexican Government had forced the claimant to accept payment according to the table of payments prescribed by the Mexican law of April 13, 1918, such action would have resulted in a violation of international law. The Mexican authorities have refused to make any payment. The questions before the Commission are, first, whether the failure of the Mexican Government to pay to the claimant the value of the money orders upon presentation renders the Government of Mexico liable under the terms of submission in the Convention of September 8, 1923, requiring the Commission to determine claims in accordance with principles of international law, and, second, if such liability exists what sum shall be awarded for wrongful withholding of the purchase prices or the orders. That responsibility in a case of this character exists was stated by the Commission in the decision rendered in the *Hopkins* case on March 31, 1926.

7. When questions are raised before an international tribunal, as they have been in the present case, with respect to the application of the proper law in the determination of rights grounded on contractual obligations, it is necessary to have clearly in mind the particular law applicable to the different aspects of the case. The nature of such contractual rights or rights with respect to tangible property, real or personal, which a claimant asserts have been invaded in a given case is determined by the local law that governs the legal effects of the contract or other form of instrument creating such rights. But the responsibility of a respondent Government is determined solely by international law. When it is alleged before an international tribunal that some property rights under a contract have been impaired or destroyed, the tribunal does not sit as a domestic court entertaining a common law action of assumpsit or debt, or some corresponding form of action in the civil law. And in a case involving damages to or confiscation of tangible property, real or personal, inflicted by agencies for which a government is responsible, or by private individuals under conditions rendering a government liable for wrongs inflicted, an international tribunal is not concerned with an action in tort, the merits of which must be determined according to domestic law. The ultimate issue upon which the question of responsibility must be determined in either of these kinds of cases is whether or not there is proof of conduct which is wrongful under

international law and which therefore entails responsibility upon a respondent government.

8. By the failure of the Mexican authorities to pay the money orders in question in conformity with the existing Mexican law when payment was due, the claimant, Cook, was wrongfully deprived at that time of property in the amount of 9,053.16 pesos. Payment of the orders should have been made when they were presented. The claimant is entitled to recover the loss which he sustained on account of the nonpayment at that time. An award should therefore be rendered by the Commission in favor of the claimant for the amount of the orders, namely, 9,053.16 pesos with interest. The total sum represents the legal measure of the loss suffered by the claimant when payment of the orders was refused. Since it is desirable to render the award in the currency of the United States conformably to the practice which the Commission has followed in the past, having in mind the desirability of avoiding uncertainties with respect to rates of exchange, and further having in mind the provisions of the first paragraph of Article IX of the Convention of September 8, 1923, account must be taken of the proper rate of exchange.

9. Domestic courts have frequently had occasion, especially in recent years, to deal with the translation into the currency of their own country monetary judgments in satisfaction of obligations fixed in the terms of the currency of some other country. In the absence of evidence with regard to the value of a foreign coin it has been held that the par value should be taken. *Birge-Forbes Company* v. *Heye*. 251 U. S. 317. The courts are required to convert currency in these cases in view of the fact that they can render judgments only in coin of the government by which they were created. However, the principles which these courts have considered in arriving at their decisions may have some pertinency to a case such as that before the Commission, since the translation of currency either by an international tribunal or by a domestic court must be based on some principle that is sound from the standpoint of the interests of the parties to the litigation. Some courts have held that in the case of a breach of contractual obligations the rates of exchange should be determined as of the date of the breach. Others have held that the rate should be fixed as of the date of judgment. In a recent case the Supreme Court of the United States held that the debt of a German bank to an American citizen arising from the refusal to pay a deposit on demand should be determined as of the value of the mark at the time the suit was brought. *Die Deutsche Bank Filiale Nurnberg* v. *Humphrey*, 272 U. S. 517. In a Brief filed by counsel in the case of *Hicks* v. *Guinness et al.*, 269 U. S. 71, are cited numerous decisions of each kind. I am of the opinion that in the instant case the par value of the Mexican peso, namely $0.4985, may properly be taken in determining the amount to be awarded in the currency of the United States. There are several considerations which I think justify this conclusion. Mexico withheld payment of the money orders, and the claimant should be reimbursed in the full value of the orders. That payments were not made is satisfactorily shown by evidence, but the date upon which payment of each order was refused is uncertain, and it is natural that the claimant should not be able to furnish precise information in each case. There is not, in my opinion, before the Commission the proper kind of evidence on which the Commission could properly determine the rate of exchange on each of those dates or an average rate of exchange during the period within which the orders were dishonored,

even if such computations might be deemed to be proper. And what is probably more to the point, Mexico has not contended that the prevailing exchange rates at the time the orders were dishonored should be applied, but has insisted that an award should be rendered in terms of the law of payments of April 13, 1918.

10. Having in mind the uncertainty in the record as to the specific dates on which payment of each of the several money orders was refused, I am of the opinion that interest may properly be allowed on the sum of $4,513.00 from the date of the last order, namely, September 21, 1914.

Van Vollenhoven, Presiding Commissioner:

I concur in paragraphs 1 to 4, inclusive, 8 and 10 of Commissioner Nielsen's opinion. Amounts which fell due to claimants in Mexico in the years 1913 to 1915 when a depreciated paper currency was in circulation throughout the country should be awarded by this Commission in strict compliance with the monetary enactments of Mexico effective in those years, unless in any specific case there might be conclusively proven that by so doing the Commission would cause the claimants an unjust enrichment. In the present case not only such evidence fails, but it would seem from the record that Cook, in having the full value of his money orders reimbursed to him, would only receive the value of what he sold, delivered, and was compensated for by way of these money orders. I therefore am of the opinion that an award should be rendered in the sum of $4,513.00, with interest thereon.

Fernández MacGregor, Commissioner:

I concur in the opinion of the Presiding Commissioner.

Decision

The Commission decides that the Government of the United Mexican States shall pay to the Government of the United States of America in behalf of George W. Cook the sum of $4,513.00 (four thousand five hundred and thirteen dollars) with interest at the rate of six per centum per annum from September 21, 1914, to the date on which the last award is rendered by the Commission.

PARSONS TRADING COMPANY (U.S.A.) *v.* UNITED MEXICAN STATES.

(June 3, 1927. Pages 324-325.)

CONTRACT CLAIMS.—NON-PAYMENT OF MONEY ORDERS.—EFFECT OF DEPRECIATION OF CURRENCY.—COMPUTATION OF AWARD.—RATES OF EXCHANGE.—EFFECT OF DOMESTIC LAW GOVERNING PAYMENTS. Decision in *George W. Cook* claim *supra* followed.

Cross-reference: Am. J. Int. Law, Vol. 22, 1928, p. 194.

(Text of decision omitted.)