

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

The Pious Fund Case (United States of America v. Mexico)

14 October 1902

VOLUME IX pp. 1-14



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

THE PIOUS FUND CASE

PARTIES: United States of America *v.* Mexico.

COMPROMIS: Protocol of Agreement, 22 May, 1902.

ARBITRATORS: Permanent Court of Arbitration: Edward Fry, De Martens, T.M.C. Asser, A. F. de Savornin Lohman, Henning Matzen.

AWARD: 14 October, 1902.

The claim of the United States of America in the case known as "the Pious Fund of the Californias" is governed by the principle of *res judicata*—The rules of prescription, belonging exclusively to the domain of civil law, cannot be applied to the present dispute between the two States in litigation—Payment in gold cannot be exacted except by virtue of an express stipulation—Question of the mode of payment does not relate to the basis of the right in litigation, but only to the execution of the sentence.

BIBLIOGRAPHY

A. M. Stuyt, *Survey of International Arbitrations, 1794-1938*, The Hague, 1939, p. 256.

Texts of the Compromis, Award and other documents relating to the Case:

Bureau international de la Cour permanente d'Arbitrage, *Recueil des Actes et Protocoles concernant le litige du "Fonds Pieux des Californies" soumis au Tribunal d'Arbitrage constitué en vertu du Traité conclu à Washington le 22 mai 1902 entre les Etats-Unis d'Amérique et les Etats-Unis Mexicains*, La Haye, Van Langenhuisen Frères, 1902 (official publication), p. 5 [English and Spanish texts of the Compromis]; p. 107 [French text of the Award].

American Journal of International Law, vol. 2, 1908, pp. 893, 898 [English texts of the Compromis and Award].

British and Foreign State Papers, vol. 95, p. 973 [English texts of the Compromis and Award].

Baron Descamps et Louis Renault. *Recueil international des traités du XX^e siècle*, année 1902, Paris, p. 461 [English, French and Spanish texts of the Compromis]; p. 470 [French text of the Award].

Le premier arbitrage de la Cour de la Haye, Les fondations californiennes et la question de la chose jugée en droit international, plaidoirie de M. le chevalier Descamps, Conseil des Etats-Unis d'Amérique, Bruxelles, 1902 [with French texts of the Compromis and Award].

Journal du droit international privé et de la jurisprudence comparée, t. 30, 1903, p. 694 [French text of the Award].

William M. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and Other Powers, 1776-1909*, vol. I, Washington, 1910, p. 1194 [English text of the Compromis].

De Martens, *Nouveau Recueil général de traités*, 2^e série, t. XXXII, Leipzig, 1905, p. 189 [English text of the Compromis]; p. 193 [French text of the Award].

Papers relating to the Foreign Relations of the United States (1902), United States vs. Mexico in the matter of the Case of the Pious Fund of Californias, Washington, 1903, Appendix II, p. 857 [French text of the Award].

Report of Jackson H. Ralston, Agent of the United States and of Counsel in the matter of the Pious Fund of Californias, with Pleadings, Appendix, Exhibits, Briefs, and Record of the entire Proceedings, Washington, 1902 [with, in Part I, p. 13, English text of the Award].

República Mexicana, Secretaría de Relaciones Exteriores, *Reclamación del Gobierno de los Estados Unidos de América contra México respecto del Fondo Píadoso de las Californias*, Documentos principales relativos, Mexico, 1903 [including Spanish texts of the Compromis and Award].

Revue générale de droit international public, t. IX, 1902, Documents, p. 24 [French text of the Award].

The Hague Court Reports, edited by J. B. Scott, Carnegie Endowment for International Peace, New York, Oxford University Press, 1st series, 1916, p. 3 [English texts of the Compromis and Award]; p. 429 [French text of the Award]; p. 432 [Spanish text of the Compromis].

Ernst Schmitz, A. H. Feller, *Digest of the Decisions of the Permanent Court of Arbitration, 1902-1908*, Berlin, 1931, p. 201 [English and Spanish texts of the Compromis].

U.S. Statutes at Large, vol. 32, p. 1916 [English text of the Compromis].

George Grafton Wilson. *The Hague Arbitration Cases*, Boston and London, 1915, p. 1 [English texts of the Compromis and Award].

Commentaries:

K. S. Carlston, *The Process of International Arbitration*, Columbia University Press, New York 1946, pp. 11, 14, 33, 170, 235.

E. Descamps, Conseil des Etats-Unis d'Amérique, *Mémoire sur le fonctionnement du premier tribunal d'arbitrage constitué au sein de la Cour permanente d'Arbitrage*, Louvain, 1903.

M. J. P. A. François. "La Cour permanente d'Arbitrage, son origine, sa jurisprudence, son avenir", *Recueil des Cours*, 1955, I, p. 481.

Lauterpacht, *Private Law Sources and Analogies of International Law*, 1927, p. 249.

Edgar de Melville, *L'oeuvre de la Haye (1871-1921) Exposé du travail des conférences de La Haye et de la Cour permanente d'Arbitrage*, Leyde, 1924, p. 90.

Oppenheim, *International Law*, 7th ed., I, p. 315.

W. L. Penfield, "The Hague Court in the Pious Fund Arbitration", *Report of the Eighth Annual Meeting of the Lake Mohonk Conference on International Arbitration*, 1903, reported by W. J. Rose, pp. 83-90.

M. R. Pinto, "La prescription en droit international", *Recueil des Cours*, 1955, I, p. 440.

Jackson H. Ralston, "Some suggestions as to the Permanent Court of Arbitration", *American Journal of International Law*, vol. I, Part I, 1907, p. 321.

Louis Renault, "Un premier litige devant la Cour d'Arbitrage de La Haye", *Annales de l'Ecole des sciences politiques*, 18^e année, 1903, pp. 38-74.

J. B. Scott. Der Kalifornische Kirchengüterstreit zwischen den Vereinigten Staaten von America und Mexiko, *Das werk vom Haag, 2 Serie, I, teil 1*, pp. 45-247 [including the German text of the Compromis and the French text of the Award].

M. Sibert, *Traité de Droit international public*, Paris 1951, t. I, p. 338

James L. Tryon. The Hague Peace System in operation, *Yale Law Journal*, vol. XXI, November 1911-1912, p. 41.

SYLLABUS ¹

The case on trial was known as the " Pious Fund of the Californias ". It originated in donations made by Spanish subjects during the latter part of the seventeenth and the first half of the eighteenth centuries for the spread of the Roman Catholic faith in the Californias. These gifts, amounting approximately to \$ 1,700,000, were made in trust to the Society of Jesus for the execution of the pious wish of the founders. The Jesuits accepted the trust and discharged its duties until they were disabled from its further administration by their expulsion in 1767 from the Spanish dominions by the King of Spain and by the suppression of the order by the Pope in 1773. The Crown of Spain took possession of and administered the trust for the uses declared by the donors until Mexico, after her independence was achieved, succeeded to the administration of the trust. Finally, in 1842, President Santa Anna ordered the properties to be sold, that the proceeds thereof be incorporated into the national treasury, and that six per cent annual interest on the capitalization of the property should be paid and devoted to the carrying out of the intention of the donors in the conversion and civilization of the savages.

Upper California having been ceded to the United States in 1848 by the treaty of Guadalupe Hidalgo, the Mexican Government refused to pay to the prelates of the Church in Upper California any share of the interest which accrued after the ratification of the treaty. The latter presented their claims therefor to the Department of State. A mixed commission for the settlement of the cross claims between the two Governments was formed under the Convention of July 4, 1868.² On the presentation and hearing of the claim the United States and Mexican commissioners divided in opinion.³ The case was accordingly referred to the umpire, Sir Edward Thornton, who rendered an award ⁴ in favor of the United States for twenty-one annuities of \$ 43,050.99 each, as the equitable proportion to which the prelates of Upper California were entitled of the interest accrued on the entire fund from the making of the treaty of peace down to February 2, 1869. The Mexican Government paid the award, but asserting that the claim was extinguished, refused to make any further payments of interest for the benefit of the Church in Upper California. Again the prelates appealed to the Department of State for support, and in 1898 active diplomatic discussions between the two Governments as to the merits of the claim were begun and carried forward until they culminated, on May 22, 1902, in a formal agreement to refer the case to the determination of the Hague tribunal to be composed of five members none of whom were to be natives or citizens of the contracting Parties. Only two issues were presented by the protocol, namely: 1. Is the case, as a consequence of the decision of Sir Edward Thornton, within the governing principle of *res judicata*? 2. If not, is the claim just? The tribunal was authorized to render whatever judgment might be found just and equitable.

¹ *The Hague Court Reports*, edited by J. B. Scott, Carnegie Endowment for International Peace, New York, Oxford University Press, 1st series, 1916, pp. 1-2.

² *Ibid.*, pp. 12-17.

³ *Ibid.*, pp. 16-48.

⁴ *Ibid.*, pp. 48-54; see also Moore, *International Arbitrations*, vol. II, 1898, p. 1350.

As judges the United States selected Professor Martens of Russia and Sir Edward Fry of Great Britain; Mexico chose Dr. Asser and Jonkheer de Savornin Lohman of Holland; and these judges selected as president of the tribunal Dr. Matzen of Denmark. All were members of the Permanent Court of Arbitration. The sessions of the tribunal began September 15, 1902, and ended October 1, 1902.

The material part of the unanimous award of the tribunal in favor of the United States, rendered on October 14, 1902, was as follows:

1. That the said claim of the United States of America for the benefit of the Archbishop of San Francisco and of the Bishop of Monterey is governed by the principle of *res judicata* by virtue of the arbitral sentence of Sir Edward Thornton, of November 11, 1875; amended by him, October 24, 1876.¹

2. That conformably to this arbitral sentence the Government of the Republic of the United Mexican States must pay to the Government of the United States of America the sum of \$ 1,420,682.67 Mexican, in money having legal currency in Mexico, within the period fixed by Article 10 of the protocol of Washington of May 22, 1902.

This sum of \$ 1,420,682.67 will totally extinguish the annuities accrued and not paid by the Government of the Mexican Republic -- that is to say, the annuity of \$ 43,050.99 Mexican from February 2, 1869, to February 2, 1902.

3. The Government of the Republic of the United Mexican States shall pay to the Government of the United States of America on February 2, 1903, and each following year on the same date of February 2, perpetually, the annuity of \$ 43,050.99 Mexican, in money having legal currency in Mexico.

¹ *Ibid.*, pp. 48-54.

PROTOCOL OF AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF MEXICO FOR THE ADJUSTMENT OF CERTAIN CONTENTIONS ARISING UNDER WHAT IS KNOWN AS THE "PIOUS FUND OF THE CALIFORNIAS" SIGNED AT WASHINGTON, 22 MAY 1902¹

Whereas, under and by virtue of the provisions of a convention entered into between the high contracting Parties above-named, of date July 4, 1868,² and subsequent conventions supplementary thereto, there was submitted to the mixed commission provided for by said convention a certain claim advanced by and on behalf of the prelates of the Roman Catholic Church of California against the Republic of Mexico for an annual interest upon a certain fund known as "The Pious Fund of the Californias", which interest was said to have accrued between February 2, 1848, the date of the signature of the treaty of Guadalupe Hidalgo, and February 1, 1869, the date of the exchange of the ratifications of said convention above referred to; and

Whereas, said mixed commission, after considering said claim, the same being designated as No. 493 upon its docket, and entitled Thaddeus Amat, Roman Catholic Bishop of Monterey, a corporation sole, and Joseph S. Alemany, Roman Catholic Bishop of San Francisco, a corporation sole, against the Republic of Mexico, adjudged the same adversely to the Republic of Mexico and in favor of said claimants, and made an award thereon of nine hundred and four thousand, seven hundred and 99/100 (904,700.99) dollars; the same, as expressed in the findings of said court, being for twenty-one years' interest of the annual amount of forty-three thousand and eighty and 99/100 (43,080.99) dollars upon seven hundred and eighteen thousand and sixteen and 50/100 (718,016.50) dollars, said award being in Mexican gold dollars, and the said amount of nine hundred and four thousand, seven hundred and 99/100 (904,700.99) dollars having been fully paid and discharged in accordance with the terms of said conventions; and

Whereas, the United States of America on behalf of said Roman Catholic Bishops, above-named, and their successors, in title and interest, have since such award claimed from Mexico further instalments of said interest, and have insisted that the said claim was conclusively established, and its amount fixed as against Mexico and in favor of said original claimants and their successors in title and interest under the said first-mentioned convention of 1868 by force of the said award as *res judicata*; and have further contended that apart from such former award their claim against Mexico was just, both of which proposi-

¹ Bureau International de la Cour permanente d'Arbitrage, *Recueil des Actes et Protocoles concernant le litige du "Fonds Pieux des Californies" soumis au Tribunal d'Arbitrage constitué en vertu du Traité conclu à Washington le 22 mai 1902 entre les Etats-Unis d'Amérique et les Etats-Unis Mexicains*, La Haye, Van Langenhuyesen Frères, 1902, p. 5. French translation: Descamps - Renault, *Recueil international des traités du XX^e siècle*, année 1902, p. 461

² *The Hague Court Reports*, edited by J. B. Scott, Carnegie Endowment for International Peace, New York, Oxford University Press, 1st series, 1916, p. 12: *U.S. Statutes at Large*, vol. 15, p. 679.

tions are controverted and denied by the Republic of Mexico, and the high contracting Parties hereto, animated by a strong desire that the dispute so arising may be amicably, satisfactorily and justly settled, have agreed to submit said controversy to the determination of arbitrators, who shall, unless otherwise herein expressed, be controlled by the provisions of the international Convention for the pacific settlement of international disputes, commonly known as the Hague Convention, and which arbitration shall have power to determine:

1. If said claim, as a consequence of the former decision is within the governing principle of *res judicata*; and
2. If not, whether the same be just.

And to render such judgment or award as may be meet and proper under all the circumstances of the case.

It is therefore agreed by and between the United States of America, through their representative, John Hay, Secretary of State of the United States of America, and the Republic of Mexico, through its representative, Manuel de Azpiroz, Ambassador Extraordinary and Plenipotentiary to the United States of America for the Republic of Mexico as follows:

1

That the said contentions be referred to the special tribunal hereinafter provided, for examination, determination and award.

2

The special tribunal hereby constituted shall consist of four arbitrators (two to be named by each of the high contracting Parties) and umpire to be selected in accordance with the provisions of the Hague Convention. The arbitrators to be named hereunder shall be signified by each of the high contracting Parties to the other within sixty days after the date of this protocol. None of those so named shall be a native or citizen of the parties hereto. Judgment may be rendered by a majority of said court.

All vacancies occurring among the members of said court because of death, retirement or disability from any cause before a decision shall be reached, shall be filled in accordance with the method of appointment of the member affected as provided by said Hague Convention, and if occurring after said court shall have first assembled, will authorize in the judgment of the court an extension of time for hearing or judgment, as the case may be, not exceeding thirty days.

3

All pleadings, testimony, proofs, arguments of counsel and findings or awards of commissioners or umpire, filed before or arrived at by the mixed commission above referred to, are to be placed in evidence before the court hereinbefore provided for, together with all correspondence between the two countries relating to the subject-matter involved in this arbitration; originals or copies thereof duly certified by the Departments of State of the high contracting Parties being presented to said new tribunal. Where printed books are referred to in evidence by either party, the party offering the same shall specify volume, edition and page of the portion desired to be read, and shall furnish the court in print the extracts relied upon; their accuracy being attested by affidavit. If the original work is not already on file as a portion of the record of the former mixed commission, the book itself shall be placed at the disposal of the opposite party in the respective offices of the Secretary of

State of the Mexican Ambassador in Washington, as the case may be, thirty days before the meeting of the tribunal herein provided for.

4

Either party may demand from the other the discovery of any fact or of any document deemed to be or to contain material evidence for the party asking it; the document desired to be described with sufficient accuracy for identification, and the demanded discovery shall be made by delivering a statement of the fact or by depositing a copy of such document (certified by its lawful custodian, if it be a public document, and verified as such by the possessor, if a private one), and the opposite party shall be given the opportunity to examine the original in the City of Washington at the Department of State, or at the office of the Mexican Ambassador, as the case may be. If notice of the desired discovery be given too late to be answered ten days before the tribunal herein provided for shall sit for hearing, then the answer desired thereto shall be filed with or documents produced before the court herein provided for as speedily as possible.

5

Any oral testimony additional to that in the record of the former arbitration may be taken by either party before any judge, or clerk of court of record, or any notary public, in the manner and with the precautions and conditions prescribed for that purpose in the rules of the joint commission of the United States of America, and the Republic of Mexico, as ordered and adopted by that tribunal August 10, 1869, and so far as the same may be applicable. The testimony when reduced to writing, signed by the witness, and authenticated by the officer before whom the same is taken, shall be sealed up, addressed to the court constituted hereby, and deposited so sealed up in the Department of State of the United States, or in the Department of Foreign Relations of Mexico to be delivered to the court herein provided for when the same shall convene.

6

Within sixty days from the date hereof the United States of America, through their agent or counsel, shall prepare and furnish to the Department of State aforesaid, a memorial in print of the origin and amount of their claim, accompanied by references to printed books, and to such portions of the proofs or parts of the record of the former arbitration, as they rely on in support of their claim, delivering copies of the same to the Embassy of the Republic of Mexico in Washington, for the use of the agent or counsel of Mexico.

7

Within forty days after the delivery thereof to the Mexican Embassy the agent or counsel for the Republic of Mexico shall deliver to the Department of State of the United States of America in the same manner and with like references a statement of its allegations and grounds of opposition to said claim.

8

The provisions of paragraphs 6 and 7 shall not operate to prevent the agents or counsel for the parties hereto from relying at the hearing or submission upon any documentary or other evidence which may have become open to their investigation and examination at a period subsequent to the times provided for service of memorial and answer.

9

The first meeting of the arbitral court hereinbefore provided for shall take place for the selection of an umpire on September 1, 1902, at The Hague, in

the quarters which may be provided for such purpose by the International Bureau at The Hague, constituted by virtue of the Hague Convention hereinbefore referred to, and for the commencement of its hearing September 15, 1902, is designated, or, if an umpire may not be selected by said date, then as soon as possible thereafter, and not later than October 15, 1902, at which time and place and at such other times as the court may set (and at Brussels if the court should determine not to sit at The Hague) explanations and arguments shall be heard or presented as the court may determine, and the cause be submitted. The submission of all arguments, statements of facts, and documents shall be concluded within thirty days after the time provided for the meeting of the court for hearing (unless the court shall order an extension of not to exceed thirty days) and its decision and award announced within thirty days after such conclusion, and certified copies thereof delivered to the agents or counsel of the respective parties and forwarded to the Secretary of State of the United States and the Mexican Ambassador at Washington, as well as filed with the Netherlands Minister for Foreign Affairs.

10

Should the decision and award of the tribunal be against the Republic of Mexico, the findings shall state the amount and in what currency the same shall be payable, and shall be for such amount as under the contentions and evidence may be just. Such final award, if any, shall be paid to the Secretary of State of the United States of America within eight months from the date of its making.

11

The agents and counsel for the respective parties may stipulate for the admission of any facts, and such stipulation, duly signed, shall be accepted as proof thereof.

12

Each of the parties hereto shall pay its own expenses, and one-half of the expenses of the arbitration, including the pay of the arbitrators; but such costs shall not constitute any part of the judgment.

13

Revision shall be permitted as provided in Article 55 of the Hague Convention, demand for revision being made within eight days after announcement of the award. Proofs upon such demand shall be submitted within the days after revision be allowed (revision only being granted, if at all, within five days after demand therefor) and counterproofs within the following ten days, unless further time be granted by the court. Arguments shall be submitted within ten days after the presentation of all proofs, and a judgment or award given within the days thereafter. All provisions applicable to the original judgment or award shall apply as far as possible to the judgment or award on revision. Provided, that all proceedings on revision shall be in the French language.

14

The award ultimately given hereunder shall be final and conclusive as to the matters presented for consideration.

Done in duplicate in English and Spanish at Washington, this 22nd day of May, A. D. 1902.

[SEAL] John HAY

[SEAL] M. DE AZPIROZ

SENTENCE ARBITRALE DU 14 OCTOBRE 1902 ¹

La réclamation des Etats-Unis d'Amérique dans l'Affaire connue sous le nom de « Fonds Pieux des Californies » est régie par le principe de la *res judicata* — Les règles de la prescription, étant exclusivement du domaine du droit civil, ne sauraient être appliquées au présent conflit entre les deux Etats en litige — Le paiement en or ne peut être exigé qu'en vertu d'une stipulation expresse — La question du mode de paiement ne concerne pas le fond du droit en litige mais seulement l'exécution de la sentence.

LE TRIBUNAL D'ARBITRAGE, constitué en vertu du Traité conclu à Washington, le 22 mai 1902, entre les Etats-Unis d'Amérique et les Etats-Unis Mexicains;

ATTENDU que, par un compromis, rédigé sous forme de *Protocole*, entre les Etats-Unis d'Amérique et les Etats-Unis Mexicains, signé à Washington le 22 mai 1902, il a été convenu et réglé que le différend, qui a surgi entre les Etats-Unis d'Amérique et les Etats-Unis Mexicains au sujet du « Fonds Pieux des Californies » dont les annuités étaient réclamées par les Etats-Unis d'Amérique, au profit de l'Archevêque de San Francisco et de l'Evêque de Monterey, au Gouvernement de la République Mexicaine, serait soumis à un Tribunal d'Arbitrage, constitué sur les bases de la *Convention pour le règlement pacifique des conflits internationaux*, signée à La Haye le 29 juillet 1899, qui serait composée de la manière suivante, savoir:

Le Président des Etats-Unis d'Amérique désignerait deux Arbitres non nationaux et le Président des Etats-Unis Mexicains également deux Arbitres non nationaux. Ces quatre Arbitres devraient se réunir le 1^{er} septembre 1902 à La Haye afin de nommer le Surarbitre qui, en même temps, serait de droit le Président du Tribunal d'Arbitrage.

ATTENDU que le Président des Etats-Unis d'Amérique a nommé comme Arbitres:

Le très honorable Sir Edward Fry, Docteur en Droit, autrefois siégeant à la Cour d'Appel, Membre du Conseil Privé de Sa Majesté Britannique, Membre de la Cour permanente d'Arbitrage et

Son Excellence Monsieur de Martens, Docteur en Droit, Conseiller Privé, Membre du Conseil du Ministère Impérial des affaires Etrangères de Russie, Membre de l'Institut de France, Membre de la Cour permanente d'Arbitrage;

¹ Texte original français: Bureau international de la Cour permanente d'Arbitrage, *Recueil des Actes et Protocoles concernant le litige du "Fonds Pieux des Californies" soumis au Tribunal d'Arbitrage constitué en vertu du Traité conclu à Washington le 22 mai 1902 entre les Etats-Unis d'Amérique et les Etats-Unis Mexicains*, La Haye, Van Langenhuisen Frères, 1902, p. 107. Traduction anglaise: *Report of Jackson H. Ralston, Agent of the United States and of Counsel in the matter of the Case of the Pious Fund of the Californias, etc.*, Part I, p. 13.

ATTENDU que le Président des Etats-Unis Mexicains a nommé comme Arbitres:

Monsieur T. M. C. Asser, Docteur en Droit, Membre du Conseil d'Etat des Pays-Bas, ancien Professeur à l'Université d'Amsterdam, Membre de la Cour permanente d'Arbitrage et

Monsieur le Jonkheer A. F. de Savornin Lohman, Docteur en Droit, ancien Ministre de l'Intérieur des Pays-Bas, ancien Professeur à l'Université libre d'Amsterdam, Membre de la Seconde Chambre des Etats-Généraux, Membre de la Cour permanente d'Arbitrage;

Lesquels Arbitres, dans leur réunion du 1^{er} septembre 1902, ont élu, conformément aux Articles XXXII-XXXIV de la Convention de La Haye du 29 juillet 1899, comme Surarbitre et Président de droit du Tribunal d'Arbitrage;

Monsieur Henning Matzen, Docteur en Droit, Professeur à l'Université de Copenhague, Conseiller extraordinaire à la Cour Suprême, Président du Landsthing, Membre de la Cour permanente d'Arbitrage.

ET ATTENDU, qu'en vertu du Protocole de Washington du 22 mai 1902, les susnommés Arbitres, réunis en Tribunal d'Arbitrage, devraient décider:

1. Si ladite réclamation des Etats-Unis d'Amérique au profit de l'Archevêque de San Francisco et de l'Evêque de Monterey est régie par le principe de la *res judicata*, en vertu de la sentence arbitrale du 11 novembre 1875, prononcée par Sir Edward Thornton, en qualité de Surarbitre; ¹

2. Sinon, si la dite réclamation est juste, avec pouvoir de rendre tel jugement qui leur semblera juste et équitable;

ATTENDU que les susnommés Arbitres, ayant examiné avec impartialité et soin tous les documents et actes, présentés au Tribunal d'Arbitrage par les Agents des Etats-Unis d'Amérique et des Etats-Unis Mexicains, et ayant entendu avec la plus grande attention les plaidoiries orales, présentées devant le Tribunal par les Agents et les Conseils des deux Parties en litige;

CONSIDÉRANT que le litige, soumis à la décision du Tribunal d'Arbitrage, consiste dans un conflit entre les Etats-Unis d'Amérique et les Etats-Unis Mexicains qui ne saurait être réglé que sur la base des traités internationaux et des principes du droit international;

CONSIDÉRANT que les Traités internationaux, conclus depuis l'année 1848 jusqu'au compromis du 22 mai 1902, entre les deux Puissances en litige, constatent le caractère éminemment international de ce conflit;

CONSIDÉRANT que toutes les parties d'un jugement ou d'un arrêt concernant les points débattus au litige s'éclaircissent et se complètent mutuellement et qu'elles servent toutes à préciser le sens et la portée du dispositif, à déterminer les points sur lesquels il y a chose jugée et qui partant ne peuvent être remis en question;

CONSIDÉRANT que cette règle ne s'applique pas seulement aux jugements des tribunaux institués par l'Etat, mais également aux sentences arbitrales, rendues dans les limites de la compétence fixées par le compromis;

CONSIDÉRANT que ce même principe doit, à plus forte raison, être appliqué aux arbitrages internationaux;

CONSIDÉRANT que la Convention du 4 juillet 1868, conclue entre les deux Etats en litige, avait accordé aux Commissions Mixtes, nommées par ces Etats,

¹ Cf. Moore, *International Arbitrations*, vol. II, 1898, p. 1350; *The Hague Court Reports*, edited by J. B. Scott, Carnegie Endowment for International Peace, New York, Oxford University Press, 1st Series, 1916, p. 48; pour le texte français, *ibid.*, éd. française, 1921, p. 50.

ainsi qu'au Surarbitre à désigner éventuellement, le droit de statuer sur leur propre compétence;

CONSIDÉRANT que dans le litige, soumis à la décision du Tribunal d'Arbitrage, en vertu du compromis du 22 mai 1902, il y a, non seulement identité des parties en litige, mais également identité de la matière, jugée par la sentence arbitrale de Sir Edward Thornton comme Surarbitre en 1875 et amendée par lui le 24 octobre 1876;

CONSIDÉRANT que le Gouvernement des Etats-Unis Mexicains a consciencieusement exécuté la sentence arbitrale de 1875 et 1876, en payant les annuités adjugées par le Surarbitre;

CONSIDÉRANT que, depuis 1869, trente-trois annuités n'ont pas été payées par le Gouvernement des Etats-Unis Mexicains au Gouvernement des Etats-Unis d'Amérique et que les règles de la prescription, étant exclusivement du domaine du droit civil, ne sauraient être appliquées au présent conflit entre les deux Etats en litige;

CONSIDÉRANT, en ce qui concerne la monnaie, dans laquelle le paiement de la rente annuelle doit avoir lieu, que le dollar d'argent, ayant cours légal au Mexique, le paiement en or ne peut être exigé qu'en vertu d'une stipulation expresse;

Que, dans l'espèce, telle stipulation n'existant pas, la Partie défenderesse a le droit de se libérer en argent;

Que, par rapport à ce point, la sentence de Sir Edward Thornton n'a pas autrement force de chose jugée que pour les vingt et une annuités à l'égard desquelles le Surarbitre a décidé que le paiement devait avoir lieu en dollars d'or Mexicains, puisque la question du mode de paiement ne concerne pas le fond du droit en litige mais seulement l'exécution de la sentence;

CONSIDÉRANT que, d'après l'Article X du Protocole de Washington du 22 mai 1902, le présent Tribunal d'Arbitrage aura à statuer, en cas de condamnation de la République du Mexique, dans quelle monnaie le paiement devra avoir lieu;

PAR CES MOTIFS le Tribunal d'Arbitrage décide et prononce à l'unanimité ce qui suit:

1° Que ladite réclamation des Etats-Unis d'Amérique au profit de l'Archevêque de San Francisco et de l'Evêque de Monterey est régie par le principe de la *res judicata*, en vertu de la sentence arbitrale de Sir Edward Thornton du 11 novembre 1875 amendée par lui le 24 octobre 1876;

2° Que, conformément à cette sentence arbitrale, le Gouvernement de la République des Etats-Unis Mexicains devra payer au Gouvernement des Etats-Unis d'Amérique la somme d'un million quatre cent vingt mille six cent quatre-vingt-deux dollars du Mexique et soixante-sept cents (1,420,682.67/100 dollars du Mexique) en monnaie ayant cours légal au Mexique, dans le délai fixé par l'Article X du Protocole de Washington du 22 mai 1902.

Cette somme d'un million quatre cent vingt mille six cent quatre-vingt-deux dollars et soixante-sept cents (1,420,682.67/100 dollars) constituera le versement total des annuités échues et non payées par le Gouvernement de la République Mexicaine, savoir de la rente annuelle de quarante-trois mille cinquante dollars du Mexique et quatre-vingt-dix-neuf cents (43,050.99/100 dollars du Mexique) depuis le 2 février 1869 jusqu'au 2 février 1902;

3° Le Gouvernement de la République des Etats-Unis Mexicains paiera au Gouvernement des Etats-Unis d'Amérique le 2 février 1903, et chaque année

suivante à cette même date du 2 février, à perpétuité la rente annuelle de *quarante-trois mille cinquante dollars du Mexique et quatre-vingt-dix-neuf cents* (43,050.99/100 dollars du Mexique) en monnaie ayant cours légal au Mexique.

FAIT à La Haye, dans l'Hotel de la Cour permanente d'Arbitrage, en triple original, le 14 octobre 1902.

(Signé) Henning MATZEN

(Signé) Edw. FRY

(Signé) MARTENS

(Signé) T. M. C. ASSER

(Signé) A. F. DE SAVORNIN LOHMAN
