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ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

**British-Mexican Claims Commission (Great Britain, United Mexican States) (8
November 1929 - February 1930)**

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PART I

BRITISH-MEXICAN CLAIMS COMMISSION

HISTORICAL NOTE

Informal negotiations between Great Britain and Mexico with regard to the conclusion of a claims convention began as early as October, 1921.¹ The insistence of the Mexican Government that recognition by Great Britain not be conditional upon the establishment of a claims commission proved to be a serious obstacle, however.² Finally British Chargé des Archives Cummins was requested by the Mexican Government to leave the country and all relations between the two countries were broken off on June 20, 1924.³

Negotiations were later resumed in 1925 and a claims convention covering the disposition of revolutionary claims arising during the period from 1910 to 1920 was entered into under date of November 19, 1926. An announcement of September 2, 1925, referred to a projected Mixed Claims Commission to deal with non-revolutionary claims, if these could not be settled through diplomatic channels.⁴ However, no such commission appears to have been established.

The convention of November 19, 1926, under which the British-Mexican Claims Commission was established, provided for a term of two years within which it was to complete its labours. However, only twenty-one decisions were rendered during this term and it accordingly became necessary to renew the life of the Commission. On December 5, 1930, a supplementary convention was signed extending the term of the Commission for an additional period of nine months and also making certain amendments as to the bases of liability of Mexico under the prior convention. A still further extension of nine months was provided for under the convention of December 5, 1930, and was taken advantage of by the parties. The work of the Commission was finally completed on February 15, 1932, the first session of the Commission having taken place on August 22, 1928. Out of the 110 claims disposed of by the Commission, favourable awards amounting to 3,795,897.53 pesos were granted in fifty cases, the remainder being disallowed or dismissed.⁵

¹ Parliamentary Debates, House of Commons, 5th ser., Vol. 151, pp. 2530-2531.

² *Ibid.*, Vol. 161, p. 1522.

³ *1925 Survey of International Affairs*, II, pp. 421-422.

⁴ *The Times* (London), Sept. 3, 1925, p. 9, col. 3.

⁵ See generally in connexion with the foregoing, Feller, pp. 26-28, 78-80. It does not appear that opinions were entered in all claims disposed of.

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Convention of December 5, 1930: State Papers, Vol. 132, 1930, Pt. 1, p. 302; L.N.T.S., Vol. 119, p. 261; de Martens, 3d ser., Vol. 24, p. 434; Am. J. Int. Law Supp., Vol. 25, 1921, p. 200.

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Conventions

CONVENTION BETWEEN GREAT BRITAIN AND THE UNITED MEXICAN STATES,

Signed November 19, 1926, ratifications exchanged March 8, 1928¹

His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India, and the President of the United Mexican States, desiring to adjust definitively and amicably all pecuniary claims arising from losses or damages suffered by British subjects or persons under British protection, on account of revolutionary acts which occurred during the period comprised between the 20th November, 1910, and the 31st May, 1920, inclusive, have decided to enter into a Convention for that purpose, and to this end have appointed as their Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India: Esmond Ovey, Esq., Companion of the Order of St. Michael and St. George, Member of the Royal Victorian Order, His Envoy Extraordinary and Minister Plenipotentiary in Mexico.

The President of the United Mexican States: Señor Licenciado Don Aarón Sáenz, Secretary of State for Foreign Relations.

Who, having communicated to each other their respective full powers, found to be in good and due form, have agreed upon the following articles:

ARTICLE 1. All the claims specified in Article 3 of this Convention shall be submitted to a Commission composed of three members; one member shall be appointed by His Britannic Majesty; another by the President of the United Mexican States; and the third, who shall preside over the Commission, shall be designated by mutual agreement between the two Governments. If the Governments should not reach the aforesaid agreement within a period of four months counting from the date upon which the exchange of ratifications is effected, the President of the Permanent Administrative Council of the Permanent Court of Arbitration at The Hague shall designate the President of the Commission. The request for this appointment shall be addressed by both Governments to the President of the aforesaid Council, within a further period of one month, or after the lapse of that period, by the Government which may first take action in the matter. In any case the third arbitrator shall be neither British nor Mexican, nor a national of a country which may have claims against Mexico similar to those which form the subject of this Convention.

In the case of the death of any member of the Commission, or in case a member should be prevented from performing his duties, or for any reason

¹ Source: Decisions and Opinions of the Commissioners in accordance with the Convention of November 19, 1926, between Great Britain and the United Mexican States, October 5, 1929, to February 15, 1930. (H.M. Stationery Office, London, 1931.) Page 4.

should abstain from performing them, he shall be immediately replaced according to the procedure set forth above.

ARTICLE 2. The Commissioners thus designated shall meet in the City of Mexico within six months counting from the date of the exchange of ratifications of this Convention. Each member of the Commission, before entering upon his duties, shall make and subscribe a solemn declaration in which he shall undertake to examine with care, and to judge with impartiality, in accordance with the principles of justice and equity, all claims presented, since it is the desire of Mexico *ex gratia* fully to compensate the injured parties, and not that her responsibility should be established in conformity with the general principles of International Law; and it is sufficient therefore that it be established that the alleged damage actually took place, and was due to any of the causes enumerated in Article 3 of this Convention. for Mexico to feel moved *ex gratia* to afford such compensation.

The aforesaid declaration shall be entered upon the record of the proceedings of the Commission.

The Commission shall fix the date and place of their sessions.

ARTICLE 3. The Commission shall deal with all claims against Mexico for losses or damages suffered by British subjects or persons under British protection, British partnerships, companies, associations or British juridical persons or those under British protection; or for losses or damages suffered by British subjects or persons under British protection, by reason of losses or damages suffered by any partnership, company or association in which British subjects or persons under British protection have or have had an interest exceeding fifty per cent of the total capital of such partnership, company or association, and acquired prior to the time when the damages or losses were sustained. But in view of certain special conditions in which some British concerns are placed in such societies which do not possess that nationality it is agreed that it will not be necessary that the interest above mentioned shall pertain to one single individual, but it will suffice that it pertains jointly to various British subjects, provided that the British claimant or claimants shall present to the Commission an allotment to the said claimant or claimants of the proportional part of such losses or damages pertaining to the claimant or claimants in such partnership, company or association. The losses or damages mentioned in this article must have been caused during the period included between the 20th November, 1910, and the 31st May, 1920, inclusive, by one or any of the following forces:

1. By the forces of a Government *de jure* or *de facto*;
2. By revolutionary forces, which, after the triumph of their cause, have established Governments *de jure* or *de facto*, or by revolutionary forces opposed to them;
3. By forces arising from the disjunction of those mentioned in the next preceding paragraph up to the time when a *de jure* Government had been established, after a particular revolution;
4. By forces arising from the disbandment of the Federal Army;
5. By mutinies or risings or by insurrectionary forces other than those referred to under subdivisions 2, 3 and 4 of this Article, or by brigands, provided that in each case it be established that the competent authorities omitted to take reasonable measures to suppress the insurrections, risings, riots or acts of brigandage in question, or to punish those responsible for the same; or that it be established in like manner that the authorities were blamable in any other way.

The Commission shall also deal with claims for losses or damages caused by acts of civil authorities, provided such acts were due to revolutionary events and disturbed conditions within the period referred to in this Article, and that the said acts were committed by any of the forces specified in subdivisions 1, 2 and 3 of this Article.

ARTICLE 4. The Commission shall determine their own methods of procedure, but shall not depart from the provisions of this present Convention.

Each Government may appoint an Agent and Counsel to present to the Commission either orally or in writing the evidence and arguments they may deem it desirable to adduce either in support of the claims or against them.

The Agent or Counsel of either Government may offer to the Commission any documents, interrogatories or other evidence desired in favour of or against any claim and shall have the right to examine witnesses under affirmation before the Commission, in accordance with Mexican Law and such rules of procedure as the Commission shall adopt.

The decision of the majority of the members of the Commission shall be the decision of the Commission. If there should be no majority the decision of the President shall be final.

Either the English or Spanish languages shall be employed, both in the proceedings and in the judgments.

ARTICLE 5. The Commission shall keep an accurate and up-to-date record of all the claims and the various cases which shall be submitted to them, as also the minutes of the debates, with the dates thereof.

For such purpose each Government may appoint a Secretary. These Secretaries shall be attached to the Commission and shall act as joint Secretaries and shall be subject to the Commission's instructions.

Each Government may likewise appoint and employ such assistant Secretaries as they may deem advisable. The Commission may also appoint and employ the assistants they may consider necessary for carrying on their work.

ARTICLE 6. The Government of Mexico being desirous of reaching an equitable agreement in regard to the claims specified in Article 3 and of granting to the claimants just compensation for the losses or damages they may have sustained, it is agreed that the Commission shall not set aside or reject any claim on the grounds that all legal remedies have not been exhausted prior to the presentation of such claim.

In order to determine the amount of compensation to be granted for damage to property, account shall be taken of the value declared by the interested parties for fiscal purposes, except in cases which in the opinion of the Commission are really exceptional.

The amount of the compensation for personal injuries shall not exceed that of the most ample compensation granted by Great Britain in similar cases.

ARTICLE 7. All claims must be formally filed with the Commission within a period of nine months counting from the date of the first meeting of the Commission; but this period may be prolonged for a further six months in special and exceptional cases, and provided that it be proved to the satisfaction of the majority of the Commission that justifiable causes existed for the delay.

The Commission shall hear, examine and decide within a period of two years counting from the date of their first session, all claims which may be presented to them.

Four months after the date of the first meeting of the members of the Commission and every four months thereafter, the Commission shall submit to

each of the interested Governments a report setting forth in detail the work which has been accomplished, and comprising a statement of the claims filed, claims heard and claims decided.

The Commission shall deliver judgment on every claim presented to them within a period of six months from the termination of the hearing of such claim.

ARTICLE 8. The High Contracting Parties agree to consider the decision of the Commission as final in respect of each matter on which they may deliver judgment, and to give full effect to such decisions. They likewise agree to consider the result of the labours of the Commission as a full, perfect and final settlement of all claims against the Mexican Government arising from any of the causes set forth in Article 3 of this present Convention. They further agree that from the moment at which the labours of the Commission are concluded, all claims of that nature, whether they have been presented to the Commission or not, are to be considered as having been absolutely and irrevocably settled for the future; provided that those which have been presented to the Commission have been examined and decided by them.

ARTICLE 9. The form in which the Mexican Government shall pay the indemnities shall be determined by both Governments after the work of the Commission has been brought to a close. The payments shall be made in gold or in money of equivalent value and shall be made to the British Government by the Mexican Government.

ARTICLE 10. Each Government shall pay the emoluments of their Commissioner and those of his staff.

Each Government shall pay half the expenses of the Commission, and of the emoluments of the third Commissioner.

ARTICLE 11. This Convention is drawn up in English and in Spanish.

ARTICLE 12. The High Contracting Parties shall ratify this present Convention in conformity with their respective Constitutions. The exchange of ratifications shall take place in the City of Mexico as soon as possible and the Convention shall come into force from the date of the exchange of ratifications.

In witness whereof the respective Plenipotentiaries have signed the present Convention, and have affixed thereto their Seals.

Done in duplicate, in the City of Mexico, on the nineteenth day of November, 1926.

(L.S.) ESMOND OVEY

(L.S.) AARÓN SÁENZ

CONVENTION BETWEEN GREAT BRITAIN AND THE UNITED MEXICAN STATES

Signed December 5, 1930, ratifications exchanged March 9, 1931¹

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and the President of the United Mexican

¹ Source: Further Decisions and Opinions of the Commissioners in accordance with the Conventions of November 19, 1926, and December 5, 1930, between Great Britain and the United Mexican States. Subsequent to February 15, 1930. (H.M. Stationery Office, London, 1933.) Page 6.

States, considering on the one hand: that the Commission created by virtue of the Convention of the 19th November, 1926, could not complete its labours within the period fixed by the said Convention, and that furthermore the work of the said Commission showed the desirability of expressing with greater clarity certain of the provisions of the said Convention in order to determine the methods by which should have been and must now be decided the responsibility, held by the Mexican Government to be *ex gratia*, to indemnify British subjects and British-protected persons for losses arising from revolutionary acts done during the period comprised between the 20th November, 1910, and the 31st May, 1920, inclusive, have agreed to sign the present Convention, and to that effect have named as their Plenipotentiaries:

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India: Mr. Edmund St. J. D. J. Monson, His Envoy Extraordinary and Minister Plenipotentiary in Mexico;

The President of the United Mexican States: Señor Don Genaro Estrada, Secretary of State and of the Department of Foreign Relations;

Who have communicated their respective full powers, and having found them in due and proper form, have agreed on the following Articles:

ARTICLE 1. The High Contracting Parties agree that the period fixed by Article 7 of the Convention of the 19th November, 1926, for the hearing, examination and decision of the claims already presented in accordance with the terms of the said Article 7, shall be extended by the present Convention for a period not exceeding nine months as from the 22nd August, 1930; this may, however, be extended for a period not exceeding nine months by a simple exchange of notes between the High Contracting Parties, should the Commission have failed to complete its labours within this period.

ARTICLE 2. Article 2 of the Convention of the 19th November, 1926, shall be amended as follows:

The Commissioners so nominated shall meet in the City of Mexico within the six months reckoned from the date of the exchange of ratifications of this Convention. Each member of the Commission, before entering upon his duties, shall make and subscribe a solemn declaration in which he shall undertake to examine with care, and to judge with impartiality, in accordance with the principles of justice and equity, all claims presented, since it is the desire of Mexico *ex gratia* fully to compensate the injured parties, and not that her responsibility should be established in conformity with the general principles of International Law; and it is sufficient therefore that it be established that the alleged damage actually took place, and was due to any of the causes enumerated in Article 3 of this Convention, that it was not the consequence of a lawful act and that its amount be proved for Mexico to feel moved *ex gratia* to afford such compensation.

The aforesaid declaration shall be entered upon the record of the proceedings of the Commission.

The Commission shall fix the date and place of their sessions in Mexico.

ARTICLE 3. Article 3 of the Convention of the 19th November, 1926, shall be amended as follows:

The Commission shall deal with all claims against Mexico for losses or damages suffered by British subjects, British partnerships, companies, associations or British juridical persons; or for losses or damages suffered by British subjects, by reason of losses or damages suffered by any partnership, company or association in which British subjects have or have had an interest exceeding fifty per cent of the total capital of such partnership, company or association

and acquired prior to the time when the damages or losses were sustained. But in view of certain special conditions in which some British concerns are placed in such societies which do not possess that nationality, it is agreed that it will not be necessary that the interest above mentioned shall pertain to one single individual, but it will suffice that it pertains jointly to various British subjects, provided that the British claimant or claimants shall present to the Commission an allotment to the said claimant or claimants of the proportional part of such losses or damages pertaining to the claimant or claimants in such partnership, company or association. The losses or damages mentioned in this Article must have been caused during the period included between the 20th November, 1910, and the 31st May, 1920, inclusive, by one or any of the following forces:

- (1) By the forces of a Government *de jure* or *de facto*;
- (2) By revolutionary forces which, after the triumph of their cause, have established a Government *de jure* or *de facto*;
- (3) By forces arising from the disbandment of the Federal Army;
- (4) By mutinies or risings or by insurrectionary forces other than those referred to under subdivisions (2) and (3) of this Article, or by brigands, provided that in each case it be established that the competent authorities omitted to take reasonable measures to suppress the insurrections, risings, riots or acts of brigandage in question, or to punish those responsible for the same; or that it be established in like manner that the said authorities were blameable in any other way.

The Commission shall also deal with claims for losses or damages caused by acts of civil authorities, provided such acts were due to revolutionary events and disturbances within the period referred to in this Article, and that the said acts were committed by any of the forces specified in subdivisions (1) and (2) of this Article.

The claims within the competence of the Commission shall not include those caused by the forces of Victoriano Huerta or by the acts of his régime.

The Commission shall not be competent to admit claims concerning the circulation or acceptance, voluntary or forced, of paper money.

ARTICLE 4. The terms of procedure fixed by the said Convention and by its rules of procedure which were suspended on the 21st August, 1930, shall re-enter into force as from the date of exchange of ratifications of the present Convention.

All the provisions of the Convention of the 19th November, 1926, and its rules of procedure approved at the session of the 1st September, 1928, which are not modified by the provisions of the present Convention, remain in force.

ARTICLE 5. The present Convention is drawn up in English and Spanish.

ARTICLE 6. The High Contracting Parties shall ratify this present Convention in conformity with their respective Constitutions. The exchange of ratifications shall take place in the City of Mexico as soon as possible and the Convention shall come into force from the date of the exchange of ratifications.

In witness whereof, the respective Plenipotentiaries have signed the present Convention, and have affixed thereto their seals.

Done in duplicate, in the City of Mexico, on the 5th day of December, nineteen hundred and thirty.

(L.S.) E. MONSON

(L.S.) G. ESTRADA

SECTION I

PARTIES: Great Britain, United Mexican States.

SPECIAL AGREEMENT: November 19, 1926.

ARBITRATORS: Dr. A. R. Zimmerman (Netherlands), Presiding Commissioner, Artemus Jones, British Commissioner until December 6, 1929, Sir John Percival, British Commissioner after December 6, 1929, Dr. Benito Flores, Mexican Commissioner.

REPORT: Decisions and Opinions of the Commissioners in accordance with the Convention of November 19, 1926, between Great Britain and the United Mexican States, October 5, 1929, to February 15, 1930. (H.M. Stationery Office, London, 1931.)

Decisions

ROBERT JOHN LYNCH (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 1, November 8, 1929, dissenting opinion by Mexican Commissioner, October, 1929. Pages 20-32¹.*)

NATIONALITY, PROOF OF. Nationality is a continuing legal relationship between a State and its citizen and not susceptible of proof in the same degree as a physical fact. Consequently, an international tribunal will merely require *prima facie* evidence of nationality sufficient to satisfy the tribunal and to raise the presumption of nationality. such presumption to be rebutted by the respondent State.

CONSULAR CERTIFICATE AS PROOF OF NATIONALITY. A consular certificate constitutes *prima facie* evidence of nationality and may even possess greater evidential value than a birth certificate.

BAPTISMAL CERTIFICATE AS PROOF OF NATIONALITY. A baptismal certificate showing baptism in Cape Town, Cape Colony, on June 21, 1868, of a child stated thereon to be born June 9, 1868, but apparently silent as to place of birth, will be accepted as further proof of nationality.

Cross-references: Am. J. Int. Law, Vol. 25, 1931, p. 754; Annual Digest, 1929-1930, p. 221.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission," Law Q. Rev., Vol. 49, 1933, p. 226 at 233.

1. In this case the respondent Government have lodged a demurrer to the claimant's memorial on the ground that it fails to establish the British nationality of the claimant in accordance with Rule 10, paragraph (a), of our Rules of Procedure. According to the terms of that rule, every claimant must, as a condition precedent to the consideration of his claim, give proof of his British nationality in the memorial.

The British Agent relies upon two documents in support of the memorial. The first is a certificate of consular registration, delivered on the 25th May, 1916, by the British Vice-Consul at Tampico, stating that the claimant was duly registered in the register of British subjects of the British Consulate-General of Mexico. The second document (which was delivered after the memorial was printed) is a baptismal certificate to the effect that the claimant was baptized at St. Mary's Cathedral in Cape Town, Cape Colony, on the 21st June, 1868.

The submission of the Mexican Agent is that these documents, taken either singly or in combination, do not amount to sufficient proof of the claimant's nationality within the meaning of Rule 10, paragraph (a).

The British Agent contends, on the other hand, that the consular certificate is sufficient to establish *prima facie* evidence of the claimant's British nationality

¹ References to page numbers herein are to the original report referred to on page 15.

and that the second document is strong corroboration of the statements contained in the first.

The question which the Commissioners have to decide is which of the two contentions is right.

2. The question whether a consular certificate constitutes proof of nationality is not a new problem. From the date when international commissions were first established right up to the present time, the question has engaged the attention of these tribunals from time to time. Respondent governments have often contested the point that consular certificates afford sufficient proof of nationality. Sometimes the question has been decided in the affirmative and at other times in the negative. Various decisions were relied upon by both Agents in the course of the argument, and in a recent decision of the Mexican-German Claims Commission (*Memoria de Labores de la Secretaría de Relaciones Exteriores de agosto de 1926 a julio de 1927, página 221-235*¹) the conflicting authorities are reviewed at some length. It is common ground between both sides in this case that the point has been decided in different ways.

The fact that so many international commissions have failed to agree in the matter points to one conclusion, namely, that international jurisprudence has not yet established any firm criterion whereby the problem can be determined. Neither in the actual decisions of the Commissions nor in the practice observed by such bodies can one find any universally accepted rule upon the point. It is quite clear that any enactment on the part of the British Legislature on the subject of nationality is not enough and is certainly not binding on this Commission. It is equally clear that the same observation applies to any enactment on the part of the Mexican Legislature. In these circumstances the Commission is of opinion that they must consider themselves free in each case to form their own independent judgment on the evidence placed before them. In other words, the Commissioners must attach such weight to the documents as appears to them to be just and fair in the particular circumstances of each case.

3. In the course of the discussion between the Agents of the respective Governments a general proposition was advanced to the effect that nationality is an issue of fact which admits of the same degree of proof as any physical fact, such as birth or death, and that it ought to be proved in the same way. This view, in the judgment of the Commission, is erroneous. A man's nationality forms a continuing state of things and not a physical fact which occurs at a particular moment. A man's nationality is a continuing legal relationship between the sovereign State on the one hand and the citizen on the other. The fundamental basis of a man's nationality is his membership of an independent political community. This legal relationship involves rights and corresponding duties upon both—on the part of the citizen no less than on the part of the State. If the citizen leaves the territory of this sovereign State and goes to live in another country, the duties and rights which his nationality involves do not cease to exist, although such rights and duties may change in their extent and character. A man's nationality is not necessarily the same from his birth to his death. He may according to circumstances lose his nationality in the course of his life. He may elect to become a citizen of another sovereign State. Moreover, the country into which he has moved may, by its domestic laws, impose upon him the nationality of the new country and in this way a state of dual nationality may be created.

These considerations show clearly that it would be impossible for any international commission to obtain evidence of nationality amounting to certitude

¹ See below, page 579. (Klemp case.)

unless a man's life outside the State to which he belongs is to be traced from day to day. Such conclusive proof is impossible and would be nothing less than *probatio diabolica*. All that an international commission can reasonably require in the way of proof of nationality is *prima facie* evidence sufficient to satisfy the Commissioners and to raise the presumption of nationality, leaving it open to the respondent State to rebut the presumption by producing evidence to show that the claimant has lost his nationality through his own act or some other cause. In the same way the respondent State may show that the citizen's first nationality has come into conflict with its domestic laws and that the position has arisen which is described as dual nationality.

4. A consular certificate is a formal acknowledgment by the agent of a sovereign State that the legal relationship of nationality subsists between that State and the subject of the certificate. A Consul is an official agent working under the control of his Government and responsible to that Government. He is as a rule in permanent touch with the colony of his compatriots who live in the country to which he is designed, and he is, by virtue of his post as Consul, in a position to make inquiries with respect to the origin and antecedents of any compatriot whom he registers. He knows full well that the registration of a compatriot entitled to all the rights of citizenship is a step which imposes serious obligations upon the State which he serves. That circumstance in itself is an inducement to him to see that the registration must be attended to with great care and attention.

It is, of course, conceivable that the inclusion of a man's name in the consular register may be made carelessly or erroneously or under circumstances which later may give rise to serious doubts. It is no less true that consular registration does not in any way solve the problem of dual citizenship. In such circumstances as those, a consular certificate cannot be considered as absolute proof of nationality, and it will be competent for the agent of the respondent State to produce evidence in rebuttal. But when, as in this case, nothing is alleged which raises the slightest doubt as to the accuracy or *bona fides* of the entries in the register, a consular certificate ought to be accepted as *prima facie* evidence which does not in any way lose its force from the general objections taken by the respondent Government.

A consular certificate, originating as it does at a more recent date than a birth certificate, may even possess greater evidential value.

5. With regard to the baptismal certificate, it was signed by a Roman Catholic priest and shows that Robert John Lynch, born on the 9th June, 1868, was baptized on the 21st June, 1868, in St. Mary's Cathedral, Cape Town. In the judgment of the Commission, this is still further proof to show that Robert John Lynch was of British nationality. The original certificate has been produced, and in the opinion of the Commission must be accepted as an authentic and genuine document. In view of the date of compulsory birth registration in England, it can be safely assumed that compulsory registration of births was not in existence in Cape Colony in 1868. A baptismal register established both the date of birth and the place and date of baptism. The objection was taken on the part of the respondent Government that the most essential fact on the question of nationality was the place of birth, and that the best evidence of the place of birth was not a baptismal certificate. This objection, however, carries little or no weight in view of the circumstances that the geographical location of Cape Town and the state of the means of communication in 1868 render it extremely unlikely that a child baptized in Cape Town on the 21st June could have been born on the 9th June in any country other than Cape Colony.

6. On these various grounds the Commission rules that the claimant's nationality has been established and that the demurrer must be overruled.

The Mexican Commissioner does not agree with this judgment and expresses a dissenting view.

Dissenting opinion of Dr. Benito Flores, Mexican Commissioner

The Mexican Commissioner regrets to have to dissent from the opinions of his honourable colleagues, the Presiding Commissioner and the Commissioner for Great Britain, and, with all due respect, begs to give his vote in the form of the following opinion in regard to the demurrer interposed by the Mexican Agent, in the matter of Claim No. 32, presented by His Britannic Majesty's Government on behalf of Robert John Lynch.

The demurrer is based on failure to establish the British nationality of the claimant.

The Facts

I. This is a case of a claim for losses sustained at the hands of "Zapatistas" on the Puente de Garay Ranch, Ixtapalapa, Mexico, in the month of July 1914, and at the hands of Constitutionalist forces, which occupied the ranch shortly afterwards.

II. The claimant endeavours to establish his British nationality by means of a certificate issued by the British Consulate at Mexico City, in which it is stated that the said Robert John Lynch was registered at the said Consulate as a British subject, said certificate having been issued on the 25th May, 1916, by the Vice-Consul, R. C. E. Milne.

III. The Mexican Agent forthwith interposed a demurrer with the Mexican-British Claims Commission, which can only deal with the claims of British subjects, having argued that the consular certificate produced by the British Government was in this case insufficient to establish the nationality of the claimant.

IV. The British Agent replied to the effect that the consular certificate submitted for the purpose of proving the nationality of Robert John Lynch was *prima facie* evidence of his British nationality; but that for better proof of the nationality of the claimant he produced a certificate of birth and baptism of the said Robert John Lynch. This certificate of baptism was issued by a priest of the name of John Colgan, in charge of St. Mary's Cathedral, Cape Town, South Africa, and it appears from it that Robert John Lynch was born on the 9th June, 1868, and that he was baptized on the 21st June, 1868. The names of his parents appear in the said certificate, and that of the clergyman who baptized him.

V. On the 8th October, 1929, the demurrer was argued before the Commission. The Mexican Agent averred that the only way of proving the nationality of a person is by means of a certificate issued from a civil register, and that only in the event that the British Agency should fully be able to prove that it had been impossible to obtain that document, could a certificate of baptism be accepted.

On those grounds the Mexican Agent challenged the certificate issued by the British Consulate in Mexico to Robert John Lynch, as being insufficient proof of nationality.

VI. The British Agent answered that he agreed that in a majority of cases a consular register is not convincing proof of nationality, but that it had been

impossible to obtain any evidence other than the certificate of baptism of Robert John Lynch and that it, in his opinion, was sufficient to establish his nationality.

VII. The Mexican Agent, in order to show that consular registers are insufficient to prove the nationality of a person, cited the precedents laid down to that effect by various internationalists, among them Cruchaga Tocornal, Umpire, in the claim of Carlos Klemp *v.* the United Mexican States, and Thornton, Umpire, in the Brockway case, before the Claims Commission, Mexico and United States in 1868.

VIII. The Mexican Agent also challenged the certificate of baptism produced by Lynch, and added that it should be looked upon as a private document lacking authenticity, due to not having been legalized by any English authorities, and called attention to the fact that this document did not state where Robert John Lynch was born, nor that his parents were English.

IX. The British Agent, on his side, contended that there was as yet no uniform jurisprudence in regard to this case in international law, and to that end he cited the cases of William A. Parker and Willard Connelly, decided by the General Claims Commission, Mexico and the United States; that in the first case the nationality of the claimant had been held proved by mere affidavits, and in the Connelly case the nationality of the claimant had been held to have been proved by means of a certificate of baptism, and that in this last case the decision of the Commission had been a unanimous one.

X. This matter took up two meetings: those of the 8th and 9th. On this last day, the Mexican Commissioner asked certain questions of the British Agent, for the purpose of obtaining information about English law and practice in regard to proof of nationality, and as a result of the said questionnaire, the latter agreed to the following points:

(a) That the fact of registration in a British Consulate abroad was of no assistance to a person desiring to acquire British nationality, this being the answer to the following question:

In England, is insertion in British consular registers abroad included among the ways of acquiring British nationality?

(b) That British Consuls do not exercise judicial functions, except in those places where extraterritorial jurisdiction exists.

(c) That as a general principle he admitted that the impossibility of producing certificates from a civil register should, when secondary evidence, such as certificates of baptism, is furnished, be established; but that in the particular instance, as Lynch was born six years prior to the enactment of the statute which created Civil Registers in England, the certificate of baptism was in itself sufficient to establish nationality.

(d) That clergymen in charge of parishes in England are not considered as authorities, and that documents issued by them are not in themselves public proof.

(e) That when a certificate of baptism is produced as a proof of nationality, the law requires that such certificate be compared with the original by the judicial authorities of the Kingdom; in the event of controversy, proof of authenticity of the document is required.

The above in substance is how the argument on this case was closed.

Considerations of a Legal Order

I. The Mexican Commissioner holds that the certificate from His Britannic Majesty's Consulate-General in Mexico, issued by the Vice-Consul, to the

effect that the name of Robert John Lynch appears in its register as a British subject, is not in itself sufficient to establish the fact of his British nationality. for the following reasons:

(a) Because as it is the imperative duty of the Mexican-British Claims Commission to satisfy itself as to the nationality of a claimant, inasmuch as its jurisdiction only extends to claims of British subjects; the Commission itself is the only authority competent to decide upon the nationality of a claimant, not by inspection of a consular certificate only, but also with the data taken into consideration by the Consulate when registering Lynch as a British subject, as the Commission would otherwise delegate its powers to the Consuls, for decision on so important a point; and as the British Agent reported in the course of the above-mentioned argument, as the Government of Great Britain does not specify fixed and concrete rules for its Consuls, for registration of persons as British subjects, but leaves such registration to their own discretion, it is unquestionable that if the Commission held that the certificate in question was sufficient proof for establishing the fact of Lynch's nationality, the British Consul, and not the Commission, would practically be the person to decide in every case as to nationality; that is, by overriding the jurisdiction of the Commission itself, which would be highly dangerous to the interests of the respondent Government.

(b) Because under international law consuls are not judicial officers, but of a merely administrative and commercial character, and registration in consular registers only determines nationality for statistical purposes, for compliance with laws as to compulsory military service, for payment of taxes on income from property which a national residing abroad may have in his own country, for the acquisition of property, the receipt of inheritances or legacies, annuities or allowance, &c.

It was thus most properly laid down in the Mexican-German Claims Commission, by the distinguished Chilean jurist, in the matter of *Carlos Klemp v. the United Mexican States*, pp. 20 and 21 of the booklet in which the decision was published by the Ministry of Foreign Affairs in Mexico, in the year 1927.

(c) Because, according to the opinion of the learned jurist and British Agent, Mr. Montague Shearman, registration at a British Consulate would be of no assistance to a person desiring to acquire British nationality.

(d) Because, according to the selfsame learned British Agent, Consuls do not exercise judicial functions, except in cases where extraterritorial jurisdiction exists.

(e) Because in order to establish the fact of British nationality by birth in a legal and authentic manner, it is necessary to produce a copy or extract from the proper Register of Births and this would not in itself constitute proof of such birth unless bearing the name of a person authorized to declare, register, &c. (Lehr, *Eléments de droit civil anglais*, Paris, 1885, p. 17), (British Act, 1874, in the *Annuaire de législation étrangère*).

(f) Because proof of nationality by means of a consular certificate has been declared insufficient by Courts of Arbitration (Borchard, *Diplomatic Protection of Citizens Abroad*, p. 490, with reference to the following cases: *Brickway, U.S. v. Mexico*, the 4th July, 1868, *ibid*, 2534; *Goldbeck, U.S. v. Mexico, ibid*, 2507; *vide also Gilmore, U.S. v. Costa Rica*, the 3rd July, 1860, *ibid*, 2539).

II. In so far as concerns the probative value of Lynch's certificate of baptism, as issued by the parish priest of St. Mary's Cathedral, Cape Town. South Africa, as regards the nationality of the claimant, the Mexican Commissioner would accept it as being sufficient for the purpose, if said document had been duly authenticated, due to the fact that Lynch was born prior to

compulsory registration in that colony and as he would therefore not be obliged to establish his nationality by means of a certificate from a civil register; but said document having been taken exception to by the Mexican Agent, on the ground of the failure to legalize the signature of the priest who issued the certificate, it undoubtedly cannot be considered as authentic and genuine, for the following reasons:

(a) Because the parochial certificate produced is a private document issued by a person not endowed with public functions in England; because by it an endeavour is made to determine the nationality of the claimant, in full controversy with Mexico, for which reason the said document should have been authenticated so that it might constitute proof before this International Tribunal, of the facts therein set out.

(b) Because who can affirm that the Rev. Mr. Colgan actually exists? Who can affirm that he really is in charge of St. Mary's parish, at Cape Town? Who can affirm that he is, within his own special functions, authorized to issue the certificate in question? Who can affirm that the signature on the document is authentic?

Authentication of documents, not only private documents like Lynch's baptismal certificate, but also of those issued by authorities lawfully acknowledged, is a requirement that must be met, so that they may be accepted as proof by International Courts, according to the opinion of such learned jurists as M. Charles Calvo (*Le droit international*), Title II, paragraph 885, which reads as follows:

“Deux catégories d'actes

“Section 885. On peut diviser ces actes en deux grandes catégories; les actes authentiques et les actes sous seing privé.

“Actes authentiques

“L'acte authentique est défini par l'article 1317 du Code civil français comme celui qui a été reçu par officiers publics ayant le droit d'instrumenter dans le lieu où il a été rédigé et avec les solennités requises. Cette définition s'applique aux actes notariés et, en général, aux actes de juridiction volontaire.

“En France

“Les actes notariés ont force exécutoire comme les jugements en France et dans les pays qui ont adopté la législation française sur la matière, tels que la Belgique, les Pays-Bas. Dans les autres pays, les actes notariés et même ceux qui sont reçus par les membres des tribunaux n'emportent pas l'exécution parée; ils n'obtiennent force exécutoire qu'en vertu d'un jugement. Les législations allemandes admettent, pour arriver à l'exécution des conventions constatées par actes publics, une procédure sommaire, plus expéditive que la procédure ordinaire, la procédure du *mandatum sine* ou *cum clausula*, ou le 'procès d'exécution'.

“Pour déterminer si l'acte fait dans un pays est authentique ou non, pour apprécier le degré de foi qu'on lui doit en justice, il est nécessaire de tenir compte de la loi du pays où l'acte a été passé, de s'assurer que l'acte a été reçu réellement dans le pays à la loi duquel on veut le soumettre.

“Pour cela, il suffit que la partie qui prétend que l'acte est authentique prouve que l'officier qu'il l'a reçu avait caractère pour lui conférer l'authenticité et que la forme de cet acte est attestée et légalisée par un autre officier public digne de foi pour le Gouvernement auprès duquel on veut faire valoir l'acte.

"En ce qui concerne les rapports internationaux sur ce point, on comprend qu'il ne saurait être question de l'exécution forcée des actes étrangers passés dans les États dont la législation n'admet pas *de plano* l'exécution forcée des actes reçus par les officiers publics des mêmes États.

"Pour être exécutés en France, les actes passés en pays étrangers doivent être déclarés exécutoires par un tribunal français (Code de procédure, article 546); mais ils font foi devant les tribunaux sans cette déclaration, pourvu que la signature de l'officier public soit légalisée et que les formalités prescrites par la loi étrangère aient été observées.

"Les actes authentiques passés à l'étranger, conformément à la règle *locus regit actum*, peuvent-ils recevoir la force exécutoire d'une autorité française?

"L'article 546 parle bien de ces actes, mais c'est pour renvoyer à l'article 2128, qui ne donne pas de solution. Aussi dans un premier système qui se subdivise en deux opinions, on répond affirmativement. Quelques partisans de ce système attribuent au président du tribunal du ressort dans lequel on sollicite l'exécution de ces actes, compétence pour leur donner la force exécutoire.¹ D'autres reconnaissent que le tribunal entier a seul qualité à cet effet.²

"Mais l'opinion générale se prononce dans le sens de la négative, on déclare que ces actes ne peuvent directement recevoir en France la force exécutoire, en conséquence on traitera ces actes comme des actes sous seing privé et le demandeur devra s'adresser aux tribunaux pour faire condamner son adversaire, ces actes ne serviront qu'à titre de documents et ce qui sera exécutoire sera le jugement français.

"En général, lorsqu'on veut rendre un acte exécutoire, il est nécessaire, pour le compléter relativement à la forme, d'observer toutes les dispositions en vigueur dans le pays où l'on demande l'exécution, quand même l'acte serait valable et complet, d'après la loi du lieu où il a été passé.

"C'est un principe généralement adopté par l'usage des nations que la forme des actes est réglée par la loi du lieu où ils sont faits ou passés. C'est-à-dire que, pour la validité de tout acte, il suffit d'observer les formalités prescrites par la loi du lieu où cet acte a été dressé; l'acte ainsi passé exerce ses effets sur les biens meubles aussi bien que sur les immeubles situés dans un autre territoire dont les lois établissent des formalités différentes.

"En d'autres termes, les lois qui règlent la forme des actes étendent leur autorité tant sur les nationaux que sur les étrangers qui contractent ou qui disposent dans le pays. C'est l'application de la règle *locus regit actum*.

"Prusse

"Le Code général de Prusse, part. I, tit. 5, § III, porte: 'La forme d'un contrat sera jugée d'après les lois du lieu où il a été passé.'

"Le § 115, part. I, tit. 10, du Code de procédure civile reproduit le même principe.

"Dans les traités relatifs à l'administration de la justice que la Prusse a conclus avec divers États allemands de 1824 à 1841, on lit, à l'Article 33 de chacun des traités, la disposition suivante: 'Lorsque, d'après les lois de l'un des États contractants, la validité de l'acte dépend uniquement de la circonstance qu'il a été reçu par une autorité spécialement désignée et établie dans le même État, cette disposition recevra son exécution.'

¹ "De Belleyme-Demangeat sur Foelix," t. II, p. 220, note.

² Cass., 25 novembre 1879: "Journal du droit international privé," p. 583, année 1880; p. 428, 1881; Grenoble, 11 mai 1881.

“*Pays-Bas*”

“L’article du Code des Pays-Bas dit que ‘la forme de tous les actes est régie par la loi du pays ou du lieu où l’acte a été passé’.

“*Russie*”

“On lit dans le *Digeste russe* : ‘L’acte passé à l’étranger d’après les formes qui y sont en vigueur, bien que non conforme au mode adopté en Russie, sera néanmoins admis à faire preuve jusqu’à production de moyens propres à en infirmer l’authenticité’ (lois civ., x. suppl., article 546).

“*Wurtemberg*”

“Le projet de Code de commerce pour le royaume de Wurtemberg (article 999) porte : ‘Les conditions exigées pour la validité d’un acte passé en pays étranger, en ce qui concerne la forme et la matière de cet acte, sont déterminées par la loi du lieu où il a été passé, et particulièrement par la loi du lieu de la date portée dans un acte écrit : toutefois un Wurtembergeois ne peut attaquer l’acte pour cause d’omission d’une de ces conditions, lorsque cet acte se trouve conforme aux lois du royaume.’

“*Louisiane*”

“L’article 10 du Code de l’État de la Louisiane est ainsi conçu : ‘La forme et l’effet des actes publics ou privés se règlent par les lois et les usages du pays où ces actes sont faits ou passés ; cependant, l’effet des actes passés pour être exécutés dans un autre pays se règle par les lois du pays où ils ont leur exécution.’

“La règle *locus regit actum* admet toutefois certaines exceptions, dont les plus généralement admises sont celles qui se rapportent aux Ambassadeurs ou Ministres publics et à leur suite, qui ne sont pas soumis aux lois de l’État auprès duquel ils exercent leur mission diplomatique ; et le cas où la loi du lieu de la rédaction de l’acte attribue à la forme qu’elle prescrit un effet qui se trouve en opposition avec le droit public du pays où l’acte est destiné à recevoir son exécution.”

F. Surville (Cours élémentaire de droit international privé), paragraphe 420, says :

“1° Preuve littérale. Le juge devant lequel une pareille preuve sera invoquée devra naturellement s’enquérir avant tout de l’origine de l’acte.

“Lorsqu’il s’agira d’un acte émané d’une autorité publique étrangère, cette preuve de l’origine se fera au moyen de légalisations émanées d’abord d’autorités publiques étrangères, et, en dernier lieu, d’un fonctionnaire auquel le Gouvernement français ajoute foi, tel qu’un Ambassadeur, un chargé d’affaires, un consul, &c.

“Quant aux actes sous signature privée, ce sera à celui qui produira l’acte à justifier qu’il a été passé en pays étranger et que la règle *locus regit actum* a été obéie.

“Faisons un pas de plus. L’origine de l’acte est constatée. Il est établi que celui-ci a force probante d’après la loi du pays où il a été rédigé. Quel va être en dehors de ce pays, particulièrement en France, le degré de cette force ?

“D’abord, s’il s’agit d’un acte sous seing privé il ne saurait s’élever de difficulté : tout doit se passer comme pour celui rédigé en France. En d’autres termes, les articles 1322 et 1328 du Code civil, puis les articles 193 et suivants du Code de procédure civile recevront leur application.

"Mais arrivons aux actes authentiques. L'acte authentique dressé conformément à la loi étrangère, par l'officier compétent aura-t-il la même autorité en France qu'un acte authentique français? Fera-t-il foi jusqu'à inscription de faux ou seulement jusqu'à preuve contraire? On pourrait être tenté de dire qu'un pareil acte n'aura pas en France un degré de force probante plus grand que l'acte sous seing privé. En effet, l'officier public étranger n'a agi comme tel que parce qu'il avait délégation de la puissance publique de son pays, délégation qui expire à la frontière. Ce n'est pas là toutefois la solution à admettre. En matière d'actes authentiques, il faut en effet se garder de confondre deux choses; d'une part, la *force probante* attachée à l'acte¹ et, d'autre part, la *force exécutoire*. Les actes publics étrangers ne peuvent pas, en raison même du principe de la souveraineté respective des États, avoir force exécutoire en France: mais rien ne s'oppose, étant donné le caractère officiel de ceux qui les ont rédigés à l'étranger, qu'ils y aient une force probante analogue à celle des actes français de même nature. Le principe de souveraineté est ici hors de cause. Les actes publics seront donc crus jusqu'à inscription de faux, et c'est par la procédure édictée à cet égard dans notre Code de procédure civile français qu'ils seront susceptibles d'être attaqués.

"Quant à la foi à attacher aux livres des commerçants, elle sera déterminée par la loi du lieu où ces livres ont été tenus."

F. Laurent (Le droit civil international), t. VIII, paragraphe 27, provides that:

"Celui qui produit en France un acte authentique reçu à l'étranger, doit en prouver l'authenticité. Les actes notariés passés en France font preuve par eux-mêmes, parce qu'ils portent la signature d'un officier public français, sauf à contester la validité de l'acte; mais rien ne prouve que l'acte étranger soit dressé par l'officier public dont il porte le nom.

"Il faut d'abord que la signature soit légalisée conformément aux usages diplomatiques. Puis le porteur de l'acte doit établir que l'écrit a été rédigé d'après les lois en vigueur dans le lieu d'où il est daté. Pour faciliter cette preuve, la loi hypothécaire belge dispose que l'acte établissant une hypothèque sur des biens situés en Belgique soit visé par le président du tribunal de la situation des biens. Ce magistrat, dit l'article 77, est chargé de vérifier si les actes réunissent les conditions nécessaires pour leur authenticité dans le pays où ils ont été reçus. Si le président refuse le visa, il peut être interjeté appel. L'acte n'a d'effet en Belgique, c'est-à-dire qu'il n'est considéré comme acte authentique que lorsqu'il a été revêtu du visa. Cette disposition est spéciale aux actes d'hypothèque. J'ai proposé, dans l'avant-projet de revision du Code civil, de la généraliser; je le préviendrai des contestations presque inévitables sur la validité des actes reçus en pays étranger. Quoi qu'il en soit, la loi hypothécaire consacre le principe que je viens d'établir. Un acte authentique dressé à l'étranger n'a par lui-même aucun *effet* en Belgique. C'est-à-dire qu'il n'existe pas aux yeux de la loi (comparez l'article 1131 du Code Nap.); pour qu'il ait effet et, par conséquent, une existence légale, il faut que la partie intéressée le soumette au visa du président, ce qui implique qu'elle doit prouver que l'acte est authentique d'après la loi du lieu où il a été reçu et qu'il est valable comme tel; à défaut de visa, l'acte n'aura d'effet que si la preuve de l'authenticité est faite en justice."

(c) Because the principle that a private document has no probative value, once same has been challenged by the opposite party, is laid down in article 338 of our Federal Code of Civil Procedure, which reads literally as follows: "Pri-

¹ Rapp. J. Clunet, 1910, p. 478 *et seq.*

vate documents shall constitute full proof against the person who wrote them, when not objected to or once they are legally acknowledged," the origin of which is the Law of Civil Procedure of Spain.

Zavala, the author of *Elements of Private International Law* (Conflict of Laws), lays down on p. 319: "All the inhabitants of Mexico must be presumed to be Mexican citizens, which is in accord with article 257 of the International Code of Dudley Field."

Furthermore, a presumption is not destroyed by another presumption, but by proof.

It is true that there are no restrictions on the Mexican-British Claims Commission as regards the admission and weighing of evidence; but this power is undoubtedly always limited by the principles of public international law, especially when it is a matter of determining its own jurisdiction.

The Commission may not, therefore, be satisfied with evidence unless it complies with the principles generally accepted by jurists to enable such evidence to be considered as authentic. In other words, the sovereignty of the Commission when weighing the evidence is not absolute; its limits will always be those imposed by law and by ethics. So that although when estimating a fact in accordance with the best knowledge and judgment of the Commissioners, neither the Convention nor the Rules of Procedure are infringed, the Commission will always be obliged not to depart from the fundamental principles of international law.

(d) Because it must not, although there is subjectively no reason for doubting the certificate of baptism produced by Lynch, be forgotten that the *onus probandi* in this case falls wholly upon the demandant Government, and that the Commission is not authorized to supply any deficiencies in the evidence produced by either party.

In view of the whole of the foregoing, the Mexican Commissioner holds that the demurrer should be allowed, on the ground that the nationality of the claimant has not been properly established.

VIRGINIE LESSARD CAMERON (GREAT BRITAIN)

v. UNITED MEXICAN STATES

(*Decision No. 2, November 8, 1929, concurring opinions by British and Mexican Commissioners, undated. Pages 33-50.*)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS. In the absence of any express provisions in its *compromis* to the contrary, an international tribunal may permit any evidence whatever to be introduced before it.

AFFIDAVITS AS EVIDENCE. Affidavits will be admitted as evidence but will be weighed with the greatest caution and circumspection.

NATIONALITY, PROOF OF.—CONFLICTING STATEMENTS BY CLAIMANT CONCERNING NATIONALITY. Presumption of nationality raised by an affidavit as to nationality of decedent, together with a certificate of British consular registration of decedent, *held* rebutted by a document produced by Mexican Agent signed by decedent in which he described himself as an American citizen.

CLAIM IN REPRESENTATIVE CAPACITY. A claimant purporting to act on behalf of a decedent's estate must submit evidence of his legal representative capacity.

Cross-references: Am. J. Int. Law, Vol. 25, 1931, p. 757; Annual Digest, 1929-1930, p. 452.

1. In this case the demurrer filed by the Mexican Agent is based on two grounds: (1) that no reliable document has been produced by the British Government to establish the British nationality of either Dr. Murdock C. Cameron or of Mrs. Cameron, and (2) that the Memorial does not comply with article 11 of the Rules of Procedure, which requires an executor or administrator who claims on behalf of the deceased person's estate to give evidence of the legal representative capacity in which he or she is acting.

In the course of his argument the Mexican Agent raised other points. He contended, in particular, that the Commissioners were not entitled to accept affidavits, on the ground that Article 4 of the Anglo-Mexican Convention does not specifically mention affidavits. A further contention was that the third paragraph of Article 4 was governed by Mexican law and that documentary evidence as well as parole evidence given in examination before the Commission should be in accordance only with Mexican law. He relied in particular upon the fact that affidavits were a form of evidence which was unknown to the law of Mexico.

The Mexican Agent declined to attach any importance to an affidavit sworn by a brother of Dr. Cameron (annex 2 of the Memorial), dated the 25th August, 1909, in which it is declared that Dr. Cameron was born on the 9th May, 1855, as a British subject, and that he never lost that nationality. He submitted that the affidavit possessed no value, because it was sworn to by a near kinsman of the claimant, who was therefore not an independent witness and as to whose trustworthiness the Commission had no information.

Furthermore, the respondent Government produced a document signed by Dr. Cameron in 1896 in which he described himself as a citizen of American nationality.

Finally, the Mexican Agent submitted that Dr. Cameron must be considered a Mexican citizen under article 30 of the Mexican Constitution of 1857, because he had acquired land in Mexico and was the father of Mexican children.

2. Against these contentions the British Agent relied upon various points in the course of his argument. In the first place, the affidavit of Dr. Cameron's brother was the evidence of a person in a better position to know the facts of Dr. Cameron's nationality than anyone else. He produced a certified copy of entries in the register of the British Consulate at Tampico, showing that Dr. Cameron and his children were registered as British subjects on the 5th June, 1908. The fact that Dr. Cameron was born in Canada was, he suggested, an explanation why the deceased had described himself as being of American nationality. He relied upon the authorities set out on p. 186 of *Ralston*, that article 30 was to be construed in a permissive and not in an obligatory sense. With regard to Rule 11, he submitted that no letters of administration were required by the law of Texas to administer an intestate estate.

The British Agent contested strenuously the claim of the Mexican Government that affidavits were excluded by the treaty and that Article 4 was to be interpreted according to Mexican law. In the whole history of international commissions no treaty had ever been signed which permitted the law of one

sovereign State to determine disputes to the exclusion of the law of the other sovereign State. Affidavits were covered by the words "other evidence" and the application of the Mexican law related exclusively to the parole examination of witnesses before the Commission.

3. It is necessary that the Commissioners should make clear once and for all what their attitude is with regard to the claim that matters of evidence and procedure were to be governed by Mexican law and that affidavit evidence was excluded by the language of the treaty. This is a matter of great general importance which must be examined with care.

In the first place the Commissioners consider that there is no limitation in the terms of the treaty to restrict them in the evidence they receive. The Commission is independent of both the Mexican law and the British law and there is nothing in the treaty to suggest the contrary.

As an international tribunal the function of the Commission is fundamentally different from the function of a civil national tribunal. The Commission has been created by two sovereign States for the purpose of carrying out a determinate object and both States have selected experienced lawyers who possess their confidence. In signing the Convention the Governments have acknowledged that it is in the interest of both States that the claims should be disposed of once and for all. In the preamble to the treaty both Great Britain and the United States of Mexico express their desire "to adjust definitively and amicably all pecuniary claims arising from losses or damage suffered by British subjects".

By article 2 of the treaty a duty is imposed upon the Commissioners "to examine with care and to judge with impartiality in accordance with the principles of justice and equity all claims presented". In order to carry out the object of the treaty and the duty of the Commissioners it is necessary that this body should be equipped with more extensive powers than a domestic tribunal can enjoy so that the Commissioners can ascertain the truth in a manner which is not subject to any restriction.

It appears to us that the true principles to be observed are expressed in the following words taken from pp. 38-39 of the Report of the Mexican-American Claims Commission, dated the 8th September, 1928:

"For the future guidance of the respective Agents, the Commission announces that however appropriate may be the technical rule of evidence obtaining in the jurisdiction of either the United States or Mexico as applied to the conduct of trials in their municipal courts, they have no place in regulating the admissibility or the weighing of evidence before this international tribunal. . . . On the contrary, the greatest liberality will obtain in the admission of evidence before this Commission, with a view of discovering the whole truth with regard to each claim submitted."

4. It appears to the Commissioners that the reference to Mexican law in article 4 of the treaty applies only to the examination of witnesses. It would be a unique event in the history of international treaties if two sovereign States solemnly agreed that the law of only one should prevail. The true interpretation of article 4 of the treaty is quite clear. It is the only article in the treaty which made it necessary for the Mexican Government to safeguard the rights of their own subjects. It authorized the Commissioners to have Mexican citizens examined under affirmation, and signing the Convention the Mexican Government had to be careful that their citizens should not be subject to a system of interrogation more stringent and more oppressive to their consciences or less familiar to them than the system prevailing in the courts of their own country. For this reason it was stipulated that the Mexican law must be observed.

5. With regard to affidavits it appears to the Commissioners that they are bound to reject the view put forward by the Mexican Government. It is true, no doubt, that affidavits contain evidence which can be described as secondary evidence and is often of a very defective character. In many cases, it may be, affidavit evidence may possess little value, but the weight to be attached to that evidence is a matter for the Commissioners to decide according to the circumstances of a particular case. Affidavits must and will be weighed with the greatest caution and circumspection, but it would be utterly unreasonable to reject them altogether.

The evidence of which the Commission will be able to dispose is limited by the very nature of the claims.

Most of the claims originate in acts of violence, of which documentary evidence will seldom, if ever, be available. The most recent of the facts have been committed nearly ten years ago and the most remote nearly twenty years ago. It is clear that oral testimonial evidence in most cases cannot be obtained owing to the death or the disappearance of witnesses, and that, if available, one would hesitate to attach much weight to the evidence of witnesses who spoke of events which happened so many years ago.

If, the evidence already being so scarce, the Commissioners were to be deprived of the light of truth, dim as it may be, that may shine out of some affidavits, it would mean that their task would be attended by greater difficulties than seems unavoidable, and that the position of one party to the convention would be seriously prejudiced.

Finally, there is nothing in the language of the treaty to warrant the proposition put forward by the Mexican Government.

6. In this particular case, the affidavit sworn by Dr. Cameron's brother is, however, not a document which ought to carry great weight with the Commissioners. Nothing is known about him, whether he is trustworthy or whether he kept in touch with his brother, who left Canada in 1881. On the other hand, for the reasons set out in our judgment in the case of R. J. Lynch, the certificate of consular registration put in by the British Agent does raise a presumption of British nationality, though that presumption is rebutted by another document put in by the Mexican Government. This is the annex attached to the demurrer, in which in 1896 Dr. Cameron designated himself as *ciudadano americano*. It may be that this referred to his Canadian birth, but, even so, the document affords evidence that Dr. Cameron did not at that time consider himself a British subject or had reasons for not avowing himself as such. The signature of Dr. Cameron to this declaration weakens very considerably the evidence of the consular certificate and justifies the Commissioners in holding that the claimant has not established his British nationality.

This being the case, it is not necessary to consider the effect of article 30 of the Mexican Constitution.

7. As regards the right of claimant to represent her deceased husband's estate, the Commission must declare that article 11 of the Rules of Procedure has not been observed. According to this article, claims on behalf of an estate must be filed by the deceased's legal representative, who shall duly establish his legal capacity therefor. The law of Texas, to which the British Agent appealed, cannot be conclusive for the decisions of the Commission, but even if it could, the Mexican Agent has in his brief put forward arguments raising serious doubt as to whether the Texas Law would give claimant any right to appear before the Commission. The Commission is not in possession of any document showing that Mrs. Cameron has the capacity to appear in her own right and in that of her children, three of whom were of age at the time of

Dr. Cameron's death, and all of whom were of age at the time when claimant made her statement (annex 1).

8. The Commission declares that (a) the British nationality of neither Dr. Cameron nor of his widow, the claimant, has been sufficiently established, and that (b) claimant has not duly shown her legal capacity to act on behalf of Dr. Cameron's estate in accordance with article 11 of the Rules of Procedure.

The demurrer is allowed.

The judgment is unanimous, but the other two Commissioners desire to express separately their reasons for arriving at the same conclusion.

Separate opinion of Mr. Artemus Jones, British Commissioner

Before dealing with the arguments of the respondent Government in the Cameron case, I want first to dispose of a point of great general importance. This is the question whether the Commissioners are free to decide all matters of evidence and procedure independently of the domestic law of Mexico or of the domestic law of Great Britain. In approaching this problem it is necessary to bear in mind the fundamental differences which distinguish an international claims commission from a municipal or national tribunal. The chief of these lies in the nature of their powers. On the one hand, a municipal or national tribunal is vested with compulsory powers for the purpose of enforcing the attendance of witnesses to give evidence and compelling litigants to disclose facts and documents relevant to the dispute. On the other hand, an international commission is equipped with no such powers, but it is wholly dependent and limited by the terms of the treaty which creates it. For example, in the case of this Commission Article 4 of the Anglo-Mexican Convention lays it down in emphatic language that the procedure adopted by the Commission shall not depart from the provisions of the treaty. An agreement between two sovereign States whereby compensation is paid in certain circumstances, not as a matter of right or of international law, but as a matter of grace on the part of one of the two Powers, stands of necessity in an entirely different category from those municipal laws which control the evidence and govern the procedure of national tribunals. On principle it appears to me beyond challenge that an international tribunal such as this cannot be bound by the municipal law of either country. In the course of the argument I drew the attention of the Agents of the British and Mexican Governments to the case of William A. Parker, which is reported in the American official reports of the American-Mexican General Claims Commission, 1927 Volume, pages 35 to 40. This very question was discussed in the unanimous judgment which was arrived at by three Commissioners in that case. It is of some significance that the Commissioner for Mexico concurred completely in the views of the American Commissioner and the President. The considerations which ought to guide international tribunals with regard to the question are set out at length on page 38 under the heading of "Rules of Evidence." The substance of the judgment is that an international commission cannot be governed by rules of evidence borrowed from municipal procedure. This view is fully established by the conclusive reasons set out therein. In my judgment the reasons which are there advanced ought to be adopted without qualification both by this and every other international commission. In expressing this opinion, I am not overlooking the fact that the decision of one international tribunal is not binding upon another. It is no less true, however, that the general principles relating to evidence and procedure which should guide them ought to be the same.

The broad question raised by the demurrer may be put in these terms: Does the word "proof" in Article 10, paragraph (a), mean absolute and conclusive

proof of British nationality, as the Mexican Agent contends? Or does it mean, as the British Agent contends, *prima facie* evidence sufficient to satisfy the Commissioners, and to raise a presumption calling upon the Mexican Government to rebut the Memorial if they have any rebutting evidence? The Mexican Agent's first proposition is that consular certificates and baptismal certificates are *ex parte* statements and only secondary evidence, and that they ought not to be admitted in evidence unless it be proved that birth certificates are not procurable. He admits that such evidence of nationality as would satisfy an English Court of Justice would be sufficient for the Anglo-Mexican Claims Commission. It is necessary therefore that I should explain what the law in England is. In England, as elsewhere, the rule requiring the best evidence of the fact to be proved prevails, and secondary evidence is only admissible where the primary or best evidence is inaccessible. If, for example, an agreement in writing, or an entry in a bank-book or birth register, has to be proved, copies of such agreement or entries are only admissible on showing that the original agreement or original bank-book or original register has been lost or destroyed. It sometimes happens that it is extremely difficult or highly inconvenient to produce either the original book or the original register, and so Acts of Parliament have been passed, declaring that copies of entries therein (certified as being correct copies by the persons having custody of such books or registers) shall be admissible in evidence. A birth certificate is thus an easy and cheap method of proving the birth of a person, just as a copy of an entry in a bank-book proves payment or the state of a person's bank account. A birth certificate proves British nationality because the place of birth and the parentage of the person are facts from which British nationality is inferred. The register of births is the primary (or best) evidence of a birth because it records the statements made to the registrar about the time of birth by the parents of the child, who alone know the true facts about the birth and parentage. A birth certificate is secondary evidence, for it is the register (in which the particulars are entered by the registrar) which is the primary evidence of the fact to be proved. The registrar is a municipal official who accepts the *ex parte* (or uncross-examined) statements of the parents, but who may never see the child personally. Two strangers, man and woman, may induce him to make an entry in the register of a purely fictitious birth, but if they do so they can be prosecuted and punished, for it is a criminal offence in England to cause false entries to be made in a birth or marriage register. A birth certificate is thus just as much secondary evidence of the fact to be proved as the certificate of a Consul registering a man as a British national or a person's baptismal certificate. As a mode of satisfying the rule which requires the best evidence, a baptismal certificate is superior evidence in one or two respects to a birth certificate. Both documents are secondary evidence but the original entry in a baptismal register, recording the statements of the parents, is made in a church to which they both belong, to a clergyman who actually sees and baptizes the child. The signature of a clergyman who signs a baptismal certificate does not require to be verified by an attestation clause, and the same is true of a birth certificate. Where the original or first written statements are destroyed or inaccessible, verbal evidence of reputation may be given by neighbours who know the facts of birth and parentage. Similarly, entries of a family Bible are admissible in English law to prove the birth of a person. It follows from these considerations that the first proposition of the Mexican Agent is fallacious, since it rests upon the assumption that a birth certificate is primary evidence whereas, in fact, it is but secondary evidence.

The second proposition was that documents put in under clause 4 of the Convention can be admitted only in accordance with Mexican Law. It is

argued that the words "according to Mexican Law" which appear in the third paragraph of the clause govern the whole sentence and apply to documents as well as to parole testimony. The soundness or unsoundness of this proposition depends upon the true construction of clause 4. Now the golden rule of construction is that words in a document must be given their plain and ordinary meaning. It is true that negotiations leading to a treaty may be looked at, but no evidence has been given to the Commission as to what was said during the Anglo-Mexican negotiations. No verbal explanation ought to be given of the intention of the parties as expressed in a document. Thus parole evidence to vary or contradict the terms of a written agreement is not admissible. If, for instance, any question arises as to the meaning of a section or a word in an Act of Parliament, advocates are not allowed to quote Parliamentary debates to show what was the intention of Parliament. In England, the Mexican Agent would not have been allowed to tell the Court what his Government had in mind when they signed the Convention. The words of the clause must be interpreted according to the recognized canons of construction. If the words are read in their plain and ordinary meaning, clause 4 is free from ambiguity. The initial paragraph of the Article allows the Commission to determine their own method of procedure, with the stringent qualification that the provisions of the treaty must not be departed from. The second paragraph then permits both Governments to appoint Agents for the purpose of presenting documentary or parole evidence to the Commission. The third paragraph deals first with documentary evidence and then with parole evidence. It declares, first of all, that the Agents may offer documentary evidence in support of or against any claim. It then deals with parole evidence (which means evidence of witnesses by word of mouth at the trial) and declares that the Agents shall have the right to examine witnesses under affirmation, in accordance with Mexican Law, and such rules of procedure as they may adopt (e.g., Rule 27). In Mexico evidence is given in Courts of Law under affirmation. In England a witness must give evidence under the sanctity of an oath sworn upon the Bible, although a witness who objects to an oath may choose to affirm. This difference in the two systems explains the presence of the words "in accordance with Mexican Law" in the sentence immediately after the phrase relating to witnesses who are examined before the Commission in Mexico. It is clear that the words have no application to the first clause of the sentence, and that the contention of the Mexican Agent has no foundation.

The third proposition advanced by the Mexican Agent was that the absence from Article 4 of the word "affidavit" prevents the Commission from receiving evidence in that form. This proposition is fraught with vital consequences to the future work of the Commission. The object of the Convention is to compensate persons who suffered loss and damage between 1910 and 1920, and, as a result, a large proportion of the documents in support of the claims are affidavits. It follows therefore that if the demurrer is upheld, a very large number of the claims presented must be excluded from consideration at the hands of the Commissioners. The contention rests not so much upon the language of Article 4 as upon the verbal statements made to the Commissioners by the Mexican Agent that his Government intended, when drafting the Convention, to exclude affidavits. Accordingly, the duty rests upon the Commissioners of examining closely the reasoning upon which the Mexican Government founds such a proposition. If, according to legal principles the contention is sound, the Commissioners must say so, irrespective of what the consequences may be. The *onus probandi* of establishing the demurrer being upon the Mexican Government, they have to satisfy the Commissioners that the language of the Convention excludes affidavits from being admitted in evidence. In my opi-

nion, little consideration should be given by the Commissioners to the personal explanations, given both by the Mexican Agent as well as the British Agent, as to what the intentions of their respective Governments were. The question which the Commissioners have to decide must be determined solely by the meaning of the language both parties have used in the document. If the language is plain, there is no need to apply those canons of interpretation which are resorted to in Courts of Justice. If, however, the words are susceptible of more than one meaning, those rules of construction must be applied to remove any ambiguity.

The question is, do the words "documents, interrogatories or other evidence" exclude affidavits from being admissible? Each of these terms must be examined. No ambiguity can be found in the first word "documents." It is a generic term comprehensive enough to include affidavits as well as every other form of written evidence. Under this term all documents which are relevant to the issues before the Court are admissible in evidence. It is by virtue of this term that the Mexican Government put in evidence the official report which is attached to the Cameron demurrer as an appendix (consisting to some extent of pure gossip and hearsay evidence). "Documents" is followed by the word "interrogatories." This is a specific term which describes a particular kind of written testimony common in Courts of Justice. This specific term is followed by the general words "or other evidence." What was the intention of the Mexican Government and the British Government as expressed in the words "or other evidence"? There can be no doubt as to the meaning of the word "other." It means documentary evidence of the same kind or class as that to which interrogatories belong. The term "evidence" standing alone would include parole as well as written evidence, but the generality of this meaning is cut down here to documentary evidence by reason of its association with the preceding word "interrogatories." Are affidavits documentary evidence of the same kind or class as interrogatories? The answer is in the affirmative, since, in nearly all material respects, affidavits are almost identical with interrogatories.

On the assumption, however, that the meaning of the words is not plain, let us see how the position stands. The case for the demurrer is that affidavits are excluded, because in the American General Claims Commission, the words of the Convention were "documents, affidavits, interrogatories or other evidence," whereas in the Anglo-Mexican treaty the word "affidavits" is omitted. In order to deal fairly with this contention, certain principles of interpretation must be borne in mind. In the first place, the language of the American General Claims Commission has nothing whatever to do with the Anglo-Mexican Treaty. The former document was never placed before the British Government at the time when the latter treaty was negotiated. The document must be construed without reference to anything outside it. The Mexican Agent's proposition is that the words "other evidence" do not include affidavits, because (1) there was an intention to omit it in the mind of the Mexican Government when they negotiated the Anglo-Mexican Convention, and (2) because the statements of a witness in an affidavit are what Mexicans call testimonial (or parole) evidence and, therefore, not included in the term "documentary evidence." The fallacy underlying the latter argument lies in assuming that statements of a witness taken down in writing place this evidence in the class of parole testimony. If the language of the article is susceptible of more than one meaning, we must fall back upon the recognized canons of interpretation. The words here are subject to the *ejusdem generis* rule, namely, that the word "other" can only mean the same kind or class of thing as the specific term preceding the word. Apart from this, however, there is another ground why the Mexican Government cannot

sustain their objection. On their own showing the words of the article are ambiguous. If it was their intention to exclude affidavits (as the Mexican Agent assures us), and if it was the intention of the British Government to include them (as the British Agent assures us), it follows that the words used by both parties are ambiguous in the sense that the treaty did not express their true meaning. Can the Mexican Government reap any benefit from an ambiguity for which they are to a certain extent responsible? According to the *contra preferentes* rule of interpretation, no party to an agreement can take advantage of an ambiguity to which he has contributed. That is to say, no contracting party can be allowed to take advantage of his own ambiguity to the prejudice of the other party to the contract. There is another objection to the proposition of the Mexican Government. The very rule upon which the Mexican Government rely in the Cameron demurrer, Rule 11, requires the claim of the deceased British subject to be put forward by his executor or administrator. The probate of a will, whereby the appointment of an executor is proved, or the grant of letters of administration by which an administrator is appointed by the Court to administer the estate, can only be obtained in England and her Dominions by means of affidavits. Such affidavits must be sworn and taken before Commissioners for Oaths, solicitors who are appointed Commissioners expressly by Act of Parliament in their capacity as officers of the High Court of Justice for that purpose. To authenticate the probate of any will Dr. Cameron may have made, or the grant of letters of administration to Mrs. Cameron for production to the Anglo-Mexican Commissioners, as well as to obtain them, an affidavit would have been necessary. It is impossible, to my mind, to reconcile this fact with the contention put forward by the Mexican Government.

Another contention was that "interrogatories" ought to carry greater weight with the Commission than *ex parte* statements such as affidavits, because in the former case they are the statements of a witness who has been subjected to cross-examination. As a general proposition it is true that the evidence of a witness who has been cross-examined may carry greater weight than the evidence of a witness who has not. This proposition, however, depends upon what is meant by the term "cross-examination." To make the position clear, it is necessary that I should describe what "interrogatories" mean in England. A party to a civil action has the right to facilitate the proof of his own case by getting the other party to the suit to admit, in answer to interrogatories, certain facts within his own knowledge relevant to the issues in the case. Accordingly he frames in writing certain questions which the person interrogated has to answer in writing upon oath. From the information supplied by the Mexican Agent, in answer to my questions, it appears that interrogatories in Mexico are something different. Here a plaintiff or defendant who wishes to interrogate a witness has the right to put to him certain questions in writing, and the questions are put and the answers given by the witness in the presence of a judge. A copy of the questions is furnished beforehand to the other side, who have the right, if they so choose, to frame certain cross-questions which are enclosed in a sealed envelope and handed to the judge, and the judge apparently puts these questions to the witness at the time when the interrogatories are taken. Is this cross-examination in the generally accepted sense of the term? Cross-examination is one of the salient features of most judicial systems, and it is a powerful weapon for getting at the truth. Cross-examination in the true sense of the word means that a witness has to face the ordeal of an open court in which he is verbally cross-questioned by counsel, both with regard to the facts of the case, and his own antecedents and credibility. The value of this method of ascertaining the truth lies in the personal contact between the witness, who has no idea of what questions may be asked him, and the personality of the

advocate who puts the questions to him. The effect of the evidence of a witness subjected to this ordeal may be completely destroyed. In this sense the evidence of a witness who has been cross-examined is of greater weight than an *ex parte* statement. It appears to me that interrogatories as administered in Mexico should carry not much more weight than the statements of a witness in an affidavit. In nearly all essential respects interrogatories as understood in Mexico and affidavits as understood in England are identical. (1) In both cases the statements of the witness are taken down in writing. (2) They are taken down in writing by officials authorized to do so. (3) Both are written evidence taken down for the information of the Court. (4) Both must be relevant to the issues in the case. The Mexican Agent, in depreciating the value of affidavits, overlooks the fact that they are made before a public official. In England no affidavit can be taken except by Commissioners for Oaths, who are appointed expressly for the purpose and who, as solicitors, are officers of the High Court of Justice. The different notaries public before whom the affidavits were taken in the Cameron case are public officials quite as much as Señor Sierra, who certifies the annex attached to the Cameron demurrer. If the statements contained in that document are admissible because Señor Sierra certifies them as an official of the Court, so likewise are affidavits because they are made before notaries public who are officers of the High Court of Justice. It was argued by the Mexican Agent that as the statement of a witness in an affidavit was not cross-examined to, the affidavit should not be produced before the Commissioners. Here again there is a fallacy. The fact of the statement not being cross-examined to, does not remove affidavits out of the kind or class of written testimony to which that form of evidence pertains; it merely goes to the weight which the statements ought to carry with the tribunal or their probative value. In other words, the circumstance does not render affidavits inadmissible, but is a matter which the Commissioners can take into account in deciding what weight to attach to them. The case for the British Government against the demurrer can be put into a sentence. You have first of all, in Article 4, a generic term "documents," then a specific term "interrogatories," and then follow general words which extend the meaning of the specific term to documents of the same class or kind. In my opinion, affidavits, being in the same class of written evidence as interrogatories, are thus included in the words of the article.

The next contention was that public documents are superior in weight to any other kind of evidence. For example, the annex attached to the Cameron demurrer is a report taken from the files of the Mexican Government, recording a dispute with regard to certain land which Dr. Cameron had acquired prior to 1896. The case for the Mexican Government rests upon the proposition that, as the statements are contained in an official document, they amount to conclusive evidence. It is necessary to examine the grounds upon which this proposition is founded. The basis of this contention is admittedly derived from the maxim *omnia praesumuntur esse*, which is derived from the Roman law and is in operation in most systems of jurisprudence, including the British. The maxim simply means that public documents shall be admitted in evidence without question on the ground that the law presumes that all acts done by public officials are done regularly and in good faith. In other words, the maxim merely facilitates the mode of proof. The evidential value of the contents of such documents is not in any way affected by the application of the maxim. For instance, the annex referred to consists in part of hearsay evidence and partly of extracts from official documents. The fact that these extracts are contained in Government archives dispenses with the necessity of proving them in a formal way. Notwithstanding this fact, it is still for the Commissioners to decide for themselves what credence to attach to the statements. It was alleged by the Mexican

Government that Dr. Cameron was not a British subject, inasmuch as he had signed a document in which he had described himself as an American citizen. In support of this allegation, they produced an official copy of the document referred to. No reflection was cast in any way on the authenticity of this document, but the Mexican Government, in their anxiety to produce all the evidence at their disposal, put in evidence the original document bearing Dr. Cameron's signature. It appears to me that the demurrer is established beyond all doubt by means of this document. The claimant had produced *prima facie* evidence, in my judgment, of Dr. Cameron's British nationality, but this evidence is rebutted by a document bearing Dr. Cameron's own signature, describing himself as a citizen of American nationality. On this ground I agree with my brother Commissioners that the demurrer must be allowed. This unanimous decision of the Commissioners renders it unnecessary to consider the further question whether the claim is barred by the operation of paragraph 3 of article 30 of the Mexican Constitution.

The final submission made by the Mexican Agent was founded on clause 11 of the Rules of Procedure, which requires an executor or an administrator to establish his legal capacity before the Commissioners can entertain a claim on behalf of a deceased person's estate. It appears that when Dr. Cameron was forced to leave Mexico in July 1916 in the circumstances set out in the Memorial, he moved, with his family, into the State of Texas. They were resident there at the time of his death in 1918 and the claimant lives there now. The Mexican Agent contended that Mrs. Cameron could not, under Rule 11, bring the claim before the Commission until she had obtained letters of administration from the courts to administer the estate of her husband, who had died intestate. The Agent of the British Government relied on a letter, written by Mrs. Cameron's lawyer in Texas, that husbands and wives are virtually partners in the property accumulated during marriage under the laws of that State, and also that it was not considered necessary in Texas that an intestate estate should be administered under the authority of the court. This contention, however, is of no avail, as the Mexican Agent has filed in reply a copy of article 2859 of the Texas Civil Code. According to the Texas Civil Code, Dr. Cameron's marital rights are governed by the law of Canada. There is no evidence before the Commission to suggest that the law of Canada does not require the administration of an intestate estate under the authority of the court. In these circumstances, it appears to me that Mrs. Cameron's failure to comply with Rule 11 is fatal to the hearing of her claim.

Separate opinion of Dr. Benito Flores, Mexican Commissioner

The demurrer is based on failure to establish the British nationality of Dr. Murdock C. Cameron and of his widow, Mrs. Virginie Lessard Cameron; and on the fact that, the claim having been made for damage to the property of a person deceased, the said claim should, pursuant to article 11 of the Rules of Procedure, be preferred on behalf of the estate interested and through its legal representative, the claimant not having shown that she is the legal representative of her husband's estate.

The Facts

I. This is a claim for damages, and compensation for loss of property by reason of the confiscation of the Glen Urquhart Ranch, situated at Gomez Farias, by Carranza soldiers under the orders of Lieutenant-Colonel Rodrigo Flores Villarreal, in the month of July 1916.

II. The evidence of the British nationality of Mrs. Cameron is based on an affidavit (annex 2) relating to the British nationality of her husband, Murdock C. Cameron, made by Daniel Cameron before Chas. E. Tanner, Notary, on the 25th August, 1909, in the Province of Nova Scotia, Canada. In said affidavit Daniel Cameron declares that his brother, Murdock C. Cameron, was born at West River, Pictou County, Province of Nova Scotia, on the 9th May, 1855, and that he preserved such nationality until the 25th day of August, 1909, deponent having added that the name and birth of his brother were entered in his father's family Bible, which was in his possession. The claimant further produced a certificate of the marriage solemnized between herself and husband (annex 3).

III. The Mexican Agent forthwith entered a demurrer, which he based on two grounds:

1. That the British nationality of Murdock C. Cameron has not been established, nor that of his widow, Mrs. Cameron.

2. On the fact that the claim should, pursuant to article 11 of the Rules of Procedure, be filed on behalf of the estate of the said Murdock C. Cameron, and that the claimant has not proved that she is the legal representative of the said estate.

IV. The British Agent replied to the effect that the affidavit of Mr. Daniel Cameron is the best evidence available for proof of the British nationality of Dr. Cameron, as due to the fact that he was born on the 9th May, 1855, before civil registration was compulsory in England, it was impossible to produce a birth certificate; that proof of the marriage of the claimant to Dr. Cameron was furnished by annex 3 to the Memorial, and that as the nationality of a wife is the same as that of her husband, the British nationality of Mrs. Cameron had been properly established; and, lastly, the British Agent contended that the claimant did not need to prove by means of any document whatsoever that she is the legal representative of the estate of her husband, because he died in the State of Texas, United States of America, where he had resided for some time; that according to the laws of that State, husband and wife were virtually partners in so far as concerned property acquired during marriage, and that it was not held to be necessary when a person died intestate without leaving real property that his estate be administered by the Courts, and that Dr. Cameron had died intestate and had left no real property, for which reason no proceedings were instituted in the Courts for winding up the estate; that Mrs. Cameron considered herself as the surviving member of the partnership with her husband, in community, and he in this manner contended that the claimant was entitled to claim in her own right and as the legal representative of the late Dr. Cameron.

V. The Mexican Agent filed a brief in this matter, and in support of the grounds on which he based his demurrer, contended that citizenship was one of so many facts that have to be proved in the same manner as any other facts: that evidence taken *ex parte*, such as depositions in the form of affidavits, was wanting in probative value; that even in the contrary supposition, the evidence of witnesses might not be offered as proof of nationality, except when proof was shown that no better evidence, such as a birth certificate, certificate of baptism or family register, was available; that the testimony of a single witness was not admissible as proof; furthermore, that the deposition of Daniel Cameron, the brother of the person from whom the claim was derived was open to suspicion and should be struck out, due to the degree of their relationship, and that he had all the more reason for requiring authentic proof of the nationality of Dr. Cameron, and that this gentleman, in a document filed with Mexican

authorities, in connexion with a different matter, had stated that he was of American nationality. And he submitted a certified copy of the document to which he had referred.

VI. The said Mexican Agent contended in his brief that the claim ought to be filed on behalf of the estate of Dr. Murdock C. Cameron, and through his legal representative, pursuant to the terms of the Convention, and in accordance with the practice followed in Courts of Arbitration. He assailed the proposition of the British Agent, to the effect that as Dr. Cameron had died in the State of Texas, United States, where husband and wife are virtually partners as regards property acquired since marriage, he did not consider it necessary to establish her capacity as the legal representative of the estate of Dr. Cameron by means of any document, because if he accepted the principle that the law of the country of the husband governs the marriage contract, the law of England, and not that of Texas, would apply; and if the Anglo-Saxon principle, that the relations of husband and wife in so far as concerns personal property must be governed by the law of the first domicile of husband and wife, be accepted, then as this claim was personal property, the law of England would also apply.

VII. This case having begun to be tried at the meeting of the 10th October, 1929, arguing of the same was concluded on the 17th day of the said month of October, both Agents having defended their standpoints at length, as mentioned above, the learned British Agent having submitted a copy of entries in a register at the British Consulate at Tampico, relating to registration of the children of Dr. Cameron. The Mexican Agent referred very fully to the nature of *ex parte* evidence, not conceding that it has any value, especially for proof of nationality, and developed his proposition to the effect that affidavit evidence should not, under the Convention, be admitted, a proposition which was assailed by the British Agent.

Considerations of a Legal Order

I. This case gave rise to the problem of the interpretation of paragraph 3 of Article IV of the Mexican-British Convention and was the cause of serious discussion, in which the Mexican Agent contended that affidavits should not be admitted under that provision, and it was called in question whether the Commission was or was not at liberty to weigh the evidence submitted, independently of the laws of Mexico and of England.

The British Agent contended that the Commission was authorized to receive all kinds of evidence, even that known as affidavits, on the understanding that the question of the admissibility of any evidence should not prejudice its sufficiency, and that the Commission is only bound to comply with the Mexican laws, when it is a matter of examining witnesses produced by the agents or counsel of either Government, pursuant to that provision of the Convention.

The Mexican Commissioner holds that as the admission of affidavits as evidence is not forbidden by the Convention, the Commission is authorized to receive them and to weigh them in due course, in accordance with the rules universally accepted, both in Municipal and International Law, and holds that a Judge should not be hindered in any way from investigating the truth of the facts, on which foundation he will have to deliver his judgment.

II. As regards the probative value of the affidavit made by the brother of Dr. Cameron, the Mexican Commissioner holds that no probative value should be ascribed to it, for the following reasons:

(a) Because Daniel Cameron is the brother of the claimant, and naturally his testimony cannot be impartial and will always have a tendency to be favourable to the interests of that member of his family, an objection that may very justly be made, which deprives his deposition of all value.

(b) Because he is the only person testifying as to the fact of the claimant's birth, and as a general rule the testimony of a single witness, however honourable he may be, cannot constitute full proof.

(c) Because the testimony of Cameron's brother is in open contradiction to the deposition of the claimant himself, as the latter in 1896 stated before the Land Agency of the Ministry of Fomento that he was an American citizen, while his brother now asserts that the claimant always preserved his British nationality. The declaration made by Cameron in 1904 was laid before the Commission for inspection in a document issued from the above-mentioned Ministry, in the form of a certified copy, the authenticity of which is undeniable. That being the case, the affidavit of Daniel Cameron should be rejected.

(d) Because, although the Commission by a majority has declared that consular certificates as to registration of British subjects constitute *prima facie* evidence of nationality, and in this case a certificate from His Britannic Majesty's Consul at Tampico has been produced, in which six persons of the name of Cameron, among whom the name of Murdock Campbell Cameron is to be found, appear as having been registered as British subjects in 1908; this evidence, far from being corroborated by other evidence, is contradicted by the admission of the late Murdock C. Cameron himself, in the document of 1896, mentioned above; and that being the case, a declaration should be made to the effect that Mrs. Virginie Lessard Cameron has not established either the British nationality of her husband, or her own.

The principles on which the above arguments for the rejection of the affidavit of the claimant's brother as insufficient are based find their origin in the remotest antiquity, and are duly applied in all modern courts. In this regard, we may cite article 283 of the French Code of Civil Procedure; article 283 of the Belgian Code; the Civil Code of the Netherlands, articles 1942, 1945 and 1946 (sections 1 and 2); Spanish Civil Procedure, article 660 (sections 1, 2 and 3); the Italian Civil Code, article 327 (second part); and our Federal Code of Civil Procedure, articles 302 and 356.

III. The second ground on which the Mexican Agent finds his demurrer is that the claimant has not shown that she is the legal representative of the estate of Dr. Murdock C. Cameron, notwithstanding that she claims for damage to the property of a deceased person.

In effect, article 11 of the Rules of Procedure, approved by the Mexican-British Commission, reads:

"Any claims presented for damage to a British subject already deceased at the time of filing such claim, if for damage to property, shall be filed on behalf of his estate and through his legal representative, who shall duly establish his legal capacity therefor."

In the Cameron case, his widow has not shown that she is the legal representative of the estate of her husband; either under the laws of England, or under those of Texas, or in any other way, having pleaded that she was not, under the laws of the place where Dr. Cameron died, bound to obtain any letters of administration; but the unquestionable fact is that in the present case the only rule governing the claim under discussion is that laid down by article 11 of the Rules of Procedure approved by the Commission, the relevant part of which is transcribed hereinabove. The Mexican Commissioner holds that Mrs. Cameron has failed to comply with that provision, and that the demurrer

interposed by the Mexican Agent on the ground of such omission should therefore be sustained.

In view of the whole of the foregoing, the Mexican Commissioner, concurring with the learned opinion of the Presiding Commissioner and with that of the British Commissioner, although in the latter case on different grounds, holds that the demurrer interposed by the Mexican Agent should be sustained, and the Commission abstain from taking cognizance of the aforesaid claim.

ANNIE BELLA GRAHAM KIDD (GREAT BRITAIN)

v. UNITED MEXICAN STATES

(Decision No. 3, undated, dissenting opinion by Mexican Commissioner, undated. Pages 50-54.)

NATIONALITY, PROOF OF.—BIRTH CERTIFICATE AS PROOF OF NATIONALITY. Proof of loss of a birth register will excuse a failure to submit a birth certificate of a British subject alleged to have been born in England at a time when compulsory registration of births was in operation.

CONSULAR CERTIFICATE AS PROOF OF NATIONALITY. Consular certificate, affidavit of a father, and corroborating evidence *held* sufficient to establish British nationality.

1. In this case the Mexican Agent has filed a demurrer on the ground that the British nationality of the late William Alfred Kidd (and therefore of his widow and children) has not been established. The claimant relies on an affidavit sworn by the late Mr. Kidd's father (annex 8) to the effect that his son was born and baptized at Arundel in Canada in 1877.

In addition to the general objections to affidavits which were pleaded in the case of Mrs. Cameron, the Mexican Agent pointed out that compulsory registration of births was in operation in England a few years before the late Mr. Kidd was born, and that in all probability it was also in operation in Canada. In these circumstances, he contended that a birth certificate could have been procured or a baptismal certificate, and that in any event evidence of a better quality was required than the affidavit of a near relation to the claimant's husband.

It appears, according to the information given by the British Agent, that the birth register had been lost, and he contended that secondary evidence of the birth by means of an affidavit was the best available evidence. The British Agent also put in evidence the birth certificates relating to the claimant's children, together with the declaration of the British Consul-General in Mexico City, dated the 27th December, 1916, to the effect that the claimant had been duly registered as a British subject.

2. It is not necessary, in the opinion of the Commissioners, to repeat their views on the question of the admissibility or the value of affidavit evidence generally; those views are fully set out in the judgment in the Cameron case. From one point of view, an affidavit sworn by a father concerning the birth of his child has more value than the statement he may make to the Registrar of Births, since the latter statements are not made upon oath. In this instance the affidavit is corroborated by other documents.

There is first of all the consular certificate, which was delivered a few months after the murder of the late Mr. Kidd and at a moment when the Consul-

General must have realized that he was imposing on his Government the serious obligation of protecting the interests of the widow and children. Furthermore, the day after Mr. Kidd's murder, there were proceedings before the Constitutionalist Court of First Instance, and in the course of the interrogatories all the witnesses described Mr. Kidd as a native of Canada. Two weeks after the murder of Mr. Kidd, the British Chargé d'Affaires at Mexico City reported to the Governor-General of Canada that "a Canadian, Mr. W. A. Kidd," had been killed. Moreover, there is the further fact that Mrs. Kidd returned to Canada after she lost her husband and that she was at once appointed as tutor of her minor children with the approval of the relatives on both sides.

On the one hand, there are all these facts corroborating the statements of the affidavit and helping to establish Mr. Kidd's British nationality. No evidence of any kind has been adduced by the respondent Government in rebuttal.

3. On these grounds the Commission is of opinion that the British nationality of the late W. A. Kidd (and, therefore, of his widow and children) has been duly established. The demurrer is overruled.

The Mexican Commissioner does not agree with this judgment and expresses a dissenting view.

Dissenting opinion of Dr. Benito Flores, Mexican Commissioner

The Mexican Commissioner regrets to have to dissent from the opinion of his distinguished colleagues, as regards the legal considerations taken into account by them for overruling the Demurrer entered by the Mexican Agent, in the matter of claim No. 29, presented by His Britannic Majesty's Government on behalf of Mrs. Annie Bella Graham Kidd; and bases his own opinion upon the following considerations in fact and in law.

The Facts

I. The British Government claims compensation amounting to \$75,000.00, Canadian currency, for the murder of William Kidd at El Carrizal, near Zitácuaro, and for the theft of all his personal property, committed by a band of men on the 8th October, 1916.

II. The British nationality of the claimant is proved by an affidavit made under date of the 11th August, 1927, by William Kidd, the father of the decedent, before G. Valois, a Notary Public in and for the Province of Quebec, Canada, and by means of the certificate of the marriage of William Alfred Kidd and Annie Graham. The claim is preferred on her behalf and on that of her five minor children at the rate of \$25,000.00 for the claimant and \$ 10,000.00 for each one of her said children.

III. William Kidd, the father of the decedent, asserts in his deposition that his son, William Alfred Kidd, was born at Arundel, Argenteuil County, Province of Quebec, Dominion of Canada, on the 3rd April, 1877.

The said William Kidd declares that the birth of his son was entered in the register, but that the original register was lost many years ago; and that his son was baptized about the 10th September, 1877, by the Rev. Arthur Whiteside, the Pastor of the Methodist Church at Mille-Isles Township.

IV. The Mexican Agent forthwith interposed a Demurrer, alleging that the British nationality of William Kidd had not been established by the affidavit made by the father of the decedent himself; that as the nationality of the said William Kidd had not been established, that of the claimant, the fact of whose marriage has been proved, had not been established either. He alleged that the

nationality of the minor children had not been properly proved, because no birth certificates were attached to the Memorial, and consequently prayed that the Commission should, as a British subject was not involved, abstain from taking jurisdiction over the claim.

V. The British Agent replied by asserting that the entry of Kidd's birth had been lost; but that the affidavit made by his father in order to prove his British nationality was sufficient and therefore for that of his wife; that in connexion with the nationality of the minors he subjoined with his Reply five certificates issued by the Supreme Court of St. Jerome, Province of Quebec, District of Terrebonne, for each one of the five children; but said certificates refer not to the Civil Register, but to the baptism of the said minors. When the case had already come up for hearing, the said British Agent also produced a Certificate of Consular Registry of Mrs. Annie Bella Graham Kidd as a British subject, dated the 26th December, 1916.

Legal Considerations

I. The Mexican Commissioner does not accept the affidavit of the father of William Kidd, as to the British nationality of his son, as sufficient to establish that fact, because it is an *ex parte* deposition, submitted by the father of the victim, a deposition which was challenged by the Mexican Agent, by reason of the very close relationship existing between the interested parties, as although the Commission has decided by a majority that affidavits constitute *prima facie* evidence, susceptible of conversion into full proof, by means of corroboration by other elements, the Mexican Commissioner holds that the affidavit of William Kidd's father finds no direct corroboration to demonstrate its sufficiency.

II. The consular certificate in which the British nationality of Mrs. Kidd is recorded is positively of no value as proof concurrent with the affidavit of her father, for two reasons:

(a) Because such registration was effected subsequently to the death of her husband and cannot have any retrospective effect; and

(b) Because, even on the assumption that proper proof had been shown of the nationality of Mrs. Kidd, it would not, either logically or in law, follow therefrom that the nationality of her husband had been established. The true principle is the contrary one, i.e., that if the nationality of the husband had been proved, that of his wife would also have been proved; but what happens is that the only element of evidence to show the nationality of William Kidd is the affidavit of his father, which is null and of no value, according to article 283 of the French Code of Civil Procedure; 283 of the Belgian Code; articles 1942, 1945 and 1946, subdivisions 1 and 2, of the Civil Code of the Netherlands; article 660, sections 1, 2 and 3, of the Spanish Code of Civil Procedure; article 327, second part, of the Italian Civil Code, and articles 302 and 356 of our Federal Code of Civil Procedure, all of which provisions unanimously reject the depositions of persons in any way interested in a controversy, on the understanding that the said laws assume a witness to have testified under oath and before the Court which is to weigh such evidence. In the present case, not even that circumstance is present; it is a case of the testimony of William Kidd's father, by way of *ex parte* evidence.

III. The fact that the witnesses who deposed before the Court of First Instance as to the details of the murder of William Kidd, reputed him to be a British subject, and the circumstance that the British Legation at Mexico, when reporting the murder of William Kidd to their Government, described him as a Canadian, do not mean anything but that the decedent, William Kidd, was at the outside considered by reputation as a British subject; but

seeing that the birth of William Kidd had, by the admission of his own father, been registered; that such registration was effected in April 1877, when compulsory registration was already in force in Great Britain; that he was baptized in September 1877, and that the certificate of baptism was duly issued by the Rev. Arthur Whiteside, the British nationality of William Kidd should have been established: (1) by means of a certified copy of the entry in the Civil Register; (2) by means of the certificate of baptism; and (3) by the evidence of witnesses, and in any event proof should have been shown of the impossibility of producing the best of said evidence, in the order given, according to the universally accepted principle in England, which says: "None but the best evidence may be adduced, that which is of a secondary kind not being admissible for that which is of a primary kind, where the primary evidence is accessible." (*Stephen's Commentaries on the Laws of England*, Vol. II, p. 603.)

The British Statute of 1874, which declared civil registry compulsory, and the authority of Lehr (*Eléments de droit civil anglais*, Paris, 1885, p. 17) assist in demonstrating the insufficiency of the evidence produced by the claimant for the purpose of establishing the British nationality of William Kidd.

In view of the whole of the foregoing, the Mexican Commissioner holds that the Demurrer entered by the Mexican Agent should be sustained, and that the Commission should therefore abstain from taking cognizance of this claim.

CAPTAIN W. H. GLEADELL (GREAT BRITAIN)

v. UNITED MEXICAN STATES

(*Decision No. 4, November 19, 1929, dissenting opinion by British Commissioner, undated, concurring opinion by Mexican Commissioner, November, 1929. Pages 55-64.*)

NATIONAL CHARACTER OF CLAIM.—CONTINUING NATIONALITY OF CLAIM.—

CLAIM IN REPRESENTATIVE CAPACITY. An international claim must be founded upon an injury or wrong done to a citizen of the claimant government and must remain continuously in the hands of a citizen of such government until the time for its presentation before the tribunal.

A forced loan imposed by the Provisional Government of Yucatán upon real property owned by a British subject was a claim British in origin, but when such owner thereafter died and bequeathed her residuary estate to an American citizen, subject to a life estate in a British subject, *held* such claim lost its quality of a British claim.

Cross-references: Am. J. Int. Law, Vol. 25, 1931, p. 762; Annual Digest, 1929-1930, p. 190.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission," Law Q. Rev., Vol. 49, 1933, p. 226 at 231.

1. The respondent Government have lodged in this case a Motion to Dismiss the memorial on the ground that the right to claim the compensation for the loss which is the subject matter of the memorial is not vested in Captain Gleadell, a British subject, but in his stepdaughter, Mrs. Muse, who is an American subject.

Captain Gleadell was married in 1907 to Mrs. Katherine Baker de Gleadell, who was the owner of real property in Mexico. In 1914, when she was a British subject by reason of her marriage to the claimant, Mrs. Gleadell was compelled,

by means of a forced loan, to deliver the sum of ten thousand dollars to the Provisional Government of Yucatan. The memorial seeks to recover this sum from the Mexican Government on the ground that the right to it is vested in Captain Gleadell. In its origin the claim is undoubtedly British, but the contention of the Mexican Agent is that Mrs. Gleadell by her will bequeathed the right to claim the money to Mrs. Muse, who is her daughter by her first marriage and who was born in Mexico. In support of this contention the respondent Government relied upon the will of Mrs. Gleadell, executed in England on the 6th October, 1925 (annex 7 of the memorial), clause 5 of which reads as follows:

"I devise and bequeath all my real and personal property or share or interest in real and personal property which may be situate in Mexico at the time of my death unto my said daughter absolutely and beneficially."

The submission of the Mexican Agent is that this is a claim to recover money, that the right to claim money must be considered as a form of personal property, and that this right, according to English jurisprudence, is a right situated at the place where the debtor is domiciled.

On the other side it was contended by the British Agent that Mrs. Gleadell paid the forced loan from her general resources, which form no part in her Mexican estate. The testatrix nominated two executors under her will, namely, her husband, Captain Gleadell, and her daughter, Mrs. Muse, but the latter renounced probate and Captain Gleadell is now the sole executor. The British Agent contended that Captain Gleadell, under the terms of the will, possessed a life interest in the residuary estate of the late Mrs. Gleadell, and that the claim for the repayment of the forced loan was part of the estate.

2. In the opinion of the majority of the Commissioners, a long course of arbitral decisions has established the principle that no claim falls within a treaty which is not founded upon an injury or wrong done to a citizen of the claimant Government. According to *Ralston*, pages 161 and 163, and *Borchard*, pages 664, 666, such claim must have remained continuously in the hands of the citizen of such Government until the time for its presentation before the Commission.

It is admitted that the origin of the claim was British, and the contest between the two Governments is whether the claim has retained that British character until the present time.

This question cannot be solved by the fact that the deceased Mrs. Gleadell was a British subject at the time of her death and that her husband acts on behalf of her estate. The necessity of the continuous national character of the claim, as formulated above and as adhered to by the Commission, does not allow us to consider the estate as taking over and retaining the testatrix's nationality, as apart from the nationality of the heirs. It is essential to know in whose hands the assets of the estate have passed and whether this transition involved a change of nationality in the person entitled to the claim. These questions can only be answered by the will.

3. Mrs. Gleadell in her will divided her estate in two parts. The one was described in clause 5, quoted above, and the other in clause 6, reading as follows:

"6. I devise and bequeath the residue of my real and personal property (including any real and personal property to which I may be entitled or in which I may be interested in the United States of America or elsewhere out of Great Britain), not hereinbefore otherwise disposed of, unto my Trustees upon trust to sell, call in and convert the same into money (with full power to postpone such sale, calling-in and conversion for so long as my Trustees shall in

their absolute discretion think fit without being responsible for loss (Katherine Gleadell) caused by such postponement) and, out of the proceeds of such sale, calling-in and conversion and out of my ready money, to pay my debts and funeral and testamentary expenses and to stand possessed of the residue upon trust, to invest the same in manner hereinafter authorized, the said residue and the investments for the time being representing the same being hereinafter called 'my residuary estate.' "

It is quite clear that the testatrix disposed of all the assets of her estate, because she called the second part "my residuary estate." The title to claim the money paid unto the forced loan is, therefore, included either in clause 5 or in clause 6.

There can be little doubt that the right to claim falls under the definition of "personal property." Dicey (*Conflict of Laws, a digest of the Law of England*, p 313), when enumerating the kinds of goods which constitute personal property, mentions:

"*Chose in action*.—Personal property includes every kind of Chose in action, using that term in its very widest sense. It includes, that is to say, every movable which cannot be touched or intangible movable. Thus it includes 'debts' in the strict sense of the terms, and also everything (not an immovable) which can be made the object of a legal claim, as, for example, a person's share in a partnership property."

There is reason to identify this claim with a debt of which Mrs. Gleadell was the creditor, because the forced loan, raised by the Governor of Yucatán in 1914, was recognized by the Mexican Government and all holders of receipts were invited to submit their claims to a special Commission.

4. The question now to be answered is whether this part of Mrs. Gleadell's personal property was situate in Mexico (clause 5 of the will) or elsewhere (clause 6).

As the will was made in England by a British subject, the intention of the testatrix must be interpreted according to English law and jurisprudence.

In this connexion it is material to observe what Dicey says on pages 318 and 319:

"From these two considerations flows the following general maxim, viz., that whilst lands, and generally, though not invariably, goods must be held situate at the place where they at a given moment actually lie, debts, choses in action and claims of any kind must be held situate where the debtor or other person against whom a claim exists resides; or, in other words, debts or choses in action are generally to be looked upon as situate in the country where they are properly recoverable or can be enforced."

In this case the only country where the claim is recoverable is Mexico and, therefore, this personal property must be considered as situate in Mexico and to have been left to Mrs. Gleadell's daughter, an American citizen.

We are confirmed in this view by the circumstance that the burden of the forced loan was imposed among proprietors of real property in Yucatán, which property has been shown by the Mexican Agent in his brief to have belonged to Mrs. Gleadell jointly with her daughter.

As Mrs. Gleadell died before the Claims Convention was signed, the claim, although British in origin, has not retained that character until the time of its presentation. This fact cannot be modified by the circumstance that the executor of the estate is a British subject.

On these grounds the majority of the Commissioners take the view that the right to claim the money does not belong to a British subject and, therefore, falls outside the jurisdiction of the Court.

The motion to dismiss is allowed.

One of the Commissioners expresses a dissenting view.

Dissenting opinion of Artemus Jones, British Commissioner

In this case the claimant is Captain W. H. Gleadell, who is a British subject. In December 1907, he married a widow named Mrs. Katherine de Regil, who was the owner of some real property at Merida in the State of Yucatán. In September 1914, one Eleuterio Avila arrived at Merida and proclaimed himself the Military Commander of the State. He suspended the constitutional guarantees of the Republic, immediately declared martial law, and then issued a decree raising a forced loan of eight million pesos. The victims of the forced loan were citizens who possessed property above a certain amount, and the alleged objects of the loan were the pacification and the reconstruction of the country. Amongst those citizens was Mrs. Gleadell, who was absent from the State at the time. She was represented in the district by a lawyer, and A. P. Aznar, who held her power of attorney. The manner in which the alleged loan was enforced is described on page 12 of the memorial in Mr. Aznar's evidence. From this it appears that if any citizen refused to pay the sum which had been assigned to him or to her, violence was resorted to in order to obtain payment, e.g., the capture of the person who refused to make the advance. At this time all constitutional guarantees were suspended and therefore there could be no resort to legal redress, and in these circumstances a state of panic prevailed. It was in this situation that Mrs. Gleadell's attorney advanced the sum of ten thousand pesos to the Government. In 1917 all the holders of the receipts for the money contributed to the forced loan were enumerated in an official list issued by the Government, and Mrs. Gleadell's name appeared among them. The holders were invited to present their receipts to a Commission appointed by the Government, but Mrs. Gleadell did not do so. On the 28th October, 1925, Mrs. Gleadell died in Mexico, having about three weeks before that date executed a will at Northam, Devonshire, in England. As executors of the will, the testatrix nominated her husband, Captain Gleadell, and her daughter, Mrs. Muse, who is married to an American diplomatist and is not a British subject. Mrs. Muse renounced probate and Captain Gleadell is therefore the sole executor. Under the provisions of the will the real and personal property of the estate situated within Mexico at the time of her death was bequeathed to Mrs. Muse. After this provision came certain specific bequests, and then the residue of the estate was left to trustees upon certain trusts. Under the terms of the trusts, the income of Mrs. Gleadell's estate outside Mexico was left to her husband for life.

Upon these facts the Mexican Agent opposed the consideration of the memorial on the ground that the money contributed by Mrs. Gleadell to the forced loan formed part of her Mexican estate, which was bequeathed to her daughter, who is not a British subject. He argued that the money due to the estate from the Mexican Government was a debt or chose in action, which was only recoverable in Mexico (Dicey's *Conflict of Laws*, page 318). He founded this argument upon the fact that whilst the receipt for the money contained no promise to repay, there was a clause in Avila's decree stating that when constitutional rule was re-established, the Government would "agree to the form and dates on which the repayment of the amounts lent will be effected."

Moreover, Captain Gleadell claimed the money, not in his capacity of executor, but as a person who had a life interest in the residuary estate. To these contentions the British Agent replied that there could be no contract where money was raised under these circumstances. Debt could only arise out

of contractual relationships and the compulsion under which the money was admittedly taken was inconsistent with the consensual basis of contract. Dicey's dictum could not apply in this case as it was confined to contractual obligations. Moreover, the will and other documents produced in the memorial established the fact that the claimant was the sole executor of the will, although he was also a beneficiary of the residuary estate.

In my view it is impossible to dispose of the claim at this stage of the proceedings. The question whether the ten thousand pesos formed part of the Mexican estate cannot be determined until the circumstances attending the repayment of the money to Señor Aznar are ascertained. It is clear that the money was paid in the first instance by Señor Aznar, acting as agent for his principal, Mrs. Gleadell. It is not clear, however, how the agent was repaid the money by the principal. The crucial point of this case turns upon the particular source out of which the money was paid. All that is known is that Mrs. Gleadell's attorney paid it at a time when Mrs. Gleadell was in England. If the attorney sent in his bill of costs to his client in the ordinary way, including this sum, the cheque sent to him in payment would be drawn upon Mrs. Gleadell's general account. If these are the facts, Captain Gleadell is clearly entitled to claim an interest in the money on the ground that he has a life interest in the residuary estate out of which the ten thousand pesos came. It was suggested that Mrs. Gleadell's position was not unlike that of a debenture holder and the respondent agent argued that the contribution to the forced loan was a contract which could only be enforced in Mexico. Both analogies are fallacious. The essence of a debenture is the security it gives for the repayment of the money. Mrs. Gleadell possessed nothing except a receipt, which did not contain even a promise to repay and she entered into no contract. In view of these considerations I am of opinion that the demurrer should be rejected and the merits of the claim should be gone into.

Separate opinion of the Mexican Commissioner in the Motion to Reject Filed by the Mexican Agent, in the Matter of Claim No. 19, presented by the Government of His Britannic Majesty on behalf of Captain W. H. Gleadell. This opinion concurs with that of the Honourable Presiding Commissioner.

The Facts

I. The Government of His Britannic Majesty claims from the Government of Mexico the sum of \$ 10,000.00, United States currency, with interest at the rate of 6 per cent per annum, counting from the 14th October, 1914, on behalf of Captain W. H. Gleadell, under the following heads:

II. Mrs. Katherine Baker de Gleadell, the wife of Captain W. H. Gleadell, a British subject, was in September 1914 subjected to a forced loan amounting to \$10,000.00, United States currency, by the Governor of Yucatán, through a decree dated the 26th September, 1914, which established a forced loan of eight million pesos for the pacification and reconstruction of the country. Mrs. Gleadell received in exchange a receipt for the sum of \$10,000.00, United States currency, issued by the Chief of the Revenue Department. The decree in article VI provides that the National Government would, on the re-establishment of constitutional order, determine the manner and dates on which repayment of the amounts loaned were to be effected.

III. Mrs. Gleadell died on the 28th October, 1925, leaving a will in which she appointed Mrs. Maria Beatriz Julia Muse, her daughter, and Mr. Gleadell, her husband, as executors.

IV. According to clause V of the said will, the Mexican properties were inherited absolutely by her daughter, who is now a citizen of the United States. Clause V, above mentioned, of the will executed by Mrs. Gleadell reads as follows: "V. I devise and bequeath all my real and personal property or share or interest in real or personal property which may be situate in Mexico at the time of my death unto my said daughter absolutely and beneficially."

V. The residue of her estate, both real and personal, wherever situated, and not otherwise disposed of in the said will, was to be applied in the following manner (clauses 6 and 7):

"6. I devise and bequeath the residue of my real and personal property (including any real and personal property to which I may be entitled or in which I may be interested in the United States of America or elsewhere out of Great Britain), not hereinbefore otherwise disposed of, unto my Trustees upon trust to sell, call in and convert the same into money (with full power to postpone such sale, calling-in and conversion for so long as my Trustees shall, in their absolute discretion, think fit without being responsible for loss (Katherine Gleadell) caused by such postponement) and, out of the proceeds of such sale, calling-in and conversion and out of my ready money, to pay my debts and funeral and testamentary expenses and to stand possessed of the residue upon trust, to invest the same in manner hereinafter authorized, the said residue and the investments for the time being representing the same being hereinafter called 'my residuary estate.'

"7. My trustees shall stand possessed of my residuary estate upon the following trusts:

(a) Upon trust to pay the income thereof (subject to the provisions of clause 4 hereof) to my said husband during his life.

(b) From and after his death to divide the same into two equal parts and to stand possessed of one such part as to both capital and income for my son Paul Gleadell on his attaining the age of twenty-one years.

(c) To stand possessed of the other of such parts (hereinafter called 'my daughter's share') upon trust to pay the income thereof to my said daughter during her life.

(d) From and after her death to stand possessed of my daughter's share as (Katherine Gleadell) to both capital and income upon trust for such one or more of her children as she shall by deed or will appoint.

(e) In default of such appointment, or so far as the same shall not extend, to stand possessed of my daughter's share upon trust for such of her children as being male attain the age of twenty-one years, or, being female, attain that age or marry under that age and, if more than one, in equal shares.

(f) If there shall be no such children, to stand possessed of my daughter's share upon trust for the said Paul Gleadell on his attaining the age of twenty-one years absolutely.

(g) If the said Paul Gleadell shall die under the age of twenty-one years, to stand possessed of his and my daughter's shares, but as to the latter subject as aforesaid upon trust as to both capital and income for my said daughter absolutely and beneficially."

VI. The British Agent contends that as payment of the forced loan had been made by Mrs. Gleadell out of her general resources, said resources had, on the date of her death, been reduced to the extent of \$10,000.00, United States currency, from which he infers that although a citizen of the United States has an interest in the claim, there does exist at present a well-defined and ascertainable interest in favour of British subjects.

VII. The Mexican Agent, relying on article 3 of the Claims Convention, Mexico and Great Britain, prays that the claim be dismissed on the following grounds:

(a) That Mrs. Katherine Baker de Gleadell left all her property and rights, whether real or personal, and any interest she might have had in real or personal rights, situated in Mexico, to her daughter, Maria Beatriz de Regil y Baker, now the wife of Mr. Benjamin Muse, the Second Secretary of the American Embassy in Paris.

(b) On the fact that it is unquestionable that the right to prefer a claim for the above-mentioned loan is a right personal in character, for which reason it, after the death of Mrs. Baker de Gleadell, became the property of her daughter, the wife of Mr. Benjamin Muse, a Mexican citizen by birth, and now an American citizen, through her marriage to Mr. Muse.

(c) On the fact that, according to Article 3 of the Claims Convention, Mexico and Great Britain, the 19th November, 1926, the Commission only has jurisdiction to deal with claims against Mexico for losses and damages sustained by British subjects, and as the person who would in any event be entitled to claim would be a Mexican by birth and a citizen of the United States of America, through her marriage, it is undeniable that the Commission has no jurisdiction to take cognizance of this claim.

VIII. The British Agent contends in his Memorial that in the year of 1914 the Hacienda in respect of which the forced loan was exacted belonged exclusively to Mrs. Katherine Baker de Gleadell and that her daughter had absolutely no interest in the matter; that the right to claim did not pass to the daughter of Mrs. Katherine Baker de Gleadell, because the loan was paid out of the general resources of Mrs. Gleadell, and in his Reply the British Agent attributes that right to the Estate of Mrs. Gleadell, deceased, on whose behalf he now endeavours to prefer the claim.

Considerations of a Legal Order

I. The first point to be decided by the Commission is whether the British Government has preferred the claim on behalf of Captain W. H. Gleadell, as appears from the Memorial signed by the British Agent, or whether said claim should be understood to have been filed on behalf of the Estate of Mrs. Gleadell, through her executor, Captain W. H. Gleadell, as would seem to be the view of the British Agent, in his pleading in Reply.

In order to decide that point, which is to serve as the basis for the remaining legal considerations, it is sufficient to glance at the beginning of the Memorial from the British Agency, the title of which reads: "Claim of Captain W. H. Gleadell," while the last part of the said Memorial reads: "His Majesty's Government claim on behalf of Captain W. H. Gleadell the sum of 10,000.00 dollars . . .," without losing sight of the terms themselves of the Memorial, in which it is clearly stated that Captain Gleadell, in his capacity as holder of a life interest, asserts that he is entitled to the claim as coming within the terms of clauses 6 and 7 of the will of Mrs. Gleadell. It is then undeniable that the Memorial in question does not stand in need of any interpretation, but that it is self-explanatory to the effect that the claimant is Captain W. H. Gleadell and not the estate of Mrs. Gleadell.

II. The preceding point having thus been decided, it must in the second place be settled whether the right to claim for the forced loan imposed by the Governor of Yucatán, Mexico, belongs to Mrs. Maria Beatriz Julia Muse, the daughter of Mrs. Gleadell, or to the claimant, Captain W. H. Gleadell. And as under clause 5 of her will and testament Mrs. Gleadell bequeathed to her

daughter, Mrs. Muse, the whole of her real and personal property, choses in action or interest in such real or personal property situated in Mexico at the time of her death, it is unquestionable that the right to claim the loan under discussion falls within clause 5 of the said will, and is consequently vested in Mrs. Maria Beatriz Julia Muse, because it is a perfectly well-defined credit against the Mexican Government, created by the decree which created the said loan, and by the receipt executed to Mrs. Gleadell, as the lawful title for claiming same, inasmuch as said right was situated in Mexico at the time of the death of the testatrix. Dicey, on the *Conflict of Laws* (p. 247), "Situate" means locally situate, and the local situation of personal property must, it is conceived, be in the main decided in accordance with the rules for fixing the situation of personal property for the purpose of testamentary jurisdiction. (See chap. ix, comment on Rule (62, post.): "*Thus a debt, it is submitted, is situate in the country where the debtor resides.*" (Page 313.) "(iii) *Chose in action.*—Personal property includes every kind of chose in action, using that term in its widest sense. It includes, that is to say, every movable which cannot be touched, or intangible movable. Thus, it includes 'debts,' in the strict sense of the term, and also everything (not inmovable) which can be made the object of a legal claim, as, for example, a person's share in a partnership property." (Page 318.) "(2) *As to the 'situation' of personal property.* . . . From these two considerations flows the following general maxim, viz., that whilst lands, and generally, though not invariably, goods, must be held situate at the place where they at a given moment actually lie, *debts, choses in action and claims of any kind must be held situate where the debtor or other person against whom a claim exists resides; or, in other words, debts or choses in action are generally to be looked upon as situate in the country where they are properly recoverable or can be enforced.*")

III. And as it is apparent from the Memorial itself that Mrs. Muse, the daughter of Mrs. Gleadell, is not of British nationality, but an American citizen, it is obvious that she is not entitled to claim the amount of the forced loan of \$10,000.00, United States currency, before this Commission, as the right to do so is only under the Claims Convention, Mexico and Great Britain (article 3), granted to British subjects. The claim must arise as a British claim and not cease to be British until the date of filing; Borchard so lays it down, quoting sundry decisions of Arbitral Tribunals, pp. 664 and 665 of his work on *The Diplomatic Protection of Citizens Abroad*. In the present instance, the claim was British in origin; it ceased to be so, however, when it passed into the possession of Mrs. Maria Beatriz Julia Muse, pursuant to the will of her mother, Mrs. Gleadell.

In view of the foregoing, and concurring with the opinion of the Honourable Presiding Commissioner, the Mexican Commissioner holds that the Motion to Dismiss filed by the Mexican Agent should be sustained, and that the Commission should, therefore, abstain from taking cognizance of the claim in question.

EDWARD LE BAS AND COMPANY (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(*Decision No. 5, November 22, 1929. Pages 65-66.*)

PROCEDURE, MOTION TO DISMISS. A motion to dismiss raising issues as to ownership of claim and responsibility of respondent government *suspended* and the issues thus raised postponed until the examination of the claim on its merits.

(*Text of decision omitted.*)

ADA RUTH WILLIAMS (GREAT BRITAIN)
v. UNITED MEXICAN STATES.

(*Decision No. 6, November 22, 1929. Pages 67-68.*)

NATIONAL CHARACTER OF CLAIM.—CLAIM IN REPRESENTATIVE CAPACITY.—

SURVIVAL OF CLAIMS FOR WRONGFUL DEATH. Any claim by a parent arising out of the killing in Mexico of a child who is a British subject will not survive to the estate of such parent, even though the killing occurred during the lifetime of such parent and while he was dependent upon the child for support.

This is a claim for compensation for the murder of an Englishman named George Ernest Williams, who was killed at the El Favor Mines at Hostotipaquillo, near Guadalajara, in the State of Jalisco, on the 26th April, 1914. He was employed as cashier and accountant to the El Favor Mining Company, and he was engaged on these duties as the time he met his death. He was thirty-four years of age and unmarried. According to the facts set out in the memorial the mine was attacked by mutinous Mexican miners, when he and another Englishman had surrendered their arms and both were stabbed to death by the crowd.

Mr. Williams was the son of Major George Williams, living at Ingleside, Northam, in the County of Sussex, England. The latter had retired from the army on a pension of £ 200 a year, and it was alleged that the son had, prior to his death, contributed to the maintenance of his father at the rate of ten pounds a month. At the time of his son's death in 1914 the father was sixty-three years of age, and he was said to be partly dependent upon the remittances from his son. On the 17th April, 1920, Major Williams (who was then a widower) was married to a spinster named Ada Ruth Roe, who was fifty-five years of age. On the 11th August, 1925, Major Williams died, leaving a will under which his widow, according to the British Agent, became sole executrix. He left, however, no estate.

The claim is lodged by Mrs. Williams upon two grounds. She alleges (1) that her late husband was partly dependent for his support on the contributions of the son, which amounted to £ 120 0s. 0d. per annum, and she estimates an annuity on a life of 63 years in 1914 (which was then the age of Major Williams) at £ 971 12s. 7d., together with the sum of £ 40 0s. 0d., which the father spent in equipping the son to go abroad; (2) she further alleges in her affidavit that George Ernest Williams had promised her that he would continue the allowance to her on his father's death.

It was contended on behalf of the respondent Government that the memorial should be dismissed on the ground that there was no legal relationship or dependency between G. E. Williams and the claimant, Mrs. Williams, and that therefore there was no liability on the part of the Mexican Government to pay compensation to her. The contention put forward by the British Agent was that the estate of Major Williams from 1914 had been impoverished by the loss of the son's contributions until his death in 1925, and that Mrs. Williams, as the executrix of the estate, was entitled to recover the money.

The Commissioners are unanimously of opinion that the Motion to Dismiss must be allowed. In order to succeed in the claim, Mrs. Williams must establish legal relationship or dependency as between herself and the late Mr. G. E. Williams, and there is no evidence of this in the facts set out in the Memorial, or in the oral argument. No claim against the respondent Government could form part of the estate of Major Williams until the right to present it had accrued to him. That right did not arise until the Anglo-Mexican Treaty was signed in 1926 and ratified in 1928, whereas Major Williams died in 1925, and with his death all his personal rights expired.

In view of the foregoing, and, further, in reliance upon article 11, first part, of the Rules of Procedure, it is hereby decided:

That the Motion is allowed.

CENTRAL AGENCY (LIMITED), GLASGOW (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(Decision No. 7, November 29, 1929, dissenting opinion by Mexican Commissioner, November 29, 1929. Pages 68-74.)

CORPORATE CLAIMS.—AUTHORITY TO PRESENT CLAIM.—CORPORATION, PROOF OF NATIONALITY OF CORPORATION. A certificate of incorporation of a claimant British corporation, together with an affidavit of its secretary that it was incorporated in Great Britain and that the firm signing the memorial on behalf of the claimant was its agent and authorized to make the claim, and certain other corroborating documents, *held* sufficient to establish authority to present the claim to the tribunal.

1. This claim is presented by the British Government on behalf of a limited liability company, registered in England, called the Central Agency (Limited), Glasgow. In 1913 the claimant company forwarded a consignment of cotton thread to a firm of merchants at Chihuahua. According to the memorial it had reached the railway station of Monterrey, when the place was fired upon by a party of revolutionaries on the 23rd and 24th October, 1913. The result was that the consignment was destroyed in the fire caused by the revolutionary forces, and never reached its destination.

2. The respondent Government have lodged a motion to dismiss the claim mainly on this ground: The Mexican Agent says that the memorial fails to comply with article 10 of the Rules of Procedure, which provides that each Memorial shall be signed by the claimant or by his attorney in fact, as well as by the British Agent. The rule provides also that the memorial may be signed only by the British Agent, but in this event the memorial must include a signed statement by the claimant of his claim.

The memorial contains a statement of claim made by Diego S. Dunbar, Sucr., before the British Consul-General at Mexico City on the 18th January, 1921. It is signed by Robert Craig, with the words "Per pro Diego S. Dunbar, Sucr." just above the signature. The contention of the Mexican Agent is that the Memorial does not show that the firm of Diego S. Dunbar, Sucr., is the representative of the Central Agency, nor that Mr. Craig is authorized to sign on behalf of the firm. An affidavit sworn by Mr. William Simpson, Secretary to the Central Agency, Glasgow, is set out in annex 4 of the Memorial. Mr. Simpson swears that the Central Agency is a British company, incorporated at Edinburgh in 1896, and that Diego S. Dunbar, Sucr., was the Agent of the Central Agency in Mexico City and authorized to make the claim. A certificate of the incorporation of the company is set out in annex 5.

It was contended by the Mexican Agent that Article 10 should be strictly observed in order to ensure that the claimant really wished his claim to be preferred by his Government. He submitted that the affidavit sworn by Mr. Simpson did not establish the fact that he was the Secretary of the Company, nor did it prove that the company had authorized him to make the statement.

It was contended on behalf of the British Government, on the other hand, that Mr. Craig signed the statement of the claim in his capacity as attorney in fact of Diego S. Dunbar, Sucr. The British Agent submitted, secondly, that the affidavits sworn by the Secretary of the Company, in annex 4, proved his authority to act on behalf of the Company, because such a statement came within the ordinary scope of his duties and contained facts and details which could only come within his knowledge in his official position as Secretary of the Company. The British Agent also produced, for inspection by the Commissioners, the original document signed by Mr. Craig, and also the original of the affidavit set out in annex 4. In addition to these he has produced two further documents: (1) a power of attorney, executed on the 16th March, 1918, whereby Mr. Craig is appointed attorney for the firm of Diego S. Dunbar, Sucr., and (2) a document executed before a Notary Public in Glasgow on the 11th February, 1926, signed by Mr. Simpson in his capacity as Secretary of the Company and by two directors of the Company. In his affidavit of the 28th July, 1927, Mr. Simpson declares that the Agent of the Company in Mexico City, Diego S. Dunbar, Sucr., is authorized to make the claim and that all the particulars contained in the claim are true.

3. It is evident from this document that the claim signed by Mr. Craig had been examined by Mr. Simpson as Secretary and that he authenticated it as a document issued by the firm of Diego S. Dunbar, Sucr. The information contained in the affidavit relates to matters affecting the Company which could be known to one who had access to the documents and business papers of the concern.

The Commissioners agree that the object of article 10 of the Rules of Procedure is to ensure that those on behalf of whom the claimant Government is acting really desire their Government to present their claim. On the other hand, the majority of the Commissioners are satisfied beyond any doubt that Mr. Simpson is the Secretary of the Company, that the firm of Diego S. Dunbar, Sucr., is the Company's Agent in Mexico City and that Mr. Craig is authorized to sign on behalf of the firm.

There is no valid ground, in the judgment of the majority of the Commissioners, for disputing the fact that the Central Agency not only assumed the responsibility for the claim, but also authorized its duly accredited agent to present it. On these grounds the majority of the Commissioners are of the opinion that article 10 of the Rules has been complied with.

The motion to dismiss is overruled.

The Mexican Commissioner expresses a dissenting view.

Dissenting opinion of Dr. Benito Flores, Mexican Commissioner

I. The Government of His Britannic Majesty claims on behalf of the Central Agency (Limited), Glasgow, the sum of \$ 1,568.00, Mexican gold, being the value as per invoice of two cases of cotton thread said to have been destroyed by revolutionaries at Monterrey, when said goods were in transit to Chihuahua, consigned to Messrs. Pinoncelly.

II. The Memorial has been signed by the British Agent, and the facts purport to be narrated by one Robert Craig, who signs as follows: "p.p. Diego S. Dunbar, Sucr., as the Agent of the Central Agency (Limited), Glasgow, Scotland."

III. In order to establish the standing of the claimant, the British Government submitted annex 4, in which is set out the deposition of Mr. William Simpson, the Secretary of the Central Agency (Limited), as to the following points:

(a) That the Central Agency (Limited) is a Company incorporated under the Companies Acts, on the 24th day of December, 1896, at Edinburgh, and that it is an English Company.

(b) That the Central Agency (Limited) shipped a consignment of cotton to Chihuahua, Mexico, with two cases of thread which were destroyed in the railway station at Monterrey, Nuevo Leon, by a fire caused by the Revolutionary party.

(c) That the Agent of the Central Agency (Limited) at the City of Mexico, Mr. D. S. Dunbar, Sucr., was authorized to present the claim, and that all the particulars contained in the claim lodged by him on the 14th January, 1921, are true.

IV. The Mexican Agent filed a Motion to Dismiss, based on article 10 of the Rules of Procedure of the Claims Commission, Mexico and Great Britain, which provides that the Memorial shall be signed by the claimant or by his attorney in fact and further by the British Agent, or only by the latter; but that in this case a statement of the facts giving rise to the claim signed by the claimant shall be included in the Memorial; that in the present instance, there is only submitted a statement signed by Mr. Robert Craig as the attorney in fact of Diego S. Dunbar, Sucr., and no proof has been shown that the said Mr. Craig is the representative of the claimant, which is the Central Agency (Limited), Glasgow.

V. The British Agent replied by contending that Mr. Robert Craig signed the statement of claim in his capacity as attorney in fact of Diego S. Dunbar, Sucr., and that it was, therefore, only necessary to show that the said Diego S. Dunbar, Sucr., was the authorized representative of the claimant; and that annex 4 to the Memorial duly proves that Diego S. Dunbar, Sucr., is the authorized representative of the claimant.

VI. In the course of the oral argument the British Agent submitted to the Commission a power of attorney executed by the Central Agency (Limited) to a stranger in this case, from which document it may be seen that one William Simpson signed said power of attorney as the Secretary of the said Company, together with two of the Directors, and he further exhibited the power of attorney executed by Diego S. Dunbar, Sucr., to Mr. Craig.

VII. Both the Agents defended their respective standpoints.

Legal Considerations

I. It is unquestionable that article 10, paragraph 1, of the Rules of Procedure, approved by the Mexican-British Claims Commission, lays upon the British Agent the duty of signing the Memorial, and requires that a statement of the facts giving rise to the claim *has to be signed by the claimant*, when the Memorial has been signed by the British Agent only.

II. It is also a precept established by the Rules of Procedure of the Mexican-British Claims Commission, that the Memorial shall state by whom, and on behalf of whom, the claim is filed; and if the person filing same does so in a representative capacity, that *he must establish his authority*. (Article 10, subdivision (e) of the Rules of Procedure.)

III. In the claim under discussion the claimant is the Central Agency (Limited), Glasgow. Therefore, that Company or its representative should have signed the statement of the facts which gave rise to the claim, pursuant to the legal provisions cited above.

IV. In the opinion of the Mexican Commissioner, the standing of the Central Agency (Limited) has not been established because Diego S. Dunbar, Sucr., has not shown proof of being the attorney in fact of the claimant Company. The deposition of the Secretary, Mr. Simpson, to the effect that Diego S. Dunbar, Sucr., is authorized by that Company to file the claim in question, would only establish the fact that such authorization existed; but from that very admission it is obvious that said authority has not been laid before the Commission. And the Rules of Procedure for the Commission do not consider it sufficient to have information to the effect that one person is the attorney in fact of another, or that it be known, through a third party, that some one is authorized to file a claim on behalf of some one else, but it is necessary, it is imperative, that the fact itself of such representative capacity be established by showing the manner in which it was granted.

At what particular time did the Central Agency (Limited), Glasgow, authorize Diego S. Dunbar, Sucr., to lodge the claim on their behalf? In what manner was such authority granted? What was the extent of such authority? We do not know, for the very reason that the Commission has never had the fact itself of such authority established before it. We do know that such authority exists, because Mr. Simpson, as the Secretary of the Company, has assured us of that fact; but no document whatever establishing the standing of the claimant Company has been produced before the Commission.

V. Neither the Mexican Commissioner, nor the other two Commissioners, would be unduly exacting if they had before them the power of attorney under which Diego S. Dunbar, Sucr., make their appearance, so as to examine same and to decide whether such power of attorney is sufficient or not, according to law, for representing the claimant Company. Not only that, but the Commission would fulfil its duty by examining the power of attorney under which Diego S. Dunbar, Sucr., desires to be considered as the attorney in fact of the claimant Company; but it so happens that if he were called upon to produce said power of attorney, the British Agent would not be able to do so, because it does not exist, and the Commission would, therefore, not be able to perform its duty of examining said power either, because it is not included among the documents submitted by the British Government. That being so, it must be concluded that the standing of the claimant has not been established in the matter of this claim.

VI. Obviously, Mr. Simpson is not the organ through which the Company executes powers of attorney. Then some one else, and not Simpson, the Secret-

ary, is the legal representative of the Central Agency (Limited). It may possibly be the Manager; perhaps it is the Board of Directors; perhaps even the Secretary, Simpson, himself, together with the Directors of the said Company. This we do not know, because the claimant has not established its standing. Through what organ does the Central Agency (Limited) have itself represented in these cases. That we do not know either, because we are not acquainted with the By-laws of the said Company. And judging from the power of attorney produced at the last moment by the British Agent, to show that William Simpson is the Secretary of the claimant Company, it may be inferred that only two Directors and the Secretary himself, *acting jointly*, can grant powers of attorney on behalf of the Central Agency (Limited), and that being the case, the statement of the Secretary only in regard to the existence of authority granted to Diego S. Dunbar, Sucr., is of absolutely no value for establishing the standing of the Company.

VII. The Mexican Commissioner wishes to place on record once more, that in his opinion the Commission is not authorized to supply any deficiencies in the proofs submitted by the parties, in the name of equity, when it is a matter of technical questions going directly to the jurisdiction of the Commission itself, or to the standing of the parties, and more especially when, as happens in this case, the Commission has Rules to which to conform, for deciding the point under discussion.

VIII. And, lastly, considering that on the side of the Commissioners the unavoidable duty exists of complying with the Rules of Procedure approved by the Commission itself, and of seeing that they are complied with, the Mexican Commissioner, conformably to that opinion, and for the reasons stated, holds that the claimant Company has not established its standing before the Commission, and has thus failed to comply with the provisions of article 10, paragraph 1, subdivision (e) of the Rules of Procedure. The Motion to Dismiss filed by the Mexican Agent should, therefore, be allowed.

VERACRUZ TELEPHONE CONSTRUCTION SYNDICATE
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 8, December 6, 1929. Pages 74-78.*)

PROCEDURE, MOTION TO DISMISS. A Motion to Dismiss raising issues as to ownership of claim, authority to present the same, nature of acts on which claim is based, agreement between Company and Member State, made previously to claim before Commission, and appeal to Mexican Courts, also made previously to this claim. *suspended* until the examination of the claim on the merits.

The Memorial sets out the following facts:

The Company was formed in 1910 to acquire and operate a concession, dated the 22nd October, 1906, for the installation of a telephone system at Veracruz, which was granted by the Government of the State of Veracruz to José Sitzenstatter and Manuel de Corbera, and a further concession, dated the 2nd January, 1911, which was granted by the Federal Government to the said José Sitzenstatter. In or about the month of January 1916 the Company was ordered by the Government of the State of Veracruz to make large increases in the wages of its employees. The Company's resident manager, Mr. Sitzenstatter, attended before the tribunals of the Government and attempted to satisfy them of the

absolute impossibility of compliance with these orders. They refused to entertain his protests and declined to examine the books of the Company. On the 13th May, 1916, an order was received signed by Gonzalo C. de la Mata, the President of the Civil Administration of the State of Veracruz, directing the Company to hand over its offices and all its effects to a commission. This commission took possession of everything, and the Government remained in possession until the 26th October, 1920, when the property was handed back to the Company. During the period of sequestration no materials or labour were expended on maintenance of the plant, no materials were purchased for new installation and the materials of the existing lines were used for other purposes.

By a decree of the 1st March, 1920, authorizing the retransfer of the concession to the company, the Government of Veracruz appointed a representative, and directed the company to appoint another representative, in order to examine the amount of the damages resulting from the intervention. A report was drawn up and the total of the damages was calculated at the amount of \$100,824.95 Mexican gold. Although the Company took proceedings to recover the sum, the Veracruz Court declined to hear any evidence; the action was dismissed and no payment followed.

2. The arguments on which the Mexican Agent based his Motion to Dismiss are classified under three headings:

I. The Memorial does not comply with article 10 of the Rules of Procedure, because it is not shown that Mr. A. H. M. Jacobs, Secretary of the Company, really possesses that official character nor that he has been duly authorized to sign the statement of the claim (annex 1). Neither has the status of Mr. Sitzenstatter been established.

II. The Veracruz Telephone Construction Syndicate has no right to present the claim, because at the time of the sequestration the lines belonged to Mr. Sitzenstatter and not to the Company. Both concessions were in the name of Mr. Sitzenstatter, and there is no evidence that he transferred them to the Syndicate; on the contrary, annex 4 shows clearly that up to the 1st March, 1920, no transfer of the concession had taken place. Moreover, the concession provided that the lines could only be transferred to a Mexican company after the approval of the Government of the State of Veracruz had been obtained. If, in spite of this, the lines have been operated by the Syndicate, which is an English Company, the terms of the concession have been violated and the Company has no right to claim for damage, if suffered.

III. The Commission is not competent to decide the claim for the following reasons:

(a) The acts on which the claim is based are not covered by Article 3 of the Convention. It was a civil authority who ordered the sequestration and, according to the last paragraph of Article 3, losses or damages caused by acts of civil authorities must be due to revolutionary events and conditions, and the acts must have been committed by one of the forces specified in subdivisions 1, 2 and 3 of this Article.

In this case the order of the Governor of the State of Veracruz did not take its origin in revolutionary events but in the difficulties which had arisen between the enterprise and its workmen. It was, therefore, not a revolutionary movement but social and industrial discontent which led up to the sequestration. Furthermore, the sequestration was not executed by armed forces but by a commission which acted on behalf of a civil authority.

(b) As the memorial sets out, the lines were transferred in 1920, and at the same time the Company entered into an agreement with the Government of Veracruz whereby the consequences of the intervention were to be adjudicated

upon. By this arrangement the relations between the two parties became those of a contractual nature, and ceased to be of a nature which fell within the terms of the treaty.

(c) It is stated in the Memorial that the claimants, failing to receive the amount which in their opinion was due to them, appealed to the Mexican Courts. In the opinion of the Mexican Agent, this Commission is not a Court of Appeal from the judgments of the national Courts. Only in the event of there having been a denial of justice could there have been reason for intervention, but not in this case, where the Courts have given their decision.

3. The British Agent has filed copies of documents to the effect that the Board of Directors of the Veracruz Telephone Construction Syndicate have adopted the claim of Mr. Sitzenstatter, that he was a director and that Mr. Jacobs was the Secretary of the Company. The Agent drew the attention of the Commission to annex 7 of the Memorial, which shows that there was a decree of the Government of the State of Veracruz by which the formation of the Company was duly legalized and approved. The existence of this decree is denied by the Mexican Agent. In the view of the British Agent, the document reproduced in annex 4 only meant to regularize the actual form in which the lines were operated. The fact was that a British company carried out the concession and suffered the damages, which fact makes the question as to whether the concession had been legally transferred or not immaterial.

As to Article 3 of the Convention, the British Agent pointed out that there can be no doubt as to whether the confiscation found its origin in revolutionary events, which brought about the depreciation of the currency, the increase of prices and the consequent demand for higher wages. The official order to increase wages must be regarded as an act of force. Moreover, the order of sequestration was signed by an officer, Colonel de la Mata, who acted under the orders of General Jara, then Governor of the State of Veracruz. Behind the commission which executed the confiscation were the armed forces to which Article 3 of the Convention refers.

The British Agent denies that by the agreement between Mr. Sitzenstatter and the Government of Veracruz the right to claim has been extinguished. The damage has continued to exist, and there has never been an interruption of the responsibility which the treaty imposes upon the Mexican Government. Neither can the Company be made to suffer because it went to the Mexican Courts. The Convention in Article 6 provides that the Commission shall not set aside or reject any claim on the grounds that all legal remedies have not been exhausted prior to the presentation of the claim, but there is no clause in the Convention declaring the Commission incompetent to deal with cases where the claimants tried to assert their right before the national Courts.

4. The Commissioners are of opinion that, in order to do justice to the arguments brought forward by the Agents, the following questions must be answered:

I. Has it been established that Mr. A. H. M. Jacobs possesses a representative capacity and that he is empowered to prefer a claim? (Article 10 of the Rules of Procedure.)

II. Has the same been established as regards Mr. José Sitzenstatter?

III. Is the question as to whether the concession had, at the time of the sequestration, been duly transferred to the claimant, material to the decision of the Commission on the Motion to Dismiss?

or

IV. Is it sufficient for admission of the claim that operation was actually carried on by the claimant without opposition from the Mexican authorities?

V. If the answer to question III be in the affirmative, to whom did the concession belong at the time of the sequestration, and is the Veracruz Telephone Construction Syndicate entitled to claim?

VI. Were the losses for which compensation is claimed caused by any one or more of the forces enumerated under subdivisions 1, 2, 3, 4 or 5 of Article III of the Convention, or do they fall within the terms of the last paragraph of this Article? Was the confiscation ordered by a civil authority? Were the losses due to revolutionary events and disturbed conditions (*sucesos y trastornos revolucionarios*) and were the acts committed by one of the forces specified in subdivisions 1, 2 and 3 of Article III?

VII. Is the fact that in 1920 the claimant entered into an agreement with the Government of the State of Veracruz on the return of the property sufficient ground on which to allow the Motion to Dismiss?

VIII. Is the fact that the claimant, when no payment was received, resorted to the Mexican Courts, sufficient ground on which to allow the Motion to Dismiss?

5. The Commissioners have come to the conclusion that question VI, which perhaps is the most important of all, cannot be answered without entering an interpretation of Article 3 of the Convention.

In nearly all the answers of the Mexican Agent to the claims, it has been contended that the acts on which the claim is based are not covered by Article 3. This question will therefore have to be answered by the Commission in its judgment on nearly all the claims that have been filed. The Commissioners see no reason why only in this particular case this very important point should be decided by way of a motion to dismiss.

In their opinion, the question as to whether the losses or damages were due to revolutionary events and caused by the acts of forces specified in Article 3 cannot be decided without entering into an examination of essential facts, i.e., of the merits of the claim itself, and the question must therefore be suspended until the claim itself will be examined by the Commission.

Although the other questions enumerated can be answered in this stage of the procedure, the Commission prefers to deal with the Motion to Dismiss as a whole, and therefore postpones the decision until the claim be examined on its merits.

In the meantime, the Commission invites the Mexican Agent to file his answer on the claim.

PATRICK GRANT (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 9, December 7, 1929. Pages 78-79.*)

PROCEDURE, MOTION TO DISMISS. A motion to dismiss raising issues as to the ownership of the claim *overruled*, and the questions thereby raised postponed to the examination on the merits, when it appeared that as to certain of elements of damage no question as to ownership existed on the face of the record.

(*Text of decision omitted.*)

F. W. FLACK, ON BEHALF OF THE ESTATE OF THE LATE
D. L. FLACK (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 10, December 6, 1929, dissenting opinion by British Commissioner, undated, separate opinion by Mexican Commissioner, December, 1929. Pages 80-97.*)

PROOF OF NATIONALITY OF CORPORATION. A certificate of incorporation in London, with evidence that corporation was domiciled in London, *held* sufficient evidence of British nationality.

CONTINUING NATIONALITY OF CLAIM.—CORPORATE CLAIM, OWNERSHIP OF—WHEN CORPORATION WAS DISSOLVED SUBSEQUENT TO LOSS. Demurrer to a Memorial *allowed*, without prejudice to further proof, when it appeared that the damages claimed were sustained by a British corporation, subsequently dissolved, and proof was lacking of the continuing British ownership of the shares of stock of such corporation during its existence and of the assets of such corporation, including the right to claim, following its dissolution.

CLAIM IN REPRESENTATIVE CAPACITY. It was established that all the shares of stock of such corporation were at one time held by a certain D. L. Flack, subsequently deceased. Proof of his nationality and of the nationality of his heirs *held* necessary.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission," *Law Q. Rev.*, Vol. 49, 1933, p. 226 at 233.

1. According to the Memorial, the late Mr. Daniel Ludgate Flack carried on business in London, under the name of Daniel Flack and Son, and also in Mexico under the name of D. L. Flack and Son, Mexico (Limited). The latter, according to a certificate delivered by the Registrar of Joint Stock Companies, was incorporated in London under the Companies Acts, 1862-1907, as a Limited Company on the 19th February, 1909. The business of the company was the export from Great Britain of coal, patent fuel, coke and general merchandise. Compensation is claimed for the loss of stocks of coal belonging to the Company which were set on fire at Doña Cecilia during a battle between rebel and federal forces in April 1914. The claim stands in the name of Mr. Frederick William Flack, on behalf of the Estate of the late Mr. Daniel Ludgate Flack, who died on the 9th June, 1920, intestate. After his death letters of administration were given first to his widow and, after her death, to his son, Frederick William Flack. The Company has been dissolved, according to the Registrar's certificate, but the date of its dissolution is not known.

2. The Mexican Agent lodged a demurrer to the memorial on the ground that the certificate issued by a British authority is not sufficient proof of the British nationality of the Company, and also on the ground that it has not been established that Mr. F. W. Flack is, as Executor of the Estate of Mr. D. L. Flack, entitled to represent the Company of D. L. Flack and Son, Mexico (Limited). In his oral argument, and in a brief delivered on the 31st October, 1929 (the third day of the hearing), the Mexican Agent amplified his pleading with the further argument that, as the claim is preferred by F. W. Flack on behalf of the Estate of the late D. L. Flack, the following points should have been proved:

(a) That Daniel Ludgate Flack was a British subject when the damage was caused.

(b) That such and such persons were the heirs of the said Daniel Ludgate Flack.

(c) That the said persons inherited the right to prefer the claim.

(d) That the said persons were British subjects at the time of inheriting.

(e) That Mr. F. W. Flack is entitled to present the claim on behalf of the said persons.

He contended it was necessary to prove that the whole of the issued shares were held by D. L. Flack and that after the dissolution of the Company the right to present the claim was legally vested in him.

The British Agent argued, in reply, that the Registrar of Joint Stock Companies in London is a public official, appointed to register companies in London in accordance with the Companies Acts, and all companies registered by him must be presumed to have been formed in conformity with English law, and that the Certificate of Incorporation issued by him was sufficient proof of the British nationality of D. L. Flack and Son, Mexico (Limited). Moreover, the Company was domiciled in London and all the business was conducted from that place.

Secondly, the British Agent submitted that Mr. F. W. Flack is, as executor of the Estate of the late Mr. D. L. Flack, entitled to claim in respect of the deceased's interests in the firm of D. L. Flack and Son, Mexico (Limited). According to the British Agent, this Company had only one shareholder, Mr. D. L. Flack, to whose Estate all the assets of the Company (including the right to claim) were automatically transferred at the moment the Company ceased to exist.

3. In determining the issue before them the Commissioners must be guided by the rule laid down in the *Gleadell* case. When allowing the Motion to Dismiss in the claim of *W. H. Gleadell* (Claim No. 19), the Commission declared the principle by which it ought to be guided, namely, that a claim must be founded upon an injury or wrong to a citizen of the claimant Government, and that the title to that claim must have remained continuously in the hands of citizens of such Government until the time of its presentation for filing before the Commission. In the same judgment, the Commission laid down the rule that where the claim is preferred on behalf of an Estate, the nationality of the Executor is of less importance than the nationality of the heirs. Applying this principle to the case under consideration, the majority of the Commissioners are of opinion that in order to decide whether the nationality of the claim was originally British and remained so until the end, the following issues of fact must be determined:

I. Has it been established that the Company D. L. Flack and Son, Mexico (Limited) was a British Company?

II. Has it been established that at the time of the dissolution of this Company all the shares belonged to D. L. Flack?

III. If so, has it been established that D. L. Flack at the time of his death still held all the shares?

IV. If so, has it been established that D. L. Flack was a British subject?

V. Has it been established that F. W. Flack was the only heir of his father?

VI. If not, has it been established that there were other heirs who were British subjects?

4. The questions have been answered as follows:

Question I.—In the affirmative, by the majority of the Commissioners, because in their opinion the Certificate of Incorporation, combined with the fact that

the Company was domiciled in London and the affairs conducted from there, is sufficient proof of the British nationality.

Question II.—The date of the dissolution of the Company does not appear. The last annual return of the Company filed with the Registrar of Joint Stock Companies at Somerset House, London, proves that on the 13th January, 1919, all the shares issued, numbering 2,606, belonged to Mr. D. L. Flack, but there is no evidence as to what happened with regard to those shares between that date and the date of the dissolution, whenever that may have been. The answer to the question is in the negative.

Question III.—There is no evidence as to the ownership of the shares at the time of the death of Mr. D. L. Flack. Neither is there evidence as to the ownership of the assets of the Company, including the right to claim (assuming the latter was dissolved at the time of the death of Mr. D. L. Flack). The answer is in the negative.

Question IV.—The majority of the Commissioners answer this question also in the negative. There is evidence as to the nationality of the son, but not of the father.

Question V.—There is no indication whatever as to the existence or the number or the names of the heirs of the late D. L. Flack. The answer is in the negative.

Question VI.—The answer must necessarily be the same as to question V.

5. The majority of the Commissioners hold the view that the permanent British nationality of the claim has not been established, and that as long as this has not been done, the Mexican Agent is not bound to answer the Memorial.

The demurrer is therefore allowed, without prejudice to the right of the British Agent to furnish other proof.

The British Commissioner expresses a dissenting view, and the Mexican Commissioner also expresses a dissenting view, but only as regards the proof of the nationality of the Company.

Dissenting opinion of Mr. Artemus Jones, British Commissioner

This is a claim for compensation for the loss of stocks of coal which were set on fire at Doña Cecilia in April 1914 during a battle between rebel and federal forces. The claimant is Frederick William Flack, who was born at Christchurch in Monmouthshire, Great Britain, the son of Daniel Ludgate Flack. The latter carried on business in London under the name of Daniel Flack and Son. He carried on business in Mexico also in the form of a limited liability company registered in London under the title of D. L. Flack and Son, Mexico (Limited). The business of the Company was the export of coal and kindred merchandise from Great Britain to Mexico, and the stocks of coal to which the claim relates were on their way to Tampico when they were destroyed at Doña Cecilia. The nominal capital of the Company was £10,000 divided into £1 shares, but only 2,602 shares were issued. The date of the last annual return filed with the Registrar of Joint Stock Companies was the 13th January, 1919, and on that date all these 2,602 shares were in the name of Daniel Ludgate Flack. (The Company was dissolved at a date unknown.) A certified copy of the return has been produced and it shows that a certain number of these shares held by another person had been transferred to Daniel Ludgate Flack during the year and helped to make up the total of 2,602. On the 9th June, 1920, Daniel Ludgate Flack died intestate, and letters of administration were granted by the English Courts to his widow, Laura Ellen Flack, on the 8th October, 1920. On the 24th January, 1924, the said Laura Ellen Flack died, and at that date the estate of her late husband had not been fully administered. Accordingly on the

7th May, 1924, letters of administration *de bonis non* of the unadministered estate were granted to the claimant.

The Mexican Agent put in a demurrer raising two points. He contended, first, that the certificate issued by the Registrar of Companies, which declares that the Company was registered in England, is not sufficient proof of British nationality; secondly, that the memorial does not establish that the claimant, F. W. Flack, is entitled to represent the firm of D. L. Flack and Son, Mexico (Limited). In his reply to the demurrer the British Agent contended that the certificate of the Registrar of Companies is, under English law, conclusive proof of the fact and that the authority of Mr. F. W. Flack to represent the Company of which D. L. Flack was the owner, is covered by his appointment by the Courts as an administrator *de bonis non*. The demurrer occupied the attention of the Commission on the 29th, 30th and 31st October. On the 31st October the Mexican Agent supplemented his demurrer by a document which raised three fresh points: (1) there was no evidence that all the shares belonged to D. L. Flack, either at the dissolution of the Company or at the time of his death; (2) there was no evidence that D. L. Flack was a British subject; (3) there was no evidence that there might not be heirs, other than F. W. Flack, of D. L. Flack.

The issue which is presented for the determination of the Commissioners is whether the memorial establishes a *prima facie* case so that the claim can be gone into. With regard to the three points raised by the Mexican Agent in his further pleading, there is no difference of opinion among the Commissioners. The only ground on which I do not agree with my colleagues is with regard to the deductions to be drawn from the answers to those questions. Had the British Agent objected to the further pleading put in by the Mexican Agent during the course of the argument, these further questions of fact could not have been raised, but Mr. Shearman (as he has done throughout the work of the Commission) studiously refrained from raising any technical points, and allowed the further pleading to go in. In my judgment the demurrer ought not to be allowed, because these issues of fact raised at a late stage by the Mexican Agent, when the British Agent could not possibly obtain information with regard to them, are not necessary in order to determine the question whether a *prima facie* case for investigation of the claim has been made out. On the two points raised by the Mexican Agent in his demurrer there is sufficient evidence disclosed in the memorial to show that the claim ought to be investigated. The further issues of fact could be well gone into when the merits of the claim are dealt with. It is necessary, I think, that the Commissioners should not lose sight of the fact that the *prima facie* evidence which it is necessary for the memorial to show, stands in a different category from the evidence which the Commissioners may deem necessary to establish the claim when the facts are gone into. The certificate of the Registrar is conclusive of the first point. In the second place there is sufficient evidence in the information contained in the memorial to establish that the Courts who appointed the claimant as administrator *de bonis non* have authorized him to pursue the claim on behalf of the estate of his father. While I regret to differ from the conclusions at which my colleagues have arrived, I agree that the answers to the further questions set out in the President's judgment are in the negative.

Separate opinion of Dr. Benito Flores, Mexican Commissioner

I. The British Agent, on behalf of F. W. Flack, and the latter as the representative of the Estate of D. L. Flack, claim the sum of \$52,225.88, on the strength of the following facts:

That Daniel Ludgate Flack was the owner of the whole of the issued shares of the firm of D. L. Flack and Son, Mexico (Limited); that on the 9th June, 1920, he died intestate and letters of administration were granted to his widow, Laura Ellen Flack; but that the latter, having died on the 24th January, 1924, without having fully administered the estate of the late Daniel Ludgate Flack, letters of administration *de bonis non* were granted to the claimant, F. W. Flack.

II. That the said Daniel Ludgate Flack carried on business under the name of Daniel Flack and Son, and also in Mexico under the name of D. L. Flack and Son, Mexico (Limited), which was a British Company; that the nominal capital of the said Company was £ 10,000.00, divided into £ 1 shares; that of the said capital only 2,602 shares were issued, and that on the 13th January, 1919, the date of the last return filed with the Registrar of Joint Stock Companies at Somerset House, London, these 2,602 shares stood in the name of Daniel Ludgate Flack.

III. That the business of the Company consisted of the export of coal from Great Britain; that in April 1914 the Company had stored on a wharf adjoining the River Panuco at the Town of Doña Cecilia 5,567,027 kilos. of coal, brought out from England.

IV. That early in 1914 the town was attacked and bombarded by rebel forces; that as a result of such bombardment the stocks of coal belonging to the Company were set on fire, only a small portion thereof having been salvaged.

V. The following documents have been submitted with the claim:

- (a) Certificate of Incorporation.
- (b) Certified copies of invoice and bill of lading.
- (c) Translation of notarial act drawn up at request of Mr. J. Hermosillo.
- (d) Translation of notarial act drawn up at request of Mr. R. Everbusch.
- (e) Birth certificate of F. W. Flack.
- (f) Letters of administration in favour of Mrs. L. E. Flack.
- (g) Letters of administration in favour of Mr. F. W. Flack.
- (h) Letter dated the 11th July, 1914, from His Majesty's Consul at Tampico.
- (i) Letter dated the 3rd February, 1926, from Messrs. Deloitte, Plender, Haskins and Sells.
- (j) Sworn statement of Frederick William Flack.

VI. The Mexican Agent entered a Demurrer, supported by the following pleas:

A certificate issued by British authorities is not proof sufficient of the British nationality of D. L. Flack and Son (Limited), and the claimant, Frederick William Flack, is not, as administrator of the estate of D. L. Flack, entitled to represent D. L. Flack and Son, Mexico, (Limited).

VII. The British Agent maintained the positions taken by him in the Memorial.

VIII. On the 29th October this Demurrer began to be examined by the Court, and during the discussion the Mexican Agent, with the assent of the British Agent, amended the Memorial corresponding to the said Demurrer, by laying down the following points:

- (a) That it should be shown that Daniel Ludgate Flack was a British Subject at the time the damage was caused.
- (b) That such and such persons were the heirs of Daniel Ludgate Flack.
- (c) That those persons inherited the right to claim.
- (d) That those same persons were British subjects at the time of inheriting.

(e) That Mr. F. W. Flack is the administrator, entitled to claim on behalf of the persons having actually inherited.

The Mexican Agent ended by contending in his amendment:

- I. That no proof has been shown that the Company was an English Company.
- II. That it has not been proved that the whole of the shares in the Company were allotted to Daniel L. Flack.
- III. That no proof has been shown that after the dissolution of the Company the right to prefer the claim was allotted to Daniel Ludgate Flack.

All the above points were again submitted to discussion, and the hearing of the case once closed, the Presiding Commissioner laid before the Commissioners of Mexico and Great Britain the following six questions for decision:

- I. Has it been established that the Company, D. L. Flack and Son, Mexico (Limited) was a British Company?
- II. Has it been established that at the time of the dissolving of this Company all the shares belonged to D. L. Flack?
- III. If so, has it been established that D. L. Flack, at the time of his death, still held all the shares?
- IV. If so, has it been established that D. L. Flack was a British subject?
- V. Has it been established that F. W. Flack was the only heir of his father?
- VI. If not, has it been established that the other heirs were British subjects?

Questions II, III, IV, V and VI were answered in the negative by the three Commissioners.

Question I was answered affirmatively by the Presiding Commissioner and by the British Commissioner; the Mexican Commissioner answered said question I in the negative, contending that it has not been shown that D. L. Flack and Son, Mexico (Limited) was an English Company, and he for that reason expresses a concurrent opinion, so that the Demurrer entered by the Mexican Agent may be upheld, not only because of the negative answer to questions II, III, IV, V and VI, but also because it has not, in his opinion, been fully shown that D. L. Flack and Son, Mexico (Limited) was a Company of British nationality. He bases his opinion upon the following:

Considerations

I. The nationality of physical persons, i.e., the bond uniting a person to a particular nation, has never been laid open to doubt. On the contrary, doubt has arisen when the thought occurs that there may be a person without any nationality; in the case of artificial, or civil, or juridical persons, however, the problem is a different one. In the first case, the bond uniting the individual to the State consists in his submitting to its laws, so as to be able to appeal to the said State for protection in case of necessity. Rights and duties are correlative to one another. In the second case, artificial persons cannot always be considered as identical with physical persons; they cannot, for instance, at a given moment, render military service, as an individual can, or comply with any other similar requirement on the part of the Government to which they have submitted. And by reason of the lack of similarity between physical and artificial persons, and by the legal fiction upon which the latter rest, the opinions of jurists have become divided, especially after the World War, some of them contending that limited companies should have no nationality at all.

M. de Vareilles-Sommières; *Les Personnes Morales*, 2nd edition, No. 1503, says:

“La vérité, écrit cet auteur, est que la personne morale n’étant qu’un résumé et une représentation des associés, n’étant qu’eux-mêmes fondus par l’imagination en un seul être, elle n’a point de nationalité propre, elle n’a aucune autre nationalité que la leur, ou plutôt elle n’a aucune nationalité, car elle n’est qu’un procédé intellectuel, qu’une image dans notre cerveau. Seuls les associés ont une nationalité.”

A. Pillet (*Des Personnes morales en droit international privé*, un vol., Paris, 1914, Nos 82 et suivants), eminent professor of the Faculty of Law in Paris, shares the opinion of M. de Vareilles-Sommières, criticizing the fact that the endeavour has been made to extend to artificial persons a notion above all intended for physical persons, and asks:

“Les sociétés ont-elles, de même que les individus, une nationalité?”¹

Lorsqu’il s’agit de personnes vivantes, les principaux points de rattachement de la personne à un droit déterminé sont la nationalité et le domicile, deux notions différentes l’une de l’autre, la seconde étant un pur fait, la première supposant une construction juridique. De ces deux notions on sait que la première est la plus récente et qu’autrefois le domicile seul était pris en considération; il était surtout un élément matériel, car il consistait dans un certain lieu, le centre des affaires.

“La réception de l’idée de nationalité qui, dans le plus grand nombre des pays, est venue réduire l’importance de la notion du domicile, peut être considérée comme un signe du triomphe d’un certain idéal sur les pures relations matérielles. L’acquisition de la nationalité ne dépend pas, en effet, d’un simple fait comme l’acquisition d’un domicile; elle résulte de la volonté du législateur et aussi un peu de celle du sujet; elle engendre un lien purement idéal sur lequel les diverses circonstances de la vie des nationaux peuvent n’exercer aucune atteinte.

“L’une des causes du succès de l’idée de nationalité et du recul de l’idée de domicile provient de la solidité plus grande que la nationalité confère à l’emprise exercée par l’État sur l’individu. L’État demeure le maître absolu des lois sur la nationalité. Il est maître de légiférer sur la nationalité comme il l’entend et, en particulier, soit de fortifier le lien national, soit aussi, dans les cas où la persistance de ce lien lui paraît nuisible, de le trancher, même dans les cas extrêmes, sans la participation de la volonté de l’individu.

“Quoi qu’il en soit, il est certain que la nationalité et le domicile sont les deux grands points de rattachement de la personne au droit. Dans les pays où la nationalité et le domicile exercent chacun leur influence, il s’est produit entre leurs domaines une certaine séparation et dans leur autorité respective l’établissement d’un certain ordre, l’empire de la nationalité concernant plutôt la loi applicable, celui du domicile, la compétence du juge. De telle sorte qu’en général, et sous réserve d’assez nombreuses exceptions, l’individu est soumis, dans les rapports internationaux, à la loi déterminée par sa nationalité, c’est-à-dire à sa loi nationale, et, au point de vue de la compétence judiciaire, à l’autorité du juge de son domicile.

“C’est cette méthode que l’on a voulu transporter de la condition des personnes physiques à celle des sociétés. Il fallait en effet également pour elles un principe de rattachement afin de déterminer la loi à laquelle chaque société est soumise.

¹ C’est là ce que dit très nettement le tribunal de Lille, 21 mai 1908 (S., 1908, 2. 177); voir aussi trib. com. Liège, 1^{er} jév. 1901 (Clunet, 1901, p. 367); et surtout Cass. Rome, 13 sept. 1887 (Clunet, 1889, p. 510). Ce dernier arrêt pousse l’assimilation au point de confondre le simple fait de la constitution à l’étranger, en matière de société, à la circonstance de la naissance hors d’Italie d’un enfant issu de parents italiens.

“On aurait pu créer de toutes pièces ce point de rattachement, en constituant une règle juridique nouvelle et particulière aux personnes civiles, par exemple, les obliger de se conformer, pour leur constitution, aux lois en vigueur au lieu du centre de l'exploitation de leur industrie ou de leur commerce.¹

“On aurait pu sans doute suivre cette méthode. On ne l'a pas fait cependant. On a préféré le procédé plus commode de l'analogie; il a paru plus rapide et plus simple d'étendre purement et simplement aux personnes civiles les principes qui avaient été déjà dégagés pour la condition des personnes physiques.

“De là un premier inconvénient est venu, c'est la confusion des notions de nationalité et de domicile en ce qui concerne les personnes civiles. Il est, en effet, impossible de rattacher la nationalité des sociétés comme celle des personnes physiques au lieu où elles naissent, car une société ne naît pas matériellement comme une personne vivante. On ne fait donc que reculer la question et non la résoudre, puisqu'il faut alors se demander quel est le lieu de naissance de la société. Or, avec cette nouvelle question, toutes les difficultés ressuscitent. On ne peut pas davantage admettre la possibilité d'une naturalisation pour les personnes purement civiles.

“On a en réalité absolument confondu à l'égard des sociétés les deux notions de nationalité et de domicile; de telle sorte que ce que l'on appelle nationalité des sociétés n'est, en réalité, qu'une espèce de domicile. Cette nationalité découle de l'établissement de la société dans un lieu déterminé. Il a donc fallu donner ici à la notion de nationalité un sens qu'elle n'a nulle part ailleurs et qui la rapproche par trop de la notion de domicile.

“A vrai dire, on objectera peut-être que les navires ont bien, eux aussi, une nationalité. Et l'on serait tenté de la rapprocher de celle de sociétés. Mais, la nationalité des navires résulte d'une inscription sur les registres de la douane faite à certaines conditions; elle se rattache à l'accomplissement d'une formalité juridique déterminée, tandis que la nationalité des sociétés résulte du choix fait par ses fondateurs d'un certain lieu dans lequel ils l'établissent.

“Quel est ce lieu? Ou, en d'autres termes, quel est le pays dont la personne civile doit avoir la nationalité?

“C'est sur ce point que s'est produit, aussi bien dans la doctrine que dans la pratique, un très grave embarras qui dure depuis fort longtemps et qui n'est point encore résolu à l'époque actuelle. Ainsi que nous le verrons, il a son origine et son caractère inéluctable dans la mauvaise définition donnée à la question qu'il s'agit de résoudre.”

The tendency of modern jurists is now that of laying down in positive precepts the principle that artificial persons should not be considered as entitled to have any nationality. This has already been contemplated by the jurists of the American continent, at the Conference of Rio de Janeiro, following the opinion of a notable internationalist, Mr. Irigoyen, in the case of the Rosario Bank, who said (Report of the Ministry of Foreign Affairs, Vol. i, p. 385, 1887):

¹ En République Argentine, ainsi que nous l'avons déjà indiqué (supra No. 66), l'idée de nationalité des personnes morales n'a pas été admise. M. Zeballos (Clunet, 1905, p. 606), en donne notamment pour raison que “le système de droit international privé codifié par la République Argentine élimine soigneusement de ces solutions tout élément politique. Il traite les questions d'après l'école de Savigny au point de vue absolument scientifique. En conséquence, les personnes vivantes ou juridiques n'ont pas de nationalité dans leur rapport avec le droit privé. Elles doivent être soumises à une législation privée certaine et permanente, et cette racine de leur vie juridique est celle du domicile. Il convient de remarquer cependant que cette façon de présenter les choses est nettement exagérée, puisqu'elle ne tient à rien moins qu'à exclure la notion de nationalité, même pour les personnes physiques. On peut se refuser à donner une nationalité aux personnes morales sans tomber dans cet excès.

"The Bank of London is a Limited Company; it is a juridical person, which exists for a particular purpose. Juridical persons owe their existence solely to the laws of the country authorizing them, and consequently are neither national nor foreign. A Limited Company is a juridical person distinct from the individuals which compose it, and is not, even when composed of aliens exclusively, entitled to diplomatic protection. It is not the individuals who are joined, but merely their investments, in an anonymous form, which signifies, according to the meaning of that word, that such companies have neither name, nor nationality, nor any individual responsibility."

The Mexican Delegation at Rio de Janeiro supported the principles announced by the Argentine Delegate, at the International Commission of Jurists in that city, and at the meeting of the 30th April, 1927, having sought their inspiration in the valuable opinion of Doctor Bernardo Irigoyen. It is since the Great War that the principle of whether artificial persons should or should not have a nationality has been most warmly discussed.

C'est surtout, says Georges Demassieux (*Le Changement de nationalité de sociétés commerciales*, page 28), depuis le début de la Grande Guerre que la notion de nationalité des sociétés a trouvé beaucoup d'adversaires. De la guerre naquit une préoccupation nouvelle, trop justifiée bien souvent et tout à fait légitime. Il existait, sur le territoire français, des sociétés à qui l'on avait jusqu'alors reconnu, sans conteste, la nationalité française. Les sociétés commerciales ayant leur siège social en France constituées d'après les règles de la loi française, étaient, en effet, regardées comme françaises. Lorsque survint la guerre, on s'aperçut que certaines d'entre elles étaient dirigées par des sujets allemands, que leur capital avait été, en majeure partie, fourni par des Allemands, en un mot, qui résume bien la situation, que ces sociétés étaient "contrôlées par des Allemands."

Des sociétés ayant leur siège social en France, constituées, d'après les dispositions de la loi française, par conséquent françaises aux yeux de tous, étaient en réalité entre des mains ennemies, servaient des intérêts ennemis: allemands, austro-hongrois ou turcs. Il y avait là une situation paradoxale qui amena des distingués juristes à douter sérieusement de la notion même de nationalité des sociétés, laquelle aboutissait, dans son application, à d'aussi déplorables contradictions. Il leur sembla que cette notion ne signifiait rien, qu'elle était fausse, et qu'attribuer une nationalité à des êtres moraux, à des êtres fictifs, était une conception non seulement inutile, mais dangereuse, puisque, en temps de guerre, les manœuvres de l'ennemi risquaient de pouvoir impunément se perpétuer à l'abri de l'étiquette: "société nationale."

En 1917, M. Thaller, Professeur à la Faculté de droit de Paris, écrivait, dans la *Revue politique et parlementaire*.¹ "Entre l'idée de nationalité et celle de personnes fictives ou abstraites, il y a une impossibilité d'adaptation, une antinomie. La nationalité procède de la famille agrandie. Pas plus qu'une société ne possède un statut de famille, pas plus elle ne saurait prétendre au statut sous lequel les individus d'une même nation sont placés. La nationalité est faite de traditions, de mœurs communes, d'un esprit propre aux hommes qui font partie de l'État, différent de l'espèce des autres États, des autres races. En l'absence de ces éléments constitutifs, peut-il être question de nationalité?"

Aux côtés de M. Thaller, M. Lyon-Caen, M. Landry, député, M. Camille Jordan, juriste très versé dans les questions de nationalité, combattirent vigoureusement la notion de nationalité des sociétés.² Dans son fort intéressant ouvrage

¹ *Revue politique et parlementaire*, année 1917, page 297.

² *Bulletin mensuel de la Société de législation comparée*, janvier-mars 1927, article de M. Lyon-Caen, p. 535 et suiv. Numéro d'octobre-décembre 1927, article de M. Jordan, p. 534.

sur la "*Nationalité des sociétés de commerce*,"¹ M. Pepy considère que la nationalité des sociétés, d'après les idées généralement admises, ne peut que consister dans la soumission aux lois d'un État sur la constitution et le fonctionnement des sociétés. La véritable nationalité, au contraire, que seule peuvent posséder les individus, consiste dans l'emprise d'un organisme politique sur une personne humaine. C'est cette emprise qui forme le fond, la substance même de l'idée de nationalité. La Français ne relève pas seulement de la législation française, il voit de plus son activité dirigée, absorbée même par les forces propres de la communauté française. Cette communauté ne s'occupe que des êtres vivants, qui, seuls, peuvent lui être unis par ce lien personnel intime qui constitue la nationalité. Mais ce lien ne peut se concevoir à l'égard d'une entité juridique qui ne peut en avoir d'autre avec la communauté nationale que le fait *d'avoir son fonctionnement régi par ses lois*. Les sociétés n'ont pas de véritable nationalité, et vouloir leur en donner une, c'est fort dangereux. "C'est entretenir l'équivoque dans les idées, la confusion dans les esprits," dit M. Pepy.

Par la thèse de M. Pepy, les mesures prises par le Gouvernement français, pendant la guerre, à l'encontre des sociétés contrôlées par l'ennemi, se trouvent parfaitement justifiées. Si les sociétés commerciales ne pouvaient avoir de nationalité, elles n'étaient pas plus françaises qu'allemandes, austro-hongroises ou turques. Que certaines d'entre elles fussent dangereuses, cela suffisait pour que, dans l'intérêt supérieur de la défense nationale, on agit de rigueur avec elles, et qu'on sequestrât leurs biens.

Les idées des détracteurs de la notion de nationalité des sociétés trouvèrent leur écho dans la jurisprudence. Un jugement du tribunal mixte franco-allemand de 30 novembre 1923,² dénie à une société la possibilité d'avoir une nationalité. Il s'agissait, en l'espèce, d'une société en commandite simple établie à Paris, qui demandait à être considérée comme ressortissant d'un pays allié ou associé, aux termes de l'art. 297 e. du traité de Versailles. Le tribunal mixte, adoptant les motifs d'une précédente décision qu'il avait rendue le 30 septembre 1920,³ considère que les sociétés en commandite, en tant que personnes morales, n'ont pas de nationalité proprement dite, et que celle-ci dépend de la majorité des associés. Voici les termes dont il se sert: "Attendu que les sociétés en commandite n'ont pas de nationalité proprement dite, puisqu'une telle nationalité d'une part confère des droits (tels que le droit de vote, le droit d'être nommé à des fonctions publiques, la protection contre l'extradition, &c.), et d'autre part impose des obligations (telles que le service militaire), qui ne peuvent s'appliquer qu'aux personnes physiques." Plus loin, le même jugement proclame que "la nationalité de la majorité des associés détermine le caractère de l'entreprise qui forme l'objet de la société."

It is true that in this instance the question as to whether the artificial person under discussion has any nationality or not, is not being gone into, because the Mexican Government had already undertaken to pay compensation to *English Companies* having sustained damage, but if the renowned jurists to whom I have referred, are contending for the abolition of the principle of nationality in the case of artificial persons, international Tribunals, when called upon to solve the problem in a specific instance, should, with all the more reason, proceed with great care before upholding the nationality of a given person, if the facts serving as the ground for their decision do not conform exactly to universally recognized principles, and more especially to the laws of the country the protection of which is invoked.

¹ *De la nationalité des sociétés de commerce*, par M. Pepy, un vol., 1920, p. 92 et suiv.

² D. Hebd., 1924, p. 131.

³ J. Clunet, 1923, p. 600.

II. Nationality is a question which must be decided in accordance with internal law, as decided by the Permanent Court of International Justice, in various judgments. The Laws of England do not state when a Company is of British nationality, and the decisions of English Courts do not fix unvarying rules for determining when a Company is of such nationality. On the contrary, there are decisions of English Courts openly contradictory to one another, some of them admitting the principle that the nationality of a company should be determined by the laws under which it was organized and registered, while other courts have ruled that the nationality of a company should be determined by the place where its operations are carried on, i.e., its principal place of business.

III. The certificate of incorporation of the Company (annex 1) produced by the demandant Government, only shows that D. L. Flack and Son, Mexico (Limited) was organized under the Companies Acts, 1862 to 1907, as a Limited Company, on the 19th February, 1909, and that said Company was dissolved; but it cannot be inferred from this that the said Company is of British nationality. There is no law providing that a Company is an English Company through the mere fact of having been organized in accordance with the English laws. In the present case the doubt as to the British nationality of the Company arises out of the fact that D. L. Flack and Son, Mexico (Limited) had the Republic of Mexico as its only centre of operations, or at least the Company for Mexico, as the British Agent himself assures us in his Memorandum.

Georges Demassieux, in *Le Changement de Nationalité des Sociétés Commerciales*, p. 45, says:

"En Angleterre, nous le dirons plus loin, une société, pour être anglaise, doit avoir son siège administratif sur le territoire national. Mais une société 'limited' doit, pour avoir la personnalité, remplir la formalité de l'enregistrement *de ses statuts* sur un registre spécial tenu par un fonctionnaire appelé registrar. Une société 'limited' ne peut avoir la nationalité anglaise si elle n'a pas accompli cette formalité."

In this case all that we know is that D. L. Flack and Son, Mexico (Limited) was incorporated on the 19th February, 1909; but we do not know whether the articles of association of said Company were registered or not; we do not know either whether the said Company had its *siège social* in Mexico, and all that we know is that it was incorporated under the English law; but for the purpose of effecting all its transactions in Mexico. It would have been desirable that the British Agent had submitted a copy of the deed of incorporation with this Memorial. This would have saved time and argument; but the lack of that document, or rather the omission on the part of the demandant Government, cannot be transformed into an affirmative statement to the effect that the Company is a British Company, to the detriment of the interests of a sovereign nation, which has graciously acquiesced in the payment to *British subjects* of damage suffered by them, although not bound to do so under International Law.

IV. International Jurisprudence precedents differ too much to make it possible to decide with absolute exactness, without fear of error, as to the nationality of a company.

Borchard, "*The Diplomatic Protection of Citizens Abroad*," p. 617, paragraph 277, says:

"S 277. *Citizenship of Corporations*."

"The nationality of corporations is one of the most actively discussed questions of the law of continental Europe. While some writers dispute the possibility of corporate nationality, the fact that the legislation of practically all countries takes account of foreign corporations, has persuaded publicists to endeavour

to establish the criteria of a national corporation. In some countries, little help is obtained from positive legislation.

"A corporation may be attached to a territory by three elements. The first is the place where it is created or founded, where the legal formalities of its constitution, authorization and inscription have been carried out. The second is the place where the home office, the active management or centre of administration, or what the French call the *siège social* is located. The third is the place where it carries on the purpose of its organization, its actual operations, its centre of exploitation (*principale exploitation*).

"When these three elements are combined in one country, it is hardly open to question that the corporation has the nationality of that country. But when the three elements or some of them are located in different countries, the nationality of the corporation is not always easy to determine. Taking into consideration the three factors mentioned and some others, the following systems as to the determinative criterion of the nationality of a corporation have all had their adherents: It is governed (1) by the nationality of the State which authorizes its existence (Fiore and Weiss); (2) by that of the State within whose jurisdiction it has been organized (Brunard and Cassano); (3) by the nationality of the stockholders (Vareilles-Sommières); (4) by that of the country of subscription of domicile of the majority of the stockholders at the time of subscription (Thaller); (5) *by that of the country where it has its principal place of business, a system followed, with variations, by the legislation of most countries*; (6) the jurisdictional judge may determine the nationality on all the facts. Other solutions have been offered, e.g., that the will of the corporation or of the state should alone determine its nationality.

"Leaving aside all theoretical arguments, it may be said that the majority of States in their legislation have accepted *the country of domicile (siège, Sitz)* as the nationality of the corporation. The question then arises, is the domicile the centre of administration, the 'home office', or is it the centre of exploitation, where the business is carried on? Among the countries of Europe with the exception of Spain, which attributes Spanish nationality to corporations incorporated in Spain or administered from, or doing business in Spain, *and of Italy, Portugal and Romania*, which consider as domestic corporations those doing business within their borders (centre of exploitation), the majority adhere to the system by which nationality follows the country in which the *centre of administration* (the *siège social*) is located."

Jackson H. Ralston, in *The Law and Procedure of International Tribunals*, p. 155, paragraph 278, says:

"278. The mixed commissions sitting by virtue of the Versailles and subsequent treaties have several times rendered decisions upon the general subject. Thus, for instance, it has been held that a corporation formed in Germany and controlled by Frenchmen can claim, as a victim of exceptional measures of war, a house which has its site for business affairs in Germany, but of which no associate is German, cannot be considered as a German subject; under the terms of the treaty of peace the nationality of a corporation is fixed for the purpose of the interests which these treaties have in view, not according to the law under which they were constituted nor according to the site of their principal establishment of business, but according to the interests controlling them; a corporation or association composed of individuals all of the same nationality cannot have a nationality different from theirs. *Where there is no question of custody or liquidation, but there are mere contract relations between private parties, a joint stock company's nationality is determined by the location of the principal place of business unless this is merely nominal.*"

V. The Anglo-Saxon system for determining the nationality of limited companies is not uniform either. Borchard, *op. cit.*, p. 619, paragraph 275, says:

"Anglo-American Law.

"In Anglo-American law no such theoretical conflicts as have prevailed in continental law appear to have found a place. The conception of domicile with respect to corporations has been applied in cases of taxation and of belligerent rights, and for these purposes the seat of the corporation has on occasion *been considered the place where the business is carried on*. For other purposes the question of domicile and nationality is decided by practical considerations, the most important of which is the place of incorporation.

"In the United States the citizenship of corporations is judged almost exclusively according to the place of incorporation, which involves, in most municipal cases, the determination of State citizenship. Only thirteen States even require residence on the part of any of the incorporators and only six require State citizenship. New York appears to be the only State demanding United States citizenship. While the courts have made numerous distinctions between natural persons and corporations in the matter of citizenship, they have held a corporation to be a citizen for the purposes of suit under the federal constitution, and under the Act to provide for the adjudication and payment of claims arising from Indian depredations. The Supreme Court, moreover, has held that for jurisdictional purposes there is a conclusive presumption of law that the persons composing the corporation are citizens of the same State with the corporation, and, 'although an artificial person,' a corporation is 'to be considered as a citizen of the State as much as a natural person.'

"While it has been held that a corporation could be an alien enemy as well as an individual, it has not been definitely established whether the place of incorporation governs enemy character, or whether this is determined according to each place where the corporation has a branch and does business. In earlier cases, the place of actual business has been held to control; more recently, however, it has been held in England that the place of incorporation and registration, and not the place of operation governs. The British proclamation of the 9th September, 1914, in regard to trading with the enemy, provides that in the case of incorporated bodies enemy character attaches only to those incorporated in an enemy country. On the other hand, for the purposes of the effect of war on patents, designs and trade-marks, a British corporation controlled by or carried on wholly or mainly for the benefit of subjects of an enemy State was to be deemed an alien enemy."

VI. The foregoing considerations at least serve to show that the problem of the nationality of a limited company under international law is not an easy one to solve, when, as in this case, the Company was incorporated under the Laws of England, but to operate in Mexico. If the claimant Company had had its domicile in Great Britain, if its shareholders had been British and its principal place of business had been in England, the Mexican Commissioner would have agreed with his colleagues in acknowledging its British character; but this last element is lacking and he does not, for that reason, accept that opinion.

VII. The Mexican Commissioner holds, furthermore, that it is not necessary to decide this first question of the interrogatory in either sense, because the Demurrer having been upheld on the strength of the other grounds proposed, said Demurrer would, on the assumption that a British Company were involved, also be sustainable.

The Mexican Commissioner bases his opinion on the foregoing considerations, dissenting from his estimable colleagues in regard to the nationality of

the claimant Company; but he concurs, however, in all the other points which gave rise to the decision of this Court upholding the Demurrer entered by the Mexican Agent.

CARLOS L. OLDENBOURG (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(*Decision No. 11, December 19, 1929. Pages 97-99.*)

NATIONAL CHARACTER OF CLAIM.—CONTINUING NATIONALITY OF CLAIM.—
PARTNERSHIP CLAIM.—CLAIM IN REPRESENTATIVE CAPACITY.—DUAL NATIONALITY. Demurrer to a claim for damage to a partnership formed under Mexican law *allowed*, without prejudice to further proof, when evidence was lacking, as required by the *compromis*, that British subjects possessed an interest exceeding fifty per cent of the capital of the firm. Any interest in such partnership owned by persons of dual nationality, i.e., that of claimant and respondent Governments, *held* not the subject of an international claim.

Cross-reference: Annual Digest, 1929-1930, p. 189.

1. The claim is for losses suffered by Messrs. Jorge M. Oldenbourg, Succs., at Colima (State of Colima), during the years 1914, 1915 and 1916. The Memorial divides the claim into three parts:

Part 1.—For 1,000.00 pesos, being a forced loan made by the Military Governor of the State of Colima;

Part 2.—For the value of two bundles of skins taken by order of the Military Governor of the State of Colima;

Part 3.—For the payment of a bill of 2,600.00 pesos issued by the Paymaster-General of the First Army Corps at Manzanillo (State of Colima) which the Treasury of the Federal Government refused to honour.

The Memorial states that the aforesaid Company was formed on the 20th July 1904, and, although Mexican, was composed entirely of British subjects. The partners were Mrs. Emeteria Oldenbourg, Mr. Carlos, Miss Martha, Miss Luisa, Miss Berta and Miss Maria Oldenbourg, the first being the widow and the others the children of the late Mr. Jorge M. Oldenbourg. By a deed dated the 6th August, 1925, the company was dissolved and Mr. Carlos L. Oldenbourg became sole owner, taking the responsibility of all present and past accounts.

Amongst the annexes is a certificate of the British Consul at Colima stating that in April 1908, Mrs. Emeteria, Miss Martha, Mr. Carlos, Miss Luisa and Miss Maria Oldenbourg were registered as British subjects.

2. The Mexican Agent lodged a demurrer on the two following grounds: The Consular certificate does not establish the British nationality of the members of the firm of Jorge M. Oldenbourg, Succs., nor that of Mr. Carlos L. Oldenbourg, who presents the claim. The British Agent has not shown that the allotment referred to in Article III of the Convention was ever made to the claimant.

The British Agent has submitted a baptismal certificate and a certificate of the Secretary of State for Foreign Relations of Mexico as proof of the British nationality of the father, Jorge M. Oldenbourg. According to British law, his wife and his children possess the same nationality. The Company, when it was dissolved, was entirely formed by British subjects, and as the right to this claim,

by the deed of the 6th August, 1925, has passed to Carlos L. Oldenbourg, the allotment referred to in Article III is not required. Furthermore, the British Agent has filed copies of letters to the effect that Carlos L. Oldenbourg acted several times as British Consul at Colima and for that reason, according to the law of Mexico, is to be considered as a foreigner in that country.

3. In his oral argument the Mexican Agent has not contested the British nationality of the late Mr. Jorge M. Oldenbourg, nor of his widow, but as regards the nationality of their children he *first* drew attention to the fact that the Consular certificate does not mention Miss Berta Oldenbourg, and *second* maintained that according to article 2 of the Mexican "*Ley sobre Extranjeria y Naturalización*," 1886 ("Law on Alienage and Naturalization," 1886), they must be regarded as Mexican subjects, because they were all born in Mexico and have not, when they became of age, declared before the competent authority that they opted for British nationality. For this last contention, he relied upon a telegram of the Governor of the State of Colima.

The Mexican Agent held therefore that, even if the British nationality of the claimant and his sisters were established, they possessed at the same time Mexican citizenship; in other words, that the Commission was faced by a case of dual nationality. In such cases, the principle generally followed has been that a person having dual nationality cannot make one of the countries to which he owes allegiance a defendant before an international tribunal. A person cannot sue his own Government in an international court, nor can any other Government claim on his behalf (Borchard: *The Diplomatic Protection of Citizens Abroad*, p. 587; Ralston: *The law and procedure of international tribunals*, p. 172).

As regards the second ground, upon which his demurrer is based, the Mexican Agent contended that at the moment when the company was dissolved and Carlos L. Oldenbourg became sole owner, the Convention was not yet signed and the partners of this Mexican firm had therefore not yet acquired the right to claim independently of the company. For this reason, Carlos L. Oldenbourg can only claim on his own behalf and he must prove which was his interest in the concern.

4. The British Agent observed that the question of the dual allegiance had not been raised in the written pleadings and he declared that the British Government, in cases of such duality, held the same view as expressed by the authors whom his Mexican Colleague had quoted. He pointed out, however, that the British nationality of the widow of Mr. Jorge M. Oldenbourg was not contested and that also the British nationality of Mr. Carlos L. Oldenbourg must be regarded as being recognized by Article 6 of the Mexican law of 1886, owing to the fact that he had held an office in the British public service. If therefore Mr. Carlos L. Oldenbourg and his mother could be proved to have possessed an interest exceeding fifty per cent of the total capital of the company (Article III of the Convention), the nationality of the other partners would be immaterial and the demurrer falls to the ground. He accordingly asked the Commission to postpone the further discussion in order to obtain evidence as to the proportional interest pertaining to claimant and his mother.

The Commission has allowed the postponement and in its meeting of the 5th December, 1929, the British Agent has declared that, having not been able to obtain the necessary evidence, he would not further oppose the demurrer.

5. The demurrer is allowed, without prejudice to the right of the British Agent to furnish other proof.

MEXICO CITY BOMBARDMENT CLAIMS (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(*Decision No. 12, February 15, 1930, dissenting opinion (dissenting in part) by British Commissioner, undated, dissenting opinion (dissenting in part) by Mexican Commissioner, February, 1930. Pages 100-118.*)

AFFIDAVITS AS EVIDENCE.—DAMAGES, PROOF OF. Only in rare instances will unsupported affidavits of a claimant be accepted as sufficient evidence. Affidavits of claimants made shortly after their losses, corroborating one another in their recitation of the facts, and supported by affidavits of other witnesses as well as certain historical facts, *held* sufficient proof of circumstances of loss. Affidavits of claimants as to amount of loss *held* not sufficient to establish damages to be allowed, damages instead allowed on basis of estimate of the tribunal. A statement neither signed nor sworn to by claimant *held* not sufficient evidence. A statement of a claimant supported by an affidavit of another person, which latter affidavit was executed more than fifteen years after the event, *held* not sufficient evidence.

PRIMA FACIE CASE.—BURDEN OF PROOF.—EFFECT OF NON-PRODUCTION OF EVIDENCE BY RESPONDENT GOVERNMENT.—RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH. A *prima facie* case of liability will exist upon proof by the claimant Government that the existence of the insurrection, for acts of the forces of which claim was made, was known to the public authorities, when the respondent Government has failed to produce any evidence as to action taken by the authorities.

Cross-references: Am. J. Int. Law, Vol. 25, 1931, p. 765; Annual Digest, 1929-1930, pp. 166, 454.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission," Law Q. Rev., Vol. 49, 1933, p. 226 at 238.

1. The British Government have joined in a single Memorial, under the title "Mexico City Bombardment Claims," one group of similar claims and two individual claims, all of which originate in the events which took place in Mexico City in February 1913, during a period known as "the tragic ten days." They are the following:

- A. The claims of Walter Ralph Baker, Archibald William Webb, Herbert John Woodfin and George J. W. Poxon, all residents in the Hostel of the Young Men's Christian Association, for having lost property when the Hostel was occupied by troops.
- B. The claim on behalf of Daniel John Tynan for losses suffered when, as a result of a bombardment, a fire was started in his house and his property destroyed.
- C. The claim of James Kelly for losses suffered through the killing of twelve of his cows by a shell.

The Commission has considered and decided the three parts of the Memorial separately.

A

The Claims of Messrs. Baker, Webb, Woodfin and Poxon

2. Their losses are alleged to have been due to the occupation of the Y.M.C.A. Hostel, where they resided in February 1913, by revolutionary troops belonging to the forces of General Felix Díaz, then in arms against the Administration of President Madero. Claimants were ordered to leave the building without delay, and when they returned to their rooms after hostilities had ceased, they found that their personal property had been either destroyed or looted by the revolutionaries. The building was, and is still, situated at the corner of Calle Dalderas and Avenida Morelos, close to the so-called "Ciudadela," being the Arsenal, then occupied by the Felicistas (troops under command of General Felix Díaz).

The documents on which the British Agent relies are: (1) An affidavit sworn by Mr. Baker before the British Consul-General at Mexico City on the 2nd April, 1913; (2) a statement made by Mr. Webb on the 1st March, 1913, registered on the 27th March, 1913, at the British Consulate-General at Mexico City, and affirmed by his affidavit sworn before the British Vice-Consul at Guadalajara on the 15th April, 1928; (3) a statement made by Mr. Woodfin on the 3rd April, 1913, and affirmed by his affidavit sworn before the British Consul at San Jose, Costa Rica, on the 1st March, 1928; (4) an affidavit sworn by Mr. Poxon before a notary public at Los Angeles (California) on the 28th November, 1927; (5) several certificates of the Secretary of the Young Men's Christian Association, to the effect that Messrs. Baker, Webb and Woodfin occupied rooms in the Hostel when the building was invested by revolutionary troops on the 11th February, 1913.

In the course of his argument the British Agent has filed an affidavit sworn before the Vice-Consul of the United States of America at Mexico City by Mr. Richard Williamson, now National Secretary, and, in February 1913, Associate General Secretary of the Young Men's Christian Association. In this affidavit Mr. Williamson deposes that during the "tragic ten days" the Hostel of the Association was occupied by one hundred soldiers under the general command of Felix Díaz; that he (Williamson) was on hand at the same building immediately after the hostilities ceased, and that he found the majority of the rooms had been sacked and robbed. He further states that none of the occupants of the rooms had an opportunity to remove their personal belongings because of the suddenness of the occupation of the building and the impossibility of getting access to it after the troops had occupied it, and that, during the time the robbing and sacking was done, no troops, forces or individuals had access to the building.

The British Government claims, on behalf of Mr. Baker, 997.00 pesos Mexican gold; on behalf of Mr. Webb, 275.50 pesos Mexican; on behalf of Mr. Woodfin, 621.10 pesos Mexican silver or £ 62 3s.; and on behalf of Mr. Poxon, 631.00 pesos Mexican gold.

3. The Mexican Agent has denied any value whatever to the affidavits of the claimants, because they have not been sworn publicly before a court, because there has been no cross-examination of the affiants, and because, in case of perjury, the affiants cannot be prosecuted.

In his opinion, the unsupported affidavits of claimants cannot be considered as evidence, and certainly not as evidence in their favour. He pointed out that articles 10, 28, 29 and 30 of the Rules of Procedure make a clear distinction between the parties and the witnesses, and that documents emanating from the former are not equivalent to documents emanating from the latter. The

fact on which the claims are based, i.e., the looting of the room in each individual case, has not been proved, neither have the pre-existence or the value been established of the objects, for the loss of which compensation is claimed. Even if the occupation of the building were ascertained, the losses of the claimants individually would not have been proved by their uncorroborated affidavits. In the view of the Mexican Agent, the claimants have omitted to collect the necessary outside evidence, which, if they had made an effort, would have been available, and this makes their statements still more objectionable to him.

Although the Mexican Agent did not deny that the Felicistas are included in the forces enumerated in Article 3 of the Convention, he contested that there was any proof that they were responsible for the losses on which the claims rest. But even if this had been shown, they could, as being rebels, only fall within subdivision 5 of Article 3, and the British Agent ought to establish that the competent authorities had been blamable in some way.

4. The British Agent held that to unsupported affidavits of claimants more weight is to be attached than his colleague was inclined to admit. According to the British law, affiants can be prosecuted and punished for perjury even if they swore and signed outside England. In this case, however, the affidavits cannot be considered as lacking support, because they corroborate each other, having been sworn by different persons, who all suffered similar losses at the same time and owing to the same occurrences.

He further argued that, whereas it is impossible to obtain corroborated evidence as to the objects robbed from a room, the statement of the owner has the value of *prima facie* evidence.

That those who occupied the building and looted the rooms were Felicistas was, according to the Agent, of public notoriety, and is, moreover, proved by the certificates of the Secretary of the Y.M.C.A. and by the affidavit of Mr. Richard Williamson.

In his view, the Felicistas were included in subdivision 2 of Article 3 of the Convention, because they aimed at the overthrowing of President Madero, an aim which at the end of the "tragic ten days" was reached by General Victoriano Huerta. As, in the conception of the British Agent, Huerta established a Government *de facto*, the cause, which was common to him and to General Felix Díaz triumphed and the Mexican Government is responsible for the damages caused by the forces of the one as well as of the other. If, according to the opinion of his Mexican colleague, subdivision 5 of Article 3 were to be applied, the British Agent maintained that it was well known that neither General Felix Díaz nor his soldiers were punished.

5. In its decision on the demurrer, filed by the Mexican Agent in the claim of Mrs. V. C. Cameron, the Commission has made known its attitude as to affidavits in general. The unanimous view of the Commissioners was expressed as follows:

"It is true, no doubt, that affidavits contain evidence which can be described as secondary evidence and is often of a very defective character. In many cases, it may be, affidavit evidence may possess little value, but the weight to be attached to that evidence is a matter for the Commissioners to decide according to the circumstances of a particular case. Affidavits must and will be weighed with the greatest caution and circumspection, but it would be utterly unreasonable to reject them altogether."

Acting on the principle laid down in this sentence, the Commission has considered the weight to be attached, *first* to unsupported affidavits of claimants in general, and *second* to the affidavits produced in this case.

It may be useful for the further guidance of the Agents, that the Commission announces that its majority has come to the conclusion, in general, that unsupported affidavits of claimants possess the very defective character of which the quotation speaks, and that only in cases of the rarest exception, they can be accepted as sufficient evidence. Such documents are sworn without the guarantee of cross-examination by the other party; in nearly all cases a false statement will remain without penalty, and, as they are signed by the party most interested in the judgment, they can not have the value of unbiased and impartial outside evidence.

As regards, however, the affidavits, on which the British Agent relies in this case, an otherwise composed majority of the Commission does not consider them as being unsupported, at least not as regards the affidavits of Messrs. Baker, Webb and Woodfin. Their statements have been made at nearly the same time and very shortly after the events. Their depositions are identical. Their falseness would be equal to a perjury of such a premeditated and concerted character as seems difficult to admit. Moreover, their declarations are strengthened by the certificates of the Secretary of the Y.M.C.A., who attests that the Hostel was occupied by revolutionaries, and by the affidavit of Mr. Richard Williamson, who, as an eye witness, swears that he knew that the soldiers, who invested the building, were Felicistas and that the majority of the rooms have been sacked and robbed. As moreover, the Hostel was situated in the immediate neighbourhood of the place where, as is widely known, General Felix Díaz had his quarters, there is every reason to admit that, by corroboration, the various affidavits and statements prove sufficiently the occupation of the building by Felicistas and the looting by them of the rooms of Messrs. Baker, Webb and Woodfin.

It is the unanimous opinion of the Commissioners that these considerations do not hold good for the claim of Mr. Poxon for the reasons *first* that his affidavit, having been sworn on the 28th November, 1927, can not be regarded as being corroborated by the simultaneous and contemporary statements drawn up a few days or weeks after the events; and *second* that there has not been shown any evidence as to his residing in the Hostel during the "tragic ten days."

6. The majority of the Commission being satisfied that the Hostel was occupied by soldiers of the Felix Díaz forces, and that the rooms of Messrs. Baker, Webb and Woodfin were looted by them, the next question which arises is whether the Mexican Government can, under Article 3 of the Convention, be held responsible for these acts, in other words, whether the Felicistas fall within any of the subdivisions of Article 3, and if so, within which of them.

It is again a majority of the Commission who answer this question in the affirmative and hold that subdivision 5 of article 3 applies to the case under consideration.

The Commissioners, whose views are here exposed, do not admit such a close co-operation and community of aim between General Felix Díaz and General Victoriano Huerta as to identify them both together as one revolutionary force, which, after the overthrow of President Madero, set up a Government *de facto*. In their opinion, the Felicista forces must be considered as separate forces and merely as troops having risen in arms against the then Government *de jure*, i.e., as rebels.

For their acts the Republic of the United Mexican States owes compensation, in case, to quote the last part of subdivision 5: "It be established that the competent authorities omitted to take reasonable measures to suppress the insurrections, risings, riots or acts of brigandage in question or to punish those

responsible for the same; or that it be established in like manner that the authorities were blamable in any other way."

In a great many cases it will be extremely difficult to establish beyond any doubt the omission or the absence of suppressive or punitive measures. The Commission realizes that the evidence of negative facts can hardly ever be given in an absolutely convincing manner. But a strong *prima facie* evidence can be assumed to exist in these cases in which *first* the British Agent will be able to make it acceptable that the facts were known to the competent authorities, either because they were of public notoriety or because they were brought to their knowledge in due time, and *second* the Mexican Agent does not show any evidence as to action taken by the authorities.

In the claims here dealt with both conditions seem to be fulfilled. The occupying and the looting of the building must have been known to the authorities obliged to watch over and to protect life and property; and, furthermore, the British Agent showed notes of sufficient authenticity, written in the British Legation in margin of the affidavits of the claimants, which notes satisfy the majority of the Commission that the events have been duly and without delay intimated to the public authorities.

On the other hand there is no evidence at all that the soldiers, who looted the Hostel, have been prosecuted.

7. It remains to be examined if any proof has been shown of the amount of the loss for which compensation is claimed, and which decision is to be taken in case such proof is lacking.

The Commissioners join in the view that the corroboration of the three affidavits, adopted in section 5 of this judgment, does not go further than the mere facts of the occupying of the building and the looting of the rooms, and that neither in the other documents, on which the majority relies, is to be found anything which can throw light on the figures of the loss. But the majority cannot concede that this constitutes a reason why no award at all should be granted.

The majority of the Commissioners are convinced that losses have been suffered and that, according to the Convention, they are to be compensated by the United Mexican States, and the mere fact that their amount has not been established cannot deprive the claimants of their right. Another view might be taken if the claimants could be blamed for having omitted to take such steps as could lead to showing what the damages were. But there can be no reasonable doubt that such steps were not within their power. After the soldiers invested the Hostel, the residents had no choice but to evacuate their rooms at once. There was no one inside or outside the building who could be expected to know which objects had to be left in the rooms. A comparison between the inventory before and after the occupation was therefore impossible. It would be in conformity neither with justice nor equity if for this reason all compensation was disallowed.

But it seems equally wrong to accept, in the absence of convincing evidence, the figures calculated by each of the claimants. The Commission cannot believe that it would act in accordance with the principles laid down in Article 2 of the Convention if it decided that the Mexican Government must pay the uncorroborated and perhaps exaggerated amounts which appear in the affidavit of the interested parties.

To this dilemma the Commission sees only one solution, i.e., to lay down its own rule for the adjudging of the award. This rule must be established independently of the individual claims. It cannot grant to the one more than to the other because it rejects the figures which each of the claimants puts forward.

It must constitute the nearest approach to justice and equity which the case admits.

This rule, adopted by the majority of the Commissioners, is that the Mexican Government, in the absence of clear evidence, cannot be obliged to pay more to each claimant than the amount representing the value of such objects as may be safely supposed to constitute the average portable property of young, unmarried men of the social class for which the Hostels of the Y.M.C.A. are particularly destined. Arbitrary as this amount may seem, it is more in conformity with the spirit of the Convention than either the denial of all award whatever or the granting of sums for which no reliable evidence exists.

8. The Commission decides that the Government of the United Mexican States shall pay to the British Government, on behalf of Messrs. W. R. Baker, A. W. Webb and H. J. Woodfin, each the sum of 275.00 (two hundred and seventy-five) pesos Mexican gold.

The Commission decides that the claim of Mr. G. J. W. Poxon is disallowed.

B

The Claim of Mr. Daniel John Tynan

9. The Memorial states that in February 1913 Mr. Tynan was residing at 5a. Balderas No. 74. On the 17th and 18th of that month, as a result of a bombardment between Felicistas and Federal troops, a fire was started in the house and Mr. Tynan's personal property was destroyed.

On behalf of Mr. Tynan the sum of 2,743.00 pesos, Mexican currency, is claimed.

10. Contrary to article 10 of the Rules of Procedure, the Memorial is not signed by the claimant nor is there a signed statement of the claim by the claimant included in the Memorial. The only document on which the British Agent relies is a "*statement of losses suffered by D. J. Tynan*," at the foot of which appear several signatures. This statement has not been sworn, nor has any information been given as to the identity of the signatories or as to how they came to the knowledge which they profess.

The Commission cannot regard this paper as sufficient evidence of the facts alleged in the Memorial.

11. The Commission decides that the claim is disallowed.

C

The Claim of Mr. James Kelly

12. In the Memorial the following facts are alleged:

In February 1913 Mr. James Kelly was engaged in a milk business at No. 45, Calzada de Cuitlahuac, in the City of Mexico. He had approximately 150 Holstein cows on the premises. On the 12th of that month, during a battle which took place in Mexico City, a shell burst in the archway of the cowshed, killing twelve cows. As the cows were in a perfect state of health before they were killed, Mr. Kelly, with the permission of the police authorities of the Second Commissariat of Mexico City, sold the flesh to Señor Ruben Carrillo, who was at that time engaged in the cattle trade. The value of the cows alive was 275.00 pesos Mexican each, but Mr. Kelly was only able to secure the price of 50.00 pesos each for the flesh.

The amount of the claim is for 2,800.00 pesos, being the difference between the value of the twelve cows and the proceeds of the sale of the meat.

Mr. Kelly's estimate of his loss is confirmed by Señor Ruben Carrillo in an affidavit of the 8th May, 1928.

13. The Mexican Agent did not accept the affidavit of Señor Carrillo, who, being a Mexican subject, ought not to have made his deposition before the British Consul, but before the authorities of his own country. Moreover, the witness has not been cross-questioned and he does not explain how he came to know the facts.

Apart from that, the Mexican Agent held that the bombardment to which the Memorial refers was part of the defence of the lawful Mexican Government against forces who had risen against them. The Government acted according to their most essential duty, in order to uphold the constitutional régime. The bombardment, therefore, was an act of lawful warfare and not a revolutionary act. The Agent made a distinction between *damnum cum injuria* and *damnum sine injuria*. In this case, according to his view, the Commission had to deal with damage resulting from legitimate self-defence, i.e., from acts which did not constitute any injustice. The Convention did not make Mexico responsible for damage of this nature.

14. The British Agent has replied that Señor Carrillo's affidavit is a strong corroboration of the statement of Mr. Kelly, and that it is only natural that as the claims are prepared by British authorities, the affidavit is sworn before a British Consul.

He could not agree that the events of the "tragic ten days" were to be classified as lawful warfare. At that stage there was a revolt of insurgents against President Francisco Madero and no civil war. But even if the action which the Government took were identical with warfare, there was nothing in the Convention that justified his colleague's view that hereby the obligation of the Government to give compensation was eliminated. The second article of the Convention says that "it is sufficient that it be established that the alleged damage actually took place, and was due to any of the causes enumerated in Article 3 for Mexico to feel moved *ex gratia* to afford such compensation."

Those words did clearly show that even in cases where according to international law responsibility could not be admitted, still compensation would be given to the injured parties, when it could be established that they suffered losses or damages as a result of revolutionary acts.

15. The first question with which the Commission is faced is whether the facts, upon which the claim is based, are sufficiently proved by the affidavits of Mr. Kelly and of Señor Ruben Carrillo.

As regards the affidavit of the former, the majority of the Commissioners refers to section 5 of this judgment and can only repeat that this document could only be accepted as evidence if it were corroborated by reliable outside statements of one or more other persons not interested in the claim.

As such nothing has been presented but the affidavit of Señor Carrillo, who is said to have bought the flesh of the killed cows. The majority of the Commission cannot regard this document as possessing such a force as to support in a convincing manner the claimant's deposition. The affidavit of Señor Carrillo has been drawn up more than fifteen years after the events; the declarations have been made without interrogation by the other party, and he does not say how the many minute details, about which the affiant gives evidence, came to his knowledge.

This document seems the less acceptable as sufficient evidence, because an effort ought and could have been made to obtain proof of a better quality.

Mr. Kelly relates in his affidavit that, on the very day of the event, he reported to the Police Office of the Second Ward, from which a police officer and other persons were at once sent, and prepared a written report of the facts, which report was forwarded to the Office of the Public Prosecutor under No. 2250. The producing of this document would probably have assisted the Commission very effectively to establish the truth, but no endeavour has been made to procure it. In these circumstances the majority of the Commissioners object to rely on Señor Carrillo's affidavit as a sufficient support of the deposition of claimant.

16. The Commission decides that the claim is disallowed.

Dissenting opinion of Sir John Percival, British Commissioner

1. In regard to these claims so many different points have been raised that, although I am in agreement with both my colleagues on certain points, and with the President of the Commission on certain others, it is impossible to explain the points of agreement and disagreement except in a complete separate opinion.

2. In the first place, I am unable to assent to the general proposition laid down in paragraph 5 of the President's opinion, and concurred in by my Mexican colleague, with regard to the unsupported evidence of the claimants. As the question has not only been raised in this case, but will inevitably arise not infrequently in the circumstances in which claims have had their origin and have been presented to this Commission, I deem it essential to set out what appear to me to be the rules which should guide the Commission in dealing with such evidence.

3. The view propounded by the Mexican Agent is that the statements made by the claimant are merely claims, and not evidence of fact at all, and he relied on the maxim recognized in the domestic law of many countries that no one is witness in his own action. On the other hand, the British Agent contended that such statements establish a *prima facie* case and should be accepted by the Commission unless some evidence in rebuttal is produced.

I do not find myself able to accept entirely either of these theses. On the one hand, the maxim mentioned above is not universally accepted; in England, the United States of America and elsewhere a plaintiff or a defendant is allowed, and indeed, in the case of the plaintiff, is expected to give evidence exactly like any other witness. On the other hand, it is clearly most dangerous to rely on the uncorroborated statements of a single person, even though they are not rebutted, and this danger is, of course, greater when such person is the claimant himself.

Under the rules governing the procedure of the Commission we are not bound by the laws of evidence prevailing in Mexico or in England or in any other country. But it is our duty to apply general principles of justice and equity and to give to any oral evidence or document produced before us such evidential value as we consider in all the circumstances of the case it ought to carry.

Thus, in the case of a contract, there is a principle which is almost universally admitted and with which I am in entire agreement, that, in general, both the existence and the terms of the contract must be established by a written document signed by the parties, for in making a contract it should always be possible to reduce it to writing, and this, moreover, is the common practice of civilized mankind.

But in the case of a tort or a criminal matter it is obviously almost always impossible to have any document attesting the facts, and the victim of the

wrong himself is clearly the best-informed and often the only person who has a direct knowledge of what occurred, together with all its details. In these cases, therefore, in my opinion, the Commission should not reject, as unproved, an allegation of the plaintiff merely because its truth depends on his statement alone, even although it considers that it might have been possible for him to have obtained some sort of corroboration. In arriving at its decision, it should take into consideration all the circumstances of the affair, the inherent probability or otherwise of the alleged facts and the likelihood of, and opportunity for, fraud or exaggeration.

If, after giving due weight to all these considerations, it feels a reasonable doubt as to the truth of any alleged fact, that fact cannot be said to be proved. But if the Commissioners, acting as reasonable men of the world and bearing in mind the facts of human nature, do feel convinced that a particular event occurred or state of affairs existed, they should accept such things as established, regardless of the method of proof presented.

In this matter I am in agreement with the principles laid down by the General Commission of the United States and Mexico in the unanimous decision in the Parker case, *Report*, Vol. 1, pages 37, 39 and 40, and more particularly set out in the opinion of Mr. Commissioner Nielsen when concurring in the decision of the Dillon case, *Report*, Vol. 2, page 65, as follows:

"An arbitral tribunal cannot, in my opinion, refuse to consider sworn statements of a claimant, even when contentions are supported solely by his own testimony. It must give such testimony its proper value for or against such contentions. Unimpeached testimony of a person who may be the best-informed person regarding transactions and occurrences under consideration cannot properly be disregarded because such a person is interested in a case. No principle of domestic or international law would sanction such an arbitrary disregard of evidence. It seems to me that, whatever may be said with regard to the desirability or necessity of having testimony to corroborate the testimony of a claimant, a statement need not be regarded in the legal sense as unsupported even though it is unaccompanied by other statements."

A

Claims of Messrs. Baker, Webb and Woodfin

4. Apart from these general considerations, I concur with the President for the reasons set out in paragraph 5 of his opinion, that there is ample corroboration to satisfy the Commission that the rooms of Messrs. Baker, Webb and Woodfin were looted by Felicistas.

Claim of Mr. Poxon

5. The case of Mr. Poxon is rather different. The Commission was informed that he also presented a claim in 1913 and made an affidavit at that time. But these documents were not put in, and it was admitted by the British Agent that they differed in certain particulars from those in the present claim. These facts cannot but cast some doubt on Mr. Poxon's statements; and for this reason, as well as for those set out in paragraph 5 of the President's opinion, I concur—though with some hesitation—in the view held by both my colleagues, that this claim is not sufficiently established.

6. The next point to be examined is under which, if any, provision of the Convention are the Felicista forces to be regarded as falling in order to render the Mexican Government liable for robberies committed by them. I am inclined

to think that they should be included in Article 3, subsection 2, as General Díaz undoubtedly revolted against the established Government of President Madero, and the result of his action was the fall of the Government and the death of Madero; though it is true that this result was not due solely or even chiefly to his efforts, but to the fact that General Huerta, commanding the Maderista forces, turned traitor, caused the death of Madero and eventually set up a *de facto* Government of which he was virtually the head. Now this probably was not at all what Felix Díaz intended. But he accepted the situation, as is shown by the fact that he did not continue hostilities and that General Huerta took no steps to punish him or his adherents. In these circumstances, although it cannot be said that his forces, after the triumph of their cause, established a *de jure* or *de facto* Government, it seems to me that, in interpreting the Convention, the Felicistas should be included in Article 3, subsection 2; in which case there would be no question as to the responsibility of the Mexican Government.

7. But if I am mistaken in this view and my Mexican colleague considers that its adoption would constitute an historical error, there is no doubt that the Felicistas must be included in Article 3, subsection 5; and I agree with the President, for the reasons set out in paragraph 6 of his opinion, that the robberies were brought to the attention of the authorities acting under the Government set up by General Huerta; that no steps were taken to discover or punish the authors; and that, therefore, the Mexican Government is responsible for the losses.

8. It only remains to consider what sum should be allotted to Messrs. Baker, Woodfin and Webb, and here I regret to find myself in disagreement with my colleagues as to the basis upon which these damages should be assessed. It is true that, as stated by the President in his opinion in paragraph 7, the Commission is not bound to accept the figures calculated by the claimants. Values are matters of opinion and can, moreover, be checked by other evidence or even by the personal experience of the Commissioners. But the identity of the article said to have been lost is a matter within the personal knowledge of the claimant and probably of the claimant alone. The President, in his opinion in paragraph 7, rightly points out that in this case it was impossible for the claimants to obtain corroboration with regard to the objects lost. It seems to me, therefore, that the principles I have laid down above in paragraph 3 should here be applied.

Adopting them as my basis, I am of opinion that it has been sufficiently established that these three gentlemen lost the articles specified in their respective lists. These lists were made out by the claimants immediately after they discovered their loss. There is nothing in the case or in their affidavits casting doubt on their *bona fides* or accuracy and, in the case of Mr. Woodfin, he withdrew an item from his list as soon as he recovered it.

I agree that in scrutinizing the accounts of the claimants we should take into consideration the probable value of the portable property of a young unmarried man of the class likely to reside at a Y.M.C.A. hostel. But all such young men do not have identical wardrobes, and I confess that the method adopted by my colleagues of awarding to each claimant the amount asked for by the one who appears to have suffered the least loss strikes me as more arbitrary than the one I should propose to follow, namely, to examine each list, to ignore any items which seem obviously unreasonable or exaggerated, and to value the remainder as far as may be possible at the prices at the time of the loss; bearing in mind that the actual and not the replacement value of the articles should alone be awarded.

Following this method I agree with my colleagues in awarding \$275.00 Mexican gold to Mr. Webb. To Mr. Woodfin, whose objects and values appear to be very reasonable, I should award \$600.00, and to Mr. Baker, some of whose items seem exaggerated and whose values are also rather high, the same sum of \$600.00.

Claim of Mr. Daniel J. Tynan

9. I agree that this claim should be disallowed for the reasons set out in the President's opinion.

Claim of Mr. James Kelly

10. In this case I find myself obliged to dissent from the opinion of the majority of the Commission, for it appears to me that the facts upon which this claim is based are quite adequately established.

The difference of opinion is, no doubt, primarily based on the conflicting views as to the value in general of a claimant's own affidavit which are set out in paragraph 3 above and in paragraph 5 of the President's opinion. But in this particular case there is much more than the bare allegation of the claimant. In the first place, he at once reported the facts to the Police Office of the Second Ward of the City of Mexico, and it was with the express consent of the said Police Office that he sold the flesh of the cows. The documents relating to these proceedings have not been produced, but it has not been denied that they took place. In the second place, the chief points of Mr. Kelly's affidavit are directly confirmed by the affidavit of an independent witness, Mr. Ruben Carrillo.

11. The majority of the Commission reject Mr. Carrillo's affidavit on three grounds:

- (a) That it was made fifteen years after the events;
- (b) That the declaration was made without interrogation by the other party;
- and
- (c) That he does not explain how certain statements that he makes came to his knowledge.

As to (a), this objection is inherent in the work of the Commission. When the claims were originally made, it was not known how they would be dealt with. If any tribunal competent to deal with them had been set up at the time, no doubt witnesses would have been forthcoming with memory of the events sufficiently fresh in their minds. But the Convention under which the Commission is working was not signed until November 1926, and it was not till then that the British Government realized that evidence in corroboration of the claimants' original claims should be obtained. It is clear, therefore that the evidence, whether oral or in the form of an affidavit, which will now be presented to the Commission, must depend on the witnesses' recollection of events long past, and, consequently, it seems to me that the Commission should not attach too much importance to the discrepancies in detail which must inevitably exist.

With regard to (b), the Commission, in its unanimous decision on the demurrer in the Cameron case, admitted affidavit evidence, and must, therefore, have held that this defect, which is inherent in such evidence, cannot be considered as destructive of the evidential value of an affidavit, at any rate in the case of a person other than the claimant.

As regards (c), it is a fact that Mr. Carrillo includes in paragraphs 1 to 5 of his affidavit statements, as if they were within his personal knowledge, of which he can only have been aware by hearsay. But this is a very natural error in the case of an ignorant person. If the affidavit had been drawn up for him by a

lawyer he would have distinguished between the facts of which he had been informed and believed to be true and those which he stated to be the case of his own personal knowledge.

In any case, the facts related in paragraphs 6 and 7 of this affidavit were undoubtedly within the knowledge of Mr. Carrillo, and the events were of so exceptional a character that he might well recollect them after fifteen years' interval.

12. The majority of the Commission also comment on the fact that no effort was made to produce the police report referred to in Mr. Kelly's affidavit. It would certainly have been better if the British Agent had given notice to the Mexican Agent to produce this document, or to allow him to inspect it, under rules 24 and 25 of the Rules of Procedure. But in my opinion the Commission should not allow this omission to prejudice Mr. Kelly when they are examining the truth of his claim. We are unaware whether this document is or is not now in existence. If it is not, the evidence which the majority of the Commission consider to be the best is not available, and the claimant is entitled to rely on the next best. If, on the other hand, the document still exists, it is in the possession of the Mexican Government, and I would refer to the unanimous opinion of the General Claims Commission of the United States and Mexico in the Parker case, *Report*, Vol. 1, pages 39 and 40, as follows:

"While ordinarily it is incumbent upon the party who alleges a fact to introduce evidence to establish it, yet before this Commission this rule does not relieve the respondent from its obligation to lay before the Commission all evidence within its possession to establish the truth, whatever it may be. For the future guidance of the Agents of both Governments, it is proper to here point out that the parties before this Commission are sovereign Nations, who are in honour bound to make full disclosures of the facts in each case so far as such facts are within their knowledge, or can reasonably be ascertained by them. The Commission, therefore, will confidently rely upon each Agent to lay before it all the facts that can reasonably be ascertained by him concerning each case, no matter what their effect may be. In any case where evidence which would probably influence its decision is peculiarly within the knowledge of the claimant or of the respondent Government, the failure to produce it, unexplained, may be taken into account by the Commission in reaching a decision."

I would not go so far as to say that it was the duty of the Mexican Government to produce this document when they had never been asked to do so by the other side, but I consider from the fact that they have not done so of their own initiative the Commission is entitled to draw the inference that it does not contradict, to any material extent, the allegations contained in Mr. Kelly's affidavit.

13. For the above reasons I am of opinion that the facts upon which this claim is based are sufficiently established. But the defence upon which the Mexican Agent chiefly relied was the argument relating to acts of lawful warfare referred to in paragraph 13 of the President's opinion. As the majority of the Commission rejected the claim on the facts, this point did not come up for discussion in our deliberations. I think, therefore, that all I should say is that I agree with the contention of the British Agent set out in paragraph 14 of the President's opinion, and consider that under the Convention the Mexican Government is responsible for this loss; and furthermore, that the damages claimed are not excessive.

Dissenting opinion of the Mexican Commissioner in regard to the decision taken by a majority composed of the other two Commissioners, but only as regards question nine, propounded by the learned presiding Commissioner, which reads literally as follows: "IX. If they were to be considered as falling under subdivision (5) of Article III, i.e., as rebels, has it been established that the competent authorities were blamable in any way?"

The Mexican Commissioner answers the question thus transcribed, in the negative, for the following reasons:

I. Article III, subdivision 5 of the Convention, Mexico and Great Britain, reads as follows:

" The losses or damages mentioned in this article must have been caused during the period included between the 20th November and the 31st May, 1920, inclusive, by any one or any of the following forces: . . . 5. By mutinies or risings or by insurrectionary forces other than those referred to under subdivisions 2, 3 and 4 of this article, or by brigands, provided that in each case it be established that the competent authorities omitted to take reasonable measures to suppress the insurrections, risings, riots or acts of brigandage in question, or to punish those responsible for the same; or that it be established in like manner that the authorities were blamable in any other way."

The three Commissioners being agreed upon the fact that the forces of Felix Díaz, which entrenched themselves in the Young Men's Christian Association building during the so-called tragic ten days, from the 9th to the 19th February, 1913, must be considered as rebel or insurrectionary forces, and as coming under subdivision 5 of Article III of the Convention, the text of which is above transcribed, it logically follows without the slightest effort, and from the terms themselves of said subdivision 5, that Mexico may only be declared liable for the losses sustained by Messrs. Baker, Webb and Woodfin, provided that it be proved that the competent authorities omitted to take reasonable measures to suppress the insurrection, or to punish the parties responsible therefore; or that it be shown, furthermore, that the authorities were to blame in some other manner.

Now, what should that proof consist of in this instance? The three Commissioners have with some difficulty, by a strong effort of goodwill, and by combining the depositions of the three claimants, reached the conclusion that the fact that the rooms respectively occupied by them in the Young Men's Christian Association were looted, can be considered as proved, although there is not a single declaration by any person other than the interested parties themselves, nor any other element of proof establishing the existence of that fact.

The fact of the looting of the rooms occupied by the claimants once established, *the obligation on the part of the British Government to demonstrate the fact of negligence on the part of the Mexican authorities in suppressing the insurrection or in punishing the guilty parties still stands.*

What proofs have the British Government submitted to establish the fact of such negligence? None whatever.

Did the claimants by any chance report the perpetration of the offence of theft, complained of by them, to the Mexican authorities? They did not do so, as admitted by the learned British Agent, when questioned upon this particular point by the Mexican Commissioner.

Have the British Government by any chance shown that the perpetration of the offence complained of by them came to the knowledge of the Mexican authorities in any other way? There is no evidence at all upon this point.

How can the Government of Mexico be accused of negligence in punishing the parties guilty of a theft, when the fact that the offence was committed has not been brought to their knowledge?

The Mexican authorities did have knowledge of the Díaz insurrection, and President Madero, and the Vice-President of the Republic in person combated that uprising, until they fell at the hands of the disloyal Huerta. What greater efficiency in suppressing that insurrection can be expected, than actually to lose life in defence of the institutions of Government?

Immediately after Huerta's defection, the Governor of the State of Coahuila, Venustiano Carranza, complying with the duty laid upon him by the Constitution, assumed the character of legal authority, by organizing a formidable army, effectively assisted by a public opinion, and he not only punished the insurrection, but Felix Díaz, the rebel, personally, having forced him to leave the country, and Huerta himself, by wresting from him the power he had usurped, and likewise forcing him to seek refuge in a foreign land. The remainder of the rebels either perished, or followed the fortunes of their leaders.

What more eloquent instance of the zeal and patriotism displayed by the Mexican authorities in suppressing the insurrection can be desired?

It is, however, asserted that Huerta should have punished the Díaz insurrection, and the parties guilty of the losses complained of by the claimants. (The Mexican Commissioner does not accept Huerta's authority as legitimate.)

That opinion is open to the objection that it involves a mistake in the construction of subdivision 5 of Article III of the Convention. The treaty does not provide that such and such authorities shall perform the duty imposed by the second part of said subdivision 5. It only mentions authorities in general, and this condition has been complied with. The authority of Carranza put an end to the insurrection and punished the parties responsible therefor. Mexico cannot then be liable for negligence in the performance of those duties.

It is necessary to draw a distinction between the insurrection of Felix Díaz and the looting of the Young Men's Christian Association, whether by the Felicista forces, or by the mob, as it certainly has not been shown just who was guilty of the said looting; but the fact of the looting cannot directly be inferred from that of the insurrection. The authorities punished the insurrection and not the looting, because the claimants did not report the latter fact, nor did it come to the knowledge of the Mexican authorities through any other channel.

Furthermore, this Commission has already, in various decisions, laid down the principle that the unsupported statement of the claimants cannot constitute proof of a claim. This has been expressly established by the learned President of this Court, and the Mexican Commissioner is in entire accord with his opinion. In this case, it has been said, and it is an absolutely true fact, that there is no evidence of negligence on the part of the Mexican Government, other than the claimants' own statement. The Commission will, if a decision is now rendered contrary to that principle, appear as acting inconsistently with their own ideas.

II. International Claims Commissions have always been very careful when it is a matter of declaring that a Government has been negligent in the performance of its international obligations, and have never done so without requiring proof conclusive of that fact. The charge is too serious a one to be founded on mere assumptions.

The General Claims Commission, Mexico and United States, dealt with the case of Charles E. Tolerton *v.* Mexico, in which the claimant sought to recover the sum of \$50,000.00, United States currency, on the ground that he had, when attacked, on the afternoon of the 19th January, 1905, by a group of Yaqui Indians, sustained damage to that amount, by reason of the failure to protect said claimant, and the lack of prosecution and punishment of his assailants.

The three Commissioners, i.e., the United States Commissioner, the Mexican Commissioner, and the Presiding Commissioner, Dr. Van Vollenhoven, unanimously decided that the said claim should be dismissed, because they did not hold that the charge of negligence brought against the Government of Mexico had been sufficiently proven by means of the unsupported statement of Tolerton, the claimant. (*Opinions of the Commissioners under the Convention concluded the 8th September, 1923, between the United States and Mexico*, page 402, Vol. I.)

The American Government, on behalf of G. L. Solis, before the General Claims Commission, Mexico and the United States, claimed from the Government of Mexico the sum of \$ 530.00, United States currency, for the theft of some cattle by revolutionary forces belonging to Huerta, having imputed to the Mexican Government lack of diligence in the pursuit and punishment of the parties responsible. The aforesaid Commission, presided over by their learned President, Kristian Sindballe, declared Mexico not liable for the said claim, by a unanimous vote, having founded their opinion on the fact that there was not, beyond the claimant's own deposition, proof sufficient of negligence on the part of the Mexican authorities. This decision is based on the opinions handed down in other International Commissions, also worthy of respect, such as those between Great Britain and the United States, and Great Britain and Venezuela. (*Opinions of the Commissioners under the Convention concluded the 8th September, 1923, between the United States of America and Mexico*, p. 48, Vol. II.)

The selfsame General Claims Commission, Mexico and the United States, reports (Vol. II, p. 56) the claim of Bond Coleman *v.* the Government of Mexico, which was espoused by the American Government, and in which the three Commissioners unanimously dismissed the claim on the ground that proper proof had not been shown of negligence on the part of the Government of Mexico.

As will thus be seen, all International Claims Commissions agree that negligence in punishing crime must be proved by the demandant Government, the alternative, in case of failure to do so, being that the claim must be dismissed.

In virtue of the whole of the foregoing, the Mexican Commissioner now expresses an opinion dissenting from that of his learned colleagues, to the effect that as no negligence on the part of the Mexican Government in punishing the parties responsible for the loss sustained by the claimants has been shown, and still less in suppressing the insurrection which gave rise to the said losses, the said claims should be dismissed.

NORMAN TUCKER TRACY (GREAT BRITAIN)

v. UNITED MEXICAN STATES

(*Decision No. 13, February 15, 1930, separate opinion by British Commissioner, undated. Pages 118-124.*)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. Unsupported affidavits of claimant *held* not sufficient evidence. An affidavit of claimant supported by an affidavit of another person in a position to know the facts of loss, which was made shortly after loss, *held* sufficient evidence.

RESPONSIBILITY FOR ACTS OF FORCES.—SEIZURE OF PROPERTY. A seizure of a mine by the Constitutionalist Government held not to entrain responsibility under terms of *compromis*.

1. The facts on which the British Government in their memorial base the claim are the following:

Mr. Tucker Tracy was employed as manager of the Compañía Minera Jesús María y Anexas S.A. Mines and Hacienda at San José de Gracia, Sin., Mexico. On the 16th May, 1913, a .303 Winchester carbine with 100 cartridges and on the 30th May a .3 Luger automatic pistol with 100 cartridges were delivered personally to Melquides Melendez under threat of search and confiscation. It was impossible to obtain a receipt for them.

In May 1913 the Constitutionalist forces occupied the mine after the Federal forces which had been garrisoning the town had been dislodged, and disposed of a quantity of precipitate of cyanide, valued at \$ 35,000. They were obliged by Federal troops to evacuate the place after a few days.

On the 3rd June, 1913, when the Federal garrison announced its intention of withdrawing from the town for the second time, Mr. Tracy considered it prudent to remove himself and his family to a place of greater safety. When he returned in January 1914 he discovered that a saddle mule, three horses and equipment, part of the household effects and almost all the clothing had been lost.

At the end of November 1913 the mine was seized with the aid of military forces by persons commissioned by the Constitutionalist Government of the State of Sinaloa and in February 1914 the administration was taken over by the Constitutional Federal Government. There was no reason in accordance with the civil laws operating at the time that might be offered as a pretext for the seizure of the Company's properties. There was no previous warning nor civil legal proceedings prior to the seizure. The property was returned to the Company on the 1st September, 1916. Mr. Tracy was refused permission to continue his employment as manager of the mine during the time the Government authorities had control. He consequently lost the salary which he would have earned during this period (annex 4). Information of the salary which Mr. Tracy would have earned is given in the affidavit signed by Miguel Tarriba, then president of the Company (annex 2).

The amount of the claim is 510 Mexican pesos for the objects and animals which he lost, plus 14,403.68 dollars, United States currency, for the loss of salary, and interest.

2. The evidence consists in three affidavits made by Mr. Tracy, the *first* on the 26th March, 1914, before the British Vice-Consul at El Paso (Texas), the *second* on the 20th September, 1916, before the British Vice-Consul at Mazatlán (Sinaloa), the *third* on the 30th September, 1927, before a notary public at Socorito (Sinaloa), and in an affidavit made by Señor Miguel Tarriba before the British Consul at El Paso (Texas) on the 15th December, 1914. Señor Tarriba was at that time the president of the Mining Company, which employed Mr. Tracy, and he supports the latter's claim for loss of salary.

3. The Mexican Agent pointed out that, as regards the claim of 510.00 pesos for the loss of property, there exists no other evidence than the affidavit of Mr. Tracy himself. The Agent has more than once argued that such uncorroborated statements cannot be accepted as proof.

In connexion with Señor Tarriba's affidavit he drew the attention of the Commission to the fact that the document had been sworn by a Mexican citizen before a British authority residing in the United States. He doubted whether this authority was in a position to know Señor Tarriba or to have information about his profession. In his opinion, the affidavit, drawn up without cross-examination, carried very little weight, if any.

He failed to see any evidence as to the nature of the confiscation of the mine. Nothing showed that this act was a military act, or a revolutionary act or an act committed by one of the forces falling within the terms of Article 3 of the Convention. But even if it had been satisfactorily proved that the mine was confiscated under the circumstances provided in that article, still the claim could not be allowed, because what Mr. Tracy asked was not the compensation of any direct loss or damage, but the indemnifying for the loss of prospective earnings. The Agent distinguished between *damnum emergens*, which in his opinion the Convention had solely in view, and *lucrum cessans*, which was outside the agreement between the two Governments. Mr. Tracy claimed for indirect damage, for speculative damage, for salary, which he had lost, which he might have earned, but just as well not have earned, because the duration of his employment was not guaranteed.

The Agent declined also any obligation on the part of his Government to pay interest on the sums awarded. The Convention does not speak of it and as Mexico only *ex gratia* undertook to compensate in certain cases the losses and damages suffered on account of civil war and revolutions, this country could never be deemed to be in delay, which would be the only ground on which the granting of interest could be based. Moreover, if the Commission were to decide that interest must be paid up to the date of payment of the award, it was obvious that such decision would exceed the life, and consequently the competence of this body.

4. The British Agent considered the statement of the losses suffered by Mr. Tracy, before he had to leave the mine, as a *prima facie* evidence, to which more value was to be attached than his colleague was inclined to do.

The affidavit of Mr. Tarriba was in his view a very important corroboration not only of the facts, which claimant alleges in the annexes 2 and 5 of the Memorial, but also of what he puts forward as to the character of the confiscation and of the forces who effected it.

The loss suffered by Mr. Tracy, because he lost his employment, was not prospective or speculative, but most real and direct, being the immediate consequence of the confiscation of the enterprise, where he earned his livelihood. Mr. Tracy's work was interrupted by revolutionary acts. His damage was similar to that of the Mining Company, both were involved in the same injury. He was General Manager, a man in control of the enterprise, and his prospects and future employment were so safely assured that his relation to the business had a permanent character. This was confirmed by the fact that he was restored in his function, when the mine was handed back.

The Agent could not see that the Convention excluded the awarding of interest, and the words *ex gratia* in Article 2 of the Convention could not be detached from the rest of this article, in which the principles of justice and equity are invoked, which principles in his opinion would not be complied with, if on the ascertained amount of the award no interest was accorded from the day of the presentation of the claim until the day of the final payment.

5. The views of the majority of the Commission in regard to uncorroborated affidavits of claimants are known from the decision in the claims of Messrs. Baker, Webb and Woodfin (Decision No. 12, section 5). Those views do not allow them to accept as sufficient evidence the statement of Mr. Tracy on his loss of property.

The affidavit of Señor Tarriba is accepted by the majority of the Commissioners, the Mexican Agent dissenting, as a corroboration of the statement of Mr. Tracy made on the 26th March, 1914. Señor Tarriba, as President of the Compañía Minera Jesús María y Anexas, was in a position to know exactly

what happened. He must have been in the closest touch with the events prior to the confiscation and with the confiscation itself. He swore his affidavit shortly afterwards, and there is no reason why his declaration should not be accepted as a sufficient proof of the seizure of the enterprise by public authorities.

This seizure in itself, however, does not make the Mexican Government liable according to the Convention. Property can be confiscated at all times, in all kinds of circumstances and on different grounds. To establish an obligation on the part of Mexico, it is necessary that it be proved that the act was committed by one of the forces enumerated in Article 3 of the Convention; in other words, the seizure must not have been an administrative act or an act ordered by purely civil authorities, but must have emanated from the elements which the article has in view, or, even if ordered by civil authorities, have been due to revolutionary events and disturbed conditions and committed by the forces already enumerated (last words of Article 3).

In examining whether in this case they had to deal with such circumstances, the Commissioners could not fail to remark a contradiction between the different statements.

On the 26th March, 1914, Mr. Tracy declared that the property had been confiscated by the Constitutionalist Government. On the 25th December of the same year Señor Tarriba said that the mine was seized by persons commissioned by the Governor of the State of Sinaloa and had been exploited since that date by order of and under officials appointed by that Governor, and afterwards by order of and under officials appointed by the Constitutionalist Government. On the 20th September, 1916, Mr. Tracy signed a statement, in which he declares that the mine was confiscated by the Government of Mexico.

In none of these documents the slightest indication is to be found that the confiscation was a military act or an act of violence or an act committed by forces. Only in his affidavit of the 30th September, 1927, drawn up after the terms of the Convention were known, Mr. Tracy amplifies his statements of 13 years ago and relates that the seizure and the administration of the Company's property were carried out with the aid and in the presence of military forces. He further mentions that a letter, sent by the Minister of Foreign Affairs of the Constitutionalist Government to the British Vice-Consul at El Paso (Texas), dated the 24th April, 1914, proved conclusively that the seizure and the administration of the properties of the Company was in accordance with the direct orders of the Chief of the Constitutionalist Arms.

Could this last document have been produced, it would probably have been of great assistance to the Commission, but it was not available, the archives of the Consulate of that period not having been preserved.

In these circumstances, the Commission must attach more value to the contemporary affidavits than to a document drawn up considerably later. In the former no mention is made of any forces, there is thrown no light on the nature of the confiscation, and there is nothing which prevents the Commission from regarding the measure as a civil act. Of the contrary, i.e., of the applicability of Article 3 of the Convention, which would be essential for the granting of an award, no convincing proof has been given.

6. The claim of the British Government on behalf of Mr. Norman Tucker Tracy is disallowed.

Separate opinion of Sir John Percival, British Commissioner

1. While I am prepared to concur in the opinion of my colleagues that this claim should be disallowed, I cannot entirely subscribe to the reasons set out in the opinion of the President.

2. With regard to the claim for \$510.00 for objects belonging to the claimant which are said to have been stolen, appropriated or taken from him, I do not agree with my colleagues that the fact that this claim is based on the affidavit of the claimant alone is a sufficient ground for rejecting it, and this for the reasons set out in my opinion in the case of Messrs. Baker, Webb and Woodfin (Mexico City Bombardment Claims), paragraph 3. I do, however, consider that it has not been adequately established that the Mexican Government is responsible under the Convention for these losses for the following reasons:

(a) As regards the carbine and pistol said to have been taken by Melendez: this person must be presumed to be a bandit referred to in Article 3, subsection 5, of the Convention, and there is no proof of negligence on the part of the Mexican authorities in respect of this robbery; moreover, it is admitted that Melendez was afterwards executed, presumably for one of his misdeeds among which this may be included.

(b) As regards the mule, bridles and household effects, there is no evidence as to who were the persons who stole these articles nor in what circumstances they were taken, and consequently no proof that the Mexican Government is responsible for the loss.

(c) As to the three horses, it is stated in Mr. Tracy's affidavit that they were taken by Federal guerrillas, in which case the Mexican Government would be liable for the loss, but Mr. Tracy admits that he did not possess sufficient evidence to prove that they were his property.

For these reasons I do not consider that he has established this part of his claim to the satisfaction of the Commission.

3. Coming to the question of the claim for loss of salary, I agree with the President that it has been sufficiently proved that the mine was confiscated by certain Mexican authorities, which was the cause that Mr. Tracy lost his employment, and, furthermore, I also agree that there is not adequate proof to make the Mexican Government responsible for the losses caused by this confiscation under the last paragraph of Article 3 of the Convention.

But I arrive at this conclusion in view of the special circumstances of the evidence offered in this case and consider that it would be dangerous to treat the decision as a precedent for other cases. When property has been confiscated by civil authorities, the Mexican Government is only responsible for loss or damage caused by such action if two conditions exist:

1. That the acts were due to revolutionary events and disturbances, and
2. That the acts were committed—or, as it should better be translated, executed—by one of the forces specified in Article 3, subdivisions 1, 2 or 3 of the Convention.

Now the first of these conditions was undoubtedly, in my opinion, fulfilled in this case, and when this is so I do not consider that it is necessary for the British Government to establish that physical force was exercised by the agents referred to in the Article. It should be sufficient that the order emanated from a military chief or that the civil authorities were supported by a military force sufficient to overcome any justified resistance. In this case, for the reasons set out in the President's opinion, and more particularly as Mr. Tracy, who

alone alleges the presence of military forces at the time of the confiscation, was not himself on the spot at the time, I concur in the view of my colleagues that the existence of the second condition referred to above has not been established, and that, therefore, the claim must be disallowed.

FREDERICK W. STACPOOLE (GREAT BRITAIN)
v. UNITED MEXICAN STATES.

(*Decision No. 14. February 15, 1930, dissenting opinion (dissenting in part) by Mexican Commissioner. January 29, 1930. Pages 124-130.*)

AFFIDAVITS AS EVIDENCE.—DAMAGES. PROOF OF. An affidavit of claimant, made shortly after the loss, supported by an affidavit of a companion, made seven years after the loss, *held* sufficient evidence of circumstances of loss. Such affidavits *held* sufficient evidence of items of property lost, even though supporting affidavit was not fully corroborative, when such items could reasonably in the circumstances have been possessed by claimant. Affidavit of claimant as to value of item lost *held* not sufficient evidence and excessive. Tribunal instead estimates damages to be awarded.

1. The Memorial, filed by the British Agent, sets out that on the 4th May, 1920, Mr. Stacpoole left the Hacienda de Guadalupe, near Sultepec, with Mr. R. J. H. Danley for Mexico City owing to the danger to person and property from the numerous soldiers in that neighbourhood. About 2.30 on the same day they were stopped near Sultepec by a number of Obregonistas. They were threatened and insulted by these men and ordered to proceed with them to headquarters. On the way there, Mr. Stacpoole's pack mule, together with all their baggage, was taken away. At the headquarters an officer demanded that they should hand over their animals, saddles and their belongings. They requested permission to retain them for riding to Sultepec, where they promised to arrange matters with the Obregonistas. This request was refused and they returned to Sultepec on foot. Every effort was made to obtain the return of this property, but the next day, the 5th May, Mr. Stacpoole recovered his mule and raincoat only. On the following days he made attempts to recover his property in Toluca, but without success. At the time of the robbery Mr. Stacpoole produced a safe-conduct signed by General Pablo Gonzalez, and a card from the Ministry of War authorizing him to carry arms. These documents were not respected.

The amount of the claim is for \$475.50 (four hundred and seventy-five pesos, fifty centavos).

2. The British Agent produced an affidavit of Mr. Stacpoole before the acting British Consul-General in Mexico City, dated the 5th June, 1920, and an affidavit of the afore-mentioned Mr. Danley before the acting British Vice-Consul in Mexico City, dated the 14th July, 1927. Mr. Danley was at the time of the hold-up and at the time he signed his affidavit Vice-President and General Manager of the Sultepec Electric Light and Power Company, and lived at Toluca. He confirms the facts set out in the affidavit of Mr. Stacpoole.

3. The Mexican Agent contended that as Mr. Danley, being an American citizen, had sworn his affidavit before a British Vice-Consul in Mexico, and could accordingly not be prosecuted either in Mexico or in the United States

or in England, in case of his having made a false statement, his assertions could not be relied upon. He denied that Mr. Stacpoole or Mr. Danley could know that the men who stopped them were Obregonistas, in consequence of which it had not been proved that the facts fell within Article 3 of the Convention. Neither could the Agent see in Mr. Danley's statement any evidence as to the amount, of the loss for which Mr. Stacpoole claims.

4. The British Agent argued that the two affidavits corroborate each other and constitute at least a *prima facie* case, against which his colleague had failed to produce any rebuttal. He thought the statements worthy of acceptance, and the amount, which Mr. Stacpoole claims, fair and reasonable.

5. The Commission by a majority judges Mr. Danley's affidavit a sufficient support of the statements of claimant. Mr. Danley travelled with Mr. Stacpoole, when the events set out in the Memorial occurred. He is himself not interested in the decision on the claim, and it is difficult to see why he should have committed perjury. There is no conflict whatever between both statements, and the time elapsed since the events is not too long to assume that an eye witness could still remember them in 1927. It is equally comprehensible that men like Mr. Stacpoole and Mr. Danley, who lived in the part of the country where they met the troops, and who had left their homes in order to bring themselves into safety, were sufficiently informed about the state of affairs to be able to know to which of the contending forces the assailants belonged.

The majority of the Commission is the more inclined to admit the evidence that has been shown, because, as the Mexican Agent informed the Commission, it has not been possible to trace the declaration of Mr. Stacpoole, according to his statement, made on the 4th May, 1920, before the Municipal President of Sultepec, which declaration, if it could have been obtained, would possibly have been evidence of a stronger quality.

In these circumstances the majority of the Commission is convinced that on the 4th May, 1920, the claimant was met by Obregonistas and that they took part of his property. As the Obregonistas at the time of the occurrences were to be considered as "revolutionary forces, which, after the triumph of their cause, have established Governments *de jure* or *de facto*" (subdivision 2 of Article 3 of the Convention), the members of the Commission, whose view is here expressed, deem that the obligation of the Mexican Government to compensate the loss exists.

6. The last question to be answered touches the objects which were taken and the value that must be ascribed to them. There is no absolutely convincing evidence in this respect, as there will hardly ever be in similar circumstances. It cannot be expected that Mr. Stacpoole was able to establish the pre-existence of what he claims as lost, neither could his companion possess knowledge in this matter. Mr. Danley does not mention more than a revolver, a raincoat (which was afterwards recovered), cash and other articles.

As the majority of the Commission explained in the decision on the claims of *Messrs. Baker, Webb and Woodfin* (Decision No. 12), it does not admit that, once the facts having been admitted as proved, the mere absence of detailed evidence as to the exact amount of the loss, justifies to disallow the whole claim. In this particular case, the Commission cannot estimate the enumeration, given by Mr. Stacpoole of the articles which he had to surrender, as exaggerated. The objects which he mentioned are certainly not more than a man who tries to save himself and his property, is likely to carry with him. But the Commission holds another view as regards the value, which the claimant attributes to each of his belongings. This estimate is considered as being, for nearly all the

items, on too high a level, and the Commission does not feel at liberty to adopt it.

7. The Commission decides that the Government of the United Mexican States is obligated to pay to the British Government on behalf of Mr. Frederick W. Stacpoole the sum of 300.00 (three hundred) pesos Mexican gold.

Dissenting opinion of the Mexican Commissioner in the Decision rendered in this Claim only as regards the Probative Value of the Depositions of Claimant and those of the Witness, Robert J. Danley

I. Claimant avers in his affidavit that he left the "Guadalupe" ranch, near Sultepec, State of Mexico, for the City of Mexico, on the 4th May, 1920, accompanied by R. J. H. Danley, on account of the danger then existing for life and property on the part of the numerous soldiers marauding in that vicinity; that they were stopped at 2.30 p.m. by some Obregonist soldiers under the leadership of General Crisóforo Ocampo; that they were threatened and insulted by these men and ordered to go with them to headquarters; that on their way, some of the men took away Mr. Stacpoole's pack mule and his luggage; that, on reaching headquarters they were ordered by an officer to hand over their horses, saddles and all their belongings, which they did, notwithstanding the request made by Mr. Stacpoole himself to be allowed to keep his belongings in the hope of arranging the matter in Sultepec with the Obregonistas; that on the following day he recovered the mule and his water-proof, but not the other things, the list of which appears in the affidavit, with their respective values.

Mr. Stacpoole also mentions Mr. Hughes as a witness in connexion with his efforts to recover the articles taken away from him, stating that on the 4th May he made a deposition before the Mayor, Mr. Nicolás Loza, and several Government employees and officers, identifying the men who had robbed him.

Mr. Robert J. H. Danley, an American citizen, declared before the British Consul at Mexico City on the 14th July, 1927, under oath, that he left the "Guadalupe" ranch, for Mexico, on the 4th May, 1920, accompanied by Mr. Frederick W. Stacpoole and a servant; that, on their way they met Obregonista troops, who, pointing their rifles at them, ordered them to halt; that said troops informed them that they were under General Crisóforo Ocampo; that they were deprived of their cash and other belongings and then arrested by these soldiers and taken to headquarters; that on their way to headquarters they took from them a mule led by a servant and carrying Mr. Stacpoole's luggage; that, once at headquarters, the officers and other men took their saddles from them; that he cannot testify just what the losses sustained by Mr. Stacpoole were, but he did know that he lost his revolver, his water-proof, the cash he had with him and other articles.

The Mexican Commissioner considers that the evidence produced by the British Government to establish the claim is very deficient and does not warrant a judgment against the Mexican Government for the amount claimed.

The statement of the claimant, Mr. Stacpoole, can never be considered, by itself, as sufficient proof of his own claim. Claimant's deposition, called an *affidavit* in Anglo-Saxon technical terms, is the equivalent of what is known as "confession" in the legislation of all countries of Latin origin. Confession, as an element of proof, is always applied against, and never in favour of the person making it. The opposing party generally makes use of that proof to be able to demonstrate, thereby, the fact he wants to submit, in an irrefutable manner, to the consideration of the judge for, evidently, there cannot be stronger proof

against the person making it than his own confession. This proof generally relieves the person making use of it, from producing other proofs on the same fact, and thus they say in Law: an admission by the party himself dispenses with proof.

The difference between confession and testimonial evidence is that the person making it is always one of the contending parties. Testimonial evidence generally emanates from persons who are strangers to the suit. In either case, both the one answering an interrogatory and the one declaring as a witness must do so under affirmation as to speaking the truth. The purpose of such affirmation is to warn the person confessing or the one declaring, as to the commission of the offence known as perjury, in case they do not speak the truth. The deponent is thus constrained to speak nothing but the truth, knowing that he will otherwise be prosecuted. That is why the affirmation of the person testifying is indispensable, whether he is a witness or a party directly interested, and why it is necessary that it should be made before a competent authority so as to produce all the corresponding legal effects. The declaration or confession, thus taken, constitutes a guarantee for the judge as well as for the opposite party, because he knows that a witness testifying against him can be cross-examined in order to make sure as to the truth sought after.

The foregoing principles, governing confession and testimonial evidence, once laid down, we shall now endeavour to examine the affidavits of Mr. Stacpoole and Mr. Danley, in order to arrive at the conclusion contained at the beginning of this study to the effect that the facts asserted in the affidavit have not been established either by the sworn statement of Mr. Stacpoole or by that of Mr. Danley.

The sworn statement made by Mr. Frederick W. Stacpoole before the British Consul in Mexico City has not the necessary guarantee for it to be held valid, for it is the claimant himself, who, in his own interest, makes same, and it would only be valid in whatever could be detrimental to him. His confession should, therefore, be looked upon with distrust, and, in no way, as sufficient in itself to prove the fact dealt with.

Mr. Danley's affidavit, not contemporaneous with the events, is still in worse condition to be considered as sufficient proof than that of Mr. Stacpoole, because he, being an American citizen, made his deposition before a British Consul to whom he probably was not known. Consequently, Mr. Danley's affidavit has not the safeguard, for the judge, in case there should be a false declaration, of its being possible to prosecute him for perjury, because he is neither a British subject nor a Mexican citizen. In other words, this witness could knowingly have made a mis-statement, feeling sure he was not incurring real responsibility. And a witness in such a condition does not deserve to be looked upon as such before any authority. His testimony has not the slightest weight in the balance of justice.

The learned Presiding Commissioner called upon the British Agent to state Mr. Danley's address and asked him whether he could produce him before the Commission. The British Agent replied that he did not know Mr. Danley's address, and that he could not, therefore, produce him, adding that he considered Mr. Danley's affidavit as sufficient, and that only in exceptional cases would the witnesses be able to appear before the Commission. This admission by the British Agent further weakens the probative value of Mr. Danley's affidavit, for, as the proof devolves on the British Agent, he should do his utmost to grant the request of the Presiding Commissioner, and show, in the last event, that production of the witness was not feasible.

The Mexican Assistant Agent showed before the Commission that he had

endeavoured to identify General Crisóforo Ocampo, by writing to the proper authorities, without any result.

It is to be regretted that the British Agent did not produce the witness, Mr. Hughes; that he did not produce the report of the proceedings held before the Mayor of Sultepec, Mr. Nicolás Loza, and the Government employees and officials referred to by Mr. Stacpoole in his affidavit (annex 1). The statement made by the servant accompanying Messrs. Stacpoole and Danley, referred to in annex 2, could also have been produced as evidence. This omission on the part of the British Agent makes it necessary for the Commission to dismiss the claim for lack of proofs, which should have been, but were not produced, without explaining the reason for said omission, for, if it is true that Mexico's responsibility should be determined according to equity and justice, this circumstance does not relieve the British Government from proving the facts on which they base their claim.

To declare a Government liable on the strength only of the depositions of the claimant and of a single witness, open to the objections mentioned above, would constitute a disregard for the general principles of Law followed by all International Claims Commissions which have always required conclusive proof before pronouncing judgment.

II. In order to show that the forces to which is ascribed the wrongful withholding of the objects for which claim is made were Obregonistas, to show also that the objects so wrongfully withheld were those listed by Mr. Stacpoole; and, to establish the value of these objects, there are no proofs other than the claimant's deposition and that of the witness, Mr. Danley. The Mexican Commissioner again invokes the arguments already advanced to maintain that such elements of proof are not sufficient to enter judgment against the Mexican Government, and for this reason regrets that he does not agree with his colleagues as regards the estimation of that evidence and holds that the claim in question should be disallowed.

A. H. FRANCIS (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 15, February 15, 1930. Pages 131-132.*)

DENIAL OF JUSTICE.—FAILURE TO PROTECT.—FAILURE TO SUPPRESS OR PUNISH.

When murderers of British subject were apprehended and executed within two weeks of the commission of the crime and when no evidence was produced that the authorities had failed to take reasonable measures to protect the neighbourhood, claim *disallowed*.

Cross-reference: Am. J. Int. Law, Vol. 25, 1931, p. 773.

1. This is a claim on behalf of the widow of Mr. Thomas Francis, a British subject, who was murdered by a party of Mexicans on the 9th December, 1914, on the road about six miles north-east from the San José mining property in the State of Sonora.

2. There is no serious difference of opinion between the parties as to the facts, which may be summarized as follows: Mr. Thomas Francis, in the latter part of 1914, was working a mining property near the town of Nacozari, in the State of Sonora, on lease from the owner, Mr. Montgomery, and his family were residing at Douglas, in the State of Arizona, U.S.A. On the 9th December

Mr. Francis wishing to visit his wife, who was ill, started to ride across country to Douglas with two companions, it being necessary to go by road as the railway line had been cut during revolutionary hostilities. On the way they were ambushed by a party of Mexicans and all killed. The bodies were found the same day by a servant of Mr. Montgomery, who at once informed the authorities at Nacozari. The Commandant of that town, the local Judge and fifteen soldiers arrived that evening, proceeded next day to the place of the crime, found the bodies, which had been robbed and mutilated, and took them to Nacozari.

3. A judicial investigation was immediately commenced and on the 13th December two Mexicans, José Escalante and Estedin Cruz, were arrested in possession of some of the effects of the murdered men. The accused admitted their crime; were convicted, and, by order of General Benjamin Hill, were shot on the 21st December. There is some doubt as to whether the murderers were employees of the deceased and committed the murder for personal reasons, or whether they were bandits, and their object was robbery. But the Commission is of opinion that this point is immaterial, for, even on the latter assumption, the Mexican Government would only be liable in damages for the murder by virtue of Article 3, Subsection 5, of the Convention if the authorities omitted to take reasonable measures to suppress the acts of brigandage, or to punish those responsible for the same, or were blamable in some other way.

4. Now it is evident that the criminals were punished with exceptional promptitude, seeing that they were executed within a fortnight of the crime, and the only ground, therefore, upon which the British claim can be based is that the authorities omitted to take reasonable measures to suppress the offence or to protect peaceful citizens residing in the neighbourhood.

5. There is no direct evidence whatever of negligence on the part of the authorities, and the British Agent did not even suggest any specific measures that they should have taken. In no country in the world can isolated crimes of this nature be prevented, and even if, in view of the disturbed state of the country, the Mexican authorities had regularly patrolled the road, it cannot be said that this would necessarily have prevented the murder. Moreover, it is admitted in the claimant's affidavit that Mr. Francis had, on previous occasions, made trips between the mining property and the city of Douglas with perfect safety. The authorities, therefore, had no reason to anticipate that there was any special danger on the road which he took on this occasion.

6. The Commission consequently is of opinion that no omission or other fault has been established against the Mexican authorities and that the claim must be rejected.

Decision

The claim of His Britannic Majesty's Government on behalf of Mrs. A. H. Francis is disallowed.

MAZAPIL COPPER COMPANY (LIMITED) (GREAT BRITAIN) *v.*
UNITED MEXICAN STATES

(*Decision No. 16, February 15, 1930. Pages 132-136.*)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—PROOF OF REPRESENTATIVE CAPACITY.—RECEIPTS FOR REQUISITIONED PROPERTY.—RESPONSIBILITY FOR ACTS OF FORCES.—SEIZURE OF PROPERTY. Power of attorney ratifying proceedings of representatives *held* sufficient evidence of representative capacity. Vouchers or receipts delivered by captain of armed forces seizing property, signature of which was shown to be valid, *held* sufficient evidence of loss.

Cross-reference: Am. J. Int. Law, Vol. 25, 1931, p. 775.

I. The British Agent, on behalf of the Mazapil Copper Company (Limited), claims from the Government of Mexico the sum of \$7,002.64 Mexican gold, for losses sustained at the Company's mines, in the vicinity of Concepción del Oro, during the occupation of that place by revolutionary forces in the month of May 1911.

II. The said Company is represented by Messrs. John Blackett, Desiderio S. Galindo and Percy E. O. Carr.

III. The British nationality of the Company has been established by means of annex 6, and consists of a certificate of incorporation issued in London on the 21st April, 1896, under the Companies Acts, 1862 to 1890.

IV. The Mazapil Copper Company (Limited) owned and operated certain mines at Concepción del Oro, Naranjera, San Pedro de Ocampo, Aranzazu, Cata Arroyo and San Eligio. In the month of May 1911 the Concepción del Oro District was occupied by revolutionary forces. Said revolutionaries did, at various mines and camps of the Company, demand and take horses, rifles, saddles, provisions and other articles for the assistance of their cause. First, Captain G. G. Sanchez was in command of the revolutionary forces responsible for these demands. The said G. G. Sanchez gave receipts for all articles taken by his forces; the copies of these receipts are given in annexes 8 and 9, and the originals were produced before the Commission.

V. The Mexican Assistant Agent alleged in defence that the damage had not been proved, and still less that it had been caused by any forces within the meaning of subdivisions 1 to 4 of Article III of the Claims Convention, Mexico and Great Britain, and that, should said damage have been caused by insurrectionists, mutineers or mere brigands, the Government of Mexico had not been guilty of omission or negligence in suppressing the act or in punishing the parties responsible for the same. He further contended that it had not been shown that the damage amounted to the sum claimed.

VI. The Mexican Agent contended that Messrs. John Blackett, Desiderio S. Galindo and P. E. O. Carr had not shown that they were authorized to represent the Company, for which reason the Memorial should be dismissed.

VII. The British Agent filed a reply, stating that proof that Messrs. Blackett, Galindo and Carr were authorized to file claims on behalf of the Mazapil Copper Company (Limited) would later be filed with the Secretaries to the Commission; that the originals of the receipts given by Captain G. G. Sanchez had already been asked for; that the proof that the claimants had sustained the losses and damages for which they claim was contained in annexes 7, 8 and 9.

to the Memorial from His Britannic Majesty's Government; that the proof that said losses and damages were caused by rebel forces was likewise contained in the aforesaid annexes; that it was public and notorious that on the date on which said losses took place there was a revolution against the Mexican Government, and that said forces came within the meaning of the first four subdivisions of Article III of the Convention; and, lastly, that the proof that the losses did amount to \$7,002.64 Mexican gold was contained in annexes 8 and 9 to the Memorial, as also the original receipts signed by First Captain G. G. Sanchez.

VIII. A certified copy of a deed containing the statements made by Mr. Lewis Daniel Fry as the attorney in fact for the Mazapil Copper Company, ratifying the acts of Messrs. P. E. O. Carr, John Blackett and Desiderio S. Galindo, the first as the former Manager of the Company from the end of 1907 until the end of 1916, the second as Auditor-General of the Coahuila and Zacatecas Railway since 1910, and the third as Superintendent of the said Railway from 1918 to 1920, has been submitted to this Commission; the said Attorney in fact approves the acts executed by Messrs. Carr, Blackett and Galindo in connexion with the claims presented to the Government of Mexico. The said Mr. Lewis Daniel Fry established before Notary Eulegio de Anda the representative capacity in which he appears for the Mazapil Copper Company (Limited).

IX. The vouchers to which claimant refers and which are signed by G. G. Sanchez, First Captain, are the following:

Value of one roll of tricolour ribbon for the army, signed at Concepción del Oro, the 14th May, 1911; another receipt signed by the said Captain G. G. Sanchez for the value of	\$ 11.30
Sundry articles; a further receipt signed the 20th May, 1911, for Being the value of one pair of boots; a further receipt for	43.72
Being a loan for payment of the troops, signed the 16th May, 1911, by the said Captain G. G. Sanchez; a further receipt, signed at Concepción del Oro, Zac., on the 14th May, 1911, by the said G. G. Sanchez for the amount of	17.50
Being the value of two horses ready saddled; a list of horses, saddles and other articles delivered to the self-same revolutionary leader, G. G. Sanchez, to the value of	3,000.00
Signed at Concepción del Oro, Zac., the 15th May, 1911, intended for the equipment and arming of the forces of the said Captain Sanchez; a further receipt, signed by the said Captain G. G. Sanchez, for	200.00
Being the value of one horse, one rifle, and one revolver, dated the 20th May, 1911	3,500.22
And, lastly, a further list of articles commandeered by the said Captain Sanchez on the 31st May, 1911, to the value of	170.00
	59.90
TOTAL	\$7,002.64

X. The Mexican Agent filed a Rejoinder maintaining the pleas contained in his Answer.

With this claim, numbered 34, there was also filed a second claim of the Mazapil Copper Company (Limited) for the amount of \$56,739.41 Mexican gold, for damage sustained by the Coahuila and Zacatecas Railway during the years 1918 to 1920 inclusive; but this Commission will only, by agreement between the two Agents, and for the time being, adjudicate upon the claim

for losses sustained at the Company's mines at Concepción del Oro in 1911, leaving the second claim for damage to the Coahuila and Zacatecas Railway, pending decision, until such time as the Mexican-British Claims Commission shall decide other claims of the same nature.

XI. This claim was, on the 17th day of the present month of January, argued before the Commission. The British Agent stated his claim, and the Mexican Agent said that, as the British Agent had filed a deed of ratification of the claim from the attorney in fact of the Mazapil Copper Company (Limited), the Commission would decide what they thought right. And in regard to the authenticity of the various receipts signed by First Captain G. G. Sanchez, he submitted various official documents, the originals, signed by G. G. Sanchez, at one time Governor of the State of Michoacán, so that the Commission might, after the necessary comparison of the signatures on the receipts submitted by the claimant with the signatures on the official documents mentioned above, decide whether the signatures on the former were authentic or otherwise.

XII. The deed of power of attorney produced by Mr. Fry on behalf of the Mazapil Copper Company (Limited) is undoubtedly a public instrument which constitutes full proof, and as the proceedings carried out by Messrs. Blackett, Carr and Galindo, as the representatives of the said Company, are therein ratified, the Commission declares that the claimant Company has duly shown proof that they are its representatives, in accordance with Article 10 of the Rules of Procedure.

XIII. It is an historical fact that First Captain G. G. Sanchez operated as a Maderista leader against the Government of General Porfirio Díaz, in the Concepción del Oro District, State of Zacatecas, where the mines of the Mazapil Copper Company (Limited) are situated, on the very dates appearing on the receipts issued to the claimant Company. It is also an historical fact that Gortrudis G. Sanchez, a First Captain in the Maderista forces in 1911, subsequently became the Governor of the State of Michoacán with residence at Morelia, and as from a careful examination by the Commissioners of the signatures on the receipts upon which the Mazapil Copper Company bases its claim, and of the signatures upon the official documents produced by the Mexican Agent, there is no reason to doubt that they are the same, the Commission consider themselves authorized to declare that the receipts executed by First Captain G. G. Sanchez to the claimant Company are authentic.

XIV. Consequently, and as the First Captain G. G. Sanchez comes within the meaning of subdivision 2 of Article III of the Convention, as a Maderista revolutionary, it is unquestionable that the Government of Mexico is liable for the damage claimed for. In view of these considerations, the Commission, by a unanimous vote, hereby declare:

That the Government of the United Mexican States is bound to pay to the Government of His Britannic Majesty, on behalf of the Mazapil Copper Company (Limited), the sum of \$7,002.64 Mexican gold.

JOSEPH SHONE (GREAT BRITAIN) *v.* UNITED MEXICAN STATES*(Decision No. 17, February 15, 1930. Pages 136-141.)*

AFFIDAVITS AS EVIDENCE. Affidavit of claimant containing inconsistencies, obscurities and arithmetical errors, supported by sworn statement of brother-in-law that facts stated in such affidavit were true and correct, *held* not sufficient evidence when upon face of claimant's affidavit it appeared that such brother-in-law was not present at most of the material times.

*(Text of decision omitted.)*WILLIAM E. BOWERMAN AND MESSRS. BURBERRY'S (LIMITED)
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES*(Decision No. 18, February 15, 1930, dissenting opinion by Mexican Commissioner, February 12, 1930. Pages 141-146.)*

ASSIGNMENT OF CLAIM. A successor to claimant's business, who took over such business by instruments dated subsequent to loss but effective as of a date prior to loss, *held* entitled to present claim. In any event, the right to claim passed as an existing asset among the assets sold and transferred.

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS.—EFFECT OF NON-PRODUCTION OF EVIDENCE BY RESPONDENT GOVERNMENT—PRIMA FACIE EVIDENCE. An assault on, and burning of, a train on line from Mexico City to Veracruz is an act of violence of such public notoriety as to entrain responsibility of respondent Government when it failed to show that it took any action whatever in the matter. (*Prima facie* evidence.)

DAMAGES, PROOF OF. Insurance value placed on trunk by claimant prior to loss *held* some evidence of value. Valuations of loss put forward by claimants accepted by tribunal to the extent reasonable.

EXECUTION OF DECISION.—EVIDENCE. Though there is no clear evidence of British nationality, decision not delayed, but right of execution made conditional on furnishing of such evidence. (See decision No. 25.)

Cross-reference: Am. J. Int. Law, Vol. 25, 1931, p. 778.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933. p. 226 at 238.

1. This case consists of two claims:

(1) A claim for £233 9s. 0d. put forward by Mr. Bowerman on behalf of Messrs. Burberry's (Limited) for the loss of a quantity of sample garments contained in a trunk which was despatched on the 6th December, 1919, by Mr. Bowerman from Tampico Station to Veracruz, and was destroyed *en route* by rebels who assaulted and burnt the train to Veracruz on the 10th December, 1919; and

(2) A claim by Mr. Bowerman himself for £16 11s. 0d., the value of personal effects of his own contained in the same trunk.

2. To these claims the Mexican Agency, apart from a formal denial of the facts, opposed two principal defences:

(1) That Mr. Bowerman was not the Agent of Messrs. Burberry's (Limited), and was not authorized to put forward the claim on their behalf, as provided by article 10 of the Rules of Procedure; and

(2) That even assuming that the trunk was destroyed by rebels, they were not forces within the meaning of subdivisions 1-4 of Article 3 of the Convention, and if they were to be included in subsection 5 of this Article, the Mexican authorities were not to blame either in the matter of repressing the act or of punishing the parties responsible therefore.

3. To these defences the British Agency replied that they were prepared to furnish proof that Mr. Bowerman was the authorized Agent of Messrs. Burberry's (Limited), and that the persons responsible for the loss were forces included in one of the first four paragraphs of Article 3. At the hearing, however, the British Agent admitted that he was not able to establish the latter contention, and that therefore the forces referred to must be included in subsection 5 of Article 3, but he contended that the Mexican Government was liable for the losses as the competent authorities, with full knowledge of the facts, had taken no measures whatever to suppress the acts complained of or to punish those responsible for the same.

4. In his rejoinder the Mexican Agent contended that it lay with the British Government to establish the omissions or faults on the part of the Mexican authorities, and that of this no evidence had been given, and at the hearing he raised an additional defence, namely, that the loss claimed had been incurred by the partnership of Burberry's, and that the claimants, Messrs. Burberry's (Ltd.), who had purchased the business of the firm of Burberry's on the 12th January, 1920, i.e., after the events forming the subject of the claim, had suffered no loss and no *locus standi* to make the claim.

5. With regard to the first defence of the Mexican Government, which was really in the nature of a motion to dismiss, the British Agent put in a copy of the agreement dated the 12th January, 1920, between the firm of Burberry's and the Company of Messrs. Burberry's (Limited) whereby the latter purchased the business of the former.

From this document it appears that, although the agreement was made on the 12th January, 1920, it was provided by article 2 that the purchase and sale should take effect as on and from the 3rd April, 1919, and by article 9 it was provided that the vendors (i.e., the firm of Burberry's) should be deemed as from the same date to have been carrying on the business of Agents for the Company (i.e., the present claimants), and that the Company should assume all the transactions and acts done by the vendors as from the same date of the 3rd April, 1919.

Documentary evidence was also provided that Mr. Bowerman was, in December 1919, the travelling representative of the firm of Burberry's, who, as shown above, were acting as Agents at that time for Messrs. Burberry's (Ltd.), and that he is now the representative of Messrs. Burberry's (Limited) and authorized to make the claim on their behalf.

The majority of the Commission is therefore of opinion that the conditions of article 10 of the Rules of Procedure have been complied with, and that the objection of the Mexican Government must be overruled.

6. The Commission is of opinion that it has been sufficiently proved by the affidavit of Mr. Bowerman, dated the 6th May, 1921, and by the telegram dated the 18th December, 1919, from Mr. S. A. Orozco, Superintendent of

Express, Puebla, to Francisco R. Nino, Agent at Veracruz for the Constitutionalist Express, that the trunk containing the articles which are the subject of this claim, was destroyed in an assault on the south mixed train at Kilo 278 on the 10th December, 1919, and that this assault was committed by insurrectionary forces or brigands referred to in Article 3, sub-section 5 of the Convention.

7. With regard to the responsibility of the Mexican Government for the acts of these forces or brigands, the majority of the Commission would refer to the principles laid down in the opinion of the President in the decisions of the claims of Messrs. Baker, Woodfin and Webb (Mexico City Bombardment claims) Paragraph 6. Reference is there made to the difficulty of imposing on the British Government the duty of proving a negative fact such as an omission on the part of the Mexican Government to take reasonable measures, and it is stated that whenever an event causing loss or damage is proved to have been brought to the knowledge of the Mexican authorities or is of such public notoriety that it must be assumed that they had knowledge of it, and it is not shown by the Mexican Agency that the authorities took any steps to suppress the acts or to punish those responsible for the same, the Commission is at liberty to assume that strong *prima facie* evidence exists of a fault on the part of the authorities.

In this case Mr. Bowerman, who left Mexico almost immediately after the loss, did not call the attention of the authorities to the matter at the time, but an assault on, and the burning of, a train on the line from Mexico City to Veracruz was an occurrence of such importance that it cannot be supposed that the authorities were unaware of it, and the Mexican Agent has not shown that they took any action whatever in the matter.

For these reasons the majority of the Commission considers that the authorities were blamable in the matter, and that the Mexican Government is responsible in virtue of Article 3, subsection 5 of the Convention.

8. The final defence of the Mexican Government consists in the argument that the loss was suffered by the firm of Burberry's and could not have been taken over by Messrs. Burberry's (Limited) under the agreement of the 12th January, 1920, as one of the assets of the firm, as the right to claim for the loss did not exist at that time, but only came into existence on the signing of the Convention on the 19th November, 1926.

The majority of the Commission is, however, of opinion that the right to claim was not created by the signing of the Convention, but existed as a marketable asset from the time when the loss occurred, even although it might subsequently turn out to be worthless. This is shown by the fact that such rights may be assigned or inherited as appears from the decisions of numerous International Commissions, and the same principle is implicit in article 10 (paragraphs (f) and (g)) of the Rules of Procedure, which show that the eventuality of an assignment of the right to claim after the time when it had its origin, i.e., the date of the loss, has been taken into consideration.

The majority of the Commission is therefore of opinion that the right to make this claim existed in the firm of Burberry's at the date of the loss and was included in the assets sold by them to Messrs. Burberry's (Limited) on the 12th January, 1920, and that the latter are now entitled to make the claim on their behalf.

9. During the discussions of the Commission, it has been pointed out that there is no clear evidence that the firm of Burberry's, who suffered the original loss, was a British partnership. The probability of this being the case seems so high that the Commission does not consider it necessary to delay its decision,

but holds that before its execution evidence satisfactory to the Commission must be furnished upon this point.

10. The only remaining question is that of damages. No evidence is forthcoming except the affidavit of Mr. Bowerman as to the contents of the trunk, and no other evidence could possibly now be produced, but he insured the trunk for \$2,000, which may be taken as some proof of its value.

The articles claimed by Mr. Bowerman as his own property appear to the Commission to be reasonable and the prices put upon them moderate, and they are prepared to accept this value of £16 11s. 0d.

With regard to the claim of Messrs. Burberry's (Limited) it must be remembered that these were sample garments and not really intended for sale, and, moreover, there is an item of £64 8s. 0d. for duty and agency fees, of which no proof has been given. The Commission is of opinion that £180 would be a fair sum to allow them for the loss sustained.

Decision

11. The United Mexican States shall, subject to the conditions set out in section 9, pay to the British Government on behalf of Messrs. Burberry's (Ltd.), the sum of £180, and on behalf of Mr. Bowerman, the sum of £16 11s. 0d.

Dissenting opinion of the Mexican Commissioner, in Claim No. 4, presented by His Britannic Majesty's Government on behalf of William Edgar Bowerman and Messrs. Burberry's (Limited)

1. The Mexican Commissioner does not agree with the opinion of his learned colleagues when deciding this case, upon the following points:

In considering Mr. Bowerman as *Attorney-in-fact* for Messrs. Burberry's (Limited), because only a commercial letter, signed by Murray Burberry, on behalf of Messrs. Burberry's (Limited), has been produced to prove it.

From said document it does not appear that the person signing it is authorized to execute said act on behalf of the company. It has not been shown either that the signer is actually the person whose name appears in the signature itself; that is, the letter in question is not authenticated. It is a private document that may or may not be authentic, but to which, at all events, objection was made by the opposing party.

The Mexican Commissioner has upheld this same principle respecting the probative value of private documents not acknowledged and presented before this Commission, to which objection was raised by the Mexican Commissioner in the case of Robert John Lynch, and, in order not to repeat the arguments therein invoked, he refers to them throughout: "Claim No. 32". Demurrer entered by the Mexican Agent.

2. The Mexican Commissioner does not agree either that any negligence on the part of the Mexican authorities in taking measures tending to suppress the act, or to punish those responsible for the same, have been proven, nor that the authorities were blamable in any other way.

The Mexican Commissioner has also upheld this principle in connexion with claims 2, 28, 40, 50, 55 and 58, referring to the bombardment of Mexico City, and it will therein be seen that the burden of proof, in the case specified in subdivision 5 of Article III of the Claims Convention, Mexico and the United States, always devolves on the claimant, and, therefore, the Mexican Government is not bound to prove its diligence, as maintained by his Honourable Colleagues.

3. The Mexican Commissioner is also of the opinion that this claim should be dismissed, because:

(a) The claimant company could not have obtained the right to claim, which is granted by the Convention only to those sustaining the damage or to their successors in interest by universal succession, but never to a third party through contract, if, when same was entered into, the predecessor in interest had not acquired the right to claim; and, in the present case it so happens that Thomas Burberry, Thomas Newman Burberry, Arthur Michael Burberry and Ralph Benjamin Rools, who were originally the injured parties, transferred all their rights to Burberry's (Limited) in 1920, that is, prior to the date of the Convention between Mexico and Great Britain, which is the only title conferring the right to claim for the acts in question, when heirs are not concerned, i.e., the *partnership* signed by those gentlemen could not transfer to Burberry's (Limited), in 1920, what it only acquired in 1926, when the Convention between Mexico and Great Britain was signed.

(b) The Mexican Commissioner is also of opinion that, even supposing it were declared that the claimant company is the one entitled to claim, and not Messrs. Thomas Burberry, Thomas Newman Burberry, Arthur Michael Burberry and Ralph Benjamin Rools, as maintained by the Mexican Commissioner, as it has not been shown that these last-mentioned gentlemen were British subjects, the claim would not be sustainable without proof of this last requirement, both because the Rules of Procedure (article X, Frac. (a)) so provide, and because this Commission has so laid it down in conformity with the jurisprudence generally established by the International Claims Commission in compliance with the principle that the claim must have the nationality of the claimant Government, from the beginning and until decided by the Commission.

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SANTA GERTRUDIS JUTE MILL COMPANY (LIMITED) (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 19, February 15, 1930, dissenting opinion (dissenting in part) by Mexican Commissioner, February 11, 1930. Pages 147-154.*)

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RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH.—

EFFECT OF NON-PRODUCTION OF EVIDENCE BY RESPONDENT GOVERNMENT.—

NECESSITY OF NOTICE TO AUTHORITIES. Forces constantly in opposition to any established Government *held* not to be considered revolutionary forces for whose acts direct responsibility under the *compromis* existed. An attack by them upon an important station on the railroad between Mexico City and Veracruz and the destruction of several railroad cars *held* an act of such public notoriety as to impute notice to the public authorities and accordingly to entrain responsibility on the part of the respondent Government when it failed to show that any action was taken against such forces. Absent circumstances of public notoriety, *held* claim must be disallowed when there was no proof that claimant advised competent authorities in due time of attack by rebels resulting in damage.

MEASURE OF DAMAGES.—EXPENSES INCURRED IN PREPARATION OF CLAIM.

Expenses of public duties or charges incurred in preparation of claim *held* compensable.

INSURANCE, EFFECT OF UPON RIGHT TO DAMAGES. Opposition of Agent for respondent Government to payment of claim when it appeared that losses claimed may have been compensable in insurance *overruled* upon production of proof that efforts of claimant to obtain such compensation were unsuccessful.

Cross-reference: Am. J. Int. Law, Vol. 25, 1931, p. 782.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 238.

1. On behalf of the Santa Gertrudis Jute Mill Company (Limited), the British Government have filed in one memorial two claims. The first is for compensation for the loss of three cars of jute which were burnt at the Paso del Macho station on the 1st February, 1917, and the second is for compensation for damages done to the company's electric plant on the 30th March, 1919.

The facts are set out in the Memorial as follows:

First Claim

In November and December 1916 the Santa Gertrudis Jute Mill Company (Limited) shipped, under three bills of lading from London via New York by the steamship *Lancastrian*, steamship *Michigan* and steamship *Mongolia*, a consignment of 1,851 bales of jute. The whole consignment was shipped from New York to Veracruz by steamers of the Ward Line during the month of January 1917, and was sent on from there, under the supervision of the company's agent, by the Terminal Company of Veracruz (Limited) via the Mexican Railway. Only 1,477 bales arrived at various dates during the first fortnight of February, resulting in a shortage of 374 bales. From the markings of the bales received it was easily established that the missing bales were:

From steamship *Lancastrian*

7 bales Narayangang mixings.
69 bales Chittagong mixings.
81 bales Substitute M.D.E.

From steamship *Michigan*

48 bales H. 2.
77 bales H. 3.

From steamship *Mongolia*

57 bales D. T. D/E.
24 bales L. B 2.
11 bales L. B 3.

On the 12th February, 1917, the Mexican Railway Company officially informed the Santa Gertrudis Jute Mill Company (Limited) that on the 1st February, 1917, the station at Paso del Macho was attacked and taken by rebel forces, who set fire to all the wagons which were in the yard of that station, including three containing 372 bales of jute belonging to the company, and that the railway company declined to accept any responsibility. The two missing bales are accounted for in a letter from the railway company stating that one wagon contained 126 bales instead of 124 bales as stated on the waybill.

The amount of the claim is 27,921.42 Mexican pesos.

Second Claim

On the morning of the 30th March, 1919, a party of rebels entered the electric plant belonging to the Santa Gertrudis Jute Mill Company (Limited) at Orizaba and partially destroyed the generating pipe by exploding a dynamite bomb which they had placed there. As a result of the damage effected, the factory which took its power from this generating plant was paralysed and unable to function until the 14th April, when the work of repair had been completed.

The amount of the claim is 1,709.81 Mexican pesos, being the cost of the repair of the damage to the generating pipe.

2. The Mexican Agent has made a motion to reject the claim and at the same time has filed an answer to the Memorial in the event that his motion should not be sustained.

The Motion to Reject

3. The Mexican Agent held that the Memorial did not comply with article 10 of the Rules of Procedure, pursuant to which the Memorial should be signed by the claimant and by the British Agent, or by the latter only, but in that case a statement of the facts giving rise to the claim should be included in the Memorial.

In his oral argument the Agent pointed out that there is no document inserted in the Memorial showing that Mr. C. M. Hunter, the General Manager of the Company, was duly authorized to present the claim, and he, furthermore, raised doubt as to the British nationality of the company, which in some of the documents is styled as Santa Gertrudis Compañía Manufacturera de Yute and which, in his opinion, might well be a Mexican Company, to be distinguished from the British Company in London.

4. The British Agent drew the attention of the Commission to Annex 11 of the Memorial, which in his view left no doubt as to whether Mr. Hunter, when making his declaration before a notary public at Orizaba, had produced a deed showing that he was the legitimate representative of the company and authorized by the terms of his Commission to collect and receive all and whatsoever sums of money that may be owing to the company from whatever cause or pretence.

He further asserted that the Spanish name of the company was nothing but a translation of the name under which the Company is incorporated in England and indicated one and the same British Company.

5. The Commission is satisfied that the document, of which the Notary Public makes mention and which was shown to him, establishes that Mr. Hunter was duly authorized to present the claim.

The Commission is equally satisfied that the Mexican branch of the company does not constitute a separate concern but is part of the company at London, the British nationality of which is proved by the certificate of the incorporation, printed as annex 12 of the Memorial.

6. The Commission decides that the Motion to reject is overruled and that the claim must be decided on their merits.

The First Claim

7. The Mexican Agent said that it was common ground between his colleague and himself that the facts had been committed on the day and under the

circumstances as described in the Memorial. The witnesses whom he had caused to be heard at Orizaba all declared that they knew that the station of Paso del Macho had been attacked by armed forces on the 1st February, 1917, and that the railway wagons had been destroyed. It was also of public knowledge that the forces in question belonged to those commanded by General Higinio Aguilar, a man whom the Agent described as a permanent rebel, having been in arms against nearly every Government since 1910 and during the whole time of the *de facto*, and afterwards the *de jure*, Government of President Carranza. But the Agent differed from his colleague in the classification of the said forces into one of the subdivisions of Article 3 of the Convention.

At the time of the attack on the station of Paso del Macho there existed in the Mexican Republic a constitutional Government, of which President Carranza was the Chief. A man like General Higinio Aguilar, who did not fight for any revolutionary programme but simply was in antagonism to every established system of public administration, had to be considered as a rebel and, consequently, he fell within the terms of the fifth subdivision of Article 3. This being so, the responsibility of the Mexican Government could only be considered to exist in case the British Agent established that the competent authorities were blamable in any way. As long as that was not proved, it had to be assumed that the Government had acted with normal diligence, the more so because the railroad where the attack occurred was of such vital importance, being the main connexion between the capital and Veracruz, the principal port, that it could not be supposed that proper measures of protection had been omitted.

That Higinio Aguilar had not been arrested did not prove that the authorities were to blame, because the region where the events happened was so mountainous as to afford easy means of escape.

As to the value of the jute which was burnt, the Agent saw no other evidence than the statement of the claimant himself, i.e., the invoices of the London Office, and observing that amongst the items of the claim also appeared expenses for insurance and war risk insurance, he asked whether the claimant had not already been compensated for his loss and, if not, whether he ought not to have tried.

The claim also including the expenses made in its preparation, the Agent denied that his Government could be made liable for them, the more so as Mexico could not claim from the other party restitution of costs incurred by defending itself, in case a claim was disallowed.

8. The British Agent held a different view as to the classification of the forces, who were guilty of the attack. In his opinion the Government of President Carranza was a revolutionary force which after the triumph of its cause, had established a Government *de jure* or *de facto*, falling within the terms of subdivision 2 of Article 3. To this force, the forces of Higinio Aguilar, being revolutionaries as well, were opposed. Acts committed by them, made Mexico responsible according to the treaty, even when no evidence of omission or negligence was produced. The Agent contended that at the time, when the station was attacked, the Carranza Government was still a *de facto* Government, against which the revolutionary forces under Aguilar were in arms. This General aimed at the overthrow of Carranza and he therefore joined a few years later his forces with those of General Obregón who—if the Agent's information were correct—finally granted him a pension.

But even if it were true that Aguilar was only a rebel and that his forces therefore were to be classified within subdivision 5, the Agent held that it was established that the competent authorities had omitted to take the mea-

tures which could have been expected from them. The railroad in question was of such an essential importance, from a political as well as from an economic point of view, that a permanent and very close military supervision would have been natural. Instead of that, conditions were such that the line and the stations were repeatedly attacked. The Agent did not doubt that this could have been prevented if there had been more diligence, and the fact that, a few months after the attack on the station of Paso del Macho, the railway was taken over by the Government, showed that the Government previously had not sufficient control of the situation.

In regard to the amount of the loss, the Agent relied upon annex 11 of the memorial in connexion with the invoices reproduced in the other annexes, and he presented copies of letters, written by the underwriters to the London Office, showing that endeavours to obtain compensation from the insurance companies had been made, but had remained without result.

An award for the expenses of the claim had often been granted by international tribunals in similar cases, and the Agent thought the amount which was claimed the more reasonable because many of the expenses consisted in the payment of stamp duties, &c.

9. Where the Agents agree as to the facts and their authors, the Commission has to examine in the first place under which of the forces, enumerated in Article 3 of the Convention, the men commanded by General Higinio Aguilar are to be classified. A historical exposition of the facts which occurred during this part of the revolutionary period and of the role played therein by this General, has been given to the Commissioners and leads them to the belief that Aguilar could not be considered as heading or participating in a revolutionary movement. At no time his aims have been stated or his programme made known. It was never shown that his action was based upon ideal, political or social principles. He seems to have been a man whose hand was against every organized system of government, ready to side with any force opposed to it. The Commission is satisfied that it must consider him and the armed men who followed his orders as rebels or as insurrectionaries other than those referred to under subdivisions 2, 3 and 4 of Article 3; in other words, as one of the elements which the fifth subdivision of that Article has in view, and the question that arises is, whether in this case the Mexican Government must be held responsible.

The majority of the Commission answers this question in the affirmative. They cannot but realize that the attack on an important station of one of the main railroads of the country, and the destroying by fire of several wagons, are facts, which must have been of public notoriety and were sure to come at once to the knowledge of the authorities. The railway between the capital and Veracruz is of such a vital importance to Mexico that it was to be expected that measures would have been taken to prevent acts of this kind. That they could occur is already a strong presumption of the absence of sufficient watchfulness. The witnesses, who at the instigation of the Mexican Agent were heard at Orizaba, all knew that the attack was the work of General Aguilar's men. As the authors were known at the time of the facts, a prosecution would have been possible, but there had not been produced any evidence showing that action was taken, and the fact that a few years later General Aguilar was still in command of armed men and able to place them under General Obregon's banner shows that he was not interfered with and retained complete liberty of movement.

There has been an exposition in section 6 of Decision No. 12 (*Mexico City Bombardment Claims*) of the attitude which the majority of the Commission takes

as to how the omission or the absence of suppressive or punitive measures is to be established. Acting on that line, the Commissioners, whose views are here expressed, must hold the Mexican Government responsible for the damage suffered by the claimant.

10. For the amount of this damage there is no other evidence than the invoices sent by the London office of the Company to the General Manager in Mexico and the letters from the Agents in New York to the same. They indicate the value of the jute then under way to Orizaba. All these documents are anterior to the attack on the station and the majority of the Commissioners cannot see why they are not to be accepted as *bona fide* statements.

The same Commissioners are satisfied, by the letters of which copies were shown, that the Company tried in vain to make the insurance pay the damage, and as regards the expenses for the preparation of the claim, they are of opinion that restitution of what has been paid for public duties is rightly claimed.

11. The Commission decides that the Government of the United Mexican States shall pay to the British Government for the Santa Gertrudis Jute Mill Company (Limited), the amounts of: Mexican pesos 27,726.42 (twenty-seven thousand, seven hundred and twenty-six pesos forty-two centavos) for damage, and Mexican pesos 67.55 (sixty-seven pesos fifty-five centavos) for expenses.

The Second Claim

12. The Mexican Agent produced the testimony of several witnesses who had been heard at Orizaba and who all said that they ignored the facts on which the claim is based. Apart from the evidence given by the claimant and some of his employees, to which the Agent attached no value, there was only the statement of Señor Reyes, who repaired the pipe, but while he could be regarded as a judge on the damage done, he was not in a position to give reliable information on the cause of it. For these reasons the Agent thought the evidence insufficient.

13. The British Agent maintained that the facts were sufficiently established by the statements produced in the annexes to the Memorial and that Señor Reyes' evidence was very important.

14. As to the authors of the destruction, the same controversy arose between the Agents as when they discussed the attack on which the first claim is based.

15. The Commissioners, although not doubting that the generating pipe has been destroyed, have not found convincing evidence as to the authors of this act. They therefore do not feel at liberty to declare that those responsible for the destruction have belonged to one of the forces enumerated in Article 3 of the Convention. The evidence collected on the spot shows that in the immediate neighbourhood it was not known that anything had happened, and as claimant does not show that he advised the competent authorities in due time, there is no ground on which they could be blamed.

16. The Commission decides that the claim is disallowed.

Dissenting opinion of the Mexican Commissioner when rendering the decision in this case, solely as regards the question asked by the Honourable Presiding Commissioner as to whether it was proved that the authorities were blamable in any way

I. In point of fact, the Mexican Commissioner is of the opinion that subdivision 5 of Article III of the Claims Convention, Mexico and Great Britain, should be construed as meaning that it is the demandant Government that has

to prove that the competent authorities omitted to take the necessary measures to suppress the insurrections, risings, riots, etc., or that said authorities were blamable in any other way, once it has been shown that the case falls within subdivision 5 of Article III already mentioned.

II. In the present case it has not been shown that the Mexican authorities were to blame in any way whatsoever.

The Mexican Government is not bound to prove that it acted diligently. The Law presumes that the Government has to act diligently, not only to protect other persons' interests, but also to safeguard its own existence. Both Governments being convinced of this legal presumption, the Convention imposed the burden of proof of negligence on the demandant Government. If this be difficult it only means that it is also difficult to give judgment against Mexico for mutinies or upheavals, or for acts committed by insurrectionary forces other than those referred to under subdivisions 2, 3 and 4 of Article III of the Convention, or for the acts of brigands. Said subdivision 5 of Article III of the Convention, thus construed in the light of the principles of international law, there is no reason why it should be inverted, and thus impose the burden of proof on the Government against whom claim is made, as his learned colleagues endeavour to do.

III. In order to maintain his viewpoint as regards this claim, the Mexican Commissioner refers, in every respect, to the dissenting opinion expressed by him on the same point of law in connexion with claims 2, 40, 58, 50, 55 and 28, relating to the bombardment of Mexico City, which were decided by this Commission. In that opinion, said Commissioner states that International Claims Commissions have always been very careful whenever it is a matter of declaring that a Government has been negligent in the fulfilment of its international obligations, and they have never done so without requiring conclusive proof, because it is too serious a charge to base on mere presumption. In this connexion, the cases of *Charles E. Tollerton, vs. Mexico*, decided by the General Claims Commission, Mexico and the United States of America, p. 402, Volume I; *Boni Coleman*, page 56, volume II; *G. L. Solis*, before the same General Claims Commission, Mexico and the United States of America, page 48, volume II, were cited, and, in these three cases that Commission uniformly upheld the principle that the obligation of fully proving negligence devolves on the claimant Government and not on the Government against which claim is made, and, that, to prove that fact, mere presumption and the assertions of the claimant Government are not sufficient.

It may well be agreed, in the present case, that the attack on Paso del Macho by rebel forces under Higinio Aguilar, was a most scandalous affair; it may well be wondered, and no doubt justly, why the Mexican Government did not suppress that act with the energy that Justice demands; it may well be established, as a basis on which to arrive at the conclusion reached by the Mexican Commissioner, that the Government itself had knowledge of those acts and that there is no proof in the record that the culprits were ever prosecuted and punished with all the severity of the law. Nevertheless, the Mexican Commissioner maintains that the Mexican Government is not responsible, for no other reason than because the claimant Government has not produced any evidence either sufficient or insufficient to comply with the obligation of proving that the Mexican Government was negligent. President Carranza's Government must certainly have suppressed the act of the attack or assault on the Mexican Railway at Paso del Macho station, and, had the Mexican Government been obliged to prove this fact, it would most certainly have complied with that obligation; but, relying on the fact that the burden of

proof did not devolve upon it, according to the Convention, no proof whatever was produced to establish the fact. The bare principle contained in section V of Article III of the Convention, is this: "The British Government is obliged to prove the Mexican Government's negligence in all cases included in subdivision 5 of Article III of the Convention." In the present case the British Government has not complied with that obligation. Therefore, the Mexican Government should be held not liable for the acts committed by Higinio Aguilar.

C. E. McFADDEN (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 20, February 10, 1930. Pages 155-156.*)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. A claimant whose coal had been requisitioned by the Huerta Government for public use but who had never been paid for the same by any Mexican Government, despite repeated requests for payment, settled by agreement between British and Mexican Agents, approved by the tribunal.

(*Text of decision omitted.*)

MEXICAN UNION RAILWAY (LIMITED) (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(*Decision No. 21, February , 1930, dissenting opinion by British Commissioner, undated. Pages 157-175.*)

CALVO CLAUSE.—RESPONSIBILITY FOR ACTS OF FORCES. Claims by a British corporation, owner of a railroad in Mexico operated under a concession from the Mexican Government in connexion with which claimant had agreed to a Calvo Clause, for damages resulting from acts of Indian, rebel, revolutionary and State government forces, *held* not within the jurisdiction of tribunal.

EXHAUSTION OF LOCAL REMEDIES. The responsibility of a State under International Law is subordinated to the exhaustion of local remedies. Article VI of *compromis*, setting aside this rule, does not deprive Calvo Clause of its effect as long as there has been no denial or undue delay of justice or other international delinquency.

Cross-references: Am. J. Int. Law, Vol. 24, 1930, p. 388; Annual Digest, 1929-1930, p. 207.

Comments: Clyde Eagleton, "*L'épuisement des recours internes et le déni de justice, d'après certaines décisions récentes*", Rev. de Droit Int. L. C., 3d Ser., Vol. 16, 1935, p. 504 at 519; Sir John H. Percival, "International Arbitral Tribunals and the Mexican Claims Commissions", Jour. Compar. Legis. and Int. Law, 3d Ser., Vol. 19, 1937, p. 98 at 103; G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 236; Lionel Summers, "*La clause Calvo: tendances nouvelles*", Rev. de Droit Int., Vol. 12, 1933, p. 229 at 230.

1. According to the Memorial of the British Government, the Mexican Union Railway (Ltd.), constructed and operated for several years under a concession, dated the 9th March, 1897, granted by the Mexican Government, which was based on an earlier concession, dated the 30th April, 1896, from the State of Sonora, a railway from Torres to Campo Verde in the State of Sonora.

In connexion with this undertaking the company owned and possessed under lawful title various works, buildings, rolling-stock, fittings, rails, chattels and other property and effects, the whole of which has been entirely lost or destroyed by revolutionary acts, during the period the 20th November, 1910, and the 31st May, 1920. The principal business of the railway was provided by the Creston Colorado Mining Company. For this mining company the railway company carried the usual supplies needed for a mining business, fuel for machinery, and also supplies for the needs of the employees of this mining company. Owing to the unsettled conditions in Sonora through revolutionary activities, the mining company was forced to close down and consequently the railway was deprived of most of its normal business. When the Mexican Government granted rates for passengers and freight it was understood that these were to be in pesos Mexican valued at 2 pesos for 1 dollar (U.S.). During the above-named period, as each fresh Government was formed, an issue of paper money was put into circulation. The example of the Government was followed by the military chiefs of all parties, and the railway was obliged to charge for fares and freight on the basis of this paper money. The railway was unable to induce business men to accept this paper money unless some Mexican official was present to punish them for their refusal. On the other hand, the Mexican Government insisted on the payment of taxes in Mexican gold. These taxes were paid by the railway during the whole of the years covered by this claim. In addition to these difficulties, the railway was subjected to constant attacks by revolutionaries, chiefly Indians. Up to February 1912, when Mr. L. Reed left for England, two trains had been held up by rebels, and Mr. Reed and Engineer Page were held prisoners for a time at Colorado.

A chronological survey of events is given in John Symond's affidavit of the 17th April, 1923 (annex 2).

The following is a short account of the principal losses suffered by the company during the years covered by the claim, taken from Mr. Symond's chronological survey (annex 2).

1912. The company was harassed by Indian rebels. Four bridges and a crib were burnt and two camps were looted. Work was constantly held up by the presence of rebels.

1913. During this year practically all work ceased owing to the revolution.

1914. During this year an escort bringing ore to Represo station was attacked by Indians, but with the help of Government forces they were driven off. Torres was attacked and looted by Indians. There was no Government protection for Torres.

1915. Telephone wire was constantly cut; the station and warehouse at Represo were looted and trains were constantly fired on by Indians. The Government was advised of these outrages, but did nothing to protect the railway. Owing to the lack of protection it was impossible to repair the track and bridges. Later in the year, Represo was again attacked; trains were derailed and another bridge was burnt. On the 16th October, State troops, under Colonel Fortunato Tenorio, took charge in Torres. This colonel ran trains night and day in the greatest disorder. The troops took over the manager's house and destroyed everything that they did not steal. The outside of

the station and the manager's house was torn down and burnt by them. In November, Sancho Villa and his defeated troops, returning from an attack on Hermosillo, held Colorado under the greatest disorder for two days, killing, looting and destroying property.

1916. After asking for State protection, the company's manager was ordered to go to Hermosillo by the State Governor, who informed him that if construction was not under way within sixteen days the concession would be annulled. It was not possible to do any ordinary railway business, but trains were run at all hours for the Government without payment. The company, however, were obliged to pay the employees, purchase wood, water and oil and do such repairs for the trains as they were able. The orders for these trains on behalf of the Government were invariably given by telephone or verbally; the only written orders obtained by the company for moving troops were signed by General A. R. Gómez for 372.49 pesos and General A. Mange, 1,124.20 pesos. The manager was forced to forward these orders to Mexico City for payment and to make a receipt duly stamped for the full amount. No money, however, was ever paid to the company.

1917. Three box-cars, loaded by and for General A. R. Gómez, were completely destroyed by explosion and fire in Torres. General Gómez refused to give the company any kind of receipt for these cars.

1918. A bridge at K. 47 was destroyed by fire and telephone wire was continually cut and carried away.

1919. Indians were again very troublesome, attacking trains and trucks. The inspector sent by the State Government to investigate conditions could not understand that the railway could continue to run at all under such conditions.

1920. The Government again threatened to cancel the concession as the railway had not complied with the contract. By this time the company was entirely without funds and running into debt and has since been forced to abandon entirely the railway.

The amount of the claim is £200,000 sterling. This sum represents the value of the property of the Mexican Railway at the time the outrages commenced and is less than the value of the property, viz., £219,476 8s. 0d., given in the balance-sheet of the company dated the 30th September, 1911. A part of the sum claimed is the value of the property mentioned in Mr. Symond's affidavit as having been destroyed by rebel forces.

2. This case is before the Commission on a Motion of the Mexican Agent to dismiss, based on article 11 of the Concession, reading as follows:

"La empresa será siempre mexicana aún cuando todos o algunos de sus miembros fueren extranjeros y estará sujeta exclusivamente a la jurisdicción de los Tribunales de la República Mexicana en todos los negocios cuya causa y acción tengan lugar dentro de su territorio. Ella misma y todos los extranjeros y los sucesores de éstos que tomen parte en sus negocios, sea como accionistas, empleados o con cualquier otro carácter, serán considerados como mexicanos en todo cuanto a ella se refiera. Nunca podrán alegar respecto de los títulos y negocios relacionados con la empresa, derechos de extranjería bajo cualquier pretexto que sea. Sólo tendrán los derechos y medios de hacerlos valer que las leyes de la República conceden a los mexicanos, y por consiguiente no podrán tener ingerencia alguna los Agentes Diplomáticos extranjeros."¹

¹ *English translation from the original report.* "The Company shall always be a Mexican Company even though any or all its members should be aliens, and it shall be subject exclusively to the jurisdiction of the Courts of the Republic of Mexico in all matters whose cause and right of action shall arise within the territory of said Republic. The said Company and all aliens and the successors of such

In the opinion of the Mexican Agent this article renders the Commission incompetent to take cognizance of the damage sustained by the Company in question, which consented to be considered as Mexican in everything connected with any acts relating to the operation of the railway for which it had acquired a concession.

3. It is clear that the Mexican Government meant through this article to insert in the concession what is generally known in international law as the Calvo Clause.

4. Many international tribunals have had to deal with this clause, and it has recently been the subject of a decision of the General Claims Commission, Mexico and United States of America (Pages 21-34, *Opinions of Commissioners*, Vol. 1). In this decision, which was taken unanimously, our Commission concurs, and as it adopts the considerations, which led to the conclusion, it refers to them, not thinking it necessary to repeat them, or possible to express them better. This decision has been accepted by the British Government as good law, and they declared that they were content to be guided by it (p. 184 of the *Bases of Discussion for the Conference for the Codification of International Law*).

5. The Commission is, however, aware that in the case before the General Claims Commission the scope was narrower than in the case now under consideration. In the former it was limited to the *execution of the work, to the fulfilment of the contract, to the business connected with the contract, and to all matters related to the contract*, whereas, in the concession granted to the Mexican Union Railway (Ltd.), it includes *all matters whose cause and right of action shall arise within the territory of the Republic, everything relating to the said company, and all titles and business connected with the company*.

While all the Commissioners are prepared to agree with and to follow the decision rendered by the General Claims Commission, only two of them are of opinion that the same considerations also apply to the claim of the *Mexican Union Railway*, and that article 11 of the concession is not invalidated because the words, in which it is expressed, comprise more than in the other case.

6. In the view of the majority of the Commission the difference between the two stipulations is not so important as to make the Calvo Clause in this concession null and void. They fail to see any very marked and essential divergence between the words *the business connected with the contract* in the first case, and the words *titles and the business connected with the company* in the second. They are of opinion that the intention of the Mexican Government, in inserting article 11 in the contract, was clear and did not go further than the legitimate protection of the rights of the country.

States possessing great natural resources which they are desirous to see developed, or wishing to improve the means of communication between the different parts of the country, or to promote the exploitation of public services, may follow different methods.

They can, when faced with a decision as to what persons or concerns a concession is to be given, make no discrimination whatever between aliens and their own nationals, and impose no special conditions when dealing with

aliens having any interest in its business, whether as shareholders, employees or in any other capacity, shall be considered as Mexican in everything relating to said Company. They shall never be entitled to assert, in regard to any titles and business connected with the Company, any rights of alienage under any pretext whatsoever. They shall only have such rights and means of asserting them as the laws of the Republic grant to Mexicans, and Foreign Diplomatic Agents may consequently not intervene in any manner whatsoever."

the former. They may also reserve the exploitation of the wealth of the country and of public services for their own subjects and decline to give interests of vital national importance into the hands of the subjects of foreign Governments. And they may in the third place consider that they must not deprive their country of the advantages accruing from the investment of foreign capital and from foreign technical knowledge, and yet at the same time see to it that the presence of huge foreign interests within their boundaries does not increase their international vulnerability.

7. It is this third method which has been chosen by the Mexican Republic. It has accepted foreign co-operation in the economic development of the country, but has realized that this might expose the State to collisions and interventions of which its own history and the history of countries in similar circumstances has shown examples. In other words, the Government wanted to avoid the possibility that measures intended to promote economic prosperity might become a source of diplomatic friction or even international danger.

This aim seems completely legitimate, and does not in itself present any conflict with the acknowledged rules of international law.

How was this aim achieved in this case?

By inserting in the concession an article by which the foreign concern put itself on the same footing as national corporations, by which it undertook to consider itself as Mexican, to submit to the Mexican courts, and not to appeal to diplomatic intervention.

8. The Company accepted this stipulation for all matters whose cause and right of action should arise within Mexican territory. This covers a great deal, but does not exceed the limits of the legitimate guaranteeing of national interests because all that it means is that the fact of having granted the concession to an alien lessor, that such concern resides in the country as a result of the concession, and the operation of the concern under the terms of the concession must not create difficulties which would not have arisen had Mexico refused to accord privileges of this nature to others than Mexicans.

Onerous as this obligation may seem, it was the *conditio sine qua non* of the contract, which the Mexican Government would otherwise not have signed. It was accepted by persons who certainly realized the weight of contractual engagements. It cannot be considered as a unilateral clause, it cannot be detached from the rest of the contract; it is part of a whole and indissoluble system of rights and duties so balanced as to make it acceptable to both parties.

9. The advantages which the Company received in exchange for what it undertook were considerable; by the same deed the Government transferred to the Concessionnaire, without any consideration, ownership of all lands and supplies of water belonging to the State and required for the track, the stations, the sheds and other appurtenances. The concessionnaire was authorized for construction, operation and maintenance of the lines, to dispose of all materials afforded by the lands or the rivers owned by the State. In case ores, coal, salt or other minerals were found during the construction of the line, they were to become the property of the company.

It does not seem surprising that such far-reaching rights, including even the free disposal of national resources, were not granted to a foreign corporation until it had bound itself, in words allowing of no misunderstanding, always to act as a Mexican Company and, instead of invoking diplomatic intervention on the part of its own Government, to appeal to the means of redress open to Mexican citizens. This was the object of article 11, and it was article 11 upon

which the Mexican Government relied and which they thought would always be complied with.

Such was the contract under which the railroad was built and the concession carried out during a period of more than a quarter of a century; such the relation between the State and the Railway company. The contract may have been a source of profit or a source of loss, but it existed, it had been signed and it had to be taken as a whole.

If the Commission were to act as if article 11 had never been written, the consequence would be that one stipulation, now perhaps onerous to the claimant, would cease to exist and that all the other provisions of the contract, including those from which claimant has derived or may still derive profit, would remain in force.

The majority of the Commissioners deems that a decision leading to such a result could not be considered as based upon the principles of justice or equity.

10. In holding that under the rules of international law an alien may lawfully make a promise, as laid down in the concession, the majority of the Commission holds at the same time that no person can, by such a clause, deprive the Government of his country of its undoubted right to apply international remedies to violations of international law committed to his hurt. A Government may take a view of losses suffered by one of its subjects different to that taken by such subject himself. Where the Government is concerned, a principle higher than the mere safeguarding of the private interests of the subject who suffered the damage may be involved. For the Government the contract is *res inter alios acta*, by which its liberty of action cannot be prejudiced.

But the Commission is bound to consider the object for which it was created, the task it has to fulfil and the treaty upon which its existence is based. It has to examine and to judge the claims contemplated by the Convention. These claims bear a mixed character. They are public claims in so far as they are presented by one Government to another Government. But they are private in so far as they aim at the granting of a financial award to an individual or to a company. The award is claimed *on behalf* of a person or a corporation and, in accordance therewith, the Rules of Procedure prescribe that the Memorial shall be signed by the claimant or his attorney or otherwise clearly show that the alien who suffered the damage agrees to his Government's acting in his behalf. For this reason the action of the Government cannot be regarded as an action taken independently of the wishes or the interest of the claimant. It is an action the initiative of which rests with the claimant.

That being the case, the Commission cannot overlook the previous engagements undertaken by the claimant towards the respondent Government. A contract between them does not constitute *res inter alios acta* for the Commission. They are both, the Mexican Government and the claimant, standing before the Commission, and the majority is of opinion that no decision would be just or equitable which resulted in the practical annulment of one of the essential elements of their contractual relation.

By this contract the claimant has solemnly promised not to apply to his Government for diplomatic intervention but to resort to the municipal courts. He has waived the right upon which the claim is now presented. He has precluded himself by his contract from taking the initiative, without which his claim can have no standing before this Commission and cannot be recognizable. Quite apart from the right of the British Government, his claim is such that it cannot be pursued before a body with the jurisdiction intrusted to this Commission and circumscribed in Articles I and III of the Convention.

11. It has been argued that the view set out in the preceding paragraph conflicts with Article VI of the Convention, which provides that no claim shall be set aside or rejected on the ground that all legal remedies have not been exhausted prior to the presentation of such claim.

The Commissioners who are responsible for this decision cannot see that this provision applies to the case here dealt with.

The same argument was put forward before the General Claims Commission, Mexico and the United States, in the case quoted in section 4, and had the same strength there that it has here, because in that regard the two Conventions are identical and the difference in scope between the two clauses has no effect.

The General Claims Commission met the argument in question in the following words:

"It is urged that the claim may be presented by claimant to its Government for espousal in view of the provision of article V of the Treaty, to the effect that no claim shall be disallowed or rejected by the Commission by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim. This provision is limited to the application of a general principle of international law to claims that may be presented to the Commission falling within the terms of article I of the Treaty, and if under the terms of article I the private claimant cannot rightfully present its claim to its Government and the claim, therefore, cannot become cognizable here, article V does not apply to it, nor can it render the claim cognizable."

The majority of the Commission concurs in this opinion.

12. The question may arise whether the view expressed in this judgment does not lead to the ultimate conclusion that the Mexican Union Railway has, by signing article 11 of the concession, divested itself of its British nationality and all that it implies, to such a degree as to waive the right to appeal to its Government even in cases of violation of the rules and principles of international law.

It is obvious that there could only be grounds for this question if the Calvo Clause in this case were construed as intended to prevent the other party from applying for the diplomatic support of his Government in any circumstances whatsoever. Had that been the scope of the provision the Commissioners would unanimously have been of opinion that the clause was to be considered as null and void. Redress of internationally illegal acts and protection against breaches of international law are regarded by the Commission as being of such high importance to the community of civilized States that their preclusion would invalidate the stipulation. But the majority of the Commission cannot see that article 11 of the concession aims so far. The claimant has not, by subscribing to it, waived its undoubted right as a British corporation to apply to its Government for protection against international delinquency; what it did waive was the right to conduct itself as if not subjected to Mexican jurisdiction and as possessing no other remedies than international remedies. What the claimant promised was to apply to the courts and to resort to those means of redress which are, according to the Mexican constitution and laws, open to Mexican citizens. The contract did not take from claimant the right to apply to its Government if its resort to the Mexican tribunals or other authorities available resulted in a denial or undue delay of justice. It only took away the right to ignore them.

This was, however, just what the claimant did. It behaved as if article 11 of the concession did not exist. Although the most recent of the events upon

which the claim is based occurred in 1920 and the Convention was signed in 1926, it took no action at all. The claimant never sought redress by application to the local courts or to the National Claims Commission, which was created to adjudicate upon claims, similar to that now submitted, which has been in operation since the 17th June, 1911, and whose functions have subsequently been transferred to the Comisión Ajustadora de la Deuda Pública Interior.

If by taking the course agreed upon by both parties, the claimant would have been unable to obtain justice, no international tribunal would have denied it access, on the ground of the engagement subscribed to by it. But the claimant omitted to pursue its right by taking that course, and acted as if said course had never been indicated by the State and accepted by it, and as there can be no question of denial of justice or delay of justice, as long as justice has not been appealed to, the majority cannot regard the claimant as a victim of international delinquency.

13. The majority does not deny that one or more of the acts or omissions, alleged to have caused the damage set out in the Memorial, may in themselves constitute a breach of international law. But even if this were so, the Commissioners cannot see that it would justify the ignoring of article 11. It is one of the recognized rules of international law that the responsibility of the State under international law can only commence when the persons concerned have availed themselves of all remedies open to them under the national laws of the State in question.

In the Bases of Discussion for the Conference for the Codification of International Law, drawn up by a preparatory Committee of the League of Nations, the following request for information, addressed to the Governments, can be found (p. 137):

"Is it the case that the enforcement of the responsibility of the State under international law is subordinate to the exhaustion by the individuals concerned of the remedies afforded by the municipal law of the State whose responsibility is in question?"

Most of the Governments have answered in the affirmative, among them the British Government, which replied in the following words:

"In general the answer to point XII is in the affirmative. As was said by His Majesty's Government in Great Britain in the memorandum enclosed in a note to the United States Government, dated the 24th April, 1916:

"His Majesty's Government attach the utmost importance to the maintenance of the rule that when an effective mode of redress is open to individuals in the courts of a civilized country by which they can obtain adequate satisfaction for any invasion of their rights, resource must be had to the mode of redress so provided before there is any scope for diplomatic action'" (*American Journal of International Law*, 1916, Special Supplement, page 139),

and the note goes on to point out that this is the only principle which is correct in theory and which operates with justice and impartiality between the more powerful and the weaker nations.

"If a State complies with the obligations incumbent upon it as a State to provide tribunals capable of administering justice effectively, it is entitled to insist that before any claim is put forward through the diplomatic channel in respect of a matter which is within the jurisdiction of these tribunals and in which they can afford an effective remedy, the individual claimant (whether a private person or a Government) should resort to the tribunals so provided and obtain redress in this manner.

"The application of the rule is thus conditional upon the existence of adequate and effective local means of redress. Furthermore, in matters falling within the classes of cases which are within the domestic jurisdiction of the State the decisions of the national courts in cases which are within their competence are final, unless it can be established that there has been a denial of justice (see answer to point IV)."

It is this rule which made it necessary to stipulate expressly in Article VI of the Convention that no claim should be set aside or rejected on the grounds that all legal remedies had not been exhausted prior to the presentation of the claim. But the rule must apply to those claims which do not fall within the terms of the Convention because they can not be rightfully presented.

14. For the reasons developed in the preceding paragraphs the majority of the Commission holds the view:

(a) That the Anglo-Mexican Claims Convention does not override the Calvo Clause contained in article 11 of the concession.

(b) That the fact, that this article includes more than the interpretation and the execution of the contract does not bring it into conflict with international law and invalidate it.

(c) That the concession would not have been granted without incorporating the substance of article 11 therein.

(d) That article 11 must be respected as long as there has been no denial of justice, undue delay of justice or other international delinquency.

(e) That the claimant never made any attempt to comply with the terms of article 11 and that, therefore, there can be no question of denial of justice nor of undue delay of justice.

(f) That it is one of the accepted rules of international law that the responsibility of a State under international law is subordinated to the exhaustion of local remedies.

15. The Commission decides that the case as presented is not within its jurisdiction. The motion to dismiss is sustained and the case is hereby dismissed without prejudice to the right of the claimant to pursue his remedies elsewhere.

Dissenting opinion of British Commissioner

1. The question of the legality of what is known as the Calvo Clause has been long discussed by international lawyers and a number of rather conflicting decisions have been given upon it by various international commissions, which decisions have been cited and debated before us by the Agents of both sides. It is, however, not necessary for me to refer to these decisions (except to remark that there is not one of them which has approved so extensive a clause as the one in this case), for the whole present legal view on the subject has been admirably set out in the lucid and fair judgment in the case of the *North-American Dredging Company of Texas*, pronounced by Dr. Van Vollenhoven, President of the General Claims Commission of the United States and Mexico, and concurred in by both his colleagues. See *Report*, Vol. 1, pages 21 to 34.

Not only would this opinion be worthy of the highest respect in itself, but the Agents of both parties have specifically stated before us that they agree in general with what is laid down therein as being a correct statement of the law in the matter. Moreover, the British Government has replied to the question put by the League of Nations on the subject of the codification of international law as follows:

Question.—"What are the conditions which must be fulfilled when the individual concerned has contracted not to have recourse to the diplomatic remedy?"

Reply of Great Britain.—"His Majesty's Government in Great Britain accept as good law and are content to be guided by the decision of the Claims Commission between the United States of America and Mexico in the case of the North-American Dredging Company of Texas of the 31st March, 1926, printed in the volume of the *Opinions of the Commissioners*, page 21. It is laid down in this opinion that a stipulation in a contract which purports to bind the claimant not to apply to his Government to intervene diplomatically or otherwise in the event of a denial or delay of justice or in the event of any violation of the rules or principles of international law is void, and that any stipulation which purports to bind the claimant's Government not to intervene in respect of violations of international law is void, but that no rule of international law prevents the inclusion of a stipulation in a contract between a Government and an alien that in all matters pertaining to the contract the jurisdiction of the local tribunals shall be complete and exclusive, nor does it prevent such a stipulation being obligatory, in the absence of any special agreement to the contrary between the two Governments concerned, upon any international tribunal to which may be submitted a claim arising out of the contract in which the stipulation was inserted."

The Commission, therefore, has no hesitation in accepting the decision referred to above as a guide to the determination of the present motion to dismiss, and it only remains to apply the principles there laid down to the facts of the present case.

2. The first point raised by the British Agency was that the effect of article 11 of the contract was cancelled or overruled by Article 6 of the Convention, which provides that the Commission shall not set aside or reject any claim on the grounds that all legal remedies have not been exhausted prior to the presentation of such claim.

I am not prepared to dissent from the view held by my colleagues that this defence to the motion to dismiss fails. It is quite true that a stipulation in a contract between the Mexican Government and a private party could be overruled by an agreement between the Mexican Government and the Government of which the private party is a citizen. But I think that it would have to be done in express terms. I agree with the opinion of the Commissioners in the Texas Dredging Company's case quoted in paragraph 11 of the majority opinion in this case, that the object of Article 6 was to relieve claimants entitled to present their claims to the commission from a general principle of international law, but not to grant jurisdiction to the Commission in respect of cases which they would otherwise not have power to hear. If the latter had been the intention of the British and Mexican Governments it would have been easy to add to Article 6 some such phrase as "Even when the claimant has expressly agreed to have recourse to such remedies." When a claim can properly be presented to the Commission in virtue of Article 3, full effect must be given to Article 6, but this latter would not render a claim cognizable which the Commission could not otherwise entertain.

3. Admitting, therefore, in principle, the validity of a clause of the nature of that contained in the contract of the present claimants, we must next consider the scope of the particular clause in question and the nature of the claim. Throughout the decision in the Texas Dredging Company's case and particularly in paragraphs 11, 22 and 23, it is stated that no general rule can be laid down as to the validity or invalidity of a clause partaking of the nature of a

Calvo Clause. It is the duty of the Commission to endeavour to draw a reasonable line between the sovereign right of national jurisdiction on the one hand and the sovereign right of national protection of citizens on the other. Each case involving application of a Calvo Clause must be considered and decided on its merits.

4. If a distinction is to be drawn between the Texas Dredging Company's case and this one, it can only be on one of two grounds—

- (1) The difference in phraseology between the clauses in the two contracts; and
- (2) The difference between the grounds on which the claims are based.

Dealing first with (1) it is necessary carefully to compare the two clauses. That in the Texas Company's case runs as follows:

"The contractor and all persons who, as employees or in any other capacity, may be engaged in the execution of the work under this contract either directly or indirectly, shall be considered as Mexicans in all matters, within the Republic of Mexico, concerning the execution of such work and the fulfilment of this contract. They shall not claim, nor shall they have, with regard to the interests and the business connected with this contract, any other rights or means to enforce the same than those granted by the laws of the Republic to Mexicans, nor shall they enjoy any other rights than those established in favour of Mexicans. They are consequently deprived of any rights as aliens, and under no conditions shall the intervention of foreign diplomatic agents be permitted, in any matter related to this contract."

In the present case the clause is as follows: ¹

"The Company shall always be Mexican, even though some or all of its members may be foreigners and it shall be exclusively subject to the jurisdiction of the courts of the Republic of Mexico in all matters whose cause or action may take place within the territory of the said Republic. The Company itself and all foreigners and successors of such foreigners, having an interest in its business either as shareholders, employees or in any other capacity, shall be considered as Mexicans in everything relating to the Company. They shall never be allowed to assert, with respect to the securities or business connected with the Company, rights of foreign status, under any pretext whatever. They shall only have the rights and means of asserting them which the laws of the Republic grant to Mexicans, and in consequence foreign diplomatic agents will not be allowed to intervene in any manner."

A careful comparison of the two clauses shows that the latter is much wider and more stringent than the former. The words "In any matter related to this contract" and "In all matters concerning the execution of such work and the fulfilment of this contract", on which Dr. Van Vollenhoven lays much stress in paragraphs 13 and 14 of his opinion, are not to be found in the clause in this case. They are replaced by the phrases "In everything relating to the Company" and "With respect to the securities and business connected with the Company", while, most important of all, the prohibition of intervention by foreign diplomatic agents is not confined as in the earlier case to "Any matter relating to the contract", but is absolutely general.

5. I am quite unable to agree with the opinion of the majority of the Commission expressed in their paragraph 6, that there is no very marked and

¹ The translation is mine and differs slightly both from that in the copy of the contract presented by the British Agent and that contained in the Mexican motion to dismiss, which do not entirely agree with each other. (Note by British Commissioner.)

essential divergence between the two clauses, and I also find myself bound to dissent from the view expressed in paragraph 12 of the majority opinion as to the intention of the Calvo Clause in this case.

It appears to me impossible to doubt, from the terms of article 11 of the contract, that it was the intention of the Mexican Government to prevent the claimant's Government from intervening diplomatically or otherwise in any case in which the Company might have suffered loss in relation to its existence, business or property, even though such loss had arisen through a breach of the rules and principles of international law. This is precisely the object which, in Dr. Van Vollenhoven's opinion, as stated in paragraph 22, would render the provision void. The same point is still more emphasized in Mr. Commissioner Parker's concurring opinion and indeed is admitted by my colleagues in their paragraph 12.

I am therefore forced inevitably to the conclusion that article 11 of the Mexican Union Railway Company's contract is repugnant to the general principles of international law and is void *ab initio*. The Mexican Government had only itself to blame for this result when it insisted on the insertion into the contract of a provision, the object of which could not be justified under international law.

This conclusion is in some ways unfortunate, and it is doubtless this consideration which induced the United States and Mexican General Commission to make the suggestion contained in paragraph 17 of their opinion, of which the intention evidently was that a sort of standard clause should be drafted "Frankly expressing its purpose with all necessary limitations and restraints", so that it could only be in the case of a departure from such a clause that a difficulty would arise. With this desire I am in hearty sympathy.

6. But I do not wish to base my opinion solely on the considerations set out in the preceding paragraph. It appears to me to be the only conclusion consistent with the strict rules of international law. But in our decisions we are bound by the terms of the Convention and under it the Mexican Government has agreed to accept liability beyond that strictly laid down by international law in respect of all claims justified by the principles of justice and equity. It may therefore, I think, fairly expect to be treated in the same way and it seems to me consistent with these principles that when a particular clause in a contract purports to bind a party in a manner which would be illegal, the Commission need not consider such a provision absolutely void, but might hold that it still retains its force to the extent of its legal limits.

I should therefore be prepared to recognize the clause as binding the parties in the manner and to the extent laid down in paragraphs 15 and 20 of Dr. Van Vollenhoven's opinion, i.e., the Mexican Union Railway Company would possess only the same rights as a Mexican Company in all matters arising from the fulfilment and interpretation of the contract and the execution of the work thereunder, and the British Government would only be entitled to intervene in the case of denial of justice, delay of justice, gross injustice or any other violation of international law.

7. Having laid down these principles, it remains to apply them to the facts of the present claim. When confronted with propositions (c) and (d) of paragraph 15 of the decision in the Texas Dredging Company's case, the Mexican Agent admitted that when a Calvo Clause existed, a foreign Power might be entitled to intervene in the case of a denial of justice, but he contended that where an appropriate tribunal existed (and the Mexican Government has set up a National Commission with power to deal with claims of the nature of this one whether put forward by Mexicans or foreigners), no breach of inter-

national law could exist until the claimant had applied to the tribunal in question and failed to obtain justice there.

This somewhat novel view of international law I am unable to accept. It appears to confuse principles of law with methods of procedure. Both international law authors and commissions have given many examples of international wrongs, such as failure to protect lives and property of foreigners from violence, arbitrary proceedings of public authorities, illegal acts of public officials, &c., which constitute breaches of international law having no connexion with denial of justice, which may constitute a breach in itself, as, for example, if a court refused to hear and determine a claim of a foreigner against a local citizen.

It is true that in any of the above cases of international wrong it is laid down that where "adequate and effective local means of redress exist" the claimant must have recourse to them before asking his Government to put forward his claim through the diplomatic channel. See answer of His Majesty's Government to point 12 of the questions in The Hague Conference on the codification of international law. But this does not mean that the wrong does not exist *ab initio*.

The theory also is quite inconsistent with the decision in the Texas Dredging Company case, which refers, in paragraph 20 and elsewhere, to denials of justice and *any other* violation of international law, and states definitely in paragraph 23 that the Commission will take jurisdiction "where a claim is based on an alleged violation of any rule or principle of international law." The adoption of the Mexican theory would in fact render any form of the Calvo Clause legal however extensive, and that is precisely what Dr. Van Vollenhoven's decision declares must not be allowed.

8. This brings me to the only remaining point of divergence between my view and that of the majority of the Commission. They admit in paragraph 13 that some of the acts and omissions alleged to have caused the damage set out in the Memorial might in themselves constitute a breach of international law. This fact in itself appears to me to justify the intervention of the British Government and its presentation of this claim to the Commission. My colleagues, however, still consider that their jurisdiction is ousted by the failure of the claimants to avail themselves of the remedies open to them under the national law of the Republic of Mexico. To this view Article 6 of the Convention seems to me a complete answer. As stated above in paragraph 2, this Article cannot be used to grant jurisdiction to the Commission in respect of claims which could not properly be presented to them. But once it has been admitted that the British Government is entitled to espouse a particular claim and present it to the Commission, the article is intended to prevent a revival of the argument of the Mexican Government based on the admitted general principle of international law. This is evidently the meaning and intention of paragraph 21 of the decision in the Texas Dredging Company's case.

9. There is also a matter of practical importance that should be referred to. It is admitted by all parties that the rule that local means of redress must be utilized, whether arising from express contract or from the general principles of international law, is conditional upon their being adequate and effective. In the *Robert E. Brown* case it was stated that "a claimant in a foreign State is not required to exhaust justice in such State when there is no justice to exhaust". (*Ralston*, page 88, paragraph 117. Moore 3129.) Consequently this and every other international commission would have to assume the odious task of deciding whether the machinery set up in the defendant State was really capable of remedying the wrong done and whether any

particular decision could be reconciled with the principles of international law. A procedure of this kind would inevitably cause far more international friction than the assumption of jurisdiction by the Commission in respect of the claim itself. In this case no evidence has been offered as to whether the National Commission mentioned in paragraph 7 above during the eighteen years of its existence, has provided claimants with adequate and effective redress.

10. The conclusion, therefore, at which I arrive is that this claim being based on the violation of certain recognized principles of international law, the British Government is entitled to present it to the Commission and the latter has jurisdiction to determine it, provided the losses claimed do not arise solely from the fulfilment or interpretation of the contract or the execution of the work thereunder.

11. This brings us to the consideration of question (2), mentioned in paragraph 4 above, and again a very wide difference appears between the facts alleged in this case and those in that of the *Texas Dredging Company*.

In that case the claim was for breaches of the contract itself and the dispute was concerned with the interpretation of certain articles of the contract. Here the claim is chiefly based on tortious acts of revolutionary forces; on wilful destruction of the Company's property; on assaults on its employees and passengers; on commandeering of trains, &c. It appears to me impossible to consider these to be matters arising out of the execution of the contract. They cannot have been in the anticipation of the parties when they drafted the clause during the peaceful days of President Porfirio Díaz.

It is, of course, necessary to examine the facts and decide whether or not the allegations are proved before we can say whether the condition mentioned at the end of the preceding paragraph does or does not exist.

12. I cannot help feeling—though I say it with all respect—that my colleagues have been too much influenced by what may be called the ethical aspect of the matter. They point out in paragraphs 8 and 9 of their opinion that it would be contrary to the principles of justice and equity to allow a claimant to appear before the Commission and ask for an award when he has definitely waived such right and has obtained a valuable concession by such waiver. This view is most reasonable and even laudable, but, in deciding this motion to dismiss, the Commission is dealing with an important principle of abstract international law affecting the rights of the Sovereign States who are the parties appearing before it and it seems to me, therefore, that we should not be influenced by the considerations mentioned above.

13. There is one other matter to which I feel it my duty to refer. During the hearing the Mexican Agent, evidently acting under direct instructions from his Government, stated that the question of the Calvo Clause was a vital one to the Mexican Government, and that if the Commission should take jurisdiction in this case, the Mexican Government would register a protest against such decision and would make a reservation as to its rights. I am unable to understand how the Mexican Government, after signing a Convention determining the powers of the Commission, can be justified in protesting against any decision at which they may arrive, unless, indeed, they suggest that the Commission has been acting corruptly.

The Mexican Agent proceeded further and referred to the attitude which the Mexican Government would adopt in the event of a hostile decision in this case, both with regard to the renewal of the mandate of the Commission—which in the absence of renewal expires next August—and towards the various

companies which, having signed the Calvo Clause, had presented claims to the Commission. Such a communication might, perhaps, have properly been made privately to the British Agency, but I cannot see any object in making it publicly to the Commission except in the hope of influencing their decision by considerations entirely extraneous to the merits of the question in dispute.

It is a well-known historical fact that the numerous international commissions that have been set up during the last hundred years have never allowed themselves to be intimidated or browbeaten by any Government, however powerful or influential.

This Commission will certainly prove no exception to the rule. It is needless to add that any threat which may be thought to have been contained in the communication made to them has had no influence whatever upon the decision at which they have arrived. It might, therefore, be considered better to ignore the matter altogether, as was done by the President of the Commission at the time and by the British Agent in his reply.

But I feel that the communication so made has a bearing on one aspect of the case. It was claimed by the Mexican Agency that the Mexican Union Railway Company should have submitted its case to the National Claims Commission referred to in paragraph 7 above. Seeing that the Mexican Government has thought fit to take the course here referred to with regard to this International Commission set up under a treaty, it is reasonable to suppose that it would not have hesitated to adopt similar or even stronger measures towards a National Commission set up by itself. This conduct goes far to explain and excuse the reluctance of the Mexican Union Railway Company and other foreign companies in a similar position to have recourse to the National Commission. It appears, therefore, to me to form an additional ground why this Commission should hold that the omission of the Company to submit its claim to the National Commission is not a bar to its presenting it here.

14. The majority of the Commission have summed up their views in paragraph 14 of their opinion, and it may be convenient similarly to summarize the points on which I agree with them or dissent from them.

I agree with proposition (*a*) that Article 6 of the Convention does not cancel article 11 of the contract.

I also agree with propositions (*c*) and (*e*), which are questions of fact.

I disagree with proposition (*b*) and consider that the terms of article 11 of the contract are repugnant to the principles of international law.

Alternatively, I consider that article 11 should be respected only in the manner and to the limits indicated in paragraph 6 of my opinion, and to that extent I disagree with proposition (*d*).

I agree with the general proposition stated in (*b*), but consider that it has no application in this case in virtue of Article 6 of the Convention.

Conclusion

15. I am of opinion that the Commission has jurisdiction to decide any part of the claim which does not arise from the fulfilment and the interpretation of the contract or the execution of the work thereunder, and does not, therefore, accept the motion to dismiss, but will examine the merits of the claim on the basis laid down in this opinion.

SECTION II

PARTIES: Great Britain, United Mexican States.

SPECIAL AGREEMENT: November 19, 1926, as extended December 5, 1930.

ARBITRATORS: Dr. A. R. Zimmerman (Netherlands), Presiding Commissioner, W. H. Stoker, British Commissioner, Dr. Benito Flores, Mexican Commissioner until January, 1932, and G. Fernández MacGregor, Mexican Commissioner after January, 1932.

REPORT: Further Decisions and Opinions of the Commissioners in accordance with the Conventions of November 19, 1926, and December 5, 1930, between Great Britain and the United Mexican States. Subsequent to February 15, 1930. (H. M. Stationery Office, London, 1933.)

Decisions

THE INTEROCEANIC RAILWAY OF MEXICO (ACAPULCO TO VERA CRUZ) (LIMITED), THE MEXICAN EASTERN RAILWAY COMPANY (LIMITED) AND THE MEXICAN SOUTHERN RAILWAY COMPANY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 22, March 24, 1931. Pages 11-12.¹)

PROCEDURE, RIGHT TO AMEND. Leave to amend a motion to dismiss *granted*, despite opposition of adverse Agent on ground that no new facts were advanced justifying allowance of motion and that sufficient time had been had to plead.

Comments: Sir John H. Percival, "International Arbitral Tribunals and the Mexican Claims Commissions", Jour. Compar. Legis. and Int. Law, 3d ser., Vol. 19, 1937, p. 98 at 103.

(Text of decision omitted.)

CORALIE DAVIS HONEY, ON BEHALF OF THE ESTATE OF THE LATE RICHARD HONEY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 23, March 26, 1931. Pages 13-14.)

DUAL NATIONALITY. Motion to dismiss *granted* when person suffering damage for which claim was made appeared to have dual nationality.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 231.

(Text of decision omitted.)

JAMES HAMMET HOWARD (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 24, March 26, 1931. Pages 15-17.)

CONTRACT CLAIMS.—RESPONSIBILITY FOR ACTS OF FORCES.—FORCED OCCUPANCY.—JURISDICTION. Motion to dismiss claim for rental value plus cost

¹ References to page numbers herein are to the original report referred to on page 131.

of repairs of house occupied by revolutionary and Government forces, on ground said claim was contractual in origin and outside jurisdiction of tribunal, *overruled* when it appeared that house was forcibly occupied. Acceptance by claimant of small payments as rent will not render such forcible occupancy consensual in nature.

Cross-reference : Annual Digest, 1931-1932, p. 233.

1. The claim is presented by the British Government on behalf of Mr. James H. Howard, and the Memorial sets out that in the month of July 1914, Mr. Howard's house, situated in the town of Ameca (State of Jalisco), was occupied by Julian Real, first as a revolutionary leader and later as Municipal President. For several subsequent periods, up to July 1918, it was occupied by other persons, all fulfilling the position of Municipal President. During all this time part of the building was occupied by revolutionary forces and later by forces of the Constitutional Government. When the house was returned to the owner in July 1918, it was found that it had suffered considerable damage. During the time of the occupation Mr. Howard received at certain times rent at the rate of 15 pesos a month. The rental value of the house is in the Memorial estimated at 80 pesos a month, and the claim is for the cost of repair of the house and for loss of rent.

2. The respondent Government have lodged a motion to dismiss on the ground that as Mr. Howard received a rent from the various individuals who occupied his house, he entered expressly and implicitly into a lease with the tenants. Therefore the claim arises out of a contract, and the owner of the house ought to have sued the tenants before the competent authorities. Damages caused by private individuals, even though they may have had the capacity of civil or military authorities, cannot be claimed before a Commission having only jurisdiction to consider damages caused by revolutionary troubles.

In the opinion of the Mexican Government the Commission lacks competence to take cognizance of the claim.

3. In the course of his oral argument the Mexican Agent contended that, although in the first instance the occupation of the house may have been a compulsory act, it was converted into a contractual relation by the fact that the owner accepted a rent. His legal position was thereby altered and he ought to have addressed himself to the Mexican Courts.

The British Agent has argued that it is incorrect to state that the claimant received rent during the term of the occupation of his house, as he only received it at certain times. He never entered into any lease with the revolutionary forces or forces of a Constitutional Government, but he was forced by those in authority to cede them his house and to accept what they were willing to pay. This was much less than the rental value of the house, and the relation can in no way be construed as a contractual one.

4. The Commission thinks it necessary to state that until now it has not yet had to deal with the question whether it is competent to take cognizance of claims arising out of contractual relations. This question will have to be examined and decided as soon as a claim of this nature comes up for decision. In the case now under consideration, the Commission fails to see such a claim because it cannot concur in the view that there existed a contractual relation between the owner of the house and those who successively occupied it during a period extending to four years.

5. The Commission holds that the most essential element of a contractual relation is the voluntary character for both parties. If, however, the statements

of claimant are correct—which can only appear when the merits of the claim are under examination—there could not be assumed free will on the side of the owner. His house was occupied by authorities, civil or military, and he had no other choice than to cede it to them. The fact that now and then he received a certain amount from some of those who were in actual possession, does not change the compulsory character of the occupation nor convert it into a contract of lease. It seems only natural that claimant accepted what those in power were disposed to pay. It is not shown that he declared himself satisfied with these payments, nor that he has ever waived his right to claim for indemnification as soon as this might prove possible.

6. The motion to dismiss is overruled.

WILLIAM E. BOWERMAN AND MESSRS. BURBERRY'S (LIMITED)
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 25, April 10, 1931. Pages 17-18. See also decision No. 18.)

NATIONALITY, PROOF OF.—PARTNERSHIP CLAIM.—CERTIFICATE OF NOTARY PUBLIC AS EVIDENCE. Certificate of notary public as to pertinent facts *held* sufficient proof of nationality of British partnership.

(Text of decision omitted.)

JOHN WALKER (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 26, April 10, 1931. Pages 18-21.)

RESPONSIBILITY FOR ACTS OF CIVIL AUTHORITIES.—JURISDICTION.—MOB VIOLENCE. Motion to dismiss in part *allowed*, in so far as claim was based on confiscatory acts of civil authorities, and in part *rejected*, in so far as claim was based on personal injuries from acts of mob violence. Jurisdiction of tribunal over latter portion of claim sustained.

(Text of decision omitted.)

DOUGLAS G. COLLIE MacNEILL (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 27, majority decision, not concurred in by Mexican Commissioner, April 10, 1931. Pages 21-25.)

CALVO CLAUSE. To be effective a Calvo Clause must be drafted so as not to permit of doubt as to intentions of parties and must emanate from an act of the national Government and not from a local authority.

Cross-reference : Annual Digest, 1931-1932, p. 222.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission," *Law Q. Rev.*, Vol. 49, 1933, p. 226 at 237.

1. The Memorial sets out that Mr. D. G. C. MacNeill is the owner of a system of tramways in Colima (State of Colima), known as the Ferrocarril Urbano de Colima, which he acquired by purchase in September 1904. The claim is for compensation for the requisition from the Colima Tramways of animals, fodder and passenger and freight cars by the Constitutionalist Army during the years 1914 to 1916 inclusive. The amount claimed is 1,637.05 pesos Mexican gold.

2. The case is before the Commission on a motion of the Mexican Agent to dismiss based on two grounds:

(a) The Commission is not competent to take cognizance of any damage sustained by claimant, inasmuch as the Government of the State of Colima granted the original concession for the construction and operation of the tramway system, with the particular condition that if the concessionnaires or any company they might organize should transfer their rights to any other company or private person, the said undertaking would preserve its character as a Mexican company and have no rights of alienage, even though kept up by foreign capital.

(b) Mr. MacNeill does not show proof that he is the owner of the Ferrocarril Urbano de Colima.

3. In the discussion between the two Agents it was contended on the Mexican side that the same reasons which urged the Commission to allow the motion to dismiss in the case of the *Mexican Union Railway* (Claim No. 36, Decision No. 21) were also decisive in this case. The Agent saw in the stipulation of the concession, on which he now relied, another instance of the so-called Calvo Clause, of the same meaning and force as article 11 of the concession granted by the Federal Government of Mexico to the Mexican Union Railway (Limited).

The British Agent pointed out that in this case the wording of the stipulation was so vague that it did not make clear its real meaning. Moreover, he argued that nothing showed that claimant, in taking over the concession, knew that he thereby deprived himself of his right to appeal to his Government.

As to the ownership of Mr. MacNeill, the Agent submitted a document described by him as a certified copy of the deed of sale of the Tramway to the claimant.

4. The Commission is faced with the question whether the arguments which led to the decision in the case of the Mexican Union Railway (Limited) must also induce them to allow the motion to dismiss filed in the case of Mr. MacNeill.

It is therefore necessary to examine and decide how far the two cases are similar.

In order to do this it is essential to compare the text of the stipulations in the two concessions.

Article 11 of the concession of the Mexican Union Railway (Limited) reads as follows:

"La empresa será siempre mexicana aun cuando todos o algunos de sus miembros fueren extranjeros y estará sujeta exclusivamente a la jurisdicción de los Tribunales de la República Mexicana en todos los negocios cuya causa y acción tengan lugar dentro de su territorio. Ella misma y todos los extranjeros y los sucesores de éstos que tomaren parte en sus negocios, sea como accionistas, empleados o en cualquier otro carácter, serán considerados como mexicanos

en todo cuanto a ella se refiera. Nunca podrán alegar respecto de los títulos y negocios relacionados con la empresa, derechos de extranjería bajo cualquier pretexto que sea. Sólo tendrán los derechos y medios de hacerlos valer que las leyes de la República conceden a los mexicanos, y por consiguiente no podrán tener ingerencia alguna los Agentes Diplomáticos extranjeros.”¹

Article 7 of the concession of the Ferrocarril Urbano de Colima reads:

“Séptimo: los concesionarios o la compañía que organicen, podrán traspasar sus derechos a otra compañía o a persona particular, con aprobación del Ayuntamiento, bajo el preciso requisito de conservar la empresa su carácter de mexicana y sin derechos de extranjería, aunque estuviere sostenida por capital extranjero.”²

5. The Commission has always realized that its decision in the case of the Mexican Union Railway (Limited) was of a very serious, momentous and consequential character in so far as it deprived British subjects of their right to ask through their Government redress before this Commission for damage and loss, suffered in Mexico. But the words in which the concessionnaire had divested himself of the right, were so clear, circumstantial and detailed, that no other decision was justified. In the text of article 11 everything seems to have been foreseen; all the actions from which the concessionnaire undertook to abstain himself, are enumerated, circumscribed and detailed with a complete fullness.

A single glance at the text of article 7 of the concession now under consideration, will show that even assuming that the insertion of a so-called Calvo Clause was intended, this object could certainly not be achieved by the limited, vague and obscure wording of the paragraph, in which the stipulation was laid down.

That the undertaking was to preserve its character as a Mexican Company was certainly not an obstacle against an appeal to the British Government in case the capital were British. Consequently there remain only the words “and have no rights of alienage”.

So far as the Commissioners know, the distinct meaning of “*rights of alienage*” cannot be found in the municipal laws of Mexico or Great Britain nor in any acknowledged rule of international law, nor in judgments of international courts. It is an expression which as yet does not allow of a clear and a well defined interpretation.

The majority of the Commission is therefore not able to understand what were the precise rights waived by the concessionnaire, and for this reason they

¹ *English translation.*—“The Company shall always be a Mexican Company, even though any or all its members should be aliens, and it shall be subject exclusively to the jurisdiction of the Courts of the Republic of Mexico in all matters whose cause and right of action shall arise within the territory of said Republic. The said Company and all aliens and the successors of such aliens having any interest in its business, whether as shareholders, employees or in any other capacity, shall be considered as Mexican in everything relating to said Company. They shall never be entitled to assert, in regard to any titles and business connected with the Company, any rights of alienage under any pretext whatsoever. They shall only have such rights and means of asserting them as the laws of the Republic grant to Mexicans, and Foreign Diplomatic Agents may, consequently, not intervene in any manner whatsoever.” (*Translation from the original report.*)

² *English translation.*—“The concessionaries, or the Company which they organize, may transfer their rights to another Company or to an individual with the approval of the Corporation, under the precise condition that the business will preserve its Mexican character and without rights of foreigners, even if it may be sustained by foreign capital.” (*Translation from the original report.*)

cannot accept a similarity between this clause and the clause inserted in the concession dealt with in decision No. 21.

The majority holds the view that a so-called Calvo Clause, to be respected in international jurisprudence, must be drafted in such a way as not to allow any doubt as to the intentions of both parties. The Commission cannot see that this has been done in article 7 of the concession.

6. The majority of the Commission has another objection against acknowledging the clause, on which the Mexican Agent relied.

The clause forms part of a contract between a concessionnaire and the Municipal Corporation of the town of Colima, a local authority. Although this contract has been approved by the Congress of the State of Colima, it is not a deed to which the United Mexican States have been party.

It is the opinion of the Commissioners that provisions affecting citizenship, the rights of foreigners, naturalization, etc., to be valid before an international tribunal, must emanate from treaties, the national legislation, decrees of the National Government, or deeds signed by or on behalf of such a Government. They cannot be regarded as valid, when they are stipulated by a local corporation, which is not entitled to dispose of such vital matters as the right of a concessionnaire to appeal to his Government.

7. The fact that in this case the clause was one of the conditions on which a municipal concession was granted, gives rise to another consideration.

The stipulation, on which the motion is based, is part of a contract to which the Mexican Government were no party.

The majority of the Commission considers this to be another very important discrepancy between this case and the claim of the Mexican Union Railway (Limited), which had contracted with the same Government against which the claim was directed.

Here the Government had nothing to do with the concession. For the Government the contract was *res inter alios acta*. From the Government is claimed compensation not for the non-observation of the contract, but for losses outside any contractual relation.

The majority of the Commissioners fail to see how the Government can derive rights from this contract to which they were not a party.

8. The Commission disallows the motion, invites the Mexican Agent to file his answer to the claim, and reserves its decision on claimant's ownership until the claim shall be examined on its merits. The Mexican Commissioner reserves his right to present a dissenting opinion.

MARY HALE (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 28. April 10, 1931. Pages 26-27.)

NATIONALITY, PROOF OF. Evidence of nationality of widow of British subject held satisfactory.

(Text of decision omitted.)

WEBSTER WELBANKS (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 29, April 10, 1931, majority decision, not concurred in by Mexican Commissioner. Pages 28-29.*)

CONSULAR CERTIFICATE AS PROOF OF NATIONALITY. Consular certificate and declaration of claimant's sister as to British nationality *held* sufficient evidence of nationality.

(*Text of decision omitted.*)

J. H. HENDERSON (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(*Decision No. 30, April 23, 1931. Pages 30-31.*)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—CLAIM IN REPRESENTATIVE CAPACITY. Certified copy of will *held* sufficient evidence of capacity as heir and executrix.

PROCEDURE, DEMURRER. Demurrer *overruled* when grounds asserted therefor did not affect entire claim.

(*Text of decision omitted.*)

THE EAGLE STAR AND BRITISH DOMINIONS INSURANCE COMPANY (LIMITED) AND EXCESS INSURANCE COMPANY (LIMITED)
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 31, April 23, 1931. Pages 32-36.*)

NATIONAL CHARACTER OF CLAIM.—INSURERS AS CLAIMANTS. British insurers of a Mexican firm *held* not entitled to claim for losses sustained by insured and paid by insurers. Insurers, by virtue of their professional character, are not to be viewed as other claimants.

Cross-reference: Annual Digest, 1931-1932, p. 216.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 233.

1. The Memorial sets out that on the 21st April, 1920, the Excess Insurance Company (Ltd.) insured in favour of Messrs. Fernando Dosal y Compañía 1,000 bags of granulated sugar at 35,000 pesos Mexican gold. The bags of sugar were located on cars N.T. 3033 and 3240 of the National Railways for the journey from Union Hidalgo to Mexico City.

On the 26th April, 1920, the Eagle Star and British Dominions Insurance Company (Ltd.) and the Excess Insurance Company (Ltd.), each Company taking half of the risk, insured in favour of Messrs. Fernando Dosal y Compañía 1,300 cases of cube sugar valued at 51,000 pesos Mexican gold, for the journey from San Jerónimo to Mexico City. The cases were loaded into cars N.T. 3311 and 3312 of the National Railways.

On the 26th April, 1920, the Eagle Star and British Dominions Insurance Company (Ltd.) insured in favour of Messrs. Fernando Dosal y Compañía 500 bags of granulated sugar valued at 21,250 pesos Mexican gold, for the journey from Union Hidalgo to Mexico City. The bags were loaded on car N.T. 3450.

On the 4th May, 1920, cars Nos. 3240, 3300, 3312 (or 3112) were left at the Railway Station at Tierra Blanca in the State of Veracruz. The garrison of the town had been withdrawn. Taking advantage of this fact, a body of unknown armed men entered the station and, assisted by several local inhabitants, looted the contents of the cars.

On the 3rd May, 1920, car No. 3540 was completely looted in the Railway Station at Tres Valles in the State of Veracruz.

The Agents of the claimants, after making the necessary investigation, were satisfied that the loss of the sugar had been sustained, and paid to Messrs. Fernando Dosal y Compañía on the 15th June, 1920, the sum of 89,510 pesos Mexican gold. Of this sum 42,880 pesos Mexican gold were for the account of the Excess Insurance Company (Ltd.), and 46,630 pesos Mexican gold were for the account of the Eagle Star and British Dominions Insurance Company (Ltd.).

The former amount is claimed on behalf of the Excess Insurance Company (Ltd.), and the latter on behalf of the Eagle Star and British Dominions Insurance Company (Ltd.), being a total of 89,510 pesos Mexican gold.

2. The Mexican Agent has lodged a motion to dismiss on the following grounds:

(a) The Memorial contains two different claims, and each one of the claims of the two Insurance Companies is made under several different heads. As article 3 of the Rules of Procedure provides that each claim shall constitute a separate case before the Commission and shall be registered as such, this provision has been infringed.

(b) As the British Agent has only sent a list of the documents in his possession and neither the originals nor copies, he has infringed article 6 of the Rules of Procedure, which provides that the Memorial shall be accompanied by all documents in support of the claim that may be in the possession of the British Agent, and also article 49 of the same Rules, which provides that five copies of each one of the said documents shall be filed.

(c) The right to file the claim belonged originally to the owners of the goods, Messrs. Fernando Dosal y Compañía, and said right was as a result of the payment of the insurance, and according to the Mexican law, transferred to the Insurance Companies. The right of the Insurer is not an original, but a derived right; he is subrogated to the right of the Insured, and his loss is not direct but indirect. Moreover, he has received a premium for the risk he undertook, and he certainly did not suffer the entire loss. As the party originally entitled to file the claim was a Mexican company, the claim did not arise as a British claim, and the Commission was for that reason not competent to take cognizance of it.

3. The British Agent replied as regards (a), that it was true that the Rules of Procedure provided that each claim should constitute a separate case, but

not that each claim should be dealt with in a separate Memorial. Article 3 had been complied with as the claims had been registered separately. The two claims which arose out of the same subject matter were included in one Memorial solely for the convenience of the Commission.

As regards (*b*), that it was incorrect to state that he had filed only a list of documents, because the annexes to the Memorial had been filed with the Joint Secretaries in July 1929.

As regards (*c*), that, although the insured cargoes belonged to a Mexican firm, the losses fell entirely upon the insurers. The Agent's view was that, according to the terms of the Convention, the claimants were fully entitled to compensation, as they were British Companies having suffered losses in consequence of revolutionary events.

4. The Commission, as regards (*a*) and (*b*), concurs in the view that the Rules of Procedure have not been infringed, because (*a*) the claims have been filed and registered separately, and (*b*) the annexes to the Memorial have been filed in due form and in due time.

5. The principal question dividing the two Agents is as to whether the insurers are entitled to claim before the Commission for insurance money paid by them to insured parties, even if those parties, i.e., the original sufferers, did not possess British nationality.

The Commission sees a great difference between the position of Insurers and that of other claimants, although they are in a similar position in so far as the losses suffered by both of them can be traced to certain events. But that is where the similarity ends.

Other claimants—assuming that the facts are proved—have suffered losses directly, unexpectedly and unwillingly. Insurers suffer losses indirectly as a consequence of a contract, into which they have entered voluntarily, professionally, in the normal and ordinary course of their business and in consideration of certain payments. They suffer losses not in the first place and just because certain events have occurred, but because, in their legitimate desire to subserve their own financial interests, they have undertaken to run the risk of those events.

It seems difficult to look at Insurers in the same light as at other claimants. They who, as a professional act and with a view to make profit, undertake risks, to which other persons are exposed, who in order to cover those risks, stipulate for the payment of certain sums of money, balanced in the course of a long experience in proportion to the extent of the danger incurred, who direct an entire organization based on the existence of risks, which would be useless in the case of their absence, and who are finally able to assume such chances and to calculate such premiums as will ultimately result in a profit on the whole volume of their transactions, cannot be regarded as entitled to compensation on the same footing as persons to whom the occurrences which gave rise to the claim were an unforeseen calamity.

6. The professional character, in which Insurers apply for compensation, makes it more difficult to determine the amount of the loss than in the case of other claimants. Very often this amount will not be equal to the amount paid by them to the insured party, because it will be dependent upon the premiums received. It will also be dependent upon another circumstance. It is universally known that Insurers are working on a vast system of reinsurance, by which they, on the one hand, take over part of the risks insured by other Companies, while, on the other hand, they cede part of their own contracts to those other Companies. As a consequence of this system the surface over which the risks are really spread is often very extensive. It may not be confined to the Com-

panies of one country, but may be international. For this reason it is quite possible that, although the insurance contract was signed and the amount paid by a British Company, the ultimate loss was divided over many corporations, of which one or more may have another nationality. Consequently the decision on the nationality of the claim from its inception until now does not depend solely upon the nationality of the Insurer claiming, but would also require an investigation of the reinsurance contracts, subdividing the profits and losses from the original insurance.

7. The view may be taken—as is laid down in several codes—that the Insurer is, by the payment of the insurance money, subrogated to the right of the Insured, and that he is entitled to such compensation as was due to the latter, but at the same time it is evident that he can never exert any rights that did not belong to the Insured.

In the case now under consideration, the Insured party was a Mexican firm not entitled to claim compensation from their Government under the terms of the Claims Convention. By declaring themselves competent to adjudicate upon this claim, the Commission would grant to the Insurance Companies a right which the firm that suffered the loss did not have. There would be laid upon the Mexican Government a liability towards another Government, which would not have arisen out of the events had not the said firm entered into a contract to which the Mexican Government were not a party.

The Commission cannot believe that this would be a just or even a reasonable application of the Convention.

8. The motion to dismiss is allowed.

ANNIE BELLA GRAHAM KIDD (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 32, April 23, 1931. Pages 36-39. See also decision No. 3.*)

RESPONSIBILITY FOR ACTS OF BANDITS.—FAILURE TO SUPPRESS OR PUNISH.

When Mexican authorities, upon being informed of killing of claimant's husband by bandits, took prompt and energetic action resulting in arrest and execution of six or eight men, claim *disallowed*.

1. This is a claim for compensation for the murder of William Alfred Kidd at El Carrizal, near Zitácuaro.

The Memorial sets out that on the 8th October, 1916, between 10 and 11 in the morning, Mrs. Kidd was in her house at El Carrizal Camp. Eight or ten men, who appeared to be of the Mexican Army, but might have been revolutionaries, arrived and started shooting. Mrs. Kidd went out to see what was happening, and these men demanded that they be given arms and horses. Mrs. Kidd replied that there were two horses, but no arms. The men then asked for Mr. Kidd, and on learning that she did not know where he was they took her into the house and commenced to search for arms. About this time Mr. Kidd arrived, and with his wife gave these men some food. After this certain members of the band began to disperse, while a few remained in the room. One of the band ordered Mr. and Mrs. Kidd and David Kidd, Mr. W. A. Kidd's brother, to stand up for execution. On being asked why they insisted on killing them, the leader replied that he was anxious that nothing should happen,

but that they required a horse belonging to Mr. W. A. Kidd. Mr. W. A. Kidd replied that it would be there soon as it was in the stable and turning around as though to order the servant to bring the horse he fell, shot by one of the band. Mrs. Kidd, with David Kidd, then made their escape, and hid in the neighbourhood. On returning afterwards they found that everything in the house had been taken except some crockery and flour. As a result of the murder of her husband, Mrs. Kidd, with five minor children, was left without means.

The late Mr. William Kidd had been earning an average of 300 pesos a month.

The amount of the claim is 75,000 dollars, Canadian currency, being 25,000 dollars in Mrs. Kidd's own right, and 50,000 dollars, or 10,000 dollars for each one of the five minor children.

2. The Mexican Agent opposed the claim in the first place because under article 11 of the Rules of Procedure, Mrs. Kidd could only, in her own right and as the legal representative of her minor children, claim for Mr. Kidd's death and not for any damage she may have sustained to her property, as the claim under this latter head should have been presented by the executor or administrator of Mr. Kidd's estate.

The Mexican Agent at the same time maintained that Mr. Kidd's murder was committed by a band of brigands and that the Mexican authorities proceeded with the necessary activity in repressing this act of brigandage, by pursuing and properly punishing the perpetrators. He produced documents showing that the Governor of the State had at once given orders to the military authorities to prosecute the bandits and to shoot them in case they were arrested. Eight of the bandits were, as a result of those instructions, taken and shot.

The fact that the murderers wore uniforms did not prove that they were part of the regular army, because soldiers, who went over to rebel forces, kept their military equipment.

The said Agent also denied that the amount of the loss suffered by Mrs. Kidd and her children had been duly proved.

3. The British Agent stated that the claim was only for the death of Mr. Kidd and therefore that it conformed to article 11 of the Rules of Procedure.

As regards the responsibility of the Mexican Government, under subdivision 4 of Article 3 of the Convention, the Agent pointed out that it had not been proved that the measures, taken by said Government, had been sufficient to repress the brigandage and to punish those who were guilty of the murder. Moreover it was his opinion that the individuals, who committed the murder, were neither brigands, nor bandits, but that they belonged to the forces of the Carranza Government. For this reason they fell within the terms of subdivision 1 of Article 3 of the Convention and it was not necessary to prove that the authorities were to be blamed.

This Agent considered the amount claimed as fair, reasonable and in proportion to the late Mr. Kidd's financial situation.

4. The Commission states that there is sufficient proof of the murder of Mr. Kidd in the circumstances described in the Memorial, but that for the adjudicating of the claim it is necessary to know whether the men, guilty of that act, formed part of the Government forces or not.

All the contemporary evidence points in the direction that the murderers were bandits. The Commission refers to the letter from the British Chargé d'Affaires to the Governor-General of Canada, dated the 23rd October, 1916 (annex 5 of the Memorial), to the Record of the Proceedings in the Constitutionalist Courts of First Instance of the District, dated the 9th October, 1916 (annex 6

of the Memorial), and to two documents filed by the Mexican Agent and containing the evidence of several witnesses interrogated in 1929. In all these papers no mention is made of soldiers, but only of bandits. It is only in affidavits sworn by claimant and her brother-in-law in the year 1924 that the view is taken that the men who killed Mr. Kidd belonged to the Mexican Army.

The Commission cannot but accept the contemporary version.

5. This being the case, the claim can only, according to the fourth subdivision of Article 3 of the Convention, be allowed if it has been established that any omission or negligence in taking reasonable measures to suppress the insurrections, risings, riots or acts of brigandage in question, or to punish those responsible for the same, has existed on the part of the competent authorities.

As regards this point, all the documents, mentioned in the preceding paragraph are unanimous in stating that the authorities, after having been informed, at once took prompt and energetic action. The Governor instructed the Military authorities to pursue the bandits and, if the culprits were caught, to shoot them at once. The result was that six or eight men were arrested and executed.

For this reason the Commission cannot admit that the authorities have been to blame. They obviously did all that was in their power and their diligence was crowned with success. The claim is therefore not covered by subdivision 4 of Article 3, nor by any other provision of the Convention.

It is not without reluctance that the Commissioners have been led to this conclusion. There is no doubt that Mr. Kidd was murdered in a most brutal manner, that by this atrocious act a young and prosperous family was entirely ruined and that an unfortunate widow and five minor children were left without means of subsistence. The Commissioners would heartily welcome any way which might be found to give compensation to this unhappy widow, but they deeply regret that, acting in a judicial function and tied to the wording of the Convention, they are not at liberty to grant an award.

6. The claim is disallowed.

DAVID ROY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 33. April 24, 1931, majority decision. Pages 39-42.*)

RES JUDICATA.—EFFECT OF AWARD RENDERED BY MEXICAN NATIONAL CLAIMS COMMISSION. Prior to the date of the *compromis*, a claimant had received 15,000 pesos Mexican on account of his claim from the Mexican Government, filed his claim with the Mexican National Claims Commission, a domestic tribunal, and received an award of 60,000 pesos Mexican from the Commission, less the 15,000 pesos Mexican previously paid. Motion to dismiss claim, filed in sum of 103,601 pesos Mexican, *disallowed*, but tribunal will take into consideration in decision on the merits the prior judgment of the Mexican National Claims Commission.

Cross-reference: Annual Digest, 1931-1932, p. 39.

1. This claim is presented on behalf of Mr. David Roy, for losses and damages sustained by him on his farm known as "Tres Hermanos" in the Municipality of Camoa, District of Aldama, State of Sonora.

It is alleged that in March 1913, revolutionary forces under the command of General Benjamin Hill entered upon the claimant's property and took posses-

sion of all the cattle, the wheat crop from the previous year, which was stored, and turned his horses loose into the wheat which was about to be harvested. General Hill forcibly discharged the farm superintendent and put in his place a Mr. Blas Gil, as representative of the State of Sonora.

On the 9th March, 1914, Mr. Roy filed, with the British Vice-Consul, a claim for 197,258 pesos Mexican, but subsequently, after the 30th August, 1919, the date of the Decree of the Mexican Government establishing the National Claims Commission, he filed a claim with the Mexican National Claims Commission for a sum of \$103,601.00 pesos, Mexican currency. After consideration thereof by that Commission he was awarded on the 17th July, 1925, a sum of \$60,000.00 pesos Mexican. The claimant had received previously to this award \$15,000.00 pesos, Mexican currency, but this, by the terms of the Award, was to be taken as in part liquidation of the Award of \$60,000.00 pesos Mexican. No sums whatever were paid by the Mexican Government to Mr. Roy after the date of the Award before referred to. The British Government now claim the sum of \$103,601.00 pesos Mexican less \$15,000.00 pesos Mexican already received as aforesaid.

2. The Mexican Agent has lodged a Motion to Dismiss the present claim on the ground that the Commission is not competent to take cognizance of this case, because the claim had been settled by the decision of the Mexican National Claims Commission, by reason of the claimant having expressly agreed with this decision and by his having received \$15,000.00 pesos Mexican as part of the compensation awarded to him.

3. The Mexican Agent stressed his point orally by arguing that since the National Commission had rendered a decision, and since Mr. Roy had signified his conformity thereto, he could not now claim compensation for losses or damages, but only the execution of a judgment, which falls outside the jurisdiction of the Anglo-Mexican Special Claims Commission. This Commission was, in the opinion of the Agent, here faced by "*res judicata*", a matter it was not competent to adjudge for a second time. Mr. Roy's claim had become merged in the Award of the National Claims Commission, and payment of the amount, therefore, would become the subject of direct negotiations between the two Governments, but could not be asked before this International Tribunal.

4. The British Agent denied that the claim had been liquidated. He pointed out that the judgment of the National Commission was dated the 17th July, 1925, that the first payment had been made previously, and that since then no other payment had followed. He—the British Agent—was not asking for the execution of a judgment, but for compensation for the losses suffered by Mr. Roy. He therefore did not claim the unpaid balance of the amount of \$60,000.00 pesos Mexican, but \$103,601.00, that being the amount originally asked by claimant before the National Commission, less \$15,000.00 pesos. The Agent could not find a single clause in the Convention, which would prevent the Commission from taking cognizance of a claim, in which the National Commission had rendered a decision. He was not appealing from that decision, but had filed an original claim of the same nature as many others.

5. The Commission are called upon to answer this fundamental question: what is the relation between themselves and the Mexican National Claims Commission? They believe that the answer to that question can only be found in the Convention.

The National Commission was created, functioned and rendered judgments before the Claims Convention was entered into. If the intention of the contracting Parties had been that the work of the National Commission was in any way to interfere with the jurisdiction of the International Tribunal which they were about to create, it would have been natural to expect that they would have expressed their intention in the Convention. This was not done, and it was even agreed in Article 6 that no claim shall be set aside or rejected on the ground that all legal remedies had not been exhausted prior to the presentation of the claim.

The absence of any clause establishing a connexion between the jurisdiction of the one Commission and that of the other, may be easily explained if the reason which gave rise to the Convention be taken into consideration.

The National Commission was an institution which had to examine and decide all claims for compensation for revolutionary losses and damages, whether suffered by Mexican citizens or by aliens. It seems obvious that the various Claims Conventions were concluded because the foreign Governments desired that a means of redress of another character be open to their subjects for the adjustment of their claims. This means of redress was found in an International Commission possessing a strong neutral element.

In this respect the Convention gave to British subjects a right which they did not possess under the Decree which created the National Commission, and one not possessed by Mexican citizens either. In another respect they also received a new right in so far as the payment of the compensation was no more an act, dependent on the discretion of one Government or on that of the authorities of one State, but was converted into an international liability, i.e., a liability of one State towards another State.

The majority of the Commissioners hold the view that, had the two Governments desired to exclude from these rights British subjects who had already applied to the National Commission, this would certainly have been expressed in the Treaty.

The view taken in this case by the Mexican Government, would mean that those British subjects, who—at a time when no other court existed—had resorted to the National Commission, had *ipso facto* and beforehand waived rights which the Convention subsequently concluded gave to their compatriots.

The majority of the Commission cannot concur in this opinion, and they can find in the Convention no stipulation supporting it. For this reason they cannot admit that the jurisdiction of the Commission is limited to the claims not submitted to the National Commission, or not adjudicated upon by that body.

This opinion is not affected by a claimant's agreement to the award, in this case given before the Claims Convention was concluded, i.e., at a moment when alien claimants could seek no other means of redress than the National Commission. Moreover, the total amount of the award has not been paid, and the Commission would, by declaring themselves incompetent, place the claimant, as regards the unpaid balance, in a weaker position than that he would have found himself in had he not sued before the National Commission, and in a weaker position than those claimants to whom our Commission has granted or may grant awards.

In taking the view that the jurisdiction of the National Commission can have no legal or other bearing, originating in the treaty, on the acts of this Commission, the majority at the same time fully realize that the judgments of the former may have great weight for the decisions of the latter, principally because the examination of claims by the National Institution took place at a time less remote from the occurrence underlying the claim.

For this reason the decision already delivered in the claim of Mr. Roy will have to be carefully studied as it may furnish valuable material for judgment on the claim on its merits.

At the same time, the Commission wish it to be understood that the amount already received by claimant, will of course be taken into consideration in fixing any award which the Commission may feel justified in allowing.

6. The Motion to Dismiss is disallowed.

The Mexican Commissioner expresses a dissenting opinion.

CARL OLOF LUNDHOLM (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 34, April 28, 1931. Pages 43-44.*)

RESPONSIBILITY FOR ACTS OF FORCES.—MILITARY ACTS. *Held*, no responsibility existed for acts of forces engaged in a battle taking place in the course of a rebellion, whether such forces be governmental or rebel.

The Memorial filed by the British Agent claims compensation for damages suffered by the claimant, Carl Olof Lundholm, a British naturalized subject, to his house at Coyoacan during a battle in February 1915 between the Constitutionalist forces and the Zapatista army, and for the robbery and destruction of the furniture and fittings of the house by Zapatistas, who afterwards took possession of the house.

The Memorial sets out the facts relative to the acquirement of the house and furniture and relates the occurrences giving rise to the claim. In February 1915 the Constitutionalist forces were established on the River Churubusco and a battle was fought between them and the Zapatista army on the ranch "Tasqueña". During the battle the house suffered serious damage, its walls and roof being pierced by shells. The Zapatistas, in order to dislodge the Constitutionalist forces from Coyoacan, took possession of the house. They took away all movables and destroyed the installation of water and light and carried away the iron-work of the doors and windows. The claim was for a total of 17,670 pesos (Mexican gold) arrived at as set out in the Memorial.

2. The claim was partly heard on its merits by the Commission during the term of the Convention, dated the 19th November, 1926, and further hearing was adjourned for the cross-examination of witnesses. This having taken place, also under the Convention of the 19th November, 1926, the claim came up for further and final hearing before the Commission under the Convention dated the 5th December, 1930, as now constituted.

3. The British Agent then stated that he did not desire to argue further the case, because if the damage was caused by Constitutionalist forces, it must be considered as the consequence of a lawful act of war, and if it was caused by Zapatistas, it did not fall within subdivision 4 of Article 3 of the Convention of the 5th December, 1930, as the fighting itself proved that there was no negligence on the part of the Government.

4. The Mexican Agent did not, in these circumstances, address any argument to the Commission on the merits of the claim, but asked the Commission in its decision to classify Zapatistas, the Mexican contention being that these

were not included in any of the subdivisions of Article 3 of the Convention of the 5th December, 1930, the date of the occurrence in this case being subsequent to November 1914.

5. The Commission decide that it is not necessary for the purposes of this case, in view of the statement and admission of the British Agent, to make any classification of Zapatistas and their position, but that it is sufficient to say that they do not see how the British Agent, on the facts of the case, could have taken any other course than he did, and they dismiss the claim under review, making no declaration or classification of the position of Zapatistas.

6. The claim is dismissed accordingly.

HERBERT CARMICHAEL (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 35, April 29, 1931. Pages 45-48.*)

NATIONALITY, PROOF OF.—NOTARY PUBLIC'S CERTIFICATE OF NATIONALITY AS EVIDENCE. Certificate of Canadian notary public *held* insufficient proof of nationality.

Cross-reference : Annual Digest, 1931-1932, p. 424.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 233.

1. This is a claim for compensation for the losses and damages suffered by Herbert Carmichael on the Hacienda Coacoyolitas, in the State of Sinaloa, and Las Mariquitas o Romero's in the State of Nayarit, during the years 1915-19 inclusive.

The Memorial sets out that in December 1912 Herbert Carmichael purchased through Messrs. Francisco Echeguren y Cia. Sucrs., of Mazatlán, in the State of Sinaloa a property situated in the State of Nayarit, known as Las Mariquitas o Romero's, for the sum of 26,000 pesos Mexican gold. This property was paid for in full by the claimant. Owing to the revolution and the withdrawal of land registry facilities from Acaponeta the claimant was unable to secure the registration of his clear title to the property. At the time of purchase Las Mariquitas contained a large brick hacienda, outbuildings, a sugar mill, agricultural machinery and implements, live-stock and growing crops. The estate was operated for little over a year, when revolutionary parties and bandits overran the country and drove off his major-domo and the peons. The claimant has made many attempts to operate this property without success, and the last man who ventured on the property for purposes of its welfare was murdered. No effort was made by the Mexican Government or its officials to afford protection in this very disturbed area. The claimant sold his property in 1923 for the sum of 5,000 pesos. Loss on this property was therefore at least 21,000 pesos.

On the 15th February, 1913, Herbert Carmichael purchased from Señor Federico Ramirez of Mazatlán a portion of the property known as Coacoyolitos, Pitayas and Laguna Larga in the State of Sinaloa. The purchase price was 35,000 pesos gold, of which 20,000 pesos gold was paid in cash, and interest at the rate of 8 per cent per annum on the balance has been paid up to June

1919. On the 27th April, 1913, Mr. Carmichael purchased from Señorita Lina Hernandez of Chametla in the State of Sinaloa, another portion of the estate of Coacoyolitos, for the sum of 15,000 pesos, of which he paid 10,500 and interest on the balance up to the 29th April, 1914. On these two portions of the Coacoyolitos estate the claimant erected a brick hacienda, installed farm machinery, including a 60 horse-power Holt steam tractor, and purchased live-stock. The total sum expended on improvements amounted to 12,000 pesos gold. This property was the scene of continued conflict between Government forces and revolutionaries. The major-domo of the hacienda was murdered on the property by bandits. In view of the state of affairs, cultivation of the property was impossible, and most of the crops which had been sown were lost. Mr. Carmichael came to an arrangement with Señor Ramirez on the 12th September, 1918, by which the time for the payment of the balance of the purchase price was extended for three years from that date. The interest was paid in full to the end of June 1919, when a revolution again broke out in Mexico. At this time Mr. Carmichael was attached by the Banco Occidental de Mexico in Mazatlán, which placed an embargo on the property in connexion with a debt contracted by some people for business which had no connexion with Mr. Carmichael or his property. The bank took possession of the properties, but after short legal proceedings agreed to withdraw their action. The bank immediately afterwards purchased the interests of Señor Ramirez and demanded immediate payment of the balance of the purchase price, and at once served Mr. Carmichael with foreclosure papers. The bank were unable to obtain a clear title, and later Mr. Carmichael sold the ranch for a small sum.

In April 1913 Mr. Carmichael purchased from Señora Cruz Diaz, of Chametla, for the sum of 1,000¹ paid in cash, a small property near his other properties.

In 1913 the claimant and his representative entered into active working of all the above-mentioned properties, but owing to revolutions he was unable to proceed. He then operated on the Medias system with local Mexicans without success. In June 1919, when conditions appeared settled, Captain William Maurice Carmichael, a son of the claimant, was proceeding to Mexico with the sum of 30,000 United States gold dollars for the purpose of entering into occupation of the properties and paying off all indebtedness of principal, interest and taxes. On his arrival at San Francisco and while waiting for a ship to Mazatlán the revolution broke out and Captain Carmichael was forced to abandon the project. Immediately before leaving for Mazatlán Captain Carmichael had refused an offer from Mr. Luis Bradbury to purchase these properties as it was his intention to live on the properties. After he had been forced to abandon his project Mr. Bradbury declined to renew negotiations for purchase.

The claim was first registered at His Majesty's Consulate-General in Mexico City on the 15th November, 1920. This claim was for the sum of 78,360 pesos Mexican gold, being the purchase price, interest and losses of the claimant on these properties. In addition to this an indemnity, which was not specified, for being driven off the property was claimed. As an alternative it was suggested that the Mexican Government should reinstate Mr. Carmichael as holder of these properties, giving him clear titles and satisfying all outstanding claims against him on account of law suits, arrears and taxes and giving him five years of freedom from taxation in respect of these properties, in return for which Mr. Carmichael would forgo any claim for indemnity for loss of stocks, crops, machinery, implements or improvements. Since the date of this state-

¹ No currency indicated in original report.

ment of claim Mr. Carmichael has disposed of all his properties in Mexico. On the Mariquitas property the claimant has lost at least 21,000 pesos gold. This loss is merely the difference in the purchase price and the selling price. No account has been taken of the loss of interest on this money or of the reasonable profits of working this estate. On the Coacoyolitos property Mr. Carmichael estimates that he has lost about 70,000 pesos gold. The minimum amount of the claim is therefore 91,000 pesos gold, to which should be added compensation for being driven off these properties and the consequent loss of interest and livelihood. Three quarters of the capital for the purchase and improvement of these properties was provided by the claimant. The remaining quarter was provided by a partner.

His Majesty's Government claim on behalf of Robert Carmichael the sum of 68,250 pesos Mexican gold, being three-fourths of the total losses, together with such compensation for the loss of interest and livelihood as the Commission may consider equitable.

2. The Mexican Agent has lodged a demurrer on the ground that Mr. Herbert Carmichael's British nationality has not been established. The Agent does not accept as sufficient proof the certificate issued by a notary public in the Dominion of Canada.

3. The British Agent alleged that this document was sufficient proof to establish the British nationality of the claimant.

4. The Commission do not feel at liberty to attach to the certificate of a notary public the same value in matters of nationality as to a consular certificate. As regards the latter instrument they refer to the following passage of their decision No. 1 (*R. J. Lynch*):

"4. A consular certificate is a formal acknowledgment by the agent of a sovereign State that the legal relationship of nationality subsists between the State and the subject of the certificate. A Consul is an official agent working under the control of his Government and responsible to that Government. He is as a rule in permanent touch with the colony of his compatriots who live in the country to which he is assigned, and he is, by virtue of his post as Consul, in a position to make inquiries in respect to the origin and antecedents of any compatriot whom he registers. He knows full well that the registration of a compatriot entitled to all the rights of citizenship is a step which imposes serious obligations upon the State which he serves. That circumstance in itself is an inducement to him to see that the registration must be attended to with great care and attention."

None of the guarantees which are offered by a consular certificate and which induced the Commission to accept it as *prima facie* evidence are presented by the document on which the British Agent relied.

A notary public, although a public servant, cannot be considered as an agent working under the permanent control of, nor as being in continuous touch with, the Government. The keeping of a register of British subjects does not form part of his official duties. Neither does his normal professional work, nor his previous training therefor, include frequent contact with questions of nationality. His function gravitates in civil law, not in public or international law. To his declarations in matters of citizenship no preponderating value can be attached.

5. The demurrer is allowed, without prejudice to the right of the British Agent to produce further evidence.

EDWARD LE BAS AND COMPANY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 36, April 29, 1931. Pages 48-51. See also decision No. 5.*)

OWNERSHIP, PROOF OF. Claim *disallowed* for lack of evidence of ownership.

(*Text of decision omitted.*)

JAMES F. BARTLETT (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 37, May 13, 1931. Pages 51-53.*)

IDENTITY OF CLAIMANT. When evidence raises question as to whether claimant was the same person as the one who suffered damage, an unsworn statement of another person as to claimant's identity *held* insufficient evidence to remove doubt.

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH.—DUTY TO PROTECT IN REMOTE TERRITORY. Failure to drive out rebels in remote territory within one month *held* no negligence on part of respondent Government.

1. The British Government on behalf of James F. Bartlett claim the sum of \$4,209.35 Mexican gold, for damage sustained by him at Alamo, Lower California, where (as he alleges) under the name of James F. Morgan he was the proprietor of a store and restaurant. It is stated that on the 23rd March, 1911, a band of Mexican rebels commanded by one Guerrero invaded his store and took 800 dollars and the articles itemized in annex 1; that the said rebels destroyed the roof of the store, the hen-house, a shed, two windows and a back door, that the town was in the possession of the rebels from the 24th March to the 24th April, 1911, and that he was during that period, forced to board ten rebels under order of Captain Moseby; that he suffered the damage incident to the stoppage of his business due to the invasion in question, under which head he also claims. He accuses the Mexican Government of not having sent troops until the 23rd June, 1911. The said claimant states that in 1911 he filed the same claim with the Comisión Consultiva de Indemnizaciones on the 12th September, under the name of James F. Morgan, but that he had obtained no result.

2. The British Government base their claim on the statements of the claimant himself and on those of certain witnesses, Max J. Weber, Henry Finel and C. B. McAleer; on a certificate of F. Simpich, American Consul, and of W. D. Madden, British Consul at Ensenada, Lower California, as regards the damage claimed for; but in order to establish the fact that J. F. Bartlett, in whose name the claim is filed, is the same person as J. F. Morgan, that being the name by which the claimant was known in Mexico, an unsworn statement by one John Shapley made before the Mayor of Windsor is produced. The claimant also submits a birth certificate in which he appears under the name of James Frederick, the child of George Bartlett and of Elizabeth Morgan, and as born in 1840.

3. The Mexican Agent answered by asserting that, to begin with, no proof had been shown that James F. Bartlett, who does prove that he was a British subject, and James F. Morgan, who sustained the damage, are one and the same person. He further maintains that the evidence of the witnesses filed in support of the claim, lacks probative value, and attaches to his Answer annexes Nos. 1, 2, 3, 4 and 5 which contradict the statement made by the claimant, and from which it is apparent that the invaders of Alamo were filibusters. He also adds that even though the alleged facts were actual facts, they could not give rise to a claim because they were committed by bandits and because it has not been shown that the Government of Mexico were negligent nor that they were in any way to blame in connexion therewith. Lastly the Mexican Agent maintains that the amount of the claim has not been proved and that losses of profits and expenses incurred in the presentation of the claim cannot, under the Convention between Mexico and Great Britain, be taken into consideration. Lastly, he requests that the claim be disallowed and that the Government of Mexico be absolved.

4. When this case came up before the Commission, the British Agent asked that judgment be rendered against the Government of Mexico for payment of the sum claimed, seeing that annexes 3, 4 and 5 were sufficient proof for the claim.

5. The Mexican Agent upheld the Answer filed by him to the claim and stressed the fact that the identity of the person claiming with the person who sustained the damage, had not been demonstrated, and that the Government of Mexico could not be accused of negligence, for as the events which gave rise to the claim took place at Alamo, Lower California, a place difficult of access from the rest of the Republic and more especially from the City of Mexico where the seat of Government is situated, it was not easy immediately to suppress the filibustering invasion which took possession of that town, and the protection as well as punishment was given in good time by executing several of the filibusters. He maintained that there was no evidence of negligence on the part of the Mexican Government in suppressing these acts.

6. The discussion of this case once closed, the Commission took upon themselves the task of rendering the necessary decision and agree:

That the identity of the claimant has not been established and consequently that it has not been proved that James F. Bartlett and James F. Morgan are one and the same person. The Commission hold that the unsworn and very bare statement made without adequate and particularized foundation of John Shapley is not sufficient to corroborate the assertion of the claimant to that effect, and that this sole consideration would in consequence be sufficient reason in itself for dismissing the claim; but the Commission further hold that even on the supposition that the identity of the claimant with the person who sustained the damage had been proved, no negligence on the part of Mexico in suppressing the filibustering acts that took place at Alamo, Lower California, has been proved, as in view of the great distance and difficult communications it was impossible for the Government to have done more than it did, in driving out and punishing the filibusters one month after the invasion.

7. In view of the above considerations, the Commission disallow the claim preferred against the Government of Mexico by the British Government on behalf of James F. Bartlett.

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RUTH M. RAEBURN (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 38, May 13, 1931, dissenting opinion by British Commissioner, May 13, 1931. Pages 54-61.*)

CLAIM IN REPRESENTATIVE CAPACITY. Claim presented by an executor of a will probated in Scotland, said will having been executed in Mexico by a British subject domiciled there, *disallowed* for failure of the will to comply with the formalities of Mexican law.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", *Law Q. Rev.*, Vol. 49, 1933, p. 226 at 232.

(*Text of decision omitted.*)

W. ALLAN ODELL (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 39, May 13, 1931. Pages 61-64.*)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—NECESSITY OF CORROBORATING EVIDENCE. Unsupported allegations of claimant as to circumstances of damage *held* insufficient evidence.

Cross-reference: Annual Digest, 1931-1932, p. 423.

1. The Memorial sets out that on the 21st March, 1911, Mr. W. Allan Odell was appointed locomotive engineer on the Interoceanic Railroad of Mexico, and was stationed at Puebla in the State of Puebla. On the 6th May, 1911, he was detailed in the regular manner to take a military train to the city of Atlixco, some 47 kilometres distant. This military train carried horses, mules, attire, ammunition and soldiers at the command of Colonel, afterwards General, Blanquet. Mr. Odell objected to taking this train, but was persuaded to go on the grounds that the city of Atlixco was without protection from revolutionaries. When the train reached the switchstand at San Agustín, kilometre 39.2, the train left the rails. The switch at this point had been secretly spiked and tampered with by Maderistas, who were against the Government. Mr. Odell was thrown out of the engine and very seriously injured, and his fireman was killed. The injuries which Mr. Odell suffered are fully described in his affidavit (Document C) and the Annexes to it. With the help of a crutch Mr. Odell was able to get back to work in January 1912, but he was making little progress towards recovery, and, finally, on the 23rd July, 1912, he left Mexico for Canada. Since the time of his injuries Mr. Odell has suffered considerably, and on the 6th May, 1923, he was taken seriously ill. The doctors attending Mr. Odell unanimously are of the opinion that Mr. Odell's illness is the direct result of the injuries which he received in 1911. Mr. Odell is now in such a state of ill-health that it is extremely unlikely that he will recover sufficiently to work again.

The amount of the claim is 53,100.00 dollars gold, composed as follows:

For loss of earning capacity as locomotive engineer, based on an average rate of 1,500 dollars per annum for 18 years	27,000.00
Estimated overtime during 18 years	500.00
Interest on 27,500 dollars for 15 years	9,000.00
Medical expenses	1,600.00
Compensation for pain and suffering and for future disability	15,000.00
	<hr/> 53,100.00

His Majesty's Government claim, on behalf of Mr. W. Allan Odell, the sum of 53,100.00 dollars gold.

2. The Mexican Agent pointed out that there was no proof that the accident suffered by the claimant was due to the acts of men. It could just as well have been the consequence of a defect of the switch. And even if it were proved to have been a voluntary act, it had not been proved that this act had been committed by any forces within the meaning of Article 3 of the Convention nor, in the event that it fell within the fourth subdivision of Article 3, that the Mexican authorities were in any way to blame. In the submission of the Mexican Agent, Mr. Odell should have brought suit against the InterOceanic Railroad Company, the more so because he was, against his will, ordered to conduct a military train. Neither could the Agent admit that it had been proved that, as the British Agent contended, a passenger train had a very short time before the military train, passed the same spot without accident.

The Agent also denied that the amount of the alleged losses had been established.

3. The British Agent alleged that the injuries of the claimant were the direct result of the acts of forces within the meaning of the Convention, and that there was therefore no necessity for the claimant to have brought suit against the Railway Company. The Agent referred to the abundant medical testimony accompanying the Memorial, and also pointed out that the amount had been duly evidenced by the calculation given by the claimant.

4. The Commissioners do not deny that the description of the derailment, as given by the claimant, and taken as a whole, bares a certain appearance of truth, but a judicial decision cannot be based on this personal impression alone. If they were to do justice on such a subjective and uncertain foundation, an element of considerable frailty, and even whimsicality, would be introduced into international jurisdiction. A decision which imposes upon a state a financial liability towards another state, cannot rest solely upon the unsupported allegations of the claimant.

This is what the Commission have laid down in more than one of their judgments and to which they must in this case also adhere.¹

All that has been proved in this claim by outside evidence is the injury suffered by Mr. Odell, which has been testified to by several medical experts. But as regards the derailment and the cause of it, and all the details in connexion with it, there is no other statement than that of the claimant himself. The Commission is therefore, through lack of proof, left in uncertainty as to whether it is true—

(1) That he did conduct a military train,

(2) That he was induced to conduct it against his will and in spite of his objections,

¹ See *i.a.* Decision No. 12, *Mexico City Bombardment Claims*, section 5.

- (3) That the train was thrown off the rails through a defective switch,
- (4) That a local passenger train had, a short time before, passed without accident,
- (5) That the defect of the switch was due to the fact that it had been secretly spiked and tampered with,
- (6) That those who were responsible for this act were Maderistas.

5. If an international tribunal were to accept all these allegations without evidence, it would expose itself to the not unjustifiable criticism of placing jurisdiction as between nations below the level prevailing in all civilized states for jurisdiction as between citizens. The Commission fully realize, as they have already expressed in their decision No. 2 (*Cameron*) No. 3, that in international jurisdiction technical rules of evidence may be less restricted and less formal than in lawsuits before a domestic tribunal. That in the admission of evidence great liberality can obtain, has been shown by the Commission on several occasions, but in the present claim there is no question of the admission or the value of evidence: there is an absence of evidence and the greatest liberality cannot overcome this defect.

6. The Commission also realize that the weighing of outside evidence, if any such be produced, may be influenced by the degree to which it was possible to produce proof of a better quality. In cases where it is obvious that everything has been done to collect stronger evidence and where all efforts to do so have failed, a court can be more easily satisfied than in cases where no such endeavour seems to have been made. This consideration has guided and will guide the Commission in other cases, for instance, as regards the fixing of the amount of the award. But in the claim now before them the Commission cannot believe that it would have been impracticable to produce at least some corroboration of the statements of the claimant.

The wrecking of a military train by revolutionaries in the neighbourhood of one of the principal towns of the country, is a fact that could hardly have passed unnoticed. It must have left some trace in the archives of the Railway Company and in the contemporary press. Mr. Odell relates that on the fatal spot itself he was attended to by a surgeon, that the Superintendent of the Railway Company at Puebla also spoke to him at the scene of the derailment, that he was as soon as possible taken to the Hospital at Puebla, that he resumed work nine months later, and that finally, in June 1912, he was given a certificate of dismissal on account of his disability to serve.

It is difficult to believe that none of those sources could furnish confirmation of one or more of the facts alleged by the claimant.

7. The claim is disallowed.

ANNIE ENGLEHEART (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 40, May 13, 1931. Pages 65-67.*)

AFFIDAVITS AS EVIDENCE. An affidavit of claimant, unsupported as to circumstances of loss, though with corroborative evidence as to certain other details, *held* insufficient evidence.

(*Text of decision omitted.*)

THE MADERA COMPANY (LIMITED) (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 41, May 13, 1931. Pages 67-71.*)

CORPORATION, PROOF OF NATIONALITY. Certificate of incorporation in Canada, together with power of attorney executed by officers of corporation in Canada, *held* sufficient evidence of British nationality.

Cross-reference : Annual Digest, 1931-1932, p. 265.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 234.

(*Text of decision omitted.*)

MESSRS. D. J. AND D. SPILLANE AND COMPANY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 42, May 13, 1931. Pages 72-80.*)

PARTNERSHIP, CLAIM OF. Demurrer to claim of partnership formed under Mexican law but composed exclusively of partners of British nationality *allowed*, without prejudice to the later introduction of a claim filed in the name of the partners individually or otherwise in such form as may be admissible under the *compromis*.

Cross-reference : Annual Digest, 1931-1932, p. 218.

(*Text of decision omitted.*)

JOHN CECIL GERARD LEIGH (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 43, May 14, 1931, reservations by British Commissioner, May 14, 1931. Pages 80-85.*)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. Unsupported affidavit of claimant's manager *held* insufficient evidence. Claim *disallowed*.

(*Text of decision omitted.*)

JOHN GILL (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 44, May 19, 1931. Pages 85-92.)

AFFIDAVITS AS EVIDENCE. Affidavit of claimant, supported by letters of other persons, *held* sufficient evidence.

FAILURE TO SUPPRESS OR PUNISH.—EFFECT OF NON-PRODUCTION OF EVIDENCE BY RESPONDENT GOVERNMENT. Proof of attack by insurrectionary or rebel forces within easy distance of capital of Mexico *held* sufficient to establish responsibility on the part of the respondent Government when Mexican Agent failed to present any evidence of failure to suppress or punish.

DAMAGES, PROOF OF.—EQUITY AS A BASIS FOR ALLOWANCE OF DAMAGES. Amendment of *compromis* by addition of words “and that its amount be proved” considered and *held* not to preclude tribunal from making a discretionary allowance of damages in cases in which British Agent, after due effort, has failed to prove exact amount of damage.

Cross-reference: Annual Digest, 1931-1932, p. 203.

Comments: G. Godfrey Phillips, “The Anglo-Mexican Special Claims Commission”, Law Q. Rev., Vol. 49, 1933, p. 226 at 238 n.

1. The Memorial sets out that Mr. John Gill was employed by the Sultepec Electric Light and Power Company as chief electrical engineer at San Simonito, and resided in a house near the power plant. On the 1st September, 1912, the power plant was attacked by revolutionary forces opposing the Madero Government. Mr. Gill, together with his wife and child, aged three years, were forced to flee in their night attire and seek protection from the attack. A considerable amount of personal property is reported as taken or destroyed by the revolutionaries. As a result of her experiences Mrs. Gill has, from the date of the attack to the present time, suffered from shock, and Mr. Gill has been obliged to expend money for medical treatment. Immediately after the attack, Mrs. Gill reported the losses to the British Legation, Mexico City. A letter (annex 3 of the Memorial) was received, stating that the matter had been brought to the notice of the President of the Republic and the Minister for Foreign Affairs, and pointing out that the Mexican Government were in a difficult position in that they wished to avoid taking any action on her behalf which would constitute a precedent for the payment of claims that might be made by companies and others for large and unknown amounts.

The amount of the claim is £180 sterling.

2. The Mexican Agent has opposed the claim on several grounds. He contended that it had not been proved that Mr. Gill has suffered any loss. He attached no value whatever to the claimant's own affidavit, and he denied that this affidavit was corroborated by the letter of the British Minister, dated the 4th October, 1912 (annex 3 of the Memorial) or by the letter of the General Manager of the Electric Light and Power Company, dated the 10th September, 1912 (annex 5), because in his view those letters proved nothing more than that the writers had been acquainted by Mr. Gill with his version of the events.

The Agent also, even assuming that the acts set out in the Memorial had been committed, denied that there was any evidence that they were covered by Article 3 of the Convention or that, in the event that they fell within subdivision 4 of that Article, the Mexican authorities were in any way to blame.

On this latter point he, the Agent, had tried to get some information, but his endeavours had produced no result, because the village of Sultepec, and also the public records, had been destroyed in the attack of 1912.

In the last event the Agent failed to see any proof of the amount claimed and he considered this as sufficient ground for rejecting the claim altogether. The discretion in fixing the amount of the award, which the Commission had formerly enjoyed and of which it had made use in its decision No. 12 (*Mexico City Bombardment Claims*) no longer existed, since the words: "and that its amount be proved" have been inserted in Article 2 by the last revision of the Convention.

3. The British Agent pointed out that the letters, mentioned by his colleague, constituted a very strong corroboration of the claimant's statement, because they certainly would not have been written, had the authors not had confirmation of Mr. Gill's assertions.

As to the character of the forces that caused the damage, the Agent referred to contemporary evidence, showing that they were revolutionaries or Zapatistas, in both cases forces which cannot be considered as rebels or insurrectionaries. Notwithstanding the steps, taken by the British Minister, the competent authorities omitted to take any measure for repression or punishment. According to subdivision 4 of Article 3 of the Convention, this failure to act rendered the Mexican Government liable for compensation.

The Agent went on to say that he was fully aware that the insertion of the words "and that its amount be proved" in Article 2 of the Convention, had been made with a definite meaning, but he differed from the Mexican Agent as to the interpretation of this meaning. He argued that in the majority of claims, the amounts were small and more or less uncertain, being the value of personal property such as furniture, clothes, &c. It would nearly always be impossible to show proof of the absolute correctness of the figures, at which the estimated value of such objects was set down. It could not have been the intention of the two Governments, in amending Article 2, that the claim should in all those cases, be rejected. The only logical interpretation and the only one, which did not lead to injustice, was that the British Agent was obliged to furnish all available evidence as to the amount, but that, if this amount did not seem exaggerated, the Commission was free either to award it or replace it by another figure; in other words that the Agent must enable the Commission to award an amount that was fair and reasonable.

4. The Commission answer in the affirmative the question as to whether it has been established that the claimant's residence at the Sultepec Power Plant was assaulted on the 1st September, 1912, that he, his wife and child were forced to flee, and that this event was the cause of his losing several articles of personal property.

The Commission find that Mr. Gill's statement is fully corroborated and confirmed by the letters from the British Minister and from the General Manager of the Sultepec Electric Light and Power Corapany. The former letter shows that the Minister had been in communication with the General Manager, and it seems quite unlikely that a diplomatic Representative would visit both the Chief of the Republic and the Minister for Foreign Affairs without having satisfied himself of the truth of what he was going to submit to them. The same holds good for the steps taken by the General Manager, who corresponded with the Head Office in the United States on the subject of the loss and who gave to the claimant a letter, verifying his statement. As Mr. Gill was not the local Manager of the Plant, it is evident that the General Manager

would not have relied on his information alone, but would have consulted the resident Manager of the Works.

5. All the evidence submitted to the Commission points to the fact that the assaulting forces were insurrectionaries or rebels, either Zapatistas or the followers of some other leader, in any case armed men falling within subdivision 4 of Article 3 of the Convention.

As regards the responsibility of the Mexican authorities, the Commission must adhere to the attitude taken by them in decision No. 12 (*Mexico City Bombardment Claims*) section 6;

"In a great many cases it will be extremely difficult to establish beyond any doubt the omission or the absence of suppressive or punitive measures. The Commission realize that the evidence of negative facts can hardly ever be taken in an absolutely convincing manner. But a strong *prima facie* evidence can be assumed to exist in these cases in which first the British Agent will be able to make it acceptable that the facts were known to the competent authorities, either because they were of public notoriety or because they were brought to their knowledge in due time, and second the Mexican Agent does not show any evidence as to action taken by the authorities."

The same point of view is shown in decision No. 18 (*William R. Bowerman and Messrs. Burberry's*), section 7:

"With regard to the responsibility of the Mexican Government for the acts of these forces or brigands, the majority of the Commission would refer to the principles laid down in the opinion of the President in the decisions of the claims of Messrs. Baker, Woodfin and Webb (*Mexico City Bombardment Claims*), paragraph 6. Reference is there made to the difficulty of imposing on the British Government the duty of proving a negative fact such as an omission on the part of the Mexican Government to take reasonable measures, and it is stated that whenever an event causing loss or damage is proved to have been brought to the knowledge of the Mexican authorities or is of such public notoriety that it must be assumed that they have knowledge of it, and it is not shown by the Mexican Agent that the authorities took any steps to suppress the acts or to punish those responsible for the same, the Commission is at liberty to assume that strong *prima facie* evidence exists of a fault on the part of the authorities."

The same line was taken in decision No. 19 (*Santa Gertrudis Jute Mill Company*) and it will also direct the majority of the Commission in the claim now under consideration.

The majority fully realise that there may be a number of cases, in which absence of action is not due to negligence or omission but to the impossibility of taking immediate and decisive measures, in which every Government may temporarily find themselves, when confronted with a situation of a very sudden nature. They are also aware that authorities cannot be blamed for omission or negligence, when the action taken by them has not resulted in the *entire* suppression of the insurrections, risings, riots or acts of brigandage, or has not led to the punishment of *all* the individuals responsible. In those cases no responsibility will be admitted. But in this case nothing of the kind has been alleged. The highest authorities in the country were officially acquainted with what had occurred. They stated that they were touched by the account. They added that they had, as regarded compensation, to consider that the precedent might have grave consequences, but the Mexican Agent has not shown a single proof that any action to inquire, suppress or prosecute was taken, although Sultepec is within easy distance of the Capital. Evidence to that effect would, when existent, be at the disposal of said Agent, to whom the Archives of the Republic, of the various States and of the Muni-

palities are available for this purpose. The burning of the Sultepec archives in this connexion seems immaterial, because, if any action had been taken in consequence of the step of the British Minister, traces of it would certainly be found in the archives of the Central Administration.

For all these reasons the majority of the Commission cannot but hold that the Mexican Government is, according to the Claims Convention, obligated to compensate for the loss sustained by Mr. Gill.

The question that still remains is that of the amount to be awarded, and this question lays upon the Commission the duty of examining the meaning of the new words inserted in Article 2 of the Convention.

6. Although the words "*and that its amount be proved*" have undoubtedly been inserted in Article 2 with a certain meaning, the discussion between the Agents has shown that both Governments differ widely as to what this meaning was. The interpretations put forward by the Agents diverged considerably. As the words have been inserted by voluntary agreement, one interpretation cannot carry more weight with the Commission than the other. The Commission are therefore obliged to endeavour to lay down their own interpretation.

In order to do this it seems necessary to search for an answer to the following questions: (a) What is to be proved? (b) By whom is it to be proved? (c) How is it to be proved? and (d) To whom is it to be proved?

7. *What is to be proved?* The Convention only speaks of *its amount*. What is meant by this: the *amount claimed*, the amount of the British Government's claim, as it appears in the Memorial? The Commission cannot believe that this was the intention, because it would mean that in all cases, in which this amount was not proved by the British Agent, the Commission would have to disallow the claim entirely, in other words, that the Commission would have either to award the amount of the Memorial, or nothing at all.

This would *firstly* encroach to such a degree upon the discretionary competence of the tribunal as to entirely change its character. *Secondly* it would prevent the Commission, in a majority of the cases, from applying the principles of equity and justice, in accordance with which their members have solemnly undertaken to examine and judge the claims. *Thirdly* it would not be possible to reconcile this interpretation with "*the desire of Mexico ex gratia fully to compensate the injured parties*" (Article 2 of the Convention), because in all those cases in which the British Agent might not be able to prove exactly the original amount of the claim, even grave injuries, serious damages and huge losses would have to remain without compensation. And *fourthly* this interpretation might eventually prove prejudicial to the interests of Mexico, because it might induce the Commission, rather than disallow the total claim, to award a higher amount than perhaps would have been considered justified had the fixing of the amount been left to the discretion of the Commission.

Those cases would probably be not at all rare. The most recent of the events with which our jurisdiction has to deal, lie more than ten years behind us. the most remote more than twenty years. The case in question dates from nineteen years ago. It will, in the majority of the cases be next to impossible to produce reliable oral evidence. Damages and losses were very often caused by acts of violence, by occurrences of such a sudden nature as not to allow of the taking of timely measures to draw up inventories, make estimates, collect witnesses, etc., in order to be able subsequently to prove the losses. The establishing of the *exact* value of used objects, lost or destroyed so many years ago, will likewise almost always meet with almost insurmountable difficulties. It is also clear that to determine the compensation to which a person disabled by wounds, or the relations of a murdered man are entitled, is a matter into which

a good deal of discretion will always enter. In all similar cases, and probably in many more, it will hardly be possible to prove with precision the amount claimed. The Commission cannot believe that the new words, inserted in Article 2, mean that the Commission will, in all those cases, have to reject the claim entirely.

In their opinion those words can have no other meaning than that the amount of the alleged damage, which is, in the last event and when the facts are established, the amount of the award must be proved, but that such an amount may be one widely diverging from the sum claimed in the first instance.

8. *By whom is it to be proved?* The answer is: by the British Agent, who is no longer—as he was before the change in the Convention—allowed to leave the amount entirely to the discretion of the Commission, but who is now obliged to show everything in his possession and everything which may be available, and to do everything in his power, in order to make the amount of the damage acceptable. A claim for an obviously exaggerated amount, asked by a claimant, cannot be espoused by him while leaving the final determination to the Commission. He is to create the conviction that he has earnestly tried to place all existing evidence at our disposal. In other words, he has to produce such evidence and to use such arguments as to enable the Commission to award a fair and reasonable amount.

9. *How is it to be proved?* In the opinion of the Commission by the same means and instruments as all other equally important elements of the claim: e.g., British nationality, the acts which caused the damage, the forces which committed the acts, the responsibility of public authorities, etc. The new text of Article 2 does not in any way indicate that the Commission is to require, for the proving of the amount, any other means or instruments of evidence than those necessary for proving the rest of the claim. The liberty enjoyed by the Commission in that respect under Article 4, section 1, of the old Convention, has not been restricted by the amendment, nor has the liberty granted to the Agents by section 3 of the same Article and by article 23 of the Rules of Procedure.

Of this liberty the Commission has made ample use in many of its decisions, and it was strongly emphasized in Decision No. 2 (*Cameron*), pages 34 and 35, by their adherence to a judgment in the Report of the Mexican-American Claims Commission.

10. *To whom is it to be proved?* The answer cannot be: to the parties. The answer can only be: to the tribunal, to the Commission, which will, by following the dictates of their conscience, bearing in mind the aim of all good jurisdiction and in accordance with the principles of equity and justice, to which they bound themselves by a solemn declaration, determine in any particular case, what is the amount that has been shown to be acceptable and that is therefore justified.

11. The question may arise whether there is by accepting the interpretation given in their answers to the four questions of section 6 any difference between the state of affairs existing under the old Convention as compared with that existing under the new. The Commission think that there is.

They do not believe that the new text originated in the assumption that the Commission will ever award compensation without having fair grounds for the determination of its amount. But what the amendment does desire is that the fixing of the amount shall be the final result of serious preparation—a preparation the initiative of which is expected to lie with the British Agent. It is desired that this Agent assume the responsibility for a certain amount,

while he had formerly only to prove facts, and was allowed to abstain from discussion of the amount. He could leave it all to the Commission. In the old Convention it was only in Article 6, sections 2 and 3, that the amount was mentioned. From Article 2, which deals with the desire of Mexico to give compensation, all reference to the amount was omitted.

It is quite natural that both Governments should have desired to eliminate this hiatus.

Seen in this light, the amendment would seem to be an improvement.

12. Applying to the present claim the principles laid down in the preceding paragraph, the Commission have come to the conclusion that although fair proof has been shown for the amount claimed, some items appear uncertain or not entirely reasonable. It does not seem probable that the claimant was, in 1927, able to estimate the exact value of clothing and household linen, or to remember the exact amount of cash he had to abandon in his sudden flight.

On the other hand, the facts being admitted, it is dictated by equity, that—apart from an exact confirmation of figures—some compensation be given. The Commission believe that they are acting in conformity with the spirit, as well as with the letter of the Convention, by making a total award of £ 120 sterling.

13. The Commission decide that the Government of the United Mexican States shall pay to the British Government, on behalf of Mr. John Gill, the sum of £ 120 sterling.

JESSIE WATSON (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 45, May 19, 1931. Pages 92-96.*)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS. When statement of circumstances and amount of loss are in general supported by independent witnesses, evidence *held* sufficient.

DAMAGES, PROOF OF. Tribunal will not after lapse of seventeen years weigh factors such as current economic conditions, rates of exchange, etc., affecting market value of goods lost.

CURRENCY IN WHICH AWARDS PAYABLE. Awards will be made in Mexican national gold.

Cross-reference : Annual Digest, 1931-1932, p. 226.

1. The Memorial sets out that in February 1910 Mrs. Watson purchased several holdings in Barrón, District of Mazatlán, in the State of Sinaloa, and was engaged in agricultural pursuits. From time to time she increased her holdings of land until she formed the self-contained Hacienda Barrón. During the siege of Mazatlán in 1913-14 by Constitutionalist forces under the command of General Carranza, the claimant's husband, who was the British Vice-Consul at Mazatlán, received orders not to leave his post. Consequently it was impossible for Mrs. Watson to personally supervise her Hacienda, and she placed it in charge of an administrator, Patricio Vergara. The garrison at Villa Unión was commanded by Lieutenant-Colonel Sergio Pazuengo, who, under threats, demanded products from the Hacienda. He imprisoned the administrator in the barracks at Villa Unión and demanded the entire harvest of beans. The

hacienda store and warehouse were also plundered by Pazuengo, who also took fifteen mules and some horses. The cattle and draft oxen were chiefly taken by Yaqui Indians under the command of Colonel Juan Cabral. A complaint being made to General Carrasco in El Potrero, Pazuengo forced the administrator to write two letters, one addressed to General Carrasco and the other to Mr. Watson, denying that these outrages had taken place. Directly the siege of Mazatlán was raised, the administrator confessed that these letters were false and that he had been compelled to sign them by Sergio Pazuengo. In support of the claimant's losses four affidavits by eye-witnesses are submitted by the claimant.

The amount of the claim is 13,590.00 pesos in Mexican silver, full particulars of which are given in Mrs. Watson's statement of claim. The claim has never been presented to the Mexican Government, and no compensation has been received from the Mexican Government or from any other source. The claim at the time of the losses did and still does belong solely and absolutely to the claimant.

His Majesty's Government claim in support of Mrs. Jessie Watson the sum of 13,590.00 pesos Mexican silver.

2. The Mexican Agent in his written answer to the claim denied that the facts had been proved, or that it had been shown that the acts complained of by the claimant were committed by any forces within the meaning of Article 3 of the Convention. He recognized, however, in his oral argument, that in the annexes of the Memorial considerable corroboration of the statement made by Mrs. Watson was to be found. He also recognized that those who were guilty of the acts fell within subdivision 2 of Article 3 of the Convention, as being Carrancistas. But he thought it very doubtful whether Mexico could be held liable for the acts of a single officer, who had later been dismissed from the Army. And he further contended that the taking of cattle was only confirmed by a statement made fifteen years afterwards by Felipe Vergara, the son of the administrator. He did not believe that this man was in a position to know the exact number of the cattle that had been taken. Furthermore, he thought the amounts claimed by Mrs. Watson extremely vague and also exaggerated, and he did not understand why the British Agent had not produced statements of experts and merchants to show the value of the lost property at the time the acts were committed.

3. The British Agent pointed out that he had produced abundant evidence from independent eye-witnesses, and he thought that there could be no doubt as to the facts. He attached much value to a letter of the Governor of the State of Sinaloa (reproduced in annex 1 of the Memorial), which showed very clearly that this high authority was satisfied that the acts of which claimant's husband had complained, were committed. As regards the value of the property, the British Agent thought the amounts absolutely fair and reasonable, and not in the least exaggerated.

4. The Commission have come to the conclusion that the ample corroboration to be found in the letters and depositions of independent witnesses leaves no doubt as to the exactness of the statement of the facts. All the witnesses declare that at the time mentioned by the claimant, Lieutenant-Colonel Sergio Pazuengo, who was then in charge of the garrison at Villa Unión, confiscated the entire harvest of beans of the Hacienda Barrón and that he imprisoned and intimidated the administrator. The witnesses also deposed that cattle, horses and mules were taken. They all agreed that the amount of the property confiscated and stolen could not have been less than stated by the claimant.

It is also certain—and acknowledged by the Mexican Agent—that Lieutenant-Colonel Pazuengo belonged to the Constitutionalist Army, in other words

to the Carrancista forces, who afterwards established a Government. They therefore fall within the terms of subdivision 2 of Article 3 of the Convention, and Mexico must be held responsible for their acts.

5. It will always be difficult, and in a majority of cases impossible, to ascertain the exact extent of losses suffered as a result of confiscation and robbery. The number of cart-loads of beans and of head of cattle taken may be subject to controversy. In this case the allegations regarding the items of loss have been confirmed, if not as far as the ultimate details, at least to a very great extent. Deponents all bear witness to the fact that during several days a number of large waggons were occupied in carrying away the beans. One of them declares that the greater part of the cattle and of the work oxen, some mules and horses, the stock of goods in the shop, and the cereals and fodder in storage were commandeered; another how he saw the cattle of the Hacienda were slowly but steadily growing less, until not a single head remained. And Mr. Felipe Vergara, the son of the then Administrator, who lived on the Hacienda and was employed as warehouseman in the store, gives a full account of the number of cattle appropriated, and of which a specification was drawn up as soon as possible.

The Commission see no reason why the quantities and numbers specified in the claim should not be deserving of confidence.

6. While it will hardly ever be practicable to reach complete exactitude in the determining of the volume of the losses, it will not be less difficult to arrive at an absolutely perfect estimate of their amount. The value of beans and cattle will of course depend upon their quality, and upon the current prices in the markets where their owner may be able to sell them. Those prices will be affected by the economic situation of the period, the rate of exchange for the national currency, by the possibilities of transport and exportation, and by the degree of stability and tranquillity prevailing at the time of the marketing.

The Commission do not feel themselves able to weigh all these factors separately and exactly after seventeen years have elapsed. But they feel justified in declaring that sufficient proof has been shown to adopt as fair and reasonable an amount of 8,000 pesos, Mexican national gold.

7. The Commission take this opportunity to lay down a rule regarding the currency in which their awards will be expressed.

It seems arbitrary to let such currency be dependent upon what is asked in the claim. There is no reason why gold pesos should be awarded in one case, silver pesos in another, Pounds Sterling in a third, and United States dollars in a fourth. The Commission, having also regard to Article 9 of the Convention, are of the opinion that the awards can be based upon no other money than the national and legal money of the State to be held liable for the payment. Awards will, for that reason, in future be made in Mexican national gold.

8. The Commission decide that the Government of the United Mexican States shall pay to the British Government on behalf of Mrs. Jessie Watson (*née* Louth) a sum of eight thousand Mexican pesos, oro nacional.

WILLIAM McNEILL (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 46, May 19, 1931. Pages 96-101.*)

FAILURE TO SUPPRESS OR PUNISH.—EFFECT OF NON-PRODUCTION OF EVIDENCE BY RESPONDENT GOVERNMENT. When British Agent showed that the imprison-

ment of claimant by insurrectionary forces either had come or should have come to the knowledge of the authorities, while the Mexican Agent failed to submit evidence of any action taken by such authorities, *held* responsibility of respondent Government established.

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—PROOF OF PERMANENT LOSS OF EARNING CAPACITY. Only testimony of independent medical experts appointed by the tribunal will be accepted as evidence of permanent loss of earning capacity of claimant.

ILLEGAL ARREST.—MISTREATMENT DURING IMPRISONMENT.—CRUEL AND INHUMANE IMPRISONMENT.—DETENTION INCOMUNICADO. Claim for illegal arrest and mistreatment during imprisonment *allowed*.

MEASURE OF DAMAGES FOR PHYSICAL INJURY.—PROXIMATE CAUSE. When fact of serious personal injury is established, the damages allowed will take into account the nature of such injury, the probability of resulting medical expenses, and claimant's station in life.

Cross-reference : Annual Digest, 1931-1932, p. 227.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission," Law Q. Rev., Vol. 49, 1933, p. 226 at 230.

1. This is a claim for compensation for physical, moral and intellectual damages caused by arrest and imprisonment by revolutionary forces at Bacis, in the State of Durango, in April 1913.

The Memorial sets out that William McNeill was at the time of his imprisonment General Manager of the Bacis Gold and Silver Mining Company (Limited), a British Company. During the night of the 18th April, 1913, the mining area of Bacis, in the State of Durango, was visited by a party of revolutionaries numbering about 100 men, under the command of Pedro Gutierrez, Santiago Meráz, and Fermín Núñez. These rebels demanded from the Company a sum of 5,000 pesos. Mr. McNeill refused to pay this sum on the ground that the Bacis Gold and Silver Mining Company (Limited) was a British company taking no part whatever in the political struggle, was paying off taxes, and was, therefore, entitled to be allowed to continue its work unmolested. Santiago Meráz, to whom this refusal was made, arrested the claimant and placed him in solitary confinement under armed guard for about twenty hours. During the time of his imprisonment no communication with the mine officials or other employees of the Company was allowed to the claimant. After several threats of shooting and hanging, the claimant agreed to deliver to Santiago Meráz five bars of silver and a promissory note in favour of Santiago Meráz for the sum of 5,000 pesos. Mr. McNeill was then set at liberty and the silver and promissory note were handed over. Later the five bars of silver and the promissory note, through the intercession of the *Jefe Politico* at San Dimas, were returned to the company for a cash payment of 201 pesos. Shortly after this the revolutionaries left the neighbourhood of the mine. As a result of his imprisonment and the serious threats of death to which he was subjected, the claimant had a nervous breakdown, from which he has never recovered.

Dr. C. H. Miller examined Mr. McNeill after his release by the revolutionaries and found him suffering from "nervous shock and mental agony entirely due to his imprisonment". Dr. Miller's evidence is given in an affidavit made on the 16th June, 1913, before the Acting British Vice-Consul at Mazatlán. On the 19th June, 1913, Mr. McNeill was examined by Dr. J. A. René in the presence of Dr. C. H. Miller. Dr. René found that Mr. McNeill was suffering from "a

terrible nervous depression with total absence of reflex movement of the knees''. He considered that the bad treatment to which the claimant had been subjected was sufficient to produce the state of nervous prostration in which he found Mr. McNeill. Dr. René was also of the opinion that the infirmity might be incurable and might become graver in later years. Mr. McNeill had been examined by his own medical adviser, Dr. Frederick Spicer, of 142, Harley Street, London, in 1912, and his state of health was then very good. He was again examined by Dr. Spicer in September 1913 when he was found to be a complete wreck, suffering from a loss of knee reflexes. Dr. Spicer, after reading the sworn statements of Mr. McNeill, Dr. J. A. René and others, was of the opinion that the claimant's state of health was a natural consequence of his ill-treatment. On the 25th October, 1928, Dr. Spicer again made a careful and thorough examination of Mr. McNeill and found that he was still suffering from the loss of knee reflexes. Dr. Spicer is firmly of the opinion that this loss of knee reflexes was entirely due to the suffering to which he was subjected by the revolutionaries in 1913. No improvement was found to have taken place in Mr. McNeill's condition during the past fifteen years and the claimant's medical adviser is now of the opinion that his condition is chronic.

The sum of £5,000 sterling is claimed as compensation for the permanent damage to the claimant's health. This sum is considered to be quite reasonable by Dr. Spicer. A claim is also made for compensation for the humiliating and severe treatment to which the claimant was subjected during his arrest and imprisonment. The amount of this part of the claim is left to the Commission for assessment.

His Majesty's Government claim on behalf of William McNeill the sum of £5,000 sterling, together with such sum as the Commission might consider equitable compensation for moral and intellectual damages suffered by him during his imprisonment.

2. The Mexican Agent, while allowing that proof had been shown of the claimant's imprisonment, denied that there was any evidence as to the way in which he was treated during his confinement. Furthermore, he contested that it had not been proved that the loss of knee reflexes was a consequence of the imprisonment, or that this loss in itself constituted a permanent reduction of the capacity for work or the earning power of the patient. In his submission the loss of knee reflexes was not an illness, but merely a symptom of neurasthenia, which could just as well originate in physical conditions or in a nervous disposition as in the events alleged in the claim. Upon the medical certificates, produced as annexes to the Memorial, the Agent refused to reply, since they were all signed by experts chosen by the claimant. He did not regard their testimony as independent evidence and asserted that no award, and certainly not the unfounded amount claimed by the British Government, could be granted before a new examination of the claimant by impartial and independent medical advisers had taken place.

Apart from these arguments, the Agent failed to see any proof of the character of the forces, to which the acts were attributed. He could not admit that they were Maderistas or that they formed part of forces that afterwards constituted a Government. In the archives of the Mexican War Ministry the names of Pedro Gutierrez, Santiago Meráz, and Fermín Núñez had not been found and he must therefore conclude that they never served in the army. In case the individuals in question had to be regarded as insurrectionaries or as brigands, the Agent rejected any responsibility of his Government, because it had not been established that the competent authorities had omitted to take reasonable measures for suppression or punishment.

3. The British Agent held that there could be no doubt, either as to the facts or as to their consequences. There had been presented abundant evidence as to Mr. McNeill's imprisonment and as to the effects of the inhuman treatment to which he was subjected. The documents filed showed that the claimant was a strong and healthy man at the moment when he was arrested and that he left the prison a complete wreck. It had also been shown that before his imprisonment he had refused to comply with the demands of the Revolutionists and that he had, when released, given them what they asked for. Therefore the inference might safely be made that he was, during his confinement, compelled by force to give in. The Agent, in opposition to his Mexican colleague, attached very great value to the testimony of the expert (Dr. Spicer) who had been the medical adviser of the claimant since 1894, and who declared in 1914 that he had then found him a complete wreck. It could not, in the Agent's submission, be contested that Mr. McNeill had suffered very grave personal injury, which, even apart from a permanent reduction of his capacity for work, entitled him to substantial compensation, the amount of which ought certainly not to be less than the figure claimed by his Government.

As regards the classification of the forces responsible for those acts, the Agent asserted that they were either Maderistas or Constitutionalists, in both cases forces for whose acts the Mexican Government had accepted financial liability.

4. The Commission have found in the annexes to the Memorial sufficient evidence of the imprisonment of the claimant on the 18th April, 1913. Corroboration is furnished by declarations made by George F. Griffiths, Engineer of the Bacis Gold and Silver Mining Company, by Charles Leon Whittle, an employee of the same Corporation, by Ismael Reyes, a merchant at Bacis, by Tomas Venegas, a citizen of Bacis, by Dr. C. H. Miller, the Company's physician at that place, and by Dr. J. A. René, who saw the claimant at Mazatlán. Their declarations, dated the 16th, the 23rd, the 24th, or the 30th June, 1913, all state that they were either present at, or were informed, very soon afterwards, of the imprisonment of the claimant. Three of them saw him immediately after his release, and they unanimously state that he was then suffering from a very serious nervous breakdown. The same documents show that the claimant, although he first refused to comply with the wishes of his assailants, afterwards not only gave them a note for the 5,000 pesos originally demanded, but five bars of silver over and above that amount.

This evidence satisfies the Commission as regards the following facts:

- (1) Mr. McNeill was illegally imprisoned during twenty hours.
- (2) He was during that time treated very harshly and subjected to indignities and probably threatened with worse things.
- (3) He was only released when this maltreatment had resulted in his giving in.
- (4) The effects of such ill-treatment and threats were that Mr. McNeill suffered very serious nervous prostration, which was apparent to those who knew him before his arrest and saw him soon afterwards.
- (5) In the statement of the claimant and in the declarations of the witnesses, the forces commanded by Gutierrez, Meráz and Núñez are alternatively identified as revolutionaries and also as rebels, but there is no indication that they were Maderistas or Constitutionalists. As, furthermore, the Mexican Agent has not been able to trace the names of those three chiefs in the archives of the Army, it seems justified to classify them and their followers as insurrectionaries, dealt with in subdivision 4 of Article 3 of the Convention.

As regards the financial responsibility of the Mexican Government for their acts, the Commission refer to the rule laid down by them in previous decisions,

for instance in section 6 of their decision No. 12 (*Mexico City Bombardment Claims*), reading as follows:

"In a great many cases it will be extremely difficult to establish beyond any doubt the omission or the absence of suppressive or punitive measures. The Commission realizes that the evidence of negative facts can hardly ever be given in an absolutely convincing manner. But a strong *prima facie* evidence can be assumed to exist in those cases in which *first* the British Agent will be able to make it acceptable that the facts were known to the competent authorities, either because they were of public notoriety or because they were brought to their knowledge in due time, and *second* the Mexican Agent does not show any evidence as to action taken by the authorities."¹

In the present case it is evident that the authorities were informed of what had happened, because the *Jefe Politico* of San Dimas intervened and returned to the Company the bars of silver and the promissory note in exchange for a cash payment of 201 pesos. Apart from this it seems next to impossible that such a sensational act as the imprisonment of the General Manager of one of the principal concerns of the State could not have come to the knowledge of those whose function it was to watch over and to protect life and property. But not the slightest indication has been given that they took any action.

For these reasons the Commission are of the opinion that the claim falls within the terms of Article 3 of the Convention.

6. The question of the permanent loss of capacity for work or earning power has not been stressed by the British Agent. If such a loss had to be the outstanding factor in the determination of the award, the Commission could not fail to observe that Mr. McNeill, at the age of sixty-eight, still carries on the profession of Consulting Mining Engineer, and still fills the positions of Secretary and Consulting Engineer of the Bacis Gold and Silver Mining Company. And they also hold that so serious a statement as the measuring of the permanent effect on a man's earning capacity of events which occurred eighteen years ago, could only be accepted when given by independent medical experts of high standing, appointed by the Commission.

In the present case, however, there are facts—and they are enumerated in section 4—which in themselves entitle the claimant to compensation. The alleged imprisonment of Mr. McNeill constitutes a serious personal injury, and this injury was very much aggravated by the appalling and cruel way in which he was compelled to deliver up silver and money. It is easy to understand that this treatment caused the serious derangement of his nervous system, which has been stated by all the witnesses. It is equally obvious that considerable time must have elapsed before this breakdown was overcome to a sufficient extent to enable him to resume work, and there can be no doubt that the patient must have incurred heavy expenses in order to conquer his physical depression.

The Commission take the view that the compensation to be awarded to the claimant must take into account his station in life, and be in just proportion to the extent and to the serious nature of the personal injury which he sustained.

7. The Commission decide that the Government of the United Mexican States shall pay to the British Government, on behalf of Mr. William McNeill, six thousand (6,000) Mexican pesos, oro nacional.

¹ See also Decision No. 18 (*Bowerman*), section 7, and Decision No. 19 (*Santa Gertrudis*), section 9.

ROBERT JOHN LYNCH (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 47, May 21, 1931. Pages 101-104. See also decision No. 1.*)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. Claim established in material parts only by unsupported affidavit of claimant *disallowed*.

RESPONSIBILITY FOR ACTS OF FORCES.—MILITARY ACTS.—FORCED OCCUPANCY. No claim will lie for military occupation of house by government forces, including plundering, incurred in course of military operations against revolutionary forces.

1. The Memorial sets out that Mr. Robert John Lynch was the proprietor of a ranch situated at Puente de Garay, Ixtapalapa, Mexico. Towards the end of July 1914 he was obliged to abandon his property owing to a threatened attack by revolutionaries, whom he supposed were Zapatistas. Mr. Lynch left a watchman in charge of the house who, on the arrival of the revolutionaries, was threatened with death if he offered resistance. These revolutionaries plundered and destroyed everything they found in the house. Later, Mr. Lynch was able to recover part of his furniture, which he replaced in the house. In October 1914 he was informed that a cavalry detachment of Constitutionalists belonging to the forces of Lucio Blanco had taken possession of the house for military purposes. When the Constitutionalists left in November 1914 Mr. Lynch found that his house had been completely ruined. The doors, windows and floors had been removed, and the fowl-houses had been destroyed. The remainder of his furniture had disappeared.

His Majesty's Government claim on behalf of Mr. Robert John Lynch the sum of 2,455 pesos, Mexican currency.

2. The Mexican Agent denied that any proof had been shown as to the facts on which the claim was based. He could not consider as such the uncorroborated affidavit of the claimant himself.

3. With his reply the British Agent filed a letter from the British Consul at Mexico City to the claimant, dated the 6th November, 1914, with which was enclosed a copy of a letter dated the 4th November, 1914, from the Governor of the Federal District. In this letter the Governor confirmed the fact that the house of Mr. Lynch had been occupied for military reasons, because it was situated right on the firing line between the Federal forces and the Zapatistas. The Agent submitted that this was sufficient proof of the facts.

4. The Mexican Agent drew the attention of the Commission to the fact that the Governor's letter did not prove any looting of the property in October and November 1914. It only showed that the Commander of the Constitutionalist Army found himself compelled temporarily to occupy the house, as a military measure, but also that instructions were, agreeably to a request of the British Consul, given to the effect that the house be no longer occupied if military operations did not make it absolutely indispensable.

5. The Commission are of opinion that a distinction must be drawn between the two parts of the claim, and between the losses alleged in both of them.

In the first place the claim is for losses sustained between the end of July 1914—when Mr. Lynch thought himself obliged to abandon his property—and a certain date, probably prior to October of the same year. According to

the Memorial the house was plundered during that period, but the claimant was able to recover part of his furniture, which he replaced in the house.

In the second place, the Commission have to deal with an allegation of losses sustained because the house was, in October 1914, occupied for military purposes. When in November 1914 such occupation ceased, Mr. Lynch found that the house had been completely ruined and that the remainder of his furniture had disappeared.

6. For the first part of the claim no outside evidence whatever has been produced, for the unsupported affidavit of the claimant cannot be accepted as such.

The facts on which the second part of the claim is based are evidenced by the letters of the Governor, Jara, and of the British Consul, referred to in section 3 of this decision. It is obvious that the house was occupied by the Constitutionalist forces and this occupation ceased in due time.

Amongst the amendments made to the Convention in December 1930 there is one in Article 2 to the effect that no claim can be made for damage that was the consequence of a lawful act. As the Constitutionalist forces were at that time the forces of the Federal Government and fighting against the Zapatistas, there can be no doubt that their occupying a house situated on the firing line between them and their opponents was a lawful act.

It may be a subject of controversy—and it is possible that the Commission may find themselves faced with this question when dealing with one or more of the other claims—whether the amendment to Article 2 covers *all* the consequences of the act, even those which could and ought to have been avoided, in other words, whether the liberating effect of a lawful act does or does not also extend to those acts which went farther than was necessary in order to attain the lawful aim. An act may be lawful in its origin and its object, but deteriorate in the course of its execution.

In the present case, however, this question need not be considered, because no outside evidence is shown as to the character or the consequences of the military occupation. The letters mentioned above were written while the occupation was still in force, but as to the condition in which the house was left after the occupation, there is no document other than the claimant's uncorroborated affidavit. The conclusion must be that the losses are not proved and that it would not, even if their existence were established, be possible to determine their extent with any degree of accuracy.

7. The claim is disallowed.

CECIL A. BURNE (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 48, May 22, 1931. Pages 104-107.*)

FORCED ABANDONMENT. To establish a claim for forced abandonment claimant must show that he was forced to leave place of his residence as a consequence of revolutionary acts and that during his absence his property was taken, or suffered depreciation to the extent claimed.

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. Unsupported affidavit of claimant *held* insufficient evidence.

1. The Memorial sets out that in May 1911 Mr. C. A. Burne, with his wife and family, resided in a house in San Carlos, Tamaulipas, Mexico, which he had furnished at a cost of 1,500 pesos Mexican. In August 1911 Mr. Burne leased the "Dulcinea" Mine, in the San Nicolas district, and operated it constantly at a profit, until he was forced to abandon his work. In December 1911 he leased the "Montezuma" Mine in the same district, which he also operated at a profit. In September 1912 he leased the "Americas" and the "Aguilares" groups of mines, and had invested 1,800 pesos Mexican in these properties up to the time when he was forced to stop operations; and in December 1912 he located and made a claim for a mining property called "La Gran Bretaña", consisting of 6 hectares of ground of proved value, but owing to the cessation of postal communications the Government Mining Agent at San Carlos had been unable to obtain for the claimant the legal title to the property.

On the 29th February, 1912, a party of Vazquistas attacked the "Montezuma" Mine, and the claimant and his family were taken prisoners. By threats of bodily harm he was forced to supply the bandits with goods and money to the value of 50 pesos. The authorities at San Carlos had taken no steps to protect the property from attack, but, on the representations of His Majesty's Consul at Tampico, the bandits were pursued and finally suppressed a month later. In March 1913 rebels appeared at the town of Burgos, some 8 leagues from the mines. On the 22nd April, 1913, the 21st regiment of Rurales, which had revolted, attacked the city of Victoria, and, being repulsed, fled to the hill country of San Carlos, arriving there about the 25th and 26th April, under the command of a Colonel Navarrete. These rebels levied contributions on all Mexican citizens, and, in consequence, the workmen in the claimant's mines became restless and irregular in their work. Conditions rapidly became worse; the district judge, Don Baronio Flores, fled; telephone and postal communication was suspended, and murders, outrages, burnings and sackings were frequent. The railroad was frequently cut between Tampico and Monterrey, so that the claimant's ore could not be shipped to the smelter in Monterrey. On the 12th May, 1913, a band of rebels arrived at San Carlos to raise forced loans, and then proceeded to the claimant's mines, where they took four boxes of dynamite, with the necessary caps and fuse, to the value of 80 pesos Mexican. Between the 12th May and the 11th June six more bands invaded the district, and all work was suspended. There were very few workmen, no supplies nor provisions, nor any postal or railroad communications. On the 11th June, owing to the scarcity of food, the claimant left San Carlos with his wife and two children in ox-carts and journeyed north through country infested with rebels and bandits to the town of Reynosa, then in possession of the rebels. They had travelled a distance of 180 miles in some fourteen days. Mr. Burne was obliged to abandon his horse and saddle at Reynosa, as no one would buy them there. Before leaving San Carlos, Mr. Burne obtained a certificate from the chairman of the Corporation of San Carlos to the effect that he had been of good behaviour during his six or seven years' stay at San Carlos, and that he was forced to abandon his work at the mines on account of the revolutionaries. In addition to the property taken by various bands of rebels, Mr. Burne was obliged to abandon his work on the various mining properties in which he was interested. He was thus deprived of his livelihood, and it became necessary for him to seek a fresh occupation.

The amount of the claim is 14,333 pesos Mexican gold. Of this sum 4,333 pesos represent actual losses of goods taken by revolutionaries, money invested in abandoned properties, loss of furniture in house at San Carlos, and expenses of the escape from Mexico and the return to England. The remaining 10,000 pesos gold represent a low estimate of the claimant's loss due to depreciation of

his properties, losses or depreciation of machinery, tools, livestock, and loss due to his being disengaged and having to seek fresh employment.

His Majesty's Government claim on behalf of Mr. Cecil A. Burne the sum of 14,333 pesos Mexican gold.

2. The Mexican Agent's contention was that, in order to prove the facts on which the claim was based, nothing had been shown but an affidavit of Mr. Burne himself and a copy of a certificate by the President of the City Council of San Carlos, in which this official merely declared that Mr. Burne had finished his work at San José on account of the revolution, and that he was therefore going to England with all his family, for the purpose of visiting his parents. At the instance of this Agent, several witnesses who at the time mentioned in the Memorial lived in the neighbourhood, had been heard, and all of them testified that even though revolutionary forces occupied the district at the times mentioned by the claimant, the said forces did not levy any forced loans on Mr. Burne, nor did they confiscate his property. If Mr. Burne had abandoned his property at San Carlos and said property had, in consequence of such abandonment, suffered depreciation, the Government of Mexico could not be held responsible therefor.

3. The British Agent pointed out that it was not claimed that forced loans were exacted from the claimant. The claim was for confiscation of property, for the loss of money invested, for loss of furniture, for expenses incurred in returning to England, and for the depreciation of the mines, machinery, &c. The British Agent did not pursue the first item of the claim, relating to loss of goods and money to the value of 50 pesos, because this loss was due to a group of Vazquistas who were pursued and finally suppressed. As regards the other items of the claim, the Agent submitted that the testimony filed by his Mexican Colleague showed that those who were responsible were Carrancistas. Consequently, it was with subdivision 2 of Article 3 of the Convention that he had to deal, and it was unnecessary to establish negligence of the competent authorities. All the losses were due to the fact that the claimant had been compelled to leave San Carlos. The evidence presented by the Mexican Agent did not deal with what happened at the mines in the surrounding district, but only with what happened at San Carlos, and one of the witnesses upon whose testimony the Mexican Agent relied, gave a declaration showing that there had certainly been one attack upon the "Montezuma" mine.

4. The Commission have not, in the documents filed by the British Agent, found any outside corroboration of the allegations of the claimant. The case rests entirely upon the latter's affidavit, because the certificate given by Francisco V. Meléndez does not confirm any of the facts set out in the Memorial, except that the claimant returned to England because he had terminated his work at the San Nicolas mine, on account of the revolution.

Among the declarations of the witnesses recently heard at the instance of the Mexican Agent is found the testimony of one Amado Flores, who said that he had heard by public rumour, without actually having seen it himself or remembering when it happened, that a group of rebels, under the command of Conzalo and Eleazar Zúñiga, had looted the claimant's store at Montezuma.

The Commission consider this evidence in support too weak for them to base an award upon it.

In order to enable them to accept the facts underlying the claim, there ought to have been shown evidence as to the articles confiscated at the mine. It would further have been necessary to prove that Mr. Burne was forced to leave the place of his residence as a consequence of revolutionary acts, and that during his absence his property was taken or had suffered depreciation to the

extent claimed. No such evidence has been produced, and adhering to the attitude taken in several other decisions, the Commission cannot feel that they are at liberty to award any compensation.

5. The claim is disallowed.

AUGUSTIN MELLIAR WARD (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(Decision No. 49, May 22, 1931. Pages 107-110.)

AFFIDAVITS AS EVIDENCE. An affidavit of claimant based on hearsay and a statement of an independent witness based on personal knowledge *held* sufficient evidence.

DAMAGES, PROOF OF. Statement of independent witness, who had personal knowledge of facts stated and correctness of amount claimed, *held* sufficient evidence when the amounts involved seemed reasonable to the tribunal.

1. The Memorial sets out that Mr. Ward was appointed manager of the mill of the San Rafael Paper Company, Limited, at San Rafael in February 1907 and took up his residence in the manager's house within the mill walls. He had furnished this house with his own property, brought out from England. In March 1914 he returned to England on six months' leave of absence and, owing to the outbreak of the Great War in August 1914, did not return to San Rafael. About the end of 1916 he heard, through a friend, that a band of Zapatista rebels, who entered San Rafael in August 1914, had raided the manager's house and taken away all his effects. He wrote to the Company for confirmation of his loss and received a letter from Señor José Bernot Romano, the Sub-Manager, stating that everything had been taken from his house. Señor Romano has since embodied this information in a declaration.

The amount of the claim is £400 sterling, details of which are given in Mr. Ward's affidavit. The value which Mr. Ward has placed on this furniture is confirmed by Señor Romano in his declaration.

His Majesty's Government claim, on behalf of Mr. Augustin Melliar Ward, the sum of £400 sterling.

2. The Mexican Agent's contention was that the claim was not properly founded. Mr. Ward did not witness the facts on which he based his claim. Mr. José Bernot Romano had made the dogmatic assertion that in August 1914 a band of Zapatistas destroyed Mr. Ward's property, but he failed to say whether he had witnessed the events or whether he knew about them merely by hearsay.

In the submission of the Agent it was a further defect of this claim that no proof had been shown that Mr. Ward was the owner of the articles which he said were stolen from him, nor that they had the value he ascribed to them.

The Agent once more called the attention of the Commission to the fact that Article 2 of the Convention had been modified so as to make it necessary for the British Agent to produce proof of the value ascribed by him to losses of British subjects.

3. The British Agent considered that sufficient proof of the facts was given in Mr. Ward's affidavit and in Mr. Romano's statement. These documents also showed that the losses were caused by Zapatistas. As to the amount of the

Claim, the Agent submitted that the detailed nature of the schedule presented by Mr. Ward carried conviction, and that Mr. Romano confirmed the estimate. The Agent thought the amount fair and reasonable.

4. The Commission feel at liberty to accept the declaration of Mr. José Bernot Romano as sufficient proof of the facts. The deponent can be considered as an independent witness, who, at the time mentioned in the Memorial, was already in the service of the Cia. de Fábricas de Papel de San Rafael y Anexas, who resided on the premises and who often visited the house of the claimant. The Commission fail to see why his declaration should not be deserving of confidence.

5. There is just as little reason why Mr. Romano's statement as to the character of the forces who looted the mill and the house of the manager should not be accepted. He is a Mexican citizen, who lived at the place, and he may be supposed to have been able to distinguish between the different forces then in arms. Apart from that, it is of general knowledge that the San Rafael Paper Mills are situated in the immediate neighbourhood of the region where the Zapata movement originated and where up to the present day many ruined haciendas bear witness to their activities.

6. It is an equally known fact that the Zapatistas in August 1914 formed part of the Constitutionalist Army. This is also allowed in a brief filed by the Mexican Agent on the 7th April, 1931. As there is no doubt that the Constitutionalist Army was to be considered as a revolutionary force, which after the triumph of its cause established a Government, first *de facto*, and later *de jure*, the losses caused by this Army, and by the groups forming part of it, are covered by the Convention (Article 3, subdivision 2), even if some of the groups later separated and followed another cause.

The Commission, while satisfied as to the facts on which the claim is based, holds that the liability for the financial consequences of them must rest with Mexico.

7. The amount claimed has been confirmed by Mr. Romano, who was in a position to know the house and its contents, and neither the schedule nor the estimate seem exaggerated for furniture and movable property owned by the manager of an important industry, residing in a house with two living rooms, three bedrooms, hall and nursery.

8. The Commission decide that the Government of the United Mexican States shall pay to the British Government, on behalf of Mr. Augustin Melliar Ward, 4,000 (four thousand) pesos, Mexican national gold.

The Mexican Commissioner did not accept as an expert's proof, the testimony of Señor Romano in connexion with the value of the articles disappeared; hence the decision was by majority on this point.

HENRY PAYNE (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 50, May 22, 1931. Pages 110-111.)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. Claim alleged to arise under same circumstances as those of *Mexico City Bombardment Claims* (*supra*, Decision No. 12), but with fact of loss resting solely on claimant's affidavit, *disallowed*.

(Text of decision omitted.)

ROBERT HENRY BEALES (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 51, May 29, 1931. Pages 112-114.)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. Corroborating evidence adduced in support of affidavit of claimant *held* insufficient.

(Text of decision omitted.)

ROBERT O. RENAUD (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 52, May 29, 1931. Pages 114-117.)

BAPTISMAL CERTIFICATE AS PROOF OF NATIONALITY.—IDENTITY OF CLAIMANT.

A baptismal certificate of an individual having the same surname but not the same given names as those of claimant, together with a statement of claimant that he had later in life changed his name, as well as an affidavit of claimant as to place and date of birth, *held* sufficient evidence.

FORCED ABANDONMENT. Where evidence indicated claimant left his property in Mexico as a result of disturbed conditions, including assassination and robberies, and destruction of property thereafter ensuing may have been caused by gradual effects of time, claim *disallowed*.

RESPONSIBILITY FOR ACTS OF FORCES. Claim for taking and destruction of property by Carrancista forces *allowed*.

1. The Memorial sets out that during the period October 1895 to April 1907 Mr. Renaud purchased several lots of land in the Colony of Metlatoyuca, District of Huauchinango, State of Puebla. On gaining possession of the property the claimant commenced to fence the land and had constructed about seven miles of barbed wire fencing with hardwood posts. He had cleared over 600 acres of land, planting it for pasture; constructed two corrals; built a good frame house for himself and family and several houses for his workmen. For the first few years after the establishment of the colony, land was held by some 150 foreign nationals, of whom about fifty lived in the colony. Assassinations and robberies committed in the colony, rendered possible by the lack of police protection, caused the numbers of the colony to dwindle.

As Mr. Renaud had five sons of school age, he was obliged to live in Mexico City and he obtained employment there. Mr. Renaud placed a Mexican caretaker in charge of his property in the colony of Metlatoyuca. In June 1912, owing to the cessation of all business, which state of affairs was due to the disturbed conditions at the time, Mr. Renaud and his family left Mexico City for Alberta, Canada, via Veracruz. A short time after this the Mexican caretaker was driven out of the claimant's property by the revolutionaries, who had taken possession of the town of Metlatoyuca. These revolutionaries took away all Mr. Renaud's movable property and destroyed the remainder, chiefly by fire.

The robbery and destruction was at the hands of some of the revolutionary bands in the neighbourhood and it was not possible to identify the individuals responsible, but from a letter written by a Mr. W. F. Springall, it appears that they were Carrancistas. There were no police in the neighbourhood, although taxes were charged for and paid by the members of the colony. The presence of Federal soldiers in the colony offered no restraint to the activities of the revolutionaries.

Although Mr. Renaud was baptized in the name of Achille Oscar Adjutor, he assumed the name of Robert at the time of his confirmation and has used it consistently since that date.

His Majesty's Government claim on behalf of Mr. R. O. Renaud the sum of 15,130.00 dollars, United States currency.

2. The Mexican Agent with his Answer to the Memorial, filed a record of proceedings for the hearing of witnesses, held at his instance on the 30th November, 1928, before the Municipal President of Metlatoyuca; and with his Motion of the 26th March, 1931, he filed the record of further proceedings of the same nature, held before the same authority, on the 18th April, 1929.

In the Agent's submission both documents showed that the losses and damages were caused by the state of abandonment in which the claimant left his properties. There was no proof whatever that they were caused by any of the forces specified in Article 3 of the Convention, nor in case of having been caused by rebels, mutineers or brigands, that the Mexican authorities were in any way to blame.

The Agent also denied that the claimant's British nationality had been established, because there had only been filed a baptismal certificate of one Achille Oscar Adjutor Renaud, and it had not been shown that this man and Robert O. Renaud were one and the same person.

3. The British Agent considered that sufficient evidence had been produced with the Memorial to establish the fact that Mr. Renaud was a British subject.

Contrary to the opinion of the Mexican Agent, he asserted that the losses and damages had in fact been caused by the acts of forces within the meaning of Article 3 of the Convention. It might be true that the abandonment had also contributed to the losses and damages, but such abandonment had been enforced by the disturbed situation of the colony and by the many attacks by revolutionary forces on life and property. In his opinion, the testimony of more than one witness heard at the instance of the Mexican Agent confirmed the allegations on which the claim was based.

4. The Commission accept as sufficient *prima facie* evidence of the claimant's British nationality the certificate of baptism of Achille Oscar Adjutor Renaud, filed with the Memorial. They see no reason why they should not accept as *bona fide* the statement of the claimant that later in life he took a Christian name of his own choice and that he is the same individual as mentioned in the certificate. It is difficult to understand what reason he could have had for producing a certificate relating to another person, the more so as he had already, in his sworn affidavit of the 9th December, 1925, given the same date and place of birth as recorded in the baptismal certificate delivered nearly two years later.

5. The Commission have, in examining the claim, drawn a distinction between (1) the losses alleged to have been sustained through the destruction of a house and other buildings together with their contents, and (2) the losses alleged to have been sustained through the taking of cattle and horses, the

destruction of wire fencing and the deterioration of land that had been cleared and converted into pasture at great expense.

6. As regards the first item, the Commission have found no corroboration of the allegations of the claimant. The letter of Mr. W. E. Springall produced as annex 5 of the Memorial, and which gives an account of the situation of the colony, is dated the 4th October, 1916. It relates that nearly every house at Metlatoyuca was robbed and burned by Carrancistas, and although it fails to state the dates when all this happened, the letter gives the impression of dealing with more or less recent occurrences. But Mr. Renaud left Mexico in June 1912, and his affidavit shows that his property was robbed and destroyed either before or very soon after that time. It is therefore not certain that Mr. Springall's letter refers to the same events as are alleged to have caused the claimant's losses.

This seems the less certain in that the witnesses, heard at the instance of the Mexican Agent, denied that the house had been looted and burned by armed forces. These witnesses—all of whom were living at Metlatoyuca at the time mentioned in the Memorial, and some of whom lived close to Mr. Renaud's property or worked thereon regularly—deposed that the claimant's caretakers neglected their duties and left the property abandoned, although the state of safety prevailing would have allowed them to remain. It was not—according to all the witnesses—any acts of violence that had destroyed the house and annexes, but the gradual effects of time working on wooden buildings, when empty and not looked after.

In view of so much conflicting evidence, the Commission cannot consider this part of the claim as having been sufficiently proved.

7. As regards the second part of the claim, the letter of Mr. Springall contains no information, but some indication can be found in the record of the proceedings, when witnesses were heard on the 18th April, 1929.

Among them was the former caretaker of the claimant, and he indeed declared that a great number of cattle had been taken by Carrancistas. But other witnesses deposed that the whole or part of the cattle had been sold, and others again that the caretaker himself had appropriated the animals and sold them for his own account. All that proves to have been sufficiently confirmed is that the Carrancistas took seven horses.

The protocol also shows a good deal of contradiction as regards the area fenced in and made into pasture, but the figures given in the Memorial have not been confirmed by a single one of the witnesses. All of them gave much lower estimates, but it may, taking their depositions as a whole, be inferred that the claimant did, on that account, suffer losses through the acts of Carrancistas who visited the place.

The Commission hold that for the aggregate losses set down under this head of the claim, an amount of \$1,300 pesos Mexican gold, is fair and reasonable compensation.

8. The Commission decide that the Government of the United Mexican States shall pay to the British Government, on behalf of Mr. Robert O. Renaud (baptized Achille Oscar Adjutor Renaud) the sum of \$1,300 (one thousand three hundred pesos), Mexican gold.

This decision was a majority decision as regards the standing of the claimant, which has not, in the opinion of the Mexican Commissioner, been established.

THE INTEROCEANIC RAILWAY OF MEXICO (Acapulco to Veracruz)
(LIMITED), AND THE MEXICAN EASTERN RAILWAY COMPANY
(LIMITED), AND THE MEXICAN SOUTHERN RAILWAY
(LIMITED) (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 53, June 18, 1931, dissenting opinion (dissenting in part) by British Commissioner, June 18, 1931. Pages 118-135. See also decision No. 22.)

CORPORATION, PROOF OF NATIONALITY.—ALLOTMENT. *Compromis* does not require that, in order to claim, British corporation must show that British subjects have or have had an interest exceeding fifty per cent of the total capital, or that an allotment be produced.

DENIAL OF JUSTICE. Acts of non-judicial authorities, as well as judicial, may result in a denial of justice at international law.

CALVO CLAUSE. When a denial of justice is established the tribunal will have jurisdiction over the claim despite that claimant may have agreed to a Calvo Clause. Circumstances of case examined and *held* not to establish that claimants exhausted all local remedies in vain or that a denial, or undue delay, of justice existed.

Cross-references: Annual Digest, 1931-1932, pp. 199, 265.

Comments: Clyde Eagleton, "*L'épuisement de recours internes et le déni de justice, d'après certaines décisions récentes*", Rev. de Droit Int. L. C., 3d ser., Vol. 16, 1935, p. 504 at 520; Sir John H. Percival, "International Arbitral Tribunals and the Mexican Claims Commissions", Jour. Compar. Legis. and Int. Law, 3d ser., Vol. 19, 1937, p. 98 at 103; G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 237; Lionel Summers, "*La clause Calvo: tendances nouvelles*", Rev. de Droit Int., Vol. 12, 1933, p. 229 at 231.

1. According to the Memorial filed in claim No. 79, the Interoceanic Railway of Mexico (Acapulco to Veracruz) is a British Corporation, registered with limited liability on the 30th day of April, 1888, under the British Companies Acts, for the purpose of (*inter alia*) constructing or acquiring, equipping, maintaining and working railways in Mexico, and its registered office is situated in England.

In the year 1903 the Interoceanic Company entered into an arrangement with the Mexican Eastern Railway Company, Limited, whereby the Interoceanic Company agreed to take the Mexican Eastern Railway and undertaking on lease from that Company, for a period which has not yet expired.

The Mexican Eastern Railway Company, Limited, is also a British Corporation, and was registered with limited liability on the 5th day of December, 1901, under the British Companies Acts, for the purpose (*inter alia*) of constructing or acquiring, equipping, maintaining and working railways in Mexico. Its registered office is situated in England.

All the shares of the Mexican Eastern Railway Company, Limited, are owned by the Interoceanic Company.

In the year 1909 the Interoceanic Company, at the request of the Mexican Government, entered into an arrangement with the Mexican Southern Railway, Limited, whereby the Interoceanic Company agreed to take the Mexican

Southern Railway on lease from that Company for a period which has not yet expired.

The Mexican Southern Railway, Limited, is also a British Corporation, and was registered with limited liability on the 9th May, 1889, under the British Companies Acts for the purpose (*inter alia*) of constructing or acquiring and equipping, maintaining and working railways in Mexico. Its registered office is situated in England.

In the month of November 1903 an agreement was entered into between the Interoceanic Company and the National Railroad Company of Mexico (since merged in the National Railways of Mexico) under which the National Company undertook the management of the operation of the system of railway lines of the Interoceanic Company. Such agreement was subsequently amended on the 17th day of December, 1903.

It was part of the terms of the Management Agreement that:

(a) The National Company in undertaking such operation should act solely as the agent and manager of the Interoceanic Company.

(b) The earnings of the operated lines of the Interoceanic Company should be kept separate from other earnings; that all available net earnings of such lines should be paid by the National Company to the Interoceanic Company in London, and that all moneys spent either in Mexico or in England should be allocated as between capital and revenue as might be determined by the Interoceanic Company.

(c) The powers of the Interoceanic Company were to continue as theretofore to be exercised by its own Board of Directors.

(d) The Management Agreement should continue for one year from the 1st January, 1904, and thereafter until six months' notice in writing to terminate should be given by either party, but terminable forthwith in certain events.

2. The claims are for—

(1) Indemnification for loss of earnings of the Claimants for the period from the 15th August, 1914, to the 31st May, 1920, inclusive, due to the acts of General Venustiano Carranza and his forces, which resulted in depriving the Claimants of their railway undertakings and material and the earnings in respect thereof during that period.

(2) Compensation for losses of and damages to rolling-stock and other property of the Claimants, caused during such period by reason of such acts.

(3) Compensation for cash stores and other assets of the Claimants, requisitioned during such period as the results of those acts.

(4) Compensation for damage caused by the destruction in April 1914 of the San Francisco Bridge, near Veracruz, and the railway track between that bridge and Veracruz, belonging to the Claimants' railway undertakings, due to the acts of the forces of General Victoriano Huerta.

(5) Compensation for loss of earnings during the period from April 1914 to the 14th day of August, 1914, by reason of the destruction of the said San Francisco Bridge and track, and due to the acts of the forces of General Victoriano Huerta.

(6) Compensation for other losses and damages caused to the Claimants by revolutionary forces and the Mexican Government between the 20th November, 1910, and the 31st May, 1920.

(7) Interest at the rate of 6 per cent per annum, compounded half-yearly upon the amounts so payable by way of indemnification and compensation from the 31st May, 1920, down to the date of actual payment of such indemnification and compensation.

3. The Memorial further sets out that the claimants have for years endeavoured, through the intermediary of the Interoceanic Company, but without any success whatever, to obtain a settlement by the Mexican Government of their claims against the Government arising out of such seizure and occupation.

A negotiation has gone on from the end of 1921 until the end of 1927. The claimants consider the conditions imposed by the Mexican Minister of Finance as unacceptable and they conclude that it is impossible to come to an arrangement upon an equitable basis.

The British Government claim on behalf of the Interoceanic Railway of Mexico (Acapulco to Veracruz), Limited, the Mexican Eastern Railway Company, Limited, and the Mexican Southern Railway, Limited, the sum of 44,624,035 pesos Mexican gold, together with interest at the rate of 6 per cent per annum on this sum, compounded half-yearly from the 31st May, 1920, until the date of actual payment.

4. The claim No. 85, presented by the same Companies, is in respect of the following items:

(1) Indemnification for loss of earnings of the Claimants for the period from the 1st June, 1920, down to the 31st December, 1925.

(2) Compensation for losses of and damages to rolling-stock and other property of the Claimants and other losses and damages suffered during such period.

(3) Interest at the rate of 6 per cent per annum compounded half-yearly upon the amounts so payable by way of indemnification and compensation from the 31st December, 1925, down to the date of actual payment of such indemnification and compensation.

The amount of this claim is \$33,924,176 pesos Mexican gold together with interest as aforesaid.

5. The cases are before the Commission on a Motion of the Mexican Agent to Dismiss, based on the three following grounds:

(a) The British nationality of the Claimant Companies has not been established.

(b) It has not been proved that British subjects are holders of more than fifty per cent of the total capital of the said Companies, nor that the allotment to which Article 3 of the Convention refers was made.

(c) In the concessions granted to the claimant Companies, a so-called Calvo clause is inserted, reading—

“La empresa será siempre mexicana aún cuando todos o algunos de sus miembros fueren extranjeros y estará sujeta exclusivamente a la jurisdicción de los tribunales de la República Mexicana en todos los negocios cuya causa y acción tengan lugar dentro de su territorio. Ella misma y todos los extranjeros y los sucesores de éstos que tomen parte en sus negocios, sea como accionistas, empleados o con cualquier otro carácter, serán considerados como mexicanos en todo cuanto a ella se refiera. Nunca podrán alegar respecto de los títulos y negocios relacionados con la empresa, derechos de extranjería bajo cualquier pretexto que sea. Sólo tendrán los derechos y medios de hacerlos valer que las leyes de la República conceden a los mexicanos, y por consiguiente no podrán tener ingerencia alguna los Agentes Diplomáticos extranjeros.”¹

¹ *English translation from the original report.*—“The Company shall always be a Mexican Company, even though any or all its members shall be aliens, and it shall be subject exclusively to the jurisdiction of the courts of the Republic of Mexico in all matters whose cause and right of action shall arise within the territory of said Republic. The said Company and all aliens and the successors of such aliens

6. The Mexican Agent pointed out that in this case the Calvo Clause was in tenor and wording exactly similar to article 11 of the concession of the Mexican Union Railway, with which Decision No. 21 of the Commission had dealt. In his submission the Commission should declare themselves incompetent, for the same reasons as in the other case.

7. The British Agent declared that he did not intend to argue against a decision taken by the Commission in a previous session, but that he did see a marked difference between the two cases. His contention was that the Commission were not only at liberty to come to another conclusion in the claim now under consideration, but he even found in the decision quoted a strong argument in favour of overruling the motion filed by his Mexican colleague.

To this end he relied more particularly upon No. 12 of Decision No. 21, reading—

"The question may arise whether the view expressed in this judgment does not lead to the ultimate conclusion that the Mexican Union Railway has, by signing article 11 of the concession, divested itself of its British nationality and all that it implies, to such a degree as to waive the right to appeal to its Government even in cases of violation of the rules and principles of international law.

"It is obvious that there could only be grounds for this question if the Calvo Clause in this case were construed as intended to prevent the other party from applying for the diplomatic support of his Government in any circumstances whatsoever. Had that been the scope of the provision, the Commissioners would unanimously have been of opinion that the clause was to be considered as null and void. Redress of internationally illegal acts and protection against breaches of international law are regarded by the Commission as being of such high importance to the community of civilized States that their preclusion would invalidate the stipulation. But the majority of the Commission cannot see that article 11 of the concession aims so far. The claimant has not, by subscribing to it, waived its undoubted right as a British corporation to apply to its Government for protection against international delinquency; what it did waive was the right to conduct itself as if not subjected and as possessing no other remedies than international remedies. What the claimant promised was to apply to the courts and to resort to those means of redress which are, according to the Mexican constitution and laws, open to Mexican citizens. The contract did not take from claimant the right to apply to its Government if its resort to the Mexican tribunals or other authorities available resulted in a denial or undue delay of justice. It only took away the right to ignore them.

"This was, however, just what the claimant did. It behaved as if article 11 of the concession did not exist. Although the most recent of the events upon which the claim is based occurred in 1920 and the Convention was signed in 1926, it took no action at all. The claimant never sought redress by application to the local courts or to the National Claims Commission, which was created to adjudicate upon claims, similar to that now submitted, which has been in operation since the 17th June, 1911, and whose functions have subsequently been transferred to the Comisión Ajustadora de la Deuda Pública Interior.

having any interest in its business, whether as shareholders, employees or in any other capacity, shall be considered as Mexican in everything relating to said Company. They shall never be entitled to assert, in regard to any titles and business connected with the Company, any rights of alienage under any pretext whatsoever. They shall only have such rights and means of asserting them as the laws of the Republic grant to Mexicans, and Foreign Diplomatic Agents may, consequently, not intervene in any matter whatsoever."

"If by taking the course agreed upon by both parties the claimant would have been unable to obtain justice, no international tribunal would have denied it access, on the ground of the engagement subscribed to by it. But the claimant omitted to pursue its right by taking that course and acted as if said course had never been indicated by the State and accepted by it, and as there can be no question of denial of justice or delay of justice, as long as justice has not been appealed to, the majority cannot regard the claimant as a victim of international delinquency."

8. It was, in the eyes of the British Agent, clear that the Commission had, in the claim of the Mexican Union Railway, accepted the Calvo Clause *inter alia* because the claimant, so long as he had not had recourse to the Mexican Courts, could not be said to have been a victim of internationally illegal acts or breaches of international law, such as a denial of justice or an undue delay of justice. But the position of the Interoceanic Railway and of the two other Companies was quite different. They had not acted as if they had not signed a Calvo Clause. They had not disregarded local means of redress and they had not omitted to follow the course agreed upon in the concession.

In order to prove this, the Agent quoted article 14 of the Ley de Reclamaciones (30th August, 1919), reading—

"Art. 14. Las indemnizaciones debidas a empresas ferrocarrileras o de otros servicios públicos que hubieren sido ocupados o expropiados por el Gobierno con motivo de operaciones militares o a causa de las condiciones anormales que han prevalecido en el país, no tendrá necesariamente que sujetarse al conocimiento de la Comisión de Reclamaciones, sino que la indemnización que deba pagárseles podrá ser estipulada por medio de convenios celebrados por conducto de las Secretarías respectivas." ¹

And article 145, section X and section XI of the Ley sobre Ferrocarriles (29th April, 1899), reading—

"X. La autoridad federal tiene el derecho de requerir, en caso de que a su juicio lo exija la defensa del país, los ferrocarriles, su personal y todo su material de explotación y de disponer de ellos como lo juzgue conveniente.

"En este caso la Nación indemnizará a las compañías de camino de fierro. Si no hubiere avenimiento sobre el monto de la indemnización se tomará como base el término medio de los productos brutos en los últimos cinco años, aumentado en un diez por ciento y siendo por cuenta de la empresa todos los gastos.

"Si sólo requiriere una parte del material, se observará lo dispuesto en el párrafo IV de este artículo.

"XI. En caso de guerra o de circunstancias extraordinarias, el Ejecutivo podrá dictar las medidas necesarias, a fin de poner, en todo o en parte, fuera de estado de servicio, la vía, así como los puentes, líneas telegráficas y señales que formen parte de ella.

¹ *English translation from the original report.*—"Article 14. Compensation due to railway companies or other public utilities occupied or expropriated by the Government in connexion with military operations, or by reason of abnormal conditions prevailing in the country, will not necessarily have to be dealt with by the Claims Commission, but such compensation as may be due to them may be the subject of stipulation under agreements to be entered into by the respective Departments."

"Lo que haya sido destruido será restablecido a costa de la Nación, luego que lo permita el interés de ésta." ¹

The claimants have done everything in their power to have justice done, and had followed the course prescribed by a Mexican law. They had, in strict accordance with article 14 of the Law on Claims, addressed themselves to the Minister of Finance in order to arrive at a settlement of the compensation due to them. They had earnestly tried by correspondence, and orally, to obtain an equitable arrangement. It had all been in vain. After six years of patient and arduous negotiations, they were confronted by conditions, which they considered as unjust, unacceptable and unfit to constitute the basis of an agreement. In 1927 they had found themselves compelled to realize that they could not along these lines obtain justice. Since then they had received no further communication from the Department of Finance, and it was obvious that they could no longer expect that anything would be done towards awarding them the compensation to which the Railway Act entitled them.

In these circumstances, they had sought redress by applying to the Comisión Ajustadora de la Deuda Pública Interior, but although they had filed their claims with this Institution in November 1929, they had not, until now, been made acquainted with the results of their action.

The Agent's conclusion was that there could be no doubt as to the claimants having exhausted all the local means of redress open to them. These local means of redress had, however, proved insufficient. By taking the course indicated by the Mexican laws, the claimants had not been able to pursue their right. For this reason a denial of justice or undue delay of justice must be assumed to exist, in other words, that international delinquency which, according to the opinion laid down in Decision No. 21 of the Commission, entitled a claimant to apply to his own Government, in spite of having subscribed to a Calvo clause.

9. The Mexican Agent argued that, according to the opinion of many authorities on international law, only those acts or omissions could constitute a denial or an undue delay of justice, for which judicial powers were responsible. What the claimants complained of was that their negotiations with the Minister of Finance had not resulted in an agreement, because of the attitude taken by this official, but the Agent failed to understand how the attitude of this civil authority could ever be regarded as a denial of justice or as an undue delay of justice. It was only the courts that could be guilty of this kind of international delinquency, not an official, however highly placed, whose function was not that of administering justice, but that of directing one of the Departments of the Public Service.

¹ *English translation from the original report.*—"X. The Federal authorities have the right, should it in their judgment be required by the defence of the country, to call upon the railways, their personnel and all their operating equipment, and to dispose of same as they may think fit.

"The Nation shall in that event compensate the railway companies. Should they fail to reach an agreement as to the amount of such compensation, the average gross earnings for the preceding five years, plus ten per cent shall be taken as a basis, all expenses to be borne by the Company.

"If only a part of such equipment should be requisitioned, the provisions of paragraph IV hereof shall be observed.

"XI. The Executive may, in case of war or of circumstances of an extraordinary nature, order such measures to be taken as may be necessary for putting out of service, either wholly or in part, any tracks, and also any bridges, telegraph lines and signals forming part thereof.

"Anything so destroyed shall be replaced at the expense of the Nation, as soon as the interests of the latter shall allow of its doing so."

The Agent went on to set out that article 14 of the Ley de Reclamaciones had no other purpose than that of suggesting to Railway Companies an easier, and perhaps a quicker way of obtaining compensation, than by filing an action with the National Claims Commission. But the law did not intend to preclude them from taking the latter course, in case they preferred it or in case they could not arrive at an agreement with the respective Departments. This was what the Law meant by declaring that it was not necessary for the corporations in question to go to the Comisión de Reclamaciones. By entering into negotiations with a civil authority, they had not therefore waived their right to resort to the Special Court, which the same law had created to adjudicate upon revolutionary claims.

The claimants had themselves interpreted the law in identically the same way, because they had, in November 1929, applied to the Comisión Ajustadora de la Deuda Publica Interior, to which Institution the functions of the National Claims Commission had subsequently been transferred. This proved that the claimants also understood that, when the negotiations with the Minister of Finance did not lead to an issue, they still possessed other means of redress.

The fact that the Comisión Ajustadora had not rendered a decision, could not—in the Agent's submission—be construed as a denial nor as an undue delay of justice. The magnitude of these claims was such that no court could be blamed for not having administered justice within the period that had elapsed since they were filed. The same claims had been presented more than two years previously to the Commission, before which the Agent was then speaking, but no one would, having regard to the volume of the work incumbent upon the Commission, accuse this tribunal of having deferred the judgment any longer than was reasonable.

Moreover, the Agent did not deem it unlikely that the National Institution, having received the claims at a time when they were already before the International Commission, preferred to postpone the taking of them into consideration, until they knew whether the latter would declare themselves competent or not.

The Agent thought the question as to whether the Minister of Finance had really stipulated unacceptable conditions, immaterial to the issue now before the Commission, because the claimants had the right to resort to the Comisión Ajustadora, a right of which they had availed themselves. But he felt bound to observe that in his opinion the conditions were fair and reasonable, and he still believed that an arrangement might be arrived at—just as had been done in the case of other Railway companies—if both parties approached each other animated by an earnest desire to settle their differences in an amicable way.

The Agent's conclusion was that nothing had been shown that could induce the Commission not to accept the Calvo Clause, on the same grounds as they had done in the claim of the Mexican Union Railway.

10. The Commission declare themselves satisfied as to the British nationality of the claimant companies. They have, in more than one of their decisions, accepted incorporation in England and domicile in England as sufficient evidence of such nationality. They do so in this case as well.

The Convention does not require that British Companies should, in order to have standing before the Commission, show that British subjects have or have had an interest exceeding fifty per cent. of their total capital; neither is it necessary, in case the Company is British, that any allotment be produced.

The Commission cannot admit as justified the Motion to Dismiss in so far as it is based upon the grounds set out under (a) and (b) of No. 4.

11. As regards the third group upon which the motion rests, set out under (c) of No. 4, the Commission, by a majority, adhere to their decision taken in the case of the Mexican Union Railway, and as it so happens that in the claims now under consideration, the Calvo Clause has exactly the same wording as in the former case, the question before them is whether the said clause must in this case be disregarded because the three claimant companies have been the victims of internationally illegal acts or breaches of international law, such as a denial of justice or undue delay of justice.

Before answering this question, the Commission deem it necessary to lay down their opinion as to the character of the authorities who can become guilty of a denial or undue delay of justice.

They do not concur in the view that the judicial authorities can only be the ones, in other words, that only the courts can be made responsible for international delinquency of this description. They are undoubtedly aware that denial of justice or its undue delay will, in a majority of cases, be an act or an omission of a tribunal, but cases in which administrative, or rather non-judicial authorities, can be blamed for such acts or omissions are equally existent.

If an alien is arrested by the police on a false charge, his strongest desire will be to be put upon his trial without delay, in order to prove his innocence. But if the authorities in whose power he happens to be prevent him from being led before a court, if they bar him access to a tribunal, this must certainly be characterized as a denial of justice or as an undue delay of justice, the responsibility for which does not rest with the courts or with any judicial authority, but with the non-judicial officials, who deprived the alien of his liberty.

If an alien, having won a lawsuit and being desirous of seeing the judgment executed, addresses himself to those non-judicial authorities upon whom, in most countries, execution of the judgments of civil courts is incumbent, and they either refuse to assist him, or postpone their action indefinitely, the alien in question is certainly entitled to complain of denial or undue delay of justice, although the responsibility cannot be laid at the door of the tribunal that sustained his action.

If a foreigner, in the pursuit of his private interests, needs a document, which can only be delivered by one of the administrative authorities in the country where he transacts his affairs, and if this document is improperly withheld or delivered too late to be of any use, this will again constitute the same breach of international law, without any judicial authority being blamable.

The Commission deem that these examples, which could be supplemented by many others, show that non-judicial authorities also can be guilty of a denial or undue delay of justice, and if it could, in the case now before them, be shown that such authorities had been guilty of that international delinquency, they would not hesitate to declare themselves competent in spite of the claimants having agreed to a Calvo clause.

12. They have, however, been unable to find any such omission or act in the case they now have to decide. As they read it, article 14 of the Ley de Reclamaciones does not contain this alternative, that the Corporations mentioned therein must exercise the right, either of submitting their claims to the National Commission, or of endeavouring to come to an extra-judicial settlement with one of the Departments. The wording of the article does not admit of the conclusion that the Companies, having once made the election between the two means of redress, precluded themselves once for all from seeking that remedy which they had not chosen.

The meaning of article 14 seems clear. The number of the enterprises to which it refers could not be so great as to render it impossible for the Public

Administration to deal with them. This must have been one of the reasons why the law made available a seemingly less complicated mode of settlement, to railway companies and other similar concerns, than could be offered to the many thousands of other claimants. A second ground may have been that as occupation and taking over of public services must in most cases have been carried out by organs of the Government, with certain formalities and the execution of several documents, it was logical that an effort should, before resorting to the Courts, be made to come to some arrangement with the same Government by whose orders confiscation had taken place, and in whose archives much evidence was sure to exist. And a third argument may be found in the Railway Act, which already provided for the compensation of Railway Companies, whose buildings, rolling-stock and equipment had been taken over for purposes of safety and defence. It seems probable that those who drafted article 14 held the view that the rights granted by the Railway Law made a settlement of claims of this nature an easier matter than adjudication upon claims which had their origin in revolutionary acts not provided for by any law. It does not seem too bold an inference that an agreement out of court was recommended for this reason also.

But this recommendation cannot be construed as going any further than its object of facilitating an understanding. The Mexican Agent gave the correct interpretation of the provision, when he stressed the fact that the Companies had lost nothing by applying to the Department of Finance, and that they continued to be fully entitled to have recourse to the National Claims Commission (later the *Comisión Ajustadora de la Deuda Pública Interior*).

13. Another remedy remained open to them, another means of redress existed, to which they could resort. And it was to this means of redress that the claimant had recourse in November 1929, thus showing themselves that their resources were far from being exhausted.

The Commission cannot, that being the case, admit that justice has been denied to the claimants because their negotiations with the Minister of Finance have not led to an agreement. The Commission see no reason why they should enter upon an appreciation of the conditions stipulated by the Government. These are for the present an issue of no importance, because the claimants could resort to a Special Tribunal in case no settlement proved attainable.

Just as little as they can admit a denial of justice, can the Commission hold that the claimants are the victims of an undue delay of justice. The time that has elapsed since they went to the *Comisión Ajustadora* is not so considerable as to justify the charge that this Institution has deferred rendering justice longer than a court of law is allowed to do. The claims amount to over 77 million pesos Mexican gold, with interest compounded at the rate of 6 per cent, and no one would criticize a tribunal for taking a substantial time for examining actions in which such huge interests are involved, quite apart from the fact that the *Comisión Ajustadora* may have kept the claims pending so long as the International Tribunal, with which they knew that the motion had previously been filed, had not pronounced judgment as to their competence.

14. The preceding considerations have led the Commission to the conclusion that it cannot be held that the claimants have exhausted all local remedies in vain, that in this case a denial of justice or undue delay of justice are not rightly alleged, that there is consequently no evidence of internationally illegal acts or omissions, and that no appeal can, for that reason, be made to the arguments used by the Commission in Decision No. 21 when stating under what circumstances a Calvo clause should, even when signed, be disregarded.

15. The motion to dismiss is allowed.

Dissenting opinion of British Commissioner

1. I agree with the other members of the Commission in their finding that denial or delay of justice has not been established in this case. But whilst recognizing that the decision of the Commission in the case of the Mexican Union Railway (Limited), Decision No. 21, covers the present case in so far as such decision finds that the Anglo-Mexican Claims Convention does not overrule the Calvo Clause contained in the Concession then under consideration (which is identical with the Calvo Clause in this case), and that it fettered the Commission in this case, yet my opinion is so strong that their decision in the case of the Mexican Union Railway case was wrong on the important point of the relevance and applicability of the decision in the American case, to which I shall refer presently, that I must in the present case offer a dissenting opinion, so far as concerns the applicability of the Calvo Clause.

2. For convenience of reference, the Calvo Clause (translation) in the Mexican Union Railway case, which is the same in the present case, was as follows:

"The Company shall always be a Mexican Company even though any or all its members should be aliens, and it shall be subject exclusively to the jurisdiction of the Courts of the Republic of Mexico in all matters whose cause and right of action shall arise within the territory of said Republic. The said Company and all aliens and the successors of such aliens having any interest in its business, whether as shareholders, employees or in any other capacity, shall be considered as Mexican in everything relating to said Company. They shall never be entitled to assert, in regard to any titles and business connected with the Company, any rights of alienage under any pretext whatsoever. They shall only have such rights and means of asserting them as the laws of the Republic grant to Mexicans, and Foreign Diplomatic Agents may consequently not intervene in any manner whatsoever."

3. I would begin my observations by noting that, in my opinion, having carefully studied the majority decision in the Mexican Union Railway case, the Commission gave undue and misconceived weight as regards the applicability thereto of the decision of the United States and Mexico Claims Commission in the case of the North American Dredging Company of Texas, quoted in the Commission's decision in the Mexican Union Railway case. They compared the terms of the Concession in the American case with those of the Concession in the Mexican Union Railway case, and found them practically similar. But in my opinion this factor was far from settling the matter. Other considerations of much greater importance entered into the question.

4.—(1) The subject matter of the claim in the North American Dredging Company of Texas was breaches of a contract made between that Company and the Government of Mexico, which contract contained the Calvo Clause. It related purely to questions arising out of such contract and was confined to these.

(2) The Claim came before the United States and Mexico General Claims Commission under the Convention of the 8th September, 1923, and not under the Special Convention of the 10th September, 1923, for dealing with losses or damages suffered by American citizens through revolutionary acts.

(3) The Convention of the 8th September, 1923, setting up the American General Claims Commission, differs widely in its terms from the Anglo-Mexican Convention, as it also does from the terms of the American Mexican Special Claims Convention of the 10th September, 1923, in the respect shown in subparagraphs (4), (5) and (6) hereof.

(4) The Convention under which the North American Dredging Company of Texas case came before the General Claims Commission was one for settling claims by the citizens of each country against the other (excluding claims for losses or damages growing out of revolutionary disturbances in Mexico, which formed the basis of another and separate Convention). They were submitted to a Commission (i.e., the General Claims Commission) for decision in accordance with the principles "of international law, justice and equity" (see Articles I and II), though both parties (in Article V) agreed that no claim should be disallowed or rejected by the application of the general principle of international law that legal remedies must be exhausted first.

(5) The terms of the Anglo-Mexican Special Convention had (and still have) as a foundation, the desire to adjust definitely and amicably all pecuniary claims "*arising from losses or damages suffered by British subjects on account of revolutionary acts occurring during the period named*". In Article 2 is set out that the Commission shall "examine with care, and judge with impartiality, in accordance with the principles of justice and equity, all claims presented, since it is the desire of Mexico *ex gratia* fully to compensate the injured parties, and not that her responsibility shall be established in conformity with the general principles of international law; and it is sufficient therefore that it be established that the alleged damage actually took place, and was due to any of the causes enumerated in Article 3 of this Convention for Mexico to feel moved *ex gratia* to afford such compensation". It will be seen therefore that the Commission was to deal, not with questions of the construction, performance or breach of contracts, but solely and purely with damages and losses on account of, and due to, revolutionary causes.

(6) The claim coming before the Commission in the Mexican Union Railway case was not, as it was in the case of the American Dredging Company of Texas, in respect of breaches of contract or arising thereout, but was one for losses or damages owing to revolutionary causes.

5. It is in my opinion clear from a perusal of the judgment in the North American Texas Dredging case, that the American Commission was dealing with a case arising under the contract containing the Calvo Clause. It based its decision therein on the fact that the Company had procured and entered into a contract stipulating that the contractor, etc., "should be considered as Mexicans in all matters, within the Republic of Mexico, concerning the execution of such work, and the fulfilment of the contract. They should not claim nor should they have, with regard to the interests and the business connected with this contract, any other rights or measures to enforce the same than those granted by the laws of the Republic to Mexicans, nor should they enjoy any other rights than those established in favour of Mexicans. They were consequently deprived of any rights as aliens, and under no conditions should the intervention of foreign Diplomatic agents be permitted *in any matter related to the contract*". The Judgment stated that what Mexico asked of the Company as a condition of awarding it the contract which it sought was: "If all the means of enforcing your rights *under this contract* afforded by Mexican law, even against the Mexican Government itself, are wide open to you, as they are wide open to our own citizens, will you promise not to ignore them and not call directly upon your own Government to intervene in your behalf in any controversy, small or large, but seek redress under the laws of Mexico through the authorities and tribunals furnished by Mexico for your protection." And the claimant, by subscribing to this contract and seeking the profits which were to accrue to him thereunder, had answered "I promise". (See paragraph 10 of American judgment.)

6. The judgment of the *North American Dredging Company of Texas* case added (see paragraph 14) that "this provision did not, and would not, deprive the Claimant of his American citizenship and all that that implied. It did not take from him his undoubted right to apply to his own Government for protection if his resort to the Mexican tribunals or other authorities available to him resulted in a denial or delay of justice as that term is used in international law. In such a case the claimant's complaint would be not that his contract was violated, but that he had been denied justice. The basis of his appeal would be not a construction of his contract save perchance in an incidental way, but rather an internationally illegal act".

7. As I read the judgment of the present Commission in the Mexican Union Railway case, they approve of this principle (which no doubt applies to all cases coming within the Calvo Clause), but they apply it, in my opinion unnecessarily and irrelevantly, to the Mexican Union Railway case as if that case were a case of alleged breaches of contract and not, as it was, a claim entirely distinct from the contract, and one arising on revolutionary acts. The Mexican Union Railway case had nothing to do with the position of the Mexican Union Railway as contractors and *qua contract*. On the contrary, it was merely incidental that they were contractors. They happened, unfortunately for them, to be a target for Revolutionaries, just as were any other British subjects carrying on business in Mexico. There was no question of contract, or interpretation thereof, or of breaches thereof, and the Mexican Union Railway were not seeking to enforce a contract.

8. To emphasize this further, the claim of the Mexican Union Railway was brought by them not as contractors nor as seeking any rights under their contract, but as British subjects carrying on business in Mexico who had suffered loss and damage, through revolutionary causes, losses or damages which the Government of Mexico, by virtue of a laudable wish, as expressed in the Convention, were moved to compensate for, not because she might be liable under international law, but because it should be "sufficient therefore that it be established that the alleged damage actually took place". This is entirely outside any contract, whether it contained or did not contain a Calvo Clause.

9. I may here perhaps usefully refer to some general observations on the subject of Calvo Clauses as contained in Borchard's *Diplomatic Protection of Citizens Abroad* (see page 795). "Since 1886 many of these States (Latin-American) have incorporated into their constitutions and laws a provision that every contract concluded between the Government and an alien shall bear the clause that the foreigner 'renounces all right to prefer a diplomatic claim in regard to rights and obligations derived from the contract, or else that all doubts and disputes 'arising under it' shall be submitted to the local courts without right to claim diplomatic interposition of the alien's Government'." And (at page 797) Mr. Gresham, Secretary of State, interpreted the clause of the Venezuelan constitution to the effect that "in every contract of public interest the clause that doubts and controversies which may arise regarding its meaning and execution shall be decided by the Venezuelan tribunals and according to the laws of the Republic, and, in no case, can such contracts be a cause for international claims", to mean that the party claiming under the contract "agrees to invoke for the protection of his rights only the authorities, judicial or otherwise, of the country where the contract is made. Until he has done this, and unless having done this, justice is plainly denied him, he cannot invoke the diplomatic intervention of his own country for redress".

10. In all instances referred to in the authorities, the discussion has ranged round and was confined to claims involving the interpretation of contracts or arising thereout. And the *Mexican Union Railway* case is the first case in which there has been any extension of it to other matters. Further, according to the quotation contained at page 168 of Sir John Percival's dissenting opinion in the *Mexican Union Railway* case, His Majesty's Government in Great Britain, in its answer to the question put by the League of Nations on the subject of codification of international law, while accepting as good law the decision of the General Claims Commission between the United States of America and Mexico in the case of the *North American Dredging Company of Texas*, yet in recapitulating what was laid down in that case, was careful to limit it as applying "*in all matters pertaining to the contract*", and also to "*a claim arising out of the contract in which the stipulation was inserted*". The claim in the *Mexican Union Railway* case did not, in my opinion, fall within this category, but was entirely outside it.

The Calvo Clause in the Mexican Union Railway Company's contract had reference only and was confined to questions arising between the Railway Company *qua contractor* and the Government, and did not extend to claims independently thereof, and *a fortiori* does not cover revolutionary claims arising out of the provisions of a Special Convention such as was concluded between the two Governments of Great Britain and Mexico. Reading the Calvo Clause, in the Mexican Union Railway's concession or contract, it is in my opinion clear that it is confined to the position of the Company *as Contractors* and to questions connected with that position, which were subject to the jurisdiction of the Courts of the Republic of Mexico and to be settled by them, and not made the object of diplomatic intervention. To my mind it is impossible to carry the stipulation further, or to make it override the plain terms of the Convention subsequently concluded between the Governments of Great Britain and Mexico. To do so would be to recognize the rights of a subject to sign away in anticipation and limit *in futuro* the rights of his Government to make a Convention on a subject never contemplated by, nor within the terms of, the contract signed by him.

11. Coming to the case of the *Interoceanic Company*, the subject of the present claim, it is common ground that the Calvo Clause in that case is identical with that in the *Mexican Union Railway* case, but I recognize that there are some differences in the character of some of the items of the claim; in particular as regards those arising on the action of the Carranza revolutionaries under the Mexican Railway Law, which to some extent, it may be argued, remove those items from the more general category of revolutionary claims. But whatever may have been the legal foundation or validity under the Mexican Railway Law for some of General Carranza's acts at the time, then (as a revolutionary) purporting to invoke the provisions of the Railway Law, the confiscation of, and damage to, the claimant's properties were nevertheless revolutionary acts and, as such, within the purview of the Anglo-Mexican Convention, and were, under its terms, made the subject of compensation before this Commission. Therefore, the same considerations and arguments as expressed above on the Mexican Union Railway Company's claim are applicable even to those portions of the Claim.

12. For the above reasons, in my opinion, the Calvo Clause in this case is not a bar to maintenance of the claim of the Interoceanic Company and its co-claimants, and the decision of the majority of the Commission to allow the Motion to Dismiss is wrong. And the Motion should be dismissed, and the case heard on its merits.

THE DEBENTURE HOLDERS OF THE SAN MARCOS AND PINOS
COMPANY (LIMITED) (GREAT BRITAIN) *v.* UNITED MEXICAN
STATES

(Decision No. 54, June 23, 1931. Pages 135-141.)

CREDITORS' CLAIMS. Claim of holders of debentures of a British corporation, whose real property in Mexico had been sold to another, subject to a mortgage held by such corporation, based on acts of forces occurring while such property was owned by the purchaser, *dismissed*.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 233.

(Text of decision omitted.)

EL ORO MINING AND RAILWAY COMPANY (LIMITED) (GREAT
BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 55, June 18, 1931, dissenting opinion by Mexican Commissioner, June 18, 1931. Pages 141-152.)

CALVO CLAUSE.—EXHAUSTION OF LOCAL REMEDIES. Claim for compensation for transport of troops and goods on behalf of revolutionary and federal forces, for services and material furnished such forces, and for losses and damages resulting from the acts of such forces. Claimant was the holder of a railroad concession in connexion with which it had agreed to a Calvo Clause. Claimant had previously exhausted the only available local remedy and the domestic tribunal before which such claim was pending had taken no action thereon and made no indication as to when action might be taken. Motion to dismiss *disallowed*.

DENIAL OF JUSTICE.—UNDUE DELAY IN JUDICIAL PROCEEDINGS. While tribunal will not attempt to define with precision what will amount to an undue delay of justice, the holding of a case for nine years without any action whatever *held* undue delay. If such delay were due to volume of litigation, the judicial machinery itself must be deemed defective.

Cross-reference: Annual Digest, 1931-1932, p. 201.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 237; Lionel Summers, "*La clause Calvo: tendances nouvelles*", Rev. de Droit Int., Vol. 12, 1933, p. 229 at 232.

1. The claim is for compensation for the transport of troops and goods on behalf of revolutionary and federal forces, for work done and material supplied to revolutionary and federal forces, and for losses and damages suffered at the hands of revolutionary and federal forces during the period from the 20th November, 1910, to the 31st May, 1920.

The claimant Company was incorporated as a British Limited Company under the Companies' Acts, 1862 to 1898, on the 27th July, 1899.

The El Oro Mining and Railway Company, Limited, was, according to the Memorial, at the time of the losses and still is, engaged in mining and railway business in the State of Mexico. During the period from the 20th November, 1910, to the 31st May, 1920, inclusive, the Company suffered considerable losses on account of revolutionary or counter-revolutionary acts. The claim has been formulated in seven sub-claims.

CLAIM "A"

First Part

This claim is in two parts. The first is for compensation for the transport of troops by special and ordinary trains, for freight of materials and horses, and for repair to damage done to telegraph wire; and the second for compensation for material commandeered by the Libertador, Constitucionalista and Convencionista armies, and by the Secretary of War and Marine.

During November 1913 and the period from April to September 1914, troops and horses were transported over the railway belonging to the El Oro Mining and Railway Company, Limited, at the orders of Colonel J. C. Gamboa. Accounts 515-17, 521 and 524 are for services rendered at the orders of Colonel Gamboa.

During November and December 1914, January and February 1915, and November and December 1915, troops were transported for the Constitucionalista army, and a large number of special trains were used by that army. Fuel was supplied to, and some telegraphic lines were damaged by, this army. The names of the chief officers responsible for requisitions are: J. Gloriat. Arnulfo Gonzalez and F. Maguia.

During the period from February to September 1915 the Libertador army made use of the railway for the transport of troops, and requisitioned quantities of fuel.

Second Part

During the period from September to December 1915, material was supplied to, and work done for, the Constitucionalista army at the orders of Captain Juan Ramirez and Colonel Rivera.

During the period from February to September 1915 a considerable amount of work was done and material supplied to the Libertador army at the request of the same officers as detailed in group 3 of part I of this claim.

In August and September work was done for the Convencionista army at the orders of General Bonilla and General M. S. Pavon.

The amount of the claim is \$13,810.64 United States gold.

CLAIM "B"

It is alleged that on the 26th October, 1917, a train No. 480, left Empalme Gonzalez, a station on the National Railroads, with a freight of dynamite, motor cars, glass, machinery and other goods. At kilometre post 293, on the same day, an armed band of some 300 men under the command of General Gutierrez attacked the train by placing a bomb on the track, the explosion of which made it impossible for the train to proceed. After the band had stolen all they could, they set fire to the train, and the explosion which occurred when the flames reached the dynamite truck totally destroyed the train. In this train was a quantity of goods belonging to the El Oro Mining and Railway Company, Limited. Particulars of the goods are given in (j) of Exhibit B.

The amount of the claim is \$13,353.11 United States gold, or pesos 26,706.22 Mexican gold.

CLAIM "C"

This claim is for compensation for material taken by military forces and lost at Ciudad Juarez in 1915 and 1917. The claim is in two parts: the first is for some dynamite and fuse which was confiscated by military forces in 1916, and the second is for a shipment of ten kegs of litharge which was lost on the railways.

The Memorial sets out that on the 12th January, 1915, Messrs. T. J. Woodside and Company imported, on behalf of the El Oro Mining and Railway Company Limited, a car of dynamite and fuse. This car was No. 11205, and left Juarez City in a special train made up for Guanajuato. *En route* the car was cut out of the train as it was in bad order. On inquiry being made, it was found that the car had been taken to Dynamite Station and unloaded there by the order of the military authorities. Messrs. Woodside and Company wrote to the Constitutional Railways of Mexico and, in reply, were informed that this dynamite was unloaded by military command. This dynamite was never recovered by, or on behalf of, the claimant company. Part of this dynamite belonged to the El Oro Company.

In January 1915 ten cases of litharge were shipped to the El Oro Mining and Railway Company by J. A. Wright, customs broker of El Paso, Texas. This consignment of litharge was never received by the Company.

The amount of the claim is \$4,934.20 United States gold, or \$9,868.40 pesos Mexican gold. This total includes the cost of transport which had to be paid in advance.

CLAIM "D"

It is alleged in the Memorial that on the 7th August, 1914, revolutionary forces entered the mining property of the El Oro Mining and Railway Company and took possession of rolling-stock belonging to the Company. In October 1915 Colonel L. Rivera returned to the Company locomotive No. 2 and twelve trucks. The locomotive and trucks were in a very much damaged condition, and considerable repair was necessary before they were fit for further use. At the request of José P. Romo, the Judge of First Instance at El Oro ordered an investigation by experts of the damage and an estimate from these experts of the cost of repair. The report of these experts is attached to the voluntary proceedings (b) of Exhibit D.

On the 24th June, 1915, General Agustin G. Ceballos took, among other rolling-stock belonging to the Company, engine No. 5, and since that date the engine and almost all the rolling-stock was returned. On the 26th and 27th October, 1915, Colonel L. Rivera took an engine and twelve trucks belonging to the Company. In December 1915 engine No. 5, referred to above, and two trucks were returned to the Company. In an investigation made by experts at the request of the Judge of First Instance at El Oro, it was discovered that the trucks had not been badly used and were fit for further service. The engine, however, had received very bad treatment, and it was found necessary to expend a considerable sum of money on repairs.

The amount of the claim is 943.02 pesos Mexican gold, being 305.46 pesos Mexican gold the cost of repairs to locomotive No. 2 and twelve cars, and 637.38 pesos Mexican gold being the cost of repairs to locomotive No. 5.

CLAIM "E"

According to the Memorial, on the 11th December, 1918, wagon No. 115 left El Oro, and on the 13th it left Tultenango for Pateo. After the wagon had

been unloaded and entered for the return journey, it was set on fire by a party of rebels numbering between 200 and 300 men. The wagon was so badly damaged that it was necessary to reconstruct it.

The amount of the claim is \$426.70 United States gold, or pesos 853.40 Mexican gold.

CLAIM "F"

The Memorial states that on the 10th August, 1914, a loan of pesos 20,000 paper was made to General Ramon V. Sosa, of the Constitutionalist army. The El Oro Mining and Railway Company wrote on the 15th October, 1914, requesting the return of this money. No reply was returned to this letter. On the 10th January, 1915, General Luis Colín, of the Constitutionalist Army, took pesos 1,500 paper. On the 10th February, 1915, The Administrator of the State Revenue at El Oro, by the order of General Luis Colín, took pesos 7,000 paper. On the 9th January, 1915, Colonel Alfonso León took pesos 500 paper. On the 16th February, 1914, Colonel J. Jesús Ayala took pesos 500 paper. On the 22nd February, 1913, the same officer took pesos 750 paper. On the 20th February, 1915, General Inocencio Quintanilla took pesos 500 paper, and on the 30th April, 1915, General Juan Mejía F. took pesos 500 paper. This money has never been refunded to the Company.

The amount of the claim is \$4,298.88 United States gold, or pesos 8,597.76 Mexican gold, being the equivalent of the paper money taken by these officers at the rates of exchange ruling at the time.

CLAIM "G"

This is a claim for work done and for transport of troops and carriage of freight on various dates in 1914.

The accounts for this work were presented to the Secretariat of War and Navy for payment. This Department refused to pay the accounts on the grounds that, in view of the Decree of the 19th February, 1912, the acts of Victoriano Huerta could not be recognized.

The amount of the claim is pesos 140.20 Mexican gold.

The total amount of the seven sub-claims is \$36,823.53 United States gold currency and pesos 1,083.22 Mexican gold.

A claim has also been filed with the Mexican National Claims Commission, but no award has been made by that Commission in respect of that claim.

The British Government claim on behalf of the El Oro Mining and Railway Company the sum of \$36,823.53 United States gold and pesos 1,083.22 Mexican gold.

2. The claim is before the Commission on a motion to dismiss filed by the Mexican Agent.

The contention on which the motion is based is that the original concession granted in 1897 by the Mexican Government for the construction of this railway contains a so-called Calvo Clause, reading as follows:

"La empresa será siempre mexicana aún cuando todos o algunos de sus miembros fueren extranjeros y estará sujeta exclusivamente a la jurisdicción de los Tribunales de la República Mexicana en todos los negocios cuya causa y acción tengan lugar dentro de su territorio. Ella misma y todos los extranjeros y los sucesores de éstos que tomaren parte en sus negocios, sea como accionistas, empleados o con cualquier otro carácter, serán considerados como mexicanos en todo cuanto a ella se refiere. Nunca podrán alegar respecto de los títulos y negocios relacionados con la empresa, derechos de extranjería bajo cualquier pretexto que sea. Solo tendrán los derechos y medios de hacerlos valer que las

leyes de la República conceden a los mexicanos, y por consiguiente no podrán tener ingerencia alguna los Agentes Diplomáticos extranjeros.”¹

As the claimant Company has taken over this contract, they must, according to the view taken by the Mexican Agent, be regarded as bound by its provisions, including the Calvo Clause.

3. The Mexican Agent pointed out that in this case the Calvo Clause was in tenor and wording exactly similar to article 11 of the concession of the Mexican Union Railway, with which the Decision No. 21 of the Commission had dealt. In his submission, the Commission should declare themselves incompetent, for the same reasons as in the other case.

4. The British Agent declared that he did not intend to argue against a decision taken by the Commission in a previous session, but that he did see a marked difference between the two cases. His contention was that the Commission were not only at liberty to come to another conclusion in the claim now under consideration, but he even found in the Decision quoted a strong argument in favour of overruling the motion filed by his Mexican colleague.

To this end he relied more particularly upon No. 12 of Decision No. 21, reading:

“The question may arise whether the view expressed in this judgment does not lead to the ultimate conclusion that the Mexican Union Railway has, by signing article 11 of the concession, divested itself of its British nationality and all that it implies, to such a degree as to waive the right to appeal to its Government even in cases of violation of the rules and principles of International law.

“It is obvious that there could only be grounds for this question if the Calvo Clause in this case were construed as intended to prevent the other party from applying for the diplomatic support of his Government in any circumstances whatsoever. Had that been the scope of the provision, the Commissioners would unanimously have been of opinion that the clause was to be considered as null and void. Redress of internationally illegal acts and protection against breaches of international law are regarded by the Commission as being of such high importance to the community of civilized States that their preclusion would invalidate the stipulation. But the majority of the Commission cannot see that article 11 of the concession aims so far. The claimant has not, by subscribing to it, waived its undoubted right as a British Corporation to apply to its Government for protection against international delinquency; what it did waive was the right to conduct itself as if not subjected and as possessing no other remedies than international remedies. What the claimant promised was to apply to the courts and to resort to those means of redress which are, according to the Mexican constitution and laws, open to Mexican citizens. The contract did not take from claimant the right to apply to its Government if its resort to the Mexican tribunals or other authorities available resulted

¹ *English translation from the original report.*—“The Company shall always be a Mexican Company, even though any or all its members should be aliens, and it shall be subject exclusively to the jurisdiction of the Courts of the Republic of Mexico in all matters whose cause and right of action shall arise within the territory of said Republic. The said Company and all aliens and the successors of such aliens having any interest in its business, whether as shareholders, employees or in any other capacity, shall be considered as Mexican in everything relating to said Company. They shall never be entitled to assert, in regard to any titles and business connected with the Company, any rights of alienage under any pretext whatsoever. They shall only have such rights and means of asserting them as the laws of the Republic grant to Mexicans, and Foreign Diplomatic Agents may, consequently, not intervene in any manner whatsoever.”

in a denial or undue delay of justice. It only took away the right to ignore them.

"This was, however, just what the claimant did. It behaved as if article 11 of the concession did not exist. Although the most recent of the events upon which the claim is based occurred in 1920, and the Convention was signed in 1926, it took no action at all. The claimant never sought redress by application to the local courts or to the National Claims Commission, which was created to adjudicate upon claims similar to that now submitted, which has been in operation since the 17th June, 1911, and whose functions have subsequently been transferred to the Comisión Ajustadora de la Deuda Pública Interior.

"If by taking the course agreed upon by both parties, the claimant would have been unable to obtain justice, no international tribunal would have denied it access, on the ground of the engagement subscribed to by it. But the claimant omitted to pursue its right by taking that course, and acted as if said course had never been indicated by the State and accepted by it, and as there can be no question of denial of justice or delay of justice as long as justice had not been appealed to, the majority cannot regard the claimant as a victim of international delinquency."

5. It was in the eyes of the British Agent clear that the Commission had, in the claim of the Mexican Union Railway, accepted the Calvo Clause, *inter alia*, because the claimant, so long as he had not had recourse to the Mexican courts, could not be said to have been a victim of internationally illegal acts or breaches of international law, such as a denial of justice or an undue delay of justice. But the position of the El Oro Mining and Railway Company was quite different. It had not acted as if it had not signed the Calvo Clause. It had not disregarded local means of redress and had not omitted to follow the course agreed upon in the concession.

In order to prove this, the Agent drew the attention of the Commission to the Ley de Reclamaciones of the 30th August, 1919. This law created a special Court—called "La Comisión de Reclamaciones"—to which all claims should be submitted, arising out of damage—either to persons or to property—sustained through the revolutionary movements which had occurred since the 20th November, 1910. To this Tribunal aliens as well as Mexican citizens were to have access.

The Agent also quoted article 145, sections X and XI of the "Ley sobre Ferrocarriles" (the 29th April, 1899), reading:

"X. La autoridad federal tiene el derecho de requerir, en caso de que a su juicio lo exija la defensa del país, los ferrocarriles, su personal y todo su material de explotación y de disponer de ellos como lo juzgue conveniente.

"En este caso la Nación indemnizará a las compañías de camino de fierro. Si no hubiere avenimiento sobre el monto de la indemnización, se tomará como base el término medio de los productos brutos en los últimos cinco años, aumentado en un diez por ciento y siendo por cuenta de la empresa todos los gastos.

"Si sólo requiriere una parte del material, se observará lo dispuesto en el párrafo IV de este artículo.

"XI. En caso de guerra o de circunstancias extraordinarias, el Ejecutivo podrá dictar las medidas necesarias, a fin de poner, en todo o en parte, fuera de estado de servicio, la vía, así como los puentes, líneas telegráficas y señales que formen parte de ella.

"Lo que haya sido destruido, será restablecido a costo de la Nación, luego que lo permita el interés de ésta." ¹

The claimant Company has done everything in its power to have justice done, and had followed the course prescribed by a Mexican law. It had, in the year 1922, in strict accordance with the Ley de Reclamaciones, applied to the Comisión de Reclamaciones, but no award had until then been made. It had not received any communication on the subject of its claim, and it was obvious that it could no longer expect in this way to obtain the compensation due to it, according to article 145 of the Railway Act and the provisions of the Ley de Reclamaciones.

The Agent's conclusion was that there could be no doubt as to the claimants having exhausted all the local means of redress open to them. Those local means of redress had, however, proved inefficient. By taking the course indicated by the Mexican laws, the claimant had not been able to pursue its right. For this reason a denial of justice or undue delay of justice must be assumed to exist, in other words, that international delinquency which, according to the opinion laid down in Decision No. 21 of the Commission, entitled a claimant to apply to his own Government in spite of having subscribed to a Calvo Clause.

6. The Mexican Agent denied that the Comisión Ajustadora de la Deuda Pública Interior, to which the functions of the National Claims Commission had subsequently been transferred, could be blamed for undue delay of justice. The original total of the claims filed with the Mexican National Commission was over 10,000, of which 7,000 had already been settled. There was, in his submission, no reason to criticize the Commission for not yet having got through this huge volume of work.

7. The Commission, by a majority, adhere to the decision in the case of the Mexican Union Railway, and as it so happens that in the claim now under consideration the Calvo Clause has exactly the same wording as in the former case, the question before them is whether that clause must in this case be disregarded, because the claimant Company has been the victim of internationally illegal acts or breaches of international law, such as a denial of justice or undue delay of justice.

8. The local remedy open to the claimant was the "Comisión de Reclamaciones", now "Comisión Ajustadora de la Deuda Pública Interior". To this tribunal the Company had to resort according to the local law, under the Calvo Clause inserted in its concession. That there were no other means of redress open to the claimant is made clear by article 9 of the Ley de Reclamaciones, reading:

¹ *English translation from the original report.*—"X. The Federal authorities have the right, should it in their judgment be required by the defence of the country, to call upon the railways, their personnel and all their operating equipment, and to dispose of same as they may think fit.

"The Nation shall in that event compensate the railway companies. Should they fail to reach an agreement as to the amount of such compensation, the average gross earnings for the preceding five years, plus ten per cent, shall be taken as a basis, all expenses to be borne by the company.

"If only a part of such equipment should be requisitioned, the provisions of paragraph IV hereof shall be observed.

"XI. The Executive may, in case of war or of circumstances of an extraordinary nature, order such measures to be taken as may be necessary for putting out of service, either wholly or in part, any tracks, and also any bridges, telegraph lines and signals forming part thereof.

"Anything so destroyed shall be replaced at the expense of the Nation, as soon as the interests of the latter shall allow of its doing so."

"Art. 9. Por el hecho de acudir a la Comisión en la forma administrativa determinada en esta ley, se entenderá que los damnificados renuncian a su derecho de entablar las mismas reclamaciones por la vía judicial."¹

By filing an action with the National Commission, the claimant has, therefore, exhausted all local means of redress.

9. Following this statement, the Commission feel obliged to make another. It is to the effect that the claimant may rightly complain that it has applied for justice in vain.

Nine years have elapsed since the Company applied to the Court to which the law directed it, and during all those years no justice has been done. There has been no hearing; there has been no award. Not the slightest indication has been given that the claimant might expect the compensation to which it considered itself entitled, or even that it might be granted the opportunity of pleading its cause before that Court.

The Commission will not attempt to lay down with precision just within what period a tribunal may be expected to render judgment. This will depend upon several circumstances, foremost amongst them upon the volume of the work involved by a thorough examination of the case, in other words, upon the magnitude of the latter. It will often be difficult to define the time limit between a careful and conscientious study and investigation, on the one hand, and procrastination, undue postponement, negligence and lack of despatch on the other. The Commission have, in their Decision No. 53 (*Interoceanic Railway*), laid down their opinion that a court with which a claim for an enormous amount had been filed in November 1929 could not be blamed for undue delay if it had not administered justice by June 1931. It is obvious that such a grave reproach can only be directed against a judicial authority upon evidence of the most convincing nature.

But it is equally obvious that a period of nine years by far exceeds the limit of the most liberal allowance that may be made. Even those cases of the very highest importance and of a most complicated character can well be decided within such an excessively long time. A claimant who has not, during so many years, received any word or sign that his claim is being dealt with is entitled to the belief that his interests are receiving no attention, and to despair of obtaining justice.

10. In the opinion of the Commission, the amount of work incumbent upon the Court, and the multitude of lawsuits with which they are confronted, may explain, but not excuse the delay. If this number is so enormous as to occasion an arrear of nine years, the conclusion can be no other than that the judicial machinery is defective, and that the organization of its jurisdiction is not in proper proportion to the task it has to fulfil. A very obvious delay of justice originating in the overburdening with work of Courts insufficient in number is in effect equivalent to that undue delay of justice which the Commission have, in their Decision No. 21, accepted as justifying claimants in applying to their own Governments, in spite of having signed a Calvo Clause.

For this reason the Commission hold that the terms of the concession do not in this case preclude the claimant from appearing before them.

¹ *English translation from the original report.*—"Art. 9.—It shall be understood that the claimants, by resorting to the Commission in accordance with the administrative procedure hereby established, *ipso facto* waive their right to prefer the same claims in the Courts."

Dissenting opinion of the Mexican Commissioner

The Mexican Commissioner dissents from the Decision taken by his colleagues in the present case, for the following reasons:

Firstly.—He does not believe that the period of nine years, which has elapsed without the Adjusting Commission having pronounced judgment in the claim presented by the claimant company, justifies the statement that there has been a denial of justice on account of delay in administering it; and he bases his disagreement upon the fact that the said Commission has had many thousand cases to decide, some of them very complicated, and that, since the Commission itself knew that the claimant company had had recourse to the Anglo-Mexican Commission for a decision in the same case, it was logical to suppose that the Adjusting Commission itself would await the opinion of the Anglo-Mexican Commission before dealing with the case.

The General and Special Claims Commissions between Mexico and the United States have been functioning for more than six years and have not pronounced more than 200 decisions, in spite of the efforts of both Governments and of the Commissions themselves to make the best use of the time. They have more than three thousand cases to deal with, and up to the present they have not been accused of lenity in their labours.

The Claims Commission between Mexico and the United States in 1868 functioned for eleven years to decide a smaller number of cases than those enumerated in the preceding paragraph.

Delay in administering justice, according to the estimation of international authorities, should be malicious. In the present case this characteristic has not been demonstrated.

Secondly.—The Mexican Commissioner is also of opinion that the Anglo-Mexican Commission should declare itself incompetent since, even supposing it to be thought that there was denial of justice, through delay in administering it, on the part of the Adjusting Commission, this does not mean that the Anglo-Mexican Commission is the one to recognize that claim but the competent International Tribunal established in the case of the Union Railway Company. The Convention between Mexico and Great Britain does not authorize the Commission to recognize acts of civil authorities except when they have been committed by forces, which does not arise in the present case.

He agrees with all the other points in the Decision.

ALFRED F. HENRY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 56, June 9, 1931. Pages 153-154.*)

FORCED ABANDONMENT. Though it appeared that claimant's place of employment and residence was occupied by revolutionary forces at the time of his alleged departure, in the absence of evidence of acts compelling claimant to leave hurriedly and abandon his property, as well as proof that his property was taken by revolutionary forces, claim *dismissed*.

1. In this case the claim is made on behalf of Mr. Alfred F. Henry. The claimant sets out in the Memorial that he was employed as Civil Engineer to the Huasteca Petroleum Company at Tampico, and in 1913-1914 was engaged

in the erection of tanks, distillate plant, etc., at Tampico. In April 1914 the town of Tampico was occupied by rebel troops, and Mr. Henry was forced to leave hurriedly. He left Tampico as a refugee on board the Company's yacht, the *S.T. Wakiva*, and arrived at Aransas Pass, Texas, with just his working clothes, having been given enough money by the Vice-President of the Company to get to that town. As there was no likelihood of his returning to Mexico for some time, he was paid off by the Company and proceeded to his native town, Glasgow. In August 1914 the claimant returned to New York, with a view to attempting to trace his effects through the New York Agents of the Company. He was informed by the Vice-President of the Company that all trace of his personal effects and papers had been lost. Mr. Henry then returned to Glasgow to join His Majesty's forces in the Great War.

The amount of the claim is 2,500 pesos, details of which are given in the statement of claim attached to Mr. Henry's affidavit.

2. There was no oral hearing of this case, the respective parties putting forth their contentions in written briefs.

3. The Agent for Mexico contended that Mr. Henry left Tampico of his own will and that the proofs presented with his Contestation filed as Annexes thereto showed that he was not forced by the Government to leave Tampico. Further, that the American employees who left Tampico aboard the yacht *Wakiva*, following instructions from the American Consul, were not molested either by revolutionary forces or by Government forces, landing in safety.

4. The British Agent in his Brief stated that he relied upon the facts alleged in the claimant's Memorial and Annexes thereto. It was, in his submission, a matter of common notoriety that the rebels referred to in the Memorial, who occupied the town of Tampico in April 1914, were Constitutionalists, and therefore Mexico was responsible for their acts.

5. The Commission, whilst accepting that Tampico was occupied by Constitutional revolutionary forces in April 1914, and that the claimant left Tampico at the time of their occupation, do not find that there is any evidence of acts compelling him to leave Tampico hurriedly and abandon his property therein. Nor even, if the circumstances warranted him so leaving, that there is any proof that his property was taken by revolutionary forces.

6. The claim is dismissed.

GEORGE R. READ (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 57, June 9, 1931. Pages 154-157.*)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. Unsupported affidavit of claimant *held* insufficient evidence.

(*Text of decision omitted.*)

ROSA E. KING (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 58, June 9, 1931. Pages 157-159.*)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Claim for taking and destruction of property by various forces settled by direct agreement between Agents, approved by the tribunal.

(*Text of decision omitted.*)

GEORGE HENRY CLAPHAM (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 59, June 9, 1931. Pages 159-163.*)

AFFIDAVITS AS EVIDENCE. Affidavit sworn by eye-witnesses within two years after events considered as more reliable than declarations of witnesses heard more than sixteen years later.

DAMAGES, MEASURE OF. Claimant was a mining engineer permanently incapacitated as a result of foot injury due to act of forces. *Held*, award will be granted in such an amount as will purchase a life annuity commensurate with claimant's station in life.

Cross-reference: Annual Digest, 1931-1932, p. 225.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 238.

1. The Memorial relates that Mr. Clapham was employed as the Chief Engineer of the Mazapil Copper Company, Limited, and in May 1913 he was residing at their Smelter at Concepción del Oro, Zacatecas, Mexico. On the 20th May, 1913, some seven hundred revolutionaries, under the command of Eulalio Gutierrez and Pancho Coss, attacked Concepción del Oro. During the attack some rifle shots were fired at the revolutionaries from a place unknown, killing or wounding several of them. The revolutionaries suspected that the shots came from the Mazapil Copper Company's works and a party of them forced their way into the Smelter. They were preparing to blow up the buildings when Mr. Clapham took them into the garden of the works, where there was a full view of the roofs, to demonstrate to them that there was no one there. They were satisfied, and Mr. Clapham returned to his house to speak with several of the Company's employees. While speaking, another batch of revolutionaries rushed in and, without warning, opened fire on the group. Mr. Harold Bainbridge was shot through the hands. Mr. Clapham, after pushing his wife and child into the house, turned to close the door when a man entered and shot him through the thigh. As a result of damage to the main artery of the leg his foot had to be amputated, and he was for two years unfit to work. On several occasions since that time his leg has caused him considerable trouble and has necessitated prolonged medical treatment. As a result of the loss of his foot, which does not allow him to make inspections underground or in other difficult places, Mr. Clapham has found difficulty in

following his profession as mining engineer. During the fourteen years between 1913 and 1927 he has been employed only seven years, six months. The greater portion of his employment was during the war period, when able-bodied engineers were difficult to obtain. After Mr. Clapham's departure from Mexico, the revolutionaries took away a horse and saddle and a Jersey cow. They also set fire to all Mr. Clapham's household furniture.

The claim is for £12,000, the details of which are given as follows:

Amount of his salary, as confirmed by letter of the Mazapil Copper Company	£	s.	d.
Estimated value of privileges allowed him with the Mazapil Copper Company. Free house, light, fuel, water. A man servant and a maid servant. A tax on his salary paid by the Mazapil Company to the Mexican Government in lieu of all other taxes	770	0	0
	230	0	0
Equivalent value of his salary with the Mazapil Company . .	1,000	0	0
The damages at £12,000 are computed as follows:			
Compensation for 6½ years unemployment between 1913 and 1927 at £1,000 per annum	6,500	0	0
Estimated value of his furniture burnt by the rebels at Concepción, together with the value of his horse, saddle and Jersey cow taken by them	500	0	0
Cost of six artificial limbs for 14 years at £25	150	0	0
Cost of invalid's chair during convalescence	25	0	0
Compensation for continued disability	4,825	0	0
	12,000	0	0

His Majesty's Government claim, on behalf of Mr. G. H. Clapham, the sum of £12,000 (twelve thousand pounds).

2. The Mexican Agent, although allowing that the forces with which the claim deals were Carrancistas, and therefore that they fell within the terms of Article 3, subdivision 2 of the Convention, denied that it had been proved that the wound of Mr. Clapham was due to a wilful act of those forces; it might just as easily have been the consequence of his own lack of prudence. Neither had it, in the Agent's submission, been proved that the wound had had the consequences attributed to it. The Agent filed a record of the proceedings on the hearing of two witnesses, held at his instance by the Municipal President at Concepción del Oro, on the 14th June, 1929. Both witnesses declared that they believed that Mr. Clapham had been wounded through his own imprudence. They remembered having seen Mr. Clapham standing in one of the windows of the building of the Mazapil Company, shooting at the revolutionary forces. It was at that place, and not in his own house or in the garden, that Mr. Clapham had been wounded. They further believed that Mr. Clapham had killed one of the revolutionary chiefs; and as regards the amputation, they said that it was well known that the claimant already limped before the accident happened, and they could not therefore believe that the consequences alleged, were due to the wound. In his oral argument the Mexican Agent pointed out that the Doctor who swore an affidavit on the 3rd June, 1916, had only seen the claimant some years after the events, and the Agent contended that it had not been shown that amputation had been necessary. Furthermore, he thought the amount claimed grossly exaggerated, and he referred to the laws of several foreign countries on compensations for labour

accidents, in order to show that in all of them the loss of a foot was computed at a much lower amount than that claimed.

3. The British Agent observed that he failed to see any analogy between the accidents dealt with in the laws cited by his Mexican Colleague, and the case then under consideration. It was not a labour accident which had disabled Mr. Clapham but a revolutionary act, the financial responsibility for which devolved, according to the Convention, on the Mexican Government. He could not see that in this case the same considerations were valid as those on which labour laws base the liability of employers. The Agent laid great weight upon the fact that the evidence produced by him with the Memorial was contemporary evidence, whereas the testimony on which the Mexican Agent relied had been taken sixteen years afterwards. He maintained that there was abundant evidence of the allegations on which the claim was based.

4. The Commission feel bound to consider the testimony of eye-witnesses having deposed within two years after the events as more reliable than the declarations of witnesses heard more than sixteen years later. Messrs. W. J. S. Richardson, H. Burrell and H. Bainbridge, who swore the affidavits which fully corroborate the claimant's depositions, were all present when the Mazapil works were attacked; they were in Mr. Clapham's immediate vicinity; they formed part of the same group; they ran the same danger; and one of them was wounded on the same occasion. Their affidavits are dated the 15th and 19th February, 1915, at the time when the occurrences must still have been fresh in their recollection.

The testimony submitted by the other side cannot be looked at in the same light. Señores J. Jesús Góngora and José María Torrez were heard in June 1929. It is not stated in the record who or what they are, neither did they declare how they acquired the knowledge to which they gave utterance. If they were present at the attack, it was probably as onlookers upon whose minds the events must have left an impression less deep than upon that of those to whom the same events were a matter of life and death.

The Commission therefore accept the facts as proved and, as it is common ground between the Agents that Carrancistas were responsible, they declare that the case falls within the terms of Article 3, subdivision 2, of the Convention.

5. As regards the consequences of the wound inflicted upon Mr. Clapham, sufficient evidence is to be found in annex 8 of the Memorial.

This is the sworn affidavit of Dr. G. G. Farquhar, one of the medical experts, who on the 20th November, 1913, amputated the patient's left foot three inches above the ankle. Dr. Farquhar declares that he saw a letter written by Dr. McMeans, who attended the claimant in Mexico at the Monterrey Hospital after the attack. This letter described the case and was intended for the information of the doctor who was later to take up the treatment. It related that Dr. McMeans had tried to save the foot and had performed several operations on it. Dr. Farquhar therefore feels at liberty to declare that the removal of the foot was only decided on after it had been found impossible to save it.

The Commission, in the light of this evidence, cannot but accept as true the allegations in the Memorial as regards the consequences of the injury.

6. There can be no doubt that the loss of a foot must very seriously impair the earning capacity of a man carrying on the profession of Electrical and Mechanical Engineer. It is more than likely that such an injury will, for more than one kind of work, place him in an inferior position as compared with able-bodied applicants, that there will be many periods during which he will not be able to obtain employment, and that he will often have to be satisfied with a smaller remuneration than a man enjoying complete physical fitness.

It seems just and equitable, therefore, that an award be granted him, that will set off, by means of an annuity, the lifelong injury which was the result of the wound.

The Commission have found no guidance in any law or decree for the determination of the annuity, the less so as in nearly all other cases the annuity begins very soon after the accident, whereas in this case sixteen years and probably more will have elapsed before any payment can follow.

The Commission, also taking into account the station in life of the claimant, think an annuity of \$2,000 pesos Mexican gold fair and reasonable, and as, in order to purchase such annuity a man of the age of Mr. Clapham will have to pay about \$20,000 pesos Mexican gold, they fix the award at that figure.

7. The Commission have found no outside evidence of the other losses which the Memorial alleges were sustained by the claimant.

8. The Commission decide that the Government of the United Mexican States shall pay to the British Government, on behalf of Mr. George Henry Clapham, the sum of twenty thousand (\$20,000) pesos Mexican gold.

CARLOS L. OLDENBOURG (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 60, June 23, 1931. Pages 163-165. See also decision No. 11.*)

PARTNERSHIP CLAIM. Demurrer to claim of a Mexican partnership *sustained* when it appeared that less than half of capital was held exclusively by British nationals.

(*Text of decision omitted.*)

EDITH HENRY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 61, June 23, 1931. Pages 165-169.*)

PROCEDURE, MOTION TO DISMISS. The tribunal will not, on a motion to dismiss, determine the status under the *compromis* of revolutionary forces at times not material to the claim.

1. This is a claim for compensation for the murder of the claimant's husband, Mr. Francis Colin Henry, and for loss of personal property at the hands of a band of Zapatistas at Zacualpam on the 3rd January, 1916.

According to the Memorial Mr. F. C. Henry, a British subject, was employed as superintendent of the mine San Miguel Tlaxpampa, and resided at Zacualpam, in the State of Mexico. On the 2nd January, 1916, a force of Constitutionalist soldiers, stationed at Zacualpam, left without warning, and the inhabitants were without protection from the bandits and revolutionaries which were in the neighbourhood. In the afternoon of the 3rd January some 150 men, under the command of Molina, Mora and Pantalon, and some men of the Salgado group under Castrejon, entered the town. It is understood that these

were Zapatistas. Shortly afterwards a small group came to Mr. Henry's house, demanding money, but they were persuaded to leave on being shown a "safe-conduct", which Mr. Henry had obtained shortly before from Molina for the price of 400 pesos. About 4 p.m. a large group of men arrived and started to break down the fence and to enter the patio. Mr. Henry told his wife and children to go to one of the bedrooms, and, taking his pistol, ran to the door to prevent the entrance of the soldiers. Some shots were fired and a few moments later the armed men, including Molina and Pantalon, entered the house and began to sack. They even forced the ring from Mrs. Henry's marriage finger. Finally, Mrs. Henry was able to escape from the house with her children by giving Molina some silver plate that had been hidden. On leaving the house she saw her husband's body lying on the patio. He had been shot in various parts of the body, and there were signs that he had been wounded by the door and flung into the patio, where he had been killed. Mrs. Henry's son had his arm badly damaged by one of the men, who had been wounded, clubbing him with his rifle. Pantalon was seen carrying Mr. Henry's revolver. After hiding for some time Mrs. Henry was able to escape with her three children to Mexico City.

The amount of the claim is 56,585 pesos (silver), composed of 50,000 pesos (silver) for the loss of her husband and 6,585 pesos (silver) for the loss of personal effects looted by the Zapatistas.

The British Government claim, on behalf of Mrs. Edith Henry, the sum of 56,585 pesos (silver).

2. A Motion to Dismiss the claim has been lodged by the Mexican Agent as a means of obtaining from the Commission a decision as to the character of the forces under the command of General Emiliano Zapata, and at the same time as to the character of the forces that followed General Francisco Villa.

The Agent distinguished three periods in the military career of both Generals.

The first was when they and their followers formed part of the Constitutionalist Army under General Venustiano Carranza and pursued the common aim of overthrowing the Huerta régime. This object was achieved in August 1914, but the victory initiated dissensions between Carranza on the one hand and Villa and Zapata on the other. The result was that the two parties separated in November 1914.

That was, in the view of the Agent, the commencement of the second period. Both armies, disposing of about equal strength, contended for the supreme power in the Republic until the Constitutionalist Army defeated its opponents in September 1915. Upon this triumph General Carranza established a Government *de facto*, which was, in October of the same year, recognized by the Government of the United States of America and by several other Governments.

This was the end of the second, and the beginning of the third period, during which the resistance of the forces of Zapata and Villa continued, although they could no longer be considered as political factors. This period ended when these forces were, at different dates, definitely subdued.

3. The said Agent held the view that during the first period, Zapatistas and Villistas fell within the terms of subdivision 2 of Article 3 of the Convention, because they then formed part of the Constitutionalist Army, which had, after the triumph of its cause, established a Government *de facto*.

During the second period the position was different. Before the revision of the Convention, subdivision 2 not only mentioned revolutionary forces that had succeeded in obtaining the control of the State, but also "*revolutionary forces opposed to them*". In that description were included both Zapatistas and Villistas. But when the Convention was amended, those words were struck

out, and the Agent had no doubt that this was done in order to release Mexico from any claims arising out of the acts of those forces.

They could not in this period either be made to come within the meaning of subdivision 4, because this was a period of civil war, during which two factions of equal strength were in arms against each other. Neither of them had as yet been able to establish a Government; neither of them had been recognized by foreign Powers; and the United States of America had Agents at the headquarters of both factions. It was a time of anarchy, and as there was no Government, one of the parties could not have the character of an insurrectionary force as mentioned in subdivision 4. As both parties pursued political aims, the acts of none of them could be regarded as acts of banditry.

In the third period, according to the Agent, the state of affairs was such that a Government *de facto* existed. Against this Government, mutinies, risings and insurrections could break out and be sustained. The subdivision 4 of Article 3 could therefore be applied to the acts then committed by Villistas and Zapatistas.

4. The British Agent did not follow his Mexican colleague into the whole length of his argument. He wished to confine himself to the facts then before the Commission. They had occurred in January 1916 at a time when the *de facto* Government of General Carranza had already been established for three or four months, and when the Zapatistas, in arms against that Government, had consequently to be considered as an insurrectionary force, falling within the terms of subdivision 4 of Article 3.

5. The Commission, in adjudicating upon this Motion to Dismiss, do not think it necessary, on this occasion, to commit themselves to the historical divisions made by the Mexican Agent, nor to a determination of the character of the Villista and Zapatista forces in each of the periods of their career. In section 6 of their decision No. 49 (*A. M. Ward*), they have laid down the following opinion:

"It is an equally well known fact that the Zapatistas in August 1914 formed part of the Constitutionalist Army. This is also allowed in a brief filed by the Mexican Agent on the 7th April, 1931. As there is no doubt that the Constitutionalist Army was to be considered as a revolutionary force, which after the triumph of its cause established a Government, first *de facto*, and later *de jure*, the losses caused by this Army, and by the groups forming part of it, are covered by the Convention (Article 3, subdivision 2), even if some of the groups later separated and followed another cause."

6. As regards the present claim, the facts on which it is based are alleged to have occurred in January 1916, i.e., at a time when there was an established Government in Mexico. The acts of General Zapata, then in arms against that Government, must therefore be considered as a mutiny, a rising or an insurrection, unless they ought, depending upon the nature of the acts in certain instances, to be classified as acts of brigandage.

For this reason, when the claim comes up for examination on the merits, it is with subdivision 4 of Article 3 of the Convention that the Commission will have to deal.

7. The Motion is overruled.

THE ANZURES LAND COMPANY (LIMITED) (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(Decision No. 62, June 24, 1931. Pages 169-171.)

CORPORATE CLAIMS.—AUTHORITY TO PRESENT CLAIM. Evidence of authority to file claim *held* sufficient.

(Text of decision omitted.)

THE SONORA (MEXICO) LAND AND TIMBER COMPANY
(LIMITED) (GREAT BRITAIN) v. UNITED MEXICAN STATES

(Decision No. 63, June 24, 1931. Pages 171-177.)

CORPORATE CLAIMS.—NATIONALITY OF CORPORATE CLAIM.—PROOF REQUIRED TO ESTABLISH BRITISH NATIONAL INTEREST IN MEXICAN CORPORATION.—ALLOTMENT. In a claim by a British corporation based on its interest in a Mexican corporation, an allotment to such British corporation *held* required under the *compromis*.

(Text of decision omitted.)

MINNIE STEVENS ESCHAUZIER (GREAT BRITAIN) v. UNITED
MEXICAN STATES

(Decision No. 64, June 24, 1931, dissenting opinion by British Commissioner, June 24, 1931. Pages 177-184.)

NATIONAL CHARACTER OF CLAIM.—CONTINUING NATIONALITY OF CLAIM. While as a general rule it is sufficient for purposes of jurisdiction if it be established that the claim has remained continuously in the hands of citizens of the claimant Government until the time of its filing, when the record disclosed that prior to the date of the award the claim had lost its national character, motion to dismiss *allowed*.

Cross-reference : Annual Digest, 1931-1932, p. 221.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 231.

1. This is a claim for compensation for damages suffered at the Hacienda de la Mula in the counties of Hidalgo, Valles and Ciudad del Maíz in the State of San Luis Potosí during the Constitutionalist revolution of the years 1912 to 1914 inclusive.

According to the Memorial the late Mr. William Eschauzier, who was the owner of the Hacienda de la Mula at the time of these losses, was a British

subject. Mr. William Eschauzier died on the 19th October, 1920, and by his will appointed his brother, Dr. Francis Eschauzier, executor and sole heir. Dr. Francis Eschauzier was also a British subject. Dr. Eschauzier submitted this claim, which had already been drawn up by the late Mr. William Eschauzier, to His Majesty's Consul-General at Mexico City. Dr. Eschauzier died on the 9th November, 1924, and left a will appointing his wife as executrix and sole heir.

Mr. William Eschauzier had purchased the two farms known as the Hacienda de la Mula and Casa Blanca from his brother, Mr. Louis Eschauzier. These two farms were joined and are now known as the Hacienda de la Mula. During the year 1912 Mr. William Eschauzier, who was absent from the country, heard that a political revolution had broken out and that armed forces would probably invade the region in which his property was located. He instructed his attorney, Dr. Francis Eschauzier, to draw up an inventory of the property of the Hacienda de la Mula. On the 13th April, 1914, the forces of General Victoriano Huerta, which were in control of the railway line to Tampico, fell back on the station of Cárdenas, leaving the region in which the Hacienda de la Mula is situated in the hands of Constitutionalist forces. It was impossible to continue work at the Hacienda, and Mr. William Eschauzier's manager was obliged to abandon the property completely. On the 23rd May, 1914, Mr. William Eschauzier wrote to the British Vice-Consul at San Luis Potosí requesting protection for the hacienda. The Vice-Consul replied in a letter dated the 17th June, 1914, that his property was in the hands of Constitutionalists, and that it was therefore useless to ask the Mexican Government for protection. Later the forces of General Huerta evacuated all the territory of the State of San Luis Potosí and Mr. William Eschauzier was able to re-establish communications with his hacienda. He learned that on the 12th June, 1914, Lieutenant-Colonel Teóculo Aguilar, of the Second Regiment of Pedro Antonio Santos Brigade, had named Aureliano Azua, Mariano Saldaña and Bartolo Ramos, as persons in charge of the Hacienda de la Mula. On the 22nd June, 1914, Lieutenant-Colonel Aguilar authorized these persons to sell the movable and immovable property of the hacienda, the proceeds of which should be used for the payment of herdsmen and other small expenses, and the remainder to be used for revolutionary purposes. On the 18th June, 1914, Lieutenant-Colonel Aguilar and Lieutenant-Colonel Higinio Olivo issued a declaration in the City of Rayon stating that by the orders of General Francisco Cosío Robelo, duly authorized by the First Chief of the Constitutionalist Army, the Hacienda de la Mula was declared confiscated. Provision was also made in this order for the division of the land among the labourers. In view of this order Mr. William Eschauzier requested authority from General Eulalio Gutierrez, the Governor of the State of San Luis Potosí, to take possession of his hacienda, and the Governor appointed Nabor Rodriguez to make an inventory on Mr. Eschauzier's taking possession of his hacienda. On comparing the two inventories Mr. William Eschauzier found that a considerable amount of his property was missing.

The amount of the claim, which is for the value of the property found to be missing, is 60,845.28 pesos Mexican gold. Of this sum, 47,378 pesos Mexican gold represents the value of cattle, horses and mules found to be missing, and 13,467.28 pesos Mexican gold represents the value of other property, such as agricultural machinery, tools, carts and articles from the house, which was found to be missing.

The late Mr. William Eschauzier complained to the British Vice-Consul at San Luis Potosí on the 23rd May, 1914. It has been explained above that at the time it was impossible to make a protest to the Mexican Government.

When Mr. William Eschauzier was able to communicate with the Governor of the State of San Luis Potosi he regained possession of his hacienda. A statement of claim with the necessary supporting documents was drawn up by Mr. William Eschauzier on the 27th December, 1919. The claim belonged at the time solely and absolutely to Mr. William Eschauzier. The claim was not filed at His Majesty's consulate-general at Mexico City until the 10th January, 1922, and it was then filed by the late Dr. Francis Eschauzier as executor to the estate of the late Mr. William Eschauzier. No claim has, however, been presented to the Mexican Government, nor has compensation been received from any other source.

The British Government claim on behalf of Mrs. Minnie Stevens Eschauzier the sum of 60,845.28 pesos Mexican gold.

2. The claim is before the Commission on a Motion to Dismiss filed by the Mexican Agent, who had been informed by his British colleague that, after the claim was presented, the claimant had, by marrying a citizen of the United States of America, ceased to be a British subject.

3. The British Agent confirmed this allegation, and observed that, although he did not intend to argue against a decision taken by the Commission at their previous session, he still wished to state that his Government did not share the point of view of the Commission that the nationality of the heirs of a deceased person, and not the nationality of his estate, determined whether a claim had preserved its British nationality. He referred to Decision No. 4 of the Commission (Captain W. J. Gleadell), section 2.

4. The Commission, while in their majority adhering to the opinion quoted by the British Agent, feel bound to observe that the motion filed by the Mexican side not only raises the question, which they then decided, but another one as well.

Decision No. 4 dealt with a case in which British nationality had already been lost prior to the presentation of the claim, whereas in the case now under consideration, the claimant became an American citizen after the date of filing.

It might be argued that international jurisdiction would be rendered considerably more complicated if the tribunal had to take into account changes supervening during the period between the filing of the claim and the date of the award. Those changes may be numerous and may even annul one another. Naturalizations may be applied for, and obtained, and may be voluntarily lost. Marriages may be concluded and dissolved. In a majority of cases, changes in identity or nationality will escape the knowledge of the tribunal, and often of the Agents as well. It will be extremely difficult, even when possible, to ascertain whether at the time of the decision all personal elements continue to be identical to those which existed when the claim was presented. Jurisdiction would undoubtedly be simplified if the date of filing were accepted as decisive, without any of the events that may very frequently occur subsequently to that date, having to be traced up to the date of rendering judgment.

It can therefore not be a matter for surprise that both *Borchard* (pages 664 and 666), and *Ralston* (section 293), state that a long course of arbitral decisions has established that a claim must have remained continuously in the hands of a citizen of the claimant Government, until the *time of its presentation*.

5. On the other hand it cannot, however, be denied that when it is certain and known to the tribunal, that a change of nationality has taken place prior to the date of the award, it would hardly be just to obligate the respondent Government to pay compensation to a citizen of a country other than that with which it entered into a convention.

Moreover, the most recent developments of international law seem inclined to attach great value to the conditions existing at the time of the award.

6. The Commission refer to point XIII of the Basis of Discussion for the Conference for the Codification of International Law drawn up by the Preparatory Committee, reading as follows:

"It is recognized that the international responsibility of a State can only be enforced by the State of which the individual who has suffered the damage is a national or which affords him diplomatic protection. Some details might be established as regards the application of this rule.

"Is it necessary that the person interested in the claim should have retained the nationality of the State making the claim until the moment at which the claim is presented through the diplomatic channel, or must he retain it throughout the whole of the diplomatic procedure or until the claim is brought before the arbitral tribunal or until judgment is given by the tribunal? Should a change occur in the nationality of the person making the claim, are there distinctions to be made according to whether his new nationality is that of the State against which the claim is made or that of a third State, or according to whether his new nationality was acquired by a voluntary act on his part or by mere operation of law?

"Are the answers given to the preceding questions still to hold good where the injured person dies leaving heirs of a different nationality?

"If in the answers given to the preceding questions it is considered that a claim cannot be upheld except for the benefit of a national of the State making the claim, what will be the position if some only of the individuals concerned are nationals of that State?"

The answer of the British Government to this question was the following:

"His Majesty's Government in Great Britain believe that the following rules represent the correct principles of international law, as deduced from the numerous decisions of international tribunals before which cases have come involving points falling within the scope of point XIII:

"(a) The person who suffered the injury out of which the claim arose must have possessed the nationality of the claimant State and not have possessed the nationality of the respondent State at the time of the occurrence.

"(b) If the claim is put forward on behalf of the person who suffered the injury, he must possess the nationality of the claimant State and not possess the nationality of the respondent State at the time when the claim is submitted to the commission and continually up to the date of the award.

"(c) If the person who suffered the injury out of which the claim arose is dead or has parted with his interest in the claim, the person to whom the interest has passed and on whose behalf the claim is presented must possess the nationality of the claimant State and not possess the nationality of the respondent State at the time when the claim is submitted to the commission and continually up to the date of the award.

"(d) Where a national retains part only of the interest in a claim and part passes to a non-national, the claim may only be presented and an award made in respect of so much of the claim as remains vested in the national.

"(e) The result is the same whether the non-national's interest in the whole or part of a claim is passed to him by voluntary or involuntary assignment or by operation of law.

"(f) Changes of nationality subsequent to the making of the award are immaterial.

“(g) Possession of a nationality other than that of the claimant or respondent State is immaterial, provided that the preceding rules are complied with.”

A majority of the Governments answered in the same sense and accordingly the Preparatory Committee drafted the following Basis of Discussion, No. 28:

“A State may not claim a pecuniary indemnity in respect of damage suffered by a private person on the territory of a foreign State unless the injured person was its national at the moment when the damage was caused and retains its nationality until the claim is decided.

“Persons to whom the complainant State is entitled to afford diplomatic protection are for the present purpose assimilated to nationals.

“In the event of the death of the injured person, a claim for a pecuniary indemnity already made by the State whose national he was can only be maintained for the benefit of those of his heirs who are nationals of that State and to the extent to which they are interested.”

In the light of such weighty documents on the subject, the Commission do not feel at liberty to ignore the fact that the claimant no longer possesses the British nationality.

7. The Motion to Dismiss is allowed.

The British Commissioner expresses a dissenting opinion.

Dissenting opinion by British Commissioner

1. Whilst recognizing the weight of authority supporting the Decision of the majority of the Commission, my opinion is that the true test to be applied is the nationality of the person who sustained the injury and damage, and whether the claim is made on behalf of his estate or by an alien assignee of the original claim. These should be the sole considerations, irrespectively of what may be the ultimate destination of the beneficial interest in the estate. Supposing, for instance, that the deceased owed debts, and left either no assets beyond the existing claim for injuries and damage to his estate, or left assets insufficient except for such claim, to pay his debts, then his solvency, and the payment of his debts, even to creditors of his own nationality, would depend on the recovery on behalf of his estate of such damages. To defeat recovery thereof because his Executor or Administrator, or the ultimate beneficiary (after payment of debts and pecuniary or other legacies), might be of a different nationality, would in my opinion be an injury and injustice to such creditors, and to legatees, as well as to the reputation of the deceased, by causing him to have died insolvent.

2. I would here refer to a quotation given at page 633 of Borchard's *Diplomatic Protection of Citizens Abroad*.

“In the case of injuries to the person or property of the deceased, which may be deemed debts due to his estate, the personal representative, usually the Executor or Administrator, and not the heir, has been regarded as the proper party claimant. The reason for this rule was stated by the domestic commission under the Act of the 3rd March, 1849, as follows:

“ ‘The Board has not the means of deciding questions touching the distribution of intestate estates, which depend upon local laws and involve inquiries as to domicile and many other topics of which we are furnished with no evidence. Besides it may happen that the rights of creditors are involved, who are entitled to be paid before any distribution can be made.’ ”

3. I am aware that my objections may seem to go to the extent of contradicting some of the authorities referred to in the Decision herein, even those as to nationality at the time of the presentation of the claim. But in my opinion, if the nationality attaches and remains attached or is deemed to attach to the *estate* on behalf of which the claim is really brought, there is no such contradiction. The nationality of a mere assignee of the original claim is of course a different matter.

4. I may here observe that I do not think that the Answer of the British Government (*c*) quoted in paragraph 6 of the majority Decision of the Commission goes so far as apparently it is interpreted to do by such majority.

THE MEXICAN TRAMWAYS COMPANY (GREAT BRITAIN) *v.*
UNITED MEXICAN STATES

(Decision No. 65, June 30, 1931. Pages 184-191.)

PROCEDURE, MOTION TO DISMISS. When it appeared that as to certain of the items of claim, even though not all, the tribunal may have jurisdiction, motion to dismiss *overruled*.

LESSEE AS CLAIMANT. Damage to property owned by a lessee does not fall under the rule that only the owner, and not the lessee, is entitled to claim.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 234.

(Text of decision omitted.)

JAMES RICHARD ANTHONY STEVENS AND MRS. GIBB (GREAT
BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 66, June 30, 1931. Pages 191-193.)

NATIONAL CHARACTER OF CLAIM.—CONTINUING NATIONALITY OF CLAIM.—

PARTNERSHIP CLAIM. A claim by a British subject based on his interest in a partnership formed under Mexican law will not be rejected on the ground that such interest represented 50 per cent or less of the partnership capital when it appeared that at the time the claim arose the British interest in such partnership exceeded 50 per cent.

ALLOTMENT. No allotment by a partnership to a claimant holding an interest therein will be required when such partnership was dissolved by virtue of the death of one of the partners.

Cross-reference: Annual Digest, 1931-1932, p. 219.

(Text of decision omitted.)

PATRICK GRANT (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 67, July 3, 1931. Pages 194-197. See also decision No. 9.)

OWNERSHIP OF CLAIM. Claim for farm equipment, agricultural products and other personal property, filed by manager of ranch, *allowed*, but claim for reduction in value of land and damages to premises *disallowed* on ground it must be filed by owner of ranch.

DAMAGES, PROOF OF. Though damages not proved to the full extent and amount claimed on some items exaggerated, award nevertheless granted.

1. According to the Memorial, Mr. Patrick Grant was, in 1911, managing a property known as the Ranch Mezquital at Culiacancito, in the District of Guliacan, State of Sinaloa, which belonged to his father, Captain Alexander C. Grant. Mr. Patrick Grant held a power of attorney from his father.

On the 16th April, 1911, a party of State Rurales visited the Ranch Mezquital with orders from Bernardo Sainz, the Juez of Culiacancito, to deliver to them a Winchester carbine and a belt of ammunition and to lend them one horse and saddle, to be returned as soon as possible. Two days after receiving this property the troops were captured at Caimanero by rebel forces under Amado Machado. Mr. Grant has never recovered his carbine, ammunition belt or horse and saddle. On the 27th May, 1911, a number of leaders of the Maderista revolution demanded and took from Mr. Grant certain quantities of maize and fodder for the use of the revolutionaries.

Owing to the operations of revolutionary forces under the leadership of Pilar Quintero, Francisco Quintero, Pedro Quintero, Miguel Rochein and Antuna, Mr. Grant found that his life was daily in danger, and some time in February or March 1912 he was forced to flee from the Ranch Mezquital. Before leaving, Mr. Grant asked a Mexican (a Mayo Indian) to look after the property during his absence. About two months after leaving the ranch the claimant returned to Culiacan by the last train to enter the town before its capture by the revolutionary forces known as Zapatistas. After the capture of the town the Zapatistas robbed and plundered ranches in the neighbourhood, including Mr. Grant's ranch, Mezquital.

The British Government claim on behalf of Mr. Grant the sum of 27,814.67 pesos Mexican gold.

2. Following Decision No. 9 of the Commission delivered on the 7th December, 1929, both Agents have filed new evidence.

The British Agent has presented an affidavit sworn by Sarah Elizabeth Grant, the mother of the claimant. She states that her husband, Alexander C. Grant, who died on the 9th January, 1930, had entered into an agreement with his son Patrick, according to which all real property located in the State of Sinaloa, Mexico, and all personal property located thereon, should belong to the said Patrick Grant. This agreement was made prior to the 1st day of July, 1906.

The other persons, whose affidavits were filed by the British Agent, all declare that they knew that the claimant was the owner of the ranch, and was everywhere recognized as such. The affiants testify that the claimant always sold the products of the ranch as his own, and that he was the real and responsible proprietor. The affiants further declare that they knew that the claimant had suffered the losses alleged in the Memorial, and they also confirm the amount of the losses, as estimated by the claimant.

The British Agent also presented copies of letters showing that Patrick Grant transacted the business connected with the farm in his own name.

The Mexican Agent filed documents of an opposite character. The first is a declaration of the Municipal President of Culiacancito, to the effect that the claimant, in 1911, was not the proprietor of the ranch, and that he had no knowledge of any of the facts on which the claim was based. Of the same nature is the testimony of three witnesses, heard in March, 1930; they all declare that the claimant was not known as the owner, and they deny that any losses, to the amount claimed, can have been sustained.

3. In his oral argument the British Agent contended that he had shown sufficient proof that the claimant was the owner of the ranch, and that he had been the one to suffer the losses, apart from the personal losses which did not pertain to the owner or to the person for whose account the property was farmed.

As regards the forces that committed the acts, the Agent asserted that they were either Maderistas or Rurales, i.e., forces of the State, or Zapatistas, for whose acts Mexico must, in cases like the present one, be held financially liable.

4. The Mexican Agent had, to the affidavits on which his British colleague relied, the same objections to which he had given expression in several other cases. They were obtained in 1930 and 1931, from persons living in the United States. Those persons had not been cross-examined, and could not be prosecuted in case they had sworn false statements. In the Agent's submission, there was no doubt that the father of the claimant was the owner of the ranch, and that he had finally sold it. The Public Register was the only valid proof of ownership, and as in that Register Mr. Alexander C. Grant was inscribed as the proprietor, the affidavits presented by the British Agent were of no value.

The Agent also drew the attention of the Commission to the fact that the claimant estimated the value of the property at 18,600 pesos, whilst the documents filed by himself showed a fiscal value of only 840 pesos.

5. The Commission, as they have already done in their Decision No. 9, think it necessary to draw a distinction between such of the alleged losses as bear a more personal character, and those pertaining to the ownership or exploitation of the Mezquital Ranch.

6. Within the first category falls the property stated in the Memorial to have been demanded and taken from the claimant on the 16th April, 1911, by State Rurales. This property consisted of a Winchester carbine, a belt of ammunition, a horse and a saddle.

The Commission have found in the evidence filed by the British Agent, sufficient corroboration of Mr. Grant's affidavit, and as the Rurales were a force under the command of the Government of the State, their acts fall within the terms of Article 3 of the Convention.

7. The other losses include in the first place the reduction in the value of the land, and also the damage to the fencing, the buildings and the wells. Secondly, the claimant asks compensation for the mules, wagons, ploughs and other implements, which were on the ranch. And in the third place he claims for agricultural products lost or taken.

In order to decide this part of the claim, it is necessary to know in what legal relation the claimant stood to the ranch, in other words, whether he or his father was the legal owner at the time of the events.

The Commission do not hesitate to declare that they must regard the father as such. The Memorial itself states that the claimant managed the property,

which belonged to his father, Alexander C. Grant. The Power of Attorney, annexed to the Memorial, and signed by Mr. Alexander C. Grant, confers nothing upon the son beyond the right to administer the farm. The Public Register shows that the father, and not the son, was the owner. It was Mr. Alexander C. Grant who finally sold the ranch, not through his son, but through another person, as his attorney. And it was also the father who—as is shown by his letter of the 20th November, 1929—received the price of the sale.

The father being the owner, it seems clear that the son is not entitled to claim in his own name for losses, which fall upon the legal ownership, such as the reduction of the value of the land, the fencing, the buildings and the wells.

8. A different conclusion must, however, be arrived at when those losses pertaining to the operation of the ranch, such as the loss of mules, agricultural equipment and products, are considered.

As regards this part of the claim, the Commission have acquired the conviction that the property was in reality farmed for the account and the risk of the son.

There is, in the first place, the power of attorney, already mentioned above, which conferred far-reaching authority upon the son. There are, furthermore, the affidavits—see section 2 of this Decision—of many persons, who lived in the immediate neighbourhood, and who transacted business with Mr. Patrick Grant. They all declared that they had always considered him as the owner. There are also the copies of Mr. Patrick Grant's correspondence, showing that he conducted affairs in his own name. And lastly, corroboration is to be found in the fact that the horses and the mules were branded with Mr. Patrick Grant's initials.

The losses sustained of animals and implements used in the operation, and of products obtained from the land, were therefore in reality losses sustained by the claimant, who ran the risk of the farming.

9. The Commission, having examined the affidavits filed by the British Agent, and containing the evidence of eye-witnesses, feel satisfied that the losses described in the preceding paragraph, were the consequences of the acts either of Maderistas or of Zapatistas, in either case of forces within the meaning of Article 3 of the Convention, because the Maderistas established a Government, and because, at the time when the acts were committed, the Zapatistas formed part of forces, which after overthrowing the Huerta régime, established a Government, first *de facto*, and later *de jure*. For this reason the claimant is entitled to compensation under the Convention.

10. That compensation must be for the losses, with which sections 6 & 8 of this Convention deal. The amount claimed under those heads have not, in the opinion of the Commission, been proved to the full extent. As certain items give rise to the impression of being exaggerated, the Commission can find no proof of amounts exceeding 5,000 pesos, Mexican.

11. The Commission decide that the Government of the United Mexican States shall pay to the British Government on behalf of Mr. Patrick Grant, 5,000 (five thousand) pesos, Mexican gold.

DAVID ROY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 68, July 3, 1931. Pages 198-199. See also decision No. 33.)

RES JUDICATA—EFFECT OF AWARD RENDERED BY MEXICAN NATIONAL CLAIMS COMMISSION. Claim was previously presented to domestic Mexican National Claims Commission and an award of 60,000 pesos Mexican gold was allowed by it, of which only 15,000 pesos Mexican gold had been paid. *Held*, award granted as to remaining 45,000 pesos Mexican gold.

(Text of decision omitted.)

FREDERICK ADAMS AND CHARLES THOMAS BLACKMORE
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 69, July 3, 1931. Pages 199-201.)

DUAL NATIONALITY. Claim of person possessing nationality of both claimant and respondent Governments not pressed by claimant Government.

PARTNERSHIP CLAIM.—ALLOTMENT. No allotment from a partnership formed under Mexican law, but dissolved as a result of the death of a partner, will be required in the case of a British subject claiming loss by virtue of his interest in such partnership.

1. This is a claim for losses and damages suffered by Messrs. J. F. Brooks and Co., who formerly carried on business at Jalapa in the State of Veracruz as coffee growers and agriculturists.

The Memorial relates that Messrs. J. F. Brooks and Co. was a partnership of two British subjects, the late Mr. John Francis Brooks and Mr. Charles Thomas Blackmore.

Mr. J. F. Brooks died in September 1927, leaving a will in which he appointed Mr. Frederick Adams, a British subject, executor and sole heir.

In September 1912, owing to the general insecurity of the neighbourhood of Jalapa, in the State of Veracruz, Mr. Brooks was obliged to leave his ranch in the charge of an administrator. During the period from November 1916 to September 1918, local townspeople entered the property for the purpose of cutting down trees, saying that they had permission from the local authorities to cut all the wood they required. After several protests, the Governor of the State, on the 16th February, 1917, ordered investigations into this matter, but as no action was taken by the local authorities, Mr. Blackmore again protested to the Governor, and on the 25th May, 1917, the damage ceased. Shortly afterwards, however, the cutting of wood recommenced on this property. From January 1917 to September 1918, Government cavalry quartered their horses on the ranch. So much fodder was consumed by these animals that the company was obliged to purchase food for their own cattle. The soldiers in charge of these horses caused considerable damage, and in spite of frequent complaints, no satisfaction or redress was obtained. On the 21st February, 1915, armed rebels attacked the house on the ranch and compelled Mr. Honey, the administrator, to hand over all the money in his possession and to leave

the ranch. Since the beginning of September 1918, no one was allowed to live in the ranch, which was possessed by the rebels.

The ranch, with all the property contained therein, has been completely destroyed. The cutting of oak and shelter trees has destroyed the whole coffee plantations. The orange, lemons and other crops for the years 1917 to 1919 inclusive, and two coffee crops for 1918-19 and 1919-20 have been stolen.

The amount of the claim is \$71,400.00 pesos Mexican gold.

This claim, which at the time of the losses belonged solely and absolutely to Mr. J. F. Brooks and Mr. Charles T. Blackmore, now belongs solely and absolutely to the estate of the late Mr. J. F. Brooks and Mr. Charles T. Blackmore. All possible efforts were made to obtain from the civil or military authorities the necessary protection, but without success. The claim has not been presented to the Mexican Government, and no compensation has been received from the Mexican Government or from any other sources.

The British Government claim, on behalf of Mr. Frederick Adams and Mr. Charles T. Blackmore, the sum of \$71,400.00 pesos Mexican gold.

2. The Mexican Agent has lodged a demurrer, based on the following grounds:

The nationality of the partner, Blackmore, was uncertain; he was born in Mexico and there was no evidence that he had, when he came of age, chosen British nationality. He had, therefore, according to the Mexican law, to be considered as a Mexican citizen. If at the same time, the British law regarded him as a British subject, the conclusion must be that he possessed dual nationality, and was not entitled to claim before this Commission.

As regards the claim of Mr. Brooks, who named Mr. Adams as his sole heir, no allotment has been presented of the proportional part of the losses and damages of the partnership, to the partner Brooks.

3. The British Agent agreed as to the dual nationality of Mr. Blackmore, and on that ground abandoned this part of the claim. But he maintained the claim of Mr. Adams. In his submission the partnership, according to the deed by which it was founded, had been dissolved by Mr. Brooks' death, and the Agent could not see that, in a case like this, an allotment was required.

4. The Commission cannot concur in the view that the claim cannot be taken into consideration, because no allotment of the proportional part of the losses of the partnership has been presented. They can find for the provision requiring such allotment no other ground than a justifiable desire that Mexico should not, after once having been obligated to pay compensation to British subjects, whose interest in a non-British Company, Partnership or Association exceeded fifty per cent, be again confronted by an integral claim on the part of the Company, Partnership or Association itself. In order to safeguard the respondent Government against this eventuality, the Convention stipulates that the joint interest be reduced, by means of an allotment, by the proportional part of the losses, for which British partners or shareholders claim. But in the present claim, the firm, according to article 14 of the Deed of Partnership, has been dissolved through the death of one of the partners. The partnership no longer exists and it is therefore impossible to obtain the allotment. By those same facts the eventual possibility of a claim by the partnership of the amounts already awarded to a partner, is excluded. The reason for producing an allotment has therefore disappeared.

5. The demurrer is disallowed.

THE ANZURES LAND COMPANY (LIMITED) (GREAT BRITAIN) *v.*
UNITED MEXICAN STATES

(*Decision No. 70, July 7, 1931. Pages 202-203. See also decision No. 62.*)

RES JUDICATA.—EFFECT OF AWARD RENDERED BY MEXICAN NATIONAL CLAIMS COMMISSION. Claim was previously presented to domestic Mexican National Claims Commission and an award of 71,087.50 pesos Mexican gold was allowed, no part of which was ever paid. *Held*, award granted in sum of 71,087.50 pesos Mexican gold.

(*Text of decision omitted.*)

ALFRED MACKENZIE AND THOMAS HARVEY (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(*Decision No. 71, July 7, 1931. Pages 203-207.*)

NATIONALITY, PROOF OF. Birth certificate and supporting affidavits *held* sufficient evidence of nationality.

CORPORATE CLAIMS. In a claim by British subjects for losses sustained by virtue of their interest in non-British corporations, *held*, upon demurrer, that claimants must show (1) the existence of the corporations concerned, (2) the amounts of their respective capitals and share issues, (3) the number of shares held by the claimants, (4) their interest therein at the time of the various losses, and (5) the allotments. Decision on demurrer *postponed* to examination of claim on merits.

1. In this case the claim is made on behalf of Alfred Mackenzie and Thomas Harvey, for compensation for the total loss and destruction of three mining properties situated at Santa Eulalia, in the State of Chihuahua. The claim is made in respect of their ownership of the whole of the shares in three non-British Companies, that is to say in (1) a Company of the State of Arizona, U.S.A., formerly known as the Great Boulder Mining Company and now as the Compañía Minera El Gran Peñasco, in which out of a total capital of 300,000 shares Alfred Mackenzie owns 299,800, and Thomas Harvey 200, (2) a Company of the State of Arizona, U.S.A., formerly known as the London and Liverpool Mining Company, Incorporated, and now as La Victoria Mining Company, their holdings out of a total capital of 300,000 shares of stock, being respectively Alfred Mackenzie 299,800, and Thomas Harvey 200, and (3) of a Company of the State of Arizona, U.S.A., formerly known as the Seven Stars Mining Company Incorporated, but now as the Santa Eulalia Star Mining Company, their holdings therein out of a total share capital of 300,000 stock, being respectively Alfred Mackenzie 299,800 shares and Thomas Harvey 200 shares.

2. It is alleged in the Memorial that both Alfred Mackenzie and Thomas Harvey are British subjects, and that over 50 per cent of the capital of each of the aforesaid Companies, to wit 100 per cent, is owned by them. In order

to comply with the provisions of Article 3 of the Convention, they presented to the Commission allotments to the said Alfred Mackenzie and Thomas Harvey (1) by the *Compañía Minera El Gran Peñasco*, of a "proportionate share of the Company's claim against the Mexican Government" (annex 6), (2) by *La Victoria Mining Company* of "a proportionate share of the Company's claim against the Mexican Government" (annex 7), and (3) by the *Santa Eulalia Star Mining Company* of "a proportionate share of the Company's claim against the Mexican Government".

3. The evidence of the British nationality of the claimants annexed to the Memorial, consists, as regards Alfred Mackenzie, of the statements in his affidavits (annexes 1, 2 and 3) that he is a British subject born at Woodend, Victoria, Australia, on the 17th March, 1856, and that he has faithfully adhered to his allegiance to His Majesty and the Government of Great Britain. He declares himself unable to secure birth certificates, passports, or other registrations, but he refers, as to his nativity, responsibility and fidelity, to Courthrop Rason, of Bovril, Limited, London, who was Premier of Western Australia. He further produced an Affidavit (annex 4) by Alexander Peat sworn in California, U.S.A., on the 29th June, 1928, who having sworn that he is a British subject with home residence at Woodend, Victoria, Australia, states that he went from London, England, to Australia, in or about the year 1870, then becoming resident in Australia, that he is over seventy years of age, is personally acquainted with the claimant, Alfred Mackenzie, has personally known him and his family consisting of his father, Alfred Mackenzie, his mother, Hannah Mackenzie, together with three daughters and two sons (one of them the claimant, Alfred Mackenzie). He further deposes that on his (the said Alexander Peat's) arrival in Australia the said Mackenzie family were resident at Woodend, Australia, Woodend being then a small village the residents whereof were well and familiarly known to the affiant, that he visited frequently in the home of the said claimant, Alfred Mackenzie, and his father, such visits extending from almost the immediate arrival in Australia of the affiant and extending to the year 1900, when the claimant, Alfred Mackenzie, was travelling throughout Mexico and the United States. The said Alexander Peat further states that he is advised and believes that the said Alfred Mackenzie was born at Woodend, Australia, on the 17th March, 1856, such information having been conveyed to him, the affiant, by his wife, Maria Mackenzie Peat (now deceased), a sister of the Claimant, Alfred Mackenzie. Also that Alfred Mackenzie, Senior, the father of the Claimant, had personally informed the affiant that the claimant, Alfred Mackenzie, was born at Woodend, Australia, Alfred Mackenzie, Senior, having come to Australia from England about the year 1852. He further states that the claimant, Alfred Mackenzie, had communicated frequently with him, the affiant, during the claimant's absence from Australia, and that he is the identical Alfred Mackenzie known to the affiant in Australia, and is a British subject. And that he, the affiant, has no interest in the claim.

4. As regards the British nationality of the Claimant, Thomas Harvey, the evidence contained in the Annexes to the Memorial consists of (annex 21) the birth certificate of Tom Harvey, showing that he was born on the 6th June, 1858, at Townsend in the Registration district of Tiverton, Devonshire, England, of Thomas Harvey of Townsend, Tiverton, and Elizabeth Harvey (formerly Yeo), and of the statements in the Affidavits before referred to (annexes 1, 2 and 3) of the claimant, Alfred Mackenzie, that his associate, Thomas Harvey, was and is a British subject, born in Somersetshire, England.

5. The Mexican Agent filed a demurrer to the claim on the grounds—

I. That the nationality of the claimant, Alfred Mackenzie, had not been established; and

II. That the allotment required by Article 3 of the Convention had not been properly made by means of annexes 5, 6 and 7 to the Memorial, nor had the conditions which the said Article requires, in order that claims of British members of Companies not of that nationality may be presented, been complied with.

He argued before the Commission that in order to find what were the damages to the claimants it was necessary to look into the liabilities of the Company, as the loss might really fall entirely on the creditors of the Company, and that the allotments to claimants of a proportion of the loss of the Company was not a proper compliance with the provisions of Article 3 of the Convention. Further, he argued that the allotments to shareholders should be made according to Mexican Law. He questioned the legality of an allotment by Directors not in meeting of the Company, as it was not according to Mexican law, and he argued also that there was no proper proof of the claimants' ownership of the shares at the time of the losses or damage, or of the total capital of the Company. He admitted the claimant Harvey's British nationality.

6. The British Agent argued that the allotments were in reasonable satisfaction of Article 3 of the Convention, and that as regards the claimant Alfred Mackenzie's nationality the affidavits filed and annexed to the Memorial were reasonably sufficient to establish this and that they also established the ownership of the claimants at the time of the alleged losses and damage.

7. Since this case was heard by the Commission the British Agent has filed as further evidence as to the British nationality of the claimant, Mr. Mackenzie, copy of a statement dated the 8th February, 1916, from the Hon. Sir C. H. Rason, formerly Prime Minister and Treasurer of Western Australia, and the Chairman and Managing Director of Bovril Australian Estates, Limited, in which he states that he has known Mr. Mackenzie well and favourably for some twenty years past, that he held a very prominent position in Commercial and Municipal life in Western Australia, and he certifies that his reputation for straightforward conduct and commercial probity is of the highest. In view of this evidence in addition to Mr. Peat's Affidavit, the majority of the Commission hold that his British nationality has been sufficiently shown.

8. But the Commission hold that it has not been shown authentically that the total capital of British shareholdings in the non-British Company amounts to 100 per cent, nor over 50 per cent, thereof, as required by the terms of Article 3 of the Convention, nor that the damages or losses to the Companies concerned or to the claimants took place after their acquirement of such shareholdings and during their holdings. They desire to call the attention of the claimants to the necessity of showing by authentic evidence—

- (1) The existence of the Corporations concerned;
- (2) The amounts of their respective capitals and share issues;
- (3) The number of shares held by the claimants;
- (4) Their interest therein at the time of the various losses; and
- (5) The allotments.

9. The Commission's final Decision on the demurrer is postponed until the claim can be judged on its merits, and the claimants shall have presented their evidence as indicated in paragraph 8.

10. The Mexican Agent is invited to file his answer.

THE VERACRUZ (MEXICO) RAILWAYS (LIMITED) (GREAT
BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 72, July 7, 1931, dissenting opinion by British Commissioner, July 7, 1931. Pages 207-211.)

CALVO CLAUSE.—*Stare Decisis.* When Calvo Clause agreed to by claimant was identic in terms with that involved in previous decision of tribunal (i.e., *Mexican Union Railway*, Decision No. 21), such decision followed and motion to dismiss *allowed*.

Comments: Sir John H. Percival, "International Arbitral Tribunals and the Mexican Claims Commissions", *Jour. Compar. Legis. and Int. Law*, 3d ser., Vol. 19, 1937, p. 98 at 103; G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", *Law Q. Rev.*, Vol. 49, 1933, p. 226 at 237.

1. The Memorial sets out that there are two claims. The first is for losses and damages suffered by the Veracruz (Mexico) Railways, Limited, during the period from April 1914 to March 1917 and the second is for a proportionate part of the losses and damages suffered during the period April 1914 to April 1915 by the *Compañía de Vapores de Alvarado, S.A.*, the shares of which are mostly held by the Vera Cruz (Mexico) Railways, Limited (hereinafter referred to as the Company).

Claim I

The Company is British having been incorporated under the Companies Acts, 1862 to 1898, on the 6th July, 1900. It is the owner of the railway from Veracruz to Alvarado in the State of Veracruz.

During the month of May 1914 the Military authorities of Veracruz sank the steamer *Tuxtepec* with 8,000 kilos of scrap iron belonging to the Company. The value of this scrap iron was 160 pesos. During the period from April 1914 to March 1917 the railway and its property was subjected to attacks by revolutionary forces under the leadership of various chiefs.

The amount of this claim is \$759,556.97 pesos Mexican gold.

At the time of the losses notification was made by the Company either to the local authorities of the State of Veracruz or to the Mexican Government and occasionally protests were lodged with the British Consul at Veracruz.

Claim II

The *Compañía de Vapores de Alvarado, S.A.*, was formed in 1910 under Mexican laws with a share capital of 100,000 pesos divided into 1,000 shares of 100 pesos each. At the time of its formation 995 fully-paid shares were allotted to the Veracruz (Mexico) Railways, Ltd., which still holds these shares.

The *Compañía de Vapores de Alvarado, S.A.*, has allotted to the British Company 995 thousandths of the losses and damages sustained by it through revolutionary or counter-revolutionary acts during the period from April 1914 to April 1915.

On the 24th April, 1914, the Mexican authorities at Alvarado sequestered the steamship *Tuxtepec*, which was sunk by Lt.-Major Eduardo Alivier of the Mexican Navy at the bar of this port on the 4th May, 1914. The sinking of

this vessel was brought to the notice of His British Majesty's Minister at Mexico City at the time.

On the 25th April, 1915, the steamship *Playa-Vicente* was set on fire and sunk at La Manga on the river San Juan about 103 kilometres from Alvarado by armed men under the command of General Raul Ruiz. The vessel had been ordered by the military authorities to transport three officers and six soldiers to San Nicolas in spite of the fact that a warning had been issued previously by General Ruiz to the effect that the river was mined and that the vessels should not be used for transport of Carranza forces. On the return journey the *Playa Vicente* was attacked and sunk. At this time the steamship Company did not have a regular service on this river and the only trips made were at the request of the military authorities for the transport of troops.

The total losses suffered by the steamship Company amount to 28,264.02 pesos Mexican gold.

The amount of the claim is 28,122.70 pesos Mexican gold, being 995/1000ths of the total losses sustained by the Compañía de Vapores de Alvarado, S.A.

His Majesty's Government claim on behalf of the Veracruz (Mexico) Railways, Limited, the sum of 787,679.67 pesos Mexican gold, being 759,556.97 pesos Mexican gold in respect of losses and damages sustained by the Veracruz (Mexico) Railways, Limited, and 28,122.70 Mexican gold in respect of the proportional part of the losses and damages sustained by the Compañía de Vapores de Alvarado, S.A.

2. The Mexican Agent has filed a motion to dismiss on the ground that in the concession granted to the claimant Company, a so-called Calvo Clause is inserted, reading:

"La empresa será siempre mexicana aun cuando todos o algunos de sus miembros fueren extranjeros, y estará sujeta exclusivamente a la jurisdicción de los Tribunales de la República, en todos los negocios cuya causa y acción tengan lugar dentro de su territorio. Ella misma y todos los extranjeros y los sucesores de éstos que tomaren parte en la Empresa, sea como accionistas, empleados o con cualquier otro carácter, serán considerados como mexicanos en todo en cuanto a ella se refiera. Nunca podrán alegar respecto a los títulos y negocios relacionados con la empresa, derechos de extranjería, bajo cualquier pretexto que sea. Sólo tendrán los derechos y medios de hacerlos valer que las leyes de la República conceden a los mexicanos, y por consiguiente no podrán tener ingerencia alguna los Agentes Diplomáticos extranjeros."¹

3. The British Agent, having withdrawn the second claim, has declared that he could not distinguish this case from the judgment of the Commission in the case of the *Mexican Union Railway* (Decision No. 21).

4. The Commission by a majority adhere to their decision taken in the case of the *Mexican Union Railway*, and as it so happens that in the claim now

¹ *English translation from the original report.*—"The Company shall always be a Mexican Company, even though any or all its members should be aliens, and it shall be subject exclusively to the jurisdiction of the Courts of the Republic in all matters whose cause and right of action shall arise within the territory of said Republic. The said Company and all aliens and the successors of such aliens having any interest in the Company, whether as shareholders, employees or in any other capacity, shall be considered as Mexican in everything relating to said Company. They shall never be entitled to assert, in regard to any titles and business connected with the Company, any rights of alienage under any pretext whatsoever. They shall only have such rights and means of asserting them as the laws of the Republic grant to Mexicans, and Foreign Diplomatic Agents may, consequently, not intervene in any manner whatsoever."

under consideration, the Calvo Clause has exactly the same wording as in the former case, they cannot but take the same attitude.

5. The Motion to Dismiss is allowed.

Dissenting opinion of the British Commissioner

Whilst appreciating that the Calvo Clause in this case is identical with that in the *Mexican Union Railway Case* (Decision No. 21), and that the alleged circumstances giving rise to the claim are similar to those in that case, it is, in my opinion, necessary that I should record my dissent from the decision in this case, as done already in the case of the *Interoceanic Railway Company* (Decision No. 53).

I do so for the same reasons, recording also my opinion that this is a yet stronger case of the inapplicability of the Calvo Clause to cases resting on revolutionary causes, and not relating to contracts containing a Calvo clause.

VENTANAS MINING AND EXPLORATION COMPANY (LIMITED)
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 73, July 7, 1931. Pages 211-212.)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(Text of decision omitted.)

THE SALINAS OF MEXICO (LIMITED) (GREAT BRITAIN) *v.*
UNITED MEXICAN STATES

(Decision No. 74, July 7, 1931. Pages 212-213.)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(Text of decision omitted.)

EL ORO MINING AND RAILWAY COMPANY (LIMITED) (GREAT
BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 75, July 7, 1931. Page 214. See also decision No. 55.)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(Text of decision omitted.)

CHRISTINA PATTON (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 76, July 8, 1931, dissenting opinion by British Commissioner, July 8, 1931. Pages 215-222.*)

RESPONSIBILITY FOR ACTS OF FORCES.—BRIGANDAGE COMMITTED BY REVOLUTIONARY FORCES—FAILURE TO SUPPRESS OR PUNISH.—NECESSITY OF NOTICE TO AUTHORITIES. No responsibility *held* to exist for acts of four soldiers of revolutionary force when such acts were not of public notoriety and no evidence was shown that the authorities were notified.

Cross-reference: Annual Digest, 1931-1932, p. 213.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission," *Law Q. Rev.*, Vol. 49, 1933, p. 226 at 239.

1. This is, as the Memorial sets out, a claim for losses suffered by the late Mr. Patrick Thomas Patton on the 11th March, 1915, when his house was attacked and looted by armed Zapatista soldiers of General Barona's brigade. Mrs. P. T. Patton's interest in the claim is as follows:

Mr. P. T. Patton, a British subject, formulated this claim on the 5th March, 1919. Mr. Patton died in 1924 disposing of his property by a will made on the 26th March, 1920, and a codicil to this will made on the 4th March, 1921. This will and codicil, after disposing of 130 shares in the Patton Company, S.A., appoints his wife, Christina Patton, sole heir and executrix of the will.

On the 11th March, 1915, the late P. T. Patton was residing at Calle de la Reforma 22, San Angel, D.F. About 8 o'clock on the evening of that day four Zapatistas of General Barona's brigade, commanded by Salgado, forced the front gate of the house by shooting off the padlock. They shot at and smashed eighteen windows, killed a valuable Airedale terrier, and then entered the house. The late Mr. Patton, his wife and other members of the family made their escape through a side door and took refuge with some friends for the night. The soldiers took complete possession of the house for a few hours and systematically looted the place. In their search for articles of value they scattered about the rooms the furniture and other objects therein. On the following day Mr. (now Sir Thomas) T. B. Hohler, British Chargé d'Affaires at His Majesty's Legation, Mexico City, visited the house, and on the 7th April wrote a letter detailing the condition in which he had found the house on the 12th March, 1915. On the 12th April, 1915, the late Mr. P. T. Patton, with witnesses, appeared before a notary public, Heriberto Molina, and executed before him a document in Spanish, verifying and substantiating the facts and giving a list of the articles and specifying their values.

The amount of the claim is £321 0s. 6d., the details of which are given in one of the annexes to the Memorial. A certificate of the rate of exchange ruling on the 1st and the 13th March, 1915, is also given in one of the annexes.

The British Government claim on behalf of Mrs. Christina Patton the sum of £321 0s. 6d.

2. The British Agent drew attention to the date on which the attack on, and looting of, Mr. Patton's house had taken place. It was the 11th March, 1915, and those responsible were Zapatista soldiers. He found himself, therefore, faced by the question raised by his Mexican colleague in the discussion

on the motion to dismiss filed by him in Claim No. 26 (*Mrs. Edith Henry*).¹ The Mexican Agent had on that occasion drawn a distinction between three periods in the military career of Generals Emiliano Zapata and Francisco Villa.

3. According to that historical division the acts, upon which the present claim was based, fell within the second period. He, the British Agent, held the view that during that period the Zapatistas must be regarded as coming within the terms of subdivision 4 of Article 3 of the Convention. Their movement was a "rising" or an "insurrection" and in many cases their acts were those of brigands. For this reason Mexico was to be held financially responsible in case it could be established that the competent authorities had omitted to take reasonable measures to suppress the insurrection, rising, riots or acts of bri-

¹ See sections 2 and 3 of Decision No. 61:

"2. A motion to dismiss the claim has been lodged by the Mexican Agent as a means of obtaining from the Commission a decision as to the character of the forces under the command of General Emiliano Zapata, and at the same time as to the character of the forces that followed General Francisco Villa.

"The Agent distinguished three periods in the military career of both Generals.

"The first was when they and their followers formed part of the Constitutionalist Army under General Venustiano Carranza and pursued the common aim of overthrowing the Huerta régime. This object was achieved in August 1914, but the victory initiated dissensions between Carranza, on the one hand, and Villa and Zapata on the other. The result was that the two parties separated in November 1914.

"That was, in the view of the Agent, the commencement of the second period. Both armies, disposing of about equal strength, contended for the supreme power in the Republic until the Constitutionalist Army defeated its opponents in September 1915. Upon this triumph General Carranza established a Government *de facto*, which was, in October of the same year, recognized by the Government of the United States of America and by several other Governments.

"That was the end of the second, and the beginning of the third period, during which the resistance of the forces of Zapata and Villa continued, although they could no longer be considered as political factors. This period ended when these forces were, at different dates, definitely subdued.

"3. The said Agent held the view that, during the first period, Zapatistas and Villistas fell within the terms of subdivision 2 of Article 3 of the Convention, because they then formed part of the Constitutionalist Army, which had, after the triumph of its cause, established a Government *de facto*.

"During the second period the position was different. Before the revision of the Convention, subdivision 2 not only mentioned revolutionary forces, that had succeeded in obtaining the control of the State, but also "*revolutionary forces opposed to them*." In that description were included both Zapatistas and Villistas. But when the Convention was amended, those words were struck out, and the Agent had no doubt that this was done in order to release Mexico from any claim arising out of the acts of those forces.

"They could not in this period either be made to come within the meaning of subdivision 4, because this was a period of civil war, during which two factions of equal strength were in arms against each other. Neither of them had as yet been able to establish a Government, neither of them had been recognized by foreign powers and the United States of America had Agents at the headquarters of both factions. It was a time of anarchy, and as there was no Government, one of the parties could not have the character of an insurrectionary force as mentioned in subdivision 4. As both parties pursued political aims, the acts of none of them could be regarded as acts of banditry.

"In the third period, according to the Agent, the state of affairs was such that a Government *de facto* existed. Against this Government, mutinies, risings and insurrections could break out and be sustained. The subdivision 4 of Article 3 could therefore be applied to the acts then committed by Villistas and Zapatistas."

gandage, or to punish those responsible for the same, or that they were blamable in any other way.

In the case of the looting of Mr. Patton's house, there could, in the Agent's submission, exist no doubt as to the negligence of the authorities. At that time the Zapatistas had a camp at San Angel and the act committed by a party of them must have been of public notoriety. There was not the slightest indication of any action undertaken to punish them.

4. The Mexican Agent upheld the view, put forward by him when his Motion to Dismiss in the claim of Mrs. Edith Henry was being discussed. Acts committed by Zapatistas and Villistas during the second period fall altogether outside the Convention. As there was no Government, there could be neither mutiny, nor rising, nor insurrection. Neither could their acts be classified as acts of brigandage, because their aims were of a political nature, not less so than those pursued by General Carranza. The character of the two factions was, during that period, identically the same. The fighting between them was a contest on equal footing, not a rising nor an insurrection of one against the other.

But even assuming, for the sake of argument, that the acts of the Zapatistas were covered by subdivision 4 of Article 3, the Agent reminded the Commission that, at the time of the alleged attack, the centre of the Carrancista movement was established at Veracruz. He failed to see how acts, committed by Zapatistas in the Capital, could be suppressed or punished by the opposing faction, when it was so far away.

5. The Commission feel satisfied that the attack on and the looting of Mr. Patton's house have been committed as they are described in the Memorial. They find sufficient corroboration of the affidavit of Mr. and Mrs. Patton in the letter of the British Chargé d'Affaires, and in the declarations made by several witnesses shortly after the events.

The Commission feel equally satisfied that those responsible for the losses were four soldiers of the Zapatista Army, and the question before them is whether Mexico is, in this case, obliged to pay compensation.

6. The Commission accept in its general lines the distinction drawn by the Mexican Agent between the various periods of the Zapatista and Villista movements, reserving, however, their liberty as to the determination of the dates on which such periods must be assumed to begin and to end.

They are equally of opinion that during the second period, the two contending factions were fighting with the same character for political aims, and that as neither of the two had been able to establish a Government, neither of them could be regarded as being in mutiny, rising or insurrection against the other. From that point of view their acts are not covered by the Convention, since by the last revision, the words "*or by revolutionary forces opposed to them*" have been eliminated. The Commission wish it, however, to be clearly understood that this opinion of theirs goes only to those acts, which were of a political or a military nature, or directed towards political or military aims. While acts of that description seem to have been excluded when the Treaty was amended, this cannot be maintained as regards acts of brigandage.

Both factions—or greater or smaller parties of them—may, as well as other independent groups, have become guilty of brigandage in special instances, and, as the Commission read subdivision 4 of the amended Article 3, they cannot admit that all those cases fall outside the financial liability of the respondent Government.

7. Even when a country passes through a period of anarchy, even when an established and recognized Government is not in existence, the permanent

machinery of the public service continues its activity. The Commission share the view expressed in this regard in Decision No. 39 of the General Claims Commission between Mexico and the United States of America (page 44).¹

"4. The greater part of governmental machinery in every modern country is not affected by changes in the higher administrative officers. The sale of postage stamps, the registration of letters, the acceptance of money orders and telegrams (where post and telegraph are Government services), the sale of railroad tickets (where railroads are operated by the Government), the registration of births, deaths, and marriages, even many rulings by the police and the collection of several types of taxes, go on, and must go on, without being affected by the new election, Government crises, dissolutions of Parliament, and even State strokes."

They might add that the Police continued to function, that it continued to regulate traffic in the capital, to investigate crimes and to arrest criminals, as also that the Courts continued to administer justice.

This means that public authorities that were obliged to watch over and to protect life and property continued to exist, although it is not denied that the performance of those duties will often have been very difficult in those disturbed times of civil war.

The respondent Government have, in the opinion of the Commission, undertaken to grant compensation, for the consequence of the omissions of this permanent organization of the public service, also when Zapatistas or Villistas are involved. If, therefore, in the case now under consideration, such omissions were proved, the Commission would feel themselves bound to render a judgment in favour of the claimant.

8. But no such proof has been shown. The attack took place at San Angel, a suburb located at a considerable distance from the centre of the town. The time was the 11th March at 8 o'clock in the evening, after darkness had fallen. The guilty parties were four soldiers. The event could not therefore be considered as being of public notoriety, no more as in the case of any other burglary in a private dwelling.

Furthermore, nothing has been produced to prove that the competent authorities were informed. Although Mr. Patton, very soon after the event, swore an affidavit before the Acting British Consul-General, although he made, a few days later, several witnesses depose before a notary public, and although the British Chargé d'Affaires visited the house the day after it had been broken into, there is no indication that either the claimant or any of the British Representatives approached the police, or any other authority, with an account of the occurrences.

The Commission have more than once declared that, to find negligence on the part of the authorities, it is necessary to prove that the facts were known to them, either because they were of public notoriety or because they were brought to their knowledge in due time.

In this case they adhere to that same view.

9. The claim is dismissed.

The British Commissioner does not agree with the decision in this case.

Dissenting opinion of British Commissioner

There is so much in the majority judgment of the Commission in this case with which I am in accord generally, that I regret to have to sound a dissentient note as regards the conclusions and decision. I will endeavour as briefly as

¹ See Reports, Vol. IV, p. 43.

possible to express my opinion and the reasons therefor. Accepting the distinction drawn by the judgment between acts of revolutionary forces of a political or military nature or directed towards political aims, and, on the other hand, acts which do not come under that category, such as acts of brigandage, burglary or robbery, and agreeing entirely as I do with the finding of the majority of the Commission that the occurrences giving rise to this claim fall within the category of brigandage, I am not in accord with the decision relieving the Government of Mexico from financial responsibility on the ground that no blame attaches to the authorities.

2. As I understand the majority judgment it absolves the Mexican Government on the ground that the permanent civil authorities which must be regarded as functioning at the time notwithstanding political changes and unrest were unaware of the act of brigandage, because it was not an event of public notoriety so that they could be deemed to be cognizant of it, and that nothing had been produced to show that they were informed thereof. But assuming this to be so, though I am not in agreement, as I will explain presently, that the event was not of public notoriety, this does not conclude the matter. The question of negligence also arises, and the general question of blame, not merely blame for not punishing the guilty parties, but also for non-prevention of the occurrences. Further, whether responsibility or blame does not attach to the military authorities. What were these about that it was permissible for four private soldiers to emerge from the barracks or camp fully armed at about 8 o'clock in the evening and boldly commit in their neighbourhood acts of burglary and sabotage lasting for a considerable period of time? Acts committed not in the heat of battle or during its immediate aftermath, but just as an evening's profitable diversion, and with entire impunity. The outrage was committed by force of arms, the perpetrators forced the front gate of the house by shooting off the lock. They shot at and smashed eighteen windows and killed a dog and then entered the house. All this took place in a street leading out of a main street in San Angel and only a few doors away from it. Moreover, the soldiers were in complete possession of the house for a few hours, systematically looting it and scattering the furniture about the rooms. There must also have been an entire lack of police supervision or patrol in San Angel, which is not really strictly a suburb, but a town with its municipality, and in continuous frequent communication with the City by means, *inter alia*, of a tramway service which the Government were at that time operating and using for military as well as civil purposes. The time was not late in the evening, and it seems inconceivable that the events could have taken place without considerable notoriety. Mr. and Mrs. Patton were in the house at the time, and had to seek refuge with neighbours, who must have given full publicity.

3. The Mexican Agent in answer to my question whether these four private soldiers had no superior officer over them in charge of the barracks and camp, who should punish them, countered this question with a remarkable observation, "what, the Captain of bandits!" almost as if it were a matter of appealing from sin to Satan. It is difficult to reconcile this suggestion with his general line of argument as to the position of the Zapatista and Villista forces during the period November 1914 to October 1915, and I cannot believe this to be the attitude of the military authorities and officers of a redoubtable military force (General Barona's Brigade) in control at that time of the City of Mexico, and recognized as an important component part of revolutionary forces having a definite military and political status, by their leaders promulgating decrees, and carrying on administration, and all this with the potentiality of establishing a Government *de jure*. I think the Commission must assume that there were

at the time competent military as well as civil authorities on whom functions of discipline and the prevention and punishment of crimes by their forces rested.

4. The fact that it is not shown that the British Chargé d'Affaires or other British representatives approached the police or any other authority with an account of the occurrences, seems capable of explanation. The most obvious one is that it was a matter of such common notoriety that they thought it superfluous.

For all the above reasons I dissent from the decision of the majority of the Commission, and am of opinion that an Award should be given in favour of the Claimants.

GEORGE CRESWELL DELAMAIN (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(Decision No. 77, July 10, 1931. Pages 222-226.)

AFFIDAVITS AS EVIDENCE. An affidavit of claimant supported only in most general terms by affidavit of another person *held* insufficient evidence. An affidavit of claimant supported by a letter of his brother, which corroborated claimant's statement in great detail, *held* sufficient evidence.

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH.—DUTY TO PROTECT IN REMOTE TERRITORY.—NECESSITY OF NOTICE TO AUTHORITIES. Claimant was taken prisoner by bandit forces on an isolated ranch and not released until ransom was paid. Since no proof was furnished that the public authorities were advised and since the crime, being committed in a remote territory, was not of public notoriety, claim *disallowed*.

1. The Memorial sets out that in March 1891, Mr. G. Creswell Delamain entered the Republic of Mexico, and he resided there continuously until August 1915. During the whole of his residence in Mexico, Mr. Delamain was engaged in ranching. During the years 1912-15 he was living on a ranch known as Mesa de los Fresnos, where he owned horses, cattle and goats. In 1912 General Caraveo, with about 900 soldiers, camped on his ranch for eleven days, during which time he took from Mr. Delamain sixty head of cattle. From the year 1913 to the end of September 1915 an additional 500 head of cattle were taken by Carrancista officers and their soldiers stationed at Boquillas, Mexico. Some of these cattle were taken under the direction of Sebastian Carranza, who was the Jefe Politico at Boquillas, and who usually sent Captain Ernesto García or Sergeant Lazaro Morelos for the cattle. The balance of the 500 head of cattle were taken by Major Felipe Musquiz Castillo, Major Ferino and Colonel Peralde, all of whom were army officers. In 1914 Captain García, under the direction of Sebastian Carranza, took 18 head of saddle horses, and during the years 1914 and 1915, 400 head of goats were taken by the order of the commanding officer at Boquillas. No receipts were ever given to Mr. Delamain for his property; his protests were generally answered by the usual "Por la causa." On the 5th July, 1915, Mr. Delamain was taken prisoner by Major Felipe Musquiz Castillo, and held by him for ten and a half days in the mountains on the Enfiante Ranch, near the La Babia ranch. The claimant was not released until a ransom of 4,000 pesos gold had been paid. Mr. Delamain was harshly treated during his imprisonment, and it was with difficulty that he persuaded Major Castillo to spare his life.

The amount of the claim is 40,460 pesos gold, details of which are given in Mr. Delamain's affidavit.

The British Government claim on behalf of Mr. G. Creswell Delamain the sum of 40,460 pesos gold.

2. In order to do justice to this claim, it must be divided into two parts. Within the first part enter the losses alleged as having been suffered through the taking of cattle, and valued at 36,460 pesos. The second part deals with the 4,000 pesos, which the claimant says he paid as ransom for his release.

3. As regards the first part, the Commission have the affidavit of Mr. Delamain and a deposition of Mr. W. R. Sharp, sworn on the 18th March, 1930, before a notary public at Val Verde (Texas) reading as follows:

"That he has known G. C. Delamain for a period of twenty-five years, and he knows that he was ranching in Mexico about the years from 1913 to 1915; that he was on the ranch of the said G. C. Delamain, and that he saw quite a number of cattle on the Treviño Ranch, that he, the said W. R. Sharp, bought cattle from G. C. Delamain on the above ranch, while it was under the control of the said G. C. Delamain, I further swear the said G. C. Delamain lost cattle through the agents of the Carranza Military forces."

The Commission have also a record, filed by the Mexican Agent, of the hearing of witnesses, following instructions of the Mexican Government.

Those witnesses, who testified in 1928 and 1929, and are said to have lived in the neighbourhood of Mr. Delamain's Ranch at the time of the events, have answered in the negative the question as to whether they knew that cattle was taken from the claimant by military officers. One of the deponents states that General Caraveo, mentioned in the Memorial and then Governor of the State of Chihuahua, has authorized him to deny that he, General Caraveo, camped in 1912 on the Ranch "Mesa de los Fresnos" and confiscated cattle.

4. The British Agent pointed out that no great value could be attached to the evidence of witnesses examined so many years after the occurrences. The denial by authority of General Caraveo himself should certainly not impress the Commission, because it was clear that he would try to evade responsibility for the acts for which the claimant blamed him. The fact that this rebel leader had not only subsequently been amnestied, but even promoted to high public functions, was, in the eyes of the Agent, an additional reason why Mexico should be held liable for the financial consequences of his deeds.

5. The Mexican Agent drew attention to the vague character of Mr. Sharp's letter, in which no details whatever were given, neither as regarded the time when the cattle was taken, nor as regarded the forces who took it, nor as to the extent of the loss.

He, the Agent, could not see why General Caraveo's deposition should not be accepted, nor why the amnesty granted to him should be considered as an act giving rise to responsibility for Mexico. Caraveo had first followed General Orozco, had then been exiled and had later fought for the Huerta régime. His subsequent amnesty was not blamable negligence, but a measure of wise prudence promoting the return of peace and order.

6. The Commission feel unable to accept Mr. Sharp's letter as sufficient corroboration of the affidavit of the claimant. There is a total lack of detail in this document, it does not circumstantiate a single fact, and cannot be admitted as presenting evidence, on which a financial award could be based.

This being the case, only the affidavit of Mr. Delamain himself remains, and the Commission have in several decisions held that, and explained why, they cannot be satisfied by the mere statement of the person interested in the claim.

7. As regards the second part of the claim, the British Agent has filed a letter of Mr. L. A. Delamain, a brother of the claimant, dated the 11th April, 1930, in which he relates how in July 1915 one of the men of Major Felipe Musquiz Castillo came to his house in Las Cruces and told him that his brother was being held. He then went to meet the Major and arranged with him that the prisoner should be released for a ransom of U.S. \$2,000. He went back to cash this money, for which his brother had given him a cheque, and paid it to Castillo, who then released his prisoner.

The Mexican Agent considered this letter as extremely weak evidence, if it could be called such, because it had not in any way been authenticated. Moreover, he pointed to the testimony filed by himself, which showed that some of the witnesses knew nothing of the claimant's imprisonment and that others, who recollected having heard of it, at the same time declared that they thought that the ransom had later been returned to Mr. Delamain.

The same witnesses unanimously characterized Castillo as a bandit leader. This means that Mexico could only be held responsible for his acts in case the competent authorities had been shown to be guilty of negligence. The Agent asserted that Castillo had been pursued, and finally executed, and this was confirmed by his witnesses. He failed to see why the authorities could be blamed for what happened to the claimant, the less so as his colleague had not shown that they had been informed.

8. The Commission are prepared to accept the letter of Mr. L. A. Delamain as sufficient corroboration of this part of the claimant's affidavit. It gives a great many details and describes the events in such a vivid and circumstantial way, that it is difficult not to consider it as a genuine, *bona fide* and trustworthy account. It is strengthened by the deposition of those of the Mexican witnesses, who state that they knew of the holding and releasing of Mr. Delamain.

The Commission have seen no evidence showing that Castillo, at the time when he arrested the claimant, belonged to the army. All the witnesses call him a bandit leader and they assert that the Government forces brought him to execution.

In several of their decisions, the Commission have made known their attitude as regards the application of subdivision 4 of Article 3 of the Convention. They refer to section 6 of their Decision No. 12 (*Mexico City Bombardment Claims*):

"In a great many cases it will be extremely difficult to establish beyond any doubt the omission or the absence of suppressive or punitive measures. The Commission realizes that the evidence of negative facts can hardly ever be given in an absolutely convincing manner. But a strong *prima facie* evidence can be assumed to exist in these cases in which *first* the British Agent will be able to make it acceptable that the facts were known to the competent authorities, either because they were of public notoriety or because they were brought to their knowledge in due time, and *second* the Mexican Agent does not show any evidence as to action taken by the authorities."

9. In the present case they have not found any indication that Mr. G. C. Delamain, or his brother, advised the public authorities of the extortion, of which he had been a victim, nor can it be assumed that this crime, committed on an isolated ranch, was of such public notoriety as to come spontaneously to the knowledge of the authorities.

For these reasons the Commission do not feel at liberty to declare that the facts are covered by the Convention.

10. The claim is disallowed.

JAMES HAMMET HOWARD (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(Decision No. 78, July 10, 1931. Pages 226-228. See also decision No. 24.)

RESPONSIBILITY FOR ACTS OF FORCES.—FORCED OCCUPANCY.—Claimant's house was occupied by a revolutionary leader, who subsequently became a civil authority, and house was thereafter occupied by civil authorities. Claim for use and occupancy and for damage to premises *allowed*.

1. The Commission refer, as regards the facts on which the claim is based, to their Decision No. 24.

2. Following this Decision, the Agents orally argued their views.

The British Agent pointed out that Julián Real occupied the house at the time when he was a Revolutionary leader. Although he later became Municipal President, and subsequent Municipal Presidents also lived in the house, the whole occupation during four years should be considered as one continuous act, taking its origin in, and its character from, the initial deed of Julián Real.

The Agent moreover drew attention to the fact that the evidence, filed by him, showed that during that period several military forces, first Revolutionaries and later Constitutionlists, had used part of the house and caused great damage. The Agent produced photographs showing the ruinous condition of the building at the time it was returned to the owner. He also filed receipts to prove the actual expenses of repairs paid by the claimant.

3. The Mexican Agent put forward that in his opinion the occupation of the house by subsequent Municipal Presidents must be regarded as the act of civil authorities, not coming within any of the provisions of the Convention. He could not see that damage had in this case been done, or losses caused, by any of the forces enumerated in Article 3 of the Convention.

He considered the photographs, which his colleague had exhibited, as irrelevant, because it had not been certified that it was really the claimant's house which they represented, and because they did not show the condition of the house before the first occupation. According to the documents filed with the Memorial, repairing the house started not less than three years after the occupation ceased. It was clear that during that intervening period the house must have suffered heavily by the normal working of time and climate.

As regards the cost of the repairs he did not attach much value to the receipts of the contractor, because they did not indicate what expenses had been necessary to restore the building to the same condition as in 1914, nor how much was spent on improving and modernizing it.

4. The Commission, in their majority, take the view that the original seizure of the house by Julián Real was undoubtedly an act committed by a Revolutionary force covered by the Convention, as the said leader was known to have served the cause which afterwards established the Constitutionlist Government. The fact that he remained in the house after becoming Municipal President, and that his successors in that office also continued the occupation cannot, in the opinion of the Commission, modify the character of the initial act. It has not been shown that the house was ever confiscated by a decree of a civil authority, nor that the first military and compulsory occupation was ever regularized by any civil instrument. All the subsequent Municipal Presidents obviously considered the act of the revolutionary leader Real as a sufficient title to possession, and they continued to avail themselves of it, without ever

notifying the owner that his property had been taken in a legal way and in the course of the transaction of civil administration.

As, moreover, it has been shown by the evidence of the two witnesses, George A. McCormick and Jesús Magallón, that a part of the building was repeatedly used for the quartering of military forces, the majority of the Commission feel bound to declare that the losses of the claimant fall within the terms of the Convention, as having been caused by forces described in subdivision 2 of Article 3.

5. The Commission feel satisfied that occupation lasted for four years, but they cannot believe that after that period the condition of the building was such as pictured by the photographs. It is inconceivable that the first local Magistrates would have continuously dwelt in a house, which is represented as a complete ruin. If the building actually has decayed to that extent, the cause must probably be sought in the fact that the repairs were started three years after the end of the occupation, rather than in the occupation itself.

Although the Commission consider it very likely that the occupants, living in a house not their own, did not spend on upkeep anything more than was strictly indispensable, and therefore, that compensation for repairs is rightly claimed, they cannot accept an expenditure of pesos 7,168.44 as a true account of the costs that would have been incurred, in case the house had been restored to its previous condition immediately after it was returned to the owner.

6. The Commission, furthermore, have found sufficient evidence of the allegation that the claimant suffered loss, because he only, from time to time, received rent at the rate of 15 pesos a month, while the rental value was 80 pesos, which, however, in estimating the amount of his loss, he only calculates at the rate of 50 pesos. For this loss he claims 4,800 pesos, being 600 pesos yearly during six years.

The Commission, although allowing that the claimant is entitled to compensation for this item also, have considered that the occupation did not deprive the owner of the use of his house for eight years, because it did not last longer than four years, and the repairs, according to the bill of Julio C. Solórzano, took one year and three months.

The amount claimed is evidently too high, the more so as no reduction is made for the rents from time to time paid by the occupants.

The Commission can only, therefore, accept a part of the amount claimed as proved.

7. The Commission decide that the Government of the United Mexican States are obligated to pay to the British Government on behalf of Mr. James Hammet Howard the sum of 5,000 (five thousand) pesos, Mexican gold.

THE MADERA COMPANY (LIMITED) (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 79, July 10, 1931. Pages 229-232. See also decision No. 41.)

RESPONSIBILITY FOR ACTS OF FORGES, DEGREE OF PROOF REQUIRED.—When the fact of damage was established but no proof was furnished as to identity of forces responsible, or the dates or places of the events complained of, claim *disallowed*.

1. The Commission, in so far as the facts on which the present claim is based are concerned, refer to their Decision No. 41.

2. In accordance with the said Decision, the Mexican Agent answered the claim, and prayed that it be disallowed and the Government of Mexico be absolved, because it had not been shown that the claimant Company had suffered losses and damages to the extent of \$4,064,705.66 pesos, nor, in the event that the claimant had suffered them, that they were caused by any of the revolutionary forces in respect of whose acts the Government of Mexico had expressly agreed to be held responsible, nor had it been shown that the competent authorities were guilty of negligence.

3. After this case was tried by the Commission, the British Agent confirmed his Memorial by contending that it was only a matter of examining the documents annexed thereto, in order to consider the claim as proved.

The British Agent himself, during the hearing, admitted that there was no evidence in regard to the forces that had executed the various acts ascribed to revolutionaries and counter-revolutionaries; but he trusted that the Commission would, in equity, award some compensation to the claimant Company, as it had absolutely no proof beyond that already filed.

4. The Mexican Agent alleged that there was no evidence as to the nature of the forces, nor particulars to establish the claim or to make it specific, but only evidence of a vague and indeterminate nature, and therefore prayed that the claim be disallowed.

5. The Presiding Commissioner asked the British Agent whether it would be possible for him to submit to the Commission the extract from the books referred to on page 6 of the Memorial, as it might afford some light to the Commission. The learned British Agent answered that he had made an effort, but that he was not in a position to submit such evidence.

The Presiding Commissioner then asked the British Agent whether he could produce the documents referred to on page 6 of the Memorial, in regard to damage caused in the time of Mr. Francisco I. Madero. The British Agent answered in the negative, although he had tried to obtain them.

The Presiding Commissioner further asked the British Agent whether he knew if the claimant Company had reported its losses to the head office at Toronto, as in that case the correspondence might also serve to enlighten the Commissioners to a certain extent. The British Agent answered that the claimants had informed him that they had no such supplementary evidence in their possession.

6. The Commission do not hesitate to assert that the claimant Company did sustain damage during the revolutionary period, from the 20th November, 1910, to the 31st May, 1920, because this appears to be abundantly proved by means of annex 2 being a certified copy of the proceedings for examination of witnesses instituted by the Company before the Judge of the District Court at Ciudad Juárez in the State of Chihuahua.

The Commission do not, however, have the same opinion when they come to the evidence as to the kind of forces that committed the acts that caused the damage.

The witnesses fail to say where the acts were committed, and their testimony is so defective, and so wanting in precision, that they do not state the exact amounts of the losses. They confined themselves to stating that the Madera Company (Limited), since 1910, *at different dates*, and *at different places*, during the revolutionary period, and at the hands of revolutionaries, sustained great damage to its interests situated in the Districts of Galeana and Guerrero in the

State of Chihuahua; that said damage consisted of destruction, robberies, expropriations, violent requisitions of merchandise in transit and in storage, expropriations of arms, ammunition and explosives, robberies of horses, cattle, hogs and sheep, wherever they happened to be; requisitions of medicines, etc.; *but there was not a single witness to say who were the revolutionaries responsible for those acts in each case nor did they specify either the dates of, or the places where, the events occurred upon which they testified.* That being so the Commission are unable to make an award against Mexico, in accordance with the Convention entered into between Mexico and Great Britain.

Article III of the Convention, which determines the nature of the claims that may be presented against Mexico for losses or damages suffered by British subjects, etc., requires that it be established that such losses and damages have been caused by one or any of the following forces:

- (1) By the forces of a Government *de jure* or *de facto*.
- (2) By revolutionary forces which, after the triumph of their cause, have established Governments *de jure* or *de facto*.
- (3) By forces arising from the disbandment of the Federal Army.
- (4) By mutinies or risings or by insurrectionary forces other than those referred to under subdivisions 2 and 3 of this Article, or by brigands, provided that in each case it be established that the competent authorities omitted to take reasonable measures to suppress the insurrections, risings, riots or acts of brigandage in question, or to punish those responsible for the same; or that it be established in like manner that the authorities were blamable in any other way.

According to the opinion of the Commission it is not sufficient that it be proved that a British subject sustained damage during the period from the 20th November, 1910, to the 31st May, 1920, in order to hold Mexico responsible for such damage, but it is further necessary to show—

- (a) That said damage was due to the acts of forces;
- (b) That said forces are included among those mentioned in Article 3 of the Convention, and no others; and
- (c) That the date on which they were caused be also stated with such exactness as to enable the Commission to determine the nature of the forces that caused the damage, and the responsibility of Mexico, since under the new Convention Mexico is not responsible for any claims originated by the forces of Victoriano Huerta, nor for the acts of his régime, nor for those of revolutionary forces opposed to those which, after the triumph of their cause, established Governments *de jure* or *de facto*.

And as it has not, in the present case, been shown that any forces within the meaning of the Convention executed the acts that gave rise to the damages for which claim is made, the Commission, because of the lack of evidence, decide that the claim is disallowed and that Mexico is absolved from the said claim as presented against it by the Government of Great Britain on behalf of the Madera Company, Limited, for the sum of \$4,064,705.66, Mexican gold.

JANTHA PLANTATION (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 80, July 14, 1931. Pages 232-235.)

CONFISCATION. Confiscation is an act emanating from public authorities and evidenced by an express order from them. In the absence of references to authentic orders of authorities, and with conflicting evidence on the fact of confiscation, claim *disallowed*.

1. The British Government have joined in one Memorial under the title of the "Jantha Plantation Claims," a group of similar claims, all of them arising out of the same set of facts, and presented on behalf of J. B. Aiton, Frank L. Roberts, John R. Sands, Charles Wieland, Walter C. Aust and Arthur Matthews; the first one being for £4,100, the second for \$7,500.00 Mexican gold, the third for \$4,000.00 United States currency, the fourth for \$2,000.00 Canadian currency, the fifth for \$2,000.00 Canadian currency, and the sixth for \$4,000.00 Canadian currency.

2. The facts are common to all the claims, and in the Memorial they are set out as follows:

That during the years 1911, 1912, and 1913, Major J. B. Aiton, and Messrs. Frank L. Roberts, John R. Sands, Charles Wieland, Walter C. Aust and Arthur Matthews, purchased from the Jantha Plantation Company, an American concern, sundry tracts of land situated near the town of Macineso, State of Oaxaca.

That the said claimants expended large sums of money on clearing their property and on the cultivation of bananas thereon.

That the said claimants were not resident of Macineso, and that their lands were therefore left under the care of the Alvarado Construction Company, an American concern that developed the lands on behalf of the owners.

That on the 23rd April, 1913, the *Jefe Político* at Tuxtepec informed American nationals living at Macineso that he could not offer them protection and advised them to leave the place.

That on the 26th April, 1914, a company of federal soldiers under the command of Colonel Villanueva and Major Prida ordered the representatives of the Alvarado Construction Company to abandon the lands under their care and to go to Veracruz.

That the Government of Mexico appointed one D. J. García as administrator to take over the lands known as the Jantha Plantation Company, and that a band of armed men under the command of one Luis del Valle took possession of the lands under the care of the Alvarado Construction Company, among which were the properties belonging to the claimants, and forthwith used the bananas and cattle thereon as food for the soldiers.

That the Government of Mexico managed the lands for some time and availed themselves of the products therefrom for their own use. That the said lands were neglected and that they have by now become overgrown with jungle and of no use for cultivation, and that as a result of this the property has become practically worthless.

That the claimants have not been able to regain possession of their properties and that although their representatives were in 1919 allowed to visit the lands, they were not granted permission to take possession of same on behalf of the owners.

3. Attached to the Memorial filed by the British Government (annex 8) and as evidence in support of the facts on which the claims were founded, there were submitted the declarations of Paul Weber, May Crimshawe and Florence Crimshawe, who stated that the facts referred to in the Memorial were true.

4. The claims are for:

(1) Damage sustained by reason of forced abandonment by the claimants' agents.

(2) Confiscation of their properties by the Government of Mexico, in April 1913.

(3) Loss of profits which they had expected to realize, as from the 26th April, 1914.

(4) Depreciation of the properties by reason of lack of care because of their neglected condition, as a consequence of confiscation.

5. The Mexican Agent in his answer contended that the facts on which the claim was based were not correct, and by way of proof of his assertion he attached, as annex 1 to his answer, a copy of the testimony of Fermín Fontañén, Francisco Flores, Leonardo Martínez, Pedro Lavín, and José Roca, who positively denied the confiscation of the claimants' property as also the fact that D. J. García had taken possession of the said properties on behalf of the Government of Mexico.

As annex 2 to this answer, the Mexican Agent submitted a certificate from the Office of the Collector of Taxes of the State of Oaxaca, to show that the properties were very far from having the value ascribed to them, their value, according to the said certificate, being insignificant.

6. The British Agent replied by contending that there was a direct conflict between the evidence annexed to the Memorial and that annexed to the Mexican Agent's answer, but that the official denials of the authorities had not been presented, and that as his evidence had been taken before that of the Mexican Agent it was more likely to be reliable and accurate.

7. The Mexican Agent in his Rejoinder contended that the facts complained of were not correct, on the strength of the documents presented with his Answer. Moreover, he attached to his Rejoinder certain official communications from the Department of Finance, the War Department, and the Government of the State of Oaxaca, the only authorities that could have decreed the confiscations in question, and in them the fact of such taking over or confiscation of the claimants' property was positively denied.

8. The Mexican Agent also filed a Brief, contending that, although the evidence theretofore submitted showed that the facts on which the claims were based were incorrect and the amount claimed from the Government of Mexico unjustified, any losses and damages sustained by the claimant Company would—even accepting the claimant's own version of the facts—have been caused by forces belonging to the régime of Victoriano Huerta, forces which were, under the third paragraph of subdivision 4 of Article III of the Convention, expressly excluded from among those recognized as involving responsibility for the Government of Mexico.

9. The Commission, after having made themselves acquainted with the points upheld by both Agents, and with the evidence submitted by them in support of their arguments, formulate the following considerations:

(1) Confiscation is an act emanating from the public authorities and can only be carried out by means of an express order from the said authorities. The British Government have only, in order to establish the fact of such

confiscation, produced the affidavits of Paul Weber, May Crimshawe and Florence Crimshawe, without having in any way referred to any authentic orders from the authorities.

(2) The Mexican Agent has, in rebuttal of the above evidence, produced official communications from the Departments of War and Finance and from the Governor of the State of Oaxaca, denying the fact of such confiscation and the existence in the National Army of the officers to whom the act was attributed.

(3) The said Mexican Agent has filed the evidence of witnesses, in order to contradict the fact asserted by the British Agent, and his witnesses agreed with the official communications from the above-mentioned authorities, to the effect that no such confiscation had taken place.

10. The Commission do not, in the presence of this conflicting evidence, find sufficient reasons for declaring that confiscation of the claimants' property has been proved.

11. For the above reasons, and without entering upon the task of considering the arguments upheld by the Mexican Agent, the Commission declare that the Government of Great Britain have not established the fact of the confiscation of the claimants' property by the Mexican authorities, and in consequence.

12. The Commission disallow the instant claim.

ALFRED HAMMOND BROMLY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 81, July 22, 1931. Pages 235-238.)

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH. When the evidence established that the respondent Government had sent troops to pursue and punish bandits, for whose acts claim was made, though the result of such pursuit did not appear, claim *dismissed*.

1. The Memorial sets out that Mr. Alfred Hammond Bromly was engineer to the "Nueva Buenavista y Anexas, S.A." Company and was residing on the estate "Los Laureles". At 6 o'clock in the morning of the 20th February, 1913, he was awakened by continuous firing, and was informed that the house was being attacked. Shortly afterwards a parley took place between a Mr. Gorow and the chief to the assailants, who requested that the house should be evacuated. This request was refused, and thereupon the shooting began again. At this moment Mr. Bromly noticed a man named Chacón in the courtyard, who said he was a messenger of the bandits. As this man was a suspicious person, Mr. Bromly followed him to the exterior corridor, where he (Chacón) fell dead, a victim to a bullet fired from outside. Shortly afterwards the gang retired. Mr. Bromly and his companions learned from a youth named Pedro N., that the gang was composed of thirty persons, and that they had retired to La Yesca to bring up the remainder of their friends to complete the capture of the house. The total band was composed of about 130 persons under the command of Sacramento Sernón, who had been engaged in revolutionary pursuits at Tepic, ten days before, under the name of Don Félix Díaz. Previous to the attack the revolutionaries had stolen horses and harness from the stables, and had threatened the youth Pedro with penalties if he gave the alarm.

Pedro also informed Mr. Bromly that the labourers employed by the company had been killed by these Antimaderistas while they (the labourers) were running to the house for arms. After consultation it was decided to retire to the mine as the house was defenceless against so many. The revolutionaries returned shortly afterwards accompanied by armed civilians, and proceeded to attack the estate. Mr. Bromly was informed subsequently that the assailants were police officers without uniforms. The official version of these events was to the effect that the soldiers accompanied by the company's operatives, had approached the house in a peaceful manner and had been brutally fired upon by Messrs. Goisueta and Gorow without previous warning, and, as a result of this, there were a certain number of deaths. Mr. Bromly asserts that this is absolutely untrue. Mr. Bromly and others remained for two days in the buildings attached to the mine. On the 22nd February he was informed that Manuel Miramón would arrive in a few hours' time at the head of 400 revolutionaries, and, as this chief had a bad reputation, Mr. Bromly and his companions hired horses and left without delay. On their arrival at Hostotipaquillo, they informed the Government official in charge of what had occurred, and received every assistance and an escort from him. During the second attack on the estate the place was ransacked and Mr. Bromly suffered considerable loss.

The amount of the claim is one thousand three hundred and twenty-five pesos thirty centavos Mexican currency.

2. The Commission after consideration of all of the evidence produced to them have come to the conclusion that the attacking parties on the 20th February, 1913, were bandits. There is no evidence that they were revolutionaries, still less revolutionaries whose revolution afterwards succeeded. The sworn Exhibit A to Mr. Bromly's affidavit describes them in one place as "revolutionary bandits", in others as "bandits", and as "Maderista bandits", and as "gangs". In the letter from R. Gonzalez dated the 26th February, 1913 (part of the further evidence filed by the British Agent), written immediately after the occurrences, they are also described as "bandoleros" (bandits), and "bandidos". And in the extract from the Guadalajara Times of the 1st March, 1913, filed by the British Agent as further evidence, they are also referred to as "bandits".

This being so, and classing the attackers and robbers as the Commission feel compelled to do, as bandits or brigands, within subdivision 4 of Article 3 of the Convention, it remains for the Commission to decide whether the Government of Mexico can be held responsible for their acts, for any of the reasons set out in the said subdivision of Article III of the Convention.

3. The time when the events occurred was on the establishment or on the eve of the establishment of the Huerta régime and the overthrow of the Madero Government by Huerta. Madero is stated to have been taken prisoner on the 18th February, 1915, to have resigned on the 19th February, and to have been killed either on the 22nd or the 23rd February. If the acts were committed during the Madero régime, blame would have to be proved as attaching to these authorities. If, on the other hand, the Madero régime had then been overthrown and Huerta in power on the 18th February, as argued by the Mexican Agent, then the Huerta régime would be responsible for the events of the 20th February provided neglect or blame on their part were shown and unless liability for acts of omission is excluded by the provisions of the new and amended Convention.

4. But the Commission do not think it necessary for the purposes of this case to discuss or decide this last point, as they do not consider that any blame

has been shown attaching to the authorities whoever they were. According to the newspaper extract already referred to, the Government sent troops to pursue the bandits and punish them. It does not appear what the result was, but the Commission are unable to see any sufficient grounds proved upon which they can fix financial responsibility on the Government of Mexico in this case, within the terms of the Convention.

5. The claim is dismissed.

ERNEST FREDERICK AYTON (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(*Decision No. 82, July 22, 1931. Pages 238-241.*)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. When the fact of loss is established only by claimant's affidavit, *held*, evidence insufficient.

(*Text of decision omitted.*)

MAZAPIL COPPER COMPANY (LIMITED) (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(*Decision No. 83, July 22, 1931. Pages 241-242.*)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(*Text of decision omitted.*)

WILLIAM ALEXANDER KENNEDY (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(*Decision No. 84, July 22, 1931. Pages 242-244.*)

DAMAGES, PROOF OF.—FORCED OCCUPANCY. Claim for damages sustained as a result of the occupancy of claimant's house for several days by revolutionary forces. Supporting evidence indicated, contrary to claimant's statements, that forces in question at most occupied house overnight, and evidence of loss was otherwise of a doubtful character. Claim *dismissed*.

1. In this case the claimant, according to the Memorial, on or before the 18th February, 1916, occupied a house at Tlahualilo, in the State of Durango. About this date Villista forces, numbering some five hundred men, under the direct command of Canuto Reyes, a subordinate of Francisco Villa, attacked Tlahualilo. After a short fight the federal garrison were driven out. The officers

of the Villista forces occupied the claimant's house for several days. Everything in the house, except the heavy furniture, was either carried away or destroyed. The heavy furniture was afterwards found to be in such a damaged state that the claimant was obliged to have it repaired, cleaned and disinfected.

The amount of the claim is 1,267.05 dollars United States currency.

2. The evidence filed with the Memorial was an Affidavit of Mr. W. A. Kennedy sworn at Mexico City on the 27th November, 1927, to which he attached an inventory and valuation of the property destroyed or lost. In this Affidavit, besides deposing himself as to the facts stated in the Memorial, he adds that the only eye-witnesses of the occurrences were the officers of the revolutionary forces themselves, that the Mexican employees of the Tlahualilo Agricultural Company stayed in their houses, that the foreigners escaped a few moments before the revolutionary forces occupied the place, and that if necessary the Mexican employees would certify to the accuracy of the facts as stated in his claim.

3. The Mexican Agent with his Answer, filed on the 24th September, 1929, produced certain testimony taken at Tlahualilo before the Municipal President, in which the deponents all testified that, although it was true that the revolutionary forces under Canuto Reyes in superior number attacked and dislodged the Government forces, it was untrue that they occupied the house of the claimant for several days, that they were not there for more than 15 to 20 minutes, and they took nothing but three pieces of bread and three bottles of table wine which were in the larder, and further that on the following day Canuto Reyes and his fellows were pursued by the Government forces, having been dislodged.

4. The further evidence filed by the British Agent consisting of answers to questionnaires, by T. R. Fairbairn and another person whose signature is illegible, taken before Pedro G. Moreno on the 21st November, 1929, was that General Canuto Reyes's forces in superior numbers attacked Tlahualilo on the 18th February, 1916, drove out the federal garrison under Colonel Olivares, of about 150 men, and occupied the principal ranch called Zaragoza, that they plundered the house occupied by Mr. W. A. Kennedy, and used it during the time when those rebels occupied Tlahualilo, and that several articles were destroyed by them. That the contents of the house were exceedingly maltreated, and that it was necessary for the Company to repair and replace some of the furniture owned by the claimant, after the occupation by the rebels, especially the parlour furniture. But they do not state specifically to what extent they plundered the house or destroyed the articles. And they add that very early the next morning the Federal forces evicted them from Zaragoza, but that they had enough time to plunder the house of Mr. T. M. Fairbairn, Assistant Manager of the Company (the deponent) and that of Mr. W. A. Kennedy.

5. The Commission consider it to be established that the attack and occupation of the Claimant's house took place, and that the attacking and occupying forces were Villistas and at that time, the Carranza Government being established, they come within subdivision 4 of Article 3 of the Convention. But they are not satisfied on the evidence that all or a substantial part of the articles claimed as lost and set out in the inventory and list annexed by the Claimant was taken by the said rebels or that the damages claimed for were caused by them. It was, according to the Claimant's Affidavit, a week after the occurrences before he returned to Tlahualilo, and made the inventory of his losses. Moreover, his statement that the rebel forces used his house for several days cannot

be accepted as correct in the face of the other evidence produced by him as recapitulated above. Nor is there any evidence, or any statement in his Memorial that he reported or made known to the authorities his losses, or the damage alleged to have been suffered by him, and attributed to the rebels.

6. The Commission consider that the essential elements, to which they have so frequently drawn attention in previous decisions, requisite for establishing claims of this nature before them are lacking, and that they are unable for this reason to make an Award in favour of the claimant.

7. The claim is dismissed.

DOUGLAS G. COLLIE MacNEILL (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 85, July 22, 1931. Pages 245-246. See also decision No. 27.*)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS. Evidence *held* sufficient to establish claim.

(*Text of decision omitted.*)

THE SUCHI TIMBER COMPANY (1915) (LIMITED) (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 86, August 3, 1931. Pages 246-248.*)

Res Judicata—EFFECT OF AWARD RENDERED BY MEXICAN NATIONAL CLAIMS COMMISSION. Previous rejection of claim by domestic Mexican National Claims Commission *held* not binding on tribunal.

RESPONSIBILITY FOR ACTS OF FORCES.—GOODS SOLD TO REVOLUTIONARY FORCES. Supplying of wood and timber to revolutionary forces not under violence but in ordinary course of business *held* not to entrain responsibility under the *compromis*.

1. This is, according to the Memorial, a claim for compensation for various articles supplied by the Suchi Timber Company, Ltd., a British company, to the revolutionary and counter-revolutionary forces.

This claim was filed with the Mexican National Claims Commission with which the claimants expressed their dissatisfaction.

The claim was then passed to the Anglo-Mexican Special Claims Commission, and, by direction of the Commission, was handed to the British Agent and counsel for his consideration.

The claim was made up by Alfred F. Main as manager and attorney for the claimant.

During the revolutionary events which are covered by the period of the Anglo-Mexican Special Claims Convention, the Suchi Timber Company, Ltd., was obliged to supply wood and timber to the Constitutionalist railways and to the army.

The Mexican National Claims Commission rejected this claim as contrary to law, on the ground that the claimant company had not presented proofs to show that it had suffered the damages it claimed. Mr. Alfred F. Main, on behalf of the Suchi Timber Company, Ltd., protested against this decision, and contended that the documents which he had submitted fully proved that the supply of wood and timber had been delivered.

The amount of the claim is 2,394.00 pesos. The claim belonged at the time of the loss, and still does belong solely and exclusively to the claimants. No compensation has been received from the Mexican Government or from any other sources.

The British Government claim, on behalf of the Suchi Timber Company Ltd., the sum of \$2,394.00 pesos.

2. The Commission have found nothing to prove that the Company, in supplying wood and timber, acted under violence and not voluntarily in the ordinary course of their business transactions. The Commission cannot regard an order to supply fuel as an act of forces covered by the Convention.

3. The Commission disallow the claim.

MARY HALE (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 87, August 3, 1931. Pages 248-250. See also decision No. 28.*)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—NECESSITY OF CORROBORATING EVIDENCE. Claim *disallowed* for lack of corroborating evidence.

(*Text of decision omitted.*)

THOMAS PULLEY MALLARD (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 88, August 3, 1931. Pages 250-254.*)

RESPONSIBILITY FOR ACTS OF FORCES.—MILITARY ACTS. Killing by Villista forces in course of a battle against Government forces *held* a military act for which respondent Government was not responsible.

1. This is a claim for compensation for the deaths of the wife, Anna Mallard, and the son, Sidney Mallard, of the claimant, who were killed on the 6th June, 1915, during an attack by revolutionary forces on Tuxpam Bar, in the State of Veracruz.

According to the Memorial, the facts are the same as those giving rise to the claims of Mrs. Fanny Grave and of Mrs. Gwladys Amabel Jones. It should be explained that the claimant's birth certificate shows that his real name is Thomas Pulley, but that, owing to the death of his father during the claimant's infancy and his mother's remarriage to Mr. Mallard, the claimant was brought up in the name of Mallard and has used it consistently since. It should be noted that the claimant is described as Thomas Pulley Mallard, the son of James

Pulley Mallard, on the certificate of his marriage to Annie Matilda Patterson. His father's real name was James Pulley.

On the morning of the 6th June, 1915, the *de facto* Government forces stationed at Tuxpam Bar were attacked by revolutionary forces. During the attack and in view of the heavy shooting, and of the fact that the dwelling-houses, being made of wood, afforded no protection for the lives of the occupants, Mr. Mallard, his wife and child, together with a Mr. A. J. Grave and Mr. S. B. Jones, took refuge under one of these houses, which the Mexican Eagle Oil Company, Limited, provided for their employees. While taking refuge under this house, Mrs. Mallard and her son, Sidney Mallard, were, with others, fatally wounded by heavy volleys from the attacking forces. Mrs. Mallard died from her injuries on the next day, the 7th June, 1915, in the Company's hospital at Tanhuijo Camp, to which she had been taken after the fighting had ceased. The son, Sidney Mallard, died on the 6th June, 1915, while being taken to the hospital. Medical certificates given by Dr. T. M. Taylor describing the nature of the injuries and the cause of the deaths of Mrs. Mallard and of Sidney Mallard are contained in Exhibits T.M. 2a and T.M. 2b to annex 1. It is understood that in File No. 121 formed during the year 1915 in the archives of the Civil Registry Office at Tuxpam there is a record of the investigation made by the Court of First Instance at Tuxpam of the incidents which led to the deaths of Mrs. Mallard and Sidney Mallard.

The circumstances of the killing of these two British subjects were reported to His Majesty's Government at the time and urgent representations were made to General Carranza by the United States Agent at Veracruz. The British Vice-Consul at El Paso was instructed to make the strongest representations to General Villa, whose forces, it was afterwards understood, were those concerned in the attack on Tuxpam.

The claim, which amounts to 50,000 pesos Mexican, did at the time and still does belong solely and absolutely to the claimant.

The British Government claim on behalf of Thomas Pulley Mallard the sum of 50,000 pesos Mexican.

2. The British Agent drew the attention of the Commission to the fact that both victims had been killed by volleys from the attacking forces, and that those forces were commanded by General Villa. This leader was at the time of the events up in arms against Carranza, who had succeeded in establishing a Government *de facto*. The acts of the Villistas could not therefore be regarded as acts of lawful warfare, but were the acts of insurrectionaries or rebels, and as, in the Agent's view, no proof had been shown of any punitive action taken by the competent authorities against the perpetrators, the Mexican Republic should be held responsible for the consequences, according to subdivision 4 of Article 3 of the Convention.

3. The Mexican Agent argued that as regards the question of who had committed the particular acts that proved fatal to Mrs. Mallard and her child, the Commission merely had at their disposal the affidavits of the claimant himself. He considered this an insufficient proof of this very important matter. The volleys could just as well have been fired by the Government troops which defended Tuxpam and which, in doing so, performed a lawful act, for the consequences of which no recovery could be claimed from Mexico. Even if the victims had fallen through being struck by bullets from the attacking forces, they had been killed in the course of a battle. Their death had to be attributed to the hazards of war, and a great many judgments of international tribunals had decided that where injury was an ordinary incident of battle, no Government could be held liable. The Agent referred to the jurisprudence

quoted by Jackson H. Ralston (*The Law and Procedure of International Tribunals*) pp. 386 and following.

In case the killing had to be regarded as an act of insurrection or revolt, the Agent denied that any negligence on the part of the Mexican Government had been shown. It was outside the power of the authorities to trace the individuals who had fired the fatal shots; all the Government could do was to suppress the insurrection, and this duty they had certainly not failed to perform.

4. The Commission deem that no doubt can exist as to the facts or as to the forces whose volleys killed the wife and child of the claimant. All the contemporary evidence compels them to lay the responsibility upon the attacking forces, i.e., the Villistas, there being furthermore a greater likelihood that persons residing in a town subjected to attack would be killed by the attackers rather than by the defenders.

The question before the Commission is therefore whether Mexico is, under the Convention, financially responsible for the acts of General Villa and his followers at the time when the events occurred.

5. The time in question is the 6th June, 1915, a date falling within the second period of the Villista and Zapatista movements as described in the Decision of the Commission in the claim of *Mrs. Christina Patton* (Decision No. 76).

The Commission refer to paragraph 6 of that Decision reading as follows:

"The Commission accept in its general lines the distinction drawn by the Mexican Agent between the various periods of the Zapatista and Villista movements, reserving, however, their liberty as to the determination of the dates on which such periods must be assumed to begin and to end.

"They are equally of opinion that during the second period the two contending factions were fighting with the same character for political aims, and that as neither of the two had been able to establish a Government, neither of them could be regarded as being in mutiny, rising or insurrection against the other. From that point of view their acts are not covered by the Convention, since by the last revision the words "*or by revolutionary forces opposed to them*" have been eliminated. The Commission wish it, however, to be clearly understood that this opinion of theirs goes only to those acts, which were of a political or a military nature, or directed towards political or military aims. While acts of that description seem to have been excluded when the Treaty was amended, this cannot be maintained as regards the acts of brigandage.

"Both factions—or greater or smaller parties of them—may, as well as other independent groups, have become guilty of brigandage in special instances, and, as the Commission read subdivision 4 of the amended Article 3, they cannot admit that all those cases fall outside the financial liability of the respondent Government."

6. The Villistas, on attacking a place occupied by the opposite faction, were certainly engaged in the execution of a military act and not of one of those provided for by subdivision 4 of Article 3 of the Convention.

That being so, the Commission must take the same attitude as in the Decision quoted, and they regret that they are not, reading the Convention as amended by the last revision, entitled to grant an award.

7. The Commission disallow the claim.

FANNY GRAVE AND GWLADYS AMABEL JONES (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(Decision No. 89, August 3, 1931. Pages 254-257.)

RESPONSIBILITY FOR ACTS OF FORCES.—MILITARY ACTS. Killing by Villista forces in course of a battle against Government forces *held* a military act for which respondent Government was not responsible.

(Text of decision omitted).

CENTRAL AGENCY (LIMITED), GLASGOW (GREAT BRITAIN) v.
UNITED MEXICAN STATES

(Decision No. 90, August 3, 1931. Pages 258-259. See also decision No. 7.)

RESPONSIBILITY FOR ACTS OF FORCES. Burning of goods caused by attacking Constitutionalist forces, before they became a part of a Government *de facto* or *de jure*, *held* an unlawful act for which respondent Government was responsible.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 231.

1. As regards the facts on which the claim is based, the Commission refer to their Decision No. 7.

2. The majority of the Commission deem that the goods, at the time of the burning, belonged to the vendor (the claimant).

3. They take it that the burning of the Monterrey station was not caused by the acts of the defenders of the town (Huertistas), but by the fire of the attacking forces (Constitutionalists), this being more likely and also in accordance with all the contemporary evidence.

4. At the time the events occurred the Constitutionalist Movement had not yet succeeded in establishing a Government *de facto* or *de jure*, and for that reason, the Commission cannot accept their acts as being lawful. In their opinion the question of the lawfulness of an act must be judged in accordance with the circumstances prevailing at the time when it was committed.

5. The Commission feel, therefore, bound to declare that the burning of the station is an act covered by subdivision 2 of Article 3 of the Convention.

They accept the amount claimed as proved by the invoice dated before the events occurred.

6. The Commission decide that the Government of the United Mexican States is obliged to pay to the British Government on behalf of the Central Agency (Limited), Glasgow, the sum of 1,568.00 (one thousand five hundred and sixty eight) pesos, Mexican gold or an equivalent amount in gold.

THE BUENA TIERRA MINING COMPANY (LIMITED) (GREAT
BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 91, August 3, 1931. Pages 259-266.*)

RESPONSIBILITY FOR ACTS OF FORCES. Status under *compromis* of acts by various military forces considered.

FAILURE TO SUPPRESS OR PUNISH.—NECESSITY OF NOTICE TO AUTHORITIES.

When act complained of was not of public notoriety or brought to attention of authorities in due time, *held* no responsibility of respondent Government existed.

EFFECT OF ACT OF AMNESTY. A grant of amnesty to Villa and his forces *held* not a failure to punish resulting in responsibility for acts of Villista forces on the part of respondent Government, in so far as acts of a political or military nature, such as seizure or confiscation of property, were concerned.

1. The claim is for compensation for the loss of property confiscated or taken by revolutionaries during the period November 1912 to September 1916. According to the Memorial, in November 1912, a quantity of 49,300 kilos of coal, the property of the company, standing in wagon No. 17462, in the National Railway Station in the City of Chihuahua, was confiscated by the Orozquista faction. In November 1913 a quantity of 54,200 kilos of coal which was in a railway wagon at the station at Terrazas was confiscated by Villistas. In January 1915, the so-called Government of Francisco Villa requisitioned coal belonging to the company in seven wagons which were standing in the station of Chihuahua. In February of that year further confiscation of coal belonging to the company was made by the Villa Government. In November 1915, a quantity of coal deposited or stored at the minefield of Santa Eulalia, in the district of Iturbide, was confiscated by Villistas forces, who were garrisoning the place. On the 19th November of the same year, the Villistas took three horses belonging to the company from the mine in Santo Domingo, Santa Eulalia, district of Iturbide. On the 24th December, 1915, a party of Villistas came to the same mine and destroyed an iron case and took from Messrs. W. E. Dwelly and John Brooke, Jr., 100 pesos National gold, belonging to the company. On the 26th of the same month, Villistas took away forty-four bundles of alfalfa belonging to the company. On the 22nd January, 1919, the ex-rebel Francisco Villa came to the minefield of Santo Domingo, ordered the company's safe to be broken open, and took possession of 385 pesos 4 centavos National gold belonging to the Company. In February 1916, a party of Villistas came to the mine in Santo Domingo and took away sixty-four cases of candles, one and a half tins of grease and ten cases of gasoline. On the 13th September, 1919, a party of Villistas assaulted a train belonging to the Chihuahua Mining Company, which was going to the minefield of Santa Eulalia and took the sum of 700 pesos National gold belonging to the Claimant company, which was being taken by Mr. Dwelly in order to pay the company's workmen of Ciudad Juarez.

2. The facts are set out in an Affidavit (Annex to the Memorial) made by Herbert Francis Wreford, Secretary to the Claimant Company, a British company, on the 16th May, 1928, and in a translation (Exhibit "B" to annex) of a certified copy of the Record of voluntary jurisdiction proceedings instituted, before the District Court, Ciudad Juarez, State of Chihuahua, on the 23rd June,

1921, by Mr. Arthur C. Brinker, as Attorney of the Claimant Company, to verify the damages caused by the revolution. Exhibit "C" to the above-mentioned Affidavit of Herbert Francis Wreford is a certificate, dated the 15th May, 1928, under the hand and seal of the Assistant Registrar in London of Joint Stock Companies, of the incorporation of the claimant company on the 10th February, 1912.

3. At the hearing the British Agent dropped the first item of the claim, being the confiscation of coal by Orozquistas in November 1912. As regards the rest of the claim, the acts complained of were those of Villistas and the Government of Mexico were in his opinion undoubtedly responsible for such acts during 1913 as being during the Constitutionalist movement prior to November 1914 and belonging to the period during which the Villistas must be regarded as falling within the category of successful Revolutionaries, as allied to the Constitutionalist cause. That as regards the subsequent acts of the Villistas complained of, the Government of Mexico must be held responsible provided negligence, failure to punish, or blame on the part of the competent authorities was proved, the offending parties being either insurrectionaries or bandits. He claimed that subdivision (4) of Article 3 of the Amended Convention was applicable. He argued further that the effect of the General Amnesty Decree issued by the Carranza Government in December 1915, and the Agreement made by the same Government with Villa on the 28th July, 1920, was to make the Mexican Government financially responsible for non-punishment of the Villistas and Villa respectively as insurrectionaries, or bandits, as the case might be, in respect of these acts.

4. The Mexican Agent in opposing the Claim confined his arguments to the legal issues involved, arising from the dates and the character of the acts complained of, and the applicability thereto of the amended Convention. As regards the legal questions arising on the dates when (and therefore the periods during which) the acts took place, the Commission have already in their decisions in the case of *Mrs. Edith Henry* (Decision No. 61) and in the *Christina Patton* case (Decision No. 76), set out the general arguments, on these points, of the Mexican Agent, which were similar, and it is not necessary to repeat them here. But in the case now under consideration the Mexican Agent dealt also with the effect of the Carranza Decree of Amnesty of December 1915 and the Villa Agreement of 1920. He distinguished between political and criminal offences. It might be an obligation of the State or the authorities to punish criminal or common law offences, but this did not apply to political offences, which only affected the State. It was to the interest of the State to terminate political unrest and civil war, and political amnesties and agreements with this end were in the interest of the State. The Amnesty and Agreement were political acts and the Government of Mexico could not be held responsible merely because of these, but only if negligence or blame were proved against it.

5. The Commission have already, in the Case of Christina Patton, referred to in the preceding paragraph, enunciated their views as to the general principles applicable during the first and the second periods therein described, and they refer to these as directly applicable to the losses occurring during those periods, that is to say, prior to November 1914, and between November 1914 and October 1915 respectively. But a large proportion of the losses arose on confiscations and takings by Villistas during the third period, when Carranza had established first a *de facto* and later a *de jure* Government. They were then insurrectionaries or bandits, as the case might be, within subdivision 4 of Clause 3 of the Convention. In such cases omission by the competent authorities to take reasonable measures to suppress, or to punish those responsible, or blame

in any other way, must be established in order to make the Mexican Government financially responsible.

6. Acting on the general principles before enumerated they must hold the Mexican Government financially liable for the confiscation complained of in the first period, that is to say, in November 1913, when the Villistas formed part of the Constitutional Army, of 54,200 kilos. of coal which, as well as its value at 262.18 pesos, they find has been proved. As regards the confiscations during the second period, that is to say in January and February 1915, it has not been shown and the Commission do not find that these acts were of other than a political or military nature, and acting on the principles already enunciated in the cases above referred to, and no omission, negligence or blame having been proved against the authorities in regard to the actual occurrences complained of, they must hold that under the Convention as amended the Government of Mexico is not financially responsible.

7. As regards the acts complained of which occurred during the third period, that is to say, between October 1915 and September 1919, it will be convenient to summarize by recapitulation from the Memorial and evidence annexed thereto the specific acts complained of:

1915, November.—Coal confiscated at Santa Eulalia, Iturbide, by Villista forces, who were garrisoning the place.

1915, November 19.—Three horses taken by Villistas at the same place.

1916, February.—Villistas took 64 cases of candles, 10 of gasoline and 1½ tins of grease.

1916, December 24.—Villistas destroyed an iron case and took 100 pesos Mexican gold.

1916, December 26.—44 bundles of alfalfa taken by Villistas.

1919, January 22.—Visit of ex-rebel Francisco Villa to the Minefield at Santo Domingo ordered safe to be broken open and took possession of 385 pesos 4 centavos National gold.

1919, September 15.—Assault by Villistas of train belonging to Chihuahua Mining Company, and robbery from Mr. Dwelly of 700 pesos National gold belonging to the Claimants.

The above facts being taken as proved, as in the opinion of the Commission they were sufficiently, it remains to be considered how far, if at all, the Mexican Government can be held to be financially responsible. During the whole of this period, and indeed up to the date of the Agreement concluded by the Carranza Government with Francisco Villa on the 28th July, 1920, Villa and his followers came under the category of insurrectionary forces, or brigands as the case may be, and the financial liability of the Government of Mexico for their acts depends on whether the competent authorities omitted to take reasonable measures to suppress the insurrections, or acts of brigandage as the case may be, or to punish those responsible for the same, or whether it is established that the authorities were blamable in any other way.

The position of Villistas and also Zapatistas during the third period was described by the Mexican Agent in his arguments before the Commission in the cases of *Edith Henry* and *Christina Patton* referred to in paragraph 4 hereof, and his view of their position may be summarized as follows:

The resistance of the forces of Zapata and Villa continued, though they could no longer be considered as political factors. This period ended when these forces were, at different dates, definitely subdued. The state of affairs during the third period was such that a Government *de facto* existed, and against this Government, mutinies, risings and insurrections could break out and be sustained.

In the decision of the Commission in the *Edith Henry* case, on the Motion of the Mexican Agent to dismiss the Claim (Decision No. 61), they expressed the following opinion:

"6. As regards the present claim, the facts on which it is based are alleged to have occurred in January 1916, i.e., at a time when there was an established Government in Mexico. The acts of General Zapata, then in arms against the Government, must therefore be considered as a mutiny, a rising, or an insurrection, unless they ought, depending on the nature of the acts in certain instances, to be classified as acts of brigandage."

8. The Commission is faced in the present case, in view of the arguments advanced as regards the effect of the Villa Agreement of the 28th July, 1920, with the necessity of considering what was the real nature of the acts during the third period here complained of. It is clear, in the opinion of the Commission, that, speaking generally, the Villista movement and Villa's activities continued as a political factor during the whole of the third period until the conclusion of the Agreement of the 28th July, 1920. In this respect they differ from the view of the Mexican Agent that during the third period Zapata and Villa could no longer be considered as political factors. Therefore, they will have to consider the category within which the various acts complained of in this case fall. In the opinion of the Commission, these acts, with possibly the exception of the train assault and gold taking in September 1919, were *prima facie* of a political or military character, done in pursuance or in aid of political aims, and they can find no evidence sufficient to establish that the acts were pure brigandage. Nor has, in the opinion of the Commission, any negligence or blame for the acts themselves been proved against the competent authorities. On the contrary, the Carranza Government, so far as the Commission can judge, were carrying on continuous warfare and prosecution against Villa and his followers, who were in such strength and activity that the Carranza Government finally found it necessary or expedient to conclude terms with Villa. The Villa agreement, which was referred to in the *Santa Isabel* case (Claims Nos. 22 and 59) and also in this case contains the following preamble:

"In the town of Sabinas, Coahuila, on the 28th July, 1920, at 11 a.m., we, the undersigned, Generals Francisco Villa and Eugenio Martinez, hereby certify that, after holding ample conferences for the purpose of consolidating peace in the United Mexican States, we have arrived at a cordial and satisfactory agreement and that the former accepts, in his own name and that of his forces, the bases which the Executive of the Union proposed to him through the good offices of the latter as follows:—"

It contains also the following important material provisions:

"*First:* General Villa shall lay down his arms and retire to private life.

* * * * *

"*Fourth:* The Government shall give to the other persons at present forming part of General Villa's forces, that is, not only those present in this town but also those who are to be found in different places fulfilling commissions entrusted to them by General Villa, a year's pay corresponding to the rank which they hold at this date. They shall also be given tillable lands in places which the interested parties shall designate so that they may devote themselves to work upon them.

"*Fifth:* The persons who may desire to continue the career of arms shall be admitted into the National Army. General Villa swears on his word of honour that he will not take up arms against the Constitutional Government or his fellow-countrymen.

* * * * *

Note: The General, commanders, officers and troops belonging to the forces commanded by General Francisco Villa are as follows: One General of Division, one Brigade General, seven Brigadier Generals, twenty-three Colonels, twenty-five Lieutenant-Colonels, thirty-three Majors, fifty-two First Captains, thirty-three Second Captains, thirty-four Lieutenants, forty-one Second Lieutenants, thirty-one First Sergeants, thirty-three Second Sergeants, fourteen Corporals and four hundred and eighty soldiers."

The question with which the Commission is thus faced in the absence of proof of negligence, omission or blame as regards the occurrences complained of, is how far the conclusion of this agreement casts, under the terms of the Convention, financial liability on the Government of Mexico by reason of omission of the competent authorities to punish Villa, or those responsible for the acts complained of (1) as insurrectionary acts, or (2) proved acts of brigandage.

The effect of amnesties is discussed in Borchard's *Diplomatic Protection of Citizens Abroad*, particularly at pp. 238, 239. At page 238 the following passage occurs:

"The effect upon the liability of the Government of an amnesty to the rebels is somewhat uncertain. When the Government has treated the rebels as criminal offenders, and they did not attain the status of revolutionists, an amnesty operates as a pardon and constitutes a failure to punish criminals, a recognized ground of State responsibility."

Then follow cases with conflicting decisions, on the same page, and on page 239; with the concluding passage:

"As a practical matter, it is not always easy to distinguish between a movement on such a small scale as to amount to a conspiracy or plot against the established Government, punishable by municipal law, and a general movement assuming the proportions of an armed contest against the Government, of which international law takes notice by recognizing a status of insurgency, manifested in various ways, e.g., a warning by foreign Governments to their subjects to abstain from participation. While as a matter of strict right the Government may treat the insurgents as criminals, modern practice tends to regard them as belligerents, with rights as such, provided they observe the rules of legitimate warfare."

The Commission (on the whole) take the view that the Villa Agreement was an act of political expediency on the basis of the Villistas being regarded as belligerents, and does not in itself involve the Mexican Government in financial liability for acts done by Villistas of a political or military nature in pursuance and in aid of their political aims. The seizure or confiscation of coal, gasoline, and other materials, and even in some instances of cash by forced loans or otherwise fall under this description, and having regard to this factor and to the general circumstances in Mexico, the Commission do not feel that they can necessarily class all such acts as brigandage or criminal acts in the ordinary sense. The Commission desire, however, to make clear that they are not speaking here of acts such as wanton murder or other crimes committed with no possible legitimate excuse or reason of military necessity. Proceeding on the lines indicated above they find that the confiscations and takings in this case, as specified in paragraph 7 hereof, with the possible exception of that on the 13th September, 1919, belonged to the category of military or political acts as before described, and they give the Mexican Government the benefit of the doubt as regards the event of the 13th September, 1919. But in any case as regards this act, it has not been proved that there was any negligence on the part of the authorities, nor that the occurrence was of notoriety, nor that it was brought to the notice of the authorities or that they were informed thereof

in due time, so as to fix responsibility on them for non-punishment. The Commission here refer again to the passages in their judgment in the *Mexico City Bombardment Claims*. Decision No. 12, which have been referred to in other cases and in the *Christina Patton* case, at page 104 of the English Report of Decisions and Opinions:

"But a strong *prima facie* evidence can be assumed to exist in those cases in which first the British Agent will be able to make it acceptable that the facts were known to the competent authorities, either because they were of public notoriety or because they were brought to their knowledge in due time." There is no evidence that this event was of public notoriety, or that it was brought to the knowledge of the authorities in due time. Therefore for all the above reasons the Commission hold that the Government of Mexico is absolved from financial liability for all these acts. The same observations apply generally to the acts in the third period prior to the Amnesty decree of December 1915, which of course does not touch subsequent occurrences.

9. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government on behalf of the Buena Tierra Mining Company (Limited), the sum of 262.18 (two hundred and sixty-two pesos and eighteen centavos) Mexican gold, or an equivalent amount in gold.

THE SANTA ROSA MINING COMPANY (LIMITED) (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 92, August 3, 1931. Pages 266-269.)

LITISPENDENCE. The fact that claim is filed with domestic Mexican National Claims Commission will not prevent the tribunal from exercising jurisdiction.

CONFISCATION.—REQUISITION.—EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.

Claim for property (i) requisitioned and confiscated, and (ii) stolen by rebels during attack on train. Evidence *held* sufficient to support award for first part of claim.

1. This claim as set out in the Memorial, is in two parts. The first is for compensation for property lost, requisitioned or confiscated by constitutionalist forces during the years 1913 and 1914 and the second is for compensation for the loss of 450 pesos Mexican gold stolen by rebels during their assault on a train belonging to the Coahuila and Zacatecas Railway on the 28th December, 1918.

PART I

On various occasions in the years 1913 and 1914 officers belonging to the constitutional army came to the mine and demanded different articles. The officers concerned were understood to be under the command of Eulalio Gutierrez, General of the Central Division, whose headquarters were at Concepción del Oro, Zacatecas. Early in 1913 two carloads of anthracite coal were purchased by the Company from Messrs. Flack and Son, Limited. This coal was shipped in cars Nos. 8865 and 9066 and bills of lading were duly received by the accountant of the Company. These bills of lading were sent by him to the railway station at Margarita so that delivery of the coal could be taken.

Shortly afterwards the constitutional forces arrived at Margarita station and destroyed all records. The two cars of anthracite coal never reached Margarita and all efforts to trace them proved fruitless.

About the same time twenty filter leaves for the Butters Filter Press were shipped by a Mr. Newcomb of Mexico City to the Company. The bill of lading arrived, but the filter leaves never reached Margarita station.

On the 20th June, 1914, Juan L. Aguilar, Chief of Arms at Mazapil, under the orders of General Eulalio Gutierrez, confiscated 273,805 tons of concentrates stored at Margarita station. These concentrates were shipped towards the American border and cars containing them were scattered at various points along the line. With help of diplomatic intervention the Company were able to recover these concentrates, with the exception of 12,804 tons. In order to recover these concentrates the accountant of the Company was obliged to expend the sum of 3,003.75 pesos Mexican gold.

The amount of this part of the claim is 8,544.68 pesos Mexican gold.

PART II

In December 1918, Juan Rodríguez, cashier of the Santa Rosa Mining Company, Limited, at Concepción, asked Messrs. G. Purcell y Cia., to remit the sum of 450 pesos Mexican gold to meet the expenses of the mine. This sum was remitted by express voucher, dated the 26th December, 1918. The money was remitted at the risk of the Santa Rosa Mining Company, Limited, by train to Concepción. This train was assaulted by rebel forces on the 28th December, 1918, and the money was stolen. Since the remittance was made at the Company's risk, the Company had to bear the loss.

The amount of this part of the claim is 450 pesos Mexican gold.

The total amount of the claim is 8,994.68 pesos Mexican gold.

A claim for these losses has been lodged with the Mexican National Claims Commission, but no award has been made in favour of the Company, nor has the Company received compensation from any other source. The claim belonged at the time of the losses and still does belong solely and absolutely to the claimant company.

The British Government claim on behalf of the Santa Rosa Mining Company, Limited, the sum of 8,994.68 pesos Mexican gold.

2. The Commission have found sufficient evidence of the losses suffered through the requisition and confiscation of property by Constitutionalist Officers during the years 1913 and 1914.

3. They have not found sufficient evidence of the losses alleged to have been sustained through the destruction of supplies in transit between Mexico City and Saltillo.

4. They have found sufficient evidence of the confiscation of concentrates by a Constitutionalist force in June 1914 and also of the cost of recovering part of the concentrates.

5. They have found no evidence as regards the forces that were responsible for the attack on the train of the 28th December, 1918. If those forces are to be considered as bandits, the negligence of the competent authorities has not been established.

6. The Commission accept the amount claimed for the losses mentioned in paragraph 2, being 2,277.30 pesos.

They also accept the amount claimed for the loss of concentrates, being 567.93 pesos, but as regards the cost of recovering part of the concentrates, they have found no proof of an amount higher than 1,500 pesos.

7. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of the Santa Rosa Mining Company (Limited), the sum of 4,345.23 (four thousand three hundred forty-five pesos and twenty-three centavos), Mexican gold, or an equivalent amount in gold.

GERVASE SCROPE (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 93, August 3, 1931. Pages 269-272.*)

AMENDMENT OF CLAIM. British Agent requested leave to amend by substituting wife of claimant as party claimant. Mexican Agent opposed on ground this would by indirection permit of a late filing, after time to file claims had expired. *Held*, amendment denied as unnecessary.

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—CONTEMPORANEOUS EVIDENCE. When evidence is conflicting, tribunal will give greater weight to depositions by persons having first-hand knowledge thereof made contemporaneously with events complained of than to testimony by persons living some distance away and made fourteen years later. Claim for looting of ranch by Carranza forces *allowed*.

1. This is a claim for losses and damages caused by the looting of the Pensamiento Ranch, Zaragoza, in the district of Río Grande, Coahuila, in February 1915 by a party of Carrancistas under the command of General Vicente Dávila.

According to the Memorial the Pensamiento Ranch, now the property of the wife of Mr. Gervase Scrope, belonged formerly to her father, Mr. John O'Sullivan, who died in Saltillo on the 4th October, 1881. In the month of February 1915 a large party of revolutionaries known as Carrancistas, under the command of General Vicente Dávila, visited the Pensamiento Ranch. These revolutionaries ransacked the ranch, taking from the house all the drawing-room, dining-room and kitchen furniture, clothing, mattresses, carpets, pictures, wardrobes, ornaments, mirrors, and everything that could be carried away. Articles of furniture which were too bulky to carry away were broken in pieces. Among the things taken from the ranch were a gun, two rifles, harness, saddles, bridles, a buggy and ten horses. These losses are verified by the testimony of Mr. Gil Martínez and Mr. Candelario Salazar, which is recorded in the deposition drawn up by the notary public, Manuel Galindo Barrera.

The amount of the claim is 10,000 pesos Mexican. This sum is the considered estimate made by Mr. Martínez and Mr. Salazar of the value of the articles taken away or destroyed. Included in this total is the sum of 300 pesos, the value of the buggy, and the sum of 600 pesos, the value of ten horses.

Mr. Scrope reported his losses to His Majesty's Government at the time, and on the 6th April, 1916, he filed this claim at His Majesty's Consulate-General in Mexico City. The claim did at the time, and still does, belong solely and absolutely to the claimant's wife. No claim has been filed with the Mexican Government, nor has the claimant received compensation from the Mexican Government nor any other source.

The British Government claim on behalf of Mr. Gervase Scrope the sum of 10,000 pesos Mexican.

2. On the 20th May, 1931, the British Agent filed a motion in which he asked leave to amend this claim by substituting as the claimant Juanita Francisca Scrope, the wife of Gervase Scrope. On the 2nd June, 1931, the said Agent filed a letter from Gervase Scrope, in which he stated that, although the ranch property belonged to his wife, he had himself built the house and that the personal property in respect of which the claim was made, was his own.

The Mexican Agent opposed the amending of the claim. He argued that the claim would, if the amendment were allowed, be transformed into a new one, presented after the period provided in Article 7 of the Convention. He also based his objection upon article 10 of the Rules of Procedure, because the new claimant, on whose behalf his colleague now wished to act, had not signed the Memorial nor a statement of the claim. It had not, therefore, been shown that the new claimant had agreed to the filing of the claim.

3. As regards the facts, the Mexican Agent filed the testimony of three witnesses, Carlos Torres, Silverio Gómez and Francisco Gómez, who deposed in May 1929, declaring that at the time mentioned in the Memorial, Government troops visited the district, but did no harm to anyone. The same witnesses asserted that they had never heard that anything had been destroyed in Mr. Scrope's house, and they considered themselves in a position to give evidence, because, at that time, they lived at a distance of about one kilometre from the Pensamiento Ranch and were therefore familiar with what happened on that property.

4. The British Agent pointed to the fact that the evidence produced by him was the contemporary testimony of two eye-witnesses, of whom one had been present when the looting took place and the other had arrived upon the spot immediately afterwards. The Agent submitted that this evidence possessed more value than the deposition of the witnesses examined by the other side, fourteen years after the events.

5. The Mexican Agent, while not denying that the General Vicente Dávila mentioned in the Memorial was a Carrancista leader, was confident that the Commission would not, in the face of the wide divergence between the evidence produced by him and that presented by his colleague, shut their eyes to the fact that both the witnesses, who had deposed in favour of the claimant, were in the latter's service. The Agent, furthermore, pointed out that no particulars of the objects stolen or destroyed had been produced and that no reliable proof of their value was available.

6. The Commission, confronted with conflicting evidence, do not hesitate to accept as the more valuable the deposition of the witnesses Martínez and Salazar. That those witnesses were the servants of the claimant has not been established, but even if they were, this would not be a sufficient reason to reject utterly the testimony of persons who had first-hand knowledge of the events and who had been heard under affirmation a few months after they occurred. The account given by them makes more impression than the purely negative assertions of persons who lived a kilometre away and who were, after fourteen years had elapsed, asked to declare what they thought they remembered.

7. As it is common ground between the Agents that the troops that visited the Ranch belonged to Constitutionalist forces, the Commission deem that the acts are covered by subdivision 2 of Article 3 of the Convention.

As regards the extent of the looting and destruction and the amount of the value, the Commission have not found any specific details of the losses. Mr.

Scrope claims 10,000 pesos, and his witnesses declare that the value cannot, in their opinion, have been less.

In the view of the Commission these indications are vague and not entirely convincing. It does not seem likely that the witnesses were in a position to estimate, within a reasonable degree of precision, the value of the furniture in Mr. Scrope's house. For this reason the Commission cannot accept the claimed amount as proved to its full extent.

8. The Commission do not see the necessity of amending the claim by substituting as claimant the wife of Mr. Gervase Scrope, the latter having declared that, although the estate belonged to his wife, it was he who owned the property in respect of which the claim was made. While it seems irrelevant to enter into a further investigation of the question as to which of the two, the husband or the wife was the owner of the various articles, it can be regarded as sufficient to exclude the possibility of their both claiming for the same losses.

9. The Commission decide that the Government of the United Mexican States is obliged to pay to the British Government, on behalf of Mr. and Mrs. Gervase Scrope, the sum of five thousand (5,000) pesos, Mexican gold, or an equivalent amount in gold provided that the receipts for this payment be signed by both of them, or by the survivor.

THE BACIS GOLD AND SILVER MINING COMPANY (LIMITED)
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 94, August 3, 1931. Pages 272-277.*)

RESPONSIBILITY FOR ACTS OF FORCES. Claimant alleged loss of shipments on railway by acts of revolutionary forces. In absence of proof of circumstances of loss, claim *disallowed*.

DAMAGES, PROOF OF. Damages based upon the loss of a certain percentage of inventory of goods in claimant's store *held* arbitrary and amount claimed allowed only in part.

FORCED PAYMENT. After claimant's mine closed down by reason of acts of revolutionary forces, rebel commander ordered payment of small weekly sums to workmen. Claim *disallowed* on ground required payment was a normal measure of social welfare.

1. The Memorial divides the claim into two parts. The first part is for compensation for the loss of mining machinery and equipment in transit from Tampico to the mine at Bacis; and the second is for compensation for goods taken from the Company's two stores at Bacis by revolutionary forces.

PART I

During the period from November 1912 to May 1913, the Bacis Gold and Silver Mining Company, Limited, purchased mining machinery and equipment at a total cost price of £2,084 5s. 7d. This machinery was shipped in various lots, on various dates within the above-mentioned period at Tampico. A list of these shipments, showing the value of the consignments, is given in Section 11 of the affidavit of William McNeill. About the time these goods

arrived at Tampico a revolution was in progress over the area through which the railway from Tampico to Bacis passed. As a result of this revolution the railway system was paralysed, and none of the consignments of machinery and mining equipment were delivered at Bacis. The Company made a number of efforts, without success, to trace the missing consignments. According to the Memorial, there appears to be no doubt that these goods were either looted or destroyed by revolutionary forces while in transit, or, owing to the disorganization of the railway system by the revolution, were dumped at various parts of the line and subsequently looted. The cost of replacing this machinery is now at least 50 per cent more than the cost in 1912 and 1913. The Company's claim has, therefore, been increased by that amount.

The amount of this part of the claim is £3,126 8s. 5d., being £2,084 5s. 7d. in respect of the cost price of the lost machinery and equipment, and £1,042 2s. 9d. in respect of the additional cost of replacement owing to the increased prices now prevailing.

PART II

The Company maintained at Bacis two stores, one of which was the general food and clothing store, and the other the maize and bean store. These stores were necessary for the clothing and subsistence of the men employed by the Company, and did not carry any stocks of machinery or other mining equipment. It was customary to take an annual inventory at Bacis on the 31st day of August, and on the 31st August, 1912, such an inventory was taken, which showed a value of 16,559.63 Mexican pesos. The value of the stocks in the general food and clothing store did not vary materially in total value throughout the year, except in April and May, when those stocks were increased because of the difficulties of transport during the rainy season, which usually commenced before the end of May. The value of the stocks in the maize and bean store varied throughout the year, being greatest in December, immediately after harvest. Purchases, however, were made throughout the year and the stock in April 1913 would be about equal to the stock held on the 31st August, 1912, when stocktaking took place. The value of the maize and beans held at the latter date was 2,850 Mexican pesos. On the 18th April, 1913, revolutionary forces, under the command of Pedro Gutiérrez, Santiago Meráz and Fermín Núñez, entered the town of Bacis and on the following day arrested William McNeill, the then General Manager of the Company at Bacis, and demanded the delivery of a sum of 5,000 pesos. After some twenty hours of ill-treatment and imprisonment Mr. McNeill agreed to hand over to the revolutionaries 10 Winchester rifles, 800 cartridges and five bars of silver. Some time later the revolutionaries returned the five bars of silver on the payment of 201 pesos. These rebels remained in Bacis until the 23rd April, 1913, and during their stay they continually demanded money, food and goods from the stores, and personal belongings from the Company's employees. Shortly afterwards another band of rebels, under the command of Carlos Flores, entered Bacis. About this time, owing to the difficulty in obtaining supplies on account of the complete disorganization of the railway during the previous two months, the Company's Manager was compelled to reduce the number of workmen employed at the mine. On the night of the 23rd April, 1913, Carlos Flores ordered that the Company should pay to each single workman the amount of 3 pesos a week and to each married workman the amount of 6 pesos a week in goods from the two stores. It was not possible to resist this demand, which was given with threats of death for disobedience, and the rebels were in fact so threatening in their demeanour that the General Manager and the other

foreign employees were compelled to leave Bacis secretly on the night of the 24th April. Full particulars of their flight from Bacis are given in the claim of William McNeill already filed with this Commission.¹

The amount of this part of the claim is £1,516 19s. 11d., details of which are given in the affidavit of William McNeill. The Company claim only 75 per cent of the valuation of the stocks in the food and clothing store, in spite of the fact that the stocks were greater in value immediately before the 18th April, 1913, and that on the 24th April, when the Company's manager left Bacis, at least 75 per cent of these stocks had been given away under threats or taken forcibly by rebels. In the case of the bean and maize store, the Company's manager is unable to state precisely the loss which took place, but he is certain that at least 50 per cent of the contents of this store had been given away under threats or forcibly taken during the period the 18th to the 24th April, 1913. The Company have, therefore, restricted their claim to 50 per cent of the inventory value of the 31st August, 1912. It should be noted that, in addition to the losses suffered at the two stores and to the payment of £20 for the return of the five bars of silver, the Company were obliged to billet twenty men for five days at the cost of £20, and that the revolutionaries carried off mules, saddles, rifles and ammunition to the value of £95.

On the 9th July, 1913, the Company forwarded a Memorial to His Majesty's Principal Secretary of State for Foreign Affairs. This Memorial having been presented before all the details had been received from the Company's employees, requires some alteration. The necessary alterations are given in section 9 of William McNeill's affidavit. Owing to the unsettled state of Mexico at that time it was impossible to take any steps to obtain compensation for the Company. This claim, which belonged at the time of the losses, and still does, belong solely and absolutely to the claimant, was presented to His Majesty's Government on the 29th January, 1929. It has not been presented to the Mexican Government, nor has the Company received compensation from the Mexican Government or any other source.

The British Government claim on behalf of the Bacis Gold and Silver Mining Company, Limited, the sum of £4,643 8s. 4d., being £3,126 8s. 5d. in respect of machinery and mining equipment lost in transit from Tampico to the mine, and £1,516 19s. 11d. in respect of losses from the Company's two stores at Bacis and other losses inflicted by revolutionary forces.

2. The Commission will deal with the two parts of the claim separately.

As regards part I, the British Agent held the view that sufficient corroboration of Mr. McNeill's affidavit was to be found in the bills of lading and the invoices of the goods shipped from England to Tampico.

The Mexican Agent observed that those documents only showed that the Company ordered the machinery, and that it arrived at the Mexican port, but not that it had been lost or destroyed, and still less that this was due to revolutionary acts. The Agent had not seen the bills of lading of, nor any correspondence with, the Railway Company. He concluded that for this part of the claim all the evidence consisted in the affidavit of the General Manager of the claimant Company.

3. The Commission do not feel at liberty to accept this part of the claim as sufficiently proved. There is no evidence whatever as to what happened to the machinery after its arrival at Tampico. If it was lost, no proof has been given as to where or when or through what circumstances or by whose acts. It has not escaped the Commission's attention that the Company in its Memorial of

¹ See Decision No. 46.

the 9th July, 1913, addressed to the Secretary of State for Foreign Affairs, did not mention any loss on this account, nor was this done by Mr. McNeill and the other officials who, after their escape from the mines, made statements before the British Vice-Consul in San Diego (California).

The Commission fail to see a sufficient ground on which an award could be based.

4. The facts underlying the second part of the claim seem, in the eyes of the Commission, to have been satisfactorily established. The affidavit of the Company's General Manager is corroborated by the contemporary declarations of the witnesses, Carlos L. Whittle, Ismeal Reyes, Tomas Vanegas and Dr. C. H. Miller. They all certify that at the time mentioned in the Memorial, armed forces entered the town of Bacis, arrested the General Manager and demanded the delivery of 5,000 pesos. The witnesses also confirm the fact that after Mr. McNeill was released he gave the leaders what they asked, and further that the troops, during their occupation of the town of Bacis, continually demanded money, food and goods from the stores.

We have here the same assemblage of facts, of which the outrage done to Mr. William McNeill (see Decision No. 46) forms a part.

5. In the Decision cited the Commission explained why they looked at the forces responsible for the offences, as forces falling within subdivision 4 of Article 3 of the Convention. They here insert section 5 of the Decision:

"5. In the statement of the claimant and in the declarations of the witnesses, the forces commanded by Gutiérrez, Meráz and Núñez are alternately identified as revolutionaries and also as rebels, but there is no indication that they were Maderistas or Constitutionalists. As, furthermore, the Mexican Agent has not been able to trace the names of those three chiefs in the archives of the Army, it seems justified to classify them and their followers as insurrectionaries, dealt with in subdivision 4 of Article 3 of the Convention.

"As regards the financial responsibility of the Mexican Government for their acts, the Commission refer to the rule laid down by them in previous decisions, for instance, in section 6 of their Decision No. 12 (*Mexico City Bombardment Claims*), reading as follows:

"'In a great many cases it will be extremely difficult to establish beyond any doubt the omission or the absence of suppressive or punitive measures. The Commission realizes that the evidence of negative facts can hardly ever be given in an absolutely convincing manner. But a strong *prima facie* evidence can be assumed to exist in those cases in which *first* the British Agent will be able to make it acceptable that the facts were known to the competent authorities, either because they were of public notoriety or because they were brought to their knowledge in due time, and *second* the Mexican Agent does not show any evidence as to action taken by the authorities.' (See also decision No. 18 (*Bowerman*), section 7, and Decision No. 19 (*Santa Gertrudis*), section 9.)

"In the present case it is evident that the authorities were informed of what had happened, because the Jefe Político of San Dimas intervened and returned to the Company the bars of silver and the promissory note in exchange for a cash payment of 201 pesos. Apart from this, it seems next to impossible that such a sensational act as the imprisonment of the General Manager of one of the principal concerns of the State could not have come to the knowledge of those whose function it was to watch over and to protect life and property. But not the slightest indication has been given that they took any action.

"For these reasons the Commission are of opinion that the claim falls within the terms of Article 3 of the Convention."

6. The question remains as to what amount is to be granted as a reasonable compensation for the losses suffered by the claimant under this head. The exact dates when the goods were taken or delivered, are not available, nor are data as to their value. The valuation presented in the claim rests upon the calculation of a certain percentage of the last annual inventory of the stocks in the stores. It seems an estimate which contains a considerable element of uncertainty and arbitrariness. The Company also brings into the account the value of the provisions supplied to the workmen, after work had had to be stopped, but this item would seem to be a normal measure of social welfare rather than a loss, in respect of which a claim can be made.

For these reasons the Commission cannot regard the sum claimed as proved to its full amount.

7. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of the Bacis Gold and Silver Mining Company, Limited, the sum of \$10,000 (ten thousand pesos), Mexican gold, or an equivalent amount in gold.

ALFRED MACKENZIE AND THOMAS HARVEY (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(Decision No. 95, August 3, 1931. Pages 277-278. See also decision No. 71.)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. Unsupported affidavit of claimant *held* insufficient evidence.

(Text of decision omitted.)

DAVID BRUCE RUSSELL (GREAT BRITAIN) v. UNITED MEXICAN
STATES

(Decision No. 96, August 3, 1931. Pages 278-281.)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. When documentary evidence of title and ownership was lacking and claimant's affidavit was otherwise without corroboration, claim *rejected*.

(Text of decision omitted.)

DEBENTURE HOLDERS OF THE NEW PARRAL MINES SYNDICATE
AND CAPTAIN C. D. M. BLUNT (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(*Decision No. 97, August 3, 1931. Pages 281-287.*)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. Unsupported affidavits of claimants *held* insufficient evidence.

(*Text of decision omitted.*)

THE NEW SABINAS COMPANY (LIMITED) (GREAT BRITAIN) *v.*
UNITED MEXICAN STATES

(*Decision No. 98, August 3, 1931. Pages 287-289.*)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—RESPONSIBILITY FOR ACTS OF FORCES. Evidence *held* sufficient to establish claim but claim not allowed in its entirety since some of the forces for whose acts claim was made came outside the scope of the *compromis*.

(*Text of decision omitted.*)

FREDERICK ADAMS (GREAT BRITAIN) *v.* UNITED MEXICAN
STATES

(*Decision No. 99, August 3, 1931. Pages 289-291. See also decision No. 69.*)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. Unsupported affidavit of claimant *held* insufficient as evidence. An unauthenticated statement of another person which ascribed higher values to damage than claimant himself not accepted by tribunal as corroboration.

RESPONSIBILITY FOR ACTS OF FORCES.—ACTS OF INDIVIDUALS. Tribunal *held* not competent to consider claim based on acts of individuals. Identity of forces responsible for acts complained of must be established. If complaint were made to the Governor of the State, proof thereof is desirable.

1. The Commission, in so far as the facts on which this claim is based are concerned, here refer to their Decision No. 69.

2. Once the Demurrer interposed by the Mexican Agent in the instant case had been overruled, and the evidence submitted in support thereof had been examined, the Commission entered upon an examination of the facts on which it was based, which are the following:

(*a*) Forced abandonment of a property known as "El Roble" by Mr. J. F. Brooks, in September 1912, by reason of the general insecurity prevailing in the vicinity of Jalapa, Ver., as a consequence of revolutionary activities.

(b) Cutting down of trees and thefts of wood from the property of J. F. Brooks and Co., by local residents, during the period from November 1916 to September 1918.

(c) Damage caused by occupation of the aforesaid property by Government cavalry soldiers, from January 1917 to September 1918.

(d) Attack on the ranch house by revolutionary forces in February 1918, asserted in the Memorial to have forced Mr. Honey, the manager, to hand over all the money he had in his possession and to leave the ranch.

(e) Loss of orange, lemon and other crops during the years from 1917 to 1919, inclusive, and of two crops of coffee for the years 1918 to 1920, lost or stolen as a consequence of the above-mentioned acts.

3. The Commission have, after examination of the evidence submitted by the British Agent as proof of the facts on which the claim is based, formulated the following considerations:

(1) No proof has been shown of the forced abandonment of the property by Mr. Brooks; the evidence submitted to that effect consists in the affidavit of Mr. Blackmore (annex 3 to the Memorial) and taking into account the fact that Mr. Blackmore submitted that affidavit in the capacity of a claimant and that this document has not been corroborated by any other element of proof, the Commission do not, following precedents already established, accept the fact in question as proved. (Decision No. 12, the *Mexico City Bombardment Claims*.)

(2) The Commission consider that any cutting down of trees and thefts of timber carried out by local residents—even assuming that same were considered as proved—do not come within the meaning of the Claims Convention entered into between Mexico and Great Britain nor are they included in those acts binding upon Mexico, as enumerated in Article III of the extension of the Convention, which provides that the Commission shall deal with losses or damages caused to British subjects during the period included between the 20th of November, 1910, and the 31st of May, 1920, provided they were caused by one or any of the following forces:

1. By the forces of a Government *de jure* or *de facto*.
2. By revolutionary forces which, after the triumph of their cause, have established Governments *de jure* or *de facto*.
3. By forces arising from the disbandment of the Federal Army.
4. By mutinies or risings or by insurrectionary forces other than those referred to under subdivisions 2 and 3 of this Article, or by brigands, provided that in each case it be established that the competent authorities omitted to take reasonable measures to suppress the insurrections, risings, riots or acts of brigandage in question, or to punish those responsible for the same; or that it be established in like manner that the authorities were blamable in any other way.

As in the instant case none of those forces were involved, but only the acts of private individuals, the Commission do not consider themselves competent to take cognizance of this part of the claim.

(3) As regards the other facts giving rise to the instant claim, and referred to by Mr. Charles T. Blackmore in his affidavit dated the 21st May, 1929 (annex 3 to the Memorial), the Commission find that they are in part set forth by Mr. Norman S. Raeburn, dated the 9th September, 1920, and submitted as additional evidence by the British Agent. Nevertheless, the very noticeable discrepancy between the statements of Raeburn and those of Blackmore, as also the fact that the former ascribes much higher values to the damage than the claimant himself, and certain other objections to this testimony, such

as its not being in any way authenticated, have induced the Commission to abstain from accepting this document as the corroboration of Blackmore's statement.

The Commission realize that the above declaration only refers to damage sustained during the period comprised between the years 1918 to 1920, and does not contain any indication whatsoever from which the character of the forces responsible for those acts might be inferred, information which is indispensable for establishing Mexico's liability therefor, according to Article III of the Claims Convention, Mexico and Great Britain.

(4) As regards the various complaints which were, according to the Memorial (annex 3) made to the Governor of the State, and the local authorities, in February 1917, no proof has been submitted of their actually having been made; such proof would have been of great assistance to the Commission, which cannot, in consequence, find sufficient grounds on which to grant any compensation.

4. In view of the above considerations—

5. The Commission disallow the instant claim.

**THE SONORA (MEXICO) LAND AND TIMBER COMPANY
(LIMITED) (GREAT BRITAIN) v. UNITED MEXICAN STATES**

(Decision No. 100, August 3, 1931. Pages 292-297. See also decision No. 63.)

CORPORATE CLAIMS. Evidence *held* sufficient to establish compliance with *compromis* in claim filed by British corporation for losses sustained by virtue of its interest in a Mexican corporation.

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH.—

NON-PRODUCTION OF EVIDENCE BY RESPONDENT GOVERNMENT. Acts of violence committed over many years by insurrectionary forces and forces of a similar character, as covered by the *compromis*, *held* to be presumed to be within the knowledge of the proper authorities and, since no action taken by them has been shown, claim *allowed*.

DAMAGES, LOSS OF PROFITS. Claim for loss of profits based on rate of profits prior to damage *held* too problematical to be allowed.

1. This claim is for 398/400ths of the losses suffered by the Compañía Explotadora de Tierras y Maderas de Sonora (Mexico) S.A. (hereinafter referred to as the Mexican Company), through the acts of revolutionary or counter-revolutionary forces during the years 1912-1920 inclusive.

The interest of the claimants, the Sonora (Mexico) Land and Timber Company, Limited, a British Company, in the losses suffered by the Mexican Company is as follows:

On the 9th January, 1911, the Sonora (Mexico) Land and Timber Co., Ltd. (hereinafter referred to as the British Company), was formed to hold and develop certain land in the State of Sonora. The land was duly acquired and was vested in a Mexican Company, the Compañía Explotadora de Tierras y Maderas de Sonora (Mexico) S.A., which was formed on the 30th January, 1913, under Mexican laws with a capital divided into four hundred shares of 1,000 pesos each. More than 50 per cent of this capital was at the time of the

Company's formation and still is held by British subjects, and is now held to the extent of 132 shares by William Richardson, a British subject, 88 shares by Lionel Skipwith, a British subject, 88 shares by George Grinnell-Milne, a British subject, 88 shares by Henry Chaplin, a British subject, 1 share by Alexander Baird, a British subject, and 1 share by James Paxton, a British subject. The shareholders of the Mexican Company were at the time of its formation and still are the nominees of the Sonora (Mexico) Land and Timber Company, Limited. In accordance with the terms of Article 3 of the Convention between His Majesty's and the Mexican Government for the settlement of British pecuniary claims in Mexico arising from loss or damage from revolutionary acts between the 20th November, 1910, and the 31st May, 1920, the Mexican Company has allotted to each British shareholder the proportional part of its losses and damages pertaining to the number of shares held. Each British shareholder has in his turn assigned to the Sonora (Mexico) Land and Timber Company, Limited, the rights allotted to him by the Mexican Company. The Sonora (Mexico) Land and Timber Company, Limited, is therefore now the sole claimant for 398/400ths of the losses suffered by the *Compañía Explotadora de Tierras y Maderas de Sonora (Mexico) S.A.*

Six claims have been formulated by the Mexican Company. The first is for losses incurred through raids of revolutionaries in 1912 and 1913, and for compensation for the stoppage of the Mexican Company's sawmill; the second is for the loss of 1,304 head of cattle through raids of revolutionaries; the third is for horses, cattle and other property taken by revolutionaries on the 11th February, 1915; the fourth is for losses due to the raids of revolutionaries in October and December, 1915; the fifth is for losses due to the occupation of the Company's property by a band of Carrancistas during June, 1916; and the sixth is for compensation for the stoppage of the sawmill and all the Company's operations on its property during the period November 1912 to May 1920. These claims are in the Memorial dealt with in detail.

Claim 1

During the month of February 1912 the State of Sonora was greatly troubled by bandits or revolutionaries, and on the 19th February, 1912, a band of some twenty-four bandits under the command of Adolfo Dunagon and José Rodríguez raided the Company's ranch at Nogales. They took away eight horses, some saddlery, two carbines and one revolver, for which they gave a receipt. Repeated attempts had been made by the Company's officials to obtain the protection of the State from those bandits, but no steps were taken by the competent officials. During subsequent months in 1912, various other small raids took place. On a few occasions the Governor of Sonora sent small parties of Federal soldiers for the property but always after the raids had been committed. During August 1912 the revolutionaries who had been operating in the State of Chihuahua moved towards Sonora, and at the end of the month some 2,000 of these revolutionaries were in the eastern part of Sonora. The Company's manager telegraphed twice to President Madero asking for the protection of troops and suggesting means by which these troops could be despatched from Juárez. Unfortunately the Mexican Government neglected to take these steps until after the damage to the Company's property was incurred. On the 1st September, 1912, some 150 men under Campas took seven horses and some stores. On the 4th September, 1912, the leader, Emilio Campo, with 200 men raided and ransacked the ranch. This band and others on various subsequent dates killed a number of cattle belonging to the Company. From the 1st September until the 1st October, 1912, the Company was.

obliged to suspend operations as employees would not venture on the ranch. Consequently cattle and horses were not attended to, and the crops then ripe could not be properly harvested. The Company's manager made continuous efforts to obtain protection from the Mexican Government, but in spite of assurances that there were sufficient troops in Sonora, no Federal soldiers visited the ranch during August and September 1912. As a result of the enforced cessation of its operations, the Company lost some 200 calves and some 12,500 pesos Mexican gold.

The amount of this claim is \$31,897.54 Mexican gold. The values are given in United States gold dollars. These values have been converted to Mexican gold pesos at the rates of exchange ruling at the time of the losses. Bankers' certificates in support of the rates of exchange used are given.

Claim 2

About the year 1911 the Mexican Company stocked the ranch, Hacienda Mababi, in the State of Sonora, with 3,492 head of cattle. Up to the beginning of 1914, 4,007 calves had been branded, making a total of 7,499 head of cattle. Of this number the Company's records show that 6,012 head had died, been sold, slaughtered or otherwise disposed of, and only 183 head remained on the ranch. The remaining 1,304 head are the losses due to thefts by various groups of bandits and thieves who were, owing to the lack of Government protection and in spite of the vigilance of the Company's employees, able to operate on the ranch. Repeated and urgent requests for protection were sent to the authorities and, although on several occasions soldiers were sent to the ranch, they, with one exception, made no attempt to suppress the bandits. Captain Martinez from Cannanea on one occasion caught and hanged a thief.

The amount of this claim is \$71,720, being the value of the 1,304 head of cattle stolen by bandits and other persons.

Claim 3

On the 11th February, 1915, a body of some 400 men under command of Colonel Hara entered the Hacienda Mababi and proceeded to round up all the Company's horses and mules. Colonel Hara's attention was drawn to the order of the then Governor of Sonora, Señor José M. Maytorena, which stated that nothing on the Hacienda was to be touched, and to a similar order issued by General Urbalejo. No notice was taken of these orders. After Colonel Hara's departure, the main body of troops under General Sosa arrived at the Hacienda. This General allowed his troops to act as they pleased and considerable damage was done to the estate. Owing to the lawless state of the country, the Company suffered additional losses up to the month of June 1915. The amount of the claim is \$8,532.50.

Claim 4

During the month of October 1915 the State of Sonora was invaded by parties of armed men belonging to the forces of General Pancho Villa, but the Carrancista troops in various parts of the State made no attempt to repel these men. On the 29th October, 1915, some twenty Villistas under the command of Major José Torres visited the Hacienda Mababi and took away eleven mules, three horses, a buggy, a wagon, harness and other stores. Early in December 1915 General Villa entered the State with from ten to fifteen thousand men and a large force of artillery. After his unsuccessful attack on Agua Prieta, General Villa split up his forces and these bands roamed the country looting

and destroying property. On the 5th December, 1915, some 2,500 of these men under General José Rodríguez arrived at the ranch and stayed five days, during which time they looted, burned or destroyed everything they could find. Considerable structural damage was done to the ranch buildings and practically all the live-stock was confiscated by them.

The amount of this claim is \$36,402.75 Mexican gold.

Claim 5

About the end of the month of June 1916 there was a strong feeling against all foreigners in the State of Sonora, and on the 21st of that month the Company's foreign employees abandoned the property and stayed at Douglas, Arizona, U.S.A., for about a month. During their absence, a party of Carrancista soldiers under the command of Colonel Padilla were stationed on the Hacienda at the express orders of General P. Elías Calles. These soldiers used and/or destroyed a quantity of stores and supplies. The Company's officials were at the time repeatedly assured by General Calles, through the Mexican Consul at Douglas, that the occupation of the Hacienda was merely for the purpose of its protection, that nothing would be touched, and that any supplies needed for the soldiers would be paid for in cash. No payment was made at the time, and subsequent efforts to obtain reimbursement proved to be fruitless.

The amount of this claim is \$3,453.90 pesos Mexican gold.

Claim 6

From a date prior to November 1912 until May 1920, and for some time later, the Company were unable to proceed with the development of the Hacienda. The sawmill was stopped owing to the operations of armed bands or forces of revolutionaries and of the armed forces of the Government which was from time to time in power. After taking account of the profits formerly made by the Company, it is estimated that the losses suffered through the enforced cessation of operations were at the rate of \$150,000 Mexican gold pesos per annum.

The amount of this claim is \$1,125,000 Mexican gold pesos, being \$150,000 Mexican gold pesos for the period of seven and a half years, i.e., from November 1912¹ to May 1920.

The total amount of these six claims is \$1,277,006.69 Mexican gold pesos, and this represents the losses and damages suffered by the Compañía Exploradora de Tierras y Maderas de Sonora (Mexico) S.A., during the period from the 20th November, 1912,¹ to the 31st May, 1920.

It has been explained earlier in this Memorial that the claimant company is interested in these losses to the extent of 398/400ths. The amount of this interest is \$1,270,621.65 Mexican gold.

The British Government claim on behalf of the Sonora (Mexico) Land and Timber Company, Limited, the sum of \$1,270,621.65 Mexican gold.

2. Following Decision No. 63 the British Agent has filed the documents indicated in paragraphs 14 and 15 thereof.

3. The Commission do not feel at liberty to include in an award any compensation for the loss of profits claimed in part VI of the Memorial because they consider this item as too problematical.

4. As regards certain other parts of the claim, the Commission have, in the declaration of Mr. A. V. Dye, formerly American Consul at Nogales (Sonora) found corroboration of the affidavits of the Directors of the Company. They

¹ In the original report: 1910.

have also found sufficient evidence that the losses referred to in those portions of the claim were due to the acts of persons falling within subdivision 4 of Article 3 of the Convention. As those acts, committed over a period of many years, cannot have escaped the knowledge of the competent authorities, and as no proof of any action taken by them has been shown, the Company is entitled to compensation.

5. The Commission deem that the total amount of the losses to be thus compensated for has been proved up to \$72,500 pesos, 398/400ths of which is to be awarded to the claimant.

6. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of the Sonora (Mexico) Land and Timber Company (Limited), the sum of \$72,137.50 (seventy-two thousand one hundred thirty-seven pesos and fifty centavos) Mexican gold, or an equivalent amount in gold.

JOSEPH TAYLOR (MESSRS. NORCROSS AND TAYLOR) (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 101, August 3, 1931. Pages 297-299.)

PARTNERSHIP CLAIM. A partnership was formed by two individuals, one of whom subsequently died, with the business thereafter being carried on by the surviving partner, claimant herein. In such capacity, and before partnership was finally dissolved and claimant had paid heirs of deceased partner for his interest in business, losses complained of were suffered. Prior to filing of claim such acts were completed by claimant. *Held*, surviving partner is entitled to present the claim.

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH. An attack by rebel or other forces upon train on principal railroad of country *held* an act of public notoriety resulting in responsibility on the part of respondent Government in absence of proof of action taken by competent authorities.

1. This is a claim for the loss of three consignments of cotton yarn which were destroyed on the 10th January, 1914, by a party of rebels at Galera, on the Mexican Railway, while in transit from Nogales to Mexico City.

The Memorial sets out that in 1900 Mr. Joseph Taylor and Mr. Harold Norcross formed a partnership known as Norcross and Taylor and were engaged in the business of cotton spinning. Mr. Harold Norcross died on the 16th August, 1909, and during the winding-up of his estate the firm continued to trade in the name of Norcross and Taylor. The partnership was finally dissolved on the 27th May, 1916, and as Mr. Taylor paid to the heirs of Mr. Norcross his full share on account of capital and profits to the 16th August, 1909, he became the sole owner of the business. Details of the various deeds effecting this transfer of interest in the property of the partnership are given in Mr. John Harrison's affidavit. It follows, therefore, that all business transactions made in the name of Norcross and Taylor since the date of the 16th August, 1909, were in fact made in the name of Mr. Joseph Taylor, who was the sole person interested.

On the night of the 10th January, 1914, Messrs. Norcross and Taylor consigned from Nogales Station to their agents, Messrs. Watson Phillips and Co., Successors, 4A, San Agustin, No. 103, Mexico City, three consignments of cotton yarn.

These consignments, under vouchers Nos. 23, 24 and 26, were loaded on train No. 12, belonging to the Mexican Railway Company, which left Nogales Station at 9.50 p.m. on the 10th January. When the train had reached a place known as Galera it was attacked by a large party of rebels. These rebels ransacked the train and afterwards set fire to a number of the wagons forming it. Of the three consignments of cotton yarn only one badly-damaged bale was recovered, the remainder being destroyed by fire. Judicial proof of the destruction of this train is given in one of the annexes to the Memorial. The Mexican Railway Company, in notifying Messrs. Watson, Phillips and Co., Successors, and Messrs. Norcross and Taylor of the loss of the three consignments of cotton yarn, declined all responsibility for this loss on the grounds of *force majeure*.

The amount of the claim is 6,318.18 pesos Mexican. A certificate of the value of the three consignments of cotton yarn is given in one of the annexes.

The British Government claim on behalf of Mr. Joseph Taylor the sum of 6,318.18 pesos Mexican.

2. Although at the time of the assault on the train, the business was still being carried on in the name of the firm of Norcross and Taylor, the Commission after examining the terms of the dissolution of the firm, regard Mr. Joseph Taylor as entitled to present the claim.

3. In the opinion of the Commission, the goods which were destroyed, belonged to the claimant and not to his agent, to whom they were consigned.

4. The Commission have found sufficient evidence of the facts in the documents filed with the claim. They are also satisfied on the strength of the same documents, that the attacking forces were rebels or brigands, falling within subdivision 4 of article 3 of the Convention.

5. As it has not been shown that any action was taken by the competent authorities, to which an assault on a train on the principal railroad of the country must have been known, the Commission declare that negligence has been established.

6. The amount having been proved by the invoices, the Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of Mr. Joseph Taylor, the sum of \$6,318.18 (six thousand three hundred and eighteen pesos eighteen centavos) Mexican gold or an equivalent amount in gold.

EDITH HENRY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 102, August 3, 1931. Pages 299-303. See also decision No. 61.*)

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO PROTECT.—FAILURE TO SUPPRESS OR PUNISH. Upon representations by British and American Legations that residents of town were in imminent danger of their lives, Government forces occupied the town but thereafter withdrew overnight without notice. The next day rebel forces entered the town, killed claimant's husband and looted property. Claimant escaped in a destitute condition. Though British Legation informed respondent Government of events and requested apprehension and punishment of murderers, it did not appear that any action was taken by the authorities. *Held*, responsibility of respondent Government established.

CLAIM IN REPRESENTATIVE CAPACITY. Claim for property owned by deceased husband of claimant must be filed on behalf of his estate. Claim nevertheless *allowed* for items of property which appeared to belong to claimant.

MEASURE OF DAMAGES FOR DEATH. When claimant's husband was killed by forces for whose acts respondent Government was responsible, measure of damages will take into consideration age of murdered man, his position, and claimant's age and position.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 230.

1. This is a claim for compensation for the murder of the claimant's husband, Mr. Francis Colin Henry, and for the loss of personal property at the hands of a band of Zapatistas at Zacualpam on the 3rd January, 1916.

The facts giving rise to the claim are set out in the Memorial, and are fully recapitulated in Decision No. 61 of the Commission, on the motion to dismiss made by the Mexican Agent. It is therefore not necessary to set them out again here.

2. The Commission refer also to the same decision as regards the conclusions come to by them as to the circumstances empowering the Commission to deal with the claim. The date of the occurrences in this case, that is to say the 3rd of January, 1916, falls within the third period referred to in that decision, that is to say the period when there was a Government *de facto*. The Carranza party had then established such a Government, and therefore subdivision 4 of Article 3 of the Convention is applicable, provided that the facts necessary to be proved are established. As regards the losses of personal property the Commission will have to consider Mrs. Henry's claim under two heads, that is to say the portion of the claim relating to losses of her husband's property and consequently to his estate, and that relating to the loss of her own personal belongings. These items will be considered and dealt with later in their appropriate place.

3. The British Agent in opening the claim urged that it was proved that Mr. Henry had been killed by insurrectionaries or bandits believed to be Zapatistas, on the 3rd January, 1916. That on the previous day the Carranza or Constitutionalist forces stationed at Zacualpam departed therefrom without warning, leaving the inhabitants without protection from the bandits and revolutionaries which were in the neighbourhood. And that in spite of the information regarding the subsequent occurrences given to the Mexican authorities, no action was taken by them to punish the delinquents. The case came therefore within the provisions of subdivision 4 of Article 3 of the Convention, and the Government of Mexico as being to blame were financially responsible. He left the amount of the monetary compensation to be awarded to Mrs. Henry for the death of her husband to the Commission, bearing in mind his age, occupation, salary, and other circumstances. As regards Mrs. Henry's own personal effects, and their value, he referred to annex A to Mrs. Henry's Affidavit at pages 8 and 9 of the Memorial. He did not on the claim as it stood stress the claim of Mrs. Henry as regards the loss of her husband's property.

4. The Mexican Agent pointed out that as regards the loss of Mr. Henry's property the claim had not been filed by the proper party as on behalf of and representing Mr. Henry's estate, as required by the Rules of Procedure, and therefore no Award could be given to Mrs. Henry in respect of this part of the Claim. He argued that there was no sufficient evidence or sufficient corroboration of the facts alleged in the Memorial as supporting the claim for compen-

sation for Mr. Henry's death. The presumption was that the perpetrators had been pursued and exterminated, and that the murderers of Mr. Henry had been punished. The amount claimed as damage was excessive, and in any event where compensation is given *ex gratia*, as would be the case under the terms of the Convention, the amount to be awarded should be less severe than in the case of a claim under legal liability. The amount of 50,000 pesos claimed by Mrs. Henry for the death of her husband was excessive.

5. The Commission have found corroboration of the allegations of the claimant in the letter of Mr. E. W. P. Thurston, the British Consul-General, dated the 12th of February, 1916, being Annex 4 to the Memorial, and further in the letters addressed on the 10th and 12th January, 1916, to the Mexican Government by Mr. T. B. Hohler, the British Chargé d'affaires at the British Legation, Mexico, these last being further evidence filed by the British Agent. Mr. Thurston's letter, which was addressed to Mr. C. T. Davies at the County School, Neath, and was in reply to a letter addressed to him by Mr. Davies on the 21st January, 1916, confirms the murder and its circumstances, and also states that representations had already been made to the Constitutionalist authorities in Mexico in respect of Mr. Henry's murder and that he was still not without hopes that punishment would eventually be inflicted on the guilty parties. The letter of the British Chargé d'affaires, written by him as before referred to on the 10th January, 1916, was as follows:

"Mr. Secretary,

"I have the honour to inform you that in November last a guard was sent to protect the district of Zacualpam, but it was withdrawn on Sunday, the 2nd January. On the 3rd January a party of bandits occupied the place, and they murdered Mr. F. C. Henry, a British subject, superintendent of the mine of San Miguel Tlaxpampa. His wife after burying the body succeeded in escaping unhurt, but the mine was sacked.

"I have the honour to request that the *de facto* Government of Mexico will take the most prompt and energetic measures for the capture and punishment of the guilty parties.

"(Signed) T. B. HOHLER."

A further letter, also addressed to the Mexican Government, was sent by Mr. Hohler on the 12th January, 1916, which was as follows:

"Mr. Secretary,

"With reference to my Note No. 10 of the 10th instant, I have the honour to bring to your knowledge the further details concerning the assassination of the British subject Mr. F. C. Henry at Zacualpam.

"In the month of November last, information having been received to the effect that the foreigners in Zacualpam were in imminent danger of their lives, representations were made by this Legation in concert with the diplomatic agent of the United States of America to General Pablo González, who very courteously promised to do all that was in his power, and a force was promptly sent to occupy the said town.

"Most unfortunately, however, on the night of the 2nd January, this force withdrew without giving any notice of the intended movement, so that the following day the peaceful inhabitants of Zacualpam awoke to find themselves at the mercy of any band of marauders who chose to enter. On that same afternoon a party of some 150 did enter under the leadership of three men named Molina, Mors and Pantalón, and commenced a systematic sack of the

houses. There were also some followers of Castrejon who is known as a 'Salgadista', and the whole body are presumed to style themselves 'Zapatistas'.

"A small body of men soon presented themselves at Mr. Henry's house, but were eventually persuaded to depart on being shown a 'salvo conducto', which Mr. Henry had obtained from Molina a few days previously on payment of \$400. However, at about 4 p.m. a large number of armed men began climbing over the fence, and Mr. Henry, telling his wife and three little children to retire to her bedroom, seized a rifle and went to the door to try and prevent the men entering. Shots rang out, and it subsequently transpired that Mr. Henry was wounded on his doorstep and finally dragged into the yard and despatched on the ground by revolver shots. The men then entered the house in large numbers, including Molina and Pantalon, who had Mr. Henry's pistol in his hand, and proceeded to scramble for all the loot that they could find. Mrs. Henry by dint of much courage and presence of mind, eventually succeeded in escaping with her children. As they were passing through the yard a 'soldier' attempted to club her little boy with the butt-end of his gun, but the boy dodged the gun and the blow fell on his shoulder. Mrs. Henry then saw her husband's dead body in the yard, and realized that there was nothing left but to escape. After hiding in a bed in a peon's house for some days they succeeded in leaving the town, and, after many hardships, reached Mexico City entirely destitute.

"I am given to understand that the headquarters of these horrible miscreants is at the Hacienda belonging to Sr. Amado Figueroa, near Zapolpia; that they are indifferently armed; and that they are deficient in courage.

"I earnestly trust, therefore, that the *de facto* Government of Mexico will take immediate steps to act upon this information, and to send an adequate force to capture the guilty parties and to inflict upon them the condign punishment which they have deserved. A salutary example will thus be given to them that Your Excellency's Government is resolved to punish murderers, and, not least, murderers of subjects of the friendly British Government.

"I have the honour to submit to Your Excellency that the action of the Officer who withdrew his troops from Zacualpam without warning the inhabitants, involves a direct and heavy responsibility.

"Finally, Mr. Secretary, I think it fitting that I should call your attention to the situation to which Mrs. Henry, the widow of the unfortunate victim, is reduced. Her husband was her sole support, and every scrap of property which she possessed in the world has been stolen from her so that she is now absolutely destitute. And she is burdened with three small children and an aged father.

“(Signed) T. B. HOHLER”.

These letters in the opinion of the Commission afford strong corroboration (1) of the facts and circumstances of the murder as detailed in Mrs. Henry's Affidavit (annex 1 to the Memorial); (2) the fact of the withdrawal by the Mexican Government on the previous day of the protecting guard; and (3) of the representations made to the Mexican Government calling for prompt and energetic measures for the capture and punishment of the guilty parties, and placing at the disposal of the Government information as to their headquarters.

6. It does not appear, and it has not been shown, that any action was taken thereon by the Mexican Government, and the Commission must on the evidence before them hold that no such action was in fact taken, and feel bound to declare that the Claimant is entitled to compensation for the murder of her

husband. The Commission assess the amount of this compensation at 29,000 pesos, Mexican gold, taking into consideration the age of the murdered man, his position, and Mrs. Henry's age and position.

7. Mrs. Henry's claim as regards the loss of her husband's personal property is not brought by her as representing, or on behalf of her husband's estate, and she has not shown any legal authority for so claiming it, as provided by the Rules of Procedure. But the Commission find, on an analysis of the particulars of the total claim for losses of personal property, amounting to 6,585 pesos, that she lost personal and individual articles of property and deem that the value of these has been proved to the amount of 1,700 pesos, which they award to her in addition to the sum of 29,000 pesos awarded in respect of her husband's death.

8. The Commission accordingly decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of Mrs. Edith Henry, a sum of 30,700 pesos (thirty thousand and seven hundred pesos) Mexican gold, or an equivalent amount in gold.

THE BRITISH SHAREHOLDERS OF THE MARIPOSA COMPANY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 103, August 6, 1931. Pages 304-307.)

RESPONSIBILITY FOR ACTS OF FORCES.—EQUITY AS A BASIS FOR AWARD. Where cattle were confiscated by Villista forces in order to supply the population of a town with meat, *held* compensation will be awarded as a postulate of equity.

1. The Memorial describes the claim as one for losses and damages suffered by the Mariposa Company on its ranch in the State of Coahuila during the period from the 1st May, 1915, to the 1st May, 1920.

The Mariposa Company was incorporated on the 8th April, 1909, under the laws of the State of Arizona, U.S.A. The Company has therefore the status of a citizen of the United States of America, and in the first place the Company submitted a claim to the United States Agency, General and Special Claims Commissions, United States and Mexico. This Agency, in a letter dated the 19th August, 1925, enquired whether there was an American interest of any kind in the Mariposa Company. It appears that the Company were unable to point to any American interest, and in a letter dated the 17th August, 1926, the Agency definitely refused to file this claim on the grounds that all the stockholders of the Company are British subjects. A list of the shareholders in this Company is given in an affidavit made by Winchester Kelso, junior, on the 11th June, 1928, before Kelso Stanfield, notary public, Bexar County, Texas. A list of these shareholders, giving the proportions of their respective interests in this Company, is given in an affidavit made by Winchester Kelso, junior, on the 11th June, 1928, before the above-mentioned Kelso Stanfield.

The above-mentioned shareholders are all British subjects.

The Company has allotted to each of its shareholders a proportional part of its losses and damages forming the subject of this claim. This allotment is contained in an affidavit made by the Company's president, D. S. McKellar, on the 20th June, 1927, before Royal W. King, notary public in and for

Bexar County, Texas, and attested by the Company's Secretary, Winchester Kelso, junior.

The facts are set out in an affidavit made by Winchester Kelso, junior, on the 11th June, 1928, before Kelso Stanfield, notary public in and for Bexar County, Texas, and in an affidavit made by Luis Hernandez on the 1st July, 1925, before Drew Linard, consul of the United States of America, at Piedras Negras, Mexico. Winchester Kelso, junior, has made this statement of claim as Attorney for all the British shareholders in this Company. Proof of Mr. Kelso's right to claim on behalf of these shareholders is given in a Power of Attorney executed by D. S. McKellar, on the 8th June, 1928, and in a Substitution of Power Executed by D. S. McKellar, the Attorney for the remaining members of the Company, in favour of Winchester Kelso, junior. The Powers of Attorney executed by the remaining shareholders in favour of D. S. McKellar are also given.

The Mariposa Company are the owners of the Mariposa ranch situated in the State of Coahuila. On or about the 1st May, 1915, they were engaged in raising stock on this ranch. On the 14th May, 1915, the Jefe de las Armas at Muzquiz demanded by telephone four head of cattle from the ranch foreman. Three cows of the value of 168 pesos were delivered to this Jefe at Muzquiz. On the 1st June, 1915, the same officer requested one stag and six cows, which were delivered to him. On the 9th June in the same year four cows were delivered to the Jefe. Again on the 3rd July one stag and fourteen cows were delivered to him, and on the 30th July, 1915, twenty cows, one of which died before delivery, were handed to the Jefe. Copies of the receipts given by this officer are attached to the affidavit of the ranch foreman. The originals of these receipts are available for inspection if required. On the 18th August, 1915, the Colonel in command of Villista troops at Muzquiz ordered twenty head of cattle from this ranch to be delivered at Muzquiz on the 20th August. These cattle were delivered by the ranch foreman and some of his assistants. On the 20th June, 1916, General Zuazua, in command of Government troops, asked for the loan of five horses, worth 300 pesos. The ranch foreman delivered these five horses to Major Nicanor, but the horses were never returned to the ranch. On the 20th December, 1917, Colonel Pruneda, of the Federal Army, demanded corn, cattle and horses from this ranch, and accordingly 471 kilos of corn and four horses were handed to this officer. On the 27th December, 1917, General Pruneda ordered three more horses from this ranch. In the following cases no receipts were obtainable. On the 16th July, 1917, soldiers under the command of General Pruneda took three mules and three horses. On the 23rd December, 1917, General Pruneda demanded three more horses. On the 24th March, 1918, soldiers under the command of Lieutenant-Colonel Margis Cadena took two horses. On the 10th April, 1918, Lieutenant-Colonel Cadena, Sergeant Jesús Rentería and six soldiers visited the ranch and carried off four horses, one mule, provisions and corn. These soldiers belonged to the Federal forces. On the 25th January, 1919, forces under the command of General F. Villa took charge of the ranch, and on the next day they left with forty-six horses, three mules, saddlery, provisions, blankets and bedding. On the 10th December, 1919, the Villistas again raided this ranch and took the staff of the ranch prisoners. They also took twenty-one horses, four saddles, blankets, provisions and bedding. The staff of the ranch, with the exception of the manager of Las Racies Ranch, a Mr. Hugo, were released on the next day at Muzquiz.

The amount of the claim is 14,186 pesos Mexican. The detailed summary of the Company's losses, given in Exhibit "A" to Annex 2, totals 14,291.96 pesos. The discrepancy is explained in an affidavit made by Winchester Kelso,

junior, on the 8th August, 1928. It appears that the claim as originally drawn up included some losses which occurred in the year 1921, and these losses were excluded in the final draft of the claim, but by error the original total of 14,291.96 pesos remained. The correct amount is as stated above, 14,186 pesos Mexican. The ranch foreman, Luis Hernandez, states in his affidavit that the prices charged for the stock and other property taken by revolutionary and Federal forces are fair and reasonable. In an affidavit made by Winchester Kelso, junior, on the 27th June, 1927, before Royal W. King, notary public in and for Bexar County, Texas, it is stated that the amount of the claim is based on the actual price realized from sales of such property during the period of these losses.

No claim for these losses has ever been presented to the Mexican Government, and no compensation, either in whole or in part, has ever been received by the Company. The claim belonged at the time solely and absolutely to the Mariposa Company and has now been allotted solely and absolutely to the individual British shareholders.

The British Government claim on behalf of the British shareholders of the Mariposa Company the sum of 14,186 pesos Mexican.

2. The Commission answer the question whether the shareholders are entitled to claim and whether they possess British nationality, in the affirmative. They are of opinion that the allotments have been made in due form.

3. The Commission have found evidence of part of the alleged losses and they have come to the conclusion that the losses, as far as established, have been caused either by Constitutionalists or by Villistas.

As regards the Constitutionalists, Mexico must be held financially responsible, according to subdivision 2 of Article 3 of the Convention, and as regards the Villistas, the Commission have taken into account the fact that, in so far as the taking of the cattle is concerned, that where this is not covered by subdivision 2 of Article 3 of the Convention, it was to a large extent confiscated in order to supply the population of the town of Muzquiz with meat. It seems a postulate of equity, to award compensation for cattle thus exacted.

4. The Commission, acting along these lines, feel at liberty to grant compensation for 80 cows, five horses and 471 kilogrammes of corn. The amounts claimed for these items have, in their opinion, been sufficiently proved.

5. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of the British Shareholders of the Mariposa Company, the sum of \$4,877.10 (four thousand, eight hundred seventy-seven pesos and ten centavos) Mexican gold or an equivalent amount in gold.

J. H. HENDERSON (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 104, August 3, 1931. Pages 307-309. See also decision No. 30.)

RESPONSIBILITY FOR ACTS OF FORCES. Identity of forces causing loss must be established.

FAILURE TO SUPPRESS OR PUNISH. When notice of acts of banditry was given to the authorities in due time but it was not shown that they ever took any action, claim *allowed*.

1. As regards the facts on which the claim is based, the Commission refer to their Decision No. 30.

2. The Majority of the Commission have found that the transfer by Mr. Chadwick of his interest in the firm to the late Mr. David Young Henderson has been duly established.

3. Although the losses sustained by the firm, and set out in annex 2 to the Memorial, have been sufficiently proved, the Commission have not, by any document, been enabled to identify the forces that committed the acts.

For this reason, it is not possible to decide whether the events are covered by the Convention.

4. The Commission have also found sufficient evidence in respect of the losses suffered by Mr. Henderson on his ranch La Uranga, and it has been shown, by receipts and other testimony, that those responsible were either Zapatistas or Constitutionalists.

As regards the Constitutionalists, they fall within subdivision 2 of Article 3 of the Convention. And as regards the Zapatistas, their acts must be regarded as banditry, because they were committed after the establishment of the *de facto* Government of Señor Carranza.

It has been proved that the Municipal President of Cuautlancingo was informed in due time of the occurrences, but it has not been shown that he ever took any action.

The Commission feel bound to consider this as proof of negligence on the part of the competent authorities, and they consequently deem that the claimant is entitled to compensation.

In the opinion of the Commission the amount has been proved up to 10,000 pesos, Mexican gold.

5. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of Mrs. J. H. Henderson, the sum of \$10,000 (ten thousand pesos) Mexican gold, or an equivalent amount in gold.

J. M. FRASER (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 105, August 3, 1931. Pages 309-311.*)

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH.

Evidence *held* to establish that authorities used due diligence in apprehension of bandits guilty of murder of claimant's husband. Claim *disallowed*.

1. This is a claim for compensation for the murder of her husband, Alexander Fraser, by rebels on the 30th July, 1916, at El Pozo, in the State of Guanajuato, Mexico.

It is alleged in the Memorial that the late Mr. Alexander Fraser was the general manager of the Cob. Negociación Minera Angustias Dolores y Anexas at Pozo, Guanajuato. On the 31st July, 1916, Mr. Fraser had just left the Hacienda de Beneficio and was proceeding towards the mine by a tram-route, which passes nearby. Four armed horsemen approached by a path from the high ground in the direction of the electric light plant and called to Mr. Fraser to stop. Mr. Fraser did not take any notice, and it is quite possible that he did not hear them call, as he was deaf. One of the horsemen fired a shot

which did not hit Mr. Fraser, and thereupon Mr. Fraser stopped to talk to them. While he was talking one of the four horsemen shot him. Three more shots were fired. When it was possible to reach Mr. Fraser it was found that he was dead. It is understood that the person in command of the rebels was General J. Jesús Núñez, and that one of the men who fired the shots was Pedro Villanueva. Mr. Fraser's watch was stolen and his wallet was found empty a few yards away from the body. The rebels then proceeded to the office of the mine, where they took 20,000 pesos in infalsificable notes and 1,000 pesos in gold. From there they went to the village of Pozos, and after having stolen various things, left in the direction of the Hacienda de Santa Ana.

On the next day an investigation as to the cause of Mr. Fraser's death was made before the Municipal Judge of Pozos. A warrant for the capture of General Núñez and Pedro Villanueva was issued on the 2nd August, 1916, but these two persons were never captured. There was no guard in the town of Pozos to protect its inhabitants and the interests of the mine.

The amount of the claim is £5,000 sterling or a pension of £150 per annum for life. In view of the nature of Mr. Fraser's employment, His Majesty's Government consider this claim to be very reasonable.

The claim, which was filed at the Foreign Office on the 28th June, 1926, did at the time of the murder, and still does, belong solely and absolutely to the claimant. A report of the murder of the claimant's husband was made to His Majesty's Government at the time. On the 4th August, 1916, His Majesty's Minister in Mexico addressed a note on the subject to General Candido Aguilar, Minister of Foreign Relations of the then *de facto* Government of Mexico. No claim for compensation has been filed with the Mexican Government, nor has the claimant ever received compensation from the Mexican Government or from any other source.

The British Government claim on behalf of Mrs. Johanna M. Fraser the sum of £3,000 sterling or a pension of £150 per annum for life as from the 1st August, 1916.

2. The Commission have found proved the facts on which the claim is based. There is also sufficient evidence that the murder was committed by bandits under J. Jesús Núñez and Pedro Villanueva.

3. In order to decide whether Mexico is to be held financially liable for the murder, it is necessary to examine the question as to whether any negligence on the side of the competent authorities has been established.

The Commission have come to the conclusion that this is not the case, because the annexes to the Memorial and the evidence filed by the Mexican Agent show that:

(a) At about six o'clock in the evening after the murder, some fifty Carrancista troops arrived at Mr. Fraser's Hacienda de Beneficio, having been sent by the Commanding Officer at Pozos.

(b) Those troops proceeded in pursuit of the bandits at 5 p.m. on the following evening.

(c) On the 2nd August, 1916, the local tribunal issued a warrant for the capture of the two aforesaid individuals.

(d) On the 24th August, 1916, this warrant was broadcast.

(e) Both bandits were finally killed.

(f) The British Chargé d'affaires in a letter of the 4th August, 1916, expressed to the Mexican Minister of Foreign Relations his appreciation of the activity shown by the Governor of Guanajuato.

That being so, the Convention does not entitle the Commission to grant an award.

4. The claim is disallowed.

JAMES W. HAMBLETON (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 106, August 3, 1931. Pages 311-316.*)

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH.—DILATORY ACTION BY AUTHORITIES. British subjects were attacked and robbed by armed forces, of which immediate notice was given by telephone to commander of Government forces stationed only a ten minutes' walk away. Notice was also given by telephone to the local judge. Troops arrived an hour and a half later and the judge arrived some four hours later. No action was taken by the civil or military authorities to apprehend and punish the guilty. *Held*, responsibility of respondent Government established.

DEATH OF CLAIMANT, EFFECT OF—UPON CLAIM FOR PERSONAL INJURIES. British Agent ceased to press claim for personal injuries following death of claimant.

DAMAGES, PROOF OF. A lump sum award granted for stolen property and personal injury, together with expenses which the latter entailed. When claimant left his house more than a year prior to the alleged looting of it by armed forces which had occupied it, evidence of loss *held* insufficient.

PUNITIVE DAMAGES. A punitive award *held* not to be justified.

1. The Memorial brings forward two claims. The first claim is in respect of damages for personal injuries and robbery at the hands of armed men at Parral on the 12th February, 1912; the second in respect of the looting of the house and office of Mr. James W. Hambleton at Parral during the years 1916-17 inclusive by Villistas and Federal troops.

Mr. James W. Hambleton died on the 21st April, 1925, leaving a will appointing his wife, Margarita Flores, sole executrix and heiress of all his property. Mrs. Hambleton is now the sole claimant.

Claim 1

The facts are set out in an affidavit made jointly by James W. Hambleton, a British subject, and Margarita Flores, the wife of James W. Hambleton, on the 5th April, 1913, before a notary public in and for the County of El Paso, Texas.

Mr. James W. Hambleton was established in Parral City, Chihuahua, as agent of the Compañía Metalúrgica de Torreón at that place, and was also engaged in mining and ore-buying on his own account. On the 12th February, 1912, Mr. Hambleton was living in his house near the railway station at Parral with his wife and three children. At 8 o'clock in the evening the family had almost finished their dinner, when, without warning, the front door was flung open and a masked man armed with a pistol jumped into the room,

ordering them not to move. Mr. Hambleton grappled with the man, but four other men had come into the room and by weight of numbers overpowered him. These five men stabbed Mr. Hambleton in the throat and face with the points of their daggers, causing blood to flow freely. Mrs. Hambleton and the children became hysterical from fright and shock, and Mr. Hambleton, realizing the danger in which they were placed, appealed to the robbers to take what they wanted without resorting to further violence. The robbers then allowed Mr. Hambleton to rise, and at the points of their pistols led him to the office adjoining the house and ordered him to open the safe. The robbers took 1,400 pesos Mexican currency from the safe. On their return to the house Mr. Hambleton discovered that the remainder of the band, about ten persons, had entered from the back of the house and ransacked the place. He found that his wife had been assaulted and roughly handled by one of the robbers and was bleeding from a stab in the throat. The robbers then ordered Mr. Hambleton to open his wife's safe, from which they took about 200 pesos Mexican currency. The robbers also took jewellery amounting to the value of 3,500 pesos Mexican, and 600 pesos Mexican which Mrs. Hambleton had placed in her jewellery box. The robbers also took several guns and other articles belonging to Mr. Hambleton, the values of which are given in the affidavit. After this the robbers left the house, and Mr. Hambleton immediately telephoned General José de la Luz Soto, the Federal Military Commander of Parral, explaining what had happened. Although the General promised to send troops immediately, it was an hour and a half before they arrived, in spite of the fact that the barracks were only ten minutes' walk away. The robbers had by this time made good their escape. Mr. Hambleton also telephoned to the Judge at Parral who, some four hours afterwards, arrived and took his deposition of the case and then left. Mr. Hambleton was not aware of any action taken by the civil or military authorities in Parral to bring the robbers to justice.

There were two watchmen employed by Mr. Hambleton on the night of the 12th February, 1912, one at the house and one at the platform of the railroad about 50 yards away. The robbers approached the man on the platform and asked for Mr. Hambleton. When they were near enough, they jumped at him, and putting pistols to his head, threatened him with death if he moved. The robbers then tied him up and threw him in the scale-house, where Mr. Hambleton found him after the affair was over. These robbers then went to the electric light switch and turned off the lights in the patio. The house watchman seeing the lights turned off, went to investigate and was met by four men, who threatened him with death if he made an outcry. The robbers wore the regulation dress of the Maderista troops, and from the fact that they were well acquainted with Mr. Hambleton's house and the position of the electric light switch and the safes, and from personal observation, Mr. and Mrs. Hambleton were of the opinion that these men were part of the troops under the command of General Soto. Mr. Hambleton afterwards learnt that nearly all General Soto's troops were out in patrols in the city that evening.

As a result of her treatment Mrs. Hambleton suffered from a serious nervous breakdown. She was attended first by Dr. Alvarez, a local physician at Parral. On the 14th February Mr. Hambleton was obliged to move his family to El Paso, in view of the insecurity and danger to which they were subjected. He then placed his wife under the care of Dr. Robinson of that town. Dr. Robinson's affidavit on the condition of Mrs. Hambleton's health is given in "Exhibit A" to this affidavit. It appears that Mrs. Hambleton will never completely recover from her breakdown.

The state of Mrs. Hambleton's health was such that Mr. Hambleton was obliged to maintain her in El Paso while he travelled to and from Parral on

business. The extra expense to which Mr. Hambleton was put is estimated to be at least \$10,000 U.S. currency.

The amount of the claim is:

(1) 50,000 dollars, United States currency, as punitive and exemplary damages for the barbarous assault on Mr. James W. Hambleton.

(2) 50,000 dollars, United States currency, as punitive and exemplary damages for the barbarous assault on Margarita Flores, the wife of Mr. James W. Hambleton.

(3) 10,000 dollars, United States currency, as damages and compensation for the loss of money from the office safe, robbery of guns, pistols, etc., and the extra expense and loss of business due to the enforced removal from Parral to El Paso.

(4) 4,300 pesos Mexican, being the value of jewellery and money stolen by the robbers from Mrs. Hambleton. Interest at such rates as the Commission may decide to award is also claimed as from the date of each loss or damage.

As Mr. Hambleton has since died, His Majesty's Government are of opinion that his claim of 50,000 dollars United States currency as damages for personal injuries must be considered to have lapsed. Although the claim for personal injuries suffered by Mrs. Hambleton is high, His Majesty's Government have the claimant's authority to reduce it to a more reasonable amount. There are obvious difficulties in assessing the proper amount to claim, and His Majesty's Government prefer to ask the Commission to assess the amount of compensation which they consider to be appropriate in this case, having regard to the mental and physical shock suffered by Mrs. Hambleton and to the position that she occupied.

Claim 2

The facts are set out in a Memorial signed by James W. Hambleton on the 30th August, 1921, and addressed to His Majesty's Consul-General at Mexico City.

After the events described in Claim 1, Mr. James W. Hambleton continued to carry on his business in Parral up to the end of June 1915. At this time conditions were so bad and the campaign of Villistas against foreigners was so severe that he left his property in charge of his foreman, Encarnación Ogaz, and certain watchmen, and moved to El Paso, Texas. On the 5th November, 1916, the Villistas under the command of Francisco Villa, took the town of Parral, and Villa made his headquarters in Mr. Hambleton's house at Parral. Villa beat Mr. Hambleton's foreman and servant and threatened them with death for having served a foreigner. Villa made his headquarters in this house, with occasional absences, until the 5th January, 1917, when the troops under the command of General Murguía moved in and set up their headquarters there. On the 20th January, 1917, the Villistas were again in possession, and on the 10th February men under the command of Nicolas Fernandez moved into Mr. Hambleton's house. On the following day the Commands of Colonel Maltus and Lieutenant-Colonel Vega made their headquarters there. On the 15th April troops under General Amaro; on the 10th May troops under General Sarvazo; on the 27th July troops under General González; and on the 19th August troops under the command of General Escobar respectively made their headquarters in this house. During this period, the forces which occupied Mr. Hambleton's house from time to time completely sacked and stripped it of everything of value. Mr. Hambleton had complained of his losses to His Majesty's Ambassador in Washington, and he heard later that a report made by Colonel Castaños confirmed that Villa had partially looted

the claimant's house and that Government forces had finished looting it. Certificates as to the condition of Mr. Hambleton's house from notary public, Sr. Manuel Gomez y Salas, who visited the house on the 3rd December, 1916, and again on the 21st August, 1917, are given in "Exhibits C" and "D" to this Memorial.

The amount of the claim is 36,025 pesos gold, together with interest from the date of loss at such rate as the Commission may decide to award. A detailed statement of Mr. Hambleton's losses is given in "Exhibit A" to this Memorial.

His Majesty's Government claim on behalf of Mrs. James W. Hambleton, or as she is known in Mexico, Margarita Flores Vda. de Hambleton, the sum of:

(1) 50,000 dollars United States currency, or such compensation as the Commission may decide to award for Mrs. Hambleton's personal injuries.

(2) 10,000 dollars United States currency for loss of business and certain articles belonging to the late Mr. Hambleton.

(3) 4,300 pesos Mexican gold, being the value of Mrs. Hambleton's personal property stolen by armed men.

(4) 36,025 pesos Mexican gold, being the loss due to the looting of Mr. Hambleton's house in 1916-17.

(5) Interest in each case from date of loss or damage at such rate as the Commission may consider equitable.

2. The first part of the claim seems sufficiently proved by the late Mr. Hambleton's affidavit, corroborated by the documents showing that the British Minister and the British Vice-Consul at Chihuahua took immediate action after the assault happened.

The Commission must classify the men who committed the attack as bandits, and they do not hesitate to declare that the competent authorities were to blame. The Minister for Foreign Relations of the Republic was at once informed by the British Minister, and the Military Commander of Parral as well as the local Judge were immediately advised by telephone by Mr. Hambleton. It has not been shown that any measures were taken.

For this reason the claimant is entitled to compensation.

3. The Commission prefer to lump together into one sum the award for the stolen property, and the compensation for the personal injury, and the expenses which the latter must have entailed.

They have taken into consideration that there is not in this case any question of loss of earning power, and that a so-called punitive award does not seem to be justified. They fix the amount at 9,000 pesos, Mexican gold.

4. As regards the second part of the claim, the Commission have found evidence that Mr. Hambleton's house, as from the 5th November, 1916, was the headquarters of Francisco Villa and other military commanders, but they are not satisfied that the house was as a consequence of this occupation completely sacked.

From the documents it results that Mr. Hambleton left Parral in June 1915, and that, therefore, over a year elapsed before Villa took possession of the house. What happened in the meantime has not been made clear, and the witnesses produced by the Mexican Agent deposed that when Villa came the house was empty.

The Commission failed to see sufficient ground to base an award upon.

5. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of Mrs. James W. Hambleton, the sum of \$9,000 (nine thousand pesos) Mexican gold or an equivalent amount in gold.

THE EL PALMAR RUBBER ESTATES (LIMITED) (IN LIQUIDATION)
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 107, August 3, 1931, Pages 316-321.*)

RESPONSIBILITY FOR ACTS OF FORCES. Claim for property taken by armed forces *allowed* to extent leaders were identified and amount of losses substantiated.

FORCED ABANDONMENT.—CONCENTRATION ORDER. Pursuant to an order of commander of Carrancista forces that inhabitants of ranches concentrate in certain nearby towns within forty-eight hours, claimant's manager abandoned its plantation. Claim for loss and destruction of property resulting therefrom *allowed*, the tribunal being of the view that there was sufficient evidence that revolutionary circumstances made it necessary to leave the property abandoned during several years after the concentration order.

EXPENSES IN PRESERVING PROPERTY. Claim for expenses incurred in keeping abandoned property in good order *disallowed*.

LOSS OF PROFITS. Claim for loss of future profits *disallowed*.

REMISSION OF TAXES. Claim for remission of taxes *disallowed*.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 238.

1. According to the Memorial, the El Palmar Rubber Estates (Limited) (in liquidation) owned a property situated in the Canton of Zongolica, State of Veracruz. This estate was sown with Hevea oil, Castilloa oil, Arabiga and Maragogipy coffee and large numbers of plane trees, lemons and sugar-canes. In addition to this cultivation there were enclosed poultry runs to the extent of 530 hectares. Cattle and horses were also kept on the estate. In 1910, when the revolutionary movement in Mexico first broke out, the profits of this estate began to diminish and finally, as will be shown later, the whole of the property became a total loss.

The claim has been divided into four main parts: (I) compensation for property taken by revolutionary and other armed forces; (II) compensation for losses due to the enforced evacuation of the property; (III) refund of the cost of bare upkeep of the property during the time of its enforced evacuation; and (IV) indemnity for loss of profits.

PART I

From 1911 onwards armed groups of men passed through the estate, exacting forced loans and confiscating goods, cattle and any other kind of property they could obtain. In some few cases the armed forces gave receipts for the property which they took, but in the majority of cases the leaders of these bands flatly refused to give receipts. Twenty-three receipts have been attached to the claim. It will be observed that these receipts cover losses amounting to 5,656.70 pesos only. Mr. Peragallo, in his affidavit, states that this sum represents a very small part only of the exactions imposed on the property. Mr. Peragallo wrote three letters at different dates to the military leaders who had taken property asking them either to return the property taken or furnish receipts. No replies to these letters were ever received. The amount of the losses from these causes is moderately estimated at 20,000 pesos, Mexican gold.

PART II

On the 29th May, 1915, the Carrancista leader, J. N. Miranda, sent a concentration order, proof of which is given in the evidence given before the Second Court of First Instance of Cordoba. This concentration order gave the inhabitants of the El Palmar Rubber Estates (Limited) and other ranches in the neighbourhood forty-eight hours to concentrate in Acatlán, Tierra Blanca or Córdoba. The general manager of the El Palmar Estate, Mr. Peragallo, knowing that it was impossible to arrange for the safety of the property within the period of forty-eight hours' grace, wrote a letter dated the 29th May, 1915, to Major J. N. Miranda, who had issued the order, explaining how inconvenient it would be for him to obey the order and pointing out that there were fifty families engaged on the estate who would find themselves without work and means of sustenance. He added that the coffee harvest was approaching and that he was then engaged on clearing the sugar-canes, and that if the work was stopped great losses would be incurred. He pointed out also that owing to the lack of transport to the estate it would be impossible to get away the stock, horses, mules and cows, and that if these animals were left on the estate they would be either stolen or killed or would die for want of attention. No reply was given to the manager's request for an extension of the period of grace or for permission to remain on the estate. He then approached the British Vice-Consul at Orizaba in a letter dated the 31st May, 1915. The Vice-Consul was unable to get the order revoked or to obtain permission to leave some person in charge of the estate. The Vice-Consul advised the manager to obey the order of concentration, and before leaving to make an inventory of the property. This inventory was made on the 31st May, 1915, and the value of the goods and property amounted to 107,931.60 pesos, Mexican gold. The whole of the property described in the inventory has become a total loss; the furniture, machinery and tools have been destroyed, and the cattle were either used for food by the military forces or sold by their leaders in neighbouring towns. The coffee and oil plantations have become overgrown by grass and other vegetation, and heavy expenditure and hard labour would be necessary to bring the plantation into bearing again. The poultry runs have been entirely destroyed, and the sugar-canes, after being exploited by the military forces, on the property, were used as pasture for the horses. The houses and buildings on the estate were broken down to obtain material for the use of the military forces. From the date of its evacuation the El Palmar Estate was the headquarters of the military forces who happened to be in charge of the neighbourhood, at times Federal forces and at other times revolutionary forces. When the federal forces, under the command of General H. Jara, entered the estate, Mr. Peragallo wrote a letter calling attention to the state in which the estate then was, and asking for protection from military operations, indicating the losses which the property had suffered and stating that the inhabitants were quite peaceful. No reply was received to this letter. It should be added that two days after the order of concentration was obeyed the manager was able to obtain permission from the military authorities to appoint a caretaker to look after the property as much as possible. The Federal Government of Mexico were fully aware of the losses suffered by this estate, and proof of this is given in a letter from the Finance Department of the 7th May, in which a refusal to remit the land taxes on the property was conveyed to Mr. Peragallo. A certificate given by General P. C. Martínez, on the 3rd June, 1920, states that El Palmar Rubber Estate "has been abandoned in obedience to concentration orders which were issued by the Constitutionalist Government since the month of June 1915".

PART III

Two days after the evacuation of the property the manager was able to obtain military permission to place a caretaker in charge of the property. From that date expenditure was incurred in keeping as far as possible the property in good order. Very little could be done in the circumstances, and it now appears that the expenditure incurred was entirely wasted. The claim includes expenditure incurred from the month of June 1915 to the 31st May, 1920. Monthly statements of expenditure are available for inspection, but have not been printed with this Memorial.

PART IV

The El Palmar Rubber Estates (Limited) has a capital of £145,000. Out of the company's estate of 4,680 acres, 2,948 acres were under cultivation at the time the company was incorporated on the 10th March, 1910. Between that date and the time when the rebels began to loot the estate an extensive programme of planting and improving the estate had been carried out, and the prospects of the company of becoming a prosperous one were very good. Owing to the circumstances described above these prospects were not realized and the company has now been obliged to go into liquidation. It is estimated that if the company had been allowed to proceed peacefully it would have been able to pay an average yearly dividend of at least 4 per cent on its capital. For the purpose of this claim it is assumed that the average profits would be sufficient to enable the payment of a dividend of 2 per cent on the capital to be made. At this low figure the profits would amount to £23,200 sterling for the period the 3rd December, 1912, to the 31st May, 1920. Particulars of the earnings of various other rubber estates are given in Mr. Marsden Banks' affidavit. The lowest average dividend paid by any of these companies is 6 per cent.

There is also a claim for remission of land taxes charged on the estate during the time of the enforced evacuation. A number of applications have been made to the Federal Government for remission of these taxes, but in each case the Government has refused to grant the remission.

The amount of the claim is £23,200 sterling and 189,515.46 pesos, Mexican gold. This amount is composed of 20,000 pesos for compensation for goods taken by revolutionary and other armed forces, 107,931.60 pesos for compensation for losses due to the forced evacuation of the property in 1915, 61,583.89 pesos being the money expended on upkeep during the period June 1915 to May 1920, and £23,200 sterling as an indemnity for loss of profits.

The British Government claim on behalf of the El Palmar Rubber Estates (Limited) (in liquidation) the sum of £23,200, plus 189,515.46 pesos, Mexican gold.

2. *Part I.*—The Commission have found the losses proved, partly by the receipts of the officers to whom the goods had to be delivered, and partly by the three letters of Mr. Thomas Peragallo, filed as annexes 9, 10 and 11 of the Memorial.

The Commission have not been able to identify all the leaders who signed receipts, or who are mentioned in Mr. Peragallo's letters, but sufficient evidence has been shown to satisfy them that several of those leaders must be classified as Constitutionalists, and others as rebels or bandits. The acts of the leaders thus classified, are covered by subdivisions 2 and 4 of Article 3 of the Convention. It has not been shown that any action was taken by the authorities, in so far as they were informed.

The amount claimed has not been proved to the full extent, because (a) not all the leaders could be identified, and (b) not all the figures are substantiated.

The Commission allow, for this part of the claim \$4,300 (four thousand three hundred pesos) Mexican gold.

3. *Part II.*—In the opinion of the Commission the concentration order of the Carrancista leader Miranda has been proved. The order was delivered on the 29th May, 1915, at a time when the Carrancista movement had not yet succeeded in establishing a Government *de facto* or *de jure*. For this reason the Commission cannot consider the order as a lawful act within the meaning of the Convention.

While it is uncertain for how long the concentration order was to be in force, the Commission have found sufficient evidence that revolutionary circumstances made it necessary to leave the property abandoned during several years after the concentration. This is, *inter alia*, proved by annex 12 of the Memorial, being a letter dated the 7th May, 1917, from the Department of Finance of the State.

The alleged losses do, therefore, fall within subdivision 2 of Article 3 of the Convention, and the Commission deem that compensation to the extent of \$80,000 (eighty thousand pesos) Mexican gold, may safely be granted.

4. *Part III.*—The Commission see no ground for allowing an award for expenditure incurred in keeping the property, as far as was possible, in good order. They do not regard this expenditure as a loss, but as a means of avoiding loss.

5. *Part IV.*—The Commission are of opinion that in this case the direct connexion between the facts and the alleged consequences of the same, has not been sufficiently proved to enable them to ground an award upon it.

6. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of the El Palmar Rubber Estates (Limited) (in liquidation), the sum of \$84,300 (eighty-four thousand three hundred pesos) Mexican gold or an equivalent amount in gold.

THE TOMNIL MEXICAN MINING COMPANY (LIMITED) (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 108, August 3, 1931. Pages 321-323.*)

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH.—
NECESSITY OF NOTICE TO AUTHORITIES. In absence of evidence that the competent authorities were informed of the acts of bandits complained of, *held* no responsibility of respondent Government existed.

RIOT.—MOB VIOLENCE. No responsibility of respondent Government *held* to exist under the *compromis* for losses sustained by rioting during a strike.

1. The Memorial gives the following statement:

The claimant Company was a prosperous mining enterprise with its main properties in the Tomnil District, in the State of Durango. During the revolutionary period from 1910 to 1920, the Company suffered the following damages:

(a) Early in March 1912 a revolution broke out. Pilar Quinteros appeared at the Company's mine with a number of his men and took from the Company rifles, mules, horses and cows, to the value of \$1,333.80.

(b) At about the same time Quinteros demanded and received from the Company the sum of \$120 pesos.

(c) At about the same time Emiliano Aispuro and his men visited Tomnil and obtained from the Company the sum of \$100 pesos in cash, promising that such sum would be deducted from the taxes paid by the Company to the State of Durango.

(d) Pilar Quinteros also took from the Company's warehouse corn for his mules and horses and took from the Company's smelter two cases of dynamite, nails and canvas to manufacture bombs; under this head there are claimed \$200 pesos.

(e) Owing to the activities of Quinteros and his men, there was a strike for three weeks of the employees of the mine, and the Company, in consequence, incurred expenses to the amount of \$970 pesos.

During all this time, as appears from the statement of Mr. Henry Cribb, the Company repeatedly appealed to the Mexican Government for protection, but the Government, although at the time there were troops available in the district under Claro Molino, took no steps to furnish the necessary protection.

(f) The Company further suffered the following damage:

During the month of July 1912, riots took place at the Company's premises and the Company's employees declared a strike, and the Company was compelled to pay to the rioters the sum of \$836.75 pesos. Ultimately, the Government belatedly sent an escort to the mine, but no steps were taken to punish those who had attacked the Company's property and staff, and the Government officer, León Meraz, deliberately failed to do his duty.

(g) Owing to the activities of Quinteros and his men, the Company were forced to incur a loss of \$20,000 pesos, owing to extra expenditure incurred on account of the disorderly state of affairs.

(h) The Company further claims \$90,000 pesos owing to depreciation of stock.

(i) The Company further claims \$40,000 pesos in respect of repairs which will have to be undertaken owing to the damage caused by the cessation of work due to the Revolution.

(j) In May 1912 at a time when there had been no authority in the district for some ten months, the safety vault of the Company was broken open and gold and silver bars were stolen, to the value of \$6,000 pesos. The authorities in Mazatlán refused to give any assistance to the Company.

(k) In the early part of 1912 the Mexican Government confiscated from the Company 2,000 Winchester cartridges of the value of \$150 pesos.

(l) The Company further claims \$100,000 pesos in respect of loss of profits.

The British Government claim on behalf of the Tomnil Mexican Mining Company, Limited, the sum of 258,610.55 pesos.

2. The Commission have come to the conclusion that Pilar Quinteros and Emiliano Aispuro must be considered as bandits. As there is no evidence that the competent authorities were informed of their acts, Mexico cannot be made responsible for the losses caused by them.

3. The Commission hold the view that the consequences of a strike, and the acts of violence accompanying a strike—if no other intervention is shown—do not fall within the terms of the Convention.

4. The Commission have not found evidence of the other losses claimed.

5. The claim is disallowed.

LEONOR BUCKINGHAM (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 109, August 3, 1931. Pages 323-327.*)

RESPONSIBILITY FOR ACTS OF FORCES.—DUTY TO PROTECT IN REMOTE TERRITORY. When remote territory was in control of rebel forces, no responsibility of respondent Government will lie for failure to suppress acts of violence or to punish their authors, even though such acts be called to attention of proper authorities.

DUTY TO GIVE WARNING OF DANGEROUS CONDITIONS.—FAILURE TO PROTECT. It is the duty of any government to give warning to inhabitants, whether subjects or aliens, of an inability to give protection in any territory. In this case, after receiving notice of two raids on the district, Secretary of State for Protection, Colonization and Industry replied that measures were being taken. No protection was thereafter extended. *Held*, claim allowed.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", *Law Q. Rev.*, Vol. 49, 1933, p. 226 at 238.

1. This is a claim for damages for the murder, by bandits known as Tiznados, of Mr. H. W. T. Buckingham at Nanchital, near Puerto Mexico (Coatzacoalcas) on the night of the 9th March, 1917.

The facts are set out in the Memorial as follows:

Mr. H. W. T. Buckingham was employed as superintendent of the Oil Exploration and Exploitation Camp of the Mexican Petroleum Company "El Aguila", S.A., in the District of Nanchital, near Puerto Mexico. On the evening of the 9th March, 1917, Mr. Buckingham was entertaining several friends at his house. At about 8 o'clock three armed men came to the house and ordered Mr. Buckingham and his three guests, Messrs. H. E. Andersen, H. Bornacini and M. Walker to go outside the house. The armed men then demanded \$1,500 and a revolver which they alleged was in Mr. Buckingham's possession. Canuto Garcia, the company's watchman, was sent to call Mr. Bannerman, the cashier, to open the safe, in order to meet the demand for \$1,500. Mr. Bannerman was only able to produce \$1,200, and the bandits told Mr. Buckingham that if he did not obtain the missing \$300 he would pay with his life. One of the bandits then asked Mr. Buckingham to give them his best shirt, and they went into the house with another bandit to obtain it. The two bandits took a quantity of Mr. Buckingham's personal property, including blankets and sheets, and forced his guests to carry the goods down to the bottom of the hill, close to the Decauville track. On the way the bandits called Mr. J. J. Pardo, the store-keeper, from his house to open the store. They took from the store, and loaded on to a small platform car, three cases of gasoline, one case of kerosene, and also various tins of provisions and biscuits. The leader of the bandits then asked for Tirso Cruz, the stableman, who at first refused to come. Mr. Buckingham, hearing the leader ask for a tin of petrol in order to burn Tirso Cruz out of his house, sent a man to persuade him to obey the orders of the bandits. The bandits accused Tirso Cruz, when he arrived, of being the cause of the assassination of one of the bandits after the raid they had made on the 5th January, 1917, but in spite of his denial, they shot and killed him. Mr. Buckingham had no idea that the bandits intended killing Tirso Cruz when he sent to persuade him to leave his

house. As soon as the shooting started, the three guests ran behind the store, but two of the bandits ran after them and wounded Mr. Bannerman. On their return to the front of the store, one of the bandits fired at Mr. Buckingham, but his rifle misfired. Mr. Buckingham commenced to run and fell after going a short distance, but as far as could be gathered, he was not then wounded. The bandits then compelled Messrs. Walker and Pardo to push the car on the track away from the river, but after going about twenty-five yards, they were ordered to stop. The bandits went to look for Mr. Buckingham and, having found him, brought him to the car. They again asked Mr. Buckingham for his revolver, which he denied having, and gave them all the money from his pockets. The party then proceeded further up the track, those pushing the car gaining slightly, as Mr. Buckingham, owing to a recent accident, was slightly lame. For some unexplained reason, the bandits suddenly shot and killed Mr. Buckingham. After this the bandits decided to go from the camp by canoe, and compelled the remainder of the party to push the car back to the river and load the canoe. Before they left they threatened Messrs. Walker and Pardo with penalties if they should give information about this raid. Mr. Bannerman died later in the day from his wounds.

The local authorities were well aware of the unsettled state of the neighbourhood. On the 5th January, 1917, a band of armed men had taken possession of the camp of the Mexican Petroleum Company "El Aguila", S.A., at Nanchital, as well as the dwelling-houses of their employees, demanding a sum of money from the manager. On learning that the manager could not pay them the money, they beat him and led him away to be shot at the wharf. On the way there they met the rest of the personnel of the camp, who had been rounded up by the remainder of the band. The bandits then proceeded to rob the personnel of the camp. The threat of shooting was not carried out. Notice of the raid of the 5th January was given to the military commander of the district of the port of Puerto Mexico (Coatzacoalcas), in a letter signed by Mr. Buckingham on the 6th January, 1917. The military commander stated that, although the occurrence was deeply regretted, he was unable to give any protection whatsoever. The Mexican Petroleum Company "El Aguila", S.A., wrote on the 3rd February, 1917, to the Secretary of State for War and of the Navy, drawing his attention to the state of affairs. This letter was acknowledged on the 10th February. Copies of the letter to the Secretary of the Department of War and of the Navy were sent to the Secretary of State for Protection, Colonisation and Industry and to the Sub-Secretary of State for the Interior. These communications were acknowledged on the 10th and 12th February, respectively. In spite of the fact that the Mexican Government were aware of the possibility of repetitions of such raids, no effort was made to afford protection to the company or the company's employees. His Majesty's Government consider that the Mexican Government, by its neglect to take reasonable precautionary measures, is responsible for the loss of Mr. Buckingham's life.

The amount of the claim is 100,000 pesos (Mexican gold). Mr. Buckingham was forty-eight years of age at the time of his death, and was in good health. His probable term of service is estimated at twelve years. His salary at the time of his death was \$350 (U.S. currency) or, say, 700 pesos (Mexican gold) a month, in addition to housing and living expenses. On the basis of 700 pesos a month for a period of twelve years, the loss suffered by Mrs. Buckingham would be 100,800 pesos (Mexican gold), but she has fixed the amount of compensation which she claims at 100,000 pesos (Mexican gold). No claim is made for her personal loss and suffering.

The British Government claim on behalf of Mrs. Leonor Buckingham the sum of 100,000 pesos (Mexican gold).

2. The Commission are of opinion that the facts on which the claim is based have been proved, and also that the acts were committed by bandits.

3. Faced by the question as to whether Mexico is to be held financially responsible, the Commission deem that the competent authorities cannot be blamed for not having taken reasonable measures to suppress the acts or to punish those responsible for the same.

No Government of a country, of the immense extent of the Mexican Republic, with scarce population, of a mountainous character and with great difficulty of communications, can be expected to furnish adequate military protection to all the isolated oil-fields, mines, haciendas and factories scattered over the territory. The oil camp where the murder was committed is in a very remote situation, and its connexions with the rest of the country are scarce and arduous.

At the time of the events the district was controlled by the rebel leader Cástulo Pérez, for whose protection against bandits and robbers a contribution was paid by the *Aguila*, as well as by other concerns. It was this leader who pursued the murderers and had them executed. It was outside the power of the Government forces to operate in the region, which was practically in the hands of others, who were superior in number, and, therefore, they cannot be blamed for not having punished the criminals.

4. But the question put forward at the commencement of the preceding paragraph has a wider scope, because the end of subdivision 4 of Article 3 of the Convention also lays responsibility upon Mexico in case the authorities were blamable in any other way.

And with such a case the Commission have, in their opinion, to deal in the present claim.

While admitting that the Government cannot be blamed because they did not prevent the murder or punish the murderers, the Commission hold that it is the duty of any Government to know the extent to which they can afford protection, and to warn subjects, as well as aliens, if they are unable to do so, leaving it to their judgment either, to remain at their own risk, or to withdraw from those isolated places, to where the hand of government does not reach.

5. In January 1917 two raids had already been made on the same oil-field. Notice was given to the Military Commander of the district, and he replied that, although the occurrence was deeply regretted, he was unable to give any protection whatsoever, an answer which left the responsibility for remaining at the camp with the "*Aguila*". But the raids of January were also reported to the Secretary of War and of the Navy, to the Secretary of State for Protection, Colonization and Industry, and to the Sub-Secretary of State for the Interior. The Secretary of State for Protection, Colonization and Industry answered, on the 10th February, 1917, that measures were being taken, and that it was hoped that the repetition of such cases would be avoided.

It is clear that, in the eyes of the Management of the concern, this answer must in itself have annulled the perfectly correct communication from the Military Commander, and must have induced the residents of the camp to believe that protection would be given, and that they ran no danger in remaining where they were.

The events have shown that this hope was false, and that the assurance given by one of the Cabinet Ministers was not followed up by acts of such a nature as to prevent a repetition of the occurrences, and worse.

The Commission regret that they cannot answer in the negative the question of whether the authorities were blamable in any way.

6. The Commission declare Mrs. Buckingham entitled to compensation, and they think it is in accordance with the principles of justice and equity to award

a sum of 31,000 pesos, which will enable her to purchase an annuity of 2,000 pesos.

7. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of Mrs. Leonor Buckingham, the sum of \$31,000 (thirty-one thousand pesos) Mexican gold, or an equivalent amount in gold.

JAMES RICHARD ANTHONY STEVENS AND MRS. GIBB (GREAT
BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 110, August 3, 1931. Page 328. See also decision No. 66.*)

RESPONSIBILITY FOR ACTS OF FORCES.—EVIDENCE BEFORE INTERNATIONAL TRIBUNALS. In absence of evidence enabling tribunal to classify, under the *compromis*, the forces for whose acts claim was made, claim *disallowed*.

(*Text of decision omitted.*)

F. S. WHITE (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 111, August 3, 1931. Pages 329-330.*)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(*Text of decision omitted.*)

DENNIS J. AND DANIEL SPILLANE (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(*Decision No. 112, August 3, 1931. Pages 330-332. See also decision No. 42.*)

AMENDMENT OF CLAIM. Amendment of claim by substituting, as claimants, Dennis J. and Daniel Spillane to Messrs. D. J. and D. Spillane and Company *allowed*.

DAMAGES, PROOF OF.—EQUITY AS A BASIS FOR AWARD. Where valuation of items of damage appears exaggerated, tribunal will, in accordance with the principles of justice and equity, fix amount of damages.

1. As regards the facts on which the claim is based, the Commission refer to their Decision No. 42.

2. Following that decision, the British Agent asked leave to amend the Memorial originally filed on behalf of Messrs D. J. and D. Spillane and Company, by substituting, as claimants, Dennis J. Spillane and Daniel Spillane.

The Commission having allowed this amendment, now consider the claim as falling within the terms of the Convention.

3. The British Agent, while conceding that not all the forces, whose leaders had delivered receipts, had been identified, pointed to the fact that nearly all the receipts were attested by the local judge and two witnesses. Moreover, he argued that a great many of the losses sustained by the claimants had occurred within the period when the Villista and Zapatista forces formed part of the Constitutionalist army and were therefore covered by the second subdivision of Article 3 of the Convention. In his submission the claimants had taken every precaution within their power, by applying in each separate case for the testimony of the local magistrate and of two witnesses.

As regards the amount, the Agent contended that the valuations of the various items bore every appearance of conscientiousness and exactitude.

4. In the opinion of the Mexican Agent only a very small part of the receipts could be traced to leaders for whose acts the Mexican Government had, by signing the Convention, assumed responsibility. By far the greater part had been delivered by individuals of whose political identity nothing was known. The Agent explained that the function of a local judge was a very modest one, and he did not consider this magistrate as an authority to whose declaration great value could be attached.

Lastly, he regarded the appraisalment of the losses as exaggerated in the highest degree.

5. The Commission have found the facts alleged in support of the claim sufficiently proved by the receipts of those who took the goods, by the confirmation of the local judge and witnesses, or by other evidence, but they have not been enabled to classify in each case the forces to which the various leaders belonged. They have found that several receipts were delivered by officers of forces for whose acts the Convention does not, after revision, make the Mexican Republic financially responsible. Only a comparatively small part of the receipts show clearly that the goods were taken by forces falling within one of the subdivisions of Article 3 of the Convention. In a majority of the cases this remains uncertain.

6. As regards the amounts set down against the different items, many of them have appeared to the Commission to be exaggerated, and they do not feel at liberty to accept such valuation to its full extent.

7. For these reasons, only a portion of the amount claimed can be awarded, and the Commission hold that it is in accordance with the principles of justice and equity to fix this portion at 12,000 pesos.

8. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government on behalf of Dennis J. Spillane and Daniel Spillane, the sum of \$12,000 (twelve thousand pesos) Mexican gold or an equivalent amount in gold.

ROBERT HENDERSON, ON BEHALF OF THE ESTATE OF THE
LATE VIRGINIA HENDERSON (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(*Decision No. 113, August 3, 1931. Pages 332-334.*)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—RECEIPTS FOR REQUISITIONED PROPERTY. Evidence of loss consisting primarily of receipts for requisitions given by officers or officials *held* sufficient.

(*Text of decision omitted.*)

WEBSTER WELBANKS (GREAT BRITAIN) *v.* UNITED MEXICAN
STATES

(*Decision No. 114, August 6, 1931. Pages 334-337. See also decision No. 29.*)

RESPONSIBILITY FOR ACTS OF FORCES. Claim for loss of shipments of tomatoes on railway during period of its operation by State Government *held* not a loss resulting from acts of forces for which respondent Government was responsible.

(*Text of decision omitted.*)

CAPTAIN A. B. URMSTON (GREAT BRITAIN) *v.* UNITED MEXICAN
STATES

(*Decision No. 115, August 6, 1931. Pages 337-341.*)

RESPONSIBILITY FOR ACTS OF FORCES.—DAMAGES, PROOF OF. Where evidence established facts of loss but did not establish with exactness whether the amounts claimed were correct, claim *allowed* in amount justified by the evidence.

PRESERVATION OF PROPERTY. Claim for expenses incurred in preserving property *disallowed*.

DEPRECIATION IN VALUE OF PROPERTY. Claim for depreciation of value of ranch during revolutionary period *disallowed*.

Cross-reference: Annual Digest, 1931-1932, p. 227.

1. This is a claim for losses and damages to the Hacienda de San Pedro Canton Galeana, in the State of Chihuahua, due to revolutionary acts during the years 1912 to 1920, inclusive.

The facts are set out in the Memorial as follows:

Captain A. B. Urmston is the sole owner of a property, 206,000 acres in area, known as the Hacienda de San Pedro and situated in the Canton Galeana, State of Chihuahua. The property was originally purchased from the Mexican

Government by Messrs. Macmanus Brothers, Bankers, of Chihuahua, who sold it to a Captain C. G. Scobell in the year 1885. Captain Urmston, in partnership with Mr. Alexander B. Henderson, purchased part of the property from Captain Scobell in 1891 and the remainder in 1895. The claimant purchased Mr. Henderson's share in 1896 and became the sole owner of the property.

Captain Urmston resided on the property from 1890 to 1909, during which time he expended large sums of money in building substantial houses, opening farms, saw-mills, fencing the entire range with wire fence where necessary, developing the water supply, and stocking the property with a herd of high-grade cattle of 14,000 to 15,000 head and 1,000 horse stock. In 1909 Captain Urmston returned to England, leaving the property in charge of Mr. W. A. M. Roxby as manager.

In the year 1912, when raids by revolutionary and other forces first commenced, the stock of cattle on the hacienda amounted to some 14,000 head and the stock of horses amounted to some 800. The claimant states that the value of his property then was 802,000 dollars United States currency, or 1,604,000 dollars Mexican gold, calculated as follows:

	<i>U.S. Currency Dollars</i>
206,000 acres, at 2 dollars per acre	412,000
14,000 cattle, at 25 dollars a head	350,000
800 horses, at 50 dollars a head	40,000
TOTAL	<u>802,000</u>

From the year 1912 the hacienda was subjected to continual raids and requisitions by revolutionary and other forces. These revolutionary and other forces took from the hacienda horses, cattle, corn and merchandise, giving in some cases receipts for the property taken, but in the large majority of the cases flatly refusing to comply with requests for receipts. The names of some of the revolutionary or counter-revolutionary officers responsible for part of the claimant's losses are given in the affidavits of Messrs. Hollingworth, McDow and Contreras.

During the period 1912 to 1921 only small sales of stock and horses were made by Captain Urmston or by any persons on his behalf, and none of the said stock or horses was removed from the hacienda. Such sales did not exceed 1,000 head of cattle. In May 1920 only 3,000 head of cattle and from 50 to 100 horse stock, mostly mares, remained on the property. Captain Urmston's losses during this period therefore amount to some 10,000 head of cattle and at least 700 horse stock.

The claimant values the cattle and horses lost during the period 1912-May 1920, inclusive, at 285,000 dollars United States currency, or 570,000 dollars Mexican gold, calculated as follows:

	<i>U.S. Currency Dollars</i>
10,000 cattle, at 25 dollars per head	250,000
700 horses, at 50 dollars per head	35,000
TOTAL	<u>285,000</u>

The houses, buildings and farms on the hacienda were damaged by the revolutionary and counter-revolutionary forces. It is not possible at this date

for the claimant to give the dates of the specific damages or to identify the individuals responsible. He estimates, however, that the damage done amounts to at least 50,000 dollars United States currency, or 100,000 dollars Mexican gold.

During the period under review Captain Urmston was obliged to spend at least £2,500 sterling per annum in maintenance of the said property, all of which has now become a total loss. During the eight years (1912-20 inclusive) the sum of £20,000, or 100,000 dollars United States currency or 200,000 dollars Mexican gold was expended.

As a result of the depredations of the revolutionary and other forces the value of Captain Urmston's property has deteriorated very considerably. In 1912 the value of the land, as has been shown, was 412,000 dollars United States currency, or 924,000 dollars Mexican gold. Captain Urmston was offered in 1912 the price of 600,000 dollars United States currency, or 1,200,000 dollars Mexican gold for his property, including cattle and horses, but owing to the outbreak of the revolution he was unable to proceed with the sale. He has since made innumerable attempts to sell the property with a view to saving further loss, and in 1924 he signed a contract agreeing to sell to a Mr. C. K. Warren, of Three Oaks, Michigan, the whole property and stock at the price of 170,000 dollars United States currency. This contract, however, was subsequently cancelled. Of this offer of 170,000 dollars United States currency the claimant attributed 125,000 dollars United States currency to the value of the land and 45,000 dollars United States currency to the value of the stock thereon. The property therefore has depreciated to the extent of 287,000 dollars United States currency, or 574,000 dollars Mexican gold.

The amount of the claim is 722,000 dollars United States currency, or 1,444,000 dollars Mexican gold; a summary of the various items comprising this total is given in paragraph 9 of Captain Urmston's affidavit. Partial proof of the losses of cattle and horses is given by the affidavits of Messrs. Hollingworth, McDow and Contreras. These affidavits do not represent the whole of Captain Urmston's losses, but cover only losses known to these employees to have been incurred during the period they were serving on the hacienda. The amount of the losses supported by these affidavits is 139,437.51 dollars United States currency, or 278,955.03 dollars Mexican gold, as compared with 285,000 dollars United States currency, or 570,000 dollars Mexican gold, claimed by Captain Urmston.

Further proof of these losses cannot be given by the claimant who has been unable to trace the present whereabouts of all his former employees. Such proof as he has been able to obtain is produced.

The British Government claim on behalf of Captain Urmston the sum of 722,000 dollars United States currency, or 1,444,000 pesos Mexican gold.

2. Evidence of part of the losses, suffered through the taking of animals, is to be found in the receipts of several military leaders and in the affidavits of Messrs. Hollingworth, McDow, Contreras and Metcalfe.

Sufficient evidence has not been submitted to the Commission to enable them to determine to which of the forces the military leaders belonged, and whether the acts of all of them are covered by the Convention, after revision of the same.

It has likewise not been made possible to the Commission to decide with absolute exactness whether the sums, claimed for the specific items, do or do not exceed the value thereof.

The Commission do not, therefore, feel at liberty to award the full amount claimed under this head, but they are convinced that 100,000 pesos is well justified.

3. As regards the second part of the claim, the Commission see no ground for allowing an award for expenditure incurred in keeping the property, as far as was possible, in good order. They do not regard this expenditure as a loss, but as a means of avoiding loss.

4. The deterioration of the value of the property can hardly be denied, but it is a phenomenon, which is probably common to all landed wealth in Mexico during the revolutionary period. It resulted from various circumstances and measures, but it is not a loss which can, at least not in the case now under consideration, be ascribed to any specific acts of revolutionary or other armed forces. Neither is it possible to determine the amount of the depreciation, nor to examine whether it has, partly at least, been compensated for by a subsequent rise in value.

For these reasons, the Commission do not feel that they are in a position to grant an award for this part of the claim.

5. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of Captain Augustus Brabazon Urmston, the sum of \$100,000 (one hundred thousand pesos) Mexican gold, or an equivalent amount in gold.

WILLIAM J. RUSSELL (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 116, August 6, 1931. Pages 341-343.*)

RESPONSIBILITY FOR ACTS OF FORCES.—PROXIMATE CAUSE. Drunken soldiers set fire to a train, which fire spread to claimant's adjacent hotel, to his loss and damage. *Held*, respondent Government responsible.

MOB VIOLENCE. Claim for damages caused by a popular demonstration against foreigners *disallowed*.

1. The Memorial divides the claim into four parts:

Part I.—The claimant had an hotel and restaurant in Venegas Station in the State of San Luís Potosí, under a contract from the National Railways of Mexico. On the 29th May, 1913, armed men, under the command of Julián García, demanded the sum of \$165 pesos in cash. On the 22nd June of the same year, Federal Volunteers partially sacked the hotel and carried off articles and merchandise. On the 11th July, 1913, armed forces under Jesús Dávila set fire to the hotel, destroying all the furniture and other objects.

Part II.—The claimant owned a brewery and ice factory in "La Panquita", Saltillo, State of Coahuila. On the 21st April, 1914, on the occupation of Veracruz by forces of the United States of America, serious disorders occurred in the town of Saltillo, which obliged the claimant and his family to take refuge in the British Consulate. The brewery was completely sacked, and a list of the losses, such as machinery, furniture and other objects, is given in Annex 6.

Part III.—The claimant also owned the National Hotel in the City of Saltillo, and this hotel was also sacked on the 21st April, 1914.

Part IV.—On the 20th May, 1914, forces under the command of General Gustavo Mass arrived at Venegas Station and carried off articles and furniture which the claimant had placed in passenger cars and freight cars.

The total amount of the claim is 50,750.00 pesos Mexican gold.

2. *Part I.*—As regards the taking of the \$165, the Commission have not been enabled to determine to which forces Julián García belonged. They are not, therefore, in a position to decide whether the loss is covered by the Convention.

The sacking of the hotel was done by a group of Federal volunteers, who at the time served the Huerta Régime. The revision of the Convention has excluded the acts of this régime from the jurisdiction of the Commission.

The burning of the hotel was most probably due to the fact that drunken soldiers set fire to a train, which fire spread to the hotel. Even if it happened as a consequence of their commanders setting fire to the wagons of the train containing liquor, as suggested by some witnesses, such an act was highly dangerous, and calculated to set fire also to the immediately contiguous Hotel and Restaurant. As the soldiers were under the command of Jesús Dávila, and as it is known that this leader belonged to the Constitutionalist Army, Mexico must be regarded as bound to compensate the loss.

3. This loss affected the claimant only in so far as the items set down in the inventory of that place were his property and not that of the Railway Company.

The Commission find that considerable portions of the articles burned belonged to the claimant, and have found sufficient evidence to fix an amount of \$2,000 as a fair and reasonable compensation for this loss.

4. *Part II and Part III.*—The Commission regard the occurrences, referred to in these parts of the claim, as the consequences of a popular demonstration of a violent nature. They cannot view them as revolutionary acts, nor as a mutiny, a rising, an insurrection, nor as acts of banditry. The movement was not directed against the Government or against public authorities, but against the foreigners residing at Saltillo. Regrettable as the events were, they cannot, under the wording of the Convention, justify the granting of compensation.

5. *Part IV.*—The damage recorded under this heading was done by Gustavo Mass, a Huertista leader. It falls, therefore, outside the Convention, as last modified.

6. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of William J. Russell, the sum of \$2,000 (two thousand pesos) Mexican gold, or an equivalent amount in gold.

FRANK SCRIBNER MERROW (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 117, August 6, 1931. Pages 343-346.*)

DEATH OF CLAIMANT.—PURSUANCE OF CLAIM. As since filing of Memorial claimant died, claim pursued on behalf of widow as executrix of claimant's will.

DAMAGES, PROOF OF.—NECESSITY OF CORROBORATING EVIDENCE. Claim for loss of furniture and other movable property in the sum of 177,026 pesos, uncor-

roborated by outside evidence, *allowed* in the sum of 3,000 pesos Mexican gold.

1. This is a claim for the looting of property by Zapatistas under the command of Lieutenant-Colonels Mauro Neri and Vicente Rojas in the town of Miraflores, district of Chalco, State of Mexico, after their entry into that town on the 12th August, 1914.

It is stated in the Memorial that Mr. F. S. Merrow was employed as Chief Dyer of the Blanket and Spinning Factory at Miraflores, the property of the Industrial Company of San Antonio Abad (Limited), and was living in a house, within the property of that factory, with his wife and two children. On the 10th August, 1914, orders were given to the federal troops commanded by General Vasconcelos to evacuate the towns of Ozumba, Amecameca and Chalco. This order was given without previous notice to the population of these towns. On that day the last train to leave Miraflores was used for carrying troops and, therefore, no opportunity was given to the inhabitants to leave the place or to save their property. On the 12th August, 1914, the Zapatistas first entered Miraflores and they offered full guarantees in respect of life and property. Later in the day the Zapatistas began drinking liquor in the shop and ransacking the warehouses of the factory. Mr. Merrow felt that there would be no security of life and property, and he therefore spent the night with his family at the house of a Mr. Felipe Robertson. On the following day, however, their hiding place was discovered and they were forced to hide in a field of lucern grass for a whole day. At night they went to the house of an old employee of the factory, Agustin Parra, and from there went by way of the mountains towards Puebla. On the way they were assaulted and robbed of all the money they possessed. They then decided to go to Presa, a place belonging to the Miraflores factory, where they stayed hidden for several days. While endeavouring to escape through the mountains, Mr. Merrow's son, Francis, was injured in the leg, and, as a direct result of this injury, he died at the American Hospital at Mexico City on the 6th July, 1920. Finally, through the help of a Mr. J. Robertson (Junior), of "El Nuevo Mundo, S.A." Clothing Store, Mexico City, they obtained a pass from the Zapatista General Juan Banderas to proceed to Mexico City, which journey occupied two days. In May 1915 Mr. Merrow, with a passport issued by His Majesty's Consul at Mexico City, proceeded to Miraflores to discover whether his property was still intact. On his arrival, Lieutenant-Colonel Fernando Almaraz told Mr. Merrow that he could not see his house because, for the time, it was being occupied by a family named Gadea. Lieutenant-Colonel Almaraz told Mr. Merrow frankly that they were making packing cases in order to take away his furniture, adding these words: "You must lend your furniture, piano, etc., to the revolution". In February 1916, as soon as the Carrancistas had taken possession of Miraflores, Mr. Merrow proceeded to that place on a visit of investigation with a view to making a report as to the condition in which the Zapatistas had left the factory. He found that practically all his furniture and effects had been taken away. Those that were too heavy to move had been destroyed beyond repair. On the 11th August, 1914, Mr. Merrow had taken a small safe, in which his wife's jewellery and other valuables had been placed, to the ranch house belonging to Mr. Robertson and buried it beneath the floor of Miss Fergus Robertson's dressing room. This hiding place was discovered and the safe robbed of all its contents.

The amount of the claim is for 177,026.00 pesos (Mexican), at the exchange of 2 Mexican pesos equal to 1 United States dollar. A detailed inventory and valuation of the effects looted by the Zapatistas is attached to Mr. Merrow's affidavit.

The British Government claim, on behalf of Mr. Frank Scribner Merrow, the sum of 177,026.00 pesos (Mexican) at the rate of 2 Mexican pesos equal to 1 United States dollar.

2. As since the filing of the Memorial the claimant has died, the claim is now pursued on behalf of his widow, Mrs. Annie Merrow, as executrix of the will of the late Mr. Frank Scribner Merrow.

3. The British Agent pointed out that the looting had been committed by followers of Zapata, at a time when this leader had joined forces with the Constitutionalist Army of Carranza. As this last Army was to be considered as a revolutionary force which had, after the triumph of its cause, established a Government, the facts on which the claim was based fell within the meaning of subdivision 2 of Article 3 of the Convention, and had consequently to be compensated for by the Mexican Government.

4. The Mexican Agent alleged, in the first place, that no proof had been shown of the contention that Mr. Merrow had been compelled to leave his house, and he argued in the second place that the time when the looting was done was uncertain. It could just as well have been committed much later, when the Zapatistas evacuated Miraflores, as when they first occupied it. In the second case, the argument of his British colleague did not hold, because by that time the Constitutionalist forces and the forces of Zapata had already separated and were fighting each other. Besides that, the Agent described the amount claimed as extravagant, considering that Mr. Merrow, who was an employee with a monthly salary of 150 pesos, could certainly not have had in his house property of the value of 177,026.00 pesos.

5. The Commission have, in the documents as well as in the depositions of the witnesses who were heard, found sufficient evidence of the facts on which the claim is based, and they are also satisfied that the looting was done by Zapatista forces during the period when they were nominally united with the Constitutionlists. Their acts are, therefore, covered by subdivision 2 of Article 3 of the Convention.

6. Mr. Frank Scribner Merrow was the Chief Dyer of the Factory at Miraflores. The evidence as regards his salary is of a conflicting nature, the highest estimate being 400 Mexican pesos a month, expressed in the value of the then circulating medium. It was, however, alleged that Mr. Merrow had acquired much property when formerly in South Africa, and that the quantum of his salary in Mexico did not in itself dispose of the question. But it was admitted that after leaving South Africa Mr. Merrow had been obliged to assist financially his father to a considerable extent.

At the same time a claim for 177,026.00 pesos, as the value of his furniture and other portable property, uncorroborated by any outside evidence, and moreover admitted by Mrs. Merrow in the course of her oral evidence to have been overstated in many particulars, appears to the Commission to be fantastically exaggerated, and it does not find the slightest confirmation in any of the depositions. To the Commission an amount of 3,000 pesos seems a nearer approach to the truth.

7. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of Mrs. Annie Merrow, the sum of \$3,000 (three thousand pesos) Mexican gold, or an equivalent amount in gold.

THE PALMAREJO AND MEXICAN GOLD FIELDS (LIMITED)
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 118, August 6, 1931, majority decision on claim for forced abandonment. Pages 347-352.*)

RESPONSIBILITY FOR ACTS OF FORCES. Claim for property lost in transit *disallowed* for lack of evidence as to identity of forces causing loss.

PRESERVATION OF PROPERTY. Claim for expenses incurred in preserving property *disallowed*.

FORCED ABANDONMENT. Claim for damage to mine and railway caused through the forced suspension of operations as the result of the acts of Maderistas, such damage consisting primarily of depreciation through neglect and inattention, *allowed*.

RESTITUTION OF TAXES. Restitution of taxes paid by receiver, who was appointed while operation of claimant's mine and railway were suspended, *allowed*.

IMPORT DUTIES. Claim for import duty paid on property lost in transit *allowed* in part.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", *Law Q. Rev.*, Vol. 49, 1933, p. 226 at 231 and 239.

1. This is a claim for losses and damages suffered by the Palmarejo and Mexican Gold Fields (Limited) through the acts of revolutionary and counter-revolutionary forces during the period 1910 to 1920 on their mining properties situated principally on the Palmarejo and Huruapa estates in the State of Chihuahua.

The facts are set out in the Memorial as follows:

The Palmarejo and Mexican Gold Fields (Limited) was formed in 1866 with a capital of £700,000 for the purpose of purchasing, developing and working a group of mines on the Palmarejo estate in the State of Chihuahua, Mexico. The company, in developing these mines, erected a mill at Zapote, built a railway some twelve miles in length from that place to the Palmarejo mine and also built a conduit, 10 miles in length, to bring water from the upper reaches of the Chinipas river to the mill. The cost of these improvements amounts to 2,650,000 pesos. It is estimated that from 1886 to 1910 a sum of approximately 20,000,000 pesos had been expended by the company on the Palmarejo mine and on the adjoining Huruapa estate. The revolution which broke out in 1910 hampered the work of the company and, when in April 1911 a part of the conduit was destroyed by revolutionaries, the operations of the mill stopped through lack of water. Later labour was difficult to obtain and the whole business came to a standstill. For a period of two years the officials in charge of the mine were unable to communicate with their directors in London owing to a breakdown in the postal service. As a result of the complete stoppage of operations, the company has suffered large losses through damage and deterioration. These losses are divided into five headings. The losses under each of these headings will now be considered in detail.

Schedule A

This is a claim for the sum of 1,574,287.80 pesos for the cost of replacement caused by damage to and loss of plant and machinery. In 1910 the claimants,

with a view to increasing the output of silver and gold and to adopting a new and better system of ore treatment, decided to partly abolish the old mill, to erect a new one with the necessary plant and machinery and to erect an aerial tramway from the mine to the mill in order to facilitate all transport and to reduce its cost. The necessary purchases for the erection of the new mill and tramway were made in London, and the goods were shipped and landed in Mexico. Only a very small quantity of these materials was delivered to the mine. Some of the material was stolen by revolutionaries, some parts of the machinery were destroyed, rendering the remaining parts useless, other portions of machinery could not be delivered beyond the railway head of the Kansas City and Mexico Railway, where, at the time annex 1 was written, they still remained. These portions of machinery, after a lapse of some years without attention or care, became useless. The total amount expended on material for these two new installations was 524,762.60 pesos or £52,476 8s. 2d. Before operations can be restarted it will be necessary to purchase new sets of plant and machinery. It is estimated that to replace the lost materials will cost at least three times the amount of the purchase price in 1910. This estimate is made in a letter dated the 24th July, 1920, from the Cyanide Supply Company (Limited), and in a letter dated the 28th July, 1920, from E. T. McCarthy, the company's consulting engineer. The sum, therefore, that will be required to replace the machinery, either lost, destroyed or rendered useless, amounts to 1,574,287.80 pesos.

Schedule B

This is a claim for the sum of 234,538.75 pesos, being the amount paid in Mexico for the purchase of stocks in connexion with the reconstruction referred to under schedule A, and for freight paid on the importations of machinery and other goods from England. It is now impossible to give exact details of this loss as most of the books of the company in Mexico have either been mislaid or lost during the revolution. The total sum expended, however, appears in the company's books in London.

Schedule C

This is a claim for 375,000 pesos, being the expenditure incurred in protecting the property. In 1914, owing to the uncertain conditions in Mexico, which made it impossible for the company to continue operations, the company was unable to pay interest on its debenture debt. A receiver was appointed to take possession of the property on behalf of the debenture holders and he retained possession until 1918, when, by an arrangement between the shareholders and the debenture holders, the possession of the property was returned to the company. It was necessary, however, to pay to the receiver 375,000 pesos, being the amount expended by him in protecting the property. This amount is certified as correct by a chartered accountant.

Schedule D

This is a claim for compensation amounting to \$384,926.20 pesos in respect of damage to the Palmarejo mine, aqueduct, railway and Guerra al Tirano mine. These damages are divided into four headings.

(1) Damage to Interior and Exterior of Palmarejo Mine

This damage is caused through the forced suspension of the company's operations. The executive staff of the company were forced to leave the property on the 12th May, 1912, owing to the revolution which was then in pro-

gress. From this date until the 18th October, 1918, no attention could be paid to the mine. On the latter date Mr. W. D. Hole made a careful survey of the mine and estimated the extent of the damage and the cost of repair. This estimate amounts to 222,086.28 pesos.

(2) *Damage to Conduit*

On the 11th April, 1911, Maderista forces broke down the sluices at Agua Caliente with axes. The conduit had been repaired and its respective bridges rebuilt, only a short time before this event, at a cost of 48,250.13 pesos. On the 12th of the same month these revolutionaries broke the sluices in Cuba and gave orders to Jesús Beltran, who was in charge of the aqueduct, not to let water in again without their permission. On the 7th May, 1911, Federal troops under the command of Lieutenant-Colonel Manuel Reyes, set fire to the wooden bridge which crossed the stream of Ranchito. The company's manager repaired provisionally the damages done by Señores Becerra and Loya, the leaders of the revolutionaries, and by the Federal troops and maintained the conduit until he was obliged to leave the district in May 1912. From that date the conduit has suffered considerable dilapidation. An account of the acts of the revolutionary and Federal forces is given in a letter dated the 15th July, 1911, from Jesús Beltran, whose signature is certified by the Judge of First Instance of Arteaga in the State of Chihuahua. A detailed report of the damage and an estimate of the cost of repair is given in Mr. W. D. Hole's letter dated the 5th March, 1920. The truth of the statements contained in this report is affirmed by certain local inhabitants of Chinipas.

(3) *Damage to the Railway*

This railway was in good condition when the company's officials were forced to leave the district in May 1912. Owing to the lack of attention and care a considerable amount of labour will be required to restore it to working order. Mr. W. D. Hole's estimate of the cost of repair is 27,684.92 pesos.

(4) *Damage to the Guerra al Tirano Mine*

This mine, through neglect and inattention, suffered considerable damage and the estimated sum of 53,000 pesos will be required to put it into working condition.

Schedule E

This is a claim for repayment of import duty, amounting to 41,267.40 pesos, paid on the plant and machinery referred to under schedule A.

A further proof of the fact that the company had expended large sums of money on the mine and had suffered damage through the revolutionary and counter-revolutionary forces is given in a certified copy of voluntary proceedings *ad perpetuam* before the Court of First Instance in the district of Arteaga in the State of Chihuahua, Mexico.

In order to substantiate the claims based on the reports of Mr. W. D. Hole, the Judge of First Instance of Chihuahua was requested to appoint an expert to estimate the damages caused by the revolution to the properties and interests of the Palmarejo and Mexican Gold Fields (Limited). The Court appointed Mr. Eduardo Enriquez for this duty and the Court subsequently appointed Mr. Jacob W. Breach to make a similar investigation on behalf of the Federal Government. Mr. Breach came to the conclusion that the losses suffered by the Company through the revolution amounted to 403,812.55 pesos. This valuation represents the losses referred to in schedule D, and it will be noted

that Mr. Breach's estimate is higher than the sum now claimed. At the end of Mr. Breach's report is attached a petition by the Judge of First Instance of the district of Arteaga and other local citizens requesting that this claim may be settled at an early date in order that the Palmarejo mines may be reopened and thus provide work for local people. Mr. E. W. Enriquez also submitted a report and supplementary report. Mr. Enriquez only considered the damage done to the aqueduct, the railway and the Palmarejo mine, and his estimate of the damage amounts to 335,012.88 pesos. Mr. Enriquez was unable to come to a decision about the Guerra al Tirano mines, but considered Mr. Hole's estimate of 53,000 pesos to be insufficient to re-condition this mine. In regard to the plant and machinery Mr. Enriquez considered that the best course would be to appoint two expert valuers to decide what parts of machinery and plant still existing in various places in Mexico are still usable and what further supplies would be required to complete the installations.

The total amount of the claim is 2,610,020.15 pesos Mexican gold.

This claim belonged at the time of the losses and still does belong solely and absolutely to the claimants. The company informed His Majesty's Government on the 12th March, 1912, that the neighbourhood in which their mines were situated was overrun by bandits and that communication with their employees at these mines was impossible. Acting on instructions from the Foreign Office, His Majesty's Minister at Mexico City addressed a note to the Minister for Foreign Affairs on the 14th March, 1912, asking for protection of this company's property. Señor Manuel Calero replied on the 18th March, 1912, that he had written to the Ministry of the Interior in the sense of His Majesty's Minister's note. Instructions were subsequently issued by the Governor of Sonora to the Prefect of the District of Alomas to take such steps as may be possible for the protection of the company's interest if the property should be situated within his jurisdiction. In May 1912 the company informed His Majesty's Government that they had been forced to close down their mines.

The British Government claim, on behalf of the Palmarejo and Mexican Gold Fields (Limited), the sum of 2,610,020.15 pesos Mexican gold.

2. As regards schedule A, the Commission have found, *inter alia*, in the report of E. W. Enriquez (annex 15) outside evidence that a part, but not the greater part, of the plant and machinery was lost, stolen or destroyed in transit. It has not been shown what caused the loss, nor who were responsible for it. If the machinery was lost because its transport became impossible, as a consequence of the confiscation of mules, the Commission have not been enabled to ascertain whether the confiscation was a governmental (and therefore a lawful) act, or a measure taken either by revolutionary forces or by bandits.

For this reason the Commission are not in a position to determine whether the losses, claimed for under this heading, are covered by the Convention.

3. The Commission take the same line as regards schedule B, and moreover, fail to understand why these stocks, or part of them, could not have been sold or utilized for other purposes.

4. The expenditure referred to under schedule C, must not, in the view of the Commission, be considered as a loss, but as a means of avoiding loss, with the exception, however, of the amount which was paid out for Government taxes, restitution whereof seems just and equitable.

This restitution is, however, only justified as regards the period of the receivership, being from 1914 to 1918. As the claim relates to the taxes from 1910 to 1918, only one half of the amount of 94,120 pesos can be taken into consideration.

5. As regards schedule D, the majority of the Commission have arrived at the conviction that the damages recorded under numbers 1, 3 and 4 were caused through the suspension of the Company's operations in May 1912. They are equally satisfied that this suspension was a forced one, and a consequence of the revolution then in progress. This results from the contemporary correspondence between the Company and the British Minister and between the British Minister and the Mexican Ministry for Foreign Affairs, and from the fact that, according to expert testimony, the works were in perfect order before the abandonment and the Company had recently given large orders for new machinery. It cannot, therefore, be assumed that operations were voluntarily stopped or because the Company found itself in an unfavourable financial condition.

The amount claimed for these items is 302,771.20 pesos and has been corroborated by outside estimate, but it has not, in the opinion of the Commission, been taken into account that part of the expenditure must have been devoted to the replacement of old and worn out equipment by new.

A deduction would therefore seem to be necessary and the Commission fix the amount of this deduction at 27,771.20 pesos.

6. The damage, alleged under schedule D, No. 2, is sufficiently proved and it has been shown that it was caused by the acts of Maderistas, falling within subdivision 2 of Article 3 of the Convention, with the exception, however, of the burning of the bridge, which was done by Federal troops in a fight against the Maderistas. As the Federal troops were the troops of the Government, this last act must be regarded as lawful, and does not entitle the claimant to compensation.

For this part of the claim, the Commission think that an award of 60,000 pesos is adequate.

7. As regards schedule E the Commission deem it in accordance with the principles of justice and equity that a part of the import duty, paid on the plant and machinery referred to in paragraph 2, be repaid, and they determine this part at 30,000 pesos.

8. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government on behalf of the Palmarejo and Mexican Gold Fields (Limited) 47,060 plus 275,000 plus 60,000 plus 30,000 = \$412,060 (four hundred and twelve thousand and sixty pesos) Mexican gold or an equivalent amount in gold.

THE SANTA ISABEL CLAIMS (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 119, January 22, 1932. Pages 353-354.)

PROCEDURE, MOTION TO REOPEN CASE. It is discretionary with the tribunal whether to allow a motion to reopen the case after closing of pleadings. Motion *granted*, limited to the presentation of oral arguments by Agents on a question of evidence raised by the Presiding Commissioner and the relevance thereto of certain testimony desired to be presented by Mexican Agent.

SUBMISSION OF EVIDENCE AFTER CLOSE OF PLEADINGS. Tribunal will not hear new witnesses after close of pleadings but will take cognizance of new documents in which may be protocolized the evidence to be given by such witnesses.

1. The Mexican Agent refers to a question asked by the Chairman of the Commission in the meeting of the 3rd August, 1931, whether in any letters, notes or telegrams exchanged shortly after the events, there was any declaration by the Mexican Government in regard to the authorities at Chihuahua having warned Mr. Watson that it was not advisable that he should enter the region where the attack took place.

The Mexican Agent states that he has not found a declaration to that effect, but, that Messrs. Rafael Calderón, Jr., and Gonzalo N. Santos are able to give evidence on the subject and with respect to other points connected with it, and that they are ready to appear before the Commission.

The Agent requests the Commission to reopen the case, so that the testimony of Messrs. Calderón and Santos may be received.

2. The Commission, considering articles 28, 41 and 43 of the Rules of Procedure, are of opinion that they are not entitled to hear new witnesses after the pleadings were closed on the 3rd August, and that a reopening can only tend to hear again the Agents on any points they, the Commission, may deem necessary.

They have no objection against taking cognizance of a new document produced by the Mexican Agent, and in which may be protocolized the evidence to be given by Messrs. Calderón and Santos before a Mexican authority. Neither will they object to a discussion on this new evidence, as far as it relates to the question asked by the Chairman in the meeting of the 3rd August, 1931.

3. The Commission rule that the case is reopened in order that the Agents may present oral arguments which must be strictly confined to the document described in section 2, and which may not exceed the scope of the question asked by the Chairman in the meeting of the 3rd August, 1931.

VERACRUZ TELEPHONE CONSTRUCTION SYNDICATE (GREAT
BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 120, January 22, 1932. Pages 354-355. See also decision No. 8.)

PROCEDURE, MOTION TO REOPEN CASE. Motion to reopen case *granted*, limited to presentation of oral arguments by Agents on new evidence submitted to the tribunal.

1. The Mexican Agent has placed at the disposal of the Commission the original record of the proceedings instituted by the claimant Company against the Government of Veracruz, which record the Chairman of the Commission had requested the Agents to file.

The Mexican Agent, wishing to comment upon this evidence, has requested to reopen the case.

2. The Commission rule that the case is reopened in order that the Agents may present oral arguments which must be strictly confined to the new evidence submitted to the Commission.

THE MEXICAN TRAMWAYS COMPANY (GREAT BRITAIN) *v.*
UNITED MEXICAN STATES

(Decision No. 121. January 22, 1932. Pages 355-356. See also decision No. 65.)

PROCEDURE. MOTION TO REOPEN CASE. Motion to reopen case to argue issue of lack of jurisdiction on two grounds, one of which had been debated between the Agents prior to the closing of pleadings, *granted*, limited to a discussion by the Agents of that one of the grounds for lack of jurisdiction which had been not theretofore pressed.

1. The Mexican Agent has filed a motion in which he requests that the Commission may see fit to declare themselves incompetent to take cognizance of the claim. He relies upon two grounds of incompetence, the *first* being his contention that the claimant Company has accepted a Calvo Clause, and the *second* that the acts complained of by the claimant Company were not revolutionary or military acts, but ordered by civil authorities.

He requests the Commission to reopen the case in order that he may be able to amplify orally his considerations.

2. The Commission observe that the second ground on which the Mexican Agent bases his argument, has been amply discussed between the two agents before the pleadings were closed. They cannot allow that a new discussion shall take place.

As regards the first ground, the Commission admit that it was not pressed when the case was discussed.

The Commission rule that the case is reopened in order that the Agents may present oral arguments which must be strictly confined to the effect of the existence of a Calvo Clause.

VERA CRUZ TELEPHONE CONSTRUCTION SYNDICATE (GREAT
BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 122. February 15, 1932. Pages 356-357. See also decisions No. 8 and No. 120.)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(Text of decision omitted.)

RUTH M. RAEBURN (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 123, February 15, 1932. Pages 357-358. See also decision No. 38.)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(Text of decision omitted.)

AUGUSTINA PLATT HALL AND RICHARD J. C. WOON (THE SANTA ISABEL CLAIMS) (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 124, February 15, 1932. Pages 359-360.)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(Text of decision omitted.)

THE MEXICAN TRAMWAYS COMPANY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 125, February 15, 1932. Pages 360-361. See also decision No. 65 and No. 121.)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(Text of decision omitted.)

SARAH BRYANT, COUNTESS D'ETCHEGOYEN (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 126, August 6, 1932. Pages 361-362.)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—FAILURE TO FURNISH CORROBORATING EVIDENCE CAUSED BY ACTS OF AGENCY OF RESPONDENT GOVERNMENT. British Agent sought to excuse failure to produce evidence corroborating that of claimant on ground he had not been able to obtain return of the relevant documents from the Mexican National Claims Commission. *Claim disallowed.*

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO PROTECT. Respondent Government *held* to have acted with due diligence. Claim *disallowed*.

1. This is a claim for compensation for the loss of a mule, jewellery and the effects taken by the revolutionaries of the Jimenez Brigade from the San Jeronimo Ranch at Tlalnepantla, D.F., during 1914-1915 in the months of May and January.

2. A claim was presented to the Mexican National Claims Commission on the 19th August, 1921, for the sum of 14,710.25 pesos. This claim, after consideration by the Commission, was rejected.

3. The British Government claim on behalf of Sarah Bryant, Countess d'Etchegoyen, the sum of 14,710.25 pesos.

4. The Mexican Agent filed a Motion to Dismiss the claim on the grounds that it was unsupported by evidence. To this Motion the British Agent replied that he had not been able to obtain the return of the relevant documents from the Mexican National Claims Commission.

5. The Commission, having examined the claim, find that, as regards that part which originated in 1914, there is no responsibility on the part of the Mexican Government since far from having acted negligently, the Government acted with due diligence. As regards the damages caused in 1915, in accordance with the principles laid down in previous decisions, the declaration of the claimant cannot be accepted unless corroborated and, as no corroboration has been presented, the Commission have decided to dismiss this claim.

6. The claim is disallowed.
