

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

**British-Mexican Claims Commission (Convention b/w Great Britain and the
United Mexican States of December 5, 1930)(Great Britain, United Mexican
States) (24 March 1931 - 6 August 1932)**

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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 Metlaltoyuca 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 Metlaltoyuca 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 Garcia, 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 Com-
pany *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 Com-
pany, 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.
