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Shufeldt claim (Guatemala, USA)

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XXVIII.

SHUFELDT CLAIM ¹.

PARTIES: Guatemala, U.S.A.

SPECIAL AGREEMENT: November 2, 1929.

ARBITRATOR: Sir Herbert Sisnett (U.K.).

AWARD: Belize, British Honduras, July 24, 1930.

Rules of evidence.—Contract between Executive and an individual.—
Estoppel.—Legal personality of a partnership.—International and municipal
law.—Damages for breach of contract.—Direct loss.—Loss of profit.—
Moral damage.

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¹ For bibliography, index and tables, see Volume III.

Special Agreement.

EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND GUATEMALA
PROVIDING FOR ARBITRATION OF THE CLAIM.

*The American Minister in Guatemala (Arthur H. Geissler) to the Guatemalan Minister
for Foreign Affairs (Eduardo Aguirre Velásquez).*

GUATEMALA, November 2, 1929.

MR. MINISTER: Referring to previous correspondence between the Legation and the Guatemalan Foreign Office concerning the claim of P. W. Shufeldt against the Government of Guatemala, which claim has been espoused by the Government of the United States, it is agreed by the two Governments that this question shall be submitted to Sir Herbert Sisnett, Chief Justice of British Honduras, as Arbitrator. The question to be submitted to the Arbitrator is as follows:

1. Has P. W. Shufeldt, a citizen of the United States, as cessionary of the rights of Víctor M. Morales I. and Francisco Nájera Andrade, the right to claim a pecuniary indemnification for damages and injuries which may have been caused to him by the promulgation of the Legislative Decree of the Assembly of Guatemala No. 1544, by which it disapproved the contract of February 4, 1922, for the extraction of a minimum of 75,000 quintales of chicle, in a defined area in the Department of the Petén, the cession of Nájera Andrade and Morales in favor of Shufeldt having been made by contract of February 11, 1924 [1922] ?
2. In case the Arbitrator declare that Shufeldt does have the right to having an indemnification paid to him by the Government of Guatemala, what sum should the Government of Guatemala in justice pay to the Government of the United States for the account of Shufeldt?

It is proposed that the following procedure shall govern the presentation and adjudication of the case by the Tribunal, and the payment of the award, if any:

1. The Tribunal shall sit at Belize, residence of the Arbitrator.
2. Each Government shall appoint one or more representatives who shall have the authority necessary to appear before the Arbitrator and to represent it.
3. The first day of February 1930 is fixed as the day on which the representatives of the parties shall present their credentials to the Arbitrator either in person or through their respective consular officers. If they be in good and due form, the Arbitrator shall declare the proceedings open.
4. The representatives of the parties shall submit to the Arbitrator a written statement which shall comprise their respective points of view in the relation of the facts, the statements of the juridic point upon which their cause is based and all the proofs which they may wish to present as basis for their claims. They may be set forth in English or in Spanish.

The term, within which the statement of their cause must be presented by the parties, is that of thirty days counted from the time when the Arbitrator declares the proceedings open.

5. Each party shall deliver to the other party a textual copy of its statements, allegations and proofs when the originals thereof are submitted to the Arbitrator.

6. Within sixty days counted from the day on which the last of the parties presented the statement of its cause, in conformity with article 4, each party shall have the right to present a written reply to the allegations of the other party. A copy of that reply shall be delivered to the other at the time of being presented to the Arbitrator.

7. Within thirty days following the termination of the sixty days' period mentioned in article 6, the parties may present oral or written arguments to the Arbitrator, summarizing the proofs and arguments produced in the statements, but no additional evidence shall be presented except at the request of the Arbitrator.

8. Each Government shall have the right to exhibit all documents pertaining to the subject-matter of the arbitration, and the original documents or copies certified by a notary or public officials, whatever may be their character, and to request the production of such documents by the other party.

9. The Arbitrator shall have authority to establish such rules of procedure as he may deem opportune and conducive to the success of the arbitral proceeding, always provided that they do not contradict the bases laid down in the protocol of arbitration.

10. The Tribunal shall keep a record of its proceedings. The two Governments shall assign to the Tribunal such amanuenses, interpreters and employees as may be necessary. The Tribunal is authorized to administer oaths to witnesses and to take evidence on oath.

11. The decision of the Tribunal shall be given within a period of sixty days following the termination of the thirty days' period mentioned in article 7. The decision, when made, shall be forthwith communicated to the Governments at Guatemala and Washington. It shall be accepted as final and binding upon the two Governments.

12. Each Government shall pay its own expenses and one half of the common expenses of the arbitration.

13. The amount granted by the award, if any, shall be payable in gold coin of the United States at the Department of State, Washington, within one year after the rendition of the decision by the Tribunal, with interest at six per centum per annum, beginning to run one month after the rendition of the decision.

14. The honorarium and emoluments of the Arbitrator shall be as agreed upon in previous correspondence.

I avail myself [etc.].

ARTHUR H. GEISSLER

DECISION OF THE ARBITRATOR, JULY 24, 1930.

The questions submitted by the protocol of arbitration, dated 2nd November 1929 (and referred to in the record as marked 1), for the decision of the Arbitrator are—

1. Has P. W. Shufeldt, a citizen of the United States, as cessionary of the rights of Víctor M. Morales I. and Francisco Nájera Andrade, the *right* to claim a pecuniary indemnification for damages and injuries which may have been caused to him by the promulgation of the Legislative Decree of the Assembly of Guatemala No. 1544, by which it disapproved the contract of February 4, 1922, for the extraction of a minimum of seventy-five thousand quintales of chicle in a defined area in the Department of Petén. the cession of Nájera [Andrade] and Morales in favor of Shufeldt having been made by contract of 11th February 1922?

2. In case the Arbitrator declare that Shufeldt does have the right to have an indemnification paid to him by the Government of Guatemala, what sum should the Government of Guatemala in justice pay to the Government of the United States for the account of Shufeldt?

Two questions only have been referred for arbitration, and I shall endeavor to confine myself to them only and the points raised by the United States Government and the Guatemala Government bearing on these questions.

Where any point raised is not dealt with, it must be taken that I did not consider it necessary or material or of sufficient importance.

I fully appreciate the honor which has been done me by the United States and Guatemala Governments in appointing me Arbitrator in this case, and I have given all the evidence put before me and all the points raised my most careful consideration with the hope of arriving at a just, fair and impartial decision.

I do not propose to review all the cases quoted but will give my decision on any point in accordance with what I consider to be the law based on recognized authority.

On the question of evidence over which there was some argument, I may point out that in considering the cases quoted on both sides it is clear that international courts are by no means as strict as municipal courts and can not be bound by municipal rules in the receipt and admission of evidence. The evidential value of any evidence produced is for the international tribunal to decide under all the circumstances of the case.

The evidence acted upon in this case conforms with paragraph 8 of the protocol of arbitration and is such as brings moral conviction to my mind.

The foundation of this claim is the contract dated the 4th February 1922 made between David Pivaral B. as Secretary of Agriculture in the name of and in representation of the Government of the Republic of Guatemala and Messrs. Francisco Nájera A. and Víctor M. Morales I.

The provisions of this contract are shortly and where material as follows:

1. Permission was granted to Nájera and Morales to extract chicle in a section of the public lands situate in the Department of Petén in Guatemala.

2. The period of the concession was ten years from the date it was signed, which period could be extended for five years more by mutual agreement.

3. Nájera and Morales bound themselves to extract and export a minimum quantity of seventy-five thousand quintales of chicle during the ten-year term of contract.

4. Nájera and Morales bound themselves to export one thousand quintales of chicle as a minimum during the first year contract in force, five thousand in the second year and eight thousand five hundred in the next following years.

5. Five dollars American gold was to be paid to Guatemala Government for every quintal of chicle exported—a quintal to be considered as 46 kilos net. This payment was to include the extraction and export duties, the municipal taxes and whatever taxes may be imposed in the future.

6. Payments to be made to the Government, to be made to National Treasury at Guatemala City or any other place designated by the Government of Guatemala.

7. One year from date of signing contract Nájera and Morales obligated themselves to form a company under existing laws of Guatemala, the same period being allowed for beginning the works of the installation of the business.

8. The rights granted to Nájera and Morales by the Government of Guatemala under contract were—

- (a) To introduce free of import duty machinery, implements and tools needed for the extraction and export of chicle.
- (b) To make free use of the natural resources of contracted zone, &c.
- (c) To use rivers, lakes &c., for conveyance of their products.
- (d) To introduce laborers and employees of other nationalities except negro and yellow races.
- (e) To make plantations of grain within the area ceded for exploitation, but in such case to pay Government of Guatemala two thousand dollars annually and in advance as rental duties for the area contracted.

9. Nájera and Morales bind themselves—

- (a) To deposit in National Treasury five thousand dollars American gold within fifteen days from the date contract approved as guarantee of the obligations assumed.
- (b) To prevent fraudulent exploitation of forests within area.
- (c) Within five years to demark and clean limits of area.
- (d) To give preference of employment to Guatemalan citizens.
- (e) To render monthly statement to authorities &c.

10. The rights ceded by this contract will be cancelled:

- (a) For failure to deposit at the proper time the five thousand dollars, which deposit Nájera and Morales bind themselves to make in accordance with clause 9 paragraph (a) of contract.
- (b) For failure to extract and fabricate the annual amounts of chicle referred to in clause 3.
- (c) For infraction of the privileges granted to introduce implements &c., exempted from duties.

11. The employees, station masters, chicle inspectors designated by Nájera and Morales by agreement with the authorities of the Department shall have the character of auxiliary authorities for the purpose of preventing and prosecuting fraudulent exploitation and for maintaining order in the contracted zone and prosecuting offenders.

12. Exemption from military service &c.

13. Nájera and Morales obligate themselves to maintain in good condition the natural products of the zone as are not in a condition to be exploited and that they shall effect the extraction of resin in such a manner that it shall not harm or destroy the life of the trees.

14. This chicle negotiation is subjected to the supervision of the respective authorities and to the laws and fiscal by-laws now in force.

15. At expiration of contract or any extension of same, the construction and improvements constructed in the area contracted, such as dwellings, warehouses, roads, telegraph, telephone and railroad lines, railroads, tramways, artesian wells, or any other constructions whatever will pass over to the benefit or possession of the Government.

16. It is expressly agreed between both contracting parties that on entering the fifth year that the contract is in force, they will proceed to make an inventory of all the improvements, constructions, implements, working material &c., which the company may have introduced into the area for the business undertaken and that this inventory will serve as a basis for the delivery of the improvements specified in preceding paragraph upon the expiration of the contract or extension of same. This inventory may be repeated or amplified as many times as the Government may deem advisable.

17. It is also agreed upon that in case of any question arising from failure of fulfilment or misinterpretation of any of the clauses of this contract the subject will not be taken by any means to the courts of justice nor shall the case be referred to diplomatic channels but that any question which may arise will be submitted to two arbitrators, appointed one by each party, and in case of disagreement between both arbitrators they will appoint a third arbitrator whose action or finding on the subject will be deemed final or just without appeal.

18. The Government may dispose of the sum of five thousand dollars deposited as guarantee of this contract as per clause 9 (a) which amount in case of revocation or cancellation of the contract can not be claimed or refunded to them. This five thousand dollars American gold shall be repaid by export duties which correspond to the last lots upon which duties should be paid to the customs.

19. This contract only grants the right to Nájera and Morales to extract and export the chicle from this area and the uses and services which have been mentioned, but the Government expressly reserves to itself the right of absolute dominion and possession of the section or area mentioned; therefore the above-mentioned gentlemen can not withhold its delivery upon expiration of the contract or extension of the same, or upon declaration of the cancellation of the rights under the contract for the reasons specified in same.

This contract was approved of by the President of the Republic of Guatemala on the same day it was signed, and the contract with the President's

approval was published in *El Guatemalteco*, the official newspaper of the Government of Guatemala, in its issue of the 18th February 1922 (see annex 2 of United States Case).

On the 11th February 1922 the five thousand dollars American gold was paid into National Treasury as provided for in paragraph 9 (a) of the contract and a receipt given therefor signed by the National Treasurer, E. Hernandez, and sealed with the seal of the National Treasury (see annex[es] 1 A and 1 B of United States Case).

On the 1st March 1922 in the Acting President's message to the National Legislative Assembly at the opening of its ordinary sessions, it is stated that "the respective Secretaries of State will give you a detailed account in their [printed] 'memorial.s]' which they will present to you of each and every account of the work which has been accomplished by their respective offices during the year just passed" (see annex 8, United States Case).

In *El Guatemalteco* of the 15 April 1922 (annex 11 of United States Case) in the report of the proceedings of the National Assembly of 14th March 1922 it appears that the Minister of Agriculture presented, with accompanying documents, a report or memorial of the work verified by that Department during the past fiscal year. This report and accompanying documents were referred to the National Assembly's Commission on Agriculture, who in reporting thereon submitted the following resolution:

The Legislative Assembly is now informed of the work consigned in the memorial rendered by the Secretary of State in the despatch of agriculture for the year 1922.

On the 25th April 1922 the report of the Commission of Agriculture was approved (see annex 12, United States Case).

This memorial is required to be submitted to the National Assembly by article 75 of Constitution of Guatemala and must in the absence of proof to the contrary be presumed to have contained copies of all the contracts made, including the one in question, or some reference to them.

The Legislative session closed on 29th May 1922, and in June was printed and published at the National Printing Office of the Republic a document purporting to be "the memorial of the Minister of Agriculture presented to the National Legislative Assembly at its ordinary session of 1922" and bearing in print the official seal or stamp of Guatemala. This forms annex 10 of the United States Case and is put in by them as the memorial of the Minister of Agriculture, and this document contains a copy of the contract and other mention thereof.

The Guatemala Government contend that this document is not the memorial of the Minister of Agriculture and that the memorial contained no mention of the contract and that the contract was never submitted to the Legislative Assembly, but would appear to have been deliberately and wilfully withheld from them.

This would seem to be a charge against the then Government of Guatemala, but I do not see how it can discredit Shufeldt, unless he was in league with the Guatemala Government against his own interests and then one would be as bad as the other. I place no value on this statement.

The Guatemala Government put in a photostat copy of a typewritten document (exhibit 25) which they contend is the memorial of the Minister of Agriculture and which contains no mention of the contract. They also put in as exhibit 27 a similar document to annex 10 of United States Case, apparently to show that as it had not been printed till June it could not have

been the "printed memorial" which the United States Government stated was laid before the Legislature which closed in May. The United States Government did state in their Case that the printed memorial was laid before the Legislature, but this was clearly a mistake as will be seen later; the memorial must have been laid in type and printed after. No further use was made of this exhibit 27 by the Guatemala Government.

This document (exhibit 25) is word for word the same as the first and signed portion of annex 10, but without the accompanying documents contained in annex 10. On a perusal of this exhibit 25 it is quite clear that it is not the whole memorial, in fact exhibit 25 would seem to be only the Minister of Agriculture's report on the memorial of his Department for he says on page 9 of exhibit 25 (translation):

The memorial of the General Board accompanying *this report*, will give you an idea of what that important office has done towards the development of their program.

It is clear therefore that there were other documents submitted with the report and together forming what is called the memorial, and this is borne out by references in this report (exhibit 25) to other parts of memorial which are not included in exhibit 25 but are in annex 10 of the United States Case and exhibit 27 of the Guatemala Government Reply; e.g., on page 17 of the translation of exhibit 25 the Minister of Agriculture says: "If these matters do not appear to you as deserving of your attention, I beg to request your glancing at the initiative exposed at the end of this memorial (appendix A)." Appendix A is included in annex 10 and exhibit 27. Again on page 20 of exhibit 25 he says: "The statistical tables shown in another part of this memorial are a part and give an idea of the work done by that important dependency of the Ministry."

On page 21 of the translation of exhibit 25 he states: "In order to bring that idea into practice, I have dared to formulate a complementary project to our immigration law of 1909, which, marked with the letter B, in the appendix to this memorial" (contained in United States annex 10, p. 175, and in Guatemala exhibit 27).

On page 22 he says: "These ideas receive a more ample development in the initiative I permit myself to submit in the appendix of the memorial marked with the letter C, which deals with the repopulation of the forest [*of forests*] and to which I request your benevolent attention" (United States annex 10, p. 182, and Guatemala exhibit 27).

All these references are found in the printed copy of the memorial (United States annex 10 and Guatemala exhibit 27) but not in Guatemala exhibit 25 which the Guatemala Government claim to be the memorial.

The Guatemala Government in further support of their contention that the contract was not submitted to Assembly and [that] no mention was made of the contract in the memorial, contend that the report (exhibit 29 of the Guatemala Government) of the Agricultural Commission of the Assembly on the memorial does not mention the contract. This report however does mention certain contracts which they say are *not* included in the memorial. Had the contract of the 4th February 1922 not been included it must be presumed that it would have been mentioned. As a matter of fact the contract is given in full with the President's approval just as published in *El Guatemalteco* at pages 145-49 of annex 10 and is also mentioned in the list of Executive orders (*acuerdos*) on page 167 as having been approved; that the Commission considered this list is clear from the following passage

therein at bottom of page 3 of the translation of the report: "Of the lecture of the resolutions passed during the year, we make a *résumé* &c."

In further support of this contention the Government of Guatemala submitted a certificate from Raf. Castellanos A. and Ramón Calderón, Secretaries of the Legislative Assembly of Guatemala, dated 18th February 1930 to the effect that in the *text* of the memorial presented by the Ministry of Agriculture in the year 1922 to the Legislative Assembly, relative to the work undertaken by said Ministry from March 15, 1921, to March 15, 1922, no mention was made to the contract celebrated on February 4th 1922 between Ministry of Agriculture and Messrs. Francisco Nájera Andrade and Víctor M. Morales I.

What is the exact meaning of the word *text* in this certificate I am not prepared to say. In view of the fact that the Guatemala Government contend that the report portion of the memorial is the memorial, it may mean text of the report part of the memorial only or the text of the part other than the report or the whole memorial. It is too indefinite for me to act on in any case, particularly in face of evidence before recited and other evidence which I have not cited.

In the face of the facts already related, exhibit 25 of the Guatemala Government is certainly not the whole memorial, and those facts and others to be mentioned later lead me irresistibly to the conclusion that the contract was submitted to the Legislative Assembly in the memorial and that that body were fully cognizant thereof, and I so find.

I will now consider the question of the legality of the contract, apart from the question of its submission to the Legislative Assembly.

Where a contract has been made by the Executive and duly reported to the Assembly and approved—and where a document is laid before the Assembly in accordance with the law and no objection taken, it must be taken to be approved—it is difficult to see what more is wanted to make it legal, and the fact of my having found that the contract was submitted to the Legislative Assembly settles most of the grounds of illegality urged by the Guatemala Government, and it is not really necessary for me to discuss further the legality of the contract. I will however discuss the points on which the Guatemala Government contend the contract is illegal, and they are eight in number, as given in their Case (p. 16).

(a) The Minister for Agriculture had no authority to make same.

(b) The President had no authority to approve of the same.

I will deal with these two together.

In support of these contentions the Guatemala Government tender a certificate from Raf. Castellanos A. and Ramón Calderón, Secretaries of the Legislative Assembly of Guatemala, to the effect that in the month of February 1922 the Executive Power was not authorized by the Assembly to celebrate contracts as prescribed in paragraph 6th of Article 54 of the Constitution, which gives among the attributes of the Assembly the power to authorize the Executive to make contracts, and to approve or disapprove of contracts made under such authority, and in exhibit 6 of the Guatemala Case Mr. J. A. Mandujano, a Guatemalan lawyer, gives it as his opinion that the Government was not authorized by Congress to enter into any contract under the provisions of article 54, paragraph 6.

The American Government, however, refer me to article 650 of chapter 6 of title XIII of the Fiscal Code of Guatemala, which is to the following effect: "The authorization to exploit national forests will be conceded by

means of contracts which will be celebrated with the Executive or by leases which will be celebrated with the Jefe Político."

As to this the Guatemala Government contend that the contract is one of lease and therefore not within article 650. This would imply that if the contract is one of exploitation and not of lease article 650 would apply. The question of lease will be dealt with later.

The United States Government also submitted that under Decree No. 12 of the Legislature dated the 20th December 1921 the Executive Power was authorized to make such contract.

This decree is published in *El Guatemalteco* vol. C, no. 83 of the 24th December 1921 and is as follows:

ARTICLE 1. The Executive Power is amply empowered to enact all dispositions in respect to regulating the economic condition of the State.

ARTICLE 2. Executive Power shall report to the Assembly during its ordinary sessions of 1922 such acts as he may dictate.

The Guatemala Government contend that this does not empower the Executive to make contracts, and in support of this rely on the opinion of J. A. Mandujano and Marcial Salas, Guatemalan lawyers, to this effect: "The Legislative Decree No. 12, second series of December 20 [th], 1921, did not confer powers to the Executive to celebrate contracts; said faculties can only be granted by the Assembly under a clear and categorical form." The Guatemala Government in their Reply, section 81, say: "In order to further show that Decree No. 12 . . . does not grant any power to the Executive to execute contracts, the Republic [of Guatemala] exhibits Decrees 1199, 1312, and 1500 made subsequently thereto, by which it will be seen that the Legislative Assembly granted the Executive the power to execute contracts specifically. A comparison of these last-mentioned decrees with the former (annex 7) will be conclusive in this point."

These three Decrees 1199, 1312, and 1500 (exhibits 43, 44, and 45 of Guatemala) were passed by the Assembly on the 27th May 1922, 5th May 1924, and 3rd May 1927 all after the contract had been made, and could not in justice be allowed to affect acts done and rights acquired under a previous decree of the Assembly. I can see no grounds for doubting that the Executive had the power to contract. The President must have known whether he had the power to contract or not, and the publication of the contract is certainly not in accord with his trying to get away with something he was not legally entitled to.

(c) The period of duration thereof was contrary to the law of the Republic of Guatemala.

(d) The lease or rental of the territory in question without previous public auction was contrary to [the] law [of the Republic of Guatemala].

In support of these contentions the Guatemala Government refers to the opinion of Mr. J. A. Mandujano, a Guatemalan lawyer (exhibit 6, sec. 11), who says: "In consequence of articles 1439, 1440, 1443, 1444, 1447, 1459 of the Fiscal Code and 1645 and 1668 of the Civil Code, no property belonging to the Republic can be sold or rented if the sales are not submitted to public auction, and even in those cases the maximum period of rental can not exceed 5 years."

The contract in question is not one of sale or rental of Guatemalan property and this is clear from a perusal thereof particularly section 19; it merely gives the right to extract chicle, with certain privileges in connection there-

with among which is the one to make plantings of grain which if exercised was to be paid for by annual payments. This privilege in my opinion can not change the whole character of the contract from a concession to extract chicle to that of a lease of the land, this would be a case of the lesser containing the greater; nor can the use of the terms "tenant", "lease", "lessee", &c., in documents or papers unconnected with the contract as referred to in certain parts of the case.

The protocol refers to Shufeldt as cessionary and I can not but presume that the Governments who signed the protocol carefully weighed the significance of the terms they used.

(e) The duties payable thereunder were less than those required to be collected by the said law.

The contract having been approved by the Assembly, any variations in the rate of duty then in existence would be made good even if the Executive had no previous authority to make such change. It is not therefore necessary for me to comment further on the matter, but the Guatemala Government in support of their contention do not refer me to the law on the subject but submit (1) the opinion of Mr. J. A. Mandujano, as follows: "According to the customs-house tariff which is a law of Guatemala the exportation of each quintal of chicle is impose [*sic*] a tax of \$7.00 American gold be it the product of public or private lands. These exportation duties were in force on the 4th February 1922 and only Congress has power, as per article 54 of the Constitution to modify or abrogate them", and (2) a certificate from F. Fuentes Dias, Under Secretary of State in the Department of Finance and Public Credit, to the effect that the export duty on chicle in February 1922 was seven dollars per quintal. Supposing however that these two statements be correct from a general point of view, they do not show that the tax may not be altered under certain special circumstances.

Article 54 of the Constitution, referred to in Mr. Mandujano's opinion, provides in section 12 for the giving by the Legislative Assembly to the Executive extraordinary power when demanded by necessity or the interest of the State; and in the *El Guatemalteco* of the 17th January 1922 it is reported that at the eighteenth session of the Assembly on 2nd January 1922 as follows: "After being read, the report of the Combined Committee on Legislation and Finance was put to a discussion for once only and that point of the resolution which read as follows was approved:"

By virtue of the decree issued by the Assembly during the present extraordinary session under date of the 20th of last month (Decree No. 12, Second Series) the Executive is fully empowered to legislate upon fiscal matters included in the economic adjustment and in consequence the Department of the Treasury and Public Credit may enact whatever tax law it may deem adequate, or modify the one now in force (Decree 1153) as it sees fit and to enact any other laws on the economic order which in its judgment may promote the well-known interests of the State.

It would seem therefore that the Executive had full powers to reduce the tax as was done in the contract, if considered advisable.

In this connection I will mention that in a bulletin issued by the Director General of Customs purporting to be printed at the Government Printing Office and bearing the official stamp or seal of the Department, put in

by the United States as annex 8 to their Reply, I see that "Chicle pays 7 cents American gold per lb. (order of October 31, 1914) and pays by contract 5 cents American Gold per pound (vol. 101 nos. 30, 31 & 56 of *El Guatemalteco*)". (The Guatemala Government objects to this annex as not being "certified, not official and incomplete"—but make use of it as evidence for themselves: p. 5 of their Final Argument.) I can not avoid the conclusion that the Executive had the power to do what they did. I may point out that in a volume of the laws of Guatemala entitled "Recompilation of the Laws of the Republic of Guatemala 1921-22", published at the Government Printing Office in 1927 and bearing the official stamp or arms, I find copy of a contract made between the Minister of Forests, on instructions of the President, with the Chicle Development Company for the extraction of chicle approved by the President on the 2nd February 1922. In this contract the duty payable on chicle is five dollars per quintal. The contract in this case is also contained in this same volume. This would point to the fact that the contract was deemed and treated as legal up to the time of this publication.

(f) The authority to import free of duty purported to be given under clause 8 of the said agreement was contrary to the said law.

In view of the powers of the Executive as shown above it is hardly necessary to discuss this point.

(g) The authority to constitute the employees of P. W. Shufeldt & Company to be government officials purported to be given in clause 11 of the said agreement is contrary to law.

Clause 11 of the contract as I read it can not be held to confer authority on the concessionaires to constitute their employees government officials, it only provides that the employees by agreement with the authorities shall have the character of auxiliary authorities. The government authorities must sanction the assumption of any such character and there is no general power given to concessionaires to sanction the assumption of such character without the approval of the authorities. The Guatemala Government refer me to the opinion of Mr. J. A. Mandujano (exhibit 6, translation) who says: "The appointment of any person having official authority corresponds to the Government of the Republic, but the authority to effect these appointments can not be delegated or bestowed on any person", but why or on what authority he does not say.

(h) The said agreement was not submitted for nor received the approval of the National Assembly.

This point has already been dealt with.

I will now deal with events subsequent to the making of the contract and giving rise to Shufeldt's interest in the contract and to the present proceedings.

On the 11th February 1922 or about seven days after the making of the contract the concessionaires assigned all their rights and obligations without reservation whatever to Shufeldt on the following terms: (1) Shufeldt to pay on the day of assignment five thousand dollars American gold and continue to pay during life of contract five thousand yearly on same date "of this instrument being drawn" and in addition three dollars American gold for each hundredweight of chicle extracted; (2) Shufeldt

to make all payments the concessionaires are under the contract bound to pay to the Government (United States annex to Case, No. 3).

On 1st July 1922 Nájera and Morales notified the Minister of Agriculture of the transfer to Shufeldt and asked that Shufeldt be considered as concessionaire under contract and that the authorities in Petén be so informed.

On the 7th July 1922 Shufeldt also reported the transfer and made a similar request, and on the 10th July the Minister of Agriculture instructed that Shufeldt be so recognized.

On 25th April 1922 Deputy Franco in a motion in the National Assembly proposed the following decree—

CONSIDERING

that the constitutive law of the Republic empowers the Executive to grant concessions for a term of 10 years to those introducing or establishing new industries in the Republic; that without character of novelty some persons under pretended contracts with the Government have succeeded in obtaining true monopolies for the exploitation of well-known industries in the country and that with it not only are the collective rights hurt, but it violates the dispositions in article 20 of the Constitution of the Republic.

THEREFORE

the National Legislative Assembly decrees:

ARTICLE 1. Under no circumstances or whatsoever pretence nor in any form may concessions be granted for the introduction or exploitation of industries already known in the country.

ARTICLE 2. The concessions granted prior to the decree are declared null with no value or effect and in fact lapsed even though in its granting the form employed was that of a contract.

This motion was referred to the Commission of Legislation and Constitutional Points who reported against it saying as to article 2, that the decree "would establish a disposition of retroactive effects contrary to the general principles of right" and on the 17th April 1923 Mr. Franco's motion was rejected.

During the debate on this motion it was proposed that a special study be made of all the contracts made during the year, but this was rejected. The present contract was clearly one of the contracts made during the constitutional year in which the motion was made, it had been published in the gazette before the motion was made and also purported to have been laid before the Assembly in the usual way, in the Minister of Agriculture's memorial. If therefore further evidence of approval of the contract was needed here we have it. In negating the resolution we also have approval or sanction of the monopoly which it is contended the contract created, and which was one of the grounds of disapproval stated in the proposed decree submitted by the Commission on Agriculture to the Legislative Assembly in their report which led to passing of the decree disapproving of contract on the 22nd May 1928—but not mentioned in the decree as eventually passed.

On the 16th January 1923 in accordance with the provisions of section 7 of the contract Shufeldt and one Don Clodoveo Berges entered into

partnership for the purpose of exploiting and exporting chicle from Department of Petén in complete conformity with the requirements of the contract, on the following terms, so far as material to this case:

1. The name of the firm will be P. W. Shufeldt & Co. and the partner Shufeldt shall have exclusive use of it, (2) society to exist ten years, Mr. Berges to have right to withdraw from the company at any time, in which case he shall have the right to collect his capital with six per cent, (3) the partner Shufeldt contributes as capital the concession of which he is grantee, (4) the partner Berges will contribute the sum of twenty-five thousand dollars American gold and is obligated to put the same sum in the funds of the company as soon as the business demands it, (5) the partner Berges has no right to share in profits until his contribution is made, (6) in case the sum of twenty-five thousand dollars gold as contribution of partner Berges is not handed over within thirty days after a demand made in writing this deed of partnership will be non-existent.

Mr. Berges never paid up the twenty-five thousand dollars and died in 1924 having no claim whatever on the partnership. On 29th March 1928 Shufeldt entered into partnership with David Davidson on similar terms to previous partnership, except that Shufeldt contributed as capital the right of exploiting and extracting chicle but will remain the only owner of the concession. In the articles of incorporation is recited the death of Berges without his having contributed his twenty-five thousand dollars. Davidson has never contributed his twenty-five thousand dollars, and he therefore has no claim or interest whatsoever in the partnership or concession (annex 11 to United States Reply). The question raised on this partnership will be dealt with later.

On 24th April 1923 a petition by the Peteneros was presented to the Legislative Assembly, asking for a revision of the contracts with the Chicle Development Co., with Nájera and Morales, and with Attorney Leonardo Lara and stating that the Nájera and Morales contract had been transferred to Shufeldt. This petition was referred to the Agriculture Commission, and the Minister of Agriculture forwarded to the Legislative Assembly certified copies of those contracts on the 30th April 1923, about one year after the signing of the contract in question (see exhibit 7 of Guatemala Government). This petition, judging from exhibit 7, is still with the Commission on Agriculture—but here is further evidence of the contract being brought to the notice of the Legislature. From these facts the Legislature knew of the contract in April 1923, and did nothing for about five years. It was no doubt difficult to do anything in face of their previous action, but it was up to the Legislative Assembly to move, and do their duty (if any), and on what grounds it is stated that influence was brought to bear on the Commission on behalf of parties interested I fail to see.

Certainly Shufeldt would not seem to have tried to use any influence with Assembly as he wrote to the President on the subject of this petition and the President replied assuring him that he need have no fear that the procedure of the aforementioned persons (the petitioners) will injure the legitimately acquired rights. Being thus assured by the Head of the Government why should Shufeldt try to influence the Commission? Had Shufeldt addressed the Assembly as the Guatemala Government in section 35 of their Answer seem to think he ought to have, there might have been more reason for thinking he was trying to influence the Assembly.

The contract continued in force up to the 22nd May 1928, when Decree No. 1544 was passed by the Legislative Assembly disapproving the contract. During all these six years Shufeldt had been carrying out his contract, expending money on it and paying what the contract called for to the Government. Relying on the good faith of the Government he expended large sums in providing the necessary appliances, roads &c., for facilitating and expediting the extraction and export of chicle in the hope of recouping his expenditure by the time the contract expired (see annex 14 A of United States Case, p. 189).

During these six years the Government—and in speaking of the Government I mean the Executive who must be presumed to be acting in accordance with law and whose acts, those dealing with the Government are justified in treating as acts of the Government—recognized and treated the contract as a legal contract, as for instance—

(1) The Government received the five dollars a quintal on all the chicle exported and gave receipts therefor, and the two thousand dollars a year in respect of plantings in the area.

(2) On 28th February 1928 the President wrote to Shufeldt about *ceding* "part of the land which you have contracted" (see annex No. 28, United States Case).

(3) On the 2nd May 1927 the Minister of Agriculture wrote to Shufeldt, acknowledging receipt of "a copy of the detailed report of the improvements made by you in the zone of Petén, which you are working as grantee in accordance with the respective contract". This inventory is required by section 16 of the contract.

The Guatemala Government, in section 37 of their Answer, point out that this inventory was overdue and had to be asked for. This may be so, but the Guatemala Government accepted the inventory without protest and took no action; and it was certainly not a ground on which the contract was cancelled, and whatever cause of complaint there may have been was waived.

In view of my finding that the contract was laid before the Legislature and approved by them, it is not necessary for me to deal with the second point raised by the United States Case, viz., that the Guatemala Government having recognized the validity of the contract for six years and received all the benefits to which they were entitled under the contract and allowed Shufeldt to go on spending money on the concession, is precluded from denying its validity, even if the approval of the Legislature had not been given to it.

I may however state on this point that in all the circumstances I have related and the whole case submitted to me, I have no doubt that this contention of the United States is sound and in keeping with the principles of international law and I so find.

I will now pass on to a consideration of the decree which put an end to the contract, and the points raised in connection therewith.

It is not necessary for me to go into what led up to the enactment of the decree, or the influencing causes, suffice it to say that as shown in the decree itself it was not due to any action of Shufeldt's. On 22nd May 1928 the Legislative Assembly of Guatemala passed Decree No. 1544 which is as follows:

The Legislative Assembly of the Republic of Guatemala consider that the contract celebrated on the 4th February 1922, by the Secretary of State in charge of the Ministry of Agriculture and Messrs. Francisco Nájera Andrade and Victor M. Morales I. by virtue of which these latter are given *permission* for the *extraction of chicle* in a zone of the public lands situate in the Department of Petén and defined in that said contract, is harmful to the national interests, in violation of dispositions and prohibitions defined under the laws of the Republic and especially those contained in articles 653, 1458, 1459 of the Fiscal Code, and that it is within legislative attributions to approve or disapprove contracts of the nature of that in question—

Therefore, be it decreed:

ONLY ARTICLE: The contract in question is disapproved. The Executive should take such measures and emit such dispositions as the case demands, to the effect that the zone of public lands be returned to the power of the State. Passed to the Executive for publication and compliance.

This decree was approved of by the President and published in the *El Guatemalteco* of 7th July 1928. This brought the contract summarily to an end, thus depriving Shufeldt of all his rights under the contract.

The grounds on which the decree is based are three:

- (1) harmful to national interests,
- (2) in violation of dispositions and prohibitions defined under the laws of the Republic and especially those contained in articles 653, 1458, 1459 of the Fiscal Code,
- (3) that it is within legislative attributes to approve or disapprove of such contracts.

As to (1) and (3), it is perfectly competent for the Government of Guatemala to enact any decree they like and for any reasons they see fit, and such reasons are no concern of this Tribunal. But this Tribunal is only concerned where such a decree, passed even on the best of grounds, works injustice to an alien subject, in which case the Government ought to make compensation for the injury inflicted and can not invoke any municipal law to justify their refusal to do so.

As to (2), the provisions of the Fiscal Code referred to relate solely to leases of national forests and leases of national real property. Article 653 is found in title 6 of the Fiscal Code in the same title and chapter that article 650 referred to before is found, and on a consideration of the two articles under same title and chapter I come to the conclusion that article 653 refers to leases by the Jefe Político and not to contracts celebrated by the Executive for the exploitation of national forests as provided by article 650. Articles 1458 and 1459 deal with the alienation of national property.

It is significant that the grounds of disapproval are inherent in the contract and not due to any breach of the contract. According to the Guatemala Government the contract was null and void *ab initio* and never had any existence, to set up a breach of the contract is to admit a legal contract. I will however consider the points raised.

The Guatemala Government in section 34 of their Case contend that this decree establishes the fact that the contract was null and void *ab initio*. I can not agree with this contention, but as I have already found

that the contract was a valid contract made by the Executive and approved by the Legislature, it is not necessary therefore to discuss this point.

In sections 38 and 39 of their Case the Guatemala Government contend that the contract provides for its own automatic cancellation, in the event of the minimum quantity of chicle specified not being exported and that such minimum was not exported in 1924 and 1925. In section 3 of their contentions at the end of their Case, they contend that the said agreement of the 4th February 1922 was abrogated, cancelled and avoided under the terms thereof, by reason of the grantee's failing to comply therewith "as set out in paragraphs 39 and 40 hereof".

There is however no provision in the contract for automatic cancellation, the contract says "will be cancelled" and contemplates a declaration of cancellation, before actual cancellation, as section 19 of the contract says that the Government expressly reserves to itself the right of absolute dominion and possession of the section or area mentioned, therefore the concessionaires can not "withhold its delivery upon expiration of the contract or extension of same, or upon declaration of the cancellation of the rights under the contract for the reasons specified".

If there was a contravention of the agreement as alleged, it is clear from the evidence that the Government took no steps to cancel the contract and did not refer the matter to arbitration under the terms of section 17 of the contract, and that the Government continued to recognize the validity of the contract and receive the benefits accruing to it thereunder up to the time of the passing of the decree—a matter of about three years after the alleged breach—thereby in my opinion waiving such breach (if any).

But was there a contravention? The chicle business year runs from about July one year to July next year, and from annex 64 of United States Case and the receipts of the Guatemala Government referred to therein, which I have inspected, there was less chicle extracted in seasons 1923-24, 1925-26, 1926-27 and 1927-28 than called for by section four of the contract, but in the seasons 1922-23 and 1924-25 enough was extracted to cover all deficiencies in the other years and leave a balance over and above the proportionate part for six years of the seventy-five thousand quintales required for the whole period (ten years) of the contract.

Again, section 3 of the contract provides for the extraction and export of a minimum of seventy-five thousand quintales of chicle during the ten years of the contract, while section 4 gives the quantities to be exported each year, but section 10 states that on a failure to comply with section 3, not section 4, the contract will be cancelled. Section 3 has been more than complied with and section 4 would seem to be subsidiary and merely directory to section 3.

In any case the Guatemala Government can not set up this alleged breach as the cause of the cancellation in face of the provisions of the decree.

The Guatemala Government also contend that the contract was "abrogated, cancelled and avoided" by the using of machetes for bleeding the trees instead of a scratcher contrary to law and fiscal regulations, and support this by an affidavit of one Franco J. Perez (exhibit 14) who states that he was employed at Plancha de Piedra in 1925, 1926 and that during that period chicle was bled in the zone in question by the use of machetes.

The contract makes no provisions for the use of machetes, but provides, section 13, that the resin shall be extracted in "such a manner that it

will not harm or destroy the life of the trees" and also that (section 14) "this chicle negotiation is subjected to the supervision of the respective authorities and to the laws and fiscal by-laws now in force". If therefore the law had been broken in this way the authorities could have proceeded under the law; but the Government never having taken any steps to put a stop to this practice which they must have known existed either under the law or by arbitration under the contract, and never having declared the contract cancelled therefor, and having recognized the contract all through, and thus making themselves *particeps criminis* in such breach (if any) of the law, can not now in my opinion avail themselves of this contention.

I may also point out that the use of the machete is not a ground given in the decree for the disapproval of the contract, nor is there any evidence of the trees having been in any way damaged or destroyed by such use.

Having found that the contract was a valid contract and that there was no breach thereof by Shufeldt, the question arises did Shufeldt acquire any rights of property under the contract.

There can not be any doubt that property rights are created under and by virtue of a contract, and the Guatemala Government admit this in section 103 of their Answer as follows: "The Republic of Guatemala does not deny that the grantee or assignee of a legal and binding contract acquires property rights subject to the terms and conditions of the [*such*] contract." There is therefore no need to discuss this question further. Shufeldt did, in view of my findings, possess the rights of property given to him under the contract.

The Guatemala Government however contended (in their Reply, sections 105-107) that notwithstanding that Shufeldt may have acquired rights under the contract in the first instance, yet by forming the company required to be formed under the contract (section 7), and assigning to such company all his rights under the contract, he has divested himself of all his rights and vested them in the company Shufeldt & Company, and that Shufeldt "has no rights under the contract which he could either enforce by action in courts of law or by invoking the aid of the United States as an American citizen".

There was considerable argument on both sides as to whether a partnership was a juridical entity in Guatemalan law and whether the Shufeldt-Berges or the Shufeldt-Davidson partnership was in existence at the date of the decree depriving Shufeldt of the concession, but in the view I take it is not necessary for me to consider those questions. The Guatemala Government contend that the Shufeldt-Berges partnership was in existence, and the United States that the Shufeldt-Davidson partnership was in existence, but it makes no difference which was in existence, or whether any partnership was in existence, as it is not the rights of the partnership that are in question but the personal interest of Shufeldt in the partnership. Had Shufeldt not formed a partnership, the terms of the contract to that effect would not have been carried out, but this could not affect the present question; the Guatemala Government did not take any action in the matter, the contract was being carried out, no injury was done to the Guatemala Government, and if the reason for the provision as to the formation of a company in the contract was what is suggested in section 105 of the Guatemala Government's Reply, viz., to prevent the possibility of the grantee's rights under the said contract falling into the "hands of an alien with the subsequent risk of international claim such as the one that

has actually arisen in this present case", then the Guatemala Government was trying to do what it could not do in the eyes of international law. International law will not be bound by municipal law or by anything but natural justice, and will look behind the legal person to the real interests involved.

The Guatemala Government, by way of showing that Clodoveo Berges had an interest in the partnership, states in sections 26 and 27 of their Reply that Francisco Nájera assigned to Berges for the sum of ten thousand dollars his right to receive under the contract one hundred and fifty dollars per quintal for chicle exported and that there was due to Berges fifty-nine thousand seven hundred and fifty-six dollars and ninety-nine cents on this account, and that this more than covered the twenty-five thousand dollars capital to be brought into the partnership by Berges. This assignment is given as exhibit 31 of the Guatemala Government's Reply, and it is dated the 12th October 1923. On that same day, however, and in the presence of the same parties, Berges assigned to Shufeldt the same rights assigned to him by Nájera for the sum of ten thousand dollars (see annex 50, p. 358, of the United States Case), and I have seen a certified copy of such assignment of the 12th October 1923 furnished me by the United States consul at my request.

I am perfectly satisfied that Berges had no pecuniary interest in the partnership either before or after his death, nor had Davidson at the date of the decree, and that all the rights conferred under the contract to the concessionaires were vested in Shufeldt and he was the only sufferer by the decree terminating the concession and in effect confiscating all his rights and interests therein.

Any other view with regard to this question of partnership would be contrary to the provisions of the protocol of arbitration, which submits this question: "Has P. W. Shufeldt . . . the right to claim pecuniary indemnification . . .?" What does the word "right" in this question mean? It can only mean an equitable right of which international law takes cognizance. It can not mean legal right enforceable only in keeping with Guatemalan law, for if that was so this case never would have been referred to an international tribunal which does not administer municipal law.

If this point raised by the Guatemala Government was sound why should they have consented to arbitration? They referred to arbitration not the rights of Shufeldt & Co. but those of Shufeldt and this notwithstanding the provision in the contract requiring the formation of a partnership, put therein for the purpose of preventing such an arbitration. No international tribunals will allow municipal legal fictions of this sort to prevent them doing strict justice.

The Guatemala Government contend further that the decree of the 22nd May 1928 was the constitutional act of a sovereign State exercised by the National Assembly in due form according to the Constitution of the Republic and that such decree has the form and power of law and is not subject to review by any judicial authority. This may be quite true from a national point of view but not from an international point of view, for "it is a settled principle of international law that a sovereign can not be permitted to set up one of his own municipal laws as a bar to a claim by a sovereign for a wrong done to the latter's subject".

Having dealt with all the points of any importance urged for and against the right of Shufeldt to claim pecuniary indemnification I come to the conclusion and find that he has such a right.

I will now consider the question of damages and will, to begin with, quote the words of the Arbitrator in the claim of *R. H. May vs. Guatemala and Guatemala vs. May*, reported in *Foreign Relations of the United States*, 1900 (p. 673): "I can not pretend to lay down the law concerning damages in clearer words than those of the advocate of the Guatemala Government who uses the following language in the counter-claim: 'The law of Guatemala says Don Jorge Munoz (to which the claimant is subject in this case) establishes, like those of all civilized nations of the earth, that contracts produce reciprocal rights and obligations between the contracting parties; that whoever concludes a contract is bound not only to fulfil it but also to recoup or compensate (the other party) for damages and prejudice which result directly or indirectly from the nonfulfilment or infringement by default or fraud of the party concerned and that such compensation includes both damage suffered and profits lost: *damnum emergens et lucrum cessans*.'" "

The *damnum emergens* is always recoverable, but the *lucrum cessans* must be the direct fruit of the contract and not too remote or speculative.

I will deal with the profits lost first and it seems to me that this is essentially a case where such profits are the direct fruit of the contract and may reasonably be supposed to have been in the contemplation of both parties as the probable result of a breach of it.

The contract at the date of its cancellation or abrogation had been in existence for six years, and the extraction and exportation of chicle was carried on as a going business which was producing substantial profits, and there is nothing to show that these profits would not have continued to the expiration of the contract. The amount of profits earned during this period is shown by the extract from Shufeldt's books, duly certified by his bookkeeper Mr. Julio Urquiola to be one hundred and fifty-six thousand four hundred and eighty-seven dollars and forty-seven cents (\$156,487.47) but deducting four thousand dollars interest on mortgage on Ixlu—Mr. Shufeldt's own property—which I can not hold as properly included, the sum becomes \$152,487.47 which gives a yearly profit of \$25,415 for the six years, and this multiplied by four gives the profits at say \$101,660 which Shufeldt would be entitled to for the four remaining years of the contract. The United States Government in their case claimed \$400,000 as prospective profits, and it was urged by the United States Government that the improved means of transportation carried out by Shufeldt and the fact that he was free from his contract with Wrigley & Co. and could get a better price for his chicle, should be considered in fixing the amount of profit; but taking into consideration Mr. Shufeldt's memorial to the President of the Republic, dated the 30th May 1928 (annex 39 to United States Case), in which he gives details of cost of a quintal of chicle and price obtained showing an "apparent" (?) profit of \$5.00 from which must be paid bagging, freight from Plancha de Piedra to Belize, overhead, interest on money and losses inherent to all business, and states that the profit is very questionable; and also that the largest profits made during the six years were made in the season 1924-25 before the effects of improved transportation had been experienced, I can not see my way to extend the amount of the profits beyond those based on the profits actually obtained during the period of six years.

Dealing with the *damnum emergens* the Guatemala [United States?] Government make certain claims—twenty-one in number—which I will consider in the order in which they are given in the United States Case:

1. Deposit in the Guatemalan National Treasury, under section 9 (a) of the contract, which was in accordance with section 18 of the contract to "be repaid by export duties which correspond to the last lots upon which duties should be paid to the customs". The abrogation of the contract prevented Mr. Shufeldt from exporting these last lots of chicle, therefore Mr. Shufeldt who acquired all the concessionaire rights under the contract is entitled to the refund of this amount—\$5,000.00.

2. Laborers' accounts due on account of advances, \$612.92. Most of these are old accounts the nonpayment of which can not be ascribed to the cancellation of the contract. I allow one hundred and thirty-seven dollars and fifty cents (\$137.50).

3. Chicleros' accounts due on account of advances, \$7,600.91. These are also old accounts the nonpayment of which can not be put down to the cancellation of the contract. I allow one thousand three hundred and nine dollars and ninety-six cents (\$1309.96).

4. Contractors' accounts due on account of advances, \$5,391.59. This amount I allow.

5. Current accounts due, \$5,539.98 less \$3,747.66 paid, leaving \$1,792.23, which I allow.

6. Employees' accounts due on account of advances, \$584.59. I allow this amount.

The amounts set out in numbers 2, 3, 4, 5, and 6 could reasonably have been expected to have been repaid, had the contract continued in existence to the end of its period, the canceling of the contract renders it impossible that they or any portion of them will now be paid. I think these items ought to be allowed.

7. Cost of Finca Ixlu and improvements \$28,790.37. The property was bought by Shufeldt as his own private property and still is his own private property. He states however that it was bought purely for the purposes of his concession and is now no use to him. I can not see my way to allowing this item.

8. Cost of mules and horses on hand, \$9,976.50.

9. Cost of work cattle (oxen), \$619.10.

10. Cost of tools and equipment, \$7,978.70.

11. Cost of boats and equipment, \$4,742.90.

12. Cost of office furniture, equipment &c., \$3,009.10.

13. Cost of general merchandise, \$8,593.24.

All these items, 8, 9, 10, 11, 12, and 13 of expenditure were incurred on the strength of the contract lasting ten years at least, and now they are useless; it must be remembered that the concession covered a very wide area and many offices and large number of employees. There was recovered a sum of \$4,430.00 on sale of equipment making the total amount of items 8, 9, 10, 11, 12, and 13, \$30,489.54, which I allow.

14. Cost of insurance premiums paid, \$13,510.00, less surrender value \$6,700.00 equalling \$6,810.00. This was an insurance on Shufeldt's own life for the purpose of liquidating, in the case of his death, any liabilities arising from his business, which were not covered by other assets. This item I can not allow.

15. Care of live stock, July 4th 1928 to 31st March 1929, \$2,013.24.

16. General expenses 4th July to March 31, 1929, \$17,058.28.

17. Cash expenditures Belize, March 31, 1929, to 31st December 1929 \$4,512.81.

18. Cash expenditures Belize, March 31 1929 to November 6 1929, \$1,377.02.

These are all expenses incurred in consequence of the cancellation of the contract, in closing down the business. They are not impugned in themselves by the Guatemala Government but are stated to be included in damages given in the case of *Shufeldt vs. Wrigley* decided in March 1928. There is however no sufficient evidence to satisfy me on that point and I therefore allow them \$24,961.35.

19. Loss of salary and living expenses March 31 1929 to date of award, \$8,261.20.

This Mr. Shufeldt is certainly entitled to as part of his damages, for the prospective profits allowed are calculated on a net basis and do not include his salary or living expenses.

20. Additional commitments, March 31 1929 to date of award, \$25,968.42.

This item is objected to by the Guatemala Government to the extent of \$20,000.00, which is included to satisfy any judgment that Nájera and Morales may recover against Shufeldt in respect of the annual sum agreed to be paid by Shufeldt to them for the purchase of the concession, on the ground of its remoteness. This objection I uphold and allow only \$5,968.42.

21. Rental of pit-pan wharf in Belize, \$660.00, less rental received for boats \$323.00, leaving \$337.00. This wharf was necessary in connection with the business and the rent due after the cancellation of the contract forms a proper claim. I allow \$337.00.

The United States Government also claim the sum of \$50,000.00 in respect of loss of time, injury to credit, and grave anxiety of mind on account of the cancellation of the contract. Taking all the circumstances into consideration, that Shufeldt was suddenly thrown out of business and the time and expense incurred in endeavoring to come to a settlement with the Government of Guatemala and then in trying to get the United States Government to espouse his cause. I think it just and not excessive to allow \$35,000.00 on this head.

Interest is also claimed by the United States Government. Shufeldt has been deprived of the use of his property—the income on his investment—for two years. This income or property I have assessed at \$25,415.00 per annum, and I think he is entitled in justice to compensation for the loss of such use. I therefore award an amount equal to six per cent on such income for two years, that is \$4,575.100.

The United States Government also claims an award in respect of legal services obtained by Shufeldt in Guatemala and Washington, first in his endeavors to prevent the cancellation of the contract, second, in his efforts to come to a settlement with Guatemala and third, in preparation of this case for presentation before the Arbitrator.

I can not allow legal expenses on the first ground, being expenses incurred before the cancellation of the contract, nor can I allow them on the third, as the protocol of arbitration provides in article 12 that each Government shall pay its own expenses and half the common expenses of the arbitration.

As to the second ground, the expenses in this connection are included in the \$35,000.00 awarded as general damages.

In answer therefore to the two questions submitted by the protocol of arbitration, I find :

1. That P. W. Shufeldt has the right to claim pecuniary indemnification from the Government of Guatemala, and
2. That the Government of Guatemala should in justice pay to the Government of the United States \$225,468.38 for the account of P. W. Shufeldt.

In conclusion I desire to express my appreciation of the very full and able manner in which the Representatives of both Governments placed their cases before me, and for their courtesy and consideration on all occasions that they appeared before me.

H. K. M. SISNETT,
Chief Justice of British Honduras,
Arbitrator.

[SEAL.]

CHIEF JUSTICE'S CHAMBERS,
BELIZE, BRITISH HONDURAS,
24th July 1930.