

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

American Bottle Company (U.S.A.) v. United Mexican States

2 April 1929

VOLUME IV pp. 435-439



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

acts fired the pistol which he had shortly before pulled out and so killed Morton....”

On the basis of these facts, the Judge states in the Fourth whereas (*considerando*) :

“... There was, therefore, on the part of both individuals acts of mutual contention, first by words and afterwards by deeds, aggressive acts on the part of Morton which Uzeta accepted and aided in assuming greater proportion, which constitutes the fight, which is defined in the latter part of article 553 of the Penal Code...”

The provision of the Penal Code to which the Judge refers in his last paragraph reads as follows:

“By fight is understood, the combat, the engagement or the physical struggle and not one of words between two or more persons.”

There is no doubt that the Penal Code of the Federal District requires a real struggle or in other words physical acts of aggression or defense between the two combatants. I do not think that either the aggressive attitude of Morton, to which the Judge refers, in rolling up of his sleeves and advancing towards Uzeta, or his holding him by the left hand, can be construed as a real struggle and therefore I do not think that Article 553 of the said Code should be applied. The assumption of a fight, on the part of the Judge, changed completely the aspect of the homicide perpetrated by Uzeta and, consequently, the penalty to which he was sentenced was widely and unwarrantedly different from the penalty he deserved for his brutal aggression on Morton. No appeal was entered against this decision by the Attorney for the State.

In view of the foregoing, I am of the opinion that an award should be made on behalf of the claimant in the sum of \$8,000.00 without interest.

Decision

The United Mexican States shall pay to the United States of America on behalf of Ethel Morton the sum of \$8,000.00 (eight thousand dollars) without interest.

AMERICAN BOTTLE COMPANY (U.S.A.) *v.* UNITED MEXICAN STATES

(April 2, 1929, concurring opinion by American Commissioner, April 2, 1929. Pages 162-167.)

CONFLICTING JURISDICTION OF SPECIAL CLAIMS COMMISSION. Fact that claim had been filed with Special Claims Commission, United States and Mexico, will not preclude the tribunal from exercising jurisdiction it possesses under the *compromis*. Since claim is a contract claim in nature rather than based on a revolutionary seizure, *held*, tribunal has jurisdiction.

CONTRACT CLAIMS.—CONTRACT WITH GOVERNMENT INTERVENTOR OR CUSTODIAN OF SEIZED PROPERTY. A brewery was seized by Carranza

Government and a Government interventor placed in charge. Latter, in his capacity as interventor, ordered and received from claimant a number of beer bottles for which payment was never made. Claim *allowed*.

INTEREST, RATE OF. Fact that claimant stated five per cent. interest would be charged on unpaid account for which claim is made will not preclude tribunal from allowing interest at the customary rate of six per cent.

The Presiding Commissioner, Dr. Sindballe, for the Commission:

After the Constitutionalist forces of General Venustiano Carranza had captured Monterrey in April, 1914, a brewery in this town, the Cervceria Cuauhtemoc, S.A., was seized and taken over by the government of Carranza, and one Antonio Elosua was placed in charge of the brewery as "El Interventor del Gobierno Constitucionalista". It was alleged that the brewery was seized for the reason that it had taken sides against the Constitutionalist, and that it had failed to pay a fine of \$500,000, Mexican currency, imposed upon it as a punishment for its alleged crime. At the instance of an American citizen, who was a large shareholder in the brewery, the authorities of the United States interposed, but not until December 6, 1914, was the brewery turned back to its owner. The brewery company states that its property was in a depleted state at that time.

On July 2, 1914, Antonio Elosua ordered one million two hundred thousand beer bottles of The American Bottle Company, an American corporation, which for several years had been selling beer bottles in large quantities to Cervceria Cuauhtemoc, S.A. The American Bottle Company offered to deliver the bottles ordered on condition that a balance due from the brewery company, amounting to \$6,263.89, United States currency, first be paid, and that the bottles ordered be paid for before shipment. With regard to the matter of the balance due from the brewery company, Elosua answered that he needed only the approval of the brewery company, wherefore he asked The American Bottle Company to correspond with the brewery company about the question. The American Bottle Company acted accordingly, and was informed by the brewery company that it would receive the balance due from Elosua. Subsequently Elosua remitted the balance in question to The American Bottle Company. He further remitted to The American Bottle Company \$10,100.00, United States currency, this being about half the purchase price of the bottles ordered by him, and he promised to send the balance, \$10,020.00, United States currency, within a few days. At the same time he asked for immediate shipment of the bottles ordered. Accordingly the bottles were shipped during the period from August 17 to September 4, 1914. The balance was, however, never paid by Elosua. From time to time he promised to pay, ascribing his failure to do so to the unsettled conditions existing in Mexico, and to his inability to make collection of accounts due him. Finally when the brewery property had been turned back to its owner, he informed The American Bottle Company that he had referred their last letter, urging payment, to the brewery company with instructions to give the most prompt attention thereto. The American Bottle Company requested the brewery company to pay the amount. The brewery company suggested, under date of December 24, 1914, that The American Bottle Company send a full statement of the amounts remitted and of the cars of bottles shipped, as accounts or other documents belonging to the brewery were not in the possession of the representatives of the brewery company. The

statement of accounts asked for was sent to the brewery company on December 29, 1914. On February 10, 1915, the brewery company acknowledged receipt of the statement of accounts and promised to forward this statement to the company's office in Monterrey for revision as soon as possible. The brewery company added that The American Bottle Company no doubt would understand that the brewery company had nothing to do with Elosua in connexion with his business or accounts with The American Bottle Company. The American Bottle Company urged payment by letters of February 13 and July 2, 1915, but the brewery company did not pay.

Claim is now made in the sum of \$9,985.62, United States currency, with interest thereon against the United Mexican States by the United States of America on behalf of The American Bottle Company. The amount claimed is the balance due for bottles delivered to Elosua minus the sum of \$34.48, which was paid by Elosua in excess of the actual amount due to the claimants at the time of the seizure of the brewery.

In view of the fact that the present claim has been filed by Memorial before the Special Claims Commission established under the Convention of September 10, 1923, between the United States and Mexico, prior to its having been brought before the General Claims Commission, Counsel for Mexico has submitted that the hearing of this case should be suspended until it be known whether or not the Special Claims Commission will be of the opinion that the present claim is within the jurisdiction of that Commission. There is, however, no rule in international law, nor no provision in the Conventions entered into between the United States and Mexico or in the rules of this Commission, that precludes the United States from presenting a claim to this Commission because of its having been previously filed by Memorial before the Special Claims Commission. And the Commission is of the opinion that the present claim is within its jurisdiction. Article I of the Convention of September 8, 1923, excludes from the scope of the Convention claims "arising from acts incident to the recent revolutions" in Mexico. Now, the seizure of the brewery may well be said to be an act incident to a revolution. This claim, however, is not for loss or damage arising out of the seizure of the brewery, but is made for the non-payment of an amount due under a contract entered into between Elosua and the claimants after the seizure of the brewery, and in the opinion of the Commission, such non-payment cannot be said to constitute an act incident to a revolution in the sense in which this term is used in the said Convention. In the Answer filed by the Mexican Agent with the Special Claims Commission it is also alleged that the claim is outside the scope of the Convention of September 10, 1923.

With regard to the merits of the claim it is contended by Counsel for Mexico that the claimants entered into a contract with the brewery and, therefore, should demand payment from the brewery company and not from the respondent Government. That the contract was entered into with the brewery, is correct. It appears from the record that Elosua signed letters to the claimants regarding the matter in his capacity of intervener of the Constitutionalist Government on behalf of the Cerveceria Cuauhtemoc, S.A., and it further appears that the claimants, in a letter to a representative of the brewery company, dated July 17, 1914, state that it address him regarding the question of the old balance "as per the instructions of Mr. Antonio Elosua, Inspector of Constitutional Government, for and in behalf of Cerveceria Cuauhtemoc." It cannot be assumed, however, that the claimants can recover from the brewery company the balance due

to it for the bottles delivered. The seizure of the brewery was a revolutionary measure and not a legal act that could give Elosua authority to enter into a contract on behalf of the brewery company. And the respondent Government has submitted no proof to show that the brewery company ever consented to undertake the responsibility according to the contract. Further, it must be assumed that Elosua's management of the brewery had in view the exaction of the fine imposed upon it by the Constitutionals and that the acquisition of the bottles has served this purpose. In these circumstances the Commission is of the opinion that the present claim should be allowed.

It appears that under date of December 29, 1914, the claimants informed the brewery company that it would charge the account with interest at the rate of five per centum per annum. Notwithstanding this fact the Commission is of the opinion that interest in this case as in similar cases already decided by the Commission should be awarded at the rate of six per centum per annum, as the present claim is against the United Mexican States, and not against the brewery company.

Nielsen, Commissioner :

I agree with the conclusion stated in the Presiding Commissioner's opinion that a pecuniary award should be rendered in this case, but I do not entirely concur in all the conclusions with respect to the law and the facts.

From the record in the case it appears that a revolutionary leader seized a brewery and certain other properties in Monterrey. It appears from evidence accompanying the Memorial that, when the brewery was first seized the purpose was to obtain a forced loan, but that subsequently the directors of the company were charged with having taken part in opposition to the so-called Constitutionalist cause and with maintaining armed forces. It further appears that it was explained to General Carranza that the so-called armed forces were a small guard of watchmen maintained on account of the existing disturbed condition.

I do not agree with the conclusion that the contract invoked in behalf of the claimant was a contract made with the brewery. When an insurgent leader seizes property and puts it in charge of some person acting under such leader's control I do not think that contracts made by such a person can properly be said to be contracts made by the Company whose property has been seized. In such a case the acts of the person placed in control of the property are not determined by the character of the stationery he may use, or by the title or designation given him, or by the fact that he may purport to act in behalf of the Company.

Responsibility is ultimately fixed on the Mexican Government in the instant case because the revolution initiated by General Carranza became successful, and an award can be made for unpaid contractual debts on the same principle that awards have been made in other cases for supplies furnished to the Mexican Government.

The point of jurisdiction raised in this case involves more difficult questions with respect to which there is in my opinion considerable uncertainty. In giving application to the principles of international law governing a claim growing out of contractual obligations an international tribunal is not concerned with a suit on a contract. There is no law of contracts in international law. In rendering an award in a case of this kind I think we must proceed on the theory that there has been a violation of property rights in the nature of a confiscation; it might be said either a

confiscation of the property purchased or of the purchase price. The claim does not grow out of the seizure of the brewery, a Mexican corporation, but it is nevertheless concerned with a complaint of a violation of property rights. It is therefore not altogether clear to me that the claim does not fall within that class of claims which is described in meagre and general language in Article I of the Convention of September 8, 1923, and more specifically described in Article III of the Convention of September 10, 1923. If a civilian acting under the express or implied authority of an insurgent leader commits some wrongful action, it is difficult to perceive that such action must be regarded exclusively as the acts of the civilian, particularly when responsibility for the act is fixed because the revolutionary leader ultimately becomes successful.

In considering the peculiar facts of this case, I think that the Commission may be justified in attaching considerable importance to the interpretation put upon both of the arbitration conventions by the two Governments in dealing with the particular case under consideration. The United States filed this claim before the Commission under the Convention of September 10, 1923. Mexico filed an answer before that Commission alleging among other things that the claim was not within the jurisdiction of the Commission. Thereupon the United States proceeded to bring the case to hearing before this Commission. Dr. Oppenheim, in a discussion of the interpretation of treaties, says:

“But it must be emphasized that the interpretation of treaties is, in the first instance, a matter of consent between the contracting parties. If they choose a certain interpretation, no other has any basis. It is only when they disagree, that an interpretation based on scientific grounds can ask a hearing.” *International Law*, Vol. I, p. 700.

Possibly the seemingly sound principle underlying these statements may not be absolutely controlling with respect to the facts in the instant case, yet I think it is not altogether irrelevant. Article I of the Convention of September 8, 1923, confers jurisdiction on this Commission over all outstanding claims since July 4, 1868, “except those arising from acts incident to the recent revolutions”. Claims incident to the recent revolutions are those more specifically described in Article III of the Convention of September 10, 1923. Mexico in a proceeding distinct from the instant case has contended that the claim is not within this jurisdictional Article of the Convention of September 10, 1923. The United States, by prosecuting the claim to a hearing before this Commission as the tribunal having jurisdiction instead of proceeding before the so-called Special Claims Commission, seems to have acquiesced in the Mexican Government’s contention, that the Special Commission has not jurisdiction, which therefore must be vested in the General Claims Commission.

Decision

The United Mexican States shall pay to the United States of America on behalf of The American Bottle Company \$9,985.62 (nine thousand nine hundred eighty-five dollars and sixty-two cents), United States currency, with interest thereon at the rate of six per centum per annum from September 4, 1914, to the date on which the last award is rendered by the Commission.
