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George W. Cook (U.S.A.) v. United Mexican States

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Decision

The claim made by the United States of America in behalf of Lily J. Costello, Maria Eugenia Costello and Ana Maria Costello is disallowed.

GEORGE W. COOK (U.S.A.) *v.* UNITED MEXICAN STATES

(April 30, 1929, dissenting opinion by American Commissioner, undated. Pages. 266-281.)

RESPONSIBILITY FOR ACTS OF *De Facto* GOVERNMENT. Contract for sale of school benches entered into with respondent Government during Huerta regime *held* a contract of an impersonal character for which respondent Government would be responsible.

CONTRACT CLAIMS.—EFFECT OF DOMESTIC LAW UPON RIGHT TO CLAIM.—CONTRACT WITH AGENT. Claimant sold respondent Government 5,000 school benches, the delivery of 4,500 of which it admits, for which no payment was ever made. The contract therefor was entered into between the Ministry of Public Instruction and Fine Arts and claimant's agent in his personal capacity. *Held*, since claimant could not under Mexican law sue the respondent Government under contract made in the name of his agent, claim *disallowed:*

Cross-references: Am. J. Int. Law, Vol. 24, 1930, p. 398; Annual Digest, 1929-1930, pp. 177, 255.

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

In this case claim in the sum of $ 13,750, United States currency, with interest, is made against the United Mexican States by the United States of America on behalf of George W. Cook, an American citizen, for non-payment of the purchase price of 5,000 school benches alleged to have been delivered to the Mexican Ministry of Public Instruction and Fine Arts during the period from December 1913 to February 1914 pursuant to a contract of August 9, 1913, said to have have been entered into between the said Ministry and Mosler, Bowen & Cook, Sucr., of which business house the claimant was the sole owner.

The respondent Government denies that 5,000 school benches were delivered, but admits the delivery of 4,500 benches. It contends, however, that Mexico is not obligated to pay Cook for the benches, first, because the transaction in question took place with an illegitimate authority, the General Victoriano Huerta administration, and secondly, because the said contract of August 9, 1913, was entered into between the Ministry of Public Instruction and Fine Arts and Sr. José Solórzano, and not between the Ministry and the claimant. With regard to the first of these contentions the Commission refers to its decision in the case of *George W. Hopkins*, Docket No. 39, [1] and the case of the *Peerless Motor Car Company*, Docket No. 56. [2] With regard to the second contention the pertinent facts are stated in the Memorial to be as follows:

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[1] See pages 41 and 218.
[2] See page 203.

In July, 1913, the Mexican Minister of Public Instruction and Fine Arts called a meeting of the representatives of various commercial houses in Mexico City, and informed those present that the Ministry desired bids for 30,000 school benches. At this meeting Mosler, Bowen & Cook, Sucr., was represented by José Solórzano, who was one of their salesmen. Some time after the meeting Mosler, Bowen & Cook, Sucr., was informed that the Ministry had decided to apportion the order for the 30,000 school benches among various houses, and that that firm would receive an order for 6,000 benches as its share of the business. A representative of the Ministry afterwards asked the firm to prepare a contract for the construction of the 6,000 benches and to present it to the Ministry for signature. Accordingly it prepared a contract, and the claimant and Solórzano took it to the Ministry for signature. They were informed that an official of the Ministry wished to confer with Solórzano privately. By this official Solórzano was told that the Minister desired that the contract be entered into between the Ministry and Solórzano personally and not between the Ministry and Mosler, Bowen & Cook, Sucr. Solórzano as well as the claimant agreed thereto, and the contract was executed accordingly. Solórzano immediately turned the document over to Mosler, Bowen & Cook, Sucr., in whose factory the benches were built, and to whose factory a representative of the Ministry came for the purpose of inspecting benches that had been completed. All correspondence with the Ministry regarding the matter took, for the sake of consistence, place in the name of Solórzano, and also the invoices were issued in his name.

The question before the Commission is whether or not the claimant himself could sue under the contract entered into between the Ministry and Solórzano. On principle, that must depend on the intention of the parties, or, if the intention of the parties be not clear, what must be presumed to have been the intention of the parties. From the works of various civil law authors it appears that in countries, and among these Mexico, where the civil law obtains, the sole fact of a contract having been entered into by an agent in his own name excludes the principal from right of action. Mexican law contains an exception to this rule in case the agent is a "factor", who, according to Art. 309 of the Mexican Code of Commerce, is a person who has the management of a manufacturing or commercial undertaking or establishment, or who is authorized to enter into contracts in regard to *all* matters in reference to such an establishment or undertaking, but this exception does not apply in a case like the present, Solórzano not being a "factor" of Mosler, Bowen & Cook, Sucr. In Anglo-Saxon law the sole fact of a contract having been entered into by an agent in his own name is not considered as establishing a conclusive presumption that the intention was to deal with the agent only, at any rate not if the principal is undisclosed, and, by the weight of authority, not even if, as in the present case, the principal is disclosed. But, of course, a conclusive presumption may be established where there are further facts that point in the direction of an intention to exclude the principal from a right of action. So in *Die Elbinger Actien-Gesellschaft* v. *Claye*, L. R. & Q. B. 313, the further fact that the principal was known to be a foreigner, was held to raise a presumption that the contract was with the agent only. Now, in the present case, the claimant was a foreigner, and, further, it was at the express demand of the Minister that the contract was entered into between the Ministry and Solórzano personally. It therefore seems at any rate doubtful, if, according to Anglo-Saxon law, a principal would have the right to sue in a case like

the present, and, as above stated, according to Mexican law, by which the contract in question is governed, it must be assumed that he would not.

It appears that on February 4, 1915, Solórzano transferred any right he might have had under the contract in question to the claimant. The Commission has, however, no jurisdiction to enforce the right obtained by the claimant in virtue of this transfer.

Decision

The claim of the United States of America on behalf of George W. Cook is disallowed.

Commissioner Nielsen, dissenting.

This is a claim to obtain compensation for a quantity of school benches delivered to and accepted by the Mexican Government. As stated in the opinion of my associates, it appears that Mosler, Bowen & Cook, Sucr., were informed that they would receive an order for 6,000 benches as that firm's share of a total number which it had been made known to commercial firms was desired by the Government. The firm was asked to prepare a contract for the construction of the number allotted to it. When Solórzano, a salesman for the firm, took such a contract to the Mexican Minister of Public Instruction and Fine Arts, the latter said that he desired that it should be entered into personally between the Minister and Solórzano, and it was so executed. It is stated in the majority opinion that the question before the Commission is whether or not the claimant himself could sue under the contract entered into between the Ministry and Solórzano. In my opinion the question is whether this Commission can, conformably to the terms of submission in the Convention of September 8, 1923, that is, "in accordance with the principles of international law, justice and equity", make an award to the effect that Cook shall be paid the contract price of the benches. The legal questions involved in that issue are different from the point whether a Government may be sued on a contract.

In this case, as it happens in many other international cases, the questions of domestic law are much more difficult than those involved in the application of the proper principles of international law. The situs of every element of the contract invoked is in Mexico. Therefore the contract is governed in all respects by the law of Mexico. Any rights Cook has under the contract are therefore determined by Mexican law. If he had no rights, it is of course unnecessary to proceed to the question whether in the light of any principle or rule of international law such rights were infringed.

In the ultimate determination of responsibility under international law I think an international tribunal in a case of this kind can properly give effect to principles of law with respect to confiscation. International law does not prescribe rules relative to the forms and the legal effect of contracts, but that law is, in my opinion, concerned with the action authorities of a government may take with respect to contractual rights. If a government agrees to pay money for commodities and fails to make payment, it seems to me that an international tribunal may properly say that the purchase price of the commodities has been confiscated, or that the commodities have been confiscated, or that property rights in a contract have been destroyed or confiscated.

I assume that it is generally recognized that confiscation of the property of an alien is violative of international law, just as it is generally forbidden

by domestic law throughout the world. See "*Basis of the Law Against Confiscating Foreign-Owned Property*" by Chandler P. Anderson, *American Journal of International Law*, 1927, Vol. 21, p. 525. The extent to which principles of international law have been applied to this subject is interesting. While generally speaking the law of nations is not concerned with the actions of a government with respect to its own nationals, we find in international law a prohibition against confiscation even with respect to the property of a nation's own nationals; a well recognized rule of international law requires that an absorbing state shall respect and safeguard rights of persons and of property in ceded or in conquered territory. See American Agent's *Report* in the American and British Claims Arbitration under the Special Agreement of August 18, 1910, pp. 107 *et seq.*; pp. 167 *et seq.*

If Cook had rights under this contract, then he was entitled under the terms of the contract to receive compensation for the benches which he manufactured and delivered and which Mexico accepted and received but did not make payment for to any one. The brief of the American Agency contains no citation of Mexican law throwing light on the peculiar contract signed by Solórzano with a Mexican official. The effect of this contract under that law is the only point of difficulty in this case. In the written and in the oral argument counsel appeared to rely principally on two international cases, the *Heny* case before the American-Venezuelan Commission of 1903, *Ralston's Report*, p. 14, and the *McPherson* case before this Commission, *Opinions of the Commissioners*, *Washington*, *1927*, p. 325.

In the *Heny* case claim was made to obtain compensation for Heny because of damage inflicted by Venezuelan authorities on a plantation with respect to which Heny asserted some rights, although he evidently was not the owner of it. One of the Commissioners, Mr. Bainbridge, considered that Heny's right might be considered in the nature of an antichresis. With respect to the argument of counsel for Venezuela that a contract upon which Heny based his claim of rights was void, because under Venezuelan law record in a registry was indispensable to the validity of the instrument, Mr. Bainbridge said that the argument was untenable; that the contract was valid as between the parties whether recorded or not; and that, whatever might be the effect of the registration law with respect to the rights of innocent third parties, it could have no effect in excusing the acts of a trespasser or tort feasor. The case having passed for a decision to the Umpire, Mr. Barge, he stated that the contract relied upon in behalf of Heny was not a mortgage or a sale of an estate, and also lacked the characteristics of an antichresis. He found, however, that Heny did have an interest in the estate and an award was made by the Umpire in Heny's behalf. The reasoning upon which the Umpire based his conclusion is indicated by the following passages from his opinion:

"Whereas, however—whatever may be the technical deficiencies of the instrument—whilst interpreting contracts upon a basis of absolute equity, what the parties clearly intended to do must primarily be considered;

"And whereas, it was clearly the intention of parties that no one but the claimant should have a right to expropriate anything belonging to this estate, nor to profit by the revenues, at all events so long as his interest in the estate should last, which interest the heirs wished to guarantee; and whereas this interest existed as well in the sum invested by him in the estate as in the debts he assumed and which he might pay out of the estate, the credits and debits of which were equally transferred to him by the owners; whereas, therefore, according to this contract at the moment the facts which obliged the Venezuelan

Government to restitution took place, the only person who directly suffered the 'detrimentum' that had to be repaired was the claimant E. Heny;

"Whereas, it being true that according to the principles of law generally adopted by all nations and also by the civil law of Venezuela; contracts of this kind only obtain their value against third parties by being made public in accordance with the local law—in this claim before the Commission, bound by the Protocol, to decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation, this principle can not be an objection, and even when made this objection may be disregarded without impairing the great legal maxim, locus regit actum, as equity demands, that he should be indemnified who directly suffered the losses, and it not being the question here who owned the estate 'La Fundación', but who had the free disposition over and the benefit and loss of the values for which restitution must be made, and who, therefore, in equity, owns the claim for that restitution against the Venezuelan Government."

The *McPherson* case is more nearly in point with respect to the instant case. In the former, claim was made in behalf of J. A. McPherson to recover the aggregate amount of some postal money orders which were not paid upon presentation to Mexican postal authorities. In behalf of Mexico it was contended, among other things, that no claim could be maintained before the Commission in behalf of the claimant, since it was shown by the evidence that the money orders were not the property of the claimant, they having been issued in the name of John Davidson. This contention was met by the United States with the argument that Davidson was an agent and banker for McPherson, and that the former bought money orders with money belonging to the latter who could be regarded as an undisclosed principal. The Commission found that the evidence showed beyond a reasonable doubt that the money orders were bought by Davidson for McPherson with funds belonging to the latter, and it was not denied by Mexico that McPherson might have had an interest in the money orders. In the opinion of the Commission it was stated that an award in favor of the claimant could not result in the payment of money to any other than the one who lost as a result of the non-payment of the money orders. By this opinion which was unanimous an award was made in favor of the claimant.

Possibly money orders may more appropriately be regarded as the means employed in the exercise of a governmental authority for the public benefit rather than as contracts or commercial transactions. Nevertheless the relationship between the purchaser of a money order and the Government is certainly in a sense of a contractual nature. In the instant case we are dealing with the legal effect of a contract. Neither Cook nor Solórzano was paid. There is no doubt that the loss resulting from the failure of the Mexican Government to meet its contractual obligations falls on Cook, just as the failure to pay the money orders resulted in a loss to McPherson. However, in order to justify an award in favor of Cook, the possession by him of a legal interest must be shown.

It was recognized in the *Heny* case and in the *McPherson* case that the claimant had some interest, and that because of that interest and of the wrongful act of governmental authorities the claimant in each case suffered a loss. In the *Heny* case it appears that Umpire Barge attached considerable significance to the term "equity" appearing in the terms of submission in the artbitral agreement under which he functioned. The terms of submission in the Convention of September 8, 1923, requiring a determination of cases in accordance with the principles of international law, justice and equity,

are somewhat elaborate, especially when they are considered in connection with the jurisdictional provisions of the Convention which are concerned with claims described in part as claims "for losses or damages suffered by persons or by their properties", and for "acts of officials or others acting for either Government and resulting in injustice". I think that the Commission has generally proceeded on the theory that, in spite of the somewhat elaborate terminology of the Convention, it is simply required by the Convention that all cases shall be decided by a just application of law; that the Commission should not render awards based on some personal undefined theories of equity which may differ greatly in the minds of different people. Perhaps since clearly Cook only is the loser as a result of the failure of Mexico to pay for the benches, which the Mexican Government received and Cook manufactured and delivered, and since neither Agency has made clear in the proceedings before the Commission the legal effect under Mexican law of the contract invoked in this case, the Commission could properly, by taking an equitable view of the case, so to speak, render an award to compensate Cook for the loss suffered by him. However, I think it is possible, particularly in the light of the conduct of the parties revealing their construction of the contract, to conclude that Cook had legal rights which were ignored.

It is stated in the majority opinion that from "the works of various civil law authors it appears that in countries, and among these Mexico, where the civil law obtains, the sole fact of a contract having been entered into by an agent in his own name excludes the principal from right of action." No citation of any author or from any code is made to support this conclusion, except with regard to an exception in Mexican law, which, however, is said not to be pertinent to the instant case. The correctness of the above quoted conclusion with respect to an exception being assumed, it is conceivable that there may be another exception in Mexican law which is pertinent. Had it been possible to invoke some provision of Mexican law, which is the law with which we are concerned in construing the contract in question, a law clearly showing that Cook had no rights under the contract, then of course I could have no occasion to dissent from the conclusions reached by my associates, since, as I have pointed out, Mexican law is controlling with respect to the question of Cook's rights under the contract.

It is stated in the majority opinion that the question before the Commission is whether the claimant could sue under the contract entered into between the Ministry and Solórzano. In dealing with an international case it should be borne in mind that the right of a person to sue a government under domestic law is not conclusive with respect to rights that may be invoked in behalf of such a person under international law. For example, the Government of the United States and the Government of Great Britain, generally speaking, do not allow themselves to be sued in tort, nor do the tribunals of either of the two Governments pass upon political acts of the Government which created them. But redress guaranteed by international law for wrongful action can of course be obtained in behalf of aliens in other ways than by suits against the Government, as through diplomatic channels, or through the action of international tribunals. International reclamations for the most part grow out of what in terms of domestic law is described as tortious acts. So, likewise, in a case in which a government might not by its domestic law provide for suits in contract against itself, money due under a breach of contract could nevertheless be recovered in

a proceeding before an international tribunal. Prior to the year 1855, the Government of the United States did not allow itself to be sued in contract. Persons having private claims against the Government had recourse solely to applications to Congress. The right to bring an action in contract against the Government was granted by the Act approved February 24, 1855, 10 Stat. 612. *Court of Claims Reports*, Vol. 17, pp. 3 *et seq.* A petition of right lies before British courts with respect to matters of contract.

In the majority opinion there is some discussion of rights of action under Anglo-Saxon law. Since the contract invoked in the instant case is governed by Mexican law, the principles of the common law or statutory provisions obtaining in so-called Anglo-Saxon countries have no relevancy except possibly by way of analogy. Under Anglo-Saxon law it is of course well established that an undisclosed principal may sue on the contract.

The case of *Die Elbinger Actien-Gesellschaft* v. *Claye*, L. R. & Q. B. 313, cited in the majority opinion, can only be fully understood when account is taken of the fact that the decision therein is based on a long established English usage of trade. Cook's firm which carried on its manufacturing and commercial business in Mexico can seemingly not be regarded as a foreign merchant in Mexico in the sense in which a German corporation doing business in Germany is foreign to England.

The principle on which *Die Elbinger Actien-Gesellschaft* v. *Claye* was decided does not seem to have been fully accepted in the United States. In *Bray* v. *Kettell*, 1 Allen 80, Chief Justice Bigelow, in making reference to cases in which it had been stated that agents acting for merchants residing in a foreign country are held personally liable on all contracts made by them for their employers without any distinction whether they describe themselves in the contract as agents or not, said:

"We are inclined to think that a careful examination of the cases which are cited in support of this supposed rule will show that this statement is altogether too broad and comprehensive. Certain it is, that if it ever was received as a correct exposition of the law, it has been essentially modified by the more recently adjudged cases. It doubtless had its origin in a custom of usage of trade existing in England, by which the domestic factor or agent was deemed to be the contracting party to whom credit was exclusively given; and it was confined to cases where the claim against the agent was for goods sold, and was not extended to written instruments. But it is going quite too far to say that this usage or custom is so ingrafted into the common law as to become a fixed and established rule, creating a presumption in all cases that the agent is exclusively liable, to the entire exoneration of his employer."

As I have already observed, there is not in this important case any citation in the majority opinion of any provision of any Mexican Code or any other legal citation as a basis for the conclusion that under the law of Mexico the sole fact that a contract has been entered into by an agent in his own name excludes the principal from a right of action. In support of a contention to that effect counsel for Mexico cited Article 284 of the Mexican Code of Commerce of 1890, reading as follows:

"When the commission merchant contracts in his own name, he shall have cause of action and liability direct with the persons with whom he contracts, without being obliged to declare who his principal is, except in the case of insurances." (Translation.)

It is difficult to perceive that language of this provision excludes the idea of rights and obligations of a principal under a contract made in the name of the agent. Article 284 of the Mexican Code seems to confer a right of

action on an agent. It is also a general rule of the common law that where a contract entered into on account of the principal is in its terms made with the agent personally, the agent may sue upon it. At the same time a principal who is the real party in interest, though not named as such, has also a right of action upon the contract which usually is paramount to that of the agent, so that if the principal sues the agent may not. *The Law of Agency*, Mecham, Vol. 2, pp. 1592-93.

In considering the effect of Article 284 of the Mexican Code it is pertinent to determine whether Solórzano may properly be regarded in connection with the transaction under consideration as a commission merchant *(comisionista)*. It seems to me very doubtful that he can be so considered. Reference is made in the majority opinion to provisions of the Commercial Code of Mexico with respect to *factores*. The Code contains the following Articles:

"ART. 314. When the factor contracts in his own name, but on account of a principal, the other contracting party can take action against either the factor or the principal.

"ART. 315. Whenever the contracts entered into by the factors affect any object included in the kind of business or trade in which they are engaged, such contracts shall be considered to have been made on account of the principal, although the factor may not have so stated on entering into same, or may have exceeded his authority or committed an abuse of confidence.

"ART. 316. The contracts of his factor shall likewise bind the principal, even when they may be foreign to the class of business with which the factor is entrusted always provided that he is working under the instructions of his principal, or that the latter has given his approval in express terms or by positive acts." (Translation.)

It is said that Solórzano was not a factor. Counsel for the United States argued that it might be just as proper to consider him to be a factor as to designate him as a *comisionista*. In my opinion he was probably neither in connection with the transaction under consideration, and the above quoted provisions from the Mexican Code are interesting merely in showing the principle of representation in Mexican law.

Counsel for Mexico perhaps did not rely fully in his contentions on the language of Article 284 of the Mexican Code, apparently considering that it might be interpreted in the light of Article 246 of the Code of Commerce of Spain reading as follows:

"Where the *comisionista* contracts in his own name, he shall not have to specify who the principal is, and he shall be liable in a direct manner, as if the business were his own, to the persons with whom he contracts, such persons to have no actions against the principal, nor the latter against them; without prejudice to the respective actions of the principal and the *comisionista* as between themselves." (Translation.)

This provision of the Spanish Code is quoted in Lozano's publication of the Mexican Code of Commerce for 1890, and also in the same author's publication of 1889, containing the Mexican Code of Commerce with citations by way of comparison of provisions of the codes of other countries. The latter contains certain comments by Lozano on Article 246 of the Spanish Code. Counsel for Mexico apparently argued that Article 284 of the Mexican Code could be construed to have the same scope as Article 246 of the Spanish Code. To my mind it would involve an extremely liberal construction to read into the meagre language of Article 284 of the Mexican Code the comprehensive provisions of Article 246 of the Spanish Code. As has been

heretofore observed, Article 284 of the Mexican Code states a rule that is elementary in the common law with respect to the right of an agent to sue.

Apparently the principle of agency was not found in the early Roman law of contract. Hunter's *Roman Law*, 4th ed., p. 609; Sohm's *Institutes of Roman Law*, Ledlie's translation, Oxford, 1907, p. 221. But the idea of representation has of course been largely incorporated into the modern law of countries governed by the principles of the civil law, and this seems clearly to be true with respect to the law of Mexico. See on this point *Código de Comercio de los Estados Unidos Mexicanos*, Séptima, Edición, por Jenaro García Núñez y Francisco Pascual García, 1921, Arts. 51-74, 273-331; *Código Civil vigente en el Distrito y Territorios Federales*, por Francisco Pascual García, 1911, Arts. 2342-2358.

The point with respect to the intent of a party to a contract to deal with another specified party is touched upon in the opinion of my associates, and apparently was considerably stressed in the argument of counsel for Mexico. The obvious fact that a man has a right to contract with whomsoever he pleases is not inconsistent with the common law principles that an undisclosed principal or a person in whose favor a contract is made may sue on it. A man can not make a contract in such a way as to take the benefit thereof unless he also takes the responsibility of it. Counsel for Mexico argued that possibly the Mexican Government intended to contract with a Mexican citizen rather than with an alien, with the idea of avoiding diplomatic intervention in behalf of Cook or the presentation of a claim such as is now before the Commission. In my opinion the Commission is precluded from approving of any such suggestion, since diplomatic intervention could only be apprehended in case it was intended not to pay for the goods manufactured, delivered and accepted.

It seems to be pertinent to consider the point of intent in a substantial way in dealing with questions under consideration. A government buying large quantities of supplies, it must be assumed would desire to deal with responsible persons or business concerns. The Mexican Ministry seemingly would not expect a salesman to manufacture and deliver a large quantity of benches; they desired to deal with a responsible manufacturing concern; they knew that Cook's firm manufactured the benches; a Mexican representative inspected the benches on Cook's premises.

Counsel for the United States suggested that, having in mind all the facts and circumstances in relation to the somewhat peculiar transactions in question, the view could properly be taken that the writing signed by the Mexican official and Solórzano did not represent the entire contract for the manufacture and delivery of the benches. There appears to be considerable plausibility in this argument. Generally speaking, when bids for commodities are asked for and made and accepted, a contract is complete. Of course laws and regulations may prescribe subsequent formalities.

In the absence of explicit information with respect to the transactions involved in the instant claim, it seems to me that the Commission is justified in resorting to conclusions based upon the actions of the two parties to the contract whatever may be its precise nature. In the extensive record in the case there is nothing to show that the Mexican Government in the past ever suggested that Cook had no rights because he did not sign the instrument signed by the Mexican Minister and Solórzano. In the *Greenstreet* case (Docket No. 2767) [1] the Commission was called upon to construe an

[1] See page 462.

important contract signed by the General Director of the National Railways of Mexico and by an attorney of E. S. Burrowes, President of the Burrowes Rapid Transit Company. There was nothing in the language of the contract to indicate that it was made on behalf of that company. In behalf of Mexico it was contended that no contractural relations had ever existed between the National Railways of Mexico and the Burrowes Rapid Transit Company. The Commission, in reaching a conclusion with respect to this point took account of the action of the parties. In the opinion written by the Presiding Commissioner it was pertinently said:

"There is, however, ample evidence to show that the transportation business really was carried on by the Burrowes Rapid Transit Company, and that this fact was perfectly well known to representatives of the National Railways of Mexico. It must therefore be assumed that the contract entered into was intended to be a contract between the National Railways of Mexico and the Burrowes Rapid Transit Company."

Clearly the Commission in reaching the conclusion that the Burrowes Rapid Transit Company had rights under a contract signed by a representative of the Railways and an attorney for the Burrowes Company grounded its action on the interpretation put upon the contract by the parties, particularly by the Mexican Government. I perceive no reason why a similar conclusion may not be reached in the instant case with equal or with greater propriety. Cook's firm offered to make a quantity of benches desired by the Mexican Government. The firm was asked to bring in a contract. A representative of the firm signed that contract. The Mexican Government inspected the benches on Cook's premises and accepted them on delivery.

But I think there are still more pertinent considerations of which account may be taken. It is shown by the record that from 1918 up to the latter part of the year 1926, repeated requests for payment were made in the name of the firm of Mosler, Bowen & Cook, Sucr., by a representative of the firm, and evidently not once did the Mexican Government deny liability to the firm on the ground that the contract was signed by some other party.

In reply to a communication of November 26, 1918, it was stated to the firm: "in order to settle this matter it is necessary for you to prove that the said furniture is in the possession of the present Government". In reply to a letter of December 14, 1918, from the firm, it was said: "It is not possible to order the payment which you request, unless you can prove that the said furniture is in the possession of the present government." In response to a request made under date of December 28, 1918, for permission to examine files pertaining to the transaction in question, with a view to locating the furniture, the firm was informed that permission could not be granted. In reply to a communication of April 25, 1921, with which the firm's representative sent to the Ministry information concerning invoices, the former was requested to call at the Department of Finance to make certain explanations. Under date of November 16, 1921, the firm was informed by the Ministry of Finance that the General Controller's Office had stated that only by an express order of the President of the Republic could this claim be accepted, since the transactions belonged to the period of Victoriano Huerta. In response to a communication of November 17, 1922, addressed to President Obregón, the President replied that "the nullity of all acts of the usurping government of Huerta was decreed by a law" which under no circumstances could be annulled by the Executive Office. Certain detailed information having been requested of the firm, it was sent to the Controller's Office, which it appears consulted the Consult-

ing Attorney of his Department for an opinion. Under date of October 16, 1925, the Controller's Office informed the firm that, as the credits contained therein belonged to the years 1913 and 1914, they were annulled in conformity with the provisions of the law.

It thus appears that after extended discussion between the firm and the appropriate Mexican officials, the latter grounded their refusal to pay Cook's firm for the benches not on any contention that no contract had been made with the firm, but on a declaration of nullity of the debt. The annullment of debts either in time of peace or in time of war is violative of international law, and such annullment as a ground of defense for the non-payment of debts has repeatedly been so treated by this Commission. In the instant case an interesting defense based on a construction of Mexican contract law is plausibly made by the Mexican Agency. However, it seems to me that the Commission, in dealing with the uncertainties confronting it, is justified in taking into account the attitude of the claimant and of the respondent Government up to the present time, showing explicitly the rights asserted by Cook and the grounds on which the Mexican Government based its denial of the rights asserted. I am therefore of the opinion that an award should be made in the present case for the contract price of the benches manufactured and delivered by Cook's firm and accepted by the Mexican Government, and for a proper allowance of interest.

On February 4, 1915, Solórzano, on departing from Mexico, made an assignment of all his rights under the contract to Cook. It is clear that this assignment was made solely for the purpose of assisting in any possible way to obtain compensation. Solórzano has furnished sworn testimony that it was thoroughly understood by all concerned that in signing this contract he acted simply as the agent, and that Cook's firm was the real party in interest. Others have furnished testimony to the same effect. In the American brief no reliance is placed on this assignment as an important element in the claim. Let it be assumed that an assignment was necessary in order that Cook might have rights under the contract. Then had this assignment been made prior to the time when the compensation for the benches became due, so that there would have been a breach of contractual rights of the firm, it may be that a claim could now be made in behalf of Cook, since in that situation the claim which accrued was that of an American citizen. However, it seems to be clear that the money was due prior to the time of the assignment. And in any event, according to the view which I have indicated, the Commission is justified in proceeding on the theory that Cook's rights vested under the contract prior to this assignment. The assignment might be considered to be of much importance if the view should be taken that it is important only with respect to the question of the right to sue in Mexican courts.

I regret the necessity of dealing with uncertainties such as are involved in this case. However, it is certain that from the practical standpoint a pecuniary award could only have the effect of granting compensation to a claimant for commodities which he furnished in good faith. And if compensation is not paid the claimant suffers a considerable loss, and the Mexican Government retains property for which it paid nothing. In justification for withholding payment Mexican authorities have asserted nothing from 1915 up to the time of the proceedings before the Commission, except that the debt had been cancelled by executive decree.