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Esther Moffit (U.S.A.) v. United Mexican States

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commander of the Government troops at that station, requesting him to have the culprit arrested, but no action was taken.

Originally compensation for the value of the cattle as well as of the merchandise was claimed, but now only the alleged value of the merchandise taken from Howe's store is claimed. It is not contended that the Mexican authorities were in a position to prevent the robbery of the store, but the contention is made that Mexico must be responsible, because the military authorities took no action when Howe requested them so to do. The Commission, however, is of the opinion that, in the light of the evidence submitted it is not clear whether the information given by Howe was of such a nature as to afford a sufficient basis for an action of the military authorities, and that, therefore, in the absence of more satisfactory evidence, no award can be rendered in the present case.

Decision.

The claim of the United States of America on behalf on John I. Howe is disallowed.

ESTHER MOFFIT (U.S.A.) *v.* UNITED MEXICAN STATES

(*May 9, 1929. Pages 288-291.*)

NON-PAYMENT OF MONEY ORDERS. Claim for non-payment of money orders *allowed.*

COMPUTATION OF AWARD.—RATES OF EXCHANGE. Award calculated on basis of payment in United States currency at rate of exchange as of date of breach of obligation, i.e., date when money orders were presented for payment and payment refused. Fact that claimant may have paid for such money orders in silver *held immaterial.*

Cross-reference: Annual Digest, 1929-1930, p. 199.

Commissioner Nielsen, for the Commission:

Claim is made in this case by the United States of America in behalf of Esther Moffit to recover the sum of \$146.97, gold currency of the United States, stated to be the equivalent of 293.94 Mexican pesos, the aggregate amount of two money orders which it is alleged were not paid on presentation to Mexican postal authorities. Interest from August 30, 1914, is also claimed on the sum of \$146.97.

The transactions on which the claim is based are described in the Memorial in substance as follows:

During the year 1914 the claimant conducted a store at Ensenada, Lower California, Mexico, and in the course of business sent the two money orders to Melcher & Company of Mazatlán, Sinaloa. The orders were returned to her by Melcher & Company with the information that they could not be cashed, as there was no money for that purpose at the post office in Mazatlán. The claimant thereupon endeavored to have the two money orders cashed at Ensenada, but her efforts were unavailing. The claimant on several occasions endeavored to cash the orders at post offices in Mexico

and offered to pay taxes with them, but at no time were the orders accepted in payment of taxes, nor could she obtain a refund of the money paid for them.

Perhaps it may be considered that the defenses to the claim made in the Answer were abandoned except with respect to the point of the rate of exchange at which the award should be computed. In any event, the Commission, in the light of the principles stated in connection with previous similar cases, considers that an award should be made for the value of the money orders, and that the only issue in the case which is not controlled by previous decisions relates to the question of exchange.

Accompanying the Memorial of the United States is a letter addressed by the claimant to the American Agent under date of May 9, 1927, from which it may probably be inferred that the claimant intends to convey the information that the money orders were paid for in silver. On the basis of that communication the United States contends that the award should be rendered in the amount of the value of the silver peso in 1914, which it is said was \$0.4985.

In behalf of Mexico it was contended that any award given should be in a sum smaller than that claimed, and a statement is produced giving rates of exchange on New York in the year 1914.

The subject of exchange was discussed in some detail in the case of *George W. Cook*, Docket No. 663. *Opinions of the Commissioners, Washington, 1927*, p. 318. Reference was made to decisions of domestic courts which have had occasion to deal with the translation into the currency of their own country of monetary judgments fixed in the terms of the currency of some other country, these courts being required to convert currency in view of the fact that they can render judgments only in the coin of the governments by which they are created. It was pointed out that some courts have held that, in the case of a breach of contractual obligations, the rate of exchange should be determined as of the date of the breach, others have held that the rate should be fixed as of the date of judgment; it has been held that the value of the coin should be fixed as of the time suit was brought; and in the absence of evidence as to the value of the coin it has been held that the par value should be taken.

In the *Cook* case, *supra*, there was not before the Commission the proper kind of evidence on which the Commission could determine the rate of exchange at the time when certain money orders were dishonored, and it was contended in that case by the respondent Government that an award should be rendered in terms of the Mexican so-called Law of Payments of April 13, 1918. That contention was not sustained by the Commission.

Whatever may be said of the principles underlying the decisions of domestic courts in cases in which the rates of exchange have been fixed as of the date of judgment or as of the date when suit was brought, those principles do not appear to be susceptible of logical application in a case such as that pending before the Commission. But the principle of applying the rate of exchange as of the date of the breach of an obligation appears to be one which the Commission can properly apply. The Commission has followed the practice of rendering awards in currency of the United States, having in mind the uncertainties with respect to the rate of exchange and, further, the provisions of the first paragraph of Article IX of the Convention of September 8, 1923. It is therefore proper that the award should be rendered in accordance with the rates prevailing at the time the money orders should have been paid; that was when they were presented for pay-

ment. By the application of that principle the award will be the equivalent value in gold which the claimant would have received had the orders been paid on presentation. The precise dates of presentation are not shown, but, in the absence of specific evidence on this point, it may be properly assumed that requests for payment were made shortly following the issuance of the orders.

In fixing the rate of exchange as of the time when the money orders should have been paid, the Commission does not need to concern itself with questions as to the precise meaning or evidential value that may be given to a letter such as that addressed by the claimant to the American Agent on May 9, 1927.

One of the orders is dated June 30, 1914; the other August 13, 1914. Adopting the rate of \$0.3075 stated in Annex 2 to the Mexican Answer to be the rate on June 30, 1914, an award should be rendered in the sum of \$90.38, with interest thereon.

Decision

The United Mexican States shall pay to the United States of America in behalf of Esther Moffit the sum of \$90.38 (ninety dollars and thirty-eight cents), United States currency, with interest at the rate of six per centum per annum from August 30, 1914, to the date on which the last award is rendered by the Commission.

ELVIRA ALMAGUER (U.S.A.) *v.* UNITED MEXICAN STATES

(*May 13, 1929. Pages 291-299.*)

FAILURE TO PROTECT.—EXISTENCE OF LAWLESSNESS. Mere fact that a large number of crimes may have taken place in the region where claim arose is not *prima facie* proof that State has failed in its duty to protect.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—RELEASE OF SUSPECTED CRIMINALS. Claimant's husband was killed as the result of a payroll robbery. A number of suspects were arrested but were released before trial on ground that evidence against them had ceased to exist. It appeared that such conclusion was unfounded in fact as to a number of important suspects. No explanation of such release was proffered from the judicial records by respondent Government. Claim *allowed*.

MEASURE OF DAMAGES. Rule in *Janes* claim *supra* followed, to the effect that different degrees of denial of justice would be taken into consideration in allowing damages.

Cross-references: Am. J. Int. Law, Vol. 24, 1930, p. 624; Annual Digest, 1929-1930, p. 170.

Commissioner Fernández MacGregor, for the Commission:

A claim in the amount of \$50,000.00, United States currency, is made by the United States of America, on behalf of Elvira Almaguer, against the United Mexican States, alleging that the claimant's husband, Toribio