

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

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**RECUEIL DES SENTENCES  
ARBITRALES**

**Fabian Rios (United Mexican States) v. United States of America**

31 March 1926

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Commission constituted in pursuance of the Special Claims Convention between the United States and Mexico signed September 10, 1923, and effective through exchange of ratifications February 19, 1924. Articles II and III of that convention have no counterpart in the convention under which this Commission is constituted. It is not for this Commission to express any opinion with respect to the liability of Mexico under the evidence as presented by this record if the terms of the Special Claims Convention were applied thereto. It is proper, however, to call attention to the radical difference in the terms of the two conventions and to expressly state, for the guidance of the respective Governments, that what is said in this decision and opinion can have no application to cases falling within the terms of the Special Claims Convention.

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FABIAN RIOS (UNITED MEXICAN STATES) *v.* UNITED STATES  
OF AMERICA.

(*March 31, 1926. Pages 59-61.*)

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PROCEDURE, MOTION TO DISMISS.—RESPONSIBILITY FOR ACTS OF FORCES.—

MILITARY ACTS. While respondent Government would not be responsible for losses resulting from shell fire in taking possession of Veracruz, decision on motion to dismiss for lack of jurisdiction *suspended* in order that allegations of other circumstances of loss may be developed and supported.

*Comments:* Edwin M. Borchard, "Decisions of the Claims Commissions, United States and Mexico," *Am. J. Int. Law*, Vol. 20, 1926, p. 536 at 542.

This case is before this Commission on the American Agent's motion to dismiss.

1. The claim is put forward by the United Mexican States on behalf of Fabian Rios, who was born and has ever remained a Mexican national, to recover damages in the sum of 6,000 pesos. The pertinent allegation in the Memorial follows:

"That during the battles of the 21st and 22nd of the month and year above stated, fought with the invading forces of the American Government, he was compelled to abandon his residence, because several shells shot by the ships of war of the said Government, fell near his residence. That after having abandoned his home, three of those shells struck his very house, totally destroying his furniture and personal belongings, and what was left of his household and personal articles was stolen by the soldiers and by the populace."

2. The motion to dismiss challenges the jurisdiction of the Commission to hear and decide this case because the losses complained of resulted from the acts of the armed forces of the United States in taking military possession of Veracruz in April, 1914, and not from the administrative acts of the American authorities after the occupation had been accomplished. If it were clear that the Memorial did not allege any damage resulting from the administrative acts of the American authorities, then the motion would be sustained under the previous decisions of this Commission in *El Emporio del Café* case (Docket No. 281), the *Gonzales*

case (Docket No. 290), and the Lopez case (Docket No. 903), and for the reasons therein stated.

3. But while the allegations in the Memorial are inconsistent and confusing, they must be taken as confessed for the purposes of this motion, and the Commission can not say with certainty that there is no claim for loss or damage suffered by claimant after the military possession of Veracruz had been accomplished. While the Memorial does allege that the American shells which struck claimant's house when the Americans were in the act of taking possession of Veracruz totally destroyed "his furniture and personal belongings" and while it is difficult to understand how after such total destruction there was anything "left of his household and personal articles" to be "stolen by the soldiers and by the populace" due to the lax administration by the American authorities after possession had been accomplished, nevertheless, in view of these ambiguous allegations the Commission is not justified in sustaining the motion to dismiss.

4. The Mexican Agent is given leave to file an amended memorial, with full evidence in support thereof, within thirty days from this date, setting out the facts with greater particularity and reconciling these inconsistencies. A failure to take full advantage of this leave will result in the dismissal of the case.

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JOHN B. OKIE (U.S.A.) *v.* UNITED MEXICAN STATES.

(*March 31, 1926. Pages 61-64.*)

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IMPROPER COLLECTION OF GOVERNMENTAL CHARGES. Claim for collection of fees arising in connexion with imports, which authorities had agreed to waive, *allowed*.

1. This claim is put forward by the United States of America on behalf of John B. Okie, who was born and has ever remained an American national. From the record it appears that on January 17, 1920, Okie, who was engaged as a sheep breeder in Texas, applied to the Mexican Government through its Department of Finance and Public Credit, for authority to import Merino sheep into Mexico. Unfortunately neither this original letter nor a copy thereof has been produced. It was answered, however, on January 29, 1920, by the Department of Finance and Public Credit of the Mexican Government, a copy of which answer follows:

[Translation]

(To be sent under registered mail)

Federal Executive Power, Mexico, Dept. of Finance & Public Credit, Dept. of Customs Service, Sec. 1, Group 1, No.

Subject: Fixing conditions for temporary importation of ewes through Villa Acuña.

To J. B. OKIE,

670 So. Orange Grove Ave.,

Pasadena, Cal., U. S. A.

Your communication of the 17th inst. at hand, requesting authorization to import 24,000 Merino ewes, of high grade, coming from the State of Texas,