

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

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

5 November 1930

VOLUME IV pp. 661-664



NATIONS UNIES - UNITED NATIONS
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measure; the person held *incomunicado* may speak to other persons or communicate with them in writing, in the discretion of the Judge, provided that the conversation takes place in the presence of this official or that the letters be sent through him unsealed. Under these conditions, and if it does not totally prevent the accused from having an attorney to defend him, *incomunicación* does not imply a violation of international law. In the instant case the *incomunicación* suffered by the claimant took place in accordance with the law during the first days of the proceedings, from November 11, to December 1, 1910. It is of record that the accused was able to defend himself fully from the beginning to the end of the proceedings, and that finally, by virtue of that defense, he was acquitted. There is, therefore, no cause for responsibility chargeable to the Mexican Government, on this ground.

In view of the foregoing, the instant claim must be disallowed.

Decision

The claim of the United States of America on behalf of Joseph A. Farrell is disallowed.

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

(November 5, 1930. Pages 162-167.)

CONTRACT CLAIMS.—COMPUTATION OF AWARD.—AWARD CALCULATED AS OF TIME CONTRACT DEBTS WERE PAYABLE.—RATES OF EXCHANGE.—PROOF OF FOREIGN LAW. Claim for goods sold and delivered to respondent Government. Latter produced evidence as to rates of exchange during period in question. Claimant Government contended goods were acquired and selling price computed on a gold basis. *Held*, award should be in amount of losses sustained by the claimant because of the non-fulfilment by respondent Government of its obligations when they arose.

INTEREST. Interest awarded from date of latest invoice in the record to the date on which the last award is rendered by the tribunal.

Commissioner Nielsen, for the Commission:

In the Memorial filed in this case it is stated that claim is made in the amount of \$11,782.95 gold currency of the United States, due to George W. Cook, for merchandise sold and delivered to Departments of the Government of Mexico by the mercantile house of Mosler, Bowen and Cook, Sucr., of the City of Mexico. However, the claim is made up of a large number of items, and among those listed and supported by evidence are some for services rendered at the request of Mexican authorities. The substance of the allegations of the Memorial with respect to the sums for which compensation is sought is as follows:

The invoices covering the merchandise sold and delivered were approved by the respective departments of the Federal Government, but the Government of Mexico has refused to pay the invoices, although repeatedly requested to do so. Much if not all of the merchandise, consisting almost entirely of office and household furniture, fittings, fixtures, equipment and utilities, is

still in use in the several departments of the Federal Government. Although payment of each item appearing in a Bill of Particulars annexed to the Memorial has been repeatedly demanded from officials to whom delivery was made, no payment has ever been made.

It was stated in the Memorial that original copies of the invoices showing receipt of articles appearing in the annexed Bill of Particulars were in the possession of the Agent of the United States and would be produced and filed with the Secretariat of the Commission if the Commission should so order. The necessity for their production to enable the Mexican Agency and the Commission to examine them was pointed out in the Mexican Answer, and they were subsequently produced.

Certain items of this claim were contested by the Mexican Agency for various reasons. However, the Commission is convinced, in view particularly of the fact that the Agency after careful examination of the transactions in question has produced no receipts from the claimant, that the amounts objected to are due to the claimant.

Apart from questions relating to these items, the only issue in the case remaining at the time of the oral argument pertained to the rate of exchange at which the award should be computed. Mexico introduced as evidence copies of communications addressed by the Department of *Hacienda Crédito Público* of the Mexican Government to banks in Mexico, requesting information with respect to "the rates of exchange on the national monetary unit" from July 30, 1913, to August 12, 1914, inclusive, and presented also copies of the replies furnishing the desired information. The United States in turn filed evidence showing that these rates were rates on bank bills or other paper money and not on the Mexican gold coin. It was asserted in behalf of the United States that during the period in question paper money, except bills which became so through the operation of laws put into effect November 5, 1913, and January 6, 1914, was not legal tender. These bills, it was pointed out, were made gold obligations by the Government, and their redemption in gold was guaranteed. It was argued that it was therefore immaterial, in fixing rates of exchange in relation to items of the claim, whether the bills circulated at their fixed par value. Some items became due while these bills were in circulation. It was contended that debts can only be liquidated in legal tender, unless there is some agreement to the contrary, and that an award, including all items, should be made on the basis of the gold peso as defined by the Mexican law of March 25, 1905.

It was further contended that evidence in the form of affidavits showed that the claimant procured his goods on a gold basis and based his selling prices on a profit computed on the cost of the goods in gold. This contention was advanced for the purpose of applying to the case the views expressed by two of the Commissioners in an opinion written in the *Cook* case, Docket No. 663, *Opinions of the Commissioners, Washington, 1927*, p. 323. Those views were to the effect that certain amounts which became due to the claimant in that case in the years 1913 and 1915, when a depreciated paper currency was in circulation throughout the country, should be awarded by the Commission in compliance with the monetary enactments of Mexico effective in those years, unless in any specific case it might be proven that such action would cause the claimant an unjust enrichment. It was stated by the Commissioners that there was no evidence in the record that such an unjust enrichment would result from an award based on the par value of the Mexican peso, namely, \$0.4985. Counsel for the United States argued that the evidence in that case was of the same general character as that

produced in the instant case. Counsel for Mexico took issue with the conclusions advanced in behalf of the United States with respect to the evidence in the present case. His argument was concerned but slightly with the contention that rates of exchange should be based solely on money that was legal tender.

This Commission has in the past pointed out the uncertainty and conflict of opinion appearing in the decisions of domestic courts which are required to translate currency in view of the fact that they render judgments only in the coin of the governments by which they are created. The subject was discussed in the *Cook* case, Docket No. 663, *supra*, in which the Commission was of the opinion that there was not before the Commission the proper kind of evidence to determine the rate of exchange at the time when certain money orders for which payment was sought were dishonored. The subject was also discussed in the *Moffit* case, *Opinions of the Commissioners, Washington, 1929*, p. 288, in which evidence with respect to rates of exchange was produced. In the instant case there is evidence of rates. But it is contended that the evidence is irrelevant, since it relates to rates on paper money.

The Permanent Court of International Justice has dealt with the question of the monetary basis on which payments should be made of the principal and interest of certain bonds. One case was concerned with Serbian bonds and another with Brazilian bonds. *Case Concerning the Payment of Various Serbian Loans Issued in France: Case Concerning the Payment in Gold of the Brazilian Federal Loans Issued in France: Publications of the Permanent Court of International Justice, Series A.—Nos. 20/21, Collection of Judgments*. However in those cases the principal issue related to the effect of the so-called "gold clause" contained in the bonds. The issues there presented appear much less difficult than the very complicated questions that grow out of the financial conditions existing in Mexico during the years in question. The Permanent Court of International Justice had occasion to consider the effect of the domestic law of France with respect to the payment of the interest and principal sums of the bonds. And relative to the functions of an international tribunal in dealing with questions of domestic law, the Court said:

"Though bound to apply municipal law when circumstances so require, the Court, which is a tribunal of international law, and which, in this capacity, is deemed itself to know what this law is, is not obliged also to know the municipal law of the various countries. All that can be said in this respect is that the Court may possibly be obliged to obtain knowledge regarding the municipal law which has to be applied. And this it must do, either by means of evidence furnished it by the Parties or by means of any researches which the Court may think fit to undertake or to cause to be undertaken."

The view here indicated seems to be in the sense that, just as when a foreign law is invoked before a domestic court it must be proved as matters of fact, so domestic law must be proved before an international tribunal—although not necessarily in the form in which proof is made before domestic tribunals, and that an international tribunal receives evidence of the law furnished it by the parties and may itself undertake researches. The Court based its conclusions with respect to French law on citations of publicists and judicial decisions of French courts.

Mexican law with respect to legal tender in Mexico and with respect to guaranteed paper obligations, was extensively discussed by counsel for the United States. However the Commission is not convinced that the contentions advanced were fully sustained. And although it is possible to deduce from the record fairly definite conclusions with respect to the dates

of delivery of the articles for which compensation is claimed, it is impossible to determine with absolute accuracy when compensation was due with respect to each of the very numerous items. Whatever may have been Mexican law with respect to the character of money a creditor might have refused to accept in payment of debts during the years when the items embraced by the claim became due, it seems to be clear that a debtor was not obliged to make payment in legal tender, or in other words, was not required to liquidate a debt in terms of legal tender unless a creditor demanded that form of liquidation.

With respect to paper money, it may be observed that although a legally fixed value of money and declarations as to a guaranty back of it may have a bearing on rates of exchange, these matters are not solely determinative of rates. And the ascertainment of a rate on some guaranteed obligation of a Government in relation to money of another kind is obviously something different from the matter of making effective the guarantee.

Some questions were raised in argument with respect to a circular issued by the *Secretaría de Hacienda y Crédito Público* relative to the application of the so-called Law of Payments of April 13, 1918, and also of a judicial interpretation of that decree. In the *Cook* case, Docket No. 663, *supra*, it was pointed out that it was not necessary in the disposition of that case to take account of economic conditions in Mexico which prompted the enactment of that law or of the standing of that law as regards its operation on the rights of aliens. The same situation exists now in the view we take of the instant case.

The award should be in the amount of the losses sustained by the claimant because of the non-fulfillment by the Mexican Government of its obligations when they arose. It seems to be clear from the evidence that when these obligations became due there was practically no gold in circulation in Mexico. Whether the claimant would have refused payments in money other than gold had they been tendered, is a matter of useless speculation. With respect to legal tender paper money, it must of course be borne in mind, as has been pointed out, that, when a claimant is awarded a sum in gold, the translation of that amount into the equivalent of what he would have received on the date an obligation was due in accordance with the evidence of rates existing at that time, does not involve a question of enforcing a payment in gold values of some paper obligations which the claimant never possessed, nor a question as to the propriety of the issuance of such money. The Commission is of the opinion that in the light of the record before it an award may be rendered in the sum of \$8,955.04 with interest from January 6, 1915, that is, the date appearing on the latest invoice in the record.

Decision

The Government of the United Mexican States shall pay to the Government of the United States of America on behalf of George W. Cook, the sum of \$8,955.04 (eight thousand nine hundred and fifty-five dollars and four cents) with interest at the rate of six per centum per annum from January 6, 1915, to the date on which the last award is rendered by the Commission.
