

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Cornelia J. Pringle, et al., (Santa Isabel Claims) (U.S.A.) v. United Mexican States

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Decisions

CORNELIA J. PRINGLE, ET AL., (SANTA ISABEL CLAIMS) (U.S.A.)
v. UNITED MEXICAN STATES

(*Decision No. 1, April 26, 1926, dissenting opinion by American Commissioner, April 29, 1926. Pages 1-32.*)

INTERPRETATION OF *Compromis*.—PAYMENT *ex gratia*. Since respondent Government agreed in the *compromis* to make payment *ex gratia* instead of on the basis of the accepted rules of international law, the terms of the *compromis* should be strictly followed in determining responsibility.

RESPONSIBILITY FOR ACTS OF FORCES.—STATUS OF VILLISTA FORCES UNDER THE *compromis*. Adherents or former adherents of Villa as of January 10, 1916, *held* bandits under subdivision 5 of article III of the *compromis*.

FAILURE TO SUPPRESS OR PUNISH. Facts *held* to establish that no failure to suppress or punish bandits occurred so as to entrain responsibility under the *compromis*.

EFFECT OF ACT OF AMNESTY. Amnesty extended to Villa and his followers by the Mexican Government on July 28, 1920, *held* not a failure to suppress or punish within terms of *compromis*.

FAILURE TO PROTECT. Group of approximately fifteen American officials and employees of mining company, under invitation from General Obregón, who had promised them the necessary protection and assured them there was no danger from Villa forces, returned to Mexico to reopen the mines in January, 1916. They requested a military escort but authorities replied that they were unable to furnish the same. On January 16, 1916, the train carrying them was attacked by forces under the command of Villa officers and they were all murdered. The train was also robbed. Claim *disallowed*.

Cross-reference: Am. J. Int. Law, Vol. 26, 1932, p. 172.

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

The President, for the Commission:

The seventeen claims in connexion with the occurrences at Santa Isabel, filed jointly under No. 449, for a decision by this Special Claims Commission, conformably to the Rules of Procedure. (Rule IV, Art. 2) on which, however, separate memorials were prepared in the names of: 1. Cornelia J. Pringle *et al*; 2. John Pauline Conklin; 3. Lila Farland Anderson; 4. Charles F. Hase *et al*; 5. Eva W. Ross *et al*; 6. Frank W. Simmons; 7. Matilda Symansky Bodine; 8. Security Trust and Savings Bank; 9. Beatrice L. Robinson; 10. Theresa Johnson Box; 11. Nell A. Gregory; 12. Mabel MacDonald; 13. Wm. B. McHatton; 14. Jessie H. Cassaday; 15. Helen

Hintz Coy; 16. S. B. Couch; and 17. Lucy Evans Swoyer, having been duly examined, it results:

That the Cusi Mining Company is a corporation operating mines in Cusihuriachic, State of Chihuahua. In obedience to instructions from their Government, the American officials and employees of the said Company crossed to their own country owing to the disturbances which occurred in Mexico in 1915. In January 1916, the aforesaid officials and employees decided to work the mines and came back to Chihuahua for that purpose. To this end, they asked that some troops be stationed at the camp, and having obtained this they decided to set out under the direction of Mr. C. R. Watson, the General Manager.

On the morning of January 10, 1916, they started out from Chihuahua, and while the train was on its way, near Santa Isabel, they were stopped by a band of armed men, led by an individual of the name of Pablo López. The said armed men stopped the train, entered the Pullman car in which the officials and employees of the mine were traveling, obliged them to alight and murdered them with great cruelty.

The American Agent presented in his Brief several questions of a general nature, to be determined by the Commission for eventual application in the decision of each one of the cases grouped under No. 449, and concluded by affirming the responsibility of the Mexican Government as regards the said cases, and according to the Convention, because the parties who caused the death of the Americans near Santa Isabel, were Villistas and should be considered as among the forces specified in paragraphs 2 and 3 of Article III of the Convention.

The Agent of the Mexican Government opposed the point of view of the American Agent, in so far as the general questions presented were concerned, and he denied the responsibility of the Government of Mexico, as he considered that the crimes of Santa Isabel were the acts of bandits pure and simple.

Besides the Memorials presented on behalf of the seventeen claimants, and the Answers thereto, the Agents also presented their Briefs in which all the cases were jointly considered and they defended their opinions and conclusions orally.

From the examination and appreciation of all the above, it results:

1. That the Commission has as the supreme authority for its judgments, the Convention of September 10, 1923, concerted by the two countries, "providing for the settlement and amicable adjustment of claims arising from losses or damages suffered by American citizens through revolutionary acts within the period from November 20, 1910, to May 31, 1920", and under the terms of this Convention, claims should be "examined and decided in accordance with the principles of justice and equity", since Mexico "wishes that her responsibility shall not be fixed according to the generally accepted rules and principles of International Law, but *ex gratia* feels morally bound to make full indemnification and agrees, therefore, that it will be sufficient that it be established that the alleged loss or damage in any case was sustained and was due to any of the causes enumerated in Article III of the Convention".

From this provision it is obvious that the Convention withdrew from among the powers of the Commission the verification of the responsibility of Mexico in the light of the principles of international law. Claims should be examined and decided according to the principles of justice and equity, that is to say, that although, according to the rules of international law,

the responsibility of Mexico ought not to be recognized, yet it should be weighed according to the principles of justice and equity, and further, subject to the principles of Article III.

So that Article III of the Convention, which specifies in a detailed manner, by limiting and restricting the general terms of Article I, which are the forces, whose acts, having been the cause of losses or damages either to persons or properties of American citizens, may give rise to a claim, which shall be examined and decided by the Commission, evidently constitutes the essence of the agreement.

The said provision reads as follows:

“Article III. The claims which the Commission shall examine and decide are those which arose during the revolutions and disturbed conditions which existed in Mexico covering the period from November 20, 1910, to May 31, 1920, inclusive, and were due to any act by the following forces:

- (1) By forces of a Government *de jure* or *de facto*.
- (2) By revolutionary forces as a result of the triumph of whose cause governments *de facto* or *de jure* have been established, or by revolutionary forces opposed to them.
- (3) By forces arising from the disjunction of the forces mentioned in the next preceding paragraph up to the time when the government *de jure* established itself as a result of a particular revolution.
- (4) By federal forces that were disbanded, and
- (5) By mutinies or mobs, or insurrectionary forces other than those referred to under subdivisions (2), (3) and (4) above, or by bandits, provided in any case it be established that the appropriate authorities omitted to take reasonable measures to suppress insurrectionists, mobs or bandits, or treated them with lenity or were in fault in other particulars.”

2. When weighing the claims, then, it is always a preliminary question to verify whether the events fall within the terms of the Convention, that is to say, to establish whether the parties guilty of those events were any of those specified in Article III, such verification invariably consisting in the discussion of an historical problem.

It is evident that the Convention, when fixing a period within which the losses or damages suffered by American citizens might determine the presentation of a claim to the Commission, did not intend to assert that Mexico was in a continual state of revolution during the whole of this period. The Convention in Articles I and II thereof refers to the damages suffered by American citizens “during the revolutions and disturbed conditions which existed in Mexico” within a given period. This means literally that during this period there were in Mexico “revolutions and disturbed conditions”, and not a single and permanent revolution.

Consequently such preliminary question, in order to examine and decide upon the unfortunate occurrences at Santa Isabel, which brought about the presentation of the claims filed jointly under No. 449, consists in ascertaining whether those acts should be classed as acts committed by any of the parties specified in Article III of the Convention, and if any of the circumstances specified in paragraph 5 were attendant thereupon, in the event that such acts be considered as the acts of bandits.

This question is a very delicate one because the assailants and murderers of the Americans at Santa Isabel are considered as Villistas, that is to say, as followers of Francisco Villa, whose turbulent activities in Mexico extended over a protracted period, one longer than that which the Convention refers to, and in the course of which Villa appears according to the time and the circumstances, under the most different aspects, now as a bandit or

as a guerilla, or else as a revolutionary and a General in command of forces. However, the Santa Isabel case can be examined and decided by itself in view of its special circumstances, without its being necessary to characterize in a general manner, either the nature of Villa's activities or to include them under the subdivisions of Article III, which would be prejudging forthwith a great number of cases which will have to be presented to the Commission for examination and decision.

3. It is now in the realm of history that in the series of political and military events which took place in Mexico during the period mentioned in the Convention, Francisco Villa (the name assumed by Doroteo Arango as a result of the pursuit he was subjected to on account of divers and famous acts of banditry) was conspicuous in the various revolutionary movements and disturbances which occurred in Mexico.

In 1915, the forces known as Constitutionalist which recognized the supreme command of the First Chief, Venustiano Carranza, under the leadership of General Obregón, began a vigorous campaign for the annihilation and final elimination of that disturbing influence, and after a campaign lasting several months, the Constitutionalist forces, always victorious, were successful in destroying Villa's forces in the battles of Celaya (April), Trinidad (July) and Agua Prieta (September), which then dispersed in bands throughout the most uninhabited and inhospitable regions of the country.

General Obregón, in his book "Eight Thousand Kilometers of Campaigning", a work whose authority is in this case invoked by both parties, in which he gives a detailed and authorized account of the aforesaid campaign against Villa, says literally on page 708: "on that defeat (referring to the battle of Alamito, September, 1915) and on the taking of the town of Nogales by our forces, there was nothing left for Villa but to disperse and march painfully across the Sierra in order to seek out his hiding places in Chihuahua where he might resume his former activities as a highway-man and assassin of defenseless people."

Villa's men having been routed at the end of 1915, an amnesty was decreed for all of them, of which nearly eight thousand men availed themselves.

Just after those events, on October 19, 1915, the Government of the United States recognized the *de facto* Government of Carranza. American Consulates were reopened in those States that had been subject to those convulsions; on January 1, 1916, railway traffic between Ciudad Juárez, on the border, and Chihuahua, was reestablished; so that this stage of the fighting may thus be looked upon as virtually over. The country entered on a period of political reorganization; the Constituent Assembly was called, and it, once elected, did its work and drew up a Constitution which was promulgated on February 5, 1917. Señor Carranza was elected President of the Republic and after a constitutional regime had been restored, he governed for one term, still with serious and constant disturbances, until April 1920, when the revolution broke out which eventually overthrew him.

4. The above are the historical facts. It was just after the destruction and dispersion of Villa's forces, which, almost all of them, availed themselves of the amnesty decreed by the *de facto* Government of Carranza, a *de facto* Government which was recognized by the United States on October 19, 1915, when, immediately after those events, on January 10, 1916, the attack on the train at Santa Isabel and the barbarous murder of Americans by a band of men under the command of Pablo López took place. It has not

been proved nor even alleged that Villa was present at the scene of the occurrence. In a telegram sent from El Paso by the official American Agent, Cobb, to the Secretary of State at Washington, on January 13, it was said: "I am convinced Villa is responsible for massacre at kilometer 68 although no one saw him at same massacre". (General Annexes, Santa Isabel Cases, submitted by the American Agent, p. 151). In his telegram of the day before, the said Cobb had already informed the State Department that: "The bandits were commanded by Colonels Pablo López and Beltrán, both of whom were Villa Colonels and by General Reyna. Reyna is a new name. Some think it might be a name assumed by Villa. Santa Isabel is in the heart of the Villa country. During his first days as a bandit, Villa is reported to have been in the neighborhood on Sunday night. There is no further information than this to connect Villa personally with the massacre". (General Annexes, Santa Isabel Cases, p. 158).

One month later, after fuller investigations, the American Consul at Chihuahua, Marion Letcher, reported officially to the State Department that "all the evidence obtainable seems to show that López and his band massacred the eighteen Americans at La Baeza, or Santa Isabel, on January 10".

That the Santa Isabel murderers were considered as Villistas is further proved by the decree of General Carranza, dated January 14, a few days after that horrible crime, by virtue of which and as a consequence of the Santa Isabel case "in view of the frequency with which outrages by dispersed bands of bandits are being repeated in divers places in the country, after the Constitutionalist Army has annihilated Reaction under arms.

(1) The reactionary petty chieftain, ex-General Francisco Villa was declared an outlaw;

(2) The reactionary petty chieftains ex-General Rafael Castro and ex-Colonel Pablo López were declared outlaws;

(3) Any citizen of the Republic was authorized to apprehend the petty chieftains Francisco Villa, Rafael Castro and Pablo López, and to execute them without a preliminary trial, drawing up a report in which their identification and execution should be placed on record".

5. By that decree it may be seen that the opinion of the Mexican Government, at the time of those events, was that Villa was then nothing else but a bandit, and that the Santa Isabel case was an act of banditry pure and simple. Nor has the United States Government ever looked upon it as otherwise.

The official reports of the American Consuls and Agents have previously been transcribed herein. They all describe Villa and his followers as bandits, and Cobb, in his telegram of January 12th, referring to the nature of Villa's activities after the dispersion of his troops, and to those days when the event of Santa Isabel took place, said: "During *his first days as a bandit*, Villa is reported to have been in the neighborhood on Sunday night". (General Annexes. *Santa Isabel* cases, p. 158.)

And as to the opinion of the American Government, as expressed by high and authorized representatives, the conclusion is reached that it is public and notorious that at the beginning of the year 1916, a punitive expedition of American Federal forces entered into Mexico in pursuit of the bandits, and as the consequence of the criminal activities of the band under Villa in the country along the border of both nations.

President Wilson, in a communication to the American press, dated March 26, 1916, referring to this expedition, expressed himself as follows:

"As already announced, the expedition into Mexico was ordered under an agreement with the *de facto* Government of that country, for the sole purpose of capturing the bandit Villa," and farther on: "I think it is most desirable to impress upon the mind both of our people and of the people of Mexico the fact that the expedition is purely and necessarily a punitive measure, directed only towards the elimination of the marauders who committed depredations at Columbus, etc." (*Labor Internacional de la Revolution Constitucionalista en Mexico*, an official publication of the Mexican Government, p. 192.)

The use of American forces for that expedition was in accordance with the American law, and was authorized by Congress; and the Federal Senate, in their respective decision, expressly stated that the use of the armed forces of the nation was "for the sole purpose of capturing and punishing the bands of armed bandits", and added farther on "that Congress also extended their assurance to the *de facto* Government of Mexico and to the Mexican people, that the pursuit of the said band of outlaws across the international boundary line, is solely for the purpose of capturing and punishing the fugitive band of outlaws." (*Labor Internacional*, etc., p. 338).

Later on, the Secretary of State, Honorable Robert Lansing, in a note of June 20, 1916, in regard to the difficulties which arose on account of that same expedition, asserted in positive terms "that the only purpose of the expedition was to capture, destroy or completely disperse the band of Villa's outlaws", and enumerates, among the facts explaining that punitive expedition, the lamentable occurrences at Santa Isabel. (*Labor Internacional*, etc., p. 254).

It is easy to understand that had it not been so, if to those activities of Villa and his men at that time there had been ascribed a revolutionary character against the Government of Mexico, or a political nature of any sort, their pursuit by American armed forces within Mexican territory in order to capture, destroy or completely disperse them, could not but have had the character of an intervention in the internal affairs of Mexico, which the American Government always assured was not their intention.

It is, however, worthy of note that the American punitive expedition was effected after a suggestion by the Mexican Government in a note from the Department of Foreign Relations, dated March 10, 1916, to the Confidential Agent of the American Government in Mexico, in order that an agreement be concluded with the Government of the United States so as to permit the reciprocal crossing of forces of either country into the territory of the other, in the zone along the frontier, in pursuit of bandits. (*Labor Internacional*, etc., p. 156)

6. There is yet another aspect of the question to be considered. The assailants of the train January 10, 1916, did not confine themselves to the murder of the Americans, but they also looted and robbed everything of value on the train. Abundant evidence of this fact is found in the documents presented by the Honorable American Agent. In his deposition before a Notary Public at El Paso, Cesar Sala, a passenger on the train attacked, says: "The bandits looted the express car and I saw some trunks laying broken open and all the contents scattered on the ground. They took out all the silver of the Cusi Mining Company, but I don't know how much it was. The Cusi Mining Company had a considerable sum in Mexican silver with Mr. Watson in the first-class car, but before leaving Chihuahua this was placed in the express car": (General Annexes, p. 80).

Eleno López, another passenger on the train, declared: "After the Americans had been shot, the Villistas went to the express car and robbed the same". (General Annexes, p. 95) F. L. Wemple, General Freight and Passenger Agent for the Mexico Northwestern Railway Company, to which the train attacked belonged, declared: "Upon arrival at a point eight (8) kilometers west of Santa Isabel, the train was attacked and robbed" "The Express Messenger, whose name is Rincón, notified me that all of the express matter had been robbed, with the exception of a few articles of small value; and that among this express matter was Six Thousand Five Hundred and Eighteen Pesos and Fifty centavos (\$6,518.50) Mexican silver coin, in sealed bags". Furthermore, Messenger Rincón, upon arrival at Chihuahua, reported to me that he had asked the person who appeared to be the leader of the bandits who entered the express car, for a receipt for the money and the other articles of value taken. The bandits refused this and threatened him with arms. (General Annexes, p. 110.) The official Agent of the United States in El Paso. Cobb, in a telegram to the Secretary of State, dated January 12, says: "After the massacre, these bandits robbed the train and retired to Carretas, a few miles distant". (General Annexes, p. 158.)

All of which, furthermore, goes to show unmistakably that the attack on the train was the act of bandits.

7. From the detailed statement backed up by documents that has been made herein, it may clearly be seen that it is impossible to fail to recognize that the activities of Villa of a turbulent nature and which disturbed public order during a long period, have been lacking in unity. And even, if it be possible to describe them, according to the time and to the circumstances, by means of different paragraphs of Article III of the Convention, yet at that time, Villa was no more than a bandit.

It is to be considered furthermore, that whether the inclusion of these events falls within the scope of the Convention does not depend on the fact of any revolutionary unity in the activities of Villa being recognized or not. Under the terms of the Convention, acts of mere banditry may bring about the payment of indemnification, while acts due to individuals characteristically revolutionary may be insufficient for that purpose, since what is essential is not that the act be a revolutionary one or be due to a revolution, but that it proceed from some one of the parties specified in Article III.

It is undeniable, and this has been fully shown by documents, that according to contemporary feeling as expressed by the Governments of the United States and Mexico, Villa and his followers, at the time of the horrible events at Santa Isabel, cannot be considered otherwise than as bandits. With reference thereto, Cobb, the Agent of the American Government, in an official report to the Secretary of State at Washington, two days after the attack on the train, as stated above, ascribed to Villa his true character at that moment, saying that: "during his first days as a bandit, Villa is reported to have been seen in the neighborhood (of Santa Isabel) on Sunday night".

In the last paragraph of Article III aforementioned, there are included claims based on acts of banditry, "provided in any case it be established that the appropriate authorities omitted to take reasonable measures to suppress bandits or treated them with lenity or were in fault in other particulars".

None of these requirements has been established in the case before us

It belongs to the realm of history that, after the rout and dispersion of Villa's forces towards the end of 1915, the forces of law and order devoted their activities to the pursuit, dispersion and extermination of the bandits marauding in divers parts of the country, according to the means of the Government's command and under very difficult circumstances; and after the lamentable occurrences at Santa Isabel, the authorities did not treat the assailants of the train and murderers of the Americans with lenity or consideration; as they forthwith undertook swift and efficient pursuit and succeeded in arresting and executing many of them, among others their leader, Pablo López, and dispersed the band completely. It is true that Francisco Villa was not captured and that he kept up his turbulent activities for a few years more, this, however, does not prove that the established Government treated him with lenity, as it never ceased to pursue him.

The agreement of July 28, 1920, as concluded with Villa on behalf of the Provisional Government of Señor Adolfo de la Huerta and through which, in consideration of his being granted certain favors, Villa undertook to lay down his arms, however strange it may seem, represents a supreme effort for achieving, by any means whatsoever, the pacification of the country, already weary of long years of serious disturbances, and it cannot be looked upon as an act of lenity in connection with the events at Santa Isabel. In the first place, as already stated herein, it has not once been alleged that Villa was among the assailants of the train or that he ordered the attack. What has been said is that the bandits of Santa Isabel were Villistas, headed by Pablo López (known as a Villista officer *in the past*.) (General Annexes, p. 11), and by Beltrán. These individuals, who attacked the train, were pursued and López included, were executed, and the effective and vigorous pursuit of Villa never ceased.

Furthermore, the aforementioned agreement was concluded five years later, during which time conditions might have been fundamentally altered. In his report to the American Secretary of State, dated February 8, 1919, the American Consul at Chihuahua, referring to the activities of Villa and his band at that time, said: "once again in command of a considerable force, Villa no doubt has renewed hopes of not only receiving steady contributions from the companies, but also, and what is very important to him, recognition as a political factor to be reckoned with and not a mere bandit". (Brief of the United States, p. 151.) And above all this agreement was effected by a provisional government, one not recognized and as to whose acts it is doubtful whether they could involve responsibility for the nation.

Under these conditions, and it having been proven that the case of Santa Isabel is an act of pure banditry, it is not possible to recognize the responsibility of Mexico, based on the last paragraph of Article III of the Convention.

8. The Honorable Agent of the United States, however, endeavors to determine the responsibility of Mexico on the ground that the Americans, so barbarously murdered at Santa Isabel,

(a) had returned to their industrial work in Mexico having been invited by General Obregón, who, in a speech delivered at a banquet in El Paso, had promised them the necessary protection, saying that Villa was past and done with and

(b) had entered Mexico with passports issued to them by the Mexican authorities.

Such facts do not have the significance ascribed to them by the American Agency. Even if proof had been shown that General Obregón had made those declarations, they could not, however, have sufficient force to bind

Mexico to responsibility therefor. General Obregón was at that time, doubtless, a prominent personality in Mexico; he was Commander in Chief of the forces which had routed Villa's contingents, and the person to whom the nation six years later was to entrust the presidency of the Republic. Nevertheless, his official position was not such that his declarations could have had the consequences which it is now desired to ascribe to them. Neither can mere words uttered at a banquet which was not official have consequences so transcendental.

Similarly, as regards the passports. In the volume designated as *General Annexes—Santa Isabel Cases*, submitted by the Honorable Agency of the United States, there is on pages 40 to 134 a photographic reproduction of the passports issued by the Immigration Inspector at Ciudad Juárez, on December 29, 1915, to C. R. Watson, Manager of the Cusi Mining Company and a victim together with his companions of the murders at Santa Isabel. In the aforementioned document all that one can read is the following: "*Through references from Camphuis & Rives. Passports in favor of Mr. C. R. Watson to go from this town to Chihuahua*". Nothing more. Once he had arrived in Chihuahua, Watson obtained another passport, signed by the Acting Provisional Governor Colonel Ignacio C. Enríquez, on which one may read: "I shall appreciate it if the military and civil authorities will respect the person and property of Mr. C. R. Watson, who is perfectly well known to me as an honorable person and one abstaining from any participation in the politics of this country".

It is obvious that such documents were made out merely to allow of free transit in the country and to identify the bearer. There is nothing in them that could give rise to responsibility on the part of the Government on account of any incident that might happen to the bearers thereof, except in the case of offenses due to civil or military authorities. Besides, the passengers must have been conscious of the danger they ran. The fact merely of their having applied for an escort, as they did, shows that the Americans who went to Cusi knew that the voyage was a dangerous one, and if they undertook it without an escort having been furnished, they faced all dangers voluntarily.

The fact of the authorities having assured the travelers that there was no danger whatsoever in undertaking this voyage, is denied by those same authorities who, according to a document presented by the Mexican Agency and sworn to before the judicial authorities, have declared that on that occasion they informed the Americans of the danger of the voyage by train to the camp and that they had not been able to furnish them with an escort "in view of the urgent military requirements of the moment for garrisoning the principal points".

All the above circumstances, however, even though they had been fully proven, would never of themselves have been sufficient to bind Mexico to any responsibility. They have of course created about the victims of the horrible events at Santa Isabel, a very evident atmosphere of sympathy and compassion which, however, is not sufficient for an award to be rendered in their favor under the terms of the Convention which is the law that has to be observed by the Commission. For the claim to be recognized as allowable, the painful circumstances of the case cannot be taken into consideration, but what is necessary is to prove that the damages were caused by some of the parties specified in Article III of the Convention and, that, if classed as the acts of bandits, they answer to the conditions specified in the last paragraph of the aforementioned article.

9. All these facts, circumstances and arguments having been examined and

Whereas, the Mexican Nation is neither morally nor legally bound by the events of Santa Isabel, for, though it is true that in the Convention it has recognized that it is bound to make full indemnification for losses or damages suffered by American citizens, it is also true that this moral obligation was subordinate to such losses or damages having been caused by some one of the parties specified in Article III of the Convention and in the terms of the paragraphs thereof;

Whereas, under such conditions, equity, which is a natural sentiment of justice as independent of the principles of law and of the precedents of jurisprudence, requires that the responsibility of a State which has concerted a Convention in the liberal terms which gave rise to this Commission, be clearly defined and recognized in the strict and indisputable terms of the Convention, and should there be any doubt or point of view both favorable and unfavorable, subtly appreciable, equity commands that in such a case a responsibility assumed in a general way and *ex gratia* be not recognized.

Whereas, the present cases being determined preliminarily in the sense of the non-responsibility of Mexico, and as the Commission does not enter into consideration of the particularities of each case, there is no occasion in the present decision to take cognizance of the general questions of law and procedure discussed by the Agents, in the event that the claims were admitted, since the Commission is not competent to render administrative decisions but only to take cognizance of and to decide claims presented, stating the grounds on which their decision is based. (Rules of Procedure, XI, 2.)

The commission, by a majority thereof and against the vote of the United States Commissioner hereby dismisses the seventeen claims presented in connection with the events at Santa Isabel.

DISSENTING OPINION IN SANTA ISABEL CLAIMS

Conclusions of the American Commissioner

(1) A revolutionist is one who, having a plan of government, is engaged in an attempt to overthrow an existing government.

(2) Villa came within this definition of a revolutionist and the fact that he also had the characteristic of a bandit does not relieve Mexico of responsibility for his acts.

(3) The Commission has no more power to amend the Convention Agreement than it has to nullify it.

(4) When the highest military and civil authorities of a nation induce aliens to enter its territory to revive industry by promising protection for life and property, an obligation arises which international courts must recognize.

(5) Mexico contracted to indemnify for losses arising from not only revolutionary forces but from the disjunction of forces such as occurred between the Carrancistas and Villistas.

(6) The existence or non-existence of facts *de hors* the record should not affect the judgment of this Commission and prevent it from doing justice.

(7) When the President of Mexico on July 23, 1920, ceded General Villa an extensive and valuable ranch and provided for him an escort of

fifty trusted men at government expense, Mexico recognized his dual personality by referring to him as a "general", in recognition of his military standing and by treating him leniently in his capacity as a bandit.

(8) The local officers by not furnishing the protection that President Carranza had promised fixed Mexico's responsibility under the clause requiring it to answer if the "appropriate officers" were in fault in other particulars.

(9) Under the rules of equitable jurisprudence recognized in the Convention Agreement, Mexico estopped itself from denying responsibility for the acts of Villa.

(10) The refusal to make an award for the losses sustained as a result of the Santa Isabel murders, in view of the uncontradicted facts in this case, is in effect a nullification of the Convention Agreement.

Perry, *Commissioner*, dissenting:

The conclusions reached in the Presiding Commissioner's opinion are such a departure from the facts as contained in the record, so at variance with the established principles of international law and so completely repugnant to the plain, mandatory and unequivocal terms of the Convention Agreement, that I can not concur therein.

The following is a brief statement of the case: The United States of America, on behalf of Cornelia J. Pringle, mother of decedent, in her own right, on her own behalf, and Sidney J. Pringle, as administrator of the estate of Charles A. Pringle, deceased, asks that they be awarded damages against the United Mexican States in the sum of One Hundred Thousand Dollars in gold currency of the United States, together with proper interest.

This claim and sixteen others are presented by the United States on behalf of its citizens as a result of the so-called Santa Isabel massacre, which resulted in the death on January 10, 1916, of fifteen American citizens.

The facts are, briefly: The Cusi Mining Company owned and operated a mine at Cusiuhiriachic in the State of Chihuahua in the Republic of Mexico. Because of disturbed and revolutionary conditions at and near Cusiuhiriachic in August 1915, the officials and employees of the mining company were compelled in the interests of personal safety to leave the locality of the mine and seek safety in flight, and the mine was shut down and mining operations were discontinued. In January 1916, the company was urged by Mexican officials and others to reopen the mine and resume operations, assurances were given the officers of the Company by the Governor of Chihuahua, by the military commander of the District containing the mine, and by others that the District including Cusiuhiriachic and through which employees of the mining company would travel to reach the mine, was under government control and was safe; military protection for those who would reopen the mine was promised by the Mexican Government.

In January, 1916, the Cusi Mining Company assembled a party of employees at the city of Chihuahua in charge of C. T. Watson, its general Manager, for the purpose of going to Cusiuhiriachic to resume mining operations. The Watson party which included Charles A. Pringle, set out by rail, from Chihuahua to Cusiuhiriachic on the morning of January 10, 1916. While their train was en route, near Santa Isabel in Chihuahua, armed Mexican forces adhering to the Villa faction and commanded by Colonel Pablo López stopped the train. Col. Pablo López and his subordinates entered the Pullman car in which the Watson party was traveling, cursed

President Carranza (to whose Government Villa and López were then opposed and against which they were carrying on military operations) and announced that they were after Americans. Citizens of the United States were compelled by force to remove their clothing and leave the train. As they reached the ground along the railroad right of way beside the train, they were stabbed, bayoneted, cut with knives, shot and killed. These men were unarmed, defenseless and unable to make any defense and they made none.

The Mexican Government denies liability and, first, asserts that the Americans were negligent in leaving Chihuahua for Cusihuiriacic under conditions then existing; and second, asserts that Villa was at that time a bandit and not a revolutionist.

In determining those, as well as other questions, the Commission must constantly keep before it the charter under which it exists. The Commission can only act upon claims and consider defenses that are authorized by the charter that brought the Commission into existence. The Convention agreement signed at Mexico City, September 10, 1923, is specific, certain and unequivocal in its terms. Article III thereof reads:

“The claims which the Commission shall examine and decide are those which arose during the revolutions and disturbed conditions which existed in Mexico covering the period from November 20, 1910, to May 31, 1920, inclusive, and were due to any act by the following forces:

“(1) By forces of a Government *de jure* or *de facto*.

“(2) By revolutionary forces as a result of the triumph of whose cause governments *de facto* or *de jure* have been established, or by revolutionary forces opposed to them.

“(3) By forces arising from the disjunction of the forces mentioned in the next preceding paragraph up to the time when the government *de jure* established itself as a result of a particular revolution.

“(4) By federal forces that were disbanded, and

“(5) By mutinies or mobs, or insurrectionary forces other than those referred to under subdivisions (2), (3) and (4) above, or by bandits, provided in any case it be established that the appropriate authorities omitted to take reasonable measures to suppress insurrectionists, mobs or bandits, or treated them with lenity or were in fault in other particulars”.

This is a solemn compact between two nations. It is a definite agreement, as recited in paragraph II thereof, that as Mexico feels morally bound to make full indemnification to the United States for losses accruing to its citizens during disturbed conditions between the dates mentioned, that Mexico will make such indemnification without other proof than that said losses were due to the causes enumerated in said Article III.

(1) A revolutionist is one who, having a plan of government, is engaged in an attempt to overthrow an existing government.

It is a matter of history that about November 20, 1920, an insurrectionary movement was started in northern Mexico, which increased in momentum and finally led to the resignation of the then President Porfirio Díaz, on March 18, 1911.

One Francisco de la Barra, succeeded Díaz as the head of the *de facto* government.

On October 15, 1911, Francisco Madero, who headed the revolution against Díaz, was elected President and continued ad interim the *de facto* government.

Revolutions continued and on February 8, 1915, Victoriano Huerta deserted Madero, joined forces with Felix Díaz and led a revolution against

Madero. Madero was captured and compelled to resign February 14, 1913, and a few days thereafter both Presidents Madero and Vice President Suarez were put to death.

Pedro Lascurrain, the Minister of Foreign Affairs, who, under the Mexican Constitution, succeeded to the Presidency, appointed General Huerta Minister of the Interior, thereupon resigned and Huerta became provisional President.

About this time Venustiano Carranza, Governor of Coahuila, started a revolution in that State and on March 26, 1913, proclaimed the "Plan of Guadalupe", naming Carranza as the First Chief of the Constitutionalist Army. General Villa, General Zapata and other revolutionists later joined Carranza and contributed to the success of his movement.

Early in 1914 the resignation of Huerta was brought about, and a makeshift government of Francisco Carbajal was set up followed by the proclamation of General Gutiérrez as Provisional President. Generals Villa and Zapata agreed to the selection of Gutiérrez as President but Carranza refused to give up his claim to the Presidency.

The opposition to the Carranza government continued. Villa had deserted Carranza early in 1914 but an agreement was reached about July 9th, 1914, which so far as material reads as follows:

"1. The Division of the North recognized Señor Venustiano Carranza as First Chief of the Constitutionalist Army.

"2. Señor General Francisco Villa will furnish the Division of the North with all the implements required for the speedy and proper conduct of military operations leaving to its Chief freedom of action in administrative and military affairs when circumstances so demand, under the obligation to report his acts to Señor Carranza for rectification or ratification."

In September, 1914, Villa openly broke with Carranza and on September 30, 1914, issued a "manifesto" addressed to the nation giving his reasons for refusing any longer to recognize Carranza, declaring that Carranza assumed executive power at variance with the "Plan of Guadalupe".

Early in October 1914, the Convention of Constitutionalist Generals met at Mexico City and later at Aguascalientes and nominated a commission of five to take over the government, but Carranza refused to consent to this arrangement and on November 9, 1914, issued a manifesto disowning the Convention and its proceedings, and on November 19, 1914, Obregón issued a formal declaration of war against Villa.

On January 28, 1915, General Obregón (Carrancista) occupied Mexico City after the evacuation by the Convention. Early in February, Villa assumed executive power in northern Mexico, formed a cabinet and established his headquarters at Aguascalientes.

From that date Villa was not only in open revolution against the existing Government, but war had been declared upon him by the existing Government.

Mexico City changed hands several times during June and July, 1913, as one or another faction obtained the upper hand in that locality.

In August 1915, the United States, Brazil and other friendly countries had representatives meet in conference in an effort to restore normal conditions in Mexico.

The Conferees, after careful consideration of the facts, found that the Carrancista party was the only party possessing the essentials for recognition as the *de facto* Government of Mexico, and they so reported to their respective Governments.

The Carranza government shortly thereafter on October 19, 1915, was accorded *de facto* recognition by the United States and by a number of the republics of South America.

The activities of Villa and his forces and the military operations against them by the forces of the *de facto* government in the fall of 1915, after the recognition of Carranza are described by General Alvaro Obregón in his book entitled "Eight Thousand Kilometers of Campaigning".

General Obregón recounts the engagements between the enemy (Villa's forces) and the troops of the *de facto* Government in the early part of October 1915, and describes events leading up to Villa's attack on Agua Prieta on November 12, 1915. Villa failed in this attack with a loss of about 1,000 men, and thereupon retreated to the south. In December 1915, the Constitutionalist government granted amnesty to the rebels (except Francisco and Hipólito Villa) and Obregón states that over 7,600 Villista officers and men took advantage of the privilege.

Subsequently Villa kept up a continuous campaign against government forces which lasted until July 28, 1920, when peace was made between General Francisco Villa and Eugenio Martínez representing the government of the United Mexican States. Said Agreement or Treaty of Peace among other stipulations provided:

First: General Villa shall lay down his arms and retire to private life.

Second: The Executive of the Union shall cede to General Villa, in accord with legal requirements, the Canutillo Hacienda in the State of Durango and shall deliver to him the titles transferring ownership. General Villa shall reside in said Hacienda.

Third: In the place mentioned, General Villa shall have an escort of fifty trusted men, whom he himself shall designate, dependent upon the War and Navy Department which shall pay them their corresponding salaries. Said escort can not be withdrawn nor can it be diverted from its sole object of watching over the personal needs of General Villa.

Fourth: The Government shall give to the persons at present forming part of General Villa's forces, that is, not only those present in this town but also those who are to be found in different places fulfilling commissions entrusted to them by General Villa, a year's pay corresponding to the rank which they hold at this date. They shall also be given tillable lands in places which the interested parties shall designate so that they may devote themselves to work upon them.

Critics who read this and the Presiding Commissioner's opinion and who note the divergent views expressed as to the facts and as to elementary rules of law should be charitable. Because of ill health, or otherwise, the Presiding Commissioner did not meet in conference with his associates to discuss the case. Because of continued ill health he went to Cuba where he wrote his final decision, one of the Commissioners being at his home in Mexico and the other in the United States. If there could have been just one conference; if there could have been just one opportunity to present and have answered one question perhaps it would have been unnecessary to write this dissenting opinion. Bearing in mind that President Carranza admitted that Villa forces killed the fifteen Americans at Santa Isabel, the question is: Do you believe that Mexico should be released from its contractual obligations because a ranch and an escort of fifty men is too much pay for a revolutionary general to receive for this work, or is it because it is too little for a bandit to receive, in order to amount to leniency?

The opinion of the Presiding Commissioner refers to the incident in the correspondence between the United States and Mexico where a high officer

of the former referred to Villa as a bandit. That fact is not controlling. It is believed that not infrequently revolutionists succeed through efforts that are not far from banditry; it is not inconceivable that a bandit might sometimes succeed more easily by joining a revolutionary army. The official publication of Mexico employed by the Mexican Agent in his argument referred to Villa as Chief of the Army of the North. This admission, however, is not controlling as against Mexico. It is the Convention Agreement which controls and that specifically fixed the commencement and termination of the revolutionary period.

During at least a portion of the revolutionary period Villa was Carranza's Chief of the Army of the North. Later he deserted the Carranza or Constitutionalist forces and became the leader of the Conventionist forces. Villa had not only a plan of government but organized a cabinet and carried on the functions of a Government over a large portion of the territory of Mexico by collecting custom duties and other taxes from the territory controlled by him.

As is stated elsewhere herein the United States recognized the Carranza or Constitutionalist Government, and the hostility of the Villa forces toward the United States and its citizens is apparent from the following.

César Sala, a Mexican citizen tells the story in these words:

"As López, followed by his men, passed through the car, he was cursing the Americans who were in the car, the President of the United States, and Carranza, and was telling the Americans in effect, in Spanish, 'tell Wilson to come and save you, and tell Carranza to give you protection. Now is the time to come here and protect you', at the same time using vulgar expressions and curse words of the President of the United States, of the Americans, and of Carranza. All this time I remained sitting where he had told me to sit, and therefore was not able to see all that was going on. I heard López order the Americans to remove their clothing and get out of the car. Young Maurice Anderson, bare-footed and in his underclothes, passed me from behind, going up the aisle of the car, and get off the car at the front door, stepping off the right hand side toward the river. He was followed by MacHatton and an old man (whose name I did not know), who was bleeding from the side of his face, whom I remember in particular. They also had removed their clothes. After that I heard the report of guns, on the right hand side of the train. I inquired of the Mexicans sitting across the aisle, who could see out of the window, what was being done, and they told me that they were killing the Americans. Becoming more frightened I kept quiet. Mrs. Octaviano López told me afterwards that she had also been ordered out of the train, as they took her for an American because she was wearing an American style hat, but answering that she was a Mexican she was saved. I did not hear or see one of the Americans say or do anything except as ordered by the Mexicans. They had no chance, and died like men After the armed Mexicans left the passenger coach, I got up and crossed to a window on the right hand side and looked out. I counted thirteen American bodies in piles. I recognized, among them, Mr. Wallace, Mr. Robinson, Maurice Anderson, Mr. Pearce, Mr. Evans and some others whom I knew by sight but not by name. After the executions were over, Chacón was called from the car. As I heard shots following this, I thought that he too had been killed, but about an hour or so later Chacón and López came back together. Pablo López then made a speech to the Mexicans assembled. I sat in the car and heard this speech, but I did not dare to go outside, even to ask for my grip that had been taken away. In this speech, which was made in Spanish, of course, López assured the Mexicans that they had nothing to fear. that their lives and property would be respected, and that the only harm would be done to Americans; that they were after Americans, and that all the Americans they could get would be treated in the same way."

The fact that Villa forces acted like bandits did not prevent them from also being revolutionists.

(3) The Presiding Commissioner seeks to avoid placing the responsibility for this act upon Mexico by the simple statement that "on January first, 1916, that period of the war was virtually ended". No exhibit is referred to and no evidence is reproduced in support of this statement. It is inconceivable that testimony could be produced, or should be received to support such an assumption. The beginning and the ending of the revolutionary period is stated in the Convention Agreement.

The position of the Presiding Commissioner suggests this question: Has this Commission the power to amend the Convention Agreement entered into by the High Contracting Parties by striking out "May 31, 1920", and inserting in lieu thereof "January 1, 1916"? To do so eliminates four years and five months of the revolutionary period stipulated and agreed to by the High Contracting Parties which defines it as commencing "November 20, 1910, and ending May 31, 1920, inclusive".

If the Commission in this case can eliminate four years and five months, in the second case it can cut off four years more, and in the third case it can do away with the remaining one year one month and eleven days.

This Commission was created by the Convention Agreement. Not one of the members of this Commission would be sitting here if it had not been for that Agreement. Apparently this fact has been overlooked by the Presiding Commissioner for his opinion assumes that the creature is greater than the creator.

Next to integrity, frankness is one of the most admirable virtues. Why should this Commission require later sessions to determine that it is of more consequence than its creator? Why not do it now? Why not say to the High Contracting Parties: "We hereby decree that you are mistaken, there never was a revolutionary period in Mexico; the revolutionary period instead of commencing on November 20, 1910, and ending May 31, 1920, in fact terminated the day before it began"? If this is to be the attitude of the Commission why not say so in unmistakable language? Why continue the expense of this Commission and raise a false hope among two thousand other claimants if this Commission is to assume power to destroy the very charter which brought it into existence? If an effort was being made at this time to extend the revolutionary period and to hold Mexico liable for something which happened on the first day of June, 1920, I would consider myself unfit to serve on this Commission if I would not combat that unjustifiable attempt to lengthen for one day the revolutionary period as defined in the Convention Agreement which brought this Commission into existence. Yet, this Commission has just as much power to extend as it has to shorten the revolutionary period.

It is not necessary to look far for a precedent diametrically opposed to the opinion of the Presiding Commissioner. Villa was much more of a commanding figure in Mexican affairs than de la Huerta. On March 31, 1926 the General Claims Commission between the United States and Mexico by unanimous decision said:

"The de la Huerta revolt against the established administration of the Government of Mexico—call it conflict of personal politics or a rebellion or a revolution what you will—assumed such proportions that at one time it seemed more than probable that it would succeed in its attempt to overthrow the Obregón administration."

and later in the opinion declared:

“Had the loss herein complained of occurred within the period from November 20, 1910, to May 31, 1920, inclusive, it would seem that the claim would have fallen within the jurisdiction of the Special Claims 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.”

While the General Claims Commission has no control over the claims presented to this Commission, the quotation discloses how far the Presiding Commissioner has departed from the opinion of other International Jurists.

(4) It is undisputed that on December 30, 1915, just thirteen days prior to the Santa Isabel incidents, the dominant military officer of the Carranza Government agreed to protect the lives of these men if they would return to Mexico, put labor to productive employment and thereby prevent want and starvation among Mexican people. The exact words of the witness R. M. Dudley are:

“I heard and understood the speech of General Alvaro Obregón made at that time in the Spanish or Mexican language. General Alvaro Obregón then stated to the guests then present his appreciation of the expressions of good will toward himself and the Republic of Mexico made by the speakers who had preceded him, and then and there invited the citizens of the United States who had interests in Mexico to return to the Republic of Mexico and open up their mining and various other industries located there, and then and there pledged to them the protection of the *de facto* government, which he represented, or with which he was connected, *promising them full protection.*”

The promise of General Obregón was ratified by Mexico, for he was selected as its next President. Relying on the promise of General Obregón Charles A. Pringle and his associates returned to Mexico. They returned for the purpose of restoring to Mexico one of its basic industries. They were not profiteers seeking to exploit Mexico. They were not unwelcomed foreigners forcing themselves upon Mexico. They were human beings returning to Mexico at the urgent request of the Mexican Government to revive an industry which would enable the Mexican people to eat and live.

When these men relying upon the covenant of General Obregón returned to Mexico, they were given passports, assured of safe passage and promised a military guard. It was the Mexican Government who promised these things because the industries of Mexico, which had lain dormant for many months, had to be revived or the Mexican people suffer from want. Charles A. Pringle and his associates were sober, industrious, efficient, well educated men. Mexico was much more in need at that time of men of this type than these men were in need of Mexico.

If an individual had secured the custody of property upon the representations, made by Mexico to these men to secure their return to Mexico, and if the individual after securing possession of the property had negligently permitted said property to be destroyed, there is no reported case where a court has refused to compel the promisor to pay the promisee the value of the property destroyed.

Charles A. Pringle and his associates returned to Mexico because they had the promise of the Mexican Government that their lives would be protected. It was to Mexico's interest to have these men return. International tribunals should require nations to keep their contracts the same as local

courts require individuals to do. International tribunals should have as much concern for human life as for property rights.

The opinion of the Presiding Commissioner indicates that if Charles A. Pringle and his associates had been killed a few days earlier, they would have come under the technical rules of international law and their dependent relatives would be entitled to an award.

It is difficult to reconcile the mandatory and unequivocal terms of the Treaty with the highly technical and specious reasoning of the Presiding Commissioner's opinion.

No better way exists to ascertain how far the Presiding Commissioner has departed from the plain provisions of the Treaty than by setting forth extracts from the Presiding Commissioner's opinion in the first column and extracts from the Convention Agreement in the second column.

"This question is a very delicate one because the assailants and murderers of the Americans at Santa Isabel are considered as Villistas, that is to say, as followers of Francisco Villa whose turbulent activities in Mexico extended over a protracted period, one longer than that which the Convention refers to, and in the course of which Villa appears according to the time and the circumstances, under the most different aspects, now as a bandit or as a guerrilla, or else as a revolutionary and a General in command of forces...

"It is new in the realm of history that in the series of political and military events which took place in Mexico during the period mentioned in the Convention, Francisco Villa (the name assumed by Doroteo Arango as a result of the pursuit he was subjected to on account of diverse and famous acts of banditry) was conspicuous in the various revolutionary movements and disturbances which occurred in Mexico....

"On January 10, 1916, the attack on the train at Santa Isabel and the barbarous murder of Americans by a band of men under command of Pablo Lopez took place.... It is true that Francisco Villa was not captured and that he kept up his turbulent activities for a few years more....

All the above circumstances, however, even though they had been fully proven, would never of themselves have been sufficient to bind Mexico to any responsibility. They have of course created about the victims of the horrible events at

"The Commissioners as named shall meet at Mexico City within six months after the exchange of the ratifications of this Convention, and each member of the Commission, before entering upon his duties shall make and subscribe a solemn declaration stating 'that he will carefully and impartially examine and decide, according to the best of his judgment and *in accordance with the principles of justice and equity*, all claims presented for decision' and such declaration shall be entered upon the record of the proceedings of the Commission.

"The Mexican Government desires that the claims shall be so decided because Mexico wishes that her responsibility shall not be fixed according to the generally accepted rules and principles of international law, but *ex gratia* feels morally bound to make full indemnification and agrees, therefore, that it will be sufficient that it be established that the alleged loss or damage in any case was sustained and was due to any of the causes enumerated in Article III hereof.

"Since the Mexican Government desires to arrive at an equitable settlement of the claims of the citizens of the United States and to grant them a just and adequate compensation for their losses or damages, the Mexican Government agrees that the Commission shall not disallow or reject any claim by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim."

Santa Isabel, a very evident atmosphere of sympathy and compassion, which, however, is not sufficient for an award to be rendered in their favor....

"For the claim to be recognized as allowable, the painful circumstances of the case cannot be taken into consideration."

The Convention Agreement in the terms above recited specifically bound the Government of Mexico to extend to American Nationals the same rights, guarantees and protection that President Carranza in his "manifesto" issued a short time before the Santa Isabel instance, to wit, June 11, 1913, had extended to all foreigners when he declared the Mexican Government "will protect amply their lives, liberty, and enjoyment of their legal rights and their property".

The Presiding Commissioner declares that war between the Villa forces and the Carranza forces was practically ended January 1st, 1916, or nine days before the Santa Isabel massacre. The plain inference is that if these men had ventured into Mexico January 1, 1916, before they were requested to come, and before assurances of safety and protection had been given, the Mexican Government would be liable; that because these men used discretion and did not come to Mexico until urged to do so, and until given assurances of protection, that therefore the dependents of the murdered men are not to be indemnified under the Convention Agreement but must remain objects of charity. Apparently the Presiding Commissioner has completely overlooked one of the most important provisions of the Convention Agreement. Article III not only provides that Mexico shall pay for damages caused by forces of a Government *de jure* or *de facto*, by revolutionary forces, but also by forces arising from the disjunction of such forces and from forces that had been disbanded. If Mexico legally bound itself to indemnify for an uninvited guest killed on December 31, 1915, it would not seem unreasonable to conclude that Mexico is morally bound to indemnify for the invited guest who was killed January 10, 1916.

(5) The manifesto of President Carranza of January 14, 1916, set forth in the Presiding Commissioner's opinion, and which was written by Carranza four days after the Santa Isabel affair, is ingeniously construed by the Presiding Commissioner as designating Villa and López as bandits. It is true that Carranza refers to these men as bandits. He also refers to these men as former revolutionary officers, and the document taken as a whole discloses that the Santa Isabel murders were committed as a part of the disjunction of the revolutionary forces, and is in effect an admission that the Mexican Government was morally responsible for these men's lives, and a pledge that in the future the Mexican Government will attempt to better protect Americans.

(6) There are many statements in the Presiding Commissioner's opinion which do not affect the question at issue. In one place it is recited that the Carranza Government "drew up a constitution which was promulgated on February 5, 1917". The Santa Isabel incident occurred on January 10, 1916. The fact that Mexico prepared and promulgated a written constitution thirteen months later would no more bring back to life the seventeen Americans murdered by the Villa forces than it would serve to relieve the Mexican Government from responsibility for the murders.

Again it is stated in the opinion that "the assailants of the train January 10, 1916 did not confine themselves to the murder of the Americans, but they also looted and robbed everything of value on the train". The evidence of

César Salas, hereinbefore set forth, shows that none but Americans were murdered by the Villa forces. The fact that these forces, perhaps by mistake, stole property belonging to others than Americans does not relieve the Mexican Government. This is not a proceeding to recover property stolen by revolutionary forces, who had the habits of bandits, but it is a claim presented by the United States Government for the acts of revolutionary forces in injuring American nationals by killing American citizens.

It is further stated in the Presiding Commissioner's opinion that "the activities of Villa (were) of a turbulent nature and which disturbed public order during a long period, have been lacking in unity". It is impossible to attribute this lack of unity on the part of the Mexican revolutionary forces to either the United States Government or its citizens. A search of authorities on international law discloses no case releasing a nation from its contractual obligations because of a lack of unity. Since the learned Presiding Commissioner fails to cite such authority may it be assumed there is none.

(7) The Presiding Commissioner says the treaty with Villa of July 28, 1920, granting him a large ranch and an escort of fifty men to be paid by the Mexican Government, should not be construed as treating Villa with lenity. It would at least seem to be kind if not lenient treatment for a bandit to receive. In the absence of a citation to some international authority it will be assumed that none exists to support a doctrine so repugnant to the well established rules among civilized nations.

(8) The Presiding Commissioner disposed of only a portion of paragraph 5, Article III. This paragraph requires the Mexican Government to answer for damages if the appropriate authorities omitted to take reasonable measures to suppress insurrectionists, mobs, or bandits, or treated them with lenity or *were in fault in other particulars*.

The passports or safe conducts issued by the various Mexican authorities to the members of the Watson party prior to their departure for Cusihuiriachic, were of themselves assurances of safety and protection and were proof of a finding on the part of the *de facto* authorities that it was safe for Americans to undertake the journey. They were entitled to rely and did rely on these official assurances of the Mexican Government. It was not incumbent upon the recipients of these passports, nor were they in position, to conduct an independent investigation with a view to determine the existence of safe conditions of the truth of the representations of the *de facto* authorities that no danger would be encountered and that "Villa was a thing of the past". Mr. Watson offered to pay the commanding officer at Chihuahua for troops to accompany the train, "but was assured that Carranza troops were in control along the railroad and at Cusi and that he (the commanding officer at Chihuahua) was sending more out that way tonight (January 9th) or early in the morning".

Nowhere does the Presiding Commissioner undertake to say that the appropriate authorities were not in fault in other particulars. The record shows conclusively that the officers were to blame for the Santa Isabel murders because the appropriate officers did not furnish the troops that they agreed to furnish to these men.

When President Carranza wrote the manifesto heretofore mentioned, he knew, or should have known, the covenant that General Obregón had entered into with these Americans in order to induce them to return to Mexico.

With full knowledge of the Santa Isabel massacre the Mexican Government entered into a contract with the United States Government by which it agreed to do justice to American claimants.

The High Contracting Parties to the Convention under which this Commission is organized have by the terms of that Convention agreed that the members of the Commission shall, according to their best judgment, decide these cases in accordance with the *principles of justice and equity*; and the Mexican Government, with that regard for its obligations which should ever be the distinguishing characteristic of a great nation, has expressly agreed that its responsibility shall not be fixed according to the generally accepted rules and principles of international law, but that it *feels morally bound to make full indemnification for such wrongs*.

(9) The opinion of the Presiding Commissioner discusses many questions, but it does not discuss the most important question before this Commission. The members of this Commission pledged themselves to decide this issue according with the *principles of justice and equity*. One of the fundamental principles of equity is that when a party claims a certain fact exists, or claims authority to do a certain act, that party is forever estopped from contending that the facts are other than as represented.

Lord Coke gave a very harsh definition of estoppel as it existed in his time: "An estoppel is where a man is concluded by his own act or acceptance to say the truth".

The modern rule is:

Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property, of contract, or of remedy. (*Pomeroy's Equity Jurisprudence*.)

General Obregón speaking for the Mexican Government not only represented that it was safe for these men to re-enter Mexico, but he represented that he was able to and would guard and protect the lives of these men if they would return. General Obregón remained at the head of the Mexican Army and later became Mexico's President. Mexico is not in a position, under the facts and the record in this case, to deny General Obregón's authority to make these statements; it is not in a position to disclaim responsibility for nor guarding and protecting the lives of these men and it is further estopped because President Carranza made the same guarantee and when it entered into this Convention Agreement the Mexican Government said to the United States, "It feels morally bound to make full indemnification".

(10) The Convention Agreement requires the Commission to apply the principles of equity to its decision in this case. The opinion of the Presiding Commissioner instead of applying the principles of equity attempts to relieve Mexico from an obligation which it legally and morally bound itself to perform.

I therefore conclude:

First: The refusal to make an award in favor of the United States on behalf of Cornelia J. Pringle and sixteen others, who suffered losses by reason of the murder of fifteen American citizens, under the undisputed

facts in this record amounts to a nullification of the Convention Agreement and I dissent therefrom.

Second: All of the other matters discussed in the Presiding Commissioner's opinion are mere dicta, are not germane to this decision and a discussion thereof is wholly unnecessary in order to decide this case, and I therefore refuse to concur in or discuss the same.

IN THE MATTER OF THE FILING OF CERTAIN CLAIMS WITHIN
THE PERIOD OF SIX MONTHS AFTER THE EXPIRATION
OF THE REGULAR PERIOD FOR FILING PROVIDED FOR
BY ARTICLE VII OF THE CONVENTION OF SEPTEMBER 10,
1923.

(*Decision No. 2, April 24, 1931, dissenting opinion by Mexican Commissioner, undated. Pages 32-37.*)

LATE FILING OF CLAIMS. A certain number of claims were presented to the American Agency in sufficient time for filing as prescribed in the *compromis* but owing to delay in transportation from American Agency did not reach the Joint Secretariat of the tribunal until six hours after the time for filing of claims had lapsed, though still within the six-months period provided in the *compromis* for the late filing of claims subject to approval of tribunal. *Held*, claims properly filed.

JOINT SECRETARIAT. The circumstance that under the *compromis* each Government was to appoint a secretary who were to act as joint secretaries of the tribunal did not create a Mexican Secretariat and American Secretariat but instead a Joint Secretariat subject to instructions of the tribunal.

(*Text of decision omitted.*)

IN THE MATTER OF FILING OF CERTAIN CLAIMS WITHIN
THE PERIOD OF SIX MONTHS AFTER THE EXPIRATION OF
THE REGULAR PERIOD FOR FILING PROVIDED FOR BY
ARTICLE VII OF THE CONVENTION OF SEPTEMBER 10, 1923.

(*Decision No. 3, April 24, 1931. Pages 38-41.*)

LATE FILING OF CLAIMS. Rulings made as to whether certain claims were duly filed within the period stipulated for filing under the *compromis*.

(*Text of decision omitted.*)
