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**RECUEIL DES SENTENCES
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James Hammet Howard (Great Britain) v. United Mexican States

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Decisions

THE INTEROCEANIC RAILWAY OF MEXICO (ACAPULCO TO VERA CRUZ) (LIMITED), THE MEXICAN EASTERN RAILWAY COMPANY (LIMITED) AND THE MEXICAN SOUTHERN RAILWAY COMPANY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 22, March 24, 1931. Pages 11-12.*¹)

PROCEDURE, RIGHT TO AMEND. Leave to amend a motion to dismiss *granted*, despite opposition of adverse Agent on ground that no new facts were advanced justifying allowance of motion and that sufficient time had been had to plead.

Comments: Sir John H. Percival, "International Arbitral Tribunals and the Mexican Claims Commissions", *Jour. Compar. Legis. and Int. Law*, 3d ser., Vol. 19, 1937, p. 98 at 103.

(*Text of decision omitted.*)

CORALIE DAVIS HONEY, ON BEHALF OF THE ESTATE OF THE LATE RICHARD HONEY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 23, March 26, 1931. Pages 13-14.*)

DUAL NATIONALITY. Motion to dismiss *granted* when person suffering damage for which claim was made appeared to have dual nationality.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", *Law Q. Rev.*, Vol. 49, 1933, p. 226 at 231.

(*Text of decision omitted.*)

JAMES HAMMET HOWARD (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 24, March 26, 1931. Pages 15-17.*)

CONTRACT CLAIMS.—RESPONSIBILITY FOR ACTS OF FORCES.—FORCED OCCUPANCY.—JURISDICTION. Motion to dismiss claim for rental value plus cost

¹ References to page numbers herein are to the original report referred to on page 131.

of repairs of house occupied by revolutionary and Government forces, on ground said claim was contractual in origin and outside jurisdiction of tribunal, *overruled* when it appeared that house was forcibly occupied. Acceptance by claimant of small payments as rent will not render such forcible occupancy consensual in nature.

Cross-reference : Annual Digest, 1931-1932, p. 233.

1. The claim is presented by the British Government on behalf of Mr. James H. Howard, and the Memorial sets out that in the month of July 1914, Mr. Howard's house, situated in the town of Ameca (State of Jalisco), was occupied by Julian Real, first as a revolutionary leader and later as Municipal President. For several subsequent periods, up to July 1918, it was occupied by other persons, all fulfilling the position of Municipal President. During all this time part of the building was occupied by revolutionary forces and later by forces of the Constitutional Government. When the house was returned to the owner in July 1918, it was found that it had suffered considerable damage. During the time of the occupation Mr. Howard received at certain times rent at the rate of 15 pesos a month. The rental value of the house is in the Memorial estimated at 80 pesos a month, and the claim is for the cost of repair of the house and for loss of rent.

2. The respondent Government have lodged a motion to dismiss on the ground that as Mr. Howard received a rent from the various individuals who occupied his house, he entered expressly and implicitly into a lease with the tenants. Therefore the claim arises out of a contract, and the owner of the house ought to have sued the tenants before the competent authorities. Damages caused by private individuals, even though they may have had the capacity of civil or military authorities, cannot be claimed before a Commission having only jurisdiction to consider damages caused by revolutionary troubles.

In the opinion of the Mexican Government the Commission lacks competence to take cognizance of the claim.

3. In the course of his oral argument the Mexican Agent contended that, although in the first instance the occupation of the house may have been a compulsory act, it was converted into a contractual relation by the fact that the owner accepted a rent. His legal position was thereby altered and he ought to have addressed himself to the Mexican Courts.

The British Agent has argued that it is incorrect to state that the claimant received rent during the term of the occupation of his house, as he only received it at certain times. He never entered into any lease with the revolutionary forces or forces of a Constitutional Government, but he was forced by those in authority to cede them his house and to accept what they were willing to pay. This was much less than the rental value of the house, and the relation can in no way be construed as a contractual one.

4. The Commission thinks it necessary to state that until now it has not yet had to deal with the question whether it is competent to take cognizance of claims arising out of contractual relations. This question will have to be examined and decided as soon as a claim of this nature comes up for decision. In the case now under consideration, the Commission fails to see such a claim because it cannot concur in the view that there existed a contractual relation between the owner of the house and those who successively occupied it during a period extending to four years.

5. The Commission holds that the most essential element of a contractual relation is the voluntary character for both parties. If, however, the statements

of claimant are correct—which can only appear when the merits of the claim are under examination—there could not be assumed free will on the side of the owner. His house was occupied by authorities, civil or military, and he had no other choice than to cede it to them. The fact that now and then he received a certain amount from some of those who were in actual possession, does not change the compulsory character of the occupation nor convert it into a contract of lease. It seems only natural that claimant accepted what those in power were disposed to pay. It is not shown that he declared himself satisfied with these payments, nor that he has ever waived his right to claim for indemnification as soon as this might prove possible.

6. The motion to dismiss is overruled.

WILLIAM E. BOWERMAN AND MESSRS. BURBERRY'S (LIMITED)
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 25, April 10, 1931. Pages 17-18. See also decision No. 18.)

NATIONALITY, PROOF OF.—PARTNERSHIP CLAIM.—CERTIFICATE OF NOTARY PUBLIC AS EVIDENCE. Certificate of notary public as to pertinent facts *held* sufficient proof of nationality of British partnership.

(Text of decision omitted.)

JOHN WALKER (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 26, April 10, 1931. Pages 18-21.)

RESPONSIBILITY FOR ACTS OF CIVIL AUTHORITIES.—JURISDICTION.—MOB VIOLENCE. Motion to dismiss in part *allowed*, in so far as claim was based on confiscatory acts of civil authorities, and in part *rejected*, in so far as claim was based on personal injuries from acts of mob violence. Jurisdiction of tribunal over latter portion of claim sustained.

(Text of decision omitted.)

DOUGLAS G. COLLIE MacNEILL (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 27, majority decision, not concurred in by Mexican Commissioner, April 10, 1931. Pages 21-25.)

CALVO CLAUSE. To be effective a Calvo Clause must be drafted so as not to permit of doubt as to intentions of parties and must emanate from an act of the national Government and not from a local authority.

Cross-reference: Annual Digest, 1931-1932, p. 222.