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John Gill (Great Britain) v. United Mexican States

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

(Decision No. 44, May 19, 1931. Pages 85-92.)

AFFIDAVITS AS EVIDENCE. Affidavit of claimant, supported by letters of other persons, *held* sufficient evidence.

FAILURE TO SUPPRESS OR PUNISH.—EFFECT OF NON-PRODUCTION OF EVIDENCE BY RESPONDENT GOVERNMENT. Proof of attack by insurrectionary or rebel forces within easy distance of capital of Mexico *held* sufficient to establish responsibility on the part of the respondent Government when Mexican Agent failed to present any evidence of failure to suppress or punish.

DAMAGES, PROOF OF.—EQUITY AS A BASIS FOR ALLOWANCE OF DAMAGES. Amendment of *compromis* by addition of words “and that its amount be proved” considered and *held* not to preclude tribunal from making a discretionary allowance of damages in cases in which British Agent, after due effort, has failed to prove exact amount of damage.

Cross-reference: Annual Digest, 1931-1932, p. 203.

Comments: G. Godfrey Phillips, “The Anglo-Mexican Special Claims Commission”, Law Q. Rev., Vol. 49, 1933, p. 226 at 238 n.

1. The Memorial sets out that Mr. John Gill was employed by the Sultepec Electric Light and Power Company as chief electrical engineer at San Simonito, and resided in a house near the power plant. On the 1st September, 1912, the power plant was attacked by revolutionary forces opposing the Madero Government. Mr. Gill, together with his wife and child, aged three years, were forced to flee in their night attire and seek protection from the attack. A considerable amount of personal property is reported as taken or destroyed by the revolutionaries. As a result of her experiences Mrs. Gill has, from the date of the attack to the present time, suffered from shock, and Mr. Gill has been obliged to expend money for medical treatment. Immediately after the attack, Mrs. Gill reported the losses to the British Legation, Mexico City. A letter (annex 3 of the Memorial) was received, stating that the matter had been brought to the notice of the President of the Republic and the Minister for Foreign Affairs, and pointing out that the Mexican Government were in a difficult position in that they wished to avoid taking any action on her behalf which would constitute a precedent for the payment of claims that might be made by companies and others for large and unknown amounts.

The amount of the claim is £180 sterling.

2. The Mexican Agent has opposed the claim on several grounds. He contended that it had not been proved that Mr. Gill has suffered any loss. He attached no value whatever to the claimant's own affidavit, and he denied that this affidavit was corroborated by the letter of the British Minister, dated the 4th October, 1912 (annex 3 of the Memorial) or by the letter of the General Manager of the Electric Light and Power Company, dated the 10th September, 1912 (annex 5), because in his view those letters proved nothing more than that the writers had been acquainted by Mr. Gill with his version of the events.

The Agent also, even assuming that the acts set out in the Memorial had been committed, denied that there was any evidence that they were covered by Article 3 of the Convention or that, in the event that they fell within subdivision 4 of that Article, the Mexican authorities were in any way to blame.

On this latter point he, the Agent, had tried to get some information, but his endeavours had produced no result, because the village of Sultepec, and also the public records, had been destroyed in the attack of 1912.

In the last event the Agent failed to see any proof of the amount claimed and he considered this as sufficient ground for rejecting the claim altogether. The discretion in fixing the amount of the award, which the Commission had formerly enjoyed and of which it had made use in its decision No. 12 (*Mexico City Bombardment Claims*) no longer existed, since the words: "and that its amount be proved" have been inserted in Article 2 by the last revision of the Convention.

3. The British Agent pointed out that the letters, mentioned by his colleague, constituted a very strong corroboration of the claimant's statement, because they certainly would not have been written, had the authors not had confirmation of Mr. Gill's assertions.

As to the character of the forces that caused the damage, the Agent referred to contemporary evidence, showing that they were revolutionaries or Zapatistas, in both cases forces which cannot be considered as rebels or insurrectionaries. Notwithstanding the steps, taken by the British Minister, the competent authorities omitted to take any measure for repression or punishment. According to subdivision 4 of Article 3 of the Convention, this failure to act rendered the Mexican Government liable for compensation.

The Agent went on to say that he was fully aware that the insertion of the words "and that its amount be proved" in Article 2 of the Convention, had been made with a definite meaning, but he differed from the Mexican Agent as to the interpretation of this meaning. He argued that in the majority of claims, the amounts were small and more or less uncertain, being the value of personal property such as furniture, clothes, &c. It would nearly always be impossible to show proof of the absolute correctness of the figures, at which the estimated value of such objects was set down. It could not have been the intention of the two Governments, in amending Article 2, that the claim should in all those cases, be rejected. The only logical interpretation and the only one, which did not lead to injustice, was that the British Agent was obliged to furnish all available evidence as to the amount, but that, if this amount did not seem exaggerated, the Commission was free either to award it or replace it by another figure; in other words that the Agent must enable the Commission to award an amount that was fair and reasonable.

4. The Commission answer in the affirmative the question as to whether it has been established that the claimant's residence at the Sultepec Power Plant was assaulted on the 1st September, 1912, that he, his wife and child were forced to flee, and that this event was the cause of his losing several articles of personal property.

The Commission find that Mr. Gill's statement is fully corroborated and confirmed by the letters from the British Minister and from the General Manager of the Sultepec Electric Light and Power Corapany. The former letter shows that the Minister had been in communication with the General Manager, and it seems quite unlikely that a diplomatic Representative would visit both the Chief of the Republic and the Minister for Foreign Affairs without having satisfied himself of the truth of what he was going to submit to them. The same holds good for the steps taken by the General Manager, who corresponded with the Head Office in the United States on the subject of the loss and who gave to the claimant a letter, verifying his statement. As Mr. Gill was not the local Manager of the Plant, it is evident that the General Manager

would not have relied on his information alone, but would have consulted the resident Manager of the Works.

5. All the evidence submitted to the Commission points to the fact that the assaulting forces were insurrectionaries or rebels, either Zapatistas or the followers of some other leader, in any case armed men falling within subdivision 4 of Article 3 of the Convention.

As regards the responsibility of the Mexican authorities, the Commission must adhere to the attitude taken by them in decision No. 12 (*Mexico City Bombardment Claims*) section 6;

“In a great many cases it will be extremely difficult to establish beyond any doubt the omission or the absence of suppressive or punitive measures. The Commission realize that the evidence of negative facts can hardly ever be taken in an absolutely convincing manner. But a strong *prima facie* evidence can be assumed to exist in these cases in which first the British Agent will be able to make it acceptable that the facts were known to the competent authorities, either because they were of public notoriety or because they were brought to their knowledge in due time, and second the Mexican Agent does not show any evidence as to action taken by the authorities.”

The same point of view is shown in decision No. 18 (*William R. Bowerman and Messrs. Burberry's*), section 7:

“With regard to the responsibility of the Mexican Government for the acts of these forces or brigands, the majority of the Commission would refer to the principles laid down in the opinion of the President in the decisions of the claims of Messrs. Baker, Woodfin and Webb (*Mexico City Bombardment Claims*), paragraph 6. Reference is there made to the difficulty of imposing on the British Government the duty of proving a negative fact such as an omission on the part of the Mexican Government to take reasonable measures, and it is stated that whenever an event causing loss or damage is proved to have been brought to the knowledge of the Mexican authorities or is of such public notoriety that it must be assumed that they have knowledge of it, and it is not shown by the Mexican Agent that the authorities took any steps to suppress the acts or to punish those responsible for the same, the Commission is at liberty to assume that strong *prima facie* evidence exists of a fault on the part of the authorities.”

The same line was taken in decision No. 19 (*Santa Gertrudis Jute Mill Company*) and it will also direct the majority of the Commission in the claim now under consideration.

The majority fully realise that there may be a number of cases, in which absence of action is not due to negligence or omission but to the impossibility of taking immediate and decisive measures, in which every Government may temporarily find themselves, when confronted with a situation of a very sudden nature. They are also aware that authorities cannot be blamed for omission or negligence, when the action taken by them has not resulted in the *entire* suppression of the insurrections, risings, riots or acts of brigandage, or has not led to the punishment of *all* the individuals responsible. In those cases no responsibility will be admitted. But in this case nothing of the kind has been alleged. The highest authorities in the country were officially acquainted with what had occurred. They stated that they were touched by the account. They added that they had, as regarded compensation, to consider that the precedent might have grave consequences, but the Mexican Agent has not shown a single proof that any action to inquire, suppress or prosecute was taken, although Sultepec is within easy distance of the Capital. Evidence to that effect would, when existent, be at the disposal of said Agent, to whom the Archives of the Republic, of the various States and of the Municipi-

palities are available for this purpose. The burning of the Sultepec archives in this connexion seems immaterial, because, if any action had been taken in consequence of the step of the British Minister, traces of it would certainly be found in the archives of the Central Administration.

For all these reasons the majority of the Commission cannot but hold that the Mexican Government is, according to the Claims Convention, obligated to compensate for the loss sustained by Mr. Gill.

The question that still remains is that of the amount to be awarded, and this question lays upon the Commission the duty of examining the meaning of the new words inserted in Article 2 of the Convention.

6. Although the words "*and that its amount be proved*" have undoubtedly been inserted in Article 2 with a certain meaning, the discussion between the Agents has shown that both Governments differ widely as to what this meaning was. The interpretations put forward by the Agents diverged considerably. As the words have been inserted by voluntary agreement, one interpretation cannot carry more weight with the Commission than the other. The Commission are therefore obliged to endeavour to lay down their own interpretation.

In order to do this it seems necessary to search for an answer to the following questions: (a) What is to be proved? (b) By whom is it to be proved? (c) How is it to be proved? and (d) To whom is it to be proved?

7. *What is to be proved?* The Convention only speaks of *its amount*. What is meant by this: the *amount claimed*, the amount of the British Government's claim, as it appears in the Memorial? The Commission cannot believe that this was the intention, because it would mean that in all cases, in which this amount was not proved by the British Agent, the Commission would have to disallow the claim entirely, in other words, that the Commission would have either to award the amount of the Memorial, or nothing at all.

This would *firstly* encroach to such a degree upon the discretionary competence of the tribunal as to entirely change its character. *Secondly* it would prevent the Commission, in a majority of the cases, from applying the principles of equity and justice, in accordance with which their members have solemnly undertaken to examine and judge the claims. *Thirdly* it would not be possible to reconcile this interpretation with "*the desire of Mexico ex gratia fully to compensate the injured parties*" (Article 2 of the Convention), because in all those cases in which the British Agent might not be able to prove exactly the original amount of the claim, even grave injuries, serious damages and huge losses would have to remain without compensation. And *fourthly* this interpretation might eventually prove prejudicial to the interests of Mexico, because it might induce the Commission, rather than disallow the total claim, to award a higher amount than perhaps would have been considered justified had the fixing of the amount been left to the discretion of the Commission.

Those cases would probably be not at all rare. The most recent of the events with which our jurisdiction has to deal, lie more than ten years behind us. the most remote more than twenty years. The case in question dates from nineteen years ago. It will, in the majority of the cases be next to impossible to produce reliable oral evidence. Damages and losses were very often caused by acts of violence, by occurrences of such a sudden nature as not to allow of the taking of timely measures to draw up inventories, make estimates, collect witnesses, etc., in order to be able subsequently to prove the losses. The establishing of the *exact* value of used objects, lost or destroyed so many years ago, will likewise almost always meet with almost insurmountable difficulties. It is also clear that to determine the compensation to which a person disabled by wounds, or the relations of a murdered man are entitled, is a matter into which

a good deal of discretion will always enter. In all similar cases, and probably in many more, it will hardly be possible to prove with precision the amount claimed. The Commission cannot believe that the new words, inserted in Article 2, mean that the Commission will, in all those cases, have to reject the claim entirely.

In their opinion those words can have no other meaning than that the amount of the alleged damage, which is, in the last event and when the facts are established, the amount of the award must be proved, but that such an amount may be one widely diverging from the sum claimed in the first instance.

8. *By whom is it to be proved?* The answer is: by the British Agent, who is no longer—as he was before the change in the Convention—allowed to leave the amount entirely to the discretion of the Commission, but who is now obliged to show everything in his possession and everything which may be available, and to do everything in his power, in order to make the amount of the damage acceptable. A claim for an obviously exaggerated amount, asked by a claimant, cannot be espoused by him while leaving the final determination to the Commission. He is to create the conviction that he has earnestly tried to place all existing evidence at our disposal. In other words, he has to produce such evidence and to use such arguments as to enable the Commission to award a fair and reasonable amount.

9. *How is it to be proved?* In the opinion of the Commission by the same means and instruments as all other equally important elements of the claim: e.g., British nationality, the acts which caused the damage, the forces which committed the acts, the responsibility of public authorities, etc. The new text of Article 2 does not in any way indicate that the Commission is to require, for the proving of the amount, any other means or instruments of evidence than those necessary for proving the rest of the claim. The liberty enjoyed by the Commission in that respect under Article 4, section 1, of the old Convention, has not been restricted by the amendment, nor has the liberty granted to the Agents by section 3 of the same Article and by article 23 of the Rules of Procedure.

Of this liberty the Commission has made ample use in many of its decisions, and it was strongly emphasized in Decision No. 2 (*Cameron*), pages 34 and 35, by their adherence to a judgment in the Report of the Mexican-American Claims Commission.

10. *To whom is it to be proved?* The answer cannot be: to the parties. The answer can only be: to the tribunal, to the Commission, which will, by following the dictates of their conscience, bearing in mind the aim of all good jurisdiction and in accordance with the principles of equity and justice, to which they bound themselves by a solemn declaration, determine in any particular case, what is the amount that has been shown to be acceptable and that is therefore justified.

11. The question may arise whether there is by accepting the interpretation given in their answers to the four questions of section 6 any difference between the state of affairs existing under the old Convention as compared with that existing under the new. The Commission think that there is.

They do not believe that the new text originated in the assumption that the Commission will ever award compensation without having fair grounds for the determination of its amount. But what the amendment does desire is that the fixing of the amount shall be the final result of serious preparation—a preparation the initiative of which is expected to lie with the British Agent. It is desired that this Agent assume the responsibility for a certain amount,

while he had formerly only to prove facts, and was allowed to abstain from discussion of the amount. He could leave it all to the Commission. In the old Convention it was only in Article 6, sections 2 and 3, that the amount was mentioned. From Article 2, which deals with the desire of Mexico to give compensation, all reference to the amount was omitted.

It is quite natural that both Governments should have desired to eliminate this hiatus.

Seen in this light, the amendment would seem to be an improvement.

12. Applying to the present claim the principles laid down in the preceding paragraph, the Commission have come to the conclusion that although fair proof has been shown for the amount claimed, some items appear uncertain or not entirely reasonable. It does not seem probable that the claimant was, in 1927, able to estimate the exact value of clothing and household linen, or to remember the exact amount of cash he had to abandon in his sudden flight.

On the other hand, the facts being admitted, it is dictated by equity, that—apart from an exact confirmation of figures—some compensation be given. The Commission believe that they are acting in conformity with the spirit, as well as with the letter of the Convention, by making a total award of £ 120 sterling.

13. The Commission decide that the Government of the United Mexican States shall pay to the British Government, on behalf of Mr. John Gill, the sum of £ 120 sterling.

JESSIE WATSON (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 45, May 19, 1931. Pages 92-96.*)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS. When statement of circumstances and amount of loss are in general supported by independent witnesses, evidence *held* sufficient.

DAMAGES, PROOF OF. Tribunal will not after lapse of seventeen years weigh factors such as current economic conditions, rates of exchange, etc., affecting market value of goods lost.

CURRENCY IN WHICH AWARDS PAYABLE. Awards will be made in Mexican national gold.

Cross-reference : Annual Digest, 1931-1932, p. 226.

1. The Memorial sets out that in February 1910 Mrs. Watson purchased several holdings in Barrón, District of Mazatlán, in the State of Sinaloa, and was engaged in agricultural pursuits. From time to time she increased her holdings of land until she formed the self-contained Hacienda Barrón. During the siege of Mazatlán in 1913-14 by Constitutionalist forces under the command of General Carranza, the claimant's husband, who was the British Vice-Consul at Mazatlán, received orders not to leave his post. Consequently it was impossible for Mrs. Watson to personally supervise her Hacienda, and she placed it in charge of an administrator, Patricio Vergara. The garrison at Villa Unión was commanded by Lieutenant-Colonel Sergio Pazuengo, who, under threats, demanded products from the Hacienda. He imprisoned the administrator in the barracks at Villa Unión and demanded the entire harvest of beans. The