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**Robert John Lynch (Great Britain) v. United Mexican States**

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ROBERT JOHN LYNCH (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 47, May 21, 1931. Pages 101-104. See also decision No. 1.*)

**AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE.** Claim established in material parts only by unsupported affidavit of claimant *disallowed*.

**RESPONSIBILITY FOR ACTS OF FORCES.—MILITARY ACTS.—FORCED OCCUPANCY.** No claim will lie for military occupation of house by government forces, including plundering, incurred in course of military operations against revolutionary forces.

1. The Memorial sets out that Mr. Robert John Lynch was the proprietor of a ranch situated at Puente de Garay, Ixtapalapa, Mexico. Towards the end of July 1914 he was obliged to abandon his property owing to a threatened attack by revolutionaries, whom he supposed were Zapatistas. Mr. Lynch left a watchman in charge of the house who, on the arrival of the revolutionaries, was threatened with death if he offered resistance. These revolutionaries plundered and destroyed everything they found in the house. Later, Mr. Lynch was able to recover part of his furniture, which he replaced in the house. In October 1914 he was informed that a cavalry detachment of Constitutionalist belonging to the forces of Lucio Blanco had taken possession of the house for military purposes. When the Constitutionlists left in November 1914 Mr. Lynch found that his house had been completely ruined. The doors, windows and floors had been removed, and the fowl-houses had been destroyed. The remainder of his furniture had disappeared.

His Majesty's Government claim on behalf of Mr. Robert John Lynch the sum of 2,455 pesos, Mexican currency.

2. The Mexican Agent denied that any proof had been shown as to the facts on which the claim was based. He could not consider as such the uncorroborated affidavit of the claimant himself.

3. With his reply the British Agent filed a letter from the British Consul at Mexico City to the claimant, dated the 6th November, 1914, with which was enclosed a copy of a letter dated the 4th November, 1914, from the Governor of the Federal District. In this letter the Governor confirmed the fact that the house of Mr. Lynch had been occupied for military reasons, because it was situated right on the firing line between the Federal forces and the Zapatistas. The Agent submitted that this was sufficient proof of the facts.

4. The Mexican Agent drew the attention of the Commission to the fact that the Governor's letter did not prove any looting of the property in October and November 1914. It only showed that the Commander of the Constitutionalist Army found himself compelled temporarily to occupy the house, as a military measure, but also that instructions were, agreeably to a request of the British Consul, given to the effect that the house be no longer occupied if military operations did not make it absolutely indispensable.

5. The Commission are of opinion that a distinction must be drawn between the two parts of the claim, and between the losses alleged in both of them.

In the first place the claim is for losses sustained between the end of July 1914—when Mr. Lynch thought himself obliged to abandon his property—and a certain date, probably prior to October of the same year. According to

the Memorial the house was plundered during that period, but the claimant was able to recover part of his furniture, which he replaced in the house.

In the second place, the Commission have to deal with an allegation of losses sustained because the house was, in October 1914, occupied for military purposes. When in November 1914 such occupation ceased, Mr. Lynch found that the house had been completely ruined and that the remainder of his furniture had disappeared.

6. For the first part of the claim no outside evidence whatever has been produced, for the unsupported affidavit of the claimant cannot be accepted as such.

The facts on which the second part of the claim is based are evidenced by the letters of the Governor, Jara, and of the British Consul, referred to in section 3 of this decision. It is obvious that the house was occupied by the Constitutionalist forces and this occupation ceased in due time.

Amongst the amendments made to the Convention in December 1930 there is one in Article 2 to the effect that no claim can be made for damage that was the consequence of a lawful act. As the Constitutionalist forces were at that time the forces of the Federal Government and fighting against the Zapatistas, there can be no doubt that their occupying a house situated on the firing line between them and their opponents was a lawful act.

It may be a subject of controversy—and it is possible that the Commission may find themselves faced with this question when dealing with one or more of the other claims—whether the amendment to Article 2 covers *all* the consequences of the act, even those which could and ought to have been avoided, in other words, whether the liberating effect of a lawful act does or does not also extend to those acts which went farther than was necessary in order to attain the lawful aim. An act may be lawful in its origin and its object, but deteriorate in the course of its execution.

In the present case, however, this question need not be considered, because no outside evidence is shown as to the character or the consequences of the military occupation. The letters mentioned above were written while the occupation was still in force, but as to the condition in which the house was left after the occupation, there is no document other than the claimant's uncorroborated affidavit. The conclusion must be that the losses are not proved and that it would not, even if their existence were established, be possible to determine their extent with any degree of accuracy.

7. The claim is disallowed.

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#### CECIL A. BURNE (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 48, May 22, 1931. Pages 104-107.*)

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**FORCED ABANDONMENT.** To establish a claim for forced abandonment claimant must show that he was forced to leave place of his residence as a consequence of revolutionary acts and that during his absence his property was taken, or suffered depreciation to the extent claimed.

**AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE.** Unsupported affidavit of claimant *held* insufficient evidence.