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**RECUEIL DES SENTENCES
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Cecil A. Burne (Great Britain) v. United Mexican States

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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.

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

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

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.

1. The Memorial sets out that in May 1911 Mr. C. A. Burne, with his wife and family, resided in a house in San Carlos, Tamaulipas, Mexico, which he had furnished at a cost of 1,500 pesos Mexican. In August 1911 Mr. Burne leased the "Dulcinea" Mine, in the San Nicolas district, and operated it constantly at a profit, until he was forced to abandon his work. In December 1911 he leased the "Montezuma" Mine in the same district, which he also operated at a profit. In September 1912 he leased the "Americas" and the "Aquilares" groups of mines, and had invested 1,800 pesos Mexican in these properties up to the time when he was forced to stop operations; and in December 1912 he located and made a claim for a mining property called "La Gran Bretaña", consisting of 6 hectares of ground of proved value, but owing to the cessation of postal communications the Government Mining Agent at San Carlos had been unable to obtain for the claimant the legal title to the property.

On the 29th February, 1912, a party of Vazquistas attacked the "Montezuma" Mine, and the claimant and his family were taken prisoners. By threats of bodily harm he was forced to supply the bandits with goods and money to the value of 50 pesos. The authorities at San Carlos had taken no steps to protect the property from attack, but, on the representations of His Majesty's Consul at Tampico, the bandits were pursued and finally suppressed a month later. In March 1913 rebels appeared at the town of Burgos, some 8 leagues from the mines. On the 22nd April, 1913, the 21st regiment of Rurales, which had revolted, attacked the city of Victoria, and, being repulsed, fled to the hill country of San Carlos, arriving there about the 25th and 26th April, under the command of a Colonel Navarrete. These rebels levied contributions on all Mexican citizens, and, in consequence, the workmen in the claimant's mines became restless and irregular in their work. Conditions rapidly became worse; the district judge, Don Baronio Flores, fled; telephone and postal communication was suspended, and murders, outrages, burnings and sackings were frequent. The railroad was frequently cut between Tampico and Monterrey, so that the claimant's ore could not be shipped to the smelter in Monterrey. On the 12th May, 1913, a band of rebels arrived at San Carlos to raise forced loans, and then proceeded to the claimant's mines, where they took four boxes of dynamite, with the necessary caps and fuse, to the value of 80 pesos Mexican. Between the 12th May and the 11th June six more bands invaded the district, and all work was suspended. There were very few workmen, no supplies nor provisions, nor any postal or railroad communications. On the 11th June, owing to the scarcity of food, the claimant left San Carlos with his wife and two children in ox-carts and journeyed north through country infested with rebels and bandits to the town of Reynosa, then in possession of the rebels. They had travelled a distance of 180 miles in some fourteen days. Mr. Burne was obliged to abandon his horse and saddle at Reynosa, as no one would buy them there. Before leaving San Carlos, Mr. Burne obtained a certificate from the chairman of the Corporation of San Carlos to the effect that he had been of good behaviour during his six or seven years' stay at San Carlos, and that he was forced to abandon his work at the mines on account of the revolutionaries. In addition to the property taken by various bands of rebels, Mr. Burne was obliged to abandon his work on the various mining properties in which he was interested. He was thus deprived of his livelihood, and it became necessary for him to seek a fresh occupation.

The amount of the claim is 14,333 pesos Mexican gold. Of this sum 4,333 pesos represent actual losses of goods taken by revolutionaries, money invested in abandoned properties, loss of furniture in house at San Carlos, and expenses of the escape from Mexico and the return to England. The remaining 10,000 pesos gold represent a low estimate of the claimant's loss due to depreciation of

his properties, losses or depreciation of machinery, tools, livestock, and loss due to his being disengaged and having to seek fresh employment.

His Majesty's Government claim on behalf of Mr. Cecil A. Burne the sum of 14,333 pesos Mexican gold.

2. The Mexican Agent's contention was that, in order to prove the facts on which the claim was based, nothing had been shown but an affidavit of Mr. Burne himself and a copy of a certificate by the President of the City Council of San Carlos, in which this official merely declared that Mr. Burne had finished his work at San José on account of the revolution, and that he was therefore going to England with all his family, for the purpose of visiting his parents. At the instance of this Agent, several witnesses who at the time mentioned in the Memorial lived in the neighbourhood, had been heard, and all of them testified that even though revolutionary forces occupied the district at the times mentioned by the claimant, the said forces did not levy any forced loans on Mr. Burne, nor did they confiscate his property. If Mr. Burne had abandoned his property at San Carlos and said property had, in consequence of such abandonment, suffered depreciation, the Government of Mexico could not be held responsible therefor.

3. The British Agent pointed out that it was not claimed that forced loans were exacted from the claimant. The claim was for confiscation of property, for the loss of money invested, for loss of furniture, for expenses incurred in returning to England, and for the depreciation of the mines, machinery, &c. The British Agent did not pursue the first item of the claim, relating to loss of goods and money to the value of 50 pesos, because this loss was due to a group of Vazquistas who were pursued and finally suppressed. As regards the other items of the claim, the Agent submitted that the testimony filed by his Mexican Colleague showed that those who were responsible were Carrancistas. Consequently, it was with subdivision 2 of Article 3 of the Convention that he had to deal, and it was unnecessary to establish negligence of the competent authorities. All the losses were due to the fact that the claimant had been compelled to leave San Carlos. The evidence presented by the Mexican Agent did not deal with what happened at the mines in the surrounding district, but only with what happened at San Carlos, and one of the witnesses upon whose testimony the Mexican Agent relied, gave a declaration showing that there had certainly been one attack upon the "Montezuma" mine.

4. The Commission have not, in the documents filed by the British Agent, found any outside corroboration of the allegations of the claimant. The case rests entirely upon the latter's affidavit, because the certificate given by Francisco V. Meléndez does not confirm any of the facts set out in the Memorial, except that the claimant returned to England because he had terminated his work at the San Nicolas mine, on account of the revolution.

Among the declarations of the witnesses recently heard at the instance of the Mexican Agent is found the testimony of one Amado Flores, who said that he had heard by public rumour, without actually having seen it himself or remembering when it happened, that a group of rebels, under the command of Conzalo and Eleazar Zúñiga, had looted the claimant's store at Montezuma.

The Commission consider this evidence in support too weak for them to base an award upon it.

In order to enable them to accept the facts underlying the claim, there ought to have been shown evidence as to the articles confiscated at the mine. It would further have been necessary to prove that Mr. Burne was forced to leave the place of his residence as a consequence of revolutionary acts, and that during his absence his property was taken or had suffered depreciation to the

extent claimed. No such evidence has been produced, and adhering to the attitude taken in several other decisions, the Commission cannot feel that they are at liberty to award any compensation.

5. The claim is disallowed.

AUGUSTIN MELLIAR WARD (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(Decision No. 49, May 22, 1931. Pages 107-110.)

AFFIDAVITS AS EVIDENCE. An affidavit of claimant based on hearsay and a statement of an independent witness based on personal knowledge *held* sufficient evidence.

DAMAGES, PROOF OF. Statement of independent witness, who had personal knowledge of facts stated and correctness of amount claimed, *held* sufficient evidence when the amounts involved seemed reasonable to the tribunal.

1. The Memorial sets out that Mr. Ward was appointed manager of the mill of the San Rafael Paper Company, Limited, at San Rafael in February 1907 and took up his residence in the manager's house within the mill walls. He had furnished this house with his own property, brought out from England. In March 1914 he returned to England on six months' leave of absence and, owing to the outbreak of the Great War in August 1914, did not return to San Rafael. About the end of 1916 he heard, through a friend, that a band of Zapatista rebels, who entered San Rafael in August 1914, had raided the manager's house and taken away all his effects. He wrote to the Company for confirmation of his loss and received a letter from Señor José Bernot Romano, the Sub-Manager, stating that everything had been taken from his house. Señor Romano has since embodied this information in a declaration.

The amount of the claim is £400 sterling, details of which are given in Mr. Ward's affidavit. The value which Mr. Ward has placed on this furniture is confirmed by Señor Romano in his declaration.

His Majesty's Government claim, on behalf of Mr. Augustin Melliar Ward, the sum of £400 sterling.

2. The Mexican Agent's contention was that the claim was not properly founded. Mr. Ward did not witness the facts on which he based his claim. Mr. José Bernot Romano had made the dogmatic assertion that in August 1914 a band of Zapatistas destroyed Mr. Ward's property, but he failed to say whether he had witnessed the events or whether he knew about them merely by hearsay.

In the submission of the Agent it was a further defect of this claim that no proof had been shown that Mr. Ward was the owner of the articles which he said were stolen from him, nor that they had the value he ascribed to them.

The Agent once more called the attention of the Commission to the fact that Article 2 of the Convention had been modified so as to make it necessary for the British Agent to produce proof of the value ascribed by him to losses of British subjects.

3. The British Agent considered that sufficient proof of the facts was given in Mr. Ward's affidavit and in Mr. Romano's statement. These documents also showed that the losses were caused by Zapatistas. As to the amount of the