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The Veracruz (Mexico) Railways (Ltd.) (Great Britain) v. United Mexican States

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THE VERACRUZ (MEXICO) RAILWAYS (LIMITED) (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 72, July 7, 1931, dissenting opinion by British Commissioner, July 7, 1931. Pages 207-211.)

CALVO CLAUSE.—*Stare Decisis.* When Calvo Clause agreed to by claimant was identic in terms with that involved in previous decision of tribunal (i.e., *Mexican Union Railway*, Decision No. 21), such decision followed and motion to dismiss *allowed*.

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; G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", *Law Q. Rev.*, Vol. 49, 1933, p. 226 at 237.

1. The Memorial sets out that there are two claims. The first is for losses and damages suffered by the Veracruz (Mexico) Railways, Limited, during the period from April 1914 to March 1917 and the second is for a proportionate part of the losses and damages suffered during the period April 1914 to April 1915 by the *Compañía de Vapores de Alvarado, S.A.*, the shares of which are mostly held by the Vera Cruz (Mexico) Railways, Limited (hereinafter referred to as the Company).

Claim I

The Company is British having been incorporated under the Companies Acts, 1862 to 1898, on the 6th July, 1900. It is the owner of the railway from Veracruz to Alvarado in the State of Veracruz.

During the month of May 1914 the Military authorities of Veracruz sank the steamer *Tuxtepec* with 8,000 kilos of scrap iron belonging to the Company. The value of this scrap iron was 160 pesos. During the period from April 1914 to March 1917 the railway and its property was subjected to attacks by revolutionary forces under the leadership of various chiefs.

The amount of this claim is \$759,556.97 pesos Mexican gold.

At the time of the losses notification was made by the Company either to the local authorities of the State of Veracruz or to the Mexican Government and occasionally protests were lodged with the British Consul at Veracruz.

Claim II

The *Compañía de Vapores de Alvarado, S.A.*, was formed in 1910 under Mexican laws with a share capital of 100,000 pesos divided into 1,000 shares of 100 pesos each. At the time of its formation 995 fully-paid shares were allotted to the Veracruz (Mexico) Railways, Ltd., which still holds these shares.

The *Compañía de Vapores de Alvarado, S.A.*, has allotted to the British Company 995 thousandths of the losses and damages sustained by it through revolutionary or counter-revolutionary acts during the period from April 1914 to April 1915.

On the 24th April, 1914, the Mexican authorities at Alvarado sequestered the steamship *Tuxtepec*, which was sunk by Lt.-Major Eduardo Alivier of the Mexican Navy at the bar of this port on the 4th May, 1914. The sinking of

this vessel was brought to the notice of His British Majesty's Minister at Mexico City at the time.

On the 25th April, 1915, the steamship *Playa-Vicente* was set on fire and sunk at La Manga on the river San Juan about 103 kilometres from Alvarado by armed men under the command of General Raul Ruiz. The vessel had been ordered by the military authorities to transport three officers and six soldiers to San Nicolas in spite of the fact that a warning had been issued previously by General Ruiz to the effect that the river was mined and that the vessels should not be used for transport of Carranza forces. On the return journey the *Playa Vicente* was attacked and sunk. At this time the steamship Company did not have a regular service on this river and the only trips made were at the request of the military authorities for the transport of troops.

The total losses suffered by the steamship Company amount to 28,264.02 pesos Mexican gold.

The amount of the claim is 28,122.70 pesos Mexican gold, being 995/1000ths of the total losses sustained by the Compañía de Vapores de Alvarado, S.A.

His Majesty's Government claim on behalf of the Veracruz (Mexico) Railways, Limited, the sum of 787,679.67 pesos Mexican gold, being 759,556.97 pesos Mexican gold in respect of losses and damages sustained by the Veracruz (Mexico) Railways, Limited, and 28,122.70 Mexican gold in respect of the proportional part of the losses and damages sustained by the Compañía de Vapores de Alvarado, S.A.

2. The Mexican Agent has filed a motion to dismiss on the ground that in the concession granted to the claimant Company, a so-called Calvo Clause is inserted, reading:

"La empresa será siempre mexicana aun cuando todos o algunos de sus miembros fueren extranjeros, y estará sujeta exclusivamente a la jurisdicción de los Tribunales de la República, en todos los negocios cuya causa y acción tengan lugar dentro de su territorio. Ella misma y todos los extranjeros y los sucesores de éstos que tomaren parte en la Empresa, sea como accionistas, empleados o con cualquier otro carácter, serán considerados como mexicanos en todo en cuanto a ella se refiera. Nunca podrán alegar respecto a los títulos y negocios relacionados con la empresa, derechos de extranjería, bajo cualquier pretexto que sea. Sólo tendrán los derechos y medios de hacerlos valer que las leyes de la República conceden a los mexicanos, y por consiguiente no podrán tener ingerencia alguna los Agentes Diplomáticos extranjeros."¹

3. The British Agent, having withdrawn the second claim, has declared that he could not distinguish this case from the judgment of the Commission in the case of the *Mexican Union Railway* (Decision No. 21).

4. The Commission by a majority adhere to their decision taken in the case of the *Mexican Union Railway*, and as it so happens that in the claim now

¹ *English translation from the original report.*—"The Company shall always be a Mexican Company, even though any or all its members should be aliens, and it shall be subject exclusively to the jurisdiction of the Courts of the Republic in all matters whose cause and right of action shall arise within the territory of said Republic. The said Company and all aliens and the successors of such aliens having any interest in the Company, whether as shareholders, employees or in any other capacity, shall be considered as Mexican in everything relating to said Company. They shall never be entitled to assert, in regard to any titles and business connected with the Company, any rights of alienage under any pretext whatsoever. They shall only have such rights and means of asserting them as the laws of the Republic grant to Mexicans, and Foreign Diplomatic Agents may, consequently, not intervene in any manner whatsoever."

under consideration, the Calvo Clause has exactly the same wording as in the former case, they cannot but take the same attitude.

5. The Motion to Dismiss is allowed.

Dissenting opinion of the British Commissioner

Whilst appreciating that the Calvo Clause in this case is identical with that in the *Mexican Union Railway Case* (Decision No. 21), and that the alleged circumstances giving rise to the claim are similar to those in that case, it is, in my opinion, necessary that I should record my dissent from the decision in this case, as done already in the case of the *Interoceanic Railway Company* (Decision No. 53).

I do so for the same reasons, recording also my opinion that this is a yet stronger case of the inapplicability of the Calvo Clause to cases resting on revolutionary causes, and not relating to contracts containing a Calvo clause.

VENTANAS MINING AND EXPLORATION COMPANY (LIMITED)
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 73, July 7, 1931. Pages 211-212.)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(Text of decision omitted.)

THE SALINAS OF MEXICO (LIMITED) (GREAT BRITAIN) *v.*
UNITED MEXICAN STATES

(Decision No. 74, July 7, 1931. Pages 212-213.)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(Text of decision omitted.)

EL ORO MINING AND RAILWAY COMPANY (LIMITED) (GREAT
BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 75, July 7, 1931. Page 214. See also decision No. 55.)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(Text of decision omitted.)
