

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

George Creswell Delamain (Great Britain) v. United Mexican States

10 July 1931

VOLUME V pp. 229-231



NATIONS UNIES - UNITED NATIONS
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at the time competent military as well as civil authorities on whom functions of discipline and the prevention and punishment of crimes by their forces rested.

4. The fact that it is not shown that the British Chargé d'Affaires or other British representatives approached the police or any other authority with an account of the occurrences, seems capable of explanation. The most obvious one is that it was a matter of such common notoriety that they thought it superfluous.

For all the above reasons I dissent from the decision of the majority of the Commission, and am of opinion that an Award should be given in favour of the Claimants.

GEORGE CRESWELL DELAMAIN (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 77, July 10, 1931. Pages 222-226.)

AFFIDAVITS AS EVIDENCE. An affidavit of claimant supported only in most general terms by affidavit of another person *held* insufficient evidence. An affidavit of claimant supported by a letter of his brother, which corroborated claimant's statement in great detail, *held* sufficient evidence.

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH.—DUTY TO PROTECT IN REMOTE TERRITORY.—NECESSITY OF NOTICE TO AUTHORITIES. Claimant was taken prisoner by bandit forces on an isolated ranch and not released until ransom was paid. Since no proof was furnished that the public authorities were advised and since the crime, being committed in a remote territory, was not of public notoriety, claim *disallowed*.

1. The Memorial sets out that in March 1891, Mr. G. Creswell Delamain entered the Republic of Mexico, and he resided there continuously until August 1915. During the whole of his residence in Mexico, Mr. Delamain was engaged in ranching. During the years 1912-15 he was living on a ranch known as Mesa de los Fresnos, where he owned horses, cattle and goats. In 1912 General Caraveo, with about 900 soldiers, camped on his ranch for eleven days, during which time he took from Mr. Delamain sixty head of cattle. From the year 1913 to the end of September 1915 an additional 500 head of cattle were taken by Carrancista officers and their soldiers stationed at Boquillas, Mexico. Some of these cattle were taken under the direction of Sebastian Carranza, who was the Jefe Politico at Boquillas, and who usually sent Captain Ernesto Garcia or Sergeant Lazaro Morelos for the cattle. The balance of the 500 head of cattle were taken by Major Felipe Musquiz Castillo, Major Ferino and Colonel Peralde, all of whom were army officers. In 1914 Captain Garcia, under the direction of Sebastian Carranza, took 18 head of saddle horses, and during the years 1914 and 1915, 400 head of goats were taken by the order of the commanding officer at Boquillas. No receipts were ever given to Mr. Delamain for his property; his protests were generally answered by the usual "Por la causa." On the 5th July, 1915, Mr. Delamain was taken prisoner by Major Felipe Musquiz Castillo, and held by him for ten and a half days in the mountains on the Enfiante Ranch, near the La Babia ranch. The claimant was not released until a ransom of 4,000 pesos gold had been paid. Mr. Delamain was harshly treated during his imprisonment, and it was with difficulty that he persuaded Major Castillo to spare his life.

The amount of the claim is 40,460 pesos gold, details of which are given in Mr. Delamain's affidavit.

The British Government claim on behalf of Mr. G. Creswell Delamain the sum of 40,460 pesos gold.

2. In order to do justice to this claim, it must be divided into two parts. Within the first part enter the losses alleged as having been suffered through the taking of cattle, and valued at 36,460 pesos. The second part deals with the 4,000 pesos, which the claimant says he paid as ransom for his release.

3. As regards the first part, the Commission have the affidavit of Mr. Delamain and a deposition of Mr. W. R. Sharp, sworn on the 18th March, 1930, before a notary public at Val Verde (Texas) reading as follows:

"That he has known G. C. Delamain for a period of twenty-five years, and he knows that he was ranching in Mexico about the years from 1913 to 1915; that he was on the ranch of the said G. C. Delamain, and that he saw quite a number of cattle on the Treviño Ranch, that he, the said W. R. Sharp, bought cattle from G. C. Delamain on the above ranch, while it was under the control of the said G. C. Delamain, I further swear the said G. C. Delamain lost cattle through the agents of the Carranza Military forces."

The Commission have also a record, filed by the Mexican Agent, of the hearing of witnesses, following instructions of the Mexican Government.

Those witnesses, who testified in 1928 and 1929, and are said to have lived in the neighbourhood of Mr. Delamain's Ranch at the time of the events, have answered in the negative the question as to whether they knew that cattle was taken from the claimant by military officers. One of the deponents states that General Caraveo, mentioned in the Memorial and then Governor of the State of Chihuahua, has authorized him to deny that he, General Caraveo, camped in 1912 on the Ranch "Mesa de los Fresnos" and confiscated cattle.

4. The British Agent pointed out that no great value could be attached to the evidence of witnesses examined so many years after the occurrences. The denial by authority of General Caraveo himself should certainly not impress the Commission, because it was clear that he would try to evade responsibility for the acts for which the claimant blamed him. The fact that this rebel leader had not only subsequently been amnestied, but even promoted to high public functions, was, in the eyes of the Agent, an additional reason why Mexico should be held liable for the financial consequences of his deeds.

5. The Mexican Agent drew attention to the vague character of Mr. Sharp's letter, in which no details whatever were given, neither as regarded the time when the cattle was taken, nor as regarded the forces who took it, nor as to the extent of the loss.

He, the Agent, could not see why General Caraveo's deposition should not be accepted, nor why the amnesty granted to him should be considered as an act giving rise to responsibility for Mexico. Caraveo had first followed General Orozco, had then been exiled and had later fought for the Huerta régime. His subsequent amnesty was not blamable negligence, but a measure of wise prudence promoting the return of peace and order.

6. The Commission feel unable to accept Mr. Sharp's letter as sufficient corroboration of the affidavit of the claimant. There is a total lack of detail in this document, it does not circumstantiate a single fact, and cannot be admitted as presenting evidence, on which a financial award could be based.

This being the case, only the affidavit of Mr. Delamain himself remains, and the Commission have in several decisions held that, and explained why, they cannot be satisfied by the mere statement of the person interested in the claim.

7. As regards the second part of the claim, the British Agent has filed a letter of Mr. L. A. Delamain, a brother of the claimant, dated the 11th April, 1930, in which he relates how in July 1915 one of the men of Major Felipe Musquiz Castillo came to his house in Las Cruces and told him that his brother was being held. He then went to meet the Major and arranged with him that the prisoner should be released for a ransom of U.S. \$2,000. He went back to cash this money, for which his brother had given him a cheque, and paid it to Castillo, who then released his prisoner.

The Mexican Agent considered this letter as extremely weak evidence, if it could be called such, because it had not in any way been authenticated. Moreover, he pointed to the testimony filed by himself, which showed that some of the witnesses knew nothing of the claimant's imprisonment and that others, who recollected having heard of it, at the same time declared that they thought that the ransom had later been returned to Mr. Delamain.

The same witnesses unanimously characterized Castillo as a bandit leader. This means that Mexico could only be held responsible for his acts in case the competent authorities had been shown to be guilty of negligence. The Agent asserted that Castillo had been pursued, and finally executed, and this was confirmed by his witnesses. He failed to see why the authorities could be blamed for what happened to the claimant, the less so as his colleague had not shown that they had been informed.

8. The Commission are prepared to accept the letter of Mr. L. A. Delamain as sufficient corroboration of this part of the claimant's affidavit. It gives a great many details and describes the events in such a vivid and circumstantial way, that it is difficult not to consider it as a genuine, *bona fide* and trustworthy account. It is strengthened by the deposition of those of the Mexican witnesses, who state that they knew of the holding and releasing of Mr. Delamain.

The Commission have seen no evidence showing that Castillo, at the time when he arrested the claimant, belonged to the army. All the witnesses call him a bandit leader and they assert that the Government forces brought him to execution.

In several of their decisions, the Commission have made known their attitude as regards the application of subdivision 4 of Article 3 of the Convention. They refer to section 6 of their Decision No. 12 (*Mexico City Bombardment Claims*):

"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 realizes that the evidence of negative facts can hardly ever be given 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."

9. In the present case they have not found any indication that Mr. G. C. Delamain, or his brother, advised the public authorities of the extortion, of which he had been a victim, nor can it be assumed that this crime, committed on an isolated ranch, was of such public notoriety as to come spontaneously to the knowledge of the authorities.

For these reasons the Commission do not feel at liberty to declare that the facts are covered by the Convention.

10. The claim is disallowed.