

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

The Madera Company (Ltd.) (Great Britain) v. United Mexican States

10 July 1931

VOLUME V pp. 233-235



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

notifying the owner that his property had been taken in a legal way and in the course of the transaction of civil administration.

As, moreover, it has been shown by the evidence of the two witnesses, George A. McCormick and Jesús Magallón, that a part of the building was repeatedly used for the quartering of military forces, the majority of the Commission feel bound to declare that the losses of the claimant fall within the terms of the Convention, as having been caused by forces described in subdivision 2 of Article 3.

5. The Commission feel satisfied that occupation lasted for four years, but they cannot believe that after that period the condition of the building was such as pictured by the photographs. It is inconceivable that the first local Magistrates would have continuously dwelt in a house, which is represented as a complete ruin. If the building actually has decayed to that extent, the cause must probably be sought in the fact that the repairs were started three years after the end of the occupation, rather than in the occupation itself.

Although the Commission consider it very likely that the occupants, living in a house not their own, did not spend on upkeep anything more than was strictly indispensable, and therefore, that compensation for repairs is rightly claimed, they cannot accept an expenditure of pesos 7,168.44 as a true account of the costs that would have been incurred, in case the house had been restored to its previous condition immediately after it was returned to the owner.

6. The Commission, furthermore, have found sufficient evidence of the allegation that the claimant suffered loss, because he only, from time to time, received rent at the rate of 15 pesos a month, while the rental value was 80 pesos, which, however, in estimating the amount of his loss, he only calculates at the rate of 50 pesos. For this loss he claims 4,800 pesos, being 600 pesos yearly during six years.

The Commission, although allowing that the claimant is entitled to compensation for this item also, have considered that the occupation did not deprive the owner of the use of his house for eight years, because it did not last longer than four years, and the repairs, according to the bill of Julio C. Solórzano, took one year and three months.

The amount claimed is evidently too high, the more so as no reduction is made for the rents from time to time paid by the occupants.

The Commission can only, therefore, accept a part of the amount claimed as proved.

7. The Commission decide that the Government of the United Mexican States are obligated to pay to the British Government on behalf of Mr. James Hammet Howard the sum of 5,000 (five thousand) pesos, Mexican gold.

THE MADERA COMPANY (LIMITED) (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 79, July 10, 1931. Pages 229-232. See also decision No. 41.)

RESPONSIBILITY FOR ACTS OF FORGES, DEGREE OF PROOF REQUIRED.—When the fact of damage was established but no proof was furnished as to identity of forces responsible, or the dates or places of the events complained of, claim *disallowed*.

1. The Commission, in so far as the facts on which the present claim is based are concerned, refer to their Decision No. 41.

2. In accordance with the said Decision, the Mexican Agent answered the claim, and prayed that it be disallowed and the Government of Mexico be absolved, because it had not been shown that the claimant Company had suffered losses and damages to the extent of \$4,064,705.66 pesos, nor, in the event that the claimant had suffered them, that they were caused by any of the revolutionary forces in respect of whose acts the Government of Mexico had expressly agreed to be held responsible, nor had it been shown that the competent authorities were guilty of negligence.

3. After this case was tried by the Commission, the British Agent confirmed his Memorial by contending that it was only a matter of examining the documents annexed thereto, in order to consider the claim as proved.

The British Agent himself, during the hearing, admitted that there was no evidence in regard to the forces that had executed the various acts ascribed to revolutionaries and counter-revolutionaries; but he trusted that the Commission would, in equity, award some compensation to the claimant Company, as it had absolutely no proof beyond that already filed.

4. The Mexican Agent alleged that there was no evidence as to the nature of the forces, nor particulars to establish the claim or to make it specific, but only evidence of a vague and indeterminate nature, and therefore prayed that the claim be disallowed.

5. The Presiding Commissioner asked the British Agent whether it would be possible for him to submit to the Commission the extract from the books referred to on page 6 of the Memorial, as it might afford some light to the Commission. The learned British Agent answered that he had made an effort, but that he was not in a position to submit such evidence.

The Presiding Commissioner then asked the British Agent whether he could produce the documents referred to on page 6 of the Memorial, in regard to damage caused in the time of Mr. Francisco I. Madero. The British Agent answered in the negative, although he had tried to obtain them.

The Presiding Commissioner further asked the British Agent whether he knew if the claimant Company had reported its losses to the head office at Toronto, as in that case the correspondence might also serve to enlighten the Commissioners to a certain extent. The British Agent answered that the claimants had informed him that they had no such supplementary evidence in their possession.

6. The Commission do not hesitate to assert that the claimant Company did sustain damage during the revolutionary period, from the 20th November, 1910, to the 31st May, 1920, because this appears to be abundantly proved by means of annex 2 being a certified copy of the proceedings for examination of witnesses instituted by the Company before the Judge of the District Court at Ciudad Juárez in the State of Chihuahua.

The Commission do not, however, have the same opinion when they come to the evidence as to the kind of forces that committed the acts that caused the damage.

The witnesses fail to say where the acts were committed, and their testimony is so defective, and so wanting in precision, that they do not state the exact amounts of the losses. They confined themselves to stating that the Madera Company (Limited), since 1910, *at different dates*, and *at different places*, during the revolutionary period, and at the hands of revolutionaries, sustained great damage to its interests situated in the Districts of Galeana and Guerrero in the

State of Chihuahua; that said damage consisted of destruction, robberies, expropriations, violent requisitions of merchandise in transit and in storage, expropriations of arms, ammunition and explosives, robberies of horses, cattle, hogs and sheep, wherever they happened to be; requisitions of medicines, etc.; *but there was not a single witness to say who were the revolutionaries responsible for those acts in each case nor did they specify either the dates of, or the places where, the events occurred upon which they testified.* That being so the Commission are unable to make an award against Mexico, in accordance with the Convention entered into between Mexico and Great Britain.

Article III of the Convention, which determines the nature of the claims that may be presented against Mexico for losses or damages suffered by British subjects, etc., requires that it be established that such losses and damages have been caused by one or any of the following forces:

- (1) By the forces of a Government *de jure* or *de facto*.
- (2) By revolutionary forces which, after the triumph of their cause, have established Governments *de jure* or *de facto*.
- (3) By forces arising from the disbandment of the Federal Army.
- (4) By mutinies or risings or by insurrectionary forces other than those referred to under subdivisions 2 and 3 of this Article, or by brigands, provided that in each case it be established that the competent authorities omitted to take reasonable measures to suppress the insurrections, risings, riots or acts of brigandage in question, or to punish those responsible for the same; or that it be established in like manner that the authorities were blamable in any other way.

According to the opinion of the Commission it is not sufficient that it be proved that a British subject sustained damage during the period from the 20th November, 1910, to the 31st May, 1920, in order to hold Mexico responsible for such damage, but it is further necessary to show—

- (a) That said damage was due to the acts of forces;
- (b) That said forces are included among those mentioned in Article 3 of the Convention, and no others; and
- (c) That the date on which they were caused be also stated with such exactness as to enable the Commission to determine the nature of the forces that caused the damage, and the responsibility of Mexico, since under the new Convention Mexico is not responsible for any claims originated by the forces of Victoriano Huerta, nor for the acts of his régime, nor for those of revolutionary forces opposed to those which, after the triumph of their cause, established Governments *de jure* or *de facto*.

And as it has not, in the present case, been shown that any forces within the meaning of the Convention executed the acts that gave rise to the damages for which claim is made, the Commission, because of the lack of evidence, decide that the claim is disallowed and that Mexico is absolved from the said claim as presented against it by the Government of Great Britain on behalf of the Madera Company, Limited, for the sum of \$4,064,705.66, Mexican gold.