

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

Claim, the Agent submitted that the detailed nature of the schedule presented by Mr. Ward carried conviction, and that Mr. Romano confirmed the estimate. The Agent thought the amount fair and reasonable.

4. The Commission feel at liberty to accept the declaration of Mr. José Bernot Romano as sufficient proof of the facts. The deponent can be considered as an independent witness, who, at the time mentioned in the Memorial, was already in the service of the Cia. de Fábricas de Papel de San Rafael y Anexas, who resided on the premises and who often visited the house of the claimant. The Commission fail to see why his declaration should not be deserving of confidence.

5. There is just as little reason why Mr. Romano's statement as to the character of the forces who looted the mill and the house of the manager should not be accepted. He is a Mexican citizen, who lived at the place, and he may be supposed to have been able to distinguish between the different forces then in arms. Apart from that, it is of general knowledge that the San Rafael Paper Mills are situated in the immediate neighbourhood of the region where the Zapata movement originated and where up to the present day many ruined haciendas bear witness to their activities.

6. It is an equally known fact that the Zapatistas in August 1914 formed part of the Constitutionalist Army. This is also allowed in a brief filed by the Mexican Agent on the 7th April, 1931. As there is no doubt that the Constitutionalist Army was to be considered as a revolutionary force, which after the triumph of its cause established a Government, first *de facto*, and later *de jure*, the losses caused by this Army, and by the groups forming part of it, are covered by the Convention (Article 3, subdivision 2), even if some of the groups later separated and followed another cause.

The Commission, while satisfied as to the facts on which the claim is based, holds that the liability for the financial consequences of them must rest with Mexico.

7. The amount claimed has been confirmed by Mr. Romano, who was in a position to know the house and its contents, and neither the schedule nor the estimate seem exaggerated for furniture and movable property owned by the manager of an important industry, residing in a house with two living rooms, three bedrooms, hall and nursery.

8. The Commission decide that the Government of the United Mexican States shall pay to the British Government, on behalf of Mr. Augustin Melliar Ward, 4,000 (four thousand) pesos, Mexican national gold.

The Mexican Commissioner did not accept as an expert's proof, the testimony of Señor Romano in connexion with the value of the articles disappeared; hence the decision was by majority on this point.

HENRY PAYNE (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 50, May 22, 1931. Pages 110-111.*)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. Claim alleged to arise under same circumstances as those of *Mexico City Bombardment Claims* (*supra*, Decision No. 12), but with fact of loss resting solely on claimant's affidavit, *disallowed*.

(*Text of decision omitted.*)
