

Dissenting opinion of the Mexican Commissioner

The Mexican Commissioner dissents from the Decision taken by his colleagues in the present case, for the following reasons:

Firstly.—He does not believe that the period of nine years, which has elapsed without the Adjusting Commission having pronounced judgment in the claim presented by the claimant company, justifies the statement that there has been a denial of justice on account of delay in administering it; and he bases his disagreement upon the fact that the said Commission has had many thousand cases to decide, some of them very complicated, and that, since the Commission itself knew that the claimant company had had recourse to the Anglo-Mexican Commission for a decision in the same case, it was logical to suppose that the Adjusting Commission itself would await the opinion of the Anglo-Mexican Commission before dealing with the case.

The General and Special Claims Commissions between Mexico and the United States have been functioning for more than six years and have not pronounced more than 200 decisions, in spite of the efforts of both Governments and of the Commissions themselves to make the best use of the time. They have more than three thousand cases to deal with, and up to the present they have not been accused of lenity in their labours.

The Claims Commission between Mexico and the United States in 1868 functioned for eleven years to decide a smaller number of cases than those enumerated in the preceding paragraph.

Delay in administering justice, according to the estimation of international authorities, should be malicious. In the present case this characteristic has not been demonstrated.

Secondly.—The Mexican Commissioner is also of opinion that the Anglo-Mexican Commission should declare itself incompetent since, even supposing it to be thought that there was denial of justice, through delay in administering it, on the part of the Adjusting Commission, this does not mean that the Anglo-Mexican Commission is the one to recognize that claim but the competent International Tribunal established in the case of the Union Railway Company. The Convention between Mexico and Great Britain does not authorize the Commission to recognize acts of civil authorities except when they have been committed by forces, which does not arise in the present case.

He agrees with all the other points in the Decision.

ALFRED F. HENRY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 56, June 9, 1931. Pages 153-154.*)

FORCED ABANDONMENT. Though it appeared that claimant's place of employment and residence was occupied by revolutionary forces at the time of his alleged departure, in the absence of evidence of acts compelling claimant to leave hurriedly and abandon his property, as well as proof that his property was taken by revolutionary forces, claim *dismissed*.

1. In this case the claim is made on behalf of Mr. Alfred F. Henry. The claimant sets out in the Memorial that he was employed as Civil Engineer to the Huasteca Petroleum Company at Tampico, and in 1913-1914 was engaged

in the erection of tanks, distillate plant, etc., at Tampico. In April 1914 the town of Tampico was occupied by rebel troops, and Mr. Henry was forced to leave hurriedly. He left Tampico as a refugee on board the Company's yacht, the *S.T. Wakiva*, and arrived at Aransas Pass, Texas, with just his working clothes, having been given enough money by the Vice-President of the Company to get to that town. As there was no likelihood of his returning to Mexico for some time, he was paid off by the Company and proceeded to his native town, Glasgow. In August 1914 the claimant returned to New York, with a view to attempting to trace his effects through the New York Agents of the Company. He was informed by the Vice-President of the Company that all trace of his personal effects and papers had been lost. Mr. Henry then returned to Glasgow to join His Majesty's forces in the Great War.

The amount of the claim is 2,500 pesos, details of which are given in the statement of claim attached to Mr. Henry's affidavit.

2. There was no oral hearing of this case, the respective parties putting forth their contentions in written briefs.

3. The Agent for Mexico contended that Mr. Henry left Tampico of his own will and that the proofs presented with his Contestation filed as Annexes thereto showed that he was not forced by the Government to leave Tampico. Further, that the American employees who left Tampico aboard the yacht *Wakiva*, following instructions from the American Consul, were not molested either by revolutionary forces or by Government forces, landing in safety.

4. The British Agent in his Brief stated that he relied upon the facts alleged in the claimant's Memorial and Annexes thereto. It was, in his submission, a matter of common notoriety that the rebels referred to in the Memorial, who occupied the town of Tampico in April 1914, were Constitutionalists, and therefore Mexico was responsible for their acts.

5. The Commission, whilst accepting that Tampico was occupied by Constitutional revolutionary forces in April 1914, and that the claimant left Tampico at the time of their occupation, do not find that there is any evidence of acts compelling him to leave Tampico hurriedly and abandon his property therein. Nor even, if the circumstances warranted him so leaving, that there is any proof that his property was taken by revolutionary forces.

6. The claim is dismissed.

GEORGE R. READ (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 57, June 9, 1931. Pages 154-157.*)

AFFIDAVITS AS EVIDENCE.—NECESSITY OF CORROBORATING EVIDENCE. Unsupported affidavit of claimant *held* insufficient evidence.

(*Text of decision omitted.*)
