

AWARD OF THE KING OF SPAIN SETTling THE DISPUTE  
SUBMITTED TO ARBITRATION BY GREAT BRITAIN AND  
HONDURAS WITH REGARD TO THE AFFRAY OF LA MASICA.  
MADRID, 7 DECEMBER, 1916<sup>1</sup>

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ALFONSO XIII, by the Grace of God and the Constitution, King of Spain.

WHEREAS the question has been submitted to my decision whether, according to the established principles of international law and taking into consideration the agreement dated the 13th August, 1910, between His Britannic Majesty's Government and the Government of the Republic of Honduras, any responsibility rests with the latter in respect of the affray which took place on the 16th June, 1910, in the village of La Masica, department of Atlántida, Republic of Honduras, under circumstances such as were revealed in the proceedings before the court of enquiry opened at La Ceiba on the 29th August of the said year, between a squad of soldiers of the Government of Honduras which, at the time of the affray, were under the command of the Mayor de Plaza of the said department, Don Joaquín Medina Planas, and a group of three British West Indian subjects named Alexander Thurston, Wilfred Robinson and Joseph Holland, which affray resulted in the death of Alexander Thurston, the wounding of Wilfred Robinson and the beating of Joseph Holland:

Having seen —

(a) The *compromis* signed in Tegucigalpa on the 4th April, 1914, by the representatives of His Britannic Majesty's Government and the Government of Honduras, and the agreement made between the two Governments dated the 13th August, 1910, as aforesaid;

(b) The memorandum submitted by the British Government in support of its case, in conformity with the provisions of article 2 of the said *compromis* and within the period designated in the said deed;

(c) The counter-case of the Government of Honduras submitted in the form and within the period indicated in article 3 of the *compromis*;

(d) The reply of His Britannic Majesty's Government submitted in accordance with article 4 of the *compromis* and also within the period designated in the latter; and

(e) The memorandum submitted by His Britannic Majesty's Ambassador the 25th June of this year, in virtue of the invitation which, making use of the

<sup>1</sup> *British and Foreign State Papers*, vol. 121, p. 784.

powers bestowed on me by article 6 of the *compromis*, and in relation to article 56 of the Hague Convention of 1907 for the pacific settlement of international disputes, I agreed should be made to British Government to explain the circumstances serving as a basis for fixing the amount of the indemnity which it demands;

WHEREAS, according to the proceedings before the court of enquiry opened at La Ceiba on the 21st August, 1910, on the 16th day of June of the said year, between 4 and 5 in the afternoon, there were at the station of La Masica Alexander Thurston, Wilfred Robinson and Joseph Holland, British subjects and negroes from the Antilles, the two former being shunters and the latter the stoker of the train between La Ceiba and La Masica, which line was inaugurated that day, Thurston, who was somewhat inebriated and who, some hours previously, wanted to enter a ballroom accompanied by other negroes, and having been forcibly turned back by the Mayor de Plaza, Colonel Joaquín Medina Planas, took from a wagon some bananas belonging to an elderly lady, and when reproved in a friendly way by the soldier Higinio Hernández, he, Thurston, according to the declaration of the said soldier, tapped him on the shoulder signifying affection, telling him that he had already given the bananas to the old lady, but then other British negroes arrived and surrounded the soldier, trying to take from him a knife which he carried, for which reason the commander of police came to Hernández's succour, remonstrating with the negroes that they should leave him alone;

WHEREAS, as the negroes showed themselves rebellious and hostile, the commander of police, with the police magistrate, who had also arrived, and the soldier Hernández went in search of assistance and returned to the station with some policemen and soldiers, and were joined on the way by the Mayor de Plaza, who, in view of what had occurred, ordered the three negroes to come down from the engine on which they had meantime mounted in order to attend to their work, and on which were also the white men Macnamara, engine driver, and Bacucci or Bacense, also a railway employee;

WHEREAS, since the negroes did not immediately obey the order to come down, the Mayor de Plaza, after telling the two white men to descend from the engine, ordered the soldiers to pull out the negroes, but it has not been possible to make it clear whether the said chief ordered them expressly to shoot, or to abstain from doing so, or whether he said anything at all in one sense or the other respecting this matter, and whether or not he discharged his revolver, which he held in his hand from the beginning;

WHEREAS an affray between the soldiers and the negroes having arisen, Thurston was killed and Robinson wounded, in each case by rifle bullets, and Holland was beaten;

WHEREAS, judicial proceedings having been commenced on the 21st June by the Honduran authorities to clear up the incident of "the military guard who kept order in La Masica having been attacked with weapons", it was ordered by the learned judge of La Ceiba that Holland and Robinson should be imprisoned as being responsible and answerable for the crime of resisting the authority of the commander of police and his guard, and the latter, moreover, for the death of Alexander Thurston;

WHEREAS, notwithstanding this and in consequence of the negotiations carried on between the diplomatic representative of Great Britain in Tegucigalpa and the Minister for Foreign Affairs of Honduras, an agreement was signed on the 13th August, 1910, for the settlement of this matter, by which agreement the following was stipulated:

“ 1. The Government of Honduras engages within 3 days to remove from his post the Mayor de Plaza of the department of Atlántida, Don Joaquín Medina, pending the course of the judicial enquiry. His trial shall be commenced with all the urgency which the case demands, and shall take place under the following conditions:

“ (a) As a guarantee of impartiality, the substitution of the present learned judge of the department of Atlántida will be proposed to the Supreme Court of Justice; the licentiate Don Serapio Hernández y Hernández, who is acceptable to both parties, shall be appointed in his stead;

“ (b) In order still further to avoid any suspicion of partiality during the trial, the Governor and commandant of the said department shall temporarily leave his post; he shall absent himself within 8 days from the date of this arrangement, and shall remain away during the course of the summary proceedings;

“ (c) The British Consul at Puerto Cortés or, failing him, some other person appointed for this purpose by the British Legation, shall be present at the judicial sittings of the court at La Ceiba;

“ 2. In the event of the Mayor de Plaza being found guilty, the Government of Honduras will grant a proper indemnity to the family of the late Thurston, as also to the wounded man Robinson. The amounts payable in this respect shall be agreed upon later with the British Legation ”;

WHEREAS, in accordance with the provisions of article 1 of the said agreement, the proceedings before the learned judge of La Ceiba were continued and amplified by licentiate Don Serapio Hernández y Hernández, in the presence of the British Consul at Puerto Cortés, Mr. Henry T. Panting, and new declarations were received, some of them upon the proposal of Consul Panting, and such further investigations took place as were considered advisable;

WHEREAS, on the 4th October, 1910, the following judgment, confirmed by the court of appeal of Comayague on the 15th November of the same year, was pronounced by the said Judge Hernández:

“ Having seen these present proceedings initiated with a view of ascertaining the identity of the persons responsible for the death of Alexander Thurston and the wounding of Wilfred Robinson, which took place on the 16th June of the present year, in the village of La Masica, municipal district of San Francisco;

“ It results that the *corpus delicti* was duly established by the expert opinion of the doctors, Don Virgilio Reynolds, Don Francisco A. Matute and Don Rubén Andino Aguilar;

“ It results that, according to the judicial proceedings before the said learned judge, the latter, by judgment of the 21st of the said month of June, ordered Joseph Holland and Wilfred Robinson to be imprisoned, declaring the former guilty of the crime of resisting the authority of the commander of police and his guard, and the latter answerable for the death of Alexander Thurston;

“ It results that the defendant, Wilfred Robinson, and the witnesses, Curtis Sinclair, John Stewart and John Henry, asserted in their declarations that the Mayor de Plaza, Don Joaquín Medina Planas, and two soldiers had discharge their arms at the said Thurston and Robinson, the ex-Mayor de Plaza having discharged his revolver at Thurston and the soldiers having discharged their rifles, by which shots Thurston was killed and Robinson wounded;

“ It results that, on the 22nd September last, a judicial inspection took place on engine No. 2 at the place where the facts occurred, whereby it was clearly shown that the shots had been fired by Remington rifles from outside the engine;

“ Considering that, after the body of Alexander Thurston had been exhumed, a lead Remington rifle bullet, calibre 43, was extracted, by which fact all evidence against Wilfred Robinson and the former Mayor de Plaza, Don Joaquín Medina y Planas, with respect to their being answerable for the death of Alexander Thurston, falls to the ground, and that the culpability imputed to Joseph Holland has not been established in a clear manner;

“ Considering that there exist proofs that three soldiers out of those who formed the various guards keeping order in La Masica discharged their rifles, causing the death of Alexander Thurston and wounding Wilfred Robinson:

“ Therefore this court, in the name of the Republic and in virtue of section 1255 (2) of the Code of Procedure, suspends definitely, in this matter, the proceedings against the aforesaid Joseph Holland, Wilfred Robinson and Joaquín Medina Planas, ordering that a copy be taken of these present proceedings for the purpose of communicating this decision to the respective court which is to continue the investigation in order to establish which soldiers are answerable for the death of Thurston and the wounding of Robinson ”;

WHEREAS, in accordance with the provisions of this judgment, Judge Hernández continued, in the month of October and in the presence of Consul Panting, to receive declarations from various witnesses, without its appearing that any judgment was given as a result of the said fresh proceedings;

WHEREAS the Government of Honduras, basing itself on the agreement of the 13th August, 1910, above quoted, refused, in view of the results of the said investigations and of the judgment referred to, to accept any liability for what had occurred;

WHEREAS the Government of Great Britain, on its part, considers that the results of the said investigations and the judgment of the tribunal afford valid reasons for claiming from the Government of Honduras a reasonable indemnity which, in the course of its correspondence with the Ministry for Foreign Affairs in Tegucigalpa, it had fixed at £ 2,450, and that it maintains in the memorandum this figure, which the Government of Honduras did not previously and does not now discuss, taking into account that, by the death of Thurston, a woman and a child have become destitute, and that the wound of Robinson, far from having healed within a period of 15 days and preventing him from doing work for 1 month only, incapacitated him at least until the 17th February, 1911, and that Holland, in consequence of having been hit by the soldiers with the butt end of their rifles, apparently suffered internal lesions, which caused his death on the 16th February, 1911, all of which reasons are reproduced in the memorandum submitted by His Britannic Majesty's Ambassador on the 25th January last;

WHEREAS both Governments, being desirous of removing, as quickly as possible, this cause of difference between them, decided to submit it to my arbitration, in the form and according to the terms contained in the *compromis* dated the 4th April, 1914, articles 1 and 7 of which read as follows:

“ 1. The question whether, under the principles established by international law and taking into consideration the agreement of the 13th August, 1910, above referred to, any responsibility attaches to the Government of

Honduras in respect of the affray and the injuries inflicted on the above-mentioned British subjects in the circumstances as disclosed before the said court of enquiry at La Ceiba, shall be submitted to the decision of His Majesty the King of Spain.”

“7. If the award of the Royal arbitrator is in favour of Great Britain, it shall specify the amount of the pecuniary indemnity to be paid by the Government of Honduras to His Britannic Majesty’s Government. Such indemnity shall be paid by the Government of Honduras within 3 months, dating from the notification to them of the award of the Royal arbitrator”;

WHEREAS the task of settling this difference having been accepted by me under the dates of the 29th July and the 8th December, 1914, and the 6th February, 1915, His Britannic Majesty’s Ambassador submitted to me, through my Minister of State and within the period designated by the two high parties, the memorandum, the counter-case and the reply provided for in articles 2, 3 and 4 of the said *compromis*, in the form laid down by article 5, all of which documents, with their respective enclosures, have been subjected to a minute and careful examination;

WHEREAS, on my agreeing that the British Government should be asked for explanations respecting the circumstances which it may have taken into account on fixing at £2,450 the amount of indemnity which it desires, the said Government through its diplomatic representative, submitted the respective memorandum on the 25th January last;

Inspired by the wish to respond to the trust placed in me by both the Governments of His Britannic Majesty and of the Republic of Honduras in submitting this matter to my decision:

CONSIDERING that, by article 1 of the *compromis* of the 4th April, 1914, by which the Government of His Britannic Majesty and that of the Republic of Honduras agreed to submit this question to my decision, they designated as guiding rules on which the award should be given, as far as facts are concerned, “the circumstances as disclosed to the court of enquiry opened at La Ceiba on the 29th October, 1910”, and, as regards the bases of law, the principles established by international law and the agreement of the 13th August, 1910;

CONSIDERING that the fulfilment of obligations freely entered into by Governments by means of treaties or agreements is a principle established by international law, and that consequently it is necessary to seek inspiration for the decision in the matter of this arbitration, in the first instance, in what has been expressly stipulated by the Cabinets of London and of Tegucigalpa, that is to say, the agreements of the 13th August, 1910, and the *compromis* of the 4th April, 1914, by interpreting them and supplying the blanks in accordance with the principles of international law;

CONSIDERING that, from the terms in which both documents are drawn up, it may be assumed that the two high parties are agreed in considering as one single act the affray which occurred at the station of La Masica on the 16th June, 1910, between 4 and 5 o’clock in the afternoon and which has as a result the death of Alexander Thurston, the wounding of Wilfred Robinson and the contusions received by Joseph Holland, because, in both agreements, the Government of Honduras admitted the close connexion of the affray with the act by which its agents intervened in the said incident, which act was attributed to the person directing it, the Mayor de Plaza, Don Joaquin Medina Planas, seeing that, in the *compromis*, it is definitely stated that the affray took place between a squad of soldiers of the Government of Honduras, which, at that moment, was under the command of the said Mayor de Plaza, and that, in

the agreement of the 13th August, 1910, article 2 deals with the culpability of the said officer, not in one or other concrete and isolated act but "in the matter", whilst making dependent on this culpability the grant of indemnities, not only to the family of the deceased Thurston, whose wound was then ascribed to a revolver bullet, but also to the injured man Robinson, who was wounded by a Remington bullet, as was shown by the expert report issued on the 17th June of the said year;

CONSIDERING that, in the judgment of suspension pronounced by the learned judge of La Ceiba on the 4th October, 1914, and confirmed by the court of appeal of Comayagua, a decision is only given with respect to the material and direct participation of Don Medina Planas in the death of Alexander Thurston, without making any declaration with regard to his culpability or non-culpability "in the matter", which declaration, on the other hand, would have been premature, seeing that, in the said judgment, it was ordered that further proceedings with respect to the death of Thurston and the wounding of Robinson should be taken, the result of which proceedings could not be immaterial to the effects of fixing the said culpability;

CONSIDERING that it has not been shown that shots were fired by any of the three British subjects at the public force who tried to arrest them, seeing that the only positive evidence which could be adduced, that is to say, the declaration of the local chief of police, Don Arturo Pineda, to the effect that he had seen Robinson throwing away the revolver and that he had picked it up and found that one cartridge had been discharged, is not corroborated by any other evidence, not even by that of the commander of police, Don Cruz Lobo, to whom the former handed the said revolver, and who, in his turn, presented it to the court, limiting himself to referring to the fact that Pineda had taken it from the engine, but without stating that it had been discharged or causing this interesting circumstance to be taken cognisance of by the judge;

CONSIDERING that, by the agreement of the 13th August, 1910, the Government of Honduras undertook to pay an indemnity to the injured parties, provided that the culpability of the Mayor de Plaza, Don Medina Planas, should be proved in the matter, and that, to this effect, it has admitted the liability of Medina for the acts of the soldiers who were under his orders because, as has already been stated, only in this manner can it be explained that it made the payment of an indemnity to Robinson, who had been wounded, dependent on the culpability of Medina;

CONSIDERING that, if it is not shown that the Mayor de Plaza, Medina Planas, gave orders to the soldiers to fire on the negroes, neither does it appear to be proved that he prohibited them from doing so, nor that he did anything to prevent them; on the contrary, it may be inferred from his attitude during the incident and afterwards that he approved of the conduct of the said soldiers, as he did not cause steps to be taken against them and did not inflict the slightest punishment upon any of them, and it has neither been shown that the investigation carried out by Judge Hernández has achieved any result other than making it clear that the wounds of Thurston and Robinson had been caused by Remington bullets in consequence of shots fired by the soldiers, and by one of them at least from outside the engine, nor has it been possible to prove whether or not the Mayor de Plaza fired his revolver, which fact some witnesses definitely assert and others as positively deny, but against which it cannot be a proof that Thurston was mortally wounded by a rifle bullet, because it might also be the case that the bullet from the revolver which the Mayor de Plaza held in his hand missed him, even if it had been fired;

CONSIDERING that the predisposition of the soldiers against the negroes for personal motives derived from previous incident, in some of which Don Medina Planas also intervened, does not appear to be proved in such a manner as would make it possible to attribute to the act of the public force, in the affray in question, a character distinct from that of agents of the authority, or to suppose that they had been impelled by personal motives not connected with the fulfilment of their duty;

CONSIDERING that, if the attitude of the negroes and their refusal to come down from the engine to be arrested cannot justify the public force having discharged their rifles at them, the same cannot be said with respect to the action taken in the case of Joseph Holland because, as it is admitted by the two high parties that there was an affray and that the negroes refused to come down from the engine, the employment of force to compel them to do so was justified within certain limits, and there is no reason to think that these limits were exceeded in the case of Holland, seeing that it does not appear that the latter, although he received some blows before being arrested and conducted to the prison, required expert assistance, and that no expert examination into the injuries which Holland might have received had been demanded from the court of enquiry, either by the person interested or by the British Consul Panting, who proposed other steps, and that no allusion whatever has been made to the same in the agreement of the 13th August, 1910, and no expert opinion has been brought forward which would have established in a trustworthy manner a direct connexion between the death of Holland, which occurred on the 16th February, 1911, and the contusions he received on the 16th June, 1910;

CONSIDERING that it may be deduced from what has been stated that, as the Government of Honduras admitted its pecuniary liability for the culpability of Don Medina Planas in the matter, the application to the case of the principles of international law, in conformity with which a State is bound on certain occasions, to make good the damage caused to foreign nationals by illegal acts of omission or commission on the part of its authorities, has also been accepted by the said Government;

CONSIDERING that, from what has been stated above, the culpability of the Mayor de Plaza, Don Joaquín Medina, in the matter may be deduced, and that it therefore follows that the Government of Honduras should grant an equitable indemnity to the family of the deceased Thurston and to the wounded man Robinson;

CONSIDERING that the British Government fixed the indemnity which it considered just at £2,450 sterling, including in this figure the death of Holland, and that the Government of Honduras has not discussed the amount of this figure, limiting itself to the rejection of its pecuniary liability:

In conformity with the solution proposed by the Special Commissioner entrusted with the examination of this matter and in agreement with my Council of Ministers, I declare:

First, that, in accordance with the general principles established by international law and taking into consideration the agreement signed at Tegucigalpa on the 13th August, 1910, the Government of Honduras is responsible for the the injuries caused in the village of La Masica, department of Atlántida, on the 16th June of the said year, by a squad of soldiers commanded by the Mayor de Plaza of the said department, Don Joaquín Medina Planas, to the British subjects Alexander Thurston and Wilfred Robinson, the former of whom died

at the time of the occurrence in consequence of the said injuries, but not for the death of Joseph Holland; and

Second, that the Government of Honduras must pay to His Britannic Majesty's Government, within a period of 3 months, reckoned from the date on which it is notified of this award, the sum of £ 1,450 sterling.

GIVEN at the Royal Palace in Madrid, in duplicate, on the 7th December, 1916.

ALFONSO

*The Minister of State,*  
GIMENO

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