

FABIAN RIOS (UNITED MEXICAN STATES) *v.* UNITED STATES OF AMERICA.

*(March 31, 1926. Pages 59-61.)*

This case is before this Commission on the American Agent's motion to dismiss.

1. The claim is put forward by the United Mexican States on behalf of Fabian Rios, who was born and has ever remained a Mexican national, to recover damages in the sum of 6,000 pesos. The pertinent allegation in the Memorial follows:

“That during the battles of the 21st and 22nd of the month and year above stated, fought with the invading forces of the American Government, he was compelled to abandon his residence, because several shells shot by the ships of war of the said Government, fell near his residence. That after having abandoned his home, three of those shells struck his very house, totally destroying his furniture and personal belongings, and what was left of his household and personal articles was stolen by the soldiers and by the populace.”

2. The motion to dismiss challenges the jurisdiction of the Commission to hear and decide this case because the losses complained of resulted from the acts of the armed forces of the United States in taking military possession of Veracruz in April, 1914, and not from the administrative acts of the American authorities after the occupation had been accomplished. If it were clear that the Memorial did not allege any damage resulting from the administrative acts of the American authorities, then the motion would be sustained under the previous decisions of this Commission in *El Emporio del Café* case (Docket No. 281), the *Gonzales*

case (Docket No. 290), and the Lopez case (Docket No. 903), and for the reasons therein stated.

3. But while the allegations in the Memorial are inconsistent and confusing, they must be taken as confessed for the purposes of this motion, and the Commission can not say with certainty that there is no claim for loss or damage suffered by claimant after the military possession of Veracruz had been accomplished. While the Memorial does allege that the American shells which struck claimant's house when the Americans were in the act of taking possession of Veracruz totally destroyed "his furniture and personal belongings" and while it is difficult to understand how after such total destruction there was anything "left of his household and personal articles" to be "stolen by the soldiers and by the populace" due to the lax administration by the American authorities after possession had been accomplished, nevertheless, in view of these ambiguous allegations the Commission is not justified in sustaining the motion to dismiss.

4. The Mexican Agent is given leave to file an amended memorial, with full evidence in support thereof, within thirty days from this date, setting out the facts with greater particularity and reconciling these inconsistencies. A failure to take full advantage of this leave will result in the dismissal of the case.

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