

JOSEPH E. DAVIES (U.S.A.) *v.* UNITED MEXICAN STATES.

*(March 23, 1927. Pages 197-205.)*

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1. Claim is made in this case by the United States of America in behalf of Joseph E. Davies to obtain the payment of \$170,000 alleged to be due for legal services rendered by Davies under a contract concluded on or about October 11, 1920, between him and the Government of Mexico, acting through Roberto V. Pesqueira, Financial Agent of the Mexican Government in the United States. In the Mexican Government's Brief Mr. Pesqueira is also described as "confidential and financial Agent of the United Mexican States." A motion to dismiss this case on the ground that the claim, being based on an alleged non-performance of contractual

obligations, was not within the jurisdiction of the Commission, was filed by the Mexican Agent on January 27, 1926, and was overruled by the Commission on March 2, 1926. The case is now before the Commission for a final decision on the merits.

2. In the Answer filed by the Mexican Agent it is denied that Davies entered into any contract with the Mexican Government, represented by Roberto V. Pesqueira, for the performance of services as counsel by Davies for a period of years, and it is asserted that the Government of Mexico never entrusted any legal matters to the claimant.

3. There is no doubt, in the opinion of the Commission, that a contract was entered into between Davies and Pesqueira, acting in behalf of the Mexican Government. That contract is described by the claimant Government as an oral agreement the terms of which were subsequent to the making of the agreement embodied in writing. Among the evidence, which includes certain affidavits and copies of correspondence, produced by the claimant Government to establish the existence of this contract, the following communication accompanies the Memorial (Exhibit 4):

“Embajada de Mexico en los Estados Unidos de America, Washington, D. C.

CITY OF MEXICO, *October 11, 1920.*

Hon. Joseph E. DAVIES,

*Southern Building, Washington, D. C.*

DEAR MR. DAVIES: As suggested by you, I am putting our agreement into writing so that there may be no misunderstanding.

We have the conviction that my government will soon be recognized by the United States. With this recognition will come a very large amount of legal work and many serious legal problems. President de la Huerta and his associates in the Provisional Government are of the opinion, therefore, that Mexico should be represented by an efficient legal organization in the United States.

As the duly authorized representative of the Provisional Government of Mexico, I have retained you as its general counsel in the United States, the period of employment to be four years from October 1, 1920, and the rate of compensation to be \$50,000 a year, the first year payable in advance.

It is understood that you are to give all necessary time to the discharge of the business of the Government of Mexico, and that at your own expense you will make such additions to your legal organization as may be required, also that all necessary associate counsel will be employed at your expense, such amount, however, being limited to \$20,000 in any one year.

As I have explained to you, this contract is limited by one reservation. My authorization proceeds from President de la Huerta and I have no present power to bind the incoming administration of President Obregón. In event that President Obregón continues my authority, this contract will stand as drawn. If, however, President Obregón does not see fit to continue my authorities in these matters, it is understood that this agreement will be ended, at my written request, at the close of the first year; that is, on October 1, 1921.

Believe me deeply appreciative of your generous attitude in this whole matter, and accept the assurances of my high regard.

(Signed) R. V. PESQUEIRA,

*Financial Agent of the Government of Mexico  
in the United States.*

Accepted: Joseph E. DAVIES.”

4. It appears from the Memorial that, on or about October 20, 1920, the Government of Mexico paid to the claimant the sum of \$10,000, currency of the United States, and on or about December 7, 1920, the sum of \$15,000. It further appears that no additional payments were made until on or about June 19, 1922, when the claimant received \$5,000. The amount for which claim is now made is \$170,000, the difference between \$30,000 which the claimant received and \$200,000, the sum which it is alleged the claimant was entitled to receive under the contract said to have been made by him with the Mexican Government.

5. We do not consider to be tenable the contention made by the respondent Government that the contract concluded between Davies and Pesqueira is a nullity, it being governed by Mexican law, under which such an agreement is void. In behalf of the United States it is contended that the contract was made in the United States and must be governed by the law of that country. We are of the opinion that there can be no question that the sum of \$20,000 is due to the claimant under the agreement, whether American law or Mexican law is applied to it. In considering the arguments advanced to support the contention that the contract is void under Mexican law the Commission can not ignore the fact that the Mexican Government paid Davies \$30,000 in three payments made at different times. No showing has been made to the Commission which would warrant it in pronouncing a nullity a contract which the Mexican Government on several occasions clearly recognized as valid.

6. The Commission does not attach importance to the contention made in behalf of the respondent Government that Davies was a public servant of Mexico subject to removal. This being our view, it is unnecessary to consider the question whether, even if Davies should be regarded as a public servant of the Government of Mexico, a claim might be maintained in his behalf as an American citizen for any money that might be due to him from the Government of Mexico.

7. Accompanying the reply brief of the Mexican Government is a statement made by Pesqueira with regard to the transaction entered into by him with Davies. In the course of this statement Pesqueira declares that the professional services of Mr. Davies came to an end on October 1, 1921, and "declarant so notified Mr. Davies verbally in view of the fact that President Obregón did not sanction the said contract for the remaining three years." It is clear from the record that no written notice of the termination of his services was given to Mr. Davies. However, we do not consider this point to be of material importance in disposing of the case. Our conclusions with respect to the award which should be rendered by the Commission are fundamentally grounded on the construction which we give to the next to the last paragraph of the letter of October 11, 1920, addressed by Pesqueira to Davies. This paragraph contains an explicit statement with regard to the limitations on Pesqueira's authority in dealing with Davies. This point does not appear to be of any particular importance with respect to the question whether a valid agreement of some kind was made by Davies with the Government of Mexico, because the latter has not denied the authority of Pesqueira to contract for the services of Davies. But the extent of Pesqueira's authority is of importance as bearing on the nature of the agreement that was made, or in other words, the precise extent to which Pesqueira bound his Government.

8. It is probably a general rule of domestic law in many countries that a state is responsible for and is bound by acts of its agents within the limits of their functions or powers as defined by the national law, but when acts are done in excess of powers or functions so defined, the State is not bound or responsible. In the brief of the United States citation is made to two opinions of international tribunals which seem to be grounded on a somewhat different theory—the claim of H. J. Randolph Hemming under the Special Agreement of August 18, 1910, between Great Britain and the United States (*Report of the American Agent*, p. 617); and the claim of Ricardo L. Trumbull under the Convention of August 7, 1892, between Chile and the United States (Moore, *International Arbitrations*, Vol. 4, p. 3569). In the Hemming case the United States was held liable to make compensation for legal services rendered by the claimant at the request of the American Consul at Bombay in December, 1894, and in February, 1895, in connection with the prosecution of persons accused of circulating counterfeit American gold coins in India. The defense of the United States rested on the proposition that the Government should not be held liable to compensate the claimant for services rendered by him which the Consul had obtained without authority from his Government. The Tribunal, in its opinion, observed that, irrespective of what was the Consul's authority to employ an attorney at the expense of the United States, the record showed that the Government became aware of Hemming's employment, did not object to it, and approved the action taken by the Consul. This finding seems to have been the basis of the Tribunal's decision. In the Trumbull case contentions advanced by the United States with respect to nonliability for unauthorized acts of an American Minister to Chile in employing a Chilean citizen in 1889 in connection with an extradition case, were overruled by the Commission. The Commission held that the United States was liable to make compensation for the services obtained by the American Minister in consideration of, as was said in the opinion, "a promise in the name of his government, which, according to the rules of the responsibility of governments for acts performed by their agents in foreign countries, can not be repudiated". It therefore appears that in neither of these two cases did the tribunal attach importance to the authority conferred upon the national representative by domestic law or regulation.

"As I have explained to you, this contract is limited by one reservation. My authorization proceeds from President de la Huerta and I have no present power to bind the incoming administration of President Obregón."

9. The cases therefore differ from the instant case in which the record reveals a very explicit notice to the claimant Davies with regard to the limitations on the authority of the Mexican representative with whom the claimant contracted. In the communication of October 11, 1920, addressed by Pesqueira to Davies it is said:

10. The decisions in the Hemming and Trumbull cases appear to emphasize the idea of protection to persons contracting with public officers who, such persons may have good reason to believe, act within the scope of their authority. The rule of domestic law with regard to nonliability for unauthorized acts of public servants is apparently grounded on the idea that the nation's interests should be protected against indiscreet, mistaken or other improper acts of its agents. It is shown by the letter of October 11,

1920, which Pesqueira addressed to Davies that Pesqueira, by giving explicit notice of the limitations of his authority, took precaution to protect the interests of his Government and to define his position clearly to Davies. The paragraph in that letter to which attention has been specifically called might have been more concisely worded. Perhaps it might be plausibly construed to mean that Pesqueira, while calling attention to his limited authority, undertook to make an agreement which should be binding upon the Mexican Government for four years, but which might be terminated at the close of the first year, and if it should be so terminated, such action should be taken by written notification to Davies. However, we must give to the language of that paragraph what we consider to be the most reasonable interpretation of which it is susceptible. That interpretation we consider is that, in all matters pertaining to the contract, Pesqueira was without authority to bind President Obregón; that he therefore bound solely the administration of Provisional President de la Huerta; and that therefore whatever Pesqueira undertook to do after the termination of the latter's administration must be considered as merely a personal undertaking on the part of Pesqueira. In other words, Pesqueira did not bind the administration of President Obregón to give notice of termination of the contract, or, failing the giving of such notice, to be bound by the contract for the full period recited by it. Pesqueira states in the letter that "*this contract is limited by one reservation*"; that his authority proceeded from President de la Huerta; and that he has "*no present power to bind the incoming administration of President Obregón*". (Italics ours.) We do not believe that these explicit statements with regard to the limited authority of Pesqueira can be considered to be modified or nullified in any way by the subsequent somewhat vague statements regarding a possible continuation of the contract, or a possible termination on notice given by Pesqueira, who at the time he wrote could not be certain that he would be in office on October 1, 1921, which in fact he was not. A few historical facts which are of record before the Commission may be briefly mentioned to throw light on the transaction under consideration. In the spring of the year 1920, Adolfo de la Huerta, a former Governor of the State of Sonora, was elected Provisional President of Mexico following the successful so-called Agua Prieta revolution, and entered upon office on June 1, 1920. Subsequently General Obregón was elected President and assumed office on December 1, 1920. From December 1, 1920, until September 14, 1923, de la Huerta was Minister of Finance. Pesqueira's services terminated in November, 1920, shortly before General Obregón assumed the Presidency.

11. There is some evidence in the record indicating that the Mexican Treasury Department was cognizant during the administration of President Obregón of the contract made between Pesqueira and Davies. However, there is not convincing evidence that that administration recognized a contract of four years' duration and availed itself in behalf of Mexico of the claimant's services. The statement in the Memorial of the United States to the effect that in June, 1922, the Mexican Secretary of the Treasury, Adolfo de la Huerta, and the claimant Davies reached an agreement during a conference that in the future payments should be made at the rate of \$5,000 each and every month until the "full amount" of \$200,000 should be paid does not appear to be convincingly supported by the evidence cited on that point.

12. Since we have reached the conclusion that by the terms of the contract made with Davies the Mexican Government's representative did not bind his Government beyond the period of the administration of Provisional President de la Huerta, it is unnecessary to consider the effect of the failure of Davies to receive the written notice which it is stated in the communication addressed to him by Pesqueira should be served on the former in case President Obregón should not approve the contract. It might have been desirable for authorities of the Mexican Government having cognizance of this contract to communicate specifically with Davies concerning it with the idea of clarifying his position and of avoiding future misunderstanding. However, in the view we take of the case, this point involves only considerations of courtesy or expediency.

13. If the Mexican Government availed itself of the services of Davies after the termination of the administration of Provisional President de la Huerta, it might be considered that Davies is entitled to some compensation on a *quantum meruit* for such services. But even if this situation were clearly shown to exist, there is not in our opinion definite evidence of services rendered upon which to base an estimate of an award on a *quantum meruit* for such services. Unfortunately there is considerable uncertainty in the evidence in the record of this case, both as to the affidavits and as to correspondence, which in some respects is both vague and meagre. We do not discredit the evidence, but in passing on the relative legal rights and obligations of parties with respect to important contractual or quasi-contractual matters, certainty and sufficiency of evidence are of course of the utmost importance. The character of services rendered by Davies was discussed to some extent in the pleadings and briefs, and in oral arguments of counsel of each Government. On the part of Mexico this point was dealt with on the theory that no valid contract was made by a Mexican representative with Davies, and that if Davies should be considered to be entitled to any compensation it could only be on a *quantum meruit*. We hold that, since a binding contract was made obligating Mexico to pay a stated sum of \$50,000 at once following the consummation of the contract, the unpaid balance of \$20,000 should be paid, and that since we are called upon solely to give effect to strict legal rights of the parties to the contract, an award can be made only for that sum with interest.

#### *Decision*

14. For the reasons stated above the Commission decides that the Government of Mexico shall pay to the Government of the United States the sum of \$20,000 (twenty thousand dollars) plus interest on that sum at the rate of six per centum per annum from October 20, 1920, the date on which the first partial payment was made on the stipulated advance payment of \$50,000, to the date on which the last award is rendered by the Commission, and additional interest at the same rate on \$5,000 (five thousand dollars) from October 20, 1920, to June 19, 1922.

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