

GEORGE W. COOK (U.S.A.) *v.* UNITED MEXICAN STATES.

(*June 1, 1927, concurring opinion by Presiding Commissioner, June 1, 1927, dissenting opinion by Mexican Commissioner, undated. Pages 311-318.*)

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*Nielsen, Commissioner:*

1. Claim is made in this case by the United States of America in behalf of George W. Cook to recover the sum of \$153.52, stated to be the equivalent of 307.04 pesos, the value of two quantities of postage stamps, which were purchased by the claimant from Mexican postal authorities and which subsequent to the purchase were declared void. The stamps were submitted to the Commission for examination. Interest is claimed from November 15, 1914, on the sum of \$131.95 and from September 15, 1915, on the sum of \$21.57. The facts on which the claim is based as they appear from the record may be briefly stated as follows:

2. Under date of October 7, 1914, a circular communication was issued at Mexico City by the Mexican Postmaster General prohibiting the use after November 15, 1914, of a certain issue of stamps of which the claimant possessed a considerable quantity. It appears that Articles 194 and 195 of the Postal Code of Mexico make provision for the retirement of stamps upon a three months' notice, and that holders of stamps may, within the prescribed period of three months, effect an exchange of stamps which they possess for a new issue. It is provided that those who have not effected an exchange within this period shall lose not only the right to exchange the old stamps for new ones but also the value of the retired stamps which they may possess.

3. In communications dated January 14, 1915, and June 5, 1915, the claimant requested the Mexican authorities to effect an exchange or payment of stamps which he held of the value of 262.94 pesos, but no reply was made to his letters. In communicating with Mexican authorities, the claimant mentioned stamps to the value of 262.94 pesos; from the Memorial it appears that he held invalidated stamps to the value of 263.89 pesos at the time he wrote these letters. It is clear that no notice of three months was given by the postal authorities with regard to the retirement of the stamps in question. Furthermore, there is no proof that notice was given by postmasters as required by law of the retirement of the nullified stamps, within even a period of thirty-nine days, that is, from October 7, to November 15, 1914, the latter date being that on which the invalidation of the stamps took effect. While the point is immaterial in view of the fact that the legal notification prescribed by the Postal Code was not given, it may be noted that, had there been any public notice given of the retirement of the stamps on a shorter notice, evidence of such public notice could apparently easily have been produced. Notifications issued by postmasters to the public are, of course, something very different from instructions

sent to the postmasters through the mail by the Postmaster General. Obviously the claimant was deprived improperly of the value of the stamps nullified by the order of October 7, 1914. In transmitting mail the claimant would, of course, not make use of stamps which had been declared void or stamps concerning the validity of which there might be some question.

4. The claimant's rights with respect to another quantity of stamps to the value of 43.15 pesos is equally clear, or perhaps it might better be said, still more clear. These stamps bore the printed inscriptions "Gobierno Constitucionalista" and the letters "GCM". Under date of July 6, 1915, an order was issued that these postage stamps should be invalid from September 16, 1915, and that no new issue should be placed in circulation. It will be seen from this order that there was no compliance with the Mexican Code either with respect to a three months' notice of the nullification of stamps or with respect to the substitution of stamps in place of those nullified. Obviously, therefore, the claimant was deprived of his property.

5. The Mexican Agency has put in evidence a communication under date of September 8, 1926, addressed by the Mexican Postmaster General to the Department of Foreign Relations in which reference is made to a letter of February 9, 1926, addressed to W. Hansberg, an employee of Mr. Cook's firm. Nothing is said with regard to the contents of this communication, except that Mr. Hansberg "was not advised that the stamps to which he referred, were valid up to the year 1925, inasmuch as this office, on July 31, 1921, through its official organ, Bulletin of the Postal Service, advised all post offices of the Republic to notify the public that, beginning with September 1st of that year, postage stamps of the "Centenary Issue" would again be effective". Even if Mr. Hansberg had been informed in 1926, as it is stated he was not, that the stamps would again be effective up to the year 1925, such information would, of course, have been of no value to Mr. Cook in 1926. It is not perceived how the notification to the post offices to which reference is made in the above quoted extract could have any bearing on any issue in the instant case. In any event no copy of the notification to the post offices is produced, so that the Commission is not in a position to make any determination with respect to its legal effect. And no evidence is furnished that the post offices made any notification to the public to the effect that the so-called "Centenary Issue" would again be effective. If such evidence existed it evidently could easily have been produced, so that its contents and its bearing, if any, on the present case could be determined. It is nowhere even stated that a notification was given to the public. It is merely stated in the communication of September 8, 1926, that the post offices were advised to notify the public. Some of the stamps held by the claimant for which he seeks compensation evidently belonged to this "Centenary Issue".

6. In the Mexican Brief, it is stated that Mr. Cook must have seen more than once that stamps like his own were being used on the letters confided to the Mexican postal services; that he must have received correspondence addressed to him bearing those stamps; and that it did not occur to him to use them or transfer them. In my opinion it is highly improbable that even if some of these stamps were used on letters addressed to Mr. Cook—a thing concerning which, of course, we know nothing—they should ever have attracted the eyes of a business man of large affairs. Assuredly a business man to whose establishment comes a large quantity of mail which is generally opened by clerks does not make a personal examination of every stamp that comes to his place of business. Moreover, it is highly

improbable that stamps belonging to the limited issues which were nullified by the postal authorities ever came to Mr. Cook's office. And it is possible, and perhaps it may be said very probable, that none was ever used by anybody in Mexico. Whatever action may have been taken to give the public notice of a revalidation of the nullified stamps—and the record is too uncertain to reach any conclusion on that point—nothing was done until six years after the stamps had been nullified. Even though the observations made in the Mexican Brief concerning stamps that may have been seen by Cook had any bearing on the issues in the instant case, which I believe they have not, the Commission can not ground a decision on inferences of that kind, even if there were some foundation for them which I think there is not.

7. There are certain very simple facts and principles of law which I think are clearly decisive in this case. It would seem that there can be no more elementary principle of law than that the propriety of an act must be judged by the law existing at the time of the commission of the act. It is indisputable that Mr. Cook paid for the stamps that were nullified. Indeed as a matter of accommodation he took a large quantity of stamps in payment of money orders. It is also indisputable that he could not use nullified stamps, nor obtain other stamps in substitution conformably to law, nor obtain the value of the stamps nullified. It is obvious that he is entitled to pecuniary compensation to the amount he paid for the stamps which amount the Mexican authorities received.

8. I am of the opinion that an award should be rendered in this case in favor of the claimant in the amount of \$153.06 with interest at the rate of six per centum per annum, on the sum of \$131.55 from November 15, 1914, and on the sum of \$21.51 from September 15, 1915, such interest being computed on both sums from each of the two specified dates to the date on which the last award is rendered by the Commission.

*Van Vollenhoven, Presiding Commissioner:*

I concur in paragraphs 1 to 4, inclusive, of Commissioner Nielsen's opinion. I fully concur in paragraph 3 of Commissioner Fernández MacGregor's dissenting opinion. Since, however, in the present case Mexico has neither submitted the text of the revalidation circular of July 31, 1921, nor established how far said circular covered the stamps canceled in 1914 and 1915, nor established until what date (either January 1, 1925, or September 1, 1925) this revalidation had effect—such date being essential for the sake of knowing whether Cook could have legally used or sold his stamps at the time he presented his claim to the American Agency—and since Mexico was in honor bound to make full disclosure of these facts (paragraph 7 of the opinion in the *William A. Parker* case, Docket No. 127, rendered March 31, 1926, and Ralston, *Report of French-Venezuelan Mixed Claims Commission of 1902*, p. 25), I concur in paragraph 8 of Commissioner Nielsen's opinion.

#### *Decision*

The Commission decides that the Government of the United Mexican States shall pay to the Government of the United States of America in behalf of George W. Cook the sum of \$153.06 (one hundred and fifty-three dollars and six cents) with interest at the rate of six per centum per annum, on the sum of \$131.55 from November 15, 1914, and on the sum of \$21.51

from September 15, 1915, such interest being computed on both sums from each of the two specified dates to the date on which the last award is rendered by the Commission. Conformably to the practice of the Commission of making awards in a single currency, the award is expressed in the currency of the United States, the Mexican peso being converted at its par value of \$0.4985.

*Dissenting opinion*

1. I concur with the statement of facts contained in paragraphs 1 and 2 of Commissioner Nielsen's opinion. It appears clearly that the Mexican authorities violated their own law by not giving the three months' notice provided by articles 194 and 195 of the Postal Code; and although I believe that it is most probable that the circular of October 7, 1915, should have been published in the usual manner, posting it on the bulletin boards of the post offices for the information of the public, I agree that there is no evidence of its having been done.

2. All the postage stamps involved in this case, with the exception of a few in the amount of 1.12 pesos, are of the so-called "Centenary Issue." Some in the amount of 43.15 pesos, bear a renewal stamp which says; "Gobierno Constitucionalista", and the letters "GCM", and the balance, in the sum of 262.77 pesos, are not restamped. According to a letter from the Postmaster General to the Secretary of Foreign Relations, dated September 8, 1926, the postage stamps of the "Centenary Issue" were again in force from September 1, 1921, until the year 1925; such order, according to said letter, was published in the "Indicador del Servicio Postal", official organ of the Post Office Department of Mexico. Although I agree that the Government of Mexico could have produced the text of the order I have just referred to and failed to do so, I believe, nevertheless, that the letter of September 8, 1926, proves clearly that such order was made known to the public, inasmuch as it was published July 31, 1921, in the organ which the Post Office uses officially to give information about everything concerning the postal service. Claimant was, then, in my opinion, legally notified that the stamps which were in his possession as null, had been revalidated, and, therefore, could be used again or sold. If he failed to make use of them, it was due to his not wishing to do so or to negligence.

3. I believe that it is an established principle that claims must be considered as they are when presented before an international tribunal, even though it be true, further, that the propriety or impropriety of the act out of which they arise must be judged according to the law existing at the time of the commission of the act. In order that an international claim of the nature of those over which this Commission has jurisdiction, may arise properly, it is necessary (1) that there may be a transgression, on the part of a State, of some principle of international law, and (2) that there may be at the time of filing the claim evident damage to a citizen of the claimant State, directly caused by such transgression. In the present case the Mexican Government undoubtedly committed a transgression in declaring null the claimant's stamps, in violation of Articles 194 and 195 of the Postal Code; but it subsequently repaired the damage caused the claimant by restoring to the stamps he had all their value, during the long period included between September 1, 1921, and the year 1925. There was reparation of the damage caused, although such reparation may not have been complete, as Mexico limited herself to restoring the value of

certain stamps without restoring the value of all or the interest on the money which they represented. I believe it to be a sound and helpful practice recognized by authors and international decisions for the Government of the injured person to give the offending Government the opportunity to render justice to the offended party through its own regular and voluntary ways, thus avoiding occasion for international discussion and friction.

4. In view of the foregoing, I am of the opinion that the Mexican Government repaired in part the damage inflicted on the claimant, when it restored the value of certain of his stamps, and that this claim is now proper only for what has not been restored and for the unpaid interest, at the rate of six per cent per annum. The Mexican Government owes the interest on the sum of 262.77 pesos, from November 15, 1914, to September 1, 1921, and on the sum of 43.15 pesos, from September 15, 1915, to September 1, 1921; plus the sum of 1.12 pesos, value of the stamps which did not belong to the "Centenary Issue", which value was never returned, plus the corresponding interest thereon, from November 15, 1914, to the date on which the last award is rendered by the Commission.

G. Fernández MACGREGOR,  
*Commissioner.*