

CAPTAIN W. H. GLEADELL (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(Decision No. 4, November 19, 1929, dissenting opinion by British Commissioner, undated, concurring opinion by Mexican Commissioner, November, 1929. Pages 55-64.)

1. The respondent Government have lodged in this case a Motion to Dismiss the memorial on the ground that the right to claim the compensation for the loss which is the subject matter of the memorial is not vested in Captain Gleadell, a British subject, but in his stepdaughter, Mrs. Muse, who is an American subject.

Captain Gleadell was married in 1907 to Mrs. Katherine Baker de Gleadell, who was the owner of real property in Mexico. In 1914, when she was a British subject by reason of her marriage to the claimant, Mrs. Gleadell was compelled,

by means of a forced loan, to deliver the sum of ten thousand dollars to the Provisional Government of Yucatan. The memorial seeks to recover this sum from the Mexican Government on the ground that the right to it is vested in Captain Gleadell. In its origin the claim is undoubtedly British, but the contention of the Mexican Agent is that Mrs. Gleadell by her will bequeathed the right to claim the money to Mrs. Muse, who is her daughter by her first marriage and who was born in Mexico. In support of this contention the respondent Government relied upon the will of Mrs. Gleadell, executed in England on the 6th October, 1925 (annex 7 of the memorial), clause 5 of which reads as follows:

"I devise and bequeath all my real and personal property or share or interest in real and personal property which may be situate in Mexico at the time of my death unto my said daughter absolutely and beneficially."

The submission of the Mexican Agent is that this is a claim to recover money, that the right to claim money must be considered as a form of personal property, and that this right, according to English jurisprudence, is a right situated at the place where the debtor is domiciled.

On the other side it was contended by the British Agent that Mrs. Gleadell paid the forced loan from her general resources, which form no part in her Mexican estate. The testatrix nominated two executors under her will, namely, her husband, Captain Gleadell, and her daughter, Mrs. Muse, but the latter renounced probate and Captain Gleadell is now the sole executor. The British Agent contended that Captain Gleadell, under the terms of the will, possessed a life interest in the residuary estate of the late Mrs. Gleadell, and that the claim for the repayment of the forced loan was part of the estate.

2. In the opinion of the majority of the Commissioners, a long course of arbitral decisions has established the principle that no claim falls within a treaty which is not founded upon an injury or wrong done to a citizen of the claimant Government. According to *Ralston*, pages 161 and 163, and *Borchard*, pages 664, 666, such claim must have remained continuously in the hands of the citizen of such Government until the time for its presentation before the Commission.

It is admitted that the origin of the claim was British, and the contest between the two Governments is whether the claim has retained that British character until the present time.

This question cannot be solved by the fact that the deceased Mrs. Gleadell was a British subject at the time of her death and that her husband acts on behalf of her estate. The necessity of the continuous national character of the claim, as formulated above and as adhered to by the Commission, does not allow us to consider the estate as taking over and retaining the testatrix's nationality, as apart from the nationality of the heirs. It is essential to know in whose hands the assets of the estate have passed and whether this transition involved a change of nationality in the person entitled to the claim. These questions can only be answered by the will.

3. Mrs. Gleadell in her will divided her estate in two parts. The one was described in clause 5, quoted above, and the other in clause 6, reading as follows:

"6. I devise and bequeath the residue of my real and personal property (including any real and personal property to which I may be entitled or in which I may be interested in the United States of America or elsewhere out of Great Britain), not hereinbefore otherwise disposed of, unto my Trustees upon trust to sell, call in and convert the same into money (with full power to postpone such sale, calling-in and conversion for so long as my Trustees shall in

their absolute discretion think fit without being responsible for loss (Katherine Gleadell) caused by such postponement) and, out of the proceeds of such sale, calling-in and conversion and out of my ready money, to pay my debts and funeral and testamentary expenses and to stand possessed of the residue upon trust, to invest the same in manner hereinafter authorized, the said residue and the investments for the time being representing the same being hereinafter called 'my residuary estate.' "

It is quite clear that the testatrix disposed of all the assets of her estate, because she called the second part "my residuary estate." The title to claim the money paid unto the forced loan is, therefore, included either in clause 5 or in clause 6.

There can be little doubt that the right to claim falls under the definition of "personal property." Dicey (*Conflict of Laws, a digest of the Law of England*, p 313), when enumerating the kinds of goods which constitute personal property, mentions:

"*Chose in action*.—Personal property includes every kind of Chose in action, using that term in its very widest sense. It includes, that is to say, every movable which cannot be touched or intangible movable. Thus it includes 'debts' in the strict sense of the terms, and also everything (not an immovable) which can be made the object of a legal claim, as, for example, a person's share in a partnership property."

There is reason to identify this claim with a debt of which Mrs. Gleadell was the creditor, because the forced loan, raised by the Governor of Yucatán in 1914, was recognized by the Mexican Government and all holders of receipts were invited to submit their claims to a special Commission.

4. The question now to be answered is whether this part of Mrs. Gleadell's personal property was situate in Mexico (clause 5 of the will) or elsewhere (clause 6).

As the will was made in England by a British subject, the intention of the testatrix must be interpreted according to English law and jurisprudence.

In this connexion it is material to observe what Dicey says on pages 318 and 319:

"From these two considerations flows the following general maxim, viz., that whilst lands, and generally, though not invariably, goods must be held situate at the place where they at a given moment actually lie, debts, choses in action and claims of any kind must be held situate where the debtor or other person against whom a claim exists resides; or, in other words, debts or choses in action are generally to be looked upon as situate in the country where they are properly recoverable or can be enforced."

In this case the only country where the claim is recoverable is Mexico and, therefore, this personal property must be considered as situate in Mexico and to have been left to Mrs. Gleadell's daughter, an American citizen.

We are confirmed in this view by the circumstance that the burden of the forced loan was imposed among proprietors of real property in Yucatán, which property has been shown by the Mexican Agent in his brief to have belonged to Mrs. Gleadell jointly with her daughter.

As Mrs. Gleadell died before the Claims Convention was signed, the claim, although British in origin, has not retained that character until the time of its presentation. This fact cannot be modified by the circumstance that the executor of the estate is a British subject.

On these grounds the majority of the Commissioners take the view that the right to claim the money does not belong to a British subject and, therefore, falls outside the jurisdiction of the Court.

The motion to dismiss is allowed.

One of the Commissioners expresses a dissenting view.

Dissenting opinion of Artemus Jones, British Commissioner

In this case the claimant is Captain W. H. Gleadell, who is a British subject. In December 1907, he married a widow named Mrs. Katherine de Regil, who was the owner of some real property at Merida in the State of Yucatán. In September 1914, one Eleuterio Avila arrived at Merida and proclaimed himself the Military Commander of the State. He suspended the constitutional guarantees of the Republic, immediately declared martial law, and then issued a decree raising a forced loan of eight million pesos. The victims of the forced loan were citizens who possessed property above a certain amount, and the alleged objects of the loan were the pacification and the reconstruction of the country. Amongst those citizens was Mrs. Gleadell, who was absent from the State at the time. She was represented in the district by a lawyer, and A. P. Aznar, who held her power of attorney. The manner in which the alleged loan was enforced is described on page 12 of the memorial in Mr. Aznar's evidence. From this it appears that if any citizen refused to pay the sum which had been assigned to him or to her, violence was resorted to in order to obtain payment, e.g., the capture of the person who refused to make the advance. At this time all constitutional guarantees were suspended and therefore there could be no resort to legal redress, and in these circumstances a state of panic prevailed. It was in this situation that Mrs. Gleadell's attorney advanced the sum of ten thousand pesos to the Government. In 1917 all the holders of the receipts for the money contributed to the forced loan were enumerated in an official list issued by the Government, and Mrs. Gleadell's name appeared among them. The holders were invited to present their receipts to a Commission appointed by the Government, but Mrs. Gleadell did not do so. On the 28th October, 1925, Mrs. Gleadell died in Mexico, having about three weeks before that date executed a will at Northam, Devonshire, in England. As executors of the will, the testatrix nominated her husband, Captain Gleadell, and her daughter, Mrs. Muse, who is married to an American diplomatist and is not a British subject. Mrs. Muse renounced probate and Captain Gleadell is therefore the sole executor. Under the provisions of the will the real and personal property of the estate situated within Mexico at the time of her death was bequeathed to Mrs. Muse. After this provision came certain specific bequests, and then the residue of the estate was left to trustees upon certain trusts. Under the terms of the trusts, the income of Mrs. Gleadell's estate outside Mexico was left to her husband for life.

Upon these facts the Mexican Agent opposed the consideration of the memorial on the ground that the money contributed by Mrs. Gleadell to the forced loan formed part of her Mexican estate, which was bequeathed to her daughter, who is not a British subject. He argued that the money due to the estate from the Mexican Government was a debt or chose in action, which was only recoverable in Mexico (Dicey's *Conflict of Laws*, page 318). He founded this argument upon the fact that whilst the receipt for the money contained no promise to repay, there was a clause in Avila's decree stating that when constitutional rule was re-established, the Government would "agree to the form and dates on which the repayment of the amounts lent will be effected."

Moreover, Captain Gleadell claimed the money, not in his capacity of executor, but as a person who had a life interest in the residuary estate. To these contentions the British Agent replied that there could be no contract where money was raised under these circumstances. Debt could only arise out

of contractual relationships and the compulsion under which the money was admittedly taken was inconsistent with the consensual basis of contract. Dicey's dictum could not apply in this case as it was confined to contractual obligations. Moreover, the will and other documents produced in the memorial established the fact that the claimant was the sole executor of the will, although he was also a beneficiary of the residuary estate.

In my view it is impossible to dispose of the claim at this stage of the proceedings. The question whether the ten thousand pesos formed part of the Mexican estate cannot be determined until the circumstances attending the repayment of the money to Señor Aznar are ascertained. It is clear that the money was paid in the first instance by Señor Aznar, acting as agent for his principal, Mrs. Gleadell. It is not clear, however, how the agent was repaid the money by the principal. The crucial point of this case turns upon the particular source out of which the money was paid. All that is known is that Mrs. Gleadell's attorney paid it at a time when Mrs. Gleadell was in England. If the attorney sent in his bill of costs to his client in the ordinary way, including this sum, the cheque sent to him in payment would be drawn upon Mrs. Gleadell's general account. If these are the facts, Captain Gleadell is clearly entitled to claim an interest in the money on the ground that he has a life interest in the residuary estate out of which the ten thousand pesos came. It was suggested that Mrs. Gleadell's position was not unlike that of a debenture holder and the respondent agent argued that the contribution to the forced loan was a contract which could only be enforced in Mexico. Both analogies are fallacious. The essence of a debenture is the security it gives for the repayment of the money. Mrs. Gleadell possessed nothing except a receipt, which did not contain even a promise to repay and she entered into no contract. In view of these considerations I am of opinion that the demurrer should be rejected and the merits of the claim should be gone into.

Separate opinion of the Mexican Commissioner in the Motion to Reject Filed by the Mexican Agent, in the Matter of Claim No. 19, presented by the Government of His Britannic Majesty on behalf of Captain W. H. Gleadell. This opinion concurs with that of the Honourable Presiding Commissioner.

The Facts

I. The Government of His Britannic Majesty claims from the Government of Mexico the sum of \$ 10,000.00, United States currency, with interest at the rate of 6 per cent per annum, counting from the 14th October, 1914, on behalf of Captain W. H. Gleadell, under the following heads:

II. Mrs. Katherine Baker de Gleadell, the wife of Captain W. H. Gleadell, a British subject, was in September 1914 subjected to a forced loan amounting to \$10,000.00, United States currency, by the Governor of Yucatán, through a decree dated the 26th September, 1914, which established a forced loan of eight million pesos for the pacification and reconstruction of the country. Mrs. Gleadell received in exchange a receipt for the sum of \$10,000.00, United States currency, issued by the Chief of the Revenue Department. The decree in article VI provides that the National Government would, on the re-establishment of constitutional order, determine the manner and dates on which repayment of the amounts loaned were to be effected.

III. Mrs. Gleadell died on the 28th October, 1925, leaving a will in which she appointed Mrs. Maria Beatriz Julia Muse, her daughter, and Mr. Gleadell, her husband, as executors.

IV. According to clause V of the said will, the Mexican properties were inherited absolutely by her daughter, who is now a citizen of the United States. Clause V, above mentioned, of the will executed by Mrs. Gleadell reads as follows: "V. I devise and bequeath all my real and personal property or share or interest in real or personal property which may be situate in Mexico at the time of my death unto my said daughter absolutely and beneficially."

V. The residue of her estate, both real and personal, wherever situated, and not otherwise disposed of in the said will, was to be applied in the following manner (clauses 6 and 7):

"6. I devise and bequeath the residue of my real and personal property (including any real and personal property to which I may be entitled or in which I may be interested in the United States of America or elsewhere out of Great Britain), not hereinbefore otherwise disposed of, unto my Trustees upon trust to sell, call in and convert the same into money (with full power to postpone such sale, calling-in and conversion for so long as my Trustees shall, in their absolute discretion, think fit without being responsible for loss (Katherine Gleadell) caused by such postponement) and, out of the proceeds of such sale, calling-in and conversion and out of my ready money, to pay my debts and funeral and testamentary expenses and to stand possessed of the residue upon trust, to invest the same in manner hereinafter authorized, the said residue and the investments for the time being representing the same being hereinafter called 'my residuary estate.'

"7. My trustees shall stand possessed of my residuary estate upon the following trusts:

(a) Upon trust to pay the income thereof (subject to the provisions of clause 4 hereof) to my said husband during his life.

(b) From and after his death to divide the same into two equal parts and to stand possessed of one such part as to both capital and income for my son Paul Gleadell on his attaining the age of twenty-one years.

(c) To stand possessed of the other of such parts (hereinafter called 'my daughter's share') upon trust to pay the income thereof to my said daughter during her life.

(d) From and after her death to stand possessed of my daughter's share as (Katherine Gleadell) to both capital and income upon trust for such one or more of her children as she shall by deed or will appoint.

(e) In default of such appointment, or so far as the same shall not extend, to stand possessed of my daughter's share upon trust for such of her children as being male attain the age of twenty-one years, or, being female, attain that age or marry under that age and, if more than one, in equal shares.

(f) If there shall be no such children, to stand possessed of my daughter's share upon trust for the said Paul Gleadell on his attaining the age of twenty-one years absolutely.

(g) If the said Paul Gleadell shall die under the age of twenty-one years, to stand possessed of his and my daughter's shares, but as to the latter subject as aforesaid upon trust as to both capital and income for my said daughter absolutely and beneficially."

VI. The British Agent contends that as payment of the forced loan had been made by Mrs. Gleadell out of her general resources, said resources had, on the date of her death, been reduced to the extent of \$10,000.00, United States currency, from which he infers that although a citizen of the United States has an interest in the claim, there does exist at present a well-defined and ascertainable interest in favour of British subjects.

VII. The Mexican Agent, relying on article 3 of the Claims Convention, Mexico and Great Britain, prays that the claim be dismissed on the following grounds:

(a) That Mrs. Katherine Baker de Gleadell left all her property and rights, whether real or personal, and any interest she might have had in real or personal rights, situated in Mexico, to her daughter, Maria Beatriz de Regil y Baker, now the wife of Mr. Benjamin Muse, the Second Secretary of the American Embassy in Paris.

(b) On the fact that it is unquestionable that the right to prefer a claim for the above-mentioned loan is a right personal in character, for which reason it, after the death of Mrs. Baker de Gleadell, became the property of her daughter, the wife of Mr. Benjamin Muse, a Mexican citizen by birth, and now an American citizen, through her marriage to Mr. Muse.

(c) On the fact that, according to Article 3 of the Claims Convention, Mexico and Great Britain, the 19th November, 1926, the Commission only has jurisdiction to deal with claims against Mexico for losses and damages sustained by British subjects, and as the person who would in any event be entitled to claim would be a Mexican by birth and a citizen of the United States of America, through her marriage, it is undeniable that the Commission has no jurisdiction to take cognizance of this claim.

VIII. The British Agent contends in his Memorial that in the year of 1914 the Hacienda in respect of which the forced loan was exacted belonged exclusively to Mrs. Katherine Baker de Gleadell and that her daughter had absolutely no interest in the matter; that the right to claim did not pass to the daughter of Mrs. Katherine Baker de Gleadell, because the loan was paid out of the general resources of Mrs. Gleadell, and in his Reply the British Agent attributes that right to the Estate of Mrs. Gleadell, deceased, on whose behalf he now endeavours to prefer the claim.

Considerations of a Legal Order

I. The first point to be decided by the Commission is whether the British Government has preferred the claim on behalf of Captain W. H. Gleadell, as appears from the Memorial signed by the British Agent, or whether said claim should be understood to have been filed on behalf of the Estate of Mrs. Gleadell, through her executor, Captain W. H. Gleadell, as would seem to be the view of the British Agent, in his pleading in Reply.

In order to decide that point, which is to serve as the basis for the remaining legal considerations, it is sufficient to glance at the beginning of the Memorial from the British Agency, the title of which reads: "Claim of Captain W. H. Gleadell," while the last part of the said Memorial reads: "His Majesty's Government claim on behalf of Captain W. H. Gleadell the sum of 10,000.00 dollars . . .," without losing sight of the terms themselves of the Memorial, in which it is clearly stated that Captain Gleadell, in his capacity as holder of a life interest, asserts that he is entitled to the claim as coming within the terms of clauses 6 and 7 of the will of Mrs. Gleadell. It is then undeniable that the Memorial in question does not stand in need of any interpretation, but that it is self-explanatory to the effect that the claimant is Captain W. H. Gleadell and not the estate of Mrs. Gleadell.

II. The preceding point having thus been decided, it must in the second place be settled whether the right to claim for the forced loan imposed by the Governor of Yucatán, Mexico, belongs to Mrs. Maria Beatriz Julia Muse, the daughter of Mrs. Gleadell, or to the claimant, Captain W. H. Gleadell. And as under clause 5 of her will and testament Mrs. Gleadell bequeathed to her

daughter, Mrs. Muse, the whole of her real and personal property, choses in action or interest in such real or personal property situated in Mexico at the time of her death, it is unquestionable that the right to claim the loan under discussion falls within clause 5 of the said will, and is consequently vested in Mrs. Maria Beatriz Julia Muse, because it is a perfectly well-defined credit against the Mexican Government, created by the decree which created the said loan, and by the receipt executed to Mrs. Gleadell, as the lawful title for claiming same, inasmuch as said right was situated in Mexico at the time of the death of the testatrix. Dicey, on the *Conflict of Laws* (p. 247), "Situate" means locally situate, and the local situation of personal property must, it is conceived, be in the main decided in accordance with the rules for fixing the situation of personal property for the purpose of testamentary jurisdiction. (See chap. ix, comment on Rule (62, post.): "*Thus a debt, it is submitted, is situate in the country where the debtor resides.*" (Page 313.) "(iii) *Chose in action.*—Personal property includes every kind of chose in action, using that term in its widest sense. It includes, that is to say, every movable which cannot be touched, or intangible movable. Thus, it includes 'debts,' in the strict sense of the term, and also everything (not immovable) which can be made the object of a legal claim, as, for example, a person's share in a partnership property." (Page 318.) "(2) *As to the 'situation' of personal property.* . . . From these two considerations flows the following general maxim, viz., that whilst lands, and generally, though not invariably, goods, must be held situate at the place where they at a given moment actually lie, *debts, choses in action and claims of any kind must be held situate where the debtor or other person against whom a claim exists resides; or, in other words, debts or choses in action are generally to be looked upon as situate in the country where they are properly recoverable or can be enforced.*")

III. And as it is apparent from the Memorial itself that Mrs. Muse, the daughter of Mrs. Gleadell, is not of British nationality, but an American citizen, it is obvious that she is not entitled to claim the amount of the forced loan of \$10,000.00, United States currency, before this Commission, as the right to do so is only under the Claims Convention, Mexico and Great Britain (article 3), granted to British subjects. The claim must arise as a British claim and not cease to be British until the date of filing; Borchard so lays it down, quoting sundry decisions of Arbitral Tribunals, pp. 664 and 665 of his work on *The Diplomatic Protection of Citizens Abroad*. In the present instance, the claim was British in origin; it ceased to be so, however, when it passed into the possession of Mrs. Maria Beatriz Julia Muse, pursuant to the will of her mother, Mrs. Gleadell.

In view of the foregoing, and concurring with the opinion of the Honourable Presiding Commissioner, the Mexican Commissioner holds that the Motion to Dismiss filed by the Mexican Agent should be sustained, and that the Commission should, therefore, abstain from taking cognizance of the claim in question.