

CARLOS L. OLDENBOURG (GREAT BRITAIN)

v. UNITED MEXICAN STATES

(*Decision No. 11, December 19, 1929. Pages 97-99.*)

1. The claim is for losses suffered by Messrs. Jorge M. Oldenbourg, Sucs., at Colima (State of Colima), during the years 1914, 1915 and 1916. The Memorial divides the claim into three parts:

Part 1.—For 1,000.00 pesos, being a forced loan made by the Military Governor of the State of Colima;

Part 2.—For the value of two bundles of skins taken by order of the Military Governor of the State of Colima;

Part 3.—For the payment of a bill of 2,600.00 pesos issued by the Paymaster-General of the First Army Corps at Manzanillo (State of Colima) which the Treasury of the Federal Government refused to honour.

The Memorial states that the aforesaid Company was formed on the 20th July 1904, and, although Mexican, was composed entirely of British subjects. The partners were Mrs. Emeteria Oldenbourg, Mr. Carlos, Miss Martha, Miss Luisa, Miss Berta and Miss María Oldenbourg, the first being the widow and the others the children of the late Mr. Jorge M. Oldenbourg. By a deed dated the 6th August, 1925, the company was dissolved and Mr. Carlos L. Oldenbourg became sole owner, taking the responsibility of all present and past accounts.

Amongst the annexes is a certificate of the British Consul at Colima stating that in April 1908, Mrs. Emeteria, Miss Martha, Mr. Carlos, Miss Luisa and Miss Maria Oldenbourg were registered as British subjects.

2. The Mexican Agent lodged a demurrer on the two following grounds: The Consular certificate does not establish the British nationality of the members of the firm of Jorge M. Oldenbourg, Sucs., nor that of Mr. Carlos L. Oldenbourg, who presents the claim. The British Agent has not shown that the allotment referred to in Article III of the Convention was ever made to the claimant.

The British Agent has submitted a baptismal certificate and a certificate of the Secretary of State for Foreign Relations of Mexico as proof of the British nationality of the father, Jorge M. Oldenbourg. According to British law, his wife and his children possess the same nationality. The Company, when it was dissolved, was entirely formed by British subjects, and as the right to this claim,

by the deed of the 6th August, 1925, has passed to Carlos L. Oldenbourg, the allotment referred to in Article III is not required. Furthermore, the British Agent has filed copies of letters to the effect that Carlos L. Oldenbourg acted several times as British Consul at Colima and for that reason, according to the law of Mexico, is to be considered as a foreigner in that country.

3. In his oral argument the Mexican Agent has not contested the British nationality of the late Mr. Jorge M. Oldenbourg, nor of his widow, but as regards the nationality of their children he *first* drew attention to the fact that the Consular certificate does not mention Miss Berta Oldenbourg, and *second* maintained that according to article 2 of the Mexican "*Ley sobre Extranjería y Naturalización*," 1886 ("Law on Alienage and Naturalization," 1886), they must be regarded as Mexican subjects, because they were all born in Mexico and have not, when they became of age, declared before the competent authority that they opted for British nationality. For this last contention, he relied upon a telegram of the Governor of the State of Colima.

The Mexican Agent held therefore that, even if the British nationality of the claimant and his sisters were established, they possessed at the same time Mexican citizenship; in other words, that the Commission was faced by a case of dual nationality. In such cases, the principle generally followed has been that a person having dual nationality cannot make one of the countries to which he owes allegiance a defendant before an international tribunal. A person cannot sue his own Government in an international court, nor can any other Government claim on his behalf (Borchard: *The Diplomatic Protection of Citizens Abroad*, p. 587; Ralston: *The law and procedure of international tribunals*, p. 172).

As regards the second ground, upon which his demurrer is based, the Mexican Agent contended that at the moment when the company was dissolved and Carlos L. Oldenbourg became sole owner, the Convention was not yet signed and the partners of this Mexican firm had therefore not yet acquired the right to claim independently of the company. For this reason, Carlos L. Oldenbourg can only claim on his own behalf and he must prove which was his interest in the concern.

4. The British Agent observed that the question of the dual allegiance had not been raised in the written pleadings and he declared that the British Government, in cases of such duality, held the same view as expressed by the authors whom his Mexican Colleague had quoted. He pointed out, however, that the British nationality of the widow of Mr. Jorge M. Oldenbourg was not contested and that also the British nationality of Mr. Carlos L. Oldenbourg must be regarded as being recognized by Article 6 of the Mexican law of 1886, owing to the fact that he had held an office in the British public service. If therefore Mr. Carlos L. Oldenbourg and his mother could be proved to have possessed an interest exceeding fifty per cent of the total capital of the company (Article III of the Convention), the nationality of the other partners would be immaterial and the demurrer falls to the ground. He accordingly asked the Commission to postpone the further discussion in order to obtain evidence as to the proportional interest pertaining to claimant and his mother.

The Commission has allowed the postponement and in its meeting of the 5th December, 1929, the British Agent has declared that, having not been able to obtain the necessary evidence, he would not further oppose the demurrer.

5. The demurrer is allowed, without prejudice to the right of the British Agent to furnish other proof.