DAVID ROY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 33. April 24, 1931, majority decision. Pages 39-42.)

1. This claim is presented on behalf of Mr. David Roy, for losses and damages sustained by him on his farm known as "Tres Hermanos" in the Municipality of Camoa, District of Aldama, State of Sonora.

It is alleged that in March 1913, revolutionary forces under the command of General Benjamin Hill entered upon the claimant's property and took posses-

sion of all the cattle, the wheat crop from the previous year, which was stored, and turned his horses loose into the wheat which was about to be harvested. General Hill forcibly discharged the farm superintendent and put in his place a Mr. Blas Gil, as representative of the State of Sonora.

On the 9th March, 1914, Mr. Roy filed, with the British Vice-Consul, a claim for 197,258 pesos Mexican, but subsequently, after the 30th August, 1919, the date of the Decree of the Mexican Government establishing the National Claims Commission, he filed a claim with the Mexican National Claims Commission for a sum of $103,601.00 pesos, Mexican currency. After consideration thereof by that Commission he was awarded on the 17th July, 1925, a sum of $60,000.00 pesos Mexican. The claimant had received previously to this award $15,000.00 pesos, Mexican currency, but this, by the terms of the Award, was to be taken as in part liquidation of the Award of $60,000.00 pesos Mexican. No sums whatever were paid by the Mexican Government to Mr. Roy after the date of the Award before referred to. The British Government now claim the sum of $103,601.00 pesos Mexican less $15,000.00 pesos Mexican already received as aforesaid.

2. The Mexican Agent has lodged a Motion to Dismiss the present claim on the ground that the Commission is not competent to take cognizance of this case, because the claim had been settled by the decision of the Mexican National Claims Commission, by reason of the claimant having expressly agreed with this decision and by his having received $15,000.00 pesos Mexican as part of the compensation awarded to him.

3. The Mexican Agent stressed his point orally by arguing that since the National Commission had rendered a decision, and since Mr. Roy had signified his conformity thereto, he could not now claim compensation for losses or damages, but only the execution of a judgment, which falls outside the jurisdiction of the Anglo-Mexican Special Claims Commission. This Commission was, in the opinion of the Agent, here faced by "res judicata", a matter it was not competent to adjudge for a second time. Mr. Roy's claim had become merged in the Award of the National Claims Commission, and payment of the amount, therefore, would become the subject of direct negotiations between the two Governments, but could not be asked before this International Tribunal.

4. The British Agent denied that the claim had been liquidated. He pointed out that the judgment of the National Commission was dated the 17th July, 1925, that the first payment had been made previously, and that since then no other payment had followed. He—the British Agent—was not asking for the execution of a judgment, but for compensation for the losses suffered by Mr. Roy. He therefore did not claim the unpaid balance of the amount of $60,000.00 pesos Mexican, but $103,601.00, that being the amount originally asked by claimant before the National Commission, less $15,000.00 pesos. The Agent could not find a single clause in the Convention, which would prevent the Commission from taking cognizance of a claim, in which the National Commission had rendered a decision. He was not appealing from that decision, but had filed an original claim of the same nature as many others.

5. The Commission are called upon to answer this fundamental question: what is the relation between themselves and the Mexican National Claims Commission? They believe that the answer to that question can only be found in the Convention.

The National Commission was created, functioned and rendered judgments before the Claims Convention was entered into. If the intention of the contracting Parties had been that the work of the National Commission was in any way to interfere with the jurisdiction of the International Tribunal which they were about to create, it would have been natural to expect that they would have expressed their intention in the Convention. This was not done, and it was even agreed in Article 6 that no claim shall be set aside or rejected on the ground that all legal remedies had not been exhausted prior to the presentation of the claim.

The absence of any clause establishing a connexion between the jurisdiction of the one Commission and that of the other, may be easily explained if the reason which gave rise to the Convention be taken into consideration.

The National Commission was an institution which had to examine and decide all claims for compensation for revolutionary losses and damages, whether suffered by Mexican citizens or by aliens. It seems obvious that the various Claims Conventions were concluded because the foreign Governments desired that a means of redress of another character be open to their subjects for the adjustment of their claims. This means of redress was found in an International Commission possessing a strong neutral element.

In this respect the Convention gave to British subjects a right which they did not possess under the Decree which created the National Commission, and one not possessed by Mexican citizens either. In another respect they also received a new right in so far as the payment of the compensation was no more an act, dependent on the discretion of one Government or on that of the authorities of one State, but was converted into an international liability, i.e., a liability of one State towards another State.

The majority of the Commissioners hold the view that, had the two Governments desired to exclude from these rights British subjects who had already applied to the National Commission, this would certainly have been expressed in the Treaty.

The view taken in this case by the Mexican Government, would mean that those British subjects, who—at a time when no other court existed—had resorted to the National Commission, had *ipso facto* and beforehand waived rights which the Convention subsequently concluded gave to their compatriots.

The majority of the Commission cannot concur in this opinion, and they can find in the Convention no stipulation supporting it. For this reason they cannot admit that the jurisdiction of the Commission is limited to the claims not submitted to the National Commission, or not adjudicated upon by that body.

This opinion is not affected by a claimant's agreement to the award, in this case given before the Claims Convention was concluded, i.e., at a moment when alien claimants could seek no other means of redress than the National Commission. Moreover, the total amount of the award has not been paid, and the Commission would, by declaring themselves incompetent, place the claimant, as regards the unpaid balance, in a weaker position than that he would have found himself in had he not sued before the National Commission, and in a weaker position than those claimants to whom our Commission has granted or may grant awards.

In taking the view that the jurisdiction of the National Commission can have no legal or other bearing, originating in the treaty, on the acts of this Commission, the majority at the same time fully realize that the judgments of the former may have great weight for the decisions of the latter, principally because the examination of claims by the National Institution took place at a time less remote from the occurrence underlying the claim.

For this reason the decision already delivered in the claim of Mr. Roy will have to be carefully studied as it may furnish valuable material for judgment on the claim on its merits.

At the same time, the Commission wish it to be understood that the amount already received by claimant, will of course be taken into consideration in fixing any award which the Commission may feel justified in allowing.

6. The Motion to Dismiss is disallowed.

The Mexican Commissioner expresses a dissenting opinion.