

JAMES F. BARTLETT (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 37, May 13, 1931. Pages 51-53.)

1. The British Government on behalf of James F. Bartlett claim the sum of \$4,209.35 Mexican gold, for damage sustained by him at Alamo, Lower California, where (as he alleges) under the name of James F. Morgan he was the proprietor of a store and restaurant. It is stated that on the 23rd March, 1911, a band of Mexican rebels commanded by one Guerrero invaded his store and took 800 dollars and the articles itemized in annex 1; that the said rebels destroyed the roof of the store, the hen-house, a shed, two windows and a back door, that the town was in the possession of the rebels from the 24th March to the 24th April, 1911, and that he was during that period, forced to board ten rebels under order of Captain Moseby; that he suffered the damage incident to the stoppage of his business due to the invasion in question, under which head he also claims. He accuses the Mexican Government of not having sent troops until the 23rd June, 1911. The said claimant states that in 1911 he filed the same claim with the Comisión Consultiva de Indemnizaciones on the 12th September, under the name of James F. Morgan, but that he had obtained no result.

2. The British Government base their claim on the statements of the claimant himself and on those of certain witnesses, Max J. Weber, Henry Finel and C. B. McAleer; on a certificate of F. Simpich, American Consul, and of W. D. Madden, British Consul at Ensenada, Lower California, as regards the damage claimed for; but in order to establish the fact that J. F. Bartlett, in whose name the claim is filed, is the same person as J. F. Morgan, that being the name by which the claimant was known in Mexico, an unsworn statement by one John Shapley made before the Mayor of Windsor is produced. The claimant also submits a birth certificate in which he appears under the name of James Frederick, the child of George Bartlett and of Elizabeth Morgan, and as born in 1840.

3. The Mexican Agent answered by asserting that, to begin with, no proof had been shown that James F. Bartlett, who does prove that he was a British subject, and James F. Morgan, who sustained the damage, are one and the same person. He further maintains that the evidence of the witnesses filed in support of the claim, lacks probative value, and attaches to his Answer annexes Nos. 1, 2, 3, 4 and 5 which contradict the statement made by the claimant, and from which it is apparent that the invaders of Alamo were filibusters. He also adds that even though the alleged facts were actual facts, they could not give rise to a claim because they were committed by bandits and because it has not been shown that the Government of Mexico were negligent nor that they were in any way to blame in connexion therewith. Lastly the Mexican Agent maintains that the amount of the claim has not been proved and that losses of profits and expenses incurred in the presentation of the claim cannot, under the Convention between Mexico and Great Britain, be taken into consideration. Lastly, he requests that the claim be disallowed and that the Government of Mexico be absolved.

4. When this case came up before the Commission, the British Agent asked that judgment be rendered against the Government of Mexico for payment of the sum claimed, seeing that annexes 3, 4 and 5 were sufficient proof for the claim.

5. The Mexican Agent upheld the Answer filed by him to the claim and stressed the fact that the identity of the person claiming with the person who sustained the damage, had not been demonstrated, and that the Government of Mexico could not be accused of negligence, for as the events which gave rise to the claim took place at Alamo, Lower California, a place difficult of access from the rest of the Republic and more especially from the City of Mexico where the seat of Government is situated, it was not easy immediately to suppress the filibustering invasion which took possession of that town, and the protection as well as punishment was given in good time by executing several of the filibusters. He maintained that there was no evidence of negligence on the part of the Mexican Government in suppressing these acts.

6. The discussion of this case once closed, the Commission took upon themselves the task of rendering the necessary decision and agree:

That the identity of the claimant has not been established and consequently that it has not been proved that James F. Bartlett and James F. Morgan are one and the same person. The Commission hold that the unsworn and very bare statement made without adequate and particularized foundation of John Shapley is not sufficient to corroborate the assertion of the claimant to that effect, and that this sole consideration would in consequence be sufficient reason in itself for dismissing the claim; but the Commission further hold that even on the supposition that the identity of the claimant with the person who sustained the damage had been proved, no negligence on the part of Mexico in suppressing the filibustering acts that took place at Alamo, Lower California, has been proved, as in view of the great distance and difficult communications it was impossible for the Government to have done more than it did, in driving out and punishing the filibusters one month after the invasion.

7. In view of the above considerations, the Commission disallow the claim preferred against the Government of Mexico by the British Government on behalf of James F. Bartlett.
