

GEORGE HENRY CLAPHAM (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(Decision No. 59, June 9, 1931. Pages 159-163.)

1. The Memorial relates that Mr. Clapham was employed as the Chief Engineer of the Mazapil Copper Company, Limited, and in May 1913 he was residing at their Smelter at Concepción del Oro, Zacatecas, Mexico. On the 20th May, 1913, some seven hundred revolutionaries, under the command of Eulalio Gutierrez and Pancho Coss, attacked Concepción del Oro. During the attack some rifle shots were fired at the revolutionaries from a place unknown, killing or wounding several of them. The revolutionaries suspected that the shots came from the Mazapil Copper Company's works and a party of them forced their way into the Smelter. They were preparing to blow up the buildings when Mr. Clapham took them into the garden of the works, where there was a full view of the roofs, to demonstrate to them that there was no one there. They were satisfied, and Mr. Clapham returned to his house to speak with several of the Company's employees. While speaking, another batch of revolutionaries rushed in and, without warning, opened fire on the group. Mr. Harold Bainbridge was shot through the hands. Mr. Clapham, after pushing his wife and child into the house, turned to close the door when a man entered and shot him through the thigh. As a result of damage to the main artery of the leg his foot had to be amputated, and he was for two years unfit to work. On several occasions since that time his leg has caused him considerable trouble and has necessitated prolonged medical treatment. As a result of the loss of his foot, which does not allow him to make inspections underground or in other difficult places, Mr. Clapham has found difficulty in

following his profession as mining engineer. During the fourteen years between 1913 and 1927 he has been employed only seven years, six months. The greater portion of his employment was during the war period, when able-bodied engineers were difficult to obtain. After Mr. Clapham's departure from Mexico, the revolutionaries took away a horse and saddle and a Jersey cow. They also set fire to all Mr. Clapham's household furniture.

The claim is for £12,000, the details of which are given as follows:

Amount of his salary, as confirmed by letter of the Mazapil Copper Company	£	s.	d.
	770	0	0
Estimated value of privileges allowed him with the Mazapil Copper Company. Free house, light, fuel, water. A man servant and a maid servant. A tax on his salary paid by the Mazapil Company to the Mexican Government in lieu of all other taxes		230	0 0
Equivalent value of his salary with the Mazapil Company . .	1,000	0	0
The damages at £12,000 are computed as follows:			
Compensation for 6½ years unemployment between 1913 and 1927 at £1,000 per annum	6,500	0	0
Estimated value of his furniture burnt by the rebels at Concepción, together with the value of his horse, saddle and Jersey cow taken by them	500	0	0
Cost of six artificial limbs for 14 years at £25	150	0	0
Cost of invalid's chair during convalescence	25	0	0
Compensation for continued disability	4,825	0	0
	12,000	0	0

His Majesty's Government claim, on behalf of Mr. G. H. Clapham, the sum of £12,000 (twelve thousand pounds).

2. The Mexican Agent, although allowing that the forces with which the claim deals were Carrancistas, and therefore that they fell within the terms of Article 3, subdivision 2 of the Convention, denied that it had been proved that the wound of Mr. Clapham was due to a wilful act of those forces; it might just as easily have been the consequence of his own lack of prudence. Neither had it, in the Agent's submission, been proved that the wound had had the consequences attributed to it. The Agent filed a record of the proceedings on the hearing of two witnesses, held at his instance by the Municipal President at Concepción del Oro, on the 14th June, 1929. Both witnesses declared that they believed that Mr. Clapham had been wounded through his own imprudence. They remembered having seen Mr. Clapham standing in one of the windows of the building of the Mazapil Company, shooting at the revolutionary forces. It was at that place, and not in his own house or in the garden, that Mr. Clapham had been wounded. They further believed that Mr. Clapham had killed one of the revolutionary chiefs; and as regards the amputation, they said that it was well known that the claimant already limped before the accident happened, and they could not therefore believe that the consequences alleged, were due to the wound. In his oral argument the Mexican Agent pointed out that the Doctor who swore an affidavit on the 3rd June, 1916, had only seen the claimant some years after the events, and the Agent contended that it had not been shown that amputation had been necessary. Furthermore, he thought the amount claimed grossly exaggerated, and he referred to the laws of several foreign countries on compensations for labour

accidents, in order to show that in all of them the loss of a foot was computed at a much lower amount than that claimed.

3. The British Agent observed that he failed to see any analogy between the accidents dealt with in the laws cited by his Mexican Colleague, and the case then under consideration. It was not a labour accident which had disabled Mr. Clapham but a revolutionary act, the financial responsibility for which devolved, according to the Convention, on the Mexican Government. He could not see that in this case the same considerations were valid as those on which labour laws base the liability of employers. The Agent laid great weight upon the fact that the evidence produced by him with the Memorial was contemporary evidence, whereas the testimony on which the Mexican Agent relied had been taken sixteen years afterwards. He maintained that there was abundant evidence of the allegations on which the claim was based.

4. The Commission feel bound to consider the testimony of eye-witnesses having deposed within two years after the events as more reliable than the declarations of witnesses heard more than sixteen years later. Messrs. W. J. S. Richardson, H. Burrell and H. Bainbridge, who swore the affidavits which fully corroborate the claimant's depositions, were all present when the Mazapil works were attacked; they were in Mr. Clapham's immediate vicinity; they formed part of the same group; they ran the same danger; and one of them was wounded on the same occasion. Their affidavits are dated the 15th and 19th February, 1915, at the time when the occurrences must still have been fresh in their recollection.

The testimony submitted by the other side cannot be looked at in the same light. Señores J. Jesús Góngora and José María Torrez were heard in June 1929. It is not stated in the record who or what they are, neither did they declare how they acquired the knowledge to which they gave utterance. If they were present at the attack, it was probably as onlookers upon whose minds the events must have left an impression less deep than upon that of those to whom the same events were a matter of life and death.

The Commission therefore accept the facts as proved and, as it is common ground between the Agents that Carrancistas were responsible, they declare that the case falls within the terms of Article 3, subdivision 2, of the Convention.

5. As regards the consequences of the wound inflicted upon Mr. Clapham, sufficient evidence is to be found in annex 8 of the Memorial.

This is the sworn affidavit of Dr. G. G. Farquhar, one of the medical experts, who on the 20th November, 1913, amputated the patient's left foot three inches above the ankle. Dr. Farquhar declares that he saw a letter written by Dr. McMeans, who attended the claimant in Mexico at the Monterrey Hospital after the attack. This letter described the case and was intended for the information of the doctor who was later to take up the treatment. It related that Dr. McMeans had tried to save the foot and had performed several operations on it. Dr. Farquhar therefore feels at liberty to declare that the removal of the foot was only decided on after it had been found impossible to save it.

The Commission, in the light of this evidence, cannot but accept as true the allegations in the Memorial as regards the consequences of the injury.

6. There can be no doubt that the loss of a foot must very seriously impair the earning capacity of a man carrying on the profession of Electrical and Mechanical Engineer. It is more than likely that such an injury will, for more than one kind of work, place him in an inferior position as compared with able-bodied applicants, that there will be many periods during which he will not be able to obtain employment, and that he will often have to be satisfied with a smaller remuneration than a man enjoying complete physical fitness.

It seems just and equitable, therefore, that an award be granted him, that will set off, by means of an annuity, the lifelong injury which was the result of the wound.

The Commission have found no guidance in any law or decree for the determination of the annuity, the less so as in nearly all other cases the annuity begins very soon after the accident, whereas in this case sixteen years and probably more will have elapsed before any payment can follow.

The Commission, also taking into account the station in life of the claimant, think an annuity of \$2,000 pesos Mexican gold fair and reasonable, and as, in order to purchase such annuity a man of the age of Mr. Clapham will have to pay about \$20,000 pesos Mexican gold, they fix the award at that figure.

7. The Commission have found no outside evidence of the other losses which the Memorial alleges were sustained by the claimant.

8. The Commission decide that the Government of the United Mexican States shall pay to the British Government, on behalf of Mr. George Henry Clapham, the sum of twenty thousand (\$20,000) pesos Mexican gold.
