# MINNIE STEVENS ESCHAUZIER (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

*(Decision No. 64, June 24, 1931, dissenting opinion by British Commissioner, June 24, 1931. Pages 177-184.)*

1. This is a claim for compensation for damages suffered at the Hacienda de la Mula in the counties of Hidalgo, Valles and Ciudad del Maíz in the State of San Luis Potosí during the Constitutionalist revolution of the years 1912 to 1914 inclusive.

According to the Memorial the late Mr. William Eschauzier, who was the owner of the Hacienda de la Mula at the time of these losses, was a British

subject. Mr. William Eschauzier died on the 19th October, 1920, and by his will appointed his brother, Dr. Francis Eschauzier, executor and sole heir. Dr. Francis Eschauzier was also a British subject. Dr. Eschauzier submitted this claim, which had already been drawn up by the late Mr. William Eschauzier, to His Majesty's Consul-General at Mexico City. Dr. Eschauzier died on the 9th November, 1924, and left a will appointing his wife as executrix and sole heir.

Mr. William Eschauzier had purchased the two farms known as the Hacienda de la Mula and Casa Blanca from his brother, Mr. Louis Eschauzier. These two farms were joined and are now known as the Hacienda de la Mula. During the year 1912 Mr. William Eschauzier, who was absent from the country, heard that a political revolution had broken out and that armed forces would probably invade the region in which his property was located. He instructed his attorney, Dr. Francis Eschauzier, to draw up an inventory of the property of the Hacienda de la Mula. On the 13th April, 1914, the forces of General Victoriano Huerta, which were in control of the railway line to Tampico, fell back on the station of Cárdenas, leaving the region in which the Hacienda de la Mula is situated in the hands of Constitutionalist forces. It was impossible to continue work at the Hacienda, and Mr. William Eschauzier's manager was obliged to abandon the property completely. On the 23rd May, 1914, Mr. William Eschauzier wrote to the British Vice-Consul at San Luis Potosí requesting protection for the hacienda. The Vice-Consul replied in a letter dated the 17th June, 1914, that his property was in the hands of Constitutionalists, and that it was therefore useless to ask the Mexican Government for protection. Later the forces of General Huerta evacuated all the territory of the State of San Luis Potosí and Mr. William Eschauzier was able to re-establish communications with his hacienda. He learned that on the 12th June, 1914, Lieutenant-Colonel Teódulo Aguilar, of the Second Regiment of Pedro Antonio Santos Brigade, had named Aureliano Azua, Mariano Saldaña and Bartolo Ramos, as persons in charge of the Hacienda de la Mula. On the 22nd June, 1914, Lieutenant-Colonel Aguilar authorized these persons to sell the movable and immovable property of the hacienda, the proceeds of which should be used for the payment of herdsmen and other small expenses, and the remainder to be used for revolutionary purposes. On the 18th June, 1914, Lieutenant-Colonel Aguilar and Lieutenant-Colonel Higinio Olivo issued a declaration in the City of Rayon stating that by the orders of General Francisco Cosió Robelo, duly authorized by the First Chief of the Constitutionalist Army, the Hacienda de la Mula was declared confiscated. Provision was also made in this order for the division of the land among the labourers. In view of this order Mr. William Eschauzier requested authority from General Eulalio Gutierrez, the Governor of the State of San Luis Potosí, to take possession of his hacienda, and the Governor appointed Nabor Rodriguez to make an inventory on Mr. Eschauzier's taking possession of his hacienda. On comparing the two inventories Mr. William Eschauzier found that a considerable amount of his property was missing.

The amount of the claim, which is for the value of the property found to be missing, is 60,845.28 pesos Mexican gold. Of this sum, 47,378 pesos Mexican gold represents the value of cattle, horses and mules found to be missing, and 13,467.28 pesos Mexican gold represents the value of other property, such as agricultural machinery, tools, carts and articles from the house, which was found to be missing.

The late Mr. William Eschauzier complained to the British Vice-Consul at San Luis Potosí on the 23rd May, 1914. It has been explained above that at the time it was impossible to make a protest to the Mexican Government.

When Mr. William Eschauzier was able to communicate with the Governor of the State of San Luis Potosí he regained possession of his hacienda. A statement of claim with the necessary supporting documents was drawn up by Mr. William Eschauzier on the 27th December, 1919. The claim belonged at the time solely and absolutely to Mr. William Eschauzier. The claim was not filed at His Majesty's consulate-general at Mexico City until the 10th January, 1922, and it was then filed by the late Dr. Francis Eschauzier as executor to the estate of the late Mr. William Eschauzier. No claim has, however, been presented to the Mexican Government, nor has compensation been received from any other source.

The British Government claim on behalf of Mrs. Minnie Stevens Eschauzier the sum of 60,845.28 pesos Mexican gold.

2. The claim is before the Commission on a Motion to Dismiss filed by the Mexican Agent, who had been informed by his British colleague that, after the claim was presented, the claimant had, by marrying a citizen of the United States of America, ceased to be a British subject.

3. The British Agent confirmed this allegation, and observed that, although he did not intend to argue against a decision taken by the Commission at their previous session, he still wished to state that his Government did not share the point of view of the Commission that the nationality of the heirs of a deceased person, and not the nationality of his estate, determined whether a claim had preserved its British nationality. He referred to Decision No. 4 of the Commission (Captain W. J. Gleadell), section 2.

4. The Commission, while in their majority adhering to the opinion quoted by the British Agent, feel bound to observe that the motion filed by the Mexican side not only raises the question, which they then decided, but another one as well.

Decision No. 4 dealt with a case in which British nationality had already been lost prior to the presentation of the claim, whereas in the case now under consideration, the claimant became an American citizen after the date of filing.

It might be argued that international jurisdiction would be rendered considerably more complicated if the tribunal had to take into account changes supervening during the period between the filing of the claim and the date of the award. Those changes may be numerous and may even annul one another. Naturalizations may be applied for, and obtained, and may be voluntarily lost. Marriages may be concluded and dissolved. In a majority of cases, changes in identity or nationality will escape the knowledge of the tribunal, and often of the Agents as well. It will be extremely difficult, even when possible, to ascertain whether at the time of the decision all personal elements continue to be identical to those which existed when the claim was presented. Jurisdiction would undoubtedly be simplified if the date of filing were accepted as decisive, without any of the events that may very frequently occur subsequently to that date, having to be traced up to the date of rendering judgment.

It can therefore not be a matter for surprise that both *Borchard* (pages 664 and 666), and *Ralston* (section 293), state that a long course of arbitral decisions has established that a claim must have remained continuously in the hands of a citizen of the claimant Government, until the *time of its presentation.*

5. On the other hand it cannot, however, be denied that when it is certain and known to the tribunal, that a change of nationality has taken place prior to the date of the award, it would hardly be just to obligate the respondent Government to pay compensation to a citizen of a country other than that with which it entered into a convention.

Moreover, the most recent developments of international law seem inclined to attach great value to the conditions existing at the time of the award.

6. The Commission refer to point XIII of the Basis of Discussion for the Conference for the Codification of International Law drawn up by the Preparatory Committee, reading as follows:

"It is recognized that the international responsibility of a State can only be enforced by the State of which the individual who has suffered the damage is a national or which affords him diplomatic protection. Some details might be established as regards the application of this rule.

"Is it necessary that the person interested in the claim should have retained the nationality of the State making the claim until the moment at which the claim is presented through the diplomatic channel, or must he retain it throughout the whole of the diplomatic procedure or until the claim is brought before the arbitral tribunal or until judgment is given by the tribunal? Should a change occur in the nationality of the person making the claim, are there distinctions to be made according to whether his new nationality is that of the State against which the claim is made or that of a third State, or according to whether his new nationality was acquired by a voluntary act on his part or by mere operation of law?

"Are the answers given to the preceding questions still to hold good where the injured person dies leaving heirs of a different nationality?

"If in the answers given to the preceding questions it is considered that a claim cannot be upheld except for the benefit of a national of the State making the claim, what will be the position if some only of the individuals concerned are nationals of that State?"

The answer of the British Government to this question was the following:

"His Majesty's Government in Great Britain believe that the following rules represent the correct principles of international law, as deduced from the numerous decisions of international tribunals before which cases have come involving points falling within the scope of point XIII:

"*(a)* The person who suffered the injury out of which the claim arose must have possessed the nationality of the claimant State and not have possessed the nationality of the respondent State at the time of the occurrence.

"*(b)* If the claim is put forward on behalf of the person who suffered the injury, he must possess the nationality of the claimant State and not possess the nationality of the respondent State at the time when the claim is submitted to the commission and continually up to the date of the award.

"*(c)* If the person who suffered the injury out of which the claim arose is dead or has parted with his interest in the claim, the person to whom the interest has passed and on whose behalf the claim is presented must possess the nationality of the claimant State and not possess the nationality of the respondent State at the time when the claim is submitted to the commission and continually up to the date of the award.

"*(d)* Where a national retains part only of the interest in a claim and part passes to a non-national, the claim may only be presented and an award made in respect of so much of the claim as remains vested in the national.

"*(e)* The result is the same whether the non-national's interest in the whole or part of a claim is passed to him by voluntary or involuntary assignment or by operation of law.

"*(f)* Changes of nationality subsequent to the making of the award are immaterial.

"*(g)* Possession of a nationality other than that of the claimant or respondent State is immaterial, provided that the preceding rules are complied with."

A majority of the Governments answered in the same sense and accordingly the Preparatory Committee drafted the following Basis of Discussion, No. 28:

"A State may not claim a pecuniary indemnity in respect of damage suffered by a private person on the territory of a foreign State unless the injured person was its national at the moment when the damage was caused and retains its nationality until the claim is decided.

"Persons to whom the complainant State is entitled to afford diplomatic protection are for the present purpose assimilated to nationals.

"In the event of the death of the injured person, a claim for a pecuniary indemnity already made by the State whose national he was can only be maintained for the benefit of those of his heirs who are nationals of that State and to the extent to which they are interested."

In the light of such weighty documents on the subject, the Commission do not feel at liberty to ignore the fact that the claimant no longer possesses the British nationality.

7. The Motion to Dismiss is allowed.

The British Commissioner expresses a dissenting opinion.

*Dissenting opinion by British Commissioner*

1. Whilst recognizing the weight of authority supporting the Decision of the majority of the Commission, my opinion is that the true test to be applied is the nationality of the person who sustained the injury and damage, and whether the claim is made on behalf of his estate or by an alien assignee of the original claim. These should be the sole considerations, irrespectively of what may be the ultimate destination of the beneficial interest in the estate. Supposing, for instance, that the deceased owed debts, and left either no assets beyond the existing claim for injuries and damage to his estate, or left assets insufficient except for such claim, to pay his debts, then his solvency, and the payment of his debts, even to creditors of his own nationality, would depend on the recovery on behalf of his estate of such damages. To defeat recovery thereof because his Executor or Administrator, or the ultimate beneficiary (after payment of debts and pecuniary or other legacies), might be of a different nationality, would in my opinion be an injury and injustice to such creditors, and to legatees, as well as to the reputation of the deceased, by causing him to have died insolvent.

2. I would here refer to a quotation given at page 633 of Borchard's *Diplomatic Protection of Citizens Abroad.*

"In the case of injuries to the person or property of the deceased, which may be deemed debts due to his estate, the personal representative, usually the Executor or Administrator, and not the heir, has been regarded as the proper party claimant. The reason for this rule was stated by the domestic commission under the Act of the 3rd March, 1849, as follows:

" 'The Board has not the means of deciding questions touching the distribution of intestate estates, which depend upon local laws and involve inquiries as to domicile and many other topics of which we are furnished with no evidence. *Besides it may happen that the rights of creditors are involved, who are entitled to be paid before any distribution can be made.*' "

3. I am aware that my objections may seem to go to the extent of contradicting some of the authorities referred to in the Decision herein, even those as to nationality at the time of the presentation of the claim. But in my opinion, if the nationality attaches and remains attached or is deemed to attach to the *estate* on behalf of which the claim is really brought, there is no such contradiction. The nationality of a mere assignee of the original claim is of course a different matter.

4. I may here observe that I do not think that the Answer of the British Government *(c)* quoted in paragraph 6 of the majority Decision of the Commission goes so far as apparently it is interpreted to do by such majority.