

ALFRED MACKENZIE AND THOMAS HARVEY (GREAT BRITAIN)
v. UNITED MEXICAN STATES

(Decision No. 71, July 7, 1931. Pages 203-207.)

1. In this case the claim is made on behalf of Alfred Mackenzie and Thomas Harvey, for compensation for the total loss and destruction of three mining properties situated at Santa Eulalia, in the State of Chihuahua. The claim is made in respect of their ownership of the whole of the shares in three non-British Companies, that is to say in (1) a Company of the State of Arizona, U.S.A., formerly known as the Great Boulder Mining Company and now as the Compañía Minera El Gran Peñasco, in which out of a total capital of 300,000 shares Alfred Mackenzie owns 299,800, and Thomas Harvey 200, (2) a Company of the State of Arizona, U.S.A., formerly known as the London and Liverpool Mining Company, Incorporated, and now as La Victoria Mining Company, their holdings out of a total capital of 300,000 shares of stock, being respectively Alfred Mackenzie 299,800, and Thomas Harvey 200, and (3) of a Company of the State of Arizona, U.S.A., formerly known as the Seven Stars Mining Company Incorporated, but now as the Santa Eulalia Star Mining Company, their holdings therein out of a total share capital of 300,000 stock, being respectively Alfred Mackenzie 299,800 shares and Thomas Harvey 200 shares.

2. It is alleged in the Memorial that both Alfred Mackenzie and Thomas Harvey are British subjects, and that over 50 per cent of the capital of each of the aforesaid Companies, to wit 100 per cent, is owned by them. In order

to comply with the provisions of Article 3 of the Convention, they presented to the Commission allotments to the said Alfred Mackenzie and Thomas Harvey (1) by the *Compañía Minera El Gran Peñasco*, of a "proportionate share of the Company's claim against the Mexican Government" (annex 6), (2) by *La Victoria Mining Company* of "a proportionate share of the Company's claim against the Mexican Government" (annex 7), and (3) by the *Santa Eulalia Star Mining Company* of "a proportionate share of the Company's claim against the Mexican Government".

3. The evidence of the British nationality of the claimants annexed to the Memorial, consists, as regards Alfred Mackenzie, of the statements in his affidavits (annexes 1, 2 and 3) that he is a British subject born at Woodend, Victoria, Australia, on the 17th March, 1856, and that he has faithfully adhered to his allegiance to His Majesty and the Government of Great Britain. He declares himself unable to secure birth certificates, passports, or other registrations, but he refers, as to his nativity, responsibility and fidelity, to Courthrop Rason, of Bovril, Limited, London, who was Premier of Western Australia. He further produced an Affidavit (annex 4) by Alexander Peat sworn in California, U.S.A., on the 29th June, 1928, who having sworn that he is a British subject with home residence at Woodend, Victoria, Australia, states that he went from London, England, to Australia, in or about the year 1870, then becoming resident in Australia, that he is over seventy years of age, is personally acquainted with the claimant, Alfred Mackenzie, has personally known him and his family consisting of his father, Alfred Mackenzie, his mother, Hannah Mackenzie, together with three daughters and two sons (one of them the claimant, Alfred Mackenzie). He further deposes that on his (the said Alexander Peat's) arrival in Australia the said Mackenzie family were resident at Woodend, Australia, Woodend being then a small village the residents whereof were well and familiarly known to the affiant, that he visited frequently in the home of the said claimant, Alfred Mackenzie, and his father, such visits extending from almost the immediate arrival in Australia of the affiant and extending to the year 1900, when the claimant, Alfred Mackenzie, was travelling throughout Mexico and the United States. The said Alexander Peat further states that he is advised and believes that the said Alfred Mackenzie was born at Woodend, Australia, on the 17th March, 1856, such information having been conveyed to him, the affiant, by his wife, Maria Mackenzie Peat (now deceased), a sister of the Claimant, Alfred Mackenzie. Also that Alfred Mackenzie, Senior, the father of the Claimant, had personally informed the affiant that the claimant, Alfred Mackenzie, was born at Woodend, Australia, Alfred Mackenzie, Senior, having come to Australia from England about the year 1852. He further states that the claimant, Alfred Mackenzie, had communicated frequently with him, the affiant, during the claimant's absence from Australia, and that he is the identical Alfred Mackenzie known to the affiant in Australia, and is a British subject. And that he, the affiant, has no interest in the claim.

4. As regards the British nationality of the Claimant, Thomas Harvey, the evidence contained in the Annexes to the Memorial consists of (annex 21) the birth certificate of Tom Harvey, showing that he was born on the 6th June, 1858, at Townsend in the Registration district of Tiverton, Devonshire, England, of Thomas Harvey of Townsend, Tiverton, and Elizabeth Harvey (formerly Yeo), and of the statements in the Affidavits before referred to (annexes 1, 2 and 3) of the claimant, Alfred Mackenzie, that his associate, Thomas Harvey, was and is a British subject, born in Somersetshire, England.

5. The Mexican Agent filed a demurrer to the claim on the grounds—

I. That the nationality of the claimant, Alfred Mackenzie, had not been established; and

II. That the allotment required by Article 3 of the Convention had not been properly made by means of annexes 5, 6 and 7 to the Memorial, nor had the conditions which the said Article requires, in order that claims of British members of Companies not of that nationality may be presented, been complied with.

He argued before the Commission that in order to find what were the damages to the claimants it was necessary to look into the liabilities of the Company, as the loss might really fall entirely on the creditors of the Company, and that the allotments to claimants of a proportion of the loss of the Company was not a proper compliance with the provisions of Article 3 of the Convention. Further, he argued that the allotments to shareholders should be made according to Mexican Law. He questioned the legality of an allotment by Directors not in meeting of the Company, as it was not according to Mexican law, and he argued also that there was no proper proof of the claimants' ownership of the shares at the time of the losses or damage, or of the total capital of the Company. He admitted the claimant Harvey's British nationality.

6. The British Agent argued that the allotments were in reasonable satisfaction of Article 3 of the Convention, and that as regards the claimant Alfred Mackenzie's nationality the affidavits filed and annexed to the Memorial were reasonably sufficient to establish this and that they also established the ownership of the claimants at the time of the alleged losses and damage.

7. Since this case was heard by the Commission the British Agent has filed as further evidence as to the British nationality of the claimant, Mr. Mackenzie, copy of a statement dated the 8th February, 1916, from the Hon. Sir C. H. Rason, formerly Prime Minister and Treasurer of Western Australia, and the Chairman and Managing Director of Bovril Australian Estates, Limited, in which he states that he has known Mr. Mackenzie well and favourably for some twenty years past, that he held a very prominent position in Commercial and Municipal life in Western Australia, and he certifies that his reputation for straightforward conduct and commercial probity is of the highest. In view of this evidence in addition to Mr. Peat's Affidavit, the majority of the Commission hold that his British nationality has been sufficiently shown.

8. But the Commission hold that it has not been shown authentically that the total capital of British shareholdings in the non-British Company amounts to 100 per cent, nor over 50 per cent, thereof, as required by the terms of Article 3 of the Convention, nor that the damages or losses to the Companies concerned or to the claimants took place after their acquirement of such shareholdings and during their holdings. They desire to call the attention of the claimants to the necessity of showing by authentic evidence—

- (1) The existence of the Corporations concerned;
- (2) The amounts of their respective capitals and share issues;
- (3) The number of shares held by the claimants;
- (4) Their interest therein at the time of the various losses; and
- (5) The allotments.

9. The Commission's final Decision on the demurrer is postponed until the claim can be judged on its merits, and the claimants shall have presented their evidence as indicated in paragraph 8.

10. The Mexican Agent is invited to file his answer.