

JAMES HAMMET HOWARD (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(Decision No. 70, July 10, 1931. Pages 226-228. See also decision No. 24.)

1. The Commission refer, as regards the facts on which the claim is based, to their Decision No. 24.

2. Following this Decision, the Agents orally argued their views.

The British Agent pointed out that Julián Real occupied the house at the time when he was a Revolutionary leader. Although he later became Municipal President, and subsequent Municipal Presidents also lived in the house, the whole occupation during four years should be considered as one continuous act, taking its origin in, and its character from, the initial deed of Julián Real.

The Agent moreover drew attention to the fact that the evidence, filed by him, showed that during that period several military forces, first Revolutionaries and later Constitutionalists, had used part of the house and caused great damage. The Agent produced photographs showing the ruinous condition of the building at the time it was returned to the owner. He also filed receipts to prove the actual expenses of repairs paid by the claimant.

3. The Mexican Agent put forward that in his opinion the occupation of the house by subsequent Municipal Presidents must be regarded as the act of civil authorities, not coming within any of the provisions of the Convention. He could not see that damage had in this case been done, or losses caused, by any of the forces enumerated in Article 3 of the Convention.

He considered the photographs, which his colleague had exhibited, as irrelevant, because it had not been certified that it was really the claimant's house which they represented, and because they did not show the condition of the house before the first occupation. According to the documents filed with the Memorial, repairing the house started not less than three years after the occupation ceased. It was clear that during that intervening period the house must have suffered heavily by the normal working of time and climate.

As regards the cost of the repairs he did not attach much value to the receipts of the contractor, because they did not indicate what expenses had been necessary to restore the building to the same condition as in 1914, nor how much was spent on improving and modernizing it.

4. The Commission, in their majority, take the view that the original seizure of the house by Julián Real was undoubtedly an act committed by a Revolutionary force covered by the Convention, as the said leader was known to have served the cause which afterwards established the Constitutionalist Government. The fact that he remained in the house after becoming Municipal President, and that his successors in that office also continued the occupation cannot, in the opinion of the Commission, modify the character of the initial act. It has not been shown that the house was ever confiscated by a decree of a civil authority, nor that the first military and compulsory occupation was ever regularized by any civil instrument. All the subsequent Municipal Presidents obviously considered the act of the revolutionary leader Real as a sufficient title to possession, and they continued to avail themselves of it, without ever

notifying the owner that his property had been taken in a legal way and in the course of the transaction of civil administration.

As, moreover, it has been shown by the evidence of the two witnesses, George A. McCormick and Jesús Magallón, that a part of the building was repeatedly used for the quartering of military forces, the majority of the Commission feel bound to declare that the losses of the claimant fall within the terms of the Convention, as having been caused by forces described in subdivision 2 of Article 3.

5. The Commission feel satisfied that occupation lasted for four years, but they cannot believe that after that period the condition of the building was such as pictured by the photographs. It is inconceivable that the first local Magistrates would have continuously dwelt in a house, which is represented as a complete ruin. If the building actually has decayed to that extent, the cause must probably be sought in the fact that the repairs were started three years after the end of the occupation, rather than in the occupation itself.

Although the Commission consider it very likely that the occupants, living in a house not their own, did not spend on upkeep anything more than was strictly indispensable, and therefore, that compensation for repairs is rightly claimed, they cannot accept an expenditure of pesos 7,168.44 as a true account of the costs that would have been incurred, in case the house had been restored to its previous condition immediately after it was returned to the owner.

6. The Commission, furthermore, have found sufficient evidence of the allegation that the claimant suffered loss, because he only, from time to time, received rent at the rate of 15 pesos a month, while the rental value was 80 pesos, which, however, in estimating the amount of his loss, he only calculates at the rate of 50 pesos. For this loss he claims 4,800 pesos, being 600 pesos yearly during six years.

The Commission, although allowing that the claimant is entitled to compensation for this item also, have considered that the occupation did not deprive the owner of the use of his house for eight years, because it did not last longer than four years, and the repairs, according to the bill of Julio C. Solórzano, took one year and three months.

The amount claimed is evidently too high, the more so as no reduction is made for the rents from time to time paid by the occupants.

The Commission can only, therefore, accept a part of the amount claimed as proved.

7. The Commission decide that the Government of the United Mexican States are obligated to pay to the British Government on behalf of Mr. James Hammet Howard the sum of 5,000 (five thousand) pesos, Mexican gold.
