

WILLIAM ALEXANDER KENNEDY (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(Decision No. 84, July 22, 1931. Pages 242-244.)

1. In this case the claimant, according to the Memorial, on or before the 18th February, 1916, occupied a house at Tlahualilo, in the State of Durango. About this date Villista forces, numbering some five hundred men, under the direct command of Canuto Reyes, a subordinate of Francisco Villa, attacked Tlahualilo. After a short fight the federal garrison were driven out. The officers

of the Villista forces occupied the claimant's house for several days. Everything in the house, except the heavy furniture, was either carried away or destroyed. The heavy furniture was afterwards found to be in such a damaged state that the claimant was obliged to have it repaired, cleaned and disinfected.

The amount of the claim is 1,267.05 dollars United States currency.

2. The evidence filed with the Memorial was an Affidavit of Mr. W. A. Kennedy sworn at Mexico City on the 27th November, 1927, to which he attached an inventory and valuation of the property destroyed or lost. In this Affidavit, besides deposing himself as to the facts stated in the Memorial, he adds that the only eye-witnesses of the occurrences were the officers of the revolutionary forces themselves, that the Mexican employeés of the Tlahualilo Agricultural Company stayed in their houses, that the foreigners escaped a few moments before the revolutionary forces occupied the place, and that if necessary the Mexican employeés would certify to the accuracy of the facts as stated in his claim.

3. The Mexican Agent with his Answer, filed on the 24th September, 1929, produced certain testimony taken at Tlahualilo before the Municipal President, in which the deponents all testified that, although it was true that the revolutionary forces under Canuto Reyes in superior number attacked and dislodged the Government forces, it was untrue that they occupied the house of the claimant for several days, that they were not there for more than 15 to 20 minutes, and they took nothing but three pieces of bread and three bottles of table wine which were in the larder, and further that on the following day Canuto Reyes and his fellows were pursued by the Government forces, having been dislodged.

4. The further evidence filed by the British Agent consisting of answers to questionnaires, by T. R. Fairbairn and another person whose signature is illegible, taken before Pedro G. Moreno on the 21st November, 1929, was that General Canuto Reyes's forces in superior numbers attacked Tlahualilo on the 18th February, 1916, drove out the federal garrison under Colonel Olivares, of about 150 men, and occupied the principal ranch called Zaragoza, that they plundered the house occupied by Mr. W. A. Kennedy, and used it during the time when those rebels occupied Tlahualilo, and that several articles were destroyed by them. That the contents of the house were exceedingly maltreated, and that it was necessary for the Company to repair and replace some of the furniture owned by the claimant, after the occupation by the rebels, especially the parlour furniture. But they do not state specifically to what extent they plundered the house or destroyed the articles. And they add that very early the next morning the Federal forces evicted them from Zaragoza, but that they had enough time to plunder the house of Mr. T. M. Fairbairn, Assistant Manager of the Company (the deponent) and that of Mr. W. A. Kennedy.

5. The Commission consider it to be established that the attack and occupation of the Claimant's house took place, and that the attacking and occupying forces were Villistas and at that time, the Carranza Government being established, they come within subdivision 4 of Article 3 of the Convention. But they are not satisfied on the evidence that all or a substantial part of the articles claimed as lost and set out in the inventory and list annexed by the Claimant was taken by the said rebels or that the damages claimed for were caused by them. It was, according to the Claimant's Affidavit, a week after the occurrences before he returned to Tlahualilo, and made the inventory of his losses. Moreover, his statement that the rebel forces used his house for several days cannot

be accepted as correct in the face of the other evidence produced by him as recapitulated above. Nor is there any evidence, or any statement in his Memorial that he reported or made known to the authorities his losses, or the damage alleged to have been suffered by him, and attributed to the rebels.

6. The Commission consider that the essential elements, to which they have so frequently drawn attention in previous decisions, requisite for establishing claims of this nature before them are lacking, and that they are unable for this reason to make an Award in favour of the claimant.

7. The claim is dismissed.
