

THE EL PALMAR RUBBER ESTATES (LIMITED) (IN LIQUIDATION)
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 107, August 3, 1931. Pages 316-321.)

1. According to the Memorial, the El Palmar Rubber Estates (Limited) (in liquidation) owned a property situated in the Canton of Zongolica, State of Veracruz. This estate was sown with Hevea oil, Castilloa oil, Arabiga and Maragogipy coffee and large numbers of plane trees, lemons and sugar-canes. In addition to this cultivation there were enclosed poultry runs to the extent of 530 hectares. Cattle and horses were also kept on the estate. In 1910, when the revolutionary movement in Mexico first broke out, the profits of this estate began to diminish and finally, as will be shown later, the whole of the property became a total loss.

The claim has been divided into four main parts: (I) compensation for property taken by revolutionary and other armed forces; (II) compensation for losses due to the enforced evacuation of the property; (III) refund of the cost of bare upkeep of the property during the time of its enforced evacuation; and (IV) indemnity for loss of profits.

PART I

From 1911 onwards armed groups of men passed through the estate, exacting forced loans and confiscating goods; cattle and any other kind of property they could obtain. In some few cases the armed forces gave receipts for the property which they took, but in the majority of cases the leaders of these bands flatly refused to give receipts. Twenty-three receipts have been attached to the claim. It will be observed that these receipts cover losses amounting to 5,656.70 pesos only. Mr. Peragallo, in his affidavit, states that this sum represents a very small part only of the exactions imposed on the property. Mr. Peragallo wrote three letters at different dates to the military leaders who had taken property asking them either to return the property taken or furnish receipts. No replies to these letters were ever received. The amount of the losses from these causes is moderately estimated at 20,000 pesos, Mexican gold.

PART II

On the 29th May, 1915, the Carrancista leader, J. N. Miranda, sent a concentration order, proof of which is given in the evidence given before the Second Court of First Instance of Cordoba. This concentration order gave the inhabitants of the El Palmar Rubber Estates (Limited) and other ranches in the neighbourhood forty-eight hours to concentrate in Acatlán, Tierra Blanca or Córdoba. The general manager of the El Palmar Estate, Mr. Peragallo, knowing that it was impossible to arrange for the safety of the property within the period of forty-eight hours' grace, wrote a letter dated the 29th May, 1915, to Major J. N. Miranda, who had issued the order, explaining how inconvenient it would be for him to obey the order and pointing out that there were fifty families engaged on the estate who would find themselves without work and means of sustenance. He added that the coffee harvest was approaching and that he was then engaged on clearing the sugar-canes, and that if the work was stopped great losses would be incurred. He pointed out also that owing to the lack of transport to the estate it would be impossible to get away the stock, horses, mules and cows, and that if these animals were left on the estate they would be either stolen or killed or would die for want of attention. No reply was given to the manager's request for an extension of the period of grace or for permission to remain on the estate. He then approached the British Vice-Consul at Orizaba in a letter dated the 31st May, 1915. The Vice-Consul was unable to get the order revoked or to obtain permission to leave some person in charge of the estate. The Vice-Consul advised the manager to obey the order of concentration, and before leaving to make an inventory of the property. This inventory was made on the 31st May, 1915, and the value of the goods and property amounted to 107,931.60 pesos, Mexican gold. The whole of the property described in the inventory has become a total loss; the furniture, machinery and tools have been destroyed, and the cattle were either used for food by the military forces or sold by their leaders in neighbouring towns. The coffee and oil plantations have become overgrown by grass and other vegetation, and heavy expenditure and hard labour would be necessary to bring the plantation into bearing again. The poultry runs have been entirely destroyed, and the sugar-canes, after being exploited by the military forces, on the property, were used as pasture for the horses. The houses and buildings on the estate were broken down to obtain material for the use of the military forces. From the date of its evacuation the El Palmar Estate was the headquarters of the military forces who happened to be in charge of the neighbourhood, at times Federal forces and at other times revolutionary forces. When the federal forces, under the command of General H. Jara, entered the estate, Mr. Peragallo wrote a letter calling attention to the state in which the estate then was, and asking for protection from military operations, indicating the losses which the property had suffered and stating that the inhabitants were quite peaceful. No reply was received to this letter. It should be added that two days after the order of concentration was obeyed the manager was able to obtain permission from the military authorities to appoint a caretaker to look after the property as much as possible. The Federal Government of Mexico were fully aware of the losses suffered by this estate, and proof of this is given in a letter from the Finance Department of the 7th May, in which a refusal to remit the land taxes on the property was conveyed to Mr. Peragallo. A certificate given by General P. C. Martínez, on the 3rd June, 1920, states that El Palmar Rubber Estate "has been abandoned in obedience to concentration orders which were issued by the Constitutionalist Government since the month of June 1915".

PART III

Two days after the evacuation of the property the manager was able to obtain military permission to place a caretaker in charge of the property. From that date expenditure was incurred in keeping as far as possible the property in good order. Very little could be done in the circumstances, and it now appears that the expenditure incurred was entirely wasted. The claim includes expenditure incurred from the month of June 1915 to the 31st May, 1920. Monthly statements of expenditure are available for inspection, but have not been printed with this Memorial.

PART IV

The El Palmar Rubber Estates (Limited) has a capital of £145,000. Out of the company's estate of 4,680 acres, 2,948 acres were under cultivation at the time the company was incorporated on the 10th March, 1910. Between that date and the time when the rebels began to loot the estate an extensive programme of planting and improving the estate had been carried out, and the prospects of the company of becoming a prosperous one were very good. Owing to the circumstances described above these prospects were not realized and the company has now been obliged to go into liquidation. It is estimated that if the company had been allowed to proceed peacefully it would have been able to pay an average yearly dividend of at least 4 per cent on its capital. For the purpose of this claim it is assumed that the average profits would be sufficient to enable the payment of a dividend of 2 per cent on the capital to be made. At this low figure the profits would amount to £23,200 sterling for the period the 3rd December, 1912, to the 31st May, 1920. Particulars of the earnings of various other rubber estates are given in Mr. Marsden Banks' affidavit. The lowest average dividend paid by any of these companies is 6 per cent.

There is also a claim for remission of land taxes charged on the estate during the time of the enforced evacuation. A number of applications have been made to the Federal Government for remission of these taxes, but in each case the Government has refused to grant the remission.

The amount of the claim is £23,200 sterling and 189,515.46 pesos, Mexican gold. This amount is composed of 20,000 pesos for compensation for goods taken by revolutionary and other armed forces, 107,931.60 pesos for compensation for losses due to the forced evacuation of the property in 1915, 61,583.89 pesos being the money expended on upkeep during the period June 1915 to May 1920, and £23,200 sterling as an indemnity for loss of profits.

The British Government claim on behalf of the El Palmar Rubber Estates (Limited) (in liquidation) the sum of £23,200, plus 189,515.46 pesos, Mexican gold.

2. *Part I.*—The Commission have found the losses proved, partly by the receipts of the officers to whom the goods had to be delivered, and partly by the three letters of Mr. Thomas Peragallo, filed as annexes 9, 10 and 11 of the Memorial.

The Commission have not been able to identify all the leaders who signed receipts, or who are mentioned in Mr. Peragallo's letters, but sufficient evidence has been shown to satisfy them that several of those leaders must be classified as Constitutionalists, and others as rebels or bandits. The acts of the leaders thus classified, are covered by subdivisions 2 and 4 of Article 3 of the Convention. It has not been shown that any action was taken by the authorities, in so far as they were informed.

The amount claimed has not been proved to the full extent, because (a) not all the leaders could be identified, and (b) not all the figures are substantiated.

The Commission allow, for this part of the claim \$4,300 (four thousand three hundred pesos) Mexican gold.

3. *Part II.*—In the opinion of the Commission the concentration order of the Carrancista leader Miranda has been proved. The order was delivered on the 29th May, 1915, at a time when the Carrancista movement had not yet succeeded in establishing a Government *de facto* or *de jure*. For this reason the Commission cannot consider the order as a lawful act within the meaning of the Convention.

While it is uncertain for how long the concentration order was to be in force, the Commission have found sufficient evidence that revolutionary circumstances made it necessary to leave the property abandoned during several years after the concentration. This is, *inter alia*, proved by annex 12 of the Memorial, being a letter dated the 7th May, 1917, from the Department of Finance of the State.

The alleged losses do, therefore, fall within subdivision 2 of Article 3 of the Convention, and the Commission deem that compensation to the extent of \$80,000 (eighty thousand pesos) Mexican gold, may safely be granted.

4. *Part III.*—The Commission see no ground for allowing an award for expenditure incurred in keeping the property, as far as was possible, in good order. They do not regard this expenditure as a loss, but as a means of avoiding loss.

5. *Part IV.*—The Commission are of opinion that in this case the direct connexion between the facts and the alleged consequences of the same, has not been sufficiently proved to enable them to ground an award upon it.

6. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of the El Palmar Rubber Estates (Limited) (in liquidation), the sum of \$84,300 (eighty-four thousand three hundred pesos) Mexican gold or an equivalent amount in gold.
