

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

J. M. Fraser (Great Britain) v. United Mexican States

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1. As regards the facts on which the claim is based, the Commission refer to their Decision No. 30.

2. The Majority of the Commission have found that the transfer by Mr. Chadwick of his interest in the firm to the late Mr. David Young Henderson has been duly established.

3. Although the losses sustained by the firm, and set out in annex 2 to the Memorial, have been sufficiently proved, the Commission have not, by any document, been enabled to identify the forces that committed the acts.

For this reason, it is not possible to decide whether the events are covered by the Convention.

4. The Commission have also found sufficient evidence in respect of the losses suffered by Mr. Henderson on his ranch La Uranga, and it has been shown, by receipts and other testimony, that those responsible were either Zapatistas or Constitutionals.

As regards the Constitutionals, they fall within subdivision 2 of Article 3 of the Convention. And as regards the Zapatistas, their acts must be regarded as banditry, because they were committed after the establishment of the *de facto* Government of Señor Carranza.

It has been proved that the Municipal President of Cuautlancingo was informed in due time of the occurrences, but it has not been shown that he ever took any action.

The Commission feel bound to consider this as proof of negligence on the part of the competent authorities, and they consequently deem that the claimant is entitled to compensation.

In the opinion of the Commission the amount has been proved up to 10,000 pesos, Mexican gold.

5. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of Mrs. J. H. Henderson, the sum of \$10,000 (ten thousand pesos) Mexican gold, or an equivalent amount in gold.

J. M. FRASER (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 105, August 3, 1931. Pages 309-311.*)

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH.

Evidence *held* to establish that authorities used due diligence in apprehension of bandits guilty of murder of claimant's husband. Claim *disallowed*.

1. This is a claim for compensation for the murder of her husband, Alexander Fraser, by rebels on the 30th July, 1916, at El Pozo, in the State of Guanajuato, Mexico.

It is alleged in the Memorial that the late Mr. Alexander Fraser was the general manager of the Cob. Negociación Minera Angustias Dolores y Anexas at Pozo, Guanajuato. On the 31st July, 1916, Mr. Fraser had just left the Hacienda de Beneficio and was proceeding towards the mine by a tram-route, which passes nearby. Four armed horsemen approached by a path from the high ground in the direction of the electric light plant and called to Mr. Fraser to stop. Mr. Fraser did not take any notice, and it is quite possible that he did not hear them call, as he was deaf. One of the horsemen fired a shot

which did not hit Mr. Fraser, and thereupon Mr. Fraser stopped to talk to them. While he was talking one of the four horsemen shot him. Three more shots were fired. When it was possible to reach Mr. Fraser it was found that he was dead. It is understood that the person in command of the rebels was General J. Jesús Núñez, and that one of the men who fired the shots was Pedro Villanueva. Mr. Fraser's watch was stolen and his wallet was found empty a few yards away from the body. The rebels then proceeded to the office of the mine, where they took 20,000 pesos in infalsificable notes and 1,000 pesos in gold. From there they went to the village of Pozos, and after having stolen various things, left in the direction of the Hacienda de Santa Ana.

On the next day an investigation as to the cause of Mr. Fraser's death was made before the Municipal Judge of Pozos. A warrant for the capture of General Núñez and Pedro Villanueva was issued on the 2nd August, 1916, but these two persons were never captured. There was no guard in the town of Pozos to protect its inhabitants and the interests of the mine.

The amount of the claim is £5,000 sterling or a pension of £150 per annum for life. In view of the nature of Mr. Fraser's employment, His Majesty's Government consider this claim to be very reasonable.

The claim, which was filed at the Foreign Office on the 28th June, 1926, did at the time of the murder, and still does, belong solely and absolutely to the claimant. A report of the murder of the claimant's husband was made to His Majesty's Government at the time. On the 4th August, 1916, His Majesty's Minister in Mexico addressed a note on the subject to General Candido Aguilar, Minister of Foreign Relations of the then *de facto* Government of Mexico. No claim for compensation has been filed with the Mexican Government, nor has the claimant ever received compensation from the Mexican Government or from any other source.

The British Government claim on behalf of Mrs. Johanna M. Fraser the sum of £3,000 sterling or a pension of £150 per annum for life as from the 1st August, 1916.

2. The Commission have found proved the facts on which the claim is based. There is also sufficient evidence that the murder was committed by bandits under J. Jesús Núñez and Pedro Villanueva.

3. In order to decide whether Mexico is to be held financially liable for the murder, it is necessary to examine the question as to whether any negligence on the side of the competent authorities has been established.

The Commission have come to the conclusion that this is not the case, because the annexes to the Memorial and the evidence filed by the Mexican Agent show that:

(a) At about six o'clock in the evening after the murder, some fifty Carrancista troops arrived at Mr. Fraser's Hacienda de Beneficio, having been sent by the Commanding Officer at Pozos.

(b) Those troops proceeded in pursuit of the bandits at 5 p.m. on the following evening.

(c) On the 2nd August, 1916, the local tribunal issued a warrant for the capture of the two aforesaid individuals.

(d) On the 24th August, 1916, this warrant was broadcast.

(e) Both bandits were finally killed.

(f) The British Chargé d'affaires in a letter of the 4th August, 1916, expressed to the Mexican Minister of Foreign Relations his appreciation of the activity shown by the Governor of Guanajuato.

That being so, the Convention does not entitle the Commission to grant an award.

4. The claim is disallowed.

JAMES W. HAMBLETON (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 106, August 3, 1931. Pages 311-316.*)

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH.—DILATORY ACTION BY AUTHORITIES. British subjects were attacked and robbed by armed forces, of which immediate notice was given by telephone to commander of Government forces stationed only a ten minutes' walk away. Notice was also given by telephone to the local judge. Troops arrived an hour and a half later and the judge arrived some four hours later. No action was taken by the civil or military authorities to apprehend and punish the guilty. *Held*, responsibility of respondent Government established.

DEATH OF CLAIMANT, EFFECT OF—UPON CLAIM FOR PERSONAL INJURIES. British Agent ceased to press claim for personal injuries following death of claimant.

DAMAGES, PROOF OF. A lump sum award granted for stolen property and personal injury, together with expenses which the latter entailed. When claimant left his house more than a year prior to the alleged looting of it by armed forces which had occupied it, evidence of loss *held* insufficient.

PUNITIVE DAMAGES. A punitive award *held* not to be justified.

1. The Memorial brings forward two claims. The first claim is in respect of damages for personal injuries and robbery at the hands of armed men at Parral on the 12th February, 1912; the second in respect of the looting of the house and office of Mr. James W. Hambleton at Parral during the years 1916-17 inclusive by Villistas and Federal troops.

Mr. James W. Hambleton died on the 21st April, 1925, leaving a will appointing his wife, Margarita Flores, sole executrix and heiress of all his property. Mrs. Hambleton is now the sole claimant.

Claim 1

The facts are set out in an affidavit made jointly by James W. Hambleton, a British subject, and Margarita Flores, the wife of James W. Hambleton, on the 5th April, 1913, before a notary public in and for the County of El Paso, Texas.

Mr. James W. Hambleton was established in Parral City, Chihuahua, as agent of the Compañía Metalúrgica de Torreón at that place, and was also engaged in mining and ore-buying on his own account. On the 12th February, 1912, Mr. Hambleton was living in his house near the railway station at Parral with his wife and three children. At 8 o'clock in the evening the family had almost finished their dinner, when, without warning, the front door was flung open and a masked man armed with a pistol jumped into the room,