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Frederick W. Stacpoole (Great Britain) v. United Mexican States

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alone alleges the presence of military forces at the time of the confiscation, was not himself on the spot at the time, I concur in the view of my colleagues that the existence of the second condition referred to above has not been established, and that, therefore, the claim must be disallowed.

FREDERICK W. STACPOOLE (GREAT BRITAIN)
v. UNITED MEXICAN STATES.

(*Decision No. 14. February 15, 1930, dissenting opinion (dissenting in part) by Mexican Commissioner. January 29, 1930. Pages 124-130.*)

AFFIDAVITS AS EVIDENCE.—DAMAGES. PROOF OF. An affidavit of claimant, made shortly after the loss, supported by an affidavit of a companion, made seven years after the loss, *held* sufficient evidence of circumstances of loss. Such affidavits *held* sufficient evidence of items of property lost, even though supporting affidavit was not fully corroborative, when such items could reasonably in the circumstances have been possessed by claimant. Affidavit of claimant as to value of item lost *held* not sufficient evidence and excessive. Tribunal instead estimates damages to be awarded.

1. The Memorial, filed by the British Agent, sets out that on the 4th May, 1920, Mr. Stacpoole left the Hacienda de Guadalupe, near Sultepec, with Mr. R. J. H. Danley for Mexico City owing to the danger to person and property from the numerous soldiers in that neighbourhood. About 2.30 on the same day they were stopped near Sultepec by a number of Obregonistas. They were threatened and insulted by these men and ordered to proceed with them to headquarters. On the way there, Mr. Stacpoole's pack mule, together with all their baggage, was taken away. At the headquarters an officer demanded that they should hand over their animals, saddles and their belongings. They requested permission to retain them for riding to Sultepec, where they promised to arrange matters with the Obregonistas. This request was refused and they returned to Sultepec on foot. Every effort was made to obtain the return of this property, but the next day, the 5th May, Mr. Stacpoole recovered his mule and raincoat only. On the following days he made attempts to recover his property in Toluca, but without success. At the time of the robbery Mr. Stacpoole produced a safe-conduct signed by General Pablo Gonzalez, and a card from the Ministry of War authorizing him to carry arms. These documents were not respected.

The amount of the claim is for \$475.50 (four hundred and seventy-five pesos, fifty centavos).

2. The British Agent produced an affidavit of Mr. Stacpoole before the acting British Consul-General in Mexico City, dated the 5th June, 1920, and an affidavit of the afore-mentioned Mr. Danley before the acting British Vice-Consul in Mexico City, dated the 14th July, 1927. Mr. Danley was at the time of the hold-up and at the time he signed his affidavit Vice-President and General Manager of the Sultepec Electric Light and Power Company, and lived at Toluca. He confirms the facts set out in the affidavit of Mr. Stacpoole.

3. The Mexican Agent contended that as Mr. Danley, being an American citizen, had sworn his affidavit before a British Vice-Consul in Mexico, and could accordingly not be prosecuted either in Mexico or in the United States

or in England, in case of his having made a false statement, his assertions could not be relied upon. He denied that Mr. Stacpoole or Mr. Danley could know that the men who stopped them were Obregonistas, in consequence of which it had not been proved that the facts fell within Article 3 of the Convention. Neither could the Agent see in Mr. Danley's statement any evidence as to the amount, of the loss for which Mr. Stacpoole claims.

4. The British Agent argued that the two affidavits corroborate each other and constitute at least a *prima facie* case, against which his colleague had failed to produce any rebuttal. He thought the statements worthy of acceptance, and the amount, which Mr. Stacpoole claims, fair and reasonable.

5. The Commission by a majority judges Mr. Danley's affidavit a sufficient support of the statements of claimant. Mr. Danley travelled with Mr. Stacpoole, when the events set out in the Memorial occurred. He is himself not interested in the decision on the claim, and it is difficult to see why he should have committed perjury. There is no conflict whatever between both statements, and the time elapsed since the events is not too long to assume that an eye witness could still remember them in 1927. It is equally comprehensible that men like Mr. Stacpoole and Mr. Danley, who lived in the part of the country where they met the troops, and who had left their homes in order to bring themselves into safety, were sufficiently informed about the state of affairs to be able to know to which of the contending forces the assailants belonged.

The majority of the Commission is the more inclined to admit the evidence that has been shown, because, as the Mexican Agent informed the Commission, it has not been possible to trace the declaration of Mr. Stacpoole, according to his statement, made on the 4th May, 1920, before the Municipal President of Sultepec, which declaration, if it could have been obtained, would possibly have been evidence of a stronger quality.

In these circumstances the majority of the Commission is convinced that on the 4th May, 1920, the claimant was met by Obregonistas and that they took part of his property. As the Obregonistas at the time of the occurrences were to be considered as "revolutionary forces, which, after the triumph of their cause, have established Governments *de jure* or *de facto*" (subdivision 2 of Article 3 of the Convention), the members of the Commission, whose view is here expressed, deem that the obligation of the Mexican Government to compensate the loss exists.

6. The last question to be answered touches the objects which were taken and the value that must be ascribed to them. There is no absolutely convincing evidence in this respect, as there will hardly ever be in similar circumstances. It cannot be expected that Mr. Stacpoole was able to establish the pre-existence of what he claims as lost, neither could his companion possess knowledge in this matter. Mr. Danley does not mention more than a revolver, a raincoat (which was afterwards recovered), cash and other articles.

As the majority of the Commission explained in the decision on the claims of *Messrs. Baker, Webb and Woodfin* (Decision No. 12), it does not admit that, once the facts having been admitted as proved, the mere absence of detailed evidence as to the exact amount of the loss, justifies to disallow the whole claim. In this particular case, the Commission cannot estimate the enumeration, given by Mr. Stacpoole of the articles which he had to surrender, as exaggerated. The objects which he mentioned are certainly not more than a man who tries to save himself and his property, is likely to carry with him. But the Commission holds another view as regards the value, which the claimant attributes to each of his belongings. This estimate is considered as being, for nearly all the

items, on too high a level, and the Commission does not feel at liberty to adopt it.

7. The Commission decides that the Government of the United Mexican States is obligated to pay to the British Government on behalf of Mr. Frederick W. Stacpoole the sum of 300.00 (three hundred) pesos Mexican gold.

Dissenting opinion of the Mexican Commissioner in the Decision rendered in this Claim only as regards the Probative Value of the Depositions of Claimant and those of the Witness, Robert J. Danley

I. Claimant avers in his affidavit that he left the "Guadalupe" ranch, near Sultepec, State of Mexico, for the City of Mexico, on the 4th May, 1920, accompanied by R. J. H. Danley, on account of the danger then existing for life and property on the part of the numerous soldiers marauding in that vicinity; that they were stopped at 2.30 p.m. by some Obregonist soldiers under the leadership of General Crisóforo Ocampo; that they were threatened and insulted by these men and ordered to go with them to headquarters; that on their way, some of the men took away Mr. Stacpoole's pack mule and his luggage; that, on reaching headquarters they were ordered by an officer to hand over their horses, saddles and all their belongings, which they did, notwithstanding the request made by Mr. Stacpoole himself to be allowed to keep his belongings in the hope of arranging the matter in Sultepec with the Obregonistas; that on the following day he recovered the mule and his water-proof, but not the other things, the list of which appears in the affidavit, with their respective values.

Mr. Stacpoole also mentions Mr. Hughes as a witness in connexion with his efforts to recover the articles taken away from him, stating that on the 4th May he made a deposition before the Mayor, Mr. Nicolás Loza, and several Government employees and officers, identifying the men who had robbed him.

Mr. Robert J. H. Danley, an American citizen, declared before the British Consul at Mexico City on the 14th July, 1927, under oath, that he left the "Guadalupe" ranch, for Mexico, on the 4th May, 1920, accompanied by Mr. Frederick W. Stacpoole and a servant; that, on their way they met Obregonista troops, who, pointing their rifles at them, ordered them to halt; that said troops informed them that they were under General Crisóforo Ocampo; that they were deprived of their cash and other belongings and then arrested by these soldiers and taken to headquarters; that on their way to headquarters they took from them a mule led by a servant and carrying Mr. Stacpoole's luggage; that, once at headquarters, the officers and other men took their saddles from them; that he cannot testify just what the losses sustained by Mr. Stacpoole were, but he did know that he lost his revolver, his water-proof, the cash he had with him and other articles.

The Mexican Commissioner considers that the evidence produced by the British Government to establish the claim is very deficient and does not warrant a judgment against the Mexican Government for the amount claimed.

The statement of the claimant, Mr. Stacpoole, can never be considered, by itself, as sufficient proof of his own claim. Claimant's deposition, called an *affidavit* in Anglo-Saxon technical terms, is the equivalent of what is known as "confession" in the legislation of all countries of Latin origin. Confession, as an element of proof, is always applied against, and never in favour of the person making it. The opposing party generally makes use of that proof to be able to demonstrate, thereby, the fact he wants to submit, in an irrefutable manner, to the consideration of the judge for, evidently, there cannot be stronger proof

against the person making it than his own confession. This proof generally relieves the person making use of it, from producing other proofs on the same fact, and thus they say in Law: an admission by the party himself dispenses with proof.

The difference between confession and testimonial evidence is that the person making it is always one of the contending parties. Testimonial evidence generally emanates from persons who are strangers to the suit. In either case, both the one answering an interrogatory and the one declaring as a witness must do so under affirmation as to speaking the truth. The purpose of such affirmation is to warn the person confessing or the one declaring, as to the commission of the offence known as perjury, in case they do not speak the truth. The deponent is thus constrained to speak nothing but the truth, knowing that he will otherwise be prosecuted. That is why the affirmation of the person testifying is indispensable, whether he is a witness or a party directly interested, and why it is necessary that it should be made before a competent authority so as to produce all the corresponding legal effects. The declaration or confession, thus taken, constitutes a guarantee for the judge as well as for the opposite party, because he knows that a witness testifying against him can be cross-examined in order to make sure as to the truth sought after.

The foregoing principles, governing confession and testimonial evidence, once laid down, we shall now endeavour to examine the affidavits of Mr. Stacpoole and Mr. Danley, in order to arrive at the conclusion contained at the beginning of this study to the effect that the facts asserted in the affidavit have not been established either by the sworn statement of Mr. Stacpoole or by that of Mr. Danley.

The sworn statement made by Mr. Frederick W. Stacpoole before the British Consul in Mexico City has not the necessary guarantee for it to be held valid, for it is the claimant himself, who, in his own interest, makes same, and it would only be valid in whatever could be detrimental to him. His confession should, therefore, be looked upon with distrust, and, in no way, as sufficient in itself to prove the fact dealt with.

Mr. Danley's affidavit, not contemporaneous with the events, is still in worse condition to be considered as sufficient proof than that of Mr. Stacpoole, because he, being an American citizen, made his deposition before a British Consul to whom he probably was not known. Consequently, Mr. Danley's affidavit has not the safeguard, for the judge, in case there should be a false declaration, of its being possible to prosecute him for perjury, because he is neither a British subject nor a Mexican citizen. In other words, this witness could knowingly have made a mis-statement, feeling sure he was not incurring real responsibility. And a witness in such a condition does not deserve to be looked upon as such before any authority. His testimony has not the slightest weight in the balance of justice.

The learned Presiding Commissioner called upon the British Agent to state Mr. Danley's address and asked him whether he could produce him before the Commission. The British Agent replied that he did not know Mr. Danley's address, and that he could not, therefore, produce him, adding that he considered Mr. Danley's affidavit as sufficient, and that only in exceptional cases would the witnesses be able to appear before the Commission. This admission by the British Agent further weakens the probative value of Mr. Danley's affidavit, for, as the proof devolves on the British Agent, he should do his utmost to grant the request of the Presiding Commissioner, and show, in the last event, that production of the witness was not feasible.

The Mexican Assistant Agent showed before the Commission that he had

endeavoured to identify General Crisóforo Ocampo, by writing to the proper authorities, without any result.

It is to be regretted that the British Agent did not produce the witness, Mr. Hughes; that he did not produce the report of the proceedings held before the Mayor of Sultepec, Mr. Nicolás Loza, and the Government employees and officials referred to by Mr. Stacpoole in his affidavit (annex 1). The statement made by the servant accompanying Messrs. Stacpoole and Danley, referred to in annex 2, could also have been produced as evidence. This omission on the part of the British Agent makes it necessary for the Commission to dismiss the claim for lack of proofs, which should have been, but were not produced, without explaining the reason for said omission, for, if it is true that Mexico's responsibility should be determined according to equity and justice, this circumstance does not relieve the British Government from proving the facts on which they base their claim.

To declare a Government liable on the strength only of the depositions of the claimant and of a single witness, open to the objections mentioned above, would constitute a disregard for the general principles of Law followed by all International Claims Commissions which have always required conclusive proof before pronouncing judgment.

II. In order to show that the forces to which is ascribed the wrongful withholding of the objects for which claim is made were Obregonistas, to show also that the objects so wrongfully withheld were those listed by Mr. Stacpoole; and, to establish the value of these objects, there are no proofs other than the claimant's deposition and that of the witness, Mr. Danley. The Mexican Commissioner again invokes the arguments already advanced to maintain that such elements of proof are not sufficient to enter judgment against the Mexican Government, and for this reason regrets that he does not agree with his colleagues as regards the estimation of that evidence and holds that the claim in question should be disallowed.

A. H. FRANCIS (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 15, February 15, 1930. Pages 131-132.*)

DENIAL OF JUSTICE.—FAILURE TO PROTECT.—FAILURE TO SUPPRESS OR PUNISH.

When murderers of British subject were apprehended and executed within two weeks of the commission of the crime and when no evidence was produced that the authorities had failed to take reasonable measures to protect the neighbourhood, claim *disallowed*.

Cross-reference: Am. J. Int. Law, Vol. 25, 1931, p. 773.

1. This is a claim on behalf of the widow of Mr. Thomas Francis, a British subject, who was murdered by a party of Mexicans on the 9th December, 1914, on the road about six miles north-east from the San José mining property in the State of Sonora.

2. There is no serious difference of opinion between the parties as to the facts, which may be summarized as follows: Mr. Thomas Francis, in the latter part of 1914, was working a mining property near the town of Nacozari, in the State of Sonora, on lease from the owner, Mr. Montgomery, and his family were residing at Douglas, in the State of Arizona, U.S.A. On the 9th December