

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

---

**RECUEIL DES SENTENCES  
ARBITRALES**

**A. H. Francis (Great Britain) v. United Mexican States**

15 February 1930

VOLUME V pp. 99-100



NATIONS UNIES - UNITED NATIONS  
Copyright (c) 2006

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

Mr. Francis wishing to visit his wife, who was ill, started to ride across country to Douglas with two companions, it being necessary to go by road as the railway line had been cut during revolutionary hostilities. On the way they were ambushed by a party of Mexicans and all killed. The bodies were found the same day by a servant of Mr. Montgomery, who at once informed the authorities at Nacozari. The Commandant of that town, the local Judge and fifteen soldiers arrived that evening, proceeded next day to the place of the crime, found the bodies, which had been robbed and mutilated, and took them to Nacozari.

3. A judicial investigation was immediately commenced and on the 13th December two Mexicans, José Escalante and Estedin Cruz, were arrested in possession of some of the effects of the murdered men. The accused admitted their crime; were convicted, and, by order of General Benjamin Hill, were shot on the 21st December. There is some doubt as to whether the murderers were employees of the deceased and committed the murder for personal reasons, or whether they were bandits, and their object was robbery. But the Commission is of opinion that this point is immaterial, for, even on the latter assumption, the Mexican Government would only be liable in damages for the murder by virtue of Article 3, Subsection 5, of the Convention if the authorities omitted to take reasonable measures to suppress the acts of brigandage, or to punish those responsible for the same, or were blamable in some other way.

4. Now it is evident that the criminals were punished with exceptional promptitude, seeing that they were executed within a fortnight of the crime, and the only ground, therefore, upon which the British claim can be based is that the authorities omitted to take reasonable measures to suppress the offence or to protect peaceful citizens residing in the neighbourhood.

5. There is no direct evidence whatever of negligence on the part of the authorities, and the British Agent did not even suggest any specific measures that they should have taken. In no country in the world can isolated crimes of this nature be prevented, and even if, in view of the disturbed state of the country, the Mexican authorities had regularly patrolled the road, it cannot be said that this would necessarily have prevented the murder. Moreover, it is admitted in the claimant's affidavit that Mr. Francis had, on previous occasions, made trips between the mining property and the city of Douglas with perfect safety. The authorities, therefore, had no reason to anticipate that there was any special danger on the road which he took on this occasion.

6. The Commission consequently is of opinion that no omission or other fault has been established against the Mexican authorities and that the claim must be rejected.

#### *Decision*

The claim of His Britannic Majesty's Government on behalf of Mrs. A. H. Francis is disallowed.

---