

CHARLES E. TOLERTON (U.S.A.) *v.* UNITED MEXICAN STATES.

*(July 15, 1927, concurring opinion by American Commissioner, July 15, 1927.
Pages 402-403.)*

Van Vollenhoven, Presiding Commissioner :

1. Claim is made by the United States of America in behalf of Charles E. Tolerton, an American national, who, as a member of a party of six Americans, was attacked in the afternoon of January 19, 1905, between the ranch Tasajera, Sonora, Mexico, and Covache, Sonora, Mexico, by a group of Yaqui Indians; who succeeded in saving his life; but who suffered from the occurrence a mental shock and material damages for which, it is alleged, Mexico is liable on the grounds of lack of protection of the claimant and lack of prosecution and punishment of his assailants. The United States claims reparation and satisfaction in the sum of \$50,000.00.

2. From the record, lack of protection is not convincingly proven. The claimant testifies that when their party (then seven gentlemen and a lady) was about to leave La Colorada, Sonora, for their trip to a mining camp some one hundred miles off, they had a written order from the civil and military authorities at Hermosillo, the capital of Sonora, for an escort of soldiers; but that they were refused such escort by the local military authorities at La Colorada on the ground that their party was too large to need one. The American Consul at Nogales, Sonora, relates a statement by Tolerton and another member of his party, who had the good fortune to escape, Miller, according to which they were refused an escort at La Colorado on the pretext of the horses being tired. The Governor of Sonora, however, states that the party was given the opportunity of an escort pursuant to the orders from Hermosillo, but that, on the instigation of the said Miller, they were unwilling to wait for it. Evidence submitted by Mexico with reference to the Mexican policy as to granting escorts in Sonora at that period renders the uncorroborated statements of the claimant and his associate (who has filed a separate claim) improbable.

3. As to lack of prosecution and punishment, two different contentions are submitted. One is Tolerton's statement to the effect that when, after having reached Covache on January 19 and visited the Tasajera ranch, he returned to Covache on January 20 about 7 p. m., he found there some forty or fifty Mexican soldiers under an officer who had been expressly sent from La Colorada to persecute the assailants, but were intoxicated and unwilling to take the field. This statement is unsupported. The other contention alleges that the assailants never were prosecuted or punished. It seems impossible to consider this contention disproven by so loose and strange a statement as that made on March 4, 1905, by the Governor of Sonora and reading that "several of the murderers were captured by myself and made them pay with their lives for the crime committed and

we are in active pursuit of the balance"; but there is not sufficient evidence that in this region and this period the Mexican Government could successfully have taken other measures than those of the character of military expeditions against Yaqui Indians as it repeatedly dispatched. Therefore, there would not seem to be sufficient proof warranting a pronouncement of improper lack of prosecution.

4. On the above grounds, the claim should be disallowed.

Nielsen, Commissioner :

I am of the opinion that the claim must be disallowed on the sole ground that there is not sufficient evidence convincingly to prove either the lack of proper protection or the absence of appropriate steps to apprehend and punish the persons who attacked the party of which Tolerton was a member.

Fernández MacGregor, Commissioner :

I concur in the disallowance of the claim for the reasons expounded by my two colleagues.

Decision

On the above grounds the Commission decides that the claim presented by the Government of the United States of America on behalf of Charles E. Tolerton must be disallowed.
