

F. R. WEST (U.S.A.) *v.* UNITED MEXICAN STATES.

*(July 21, 1927, concurring opinion by American Commissioner, July 21, 1927.
Pages 404-407.)*

Van Vollenhoven, Presiding Commissioner :

1. Claim for damages in the amount of \$25,000.00 is made in this case by the United States of America on behalf of F. R. West, an American national, on account of the murder of his son Edgar G. West, an American oil well driller, near Nanchital, Veracruz, Mexico, on December 2, 1922, by Mexican bandits who thereafter were granted amnesty by Mexico. The murder was an ordinary case of wanton killing and robbery void of any political background, West being a member of a party of some nine Americans, two Mexicans and one Chinese, who took the pay roll of their oil company (El Aguila, S. A.) from Puerto México, Veracruz, to Ixhuatlán, travelling first by boat and thereafter by gasoline motor train. About 8.30 a. m. this train was fired upon from ambush by some fifteen bandits, who

killed West, another American (a tool dresser by the name of Snapp), and the Mexican motorman, took the pay roll and the watch of one of the party, and disappeared. About 10.30 a. m. a Mexican officer with some one hundred soldiers arrived on the spot, but did not apprehend the culprits. On December 30, 1922, the Mexican Government issued an amnesty act, which—it is alleged—was interpreted by the Mexican President on August 21, 1923, so as to cover the murder of West and Snapp. The perpetrators, as far as the record shows, never were either prosecuted or punished.

2. The nationality of the claim, which was challenged, would seem to have been sufficiently proven under the principles asserted in paragraph 3 of the opinion in the *William A. Parker* case (Docket No. 127),¹ rendered March 31, 1926.

3. There would seem no doubt but that granting amnesty for a crime has the same effect, under international law, as not punishing such a crime, not executing the penalty, or pardoning the offense. If proven, it fastens upon Mexico an indirect liability. Article 1 of the decree of December 30, 1922, which is the pertinent provision here, reads (translated): "Amnesty is hereby granted to those guilty of rebellion and sedition and any act committed in connection therewith up to the date of the publication of the present act and beginning with the year 1920". On August 21, 1923, the undersecretary of the Mexican Home Office wrote to the El Aguila Company the following letter (translated) :

FEDERAL EXECUTIVE POWER,
DEPARTMENT OF INTERIOR.

Despatch No. 3346. Number 7870.

Subject : That it is not possible to accede to the petition as stated in the enclosure herewith attached.

COMPAÑÍA DE PETRÓLEO "EL AGUILA." S. A.,
Avenida Juárez 92, 94, City.

In reply to your courteous memorial of the 4th instant, in which the aid of the President of the Republic is requested in order to prosecute the rebel leader Protasio Rosales and his followers, who were recently granted amnesty, for having been the authors of the attack committed December 2 of last year, upon the group of oil well drillers returning to their camps at Ixhuatlán, in which attack two Americans and one Mexican were killed, by advice of the First Magistrate, I have to state that the rebel Protacio Rosales and his followers having been granted amnesty by the War Department in accordance with what is ordered in the decree of December 30, last, for the crimes of rebellion and sedition and related crimes, and one of these latter being dealt with in the concrete case now denounced, it is not possible to accede to your request.

Universal suffrage. No reelection.

THE UNDERSECRETARY:
(S.) VENEZUELA.

MEXICO, D. F., AUGUST 21, 1923.

When, on October 4, 1923, the oil company inquired of the Mexican Home Office, whether there had not been a misunderstanding in applying the amnesty act to the perpetrators of the crime of December 2, 1922, the

¹ See page 35.

chief clerk of the Division of Justice replied under date of October 11, 1923, that the company "should make application to the proper authorities as this Department has no power to institute any investigation concerning the aforementioned case".

4. It is not for this Commission to interpret the amnesty act; the only point of importance is how Mexico construed it. In this respect the letter of August 21, 1923, leaves no doubt. It states that it is written on behalf of the President himself; it establishes that it relates to the perpetrators, known or unknown, of the "concrete" crimes of December 2, 1922; and it contends that these crimes cannot be prosecuted because of the fact that they are within the scope of the amnesty act. The subsequent letter of October 11, 1923, fails to contain any statement to the contrary made on behalf of the President of the United Mexican States.

5. Mexico alleged that the letter of August 21, 1923, could not purport to interpret or construe the amnesty act, since the President and the Home Office were not authorized to construe it, but the judiciary only. It would seem that the first part of this contention is disproven by the text of the letter.

6. Mexico alleged that after receiving the second letter dated October 11, 1923, it would have been the duty of the oil company to have proceedings initiated in order to give the judiciary an opportunity to decide whether the amnesty act was applicable to West's murder. There is nothing in the amnesty act which suggests the existence of such a duty.

7. Since Mexico has issued an amnesty act and since the President of Mexico has held that it covered the murder of West, Mexico has granted amnesty to West's murderers, and has voluntarily deprived itself of the possibility of prosecuting and punishing them. The indirect liability which it thereby incurred would seem to be expressed best by awarding the claimant a sum of \$10,000.00, without interest.

Nielsen, Commissioner :

I concur in the conclusion of the Presiding Commissioner with regard to responsibility on the part of Mexico in this case. It is clear that proper steps were not taken to apprehend the murderers of West. Whatever may be the proper construction and application of the amnesty mentioned in the Presiding Commissioner's opinion, the reference to it in the record serves to furnish conclusive evidence with respect to the failure on the part of the Mexican authorities to take steps looking to the apprehension and punishment of those who attacked the party of which West was a member.

Fernández MacGregor, Commissioner :

I concur in the Presiding Commissioner's opinion.

Decision

The Commission decides that the Government of the United Mexican States is obligated to pay to the Government of the United States of America, on behalf of F. R. West, \$10,000.00 (ten thousand dollars), without interest.