

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Representatives of Elizabeth Cadenhead (Great Britain) v. United States**

1 May 1914

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nine pounds eight shillings nine pence (£ 849. 8s. 9d.) with interest at four per cent (4%) from December 9, 1902, to April 26, 1912.

REPRESENTATIVES OF ELIZABETH CADENHEAD  
(GREAT BRITAIN) *v.* UNITED STATES

(May 1, 1914. Pages 506-508.)

RESPONSIBILITY FOR ACTS OF MILITARY FORCES.—MILITARY DUTY: MUNICIPAL LAW, RULING OF MILITARY COURT. On July 22, 1907, Miss Cadenhead killed by rifle shot fired by United States private soldier at escaping military prisoner on public highway. Whether or not soldier acted in conformity with military duty is question of municipal law of United States. Such conformity established by United States military court.

DENIAL OF JUSTICE.—SPECIAL CIRCUMSTANCES.—RIGHTS OF ALIENS: GENERALLY RECOGNIZED RULE OF INTERNATIONAL LAW.—PERSONAL PECUNIARY LOSS OR DAMAGE. No denial of justice shown, nor special circumstances, nor grounds of exception to generally recognized rule of international law that foreigner within United States is subject to its public law and has no greater rights than nationals of that country. No personal pecuniary loss or damage to relatives or legal representatives of victim (reference to Schedule of Claims, clause III).

EXTRAJUDICIAL ACTION. Tribunal suggests that United States consider possibility of compensation as act of grace.

*Cross-reference:* Am. J. Int. Law, vol. 8 (1914), pp. 663-665.

*Bibliography:* Nielsen, p. 505.

His Britannic Majesty's Government present a memorial in this case "in support of the claim respecting the killing of Elizabeth Cadenhead", a British subject, who left next of kin her surviving as stated in annex 1 of the memorial, all of whom are British subjects. The amount claimed as compensation for the death of Miss Cadenhead is twenty-five thousand dollars (\$25,000).

The death of Miss Cadenhead occurred under the following circumstances:

July 22, 1907, Miss Cadenhead with her brother, George M. Cadenhead, and Katharine Fordyce Cadenhead were at Sault Ste. Marie, a city in the State of Michigan, United States of America; it was about 3.30 p.m. and they were returning to the city from a visit to a military post named Fort Brady, the entrance of which is situated on a public highway called South Street. They were proceeding along the sidewalk of South Street, and when at about two hundred yards from the entrance of the Fort, Miss Cadenhead was hit by a rifle shot and instantly killed.

The shot was fired by a private soldier belonging to Company M of the Seventh Infantry, garrisoned at Fort Brady, and was aimed at a military prisoner who was escaping from his custody when at work just at the entrance of the Fort on South Street, by running easterly along the sidewalk on that street in the rear of the Cadenhead party.

His Britannic Majesty's Government contend that this soldier was not justified in firing upon an unarmed man on a public highway, that he acted unnecessarily recklessly, and with gross negligence, and that compensation should be paid by the Government of the United States on the ground that under the circumstances it was responsible for the act of this soldier.

The question whether or not a private soldier belonging to the United States Army and being on duty acted in violation of or in conformity with his military duty is a question of municipal law of the United States, and it has been established by the competent military court of the United States that he acted in entire conformity with the military orders and regulations, namely, section 365 of the Manual of Guard Duty, United States Army, approved June 14, 1902.

The only question for this Tribunal to decide is whether or not, under these circumstances, the United States Government should be held liable to pay compensation for this act of its agent.

It is established by the evidence that the aforesaid orders under which this soldier, who fired at the escaping prisoner, acted, were issued pursuant to the national law of the United States for the enforcement of military discipline, and were within the competency and jurisdiction of that Government.

It has not been shown that there was a denial of justice, or that there were any special circumstances or grounds of exception to the generally recognized rule of international law that a foreigner within the United States is subject to its public law, and has no greater rights than nationals of that country.

Furthermore, no evidence is offered and no contention is made as to any personal pecuniary loss or damage resulting to the relatives or legal representatives of the unfortunate victim of the accident, and it is to be noted that this is a pecuniary claim based on alleged personal wrongs of nationals of Great Britain, as appears from its inclusion in clause III of the Schedule of Claims in the Pecuniary Claims Convention, under which it is presented.

Under those conditions the Tribunal is of the opinion that in the circumstances of this case no pecuniary liability attaches to the Government of the United States.

It should be said, however, that it may not have been altogether prudent for the United States authorities to permit prisoners under the charge of a single guard to be put at work just at the entrance of a fort on a public highway in a city, and order or authorize that guard, after allowing one of these prisoners to escape under these circumstances, to fire at him, while running along that highway.

This Tribunal, therefore, ventures to express the desire that the United States Government will consider favorably the payment of some compensation as an act of grace to the representatives of Miss Cadenhead, on account of the unfortunate loss of their relative, under such distressing circumstances.

*On these motives*

The Tribunal decides that with the above recommendation, the claim presented by His Britannic Majesty's Government in this case be disallowed.

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OWNER OF THE *FREDERICK GERRING*, Jr. (UNITED STATES)  
v. GREAT BRITAIN

(May 1, 1914. Page 577.)

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SEIZURE OF FISHING VESSEL OFF NOVA SCOTIA.—SETTLEMENT OF CLAIM. Claim made by the United States on account of seizure on May 25, 1896, and subsequent condemnation and confiscation of American fishing vessel *Friede-*