

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Francisco Quintanilla (United Mexican States) v. United States of America

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to acts of officials in the exercise of their official capacity), thereby showing that he did not feel sufficiently convinced of their having acted in self-defense. The Attorney General, on the contrary, in confirming the first decree, discharged Solís on account of clause VIII of said article, which exclusively relates to self-defense. If the Mexicans in mortally wounding Swinney acted in self-defense, the case would have been different from their shooting a man who only did not approach, but rowed away; in his decision the Attorney General merely discarded the statements opposing those of his national officials, who at the same time were the accused. The Commission has great difficulty to understand why the royal road of an open trial has been avoided.

7. The respondent Government has not denied that, under the Convention of September 8, 1923, acts of authorities of Tamaulipas may give rise to claims against the Government of Mexico. The Commission is of the opinion that claims may be predicated on such acts.

8. The Commission considering among other things the financial support the deceased man gave the claimants, their prospects of life, and the character of the delinquency involved holds that the claimants have suffered damages to the extent of \$7,000 because of the killing of their son by Mexican authorities. For allowing interest on this amount the Commission finds no ground.

Decision

9. The Commission accordingly decides that the Government of the United Mexican States is obligated to pay to the Government of the United States of America \$7,000 (seven thousand dollars), without interest, in behalf of Jesse Walter Swinney and Nancy Louisa Swinney.

Separate opinion

I concur in the award of \$7,000.00 without concurring entirely in the grounds for the award stated in the opinion signed by the other two Commissioners.

Fred. K. NIELSEN,
Commissioner.

FRANCISCO QUINTANILLA (UNITED MEXICAN STATES) *v.* UNITED STATES OF AMERICA.

*(November 16, 1926, separate opinion by American Commissioner, undated.
Pages 136-140.)*

DENIAL OF JUSTICE.—ACTS OF MINOR OFFICIALS.—DIRECT RESPONSIBILITY.
—**DEATH DURING CUSTODY.—FAILURE TO APPREHEND OR PUNISH.** Where evidence established that deputy sheriff and three other men took decedent into custody, that decedent was later found dead by side of road, and that no one was prosecuted for such death, claim *allowed*.

MEASURE OF DAMAGES, WRONGFUL DEATH. Measure of damages in case involving wrongful death *held* to include satisfaction due parents for loss suffered by international delinquency committed by respondent

Government. No allowance made for loss of support when evidence was lacking on this point.

Cross-references: Am. J. Int. Law, Vol. 21, 1927, p. 568; Annual Digest, 1925-1926, p. 224; British Yearbook, Vol. 8, 1927, p. 185.

1. This claim is presented by the United Mexican States against the United States in behalf of F. Quintanilla and M. I. Perez de Quintanilla, Mexican nationals, father and mother of Alejo Quintanilla, a young man, who was killed on or about July 16, 1922, not far from Edinburg, Hidalgo County, Texas, U.S.A. On July 15, 1922, about 5 p. m., said Alejo Quintanilla in a lonely spot had lassoed a girl of fourteen years, Agnes Casey, who was on horseback, and thrown her from the horse; she screamed, and the young Mexican fled. She told the occurrence to her father, Tom Casey, with whom Quintanilla had been employed some time before; the father the next morning went to lodge his complaint with the authorities, first to Edinburg (the County seat), where he did not find the sheriff, and then to Donna, where he found the deputy sheriff, one Sam A. Bernard. According to the record, this deputy sheriff with three other men, whose names are not mentioned, went to Quintanilla's house, took him from it, and the deputy sheriff with one Walter Weaver placed him in a motor car and drove with him, first to Casey's house, where they put on a new tire, and then in the direction of Edinburg to take him to the county jail. On July 18, 1922, about noon, Quintanilla's corpse was found near the side of this road, some three miles from Edinburg, traces showing that he had been taken there in a motor car. Bernard and Weaver were accused by the Mexican Consul at Hidalgo, Texas, and were accordingly arrested, but released on bail; Bernard's appointment as a deputy sheriff was cancelled by his sheriff on July 22, 1922. The public prosecutor made investigations and submitted the case to the Grand Jury, but the Grand Jury deferred it from 1922 to 1923, from 1923 to 1924, and never took action upon it. The Memorial alleges that the killing has caused to Quintanilla's parents losses and damages to the amount of 49,932.00 Mexican gold pesos, and that as these damages originated in acts of an official of the State of Texas, combined with a denial of justice, the United States is liable for them.

2. It appears from the record that Quintanilla was taken into custody on July 16, 1922, by a deputy sheriff of the State of Texas, to put him at the disposal of the judicial officers; it is left uncertain whether this official was provided with any authorization to take Quintanilla from his house and arrest him. The United States Government never reported what this deputy sheriff did with Quintanilla after he had taken him under custody. The young man apparently never reached the county jail. The deputy sheriff may have changed his mind and set him at liberty, and after that Quintanilla may have been murdered by an unknown person. An enemy of Quintanilla may have come up and taken him from the car. The companion of the deputy sheriff, who was not an official, may have killed Quintanilla; or the two custodians may have acted in self-defense. The United States Government has been silent on all of this. The only thing the record clearly shows is that Quintanilla was taken into custody by a State official, and that he never was delivered to any jail. The first question before this Commission, therefore, is whether under international law these circumstances present a case for which a Government must be held liable.

3. The Commission does not hesitate to answer in the affirmative. The most notable parallel in international law relates to war prisoners, hostages,

and interned members of a belligerent army and navy. It would be going too far to pretend that a Government taking into its custody either war prisoners or hostages or interned soldiers is responsible for everything which may happen to them; but there can be no reasonable doubt that it may be called to account for them, that it is obligated to account for them, and that under international law it can not exculpate itself by merely stating that it took these men into custody and that thereafter they have disappeared without leaving any trace. The Hague Conventions of 1907 are silent as to hostages; but as to war prisoners and persons assimilated to them (detained newspaper correspondents, etc.) they contain explicit provisions for the application of this principle (articles 13, 14 and 16 of the fourth Hague Convention of 1907) and the provisions of the fifth and thirteenth Conventions of 1907 concerning the treatment of interned army and navy men would be meaningless if the respective Governments were not obligated to account for the men they took into their custody. The case before this Commission is analogous. A foreigner is taken into custody by a State official. It would go too far to hold that the Government is liable for everything which may befall him. But it has to account for him. The Government can be held liable if it is proven that it has treated him cruelly, harshly, unlawfully; so much the more it is liable if it can say only that it took him into custody—either in jail or in some other place and form—and that it ignores what happened to him.

4. The question then arises whether this duty to account for a man in Governmental custody is modified by the fact that the custodian himself is accused of having killed his prisoner and, as an accused, can not be made to testify against himself. The two things clearly are separate. If the Government is obligated to state what happened to the man in its custody, its officials are bound to inform their Governments. It might be that the custodians themselves perish in a calamity together with the men in their custody, and therefore can not furnish any information. But if they are alive, and are silent, the Government has to bear the consequences. The Commission holds, therefore, that under international law and under Article I of the Convention of September 8, 1923, the respondent Government is liable for the damages originating in this act of a State official and resulting in injustice.

5. It is useless to inquire whether, apart from this liability, the United States might have been held responsible for a denial of justice in this case. The Commission confines itself to stating that nothing in the record shows that the prosecuting officer has ascertained who were the four men that took Quintanilla from his house, what were their motives for so doing, and what was to be learned from an inspection of the car in which Quintanilla was transported. If the prosecuting officer had information as to these points, the secrecy of the investigations before the Grand Jury can not explain the silence of the American Agency on all of these points.

6. The respondent Government has not denied that, under the Convention of September 8, 1923, acts of authorities of Texas may give rise to claims against the Government of the United States. The Commission is of the opinion that claims can be predicated on such acts.

7. Considering that satisfaction is due to the parents of Quintanilla for the loss suffered by the international delinquency committed, and taking into account that the record does not show how much of his earnings went to his parents, the Commission, on the data presented in the Memorial, considers these damages not to exceed an amount of \$2,000, without interest.

Decision

8. The Commission accordingly decides that the Government of the United States of America is obligated to pay to the Government of the United Mexican States \$2,000 (two thousand dollars) in behalf of Francisco Quintanilla and Maria Ines Perez de Quintanilla, without interest.

Separate opinion

I concur in the award of \$2,000.00 without concurring in the grounds for the award stated in the opinion signed by the other two Commissioners.

Fred K. NIELSEN,
Commissioner.

D. GUERRERO VDA. DE FALCÓN (UNITED MEXICAN STATES)
v. UNITED STATES OF AMERICA.

(*November 16, 1926. Pages 140-143.*)

RESPONSIBILITY FOR ACTS OF SOLDIERS.—DIRECT RESPONSIBILITY.—FAILURE TO APPREHEND OR PUNISH. Respondent Government *held* responsible for killing of Mexican subject by soldiers guarding the border.

Cross-references: Am. J. Int. Law, Vol. 21, 1927, p. 566; Annual Digest, 1925-1926, p. 220.

1. This claim was filed by the United Mexican States against the United States of America in behalf of Dolores Guerrero, widow of Gregorio Falcón, and of Bartolo, Apolonio, Domingo, and Mónica Falcón, children of the deceased Falcón, a Mexican citizen, who, on May 5, 1919, at about 10.30 A. M., was wounded by bullets fired by two American soldiers from the American side of the Rio Grande at a point near the ranch called Las Barreras while he was, it is alleged in the Memorial, bathing together with another Mexican named Félix Villarreal. Falcón died in the afternoon of the same day. American military and civil authorities made an investigation of the occurrences connected with the killing of Falcón. The soldiers were not brought to trial, but they were admonished for having fired on unarmed persons, although it was believed that they did so without intention to hit. It is alleged that the death of Gregorio Falcón caused his widow and his children, Mexican citizens, damages in the amount of 18,518.40 pesos, Mexican currency; that the American authorities improperly failed to bring the guilty persons to trial, and that on account of this wrongful death and a denial of justice the United States should pay an indemnity in the aforementioned sum, together with interest from May 5, 1919, to the time of payment. The record discloses the following facts: Sergeants John Smith and John Floyd, of the Fourth Cavalry of the United States Army, had been directed, on May 5, 1919, to patrol the river in the locality where the shooting occurred with the object of preventing smuggling and other transgressions of the law. Sergeant Smith, during the course of the investigation conducted