

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
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D. Guerrero vda. De Falcón (United Mexican States v. United States of America)

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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

by the military authorities, testified that while the two soldiers were making an inspection on the banks of the river they saw through long-distance field glasses a naked man who was swimming towards the Mexican side and also several mounted men on the Mexican shore. Evidence on this point is not entirely clear. Sergeant Floyd stated that "About a half mile this side of that place (Barreras) we noticed a bunch of men trying to cross the river." Both soldiers also mentioned three men who were in the river naked, while evidence produced by the Mexican Government refers to but two men. It appears that the soldiers, believing that the men in the river were engaged in smuggling, approached them and directed them to halt. Falcón and Villarreal did not obey the order, whereupon Sergeant Smith fired a shot in the air to cause them to stop. The soldiers testify that they were thereupon immediately fired on from the Mexican side by mounted men; that they (the soldiers) retreated, dismounted, and returned to answer the fire in self-defense, and also directed some shots at the men who were in the water. It further appears that about fifty shots were exchanged in this manner while Falcón and Villarreal were approaching the Mexican shore, and that Falcón had to be assisted out of the water by Villarreal, he having been wounded by one of the bullets fired from the American side. While the two soldiers asserted that the men in the river were towing some floating cases, Falcón and Villarreal deny this, and there is no other evidence bearing on the point. It also appears uncertain whether the two Mexicans had been in the American side of the river. The only evidence upon this point is the statement of Juan Muñiz, a man who was on the American side at the time the occurrences in question took place, and who stated that "he had heard that two men had passed his ranch, coming from the vicinity of Mission, and that they had crossed the river." This same Muñiz testified that he had heard shots, "but that he did not know who shot first," a statement which might be interpreted in the sense that there were shots fired from both sides of the river, or that there were shots only from the American side and that Muñiz did not notice which of the two American soldiers had fired first.

2. Mexican authorities also investigated the occurrences in question and brought the results of their investigation to the notice of the Mexican Consul at Rio Grande, who, on May 12, 1919, communicated them to the Ambassador of Mexico in the United States, who brought them to the notice of the Department of State. The American military authorities, without bringing Smith and Floyd to trial, declared them innocent of crime on the ground that they had acted in the discharge of their duty in attempting to prevent smuggling, and that even if they had made an error in firing the first shot in the air, it was natural that they should return the fire of the Mexicans in order to protect themselves from shots being fired from the Mexican side.

3. Even though it be assumed that Falcón and Villarreal were engaged in smuggling, and that American soldiers were fired upon from the Mexican side, the Commission must consider the death of Falcón to be wrongful. It appears from the record that American military regulations forbade the firing on unarmed persons suspected of smuggling or crossing the river in places where passage was not authorized. (Bulletin No. 4 of February, 11 1919.) The soldiers may have believed themselves justified in using firearms to prevent smuggling or in returning a fire from the Mexican side. However, it appears they disregarded American military regulations which were evidently intended to prevent such unhappy occurrences as those underlying this claim. And according to the testimony of Sergeant Smith, they directed

fire against naked and defenseless Mexicans who were in the river thereby causing the death of Falcón.

4. In view of the results of the investigation made by American civilian authorities it seems to the Commission to be somewhat odd that the soldiers should not have been brought to trial. Apart from this point, however, the Commission is of the opinion that the killing of Falcón was a wrongful act for which damages may be assessed in the amount of \$7,000.00 without interest.

Decision

5. The Commission therefore decides that the Government of the United States of America must pay to the Government of the United Mexican States the sum of \$7,000.00 (seven thousand dollars) without interest, on behalf of Dolores Guerrero, widow of Gregorio Falcón and Bartolo, Apolonio, Domingo and Mónica Falcón, children of the deceased Falcón.

LINA BALDERAS DE DÍAZ (UNITED MEXICAN STATES) *v.*
UNITED STATES OF AMERICA.

(November 16, 1926. Pages 143-146.)

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH. When the evidence failed to show that the American authorities were guilty of gross negligence in failing to apprehend those guilty of murder of a Mexican subject, claim *disallowed*.

1. Claim is made by the United Mexican States in this case for damages in the sum of 50,000 Mexican gold pesos or the equivalent thereof in currency of the United States, suffered by Catalina Balderas de Díaz, mother of Mauricio Díaz, a Mexican citizen, who was killed on February 8, 1920, in the city of San Antonio, Texas. It is alleged in the Memorial that the "lenity of the American authorities in regard to the institution of due legal process, to the discovery of the guilty party and to his punishment, constitutes a true denial of justice, which is a justification of the right of Catalina Balderas de Díaz, the mother of the man slain, and injured by the loss of her son, to demand compensation, as she was dependent on him for a living and such injury has not been made good to her." The sum claimed is estimated as having been suffered by the mother of the deceased taking into account his probable life expectancy.

2. The evidence accompanying the Memorial, in addition to that bearing on questions of nationality, consists of:

(1) The record of the inquest conducted with respect to the killing of Díaz which recites that the deceased came to his death on the eighth day of February, 1920, from a wound caused by a bullet from the firearm in the hands of some person whose name is unknown: and

(2) Copies of certain correspondence consisting of a communication sent by the Mexican Consul at San Antonio to the Mexican Ambassador at Washington, in which the Ambassador was informed that Díaz had been killed and that the Consul had written concerning the matter to the Sheriff