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Margaret Roper (U.S.A.) v. United Mexican States

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MARGARET ROPER (U.S.A.) *v.* UNITED MEXICAN STATES

(April 4, 1927. Pages 205-211.)

RESPONSIBILITY FOR ACTS OF MINOR OFFICIALS.—ACTS OF POLICE.—DIRECT RESPONSIBILITY.—DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—FINALITY OF ACTS OF INVESTIGATING MAGISTRATE. Respondent Government *held* responsible for shooting of American subject by Mexican police resulting in his death. Acts of Mexican judge in investigating the occurrence *held* not entitled to same presumption of validity as final judgment of highest court.

MEASURE OF DAMAGES, WRONGFUL DEATH. Earning capacity of decedent and financial support given claimant taken into consideration in determining amount of award for wrongful death.

Cross-references: Am. J. Int. Law, Vol. 21, 1927, p. 776; Annual Digest, 1927-1928, p. 223; British Yearbook, Vol. 9, 1928, p. 161.

1. Claim for damages in the amount of \$17,000 is made in this case by the United States of America against the United Mexican States on behalf of Margaret Roper on account of the death of her son, William Roper, who was drowned in the Pánuco river, at Tampico, Tamaulipas, Mexico, on March 10, 1921, as a result—it is alleged in the American Memorial—of an assault upon him and three fellow seamen, S. Weston Brown, Ernest Small, and O. Griffin, committed by Mexican policemen and Mexican private citizens. It is stated in the Memorial that the seamen, when assaulted, jumped into the water to escape by swimming to their ship, the American merchant vessel *Saxon*, and that Roper was wounded by a pistol shot and sank immediately after having been heard to utter cries of distress. In behalf of the United States it is contended that Mexico is responsible for the unlawful acts of Mexican policemen for the failure of Mexican authorities to afford proper protection to the unfortunate Americans and for a denial of justice growing out of the failure of Mexican authorities to prosecute the persons implicated in the crime committed against the seamen.

2. It is difficult to reach a definite conclusion with regard to the precise character of all the occurrences connected with the death of the seamen, but certain things appear to be clearly shown by the record: Roper, Brown, and Small, American citizens, and Griffin, whose nationality does not clearly appear from the record, all members of the crew of the *Saxon*, obtained shore leave on the evening of March 10th, when the vessel was lying at anchor in the river about a mile distant from the water front at Tampico. When about 10 o'clock p. m. the men reached a boat in which they intended to proceed to the steamer, a Mexican, Florencio González, who either for some time had been following them or suddenly came upon them, tried to prevent them from leaving. After three of the seamen, Roper, Brown, and Griffin, had entered the boat other persons arrived. During a confusion of some kind the four seamen leaped into the water. Pistol shots were fired, and Roper appears to have been wounded. Griffin, instead of endeavoring to swim to the *Saxon*, hid behind a lighter and escaped death. The Captain of the *Saxon* shortly after 10 o'clock p.m. heard shots and cries and saw

swimming toward the vessel two men, one of whom cried out twice: "It is Willie Roper, I am wounded, save me"—or words to that effect. Both men sank before assistance could be given to them. Three days after the occurrences in question the bodies of Brown and Small were found, but Roper's body appears not to have been located. Brown's corpse was in a complete state of decomposition. Medical certificates produced before the Judge at Tampico would seem to indicate that Brown and Small were not wounded. As heretofore observed, it is difficult to reach a definite conclusion with regard to the precise character of all the occurrences connected with the death of the seamen. Parts of the evidence in the record before the Commission are conflicting. From some of the evidence which is available to the Commission, mainly that furnished by the seaman Griffin, it appears that González, desiring to prevent the seamen from leaving for their vessel, blew a whistle, which brought four or five companions who were near by in the dark; that one of these men assaulted the seamen Small and felled him on the shore; and that pistol shots were directed against the seamen, who leaped into the water to save themselves, whereupon the policemen without endeavoring to ascertain what became of the seamen departed with the other Mexicans.

3. The District Judge at Tampico instituted an investigation in the early part of March, 1921, and according to evidence given before the Judge by the Mexican policeman and other Mexican citizens, the occurrences in question were substantially as follows: On the evening of March 10th a half naked American citizen accosted these Mexicans and stated that he had been robbed and deprived of his clothing by some negroes. One of the Mexican citizens (González) proceeded to the river bank and found four negroes about to embark in a boat, whereupon he undertook to detain them. Two of the men went to bring two policemen, one of whom, when he arrived, fired shots into the air to intimidate the four negroes, who jumped into the water in order to escape arrest. On the basis of the evidence produced before him, the District Judge at Tampico, in an opinion which he rendered on September 9, 1922, about 18 months after the investigation was instituted, reached the conclusion that it did not appear that there was any crime to prosecute in connection with the death of the American seamen. In this opinion the Judge also declared that there was no crime to prosecute in connection with a supposed assault committed by the seamen against the person described as a half naked American who declared that he had been robbed. This latter conclusion we think was undoubtedly sound, and we are of the opinion that if there had been reason to suspect the seamen of wrongdoing they might have been arrested without any firing of pistols or indeed without any forcible measures. It would appear that the best service the policemen might have rendered would have been to deal in a proper way with the difficulties between the seamen and the private Mexican citizens who interfered with the departure of the seamen for their vessel. The evidence appears to be conclusive that shots were fired, and there is uncontradicted testimony that at least one policeman, Cristóbal Pérez, made use of his weapon. It is also clear that pistol fire was largely, if not entirely, responsible for the action of the men in leaping into the river, where they met their death. The evidence of the Captain of the *Saxon* makes it reasonably certain that Roper was shot, or in any event, that he was fired upon by the police. In view of the things of this kind concerning which the record before us leaves no doubt in our minds, we are constrained to reach the conclusion that had it not been for the unlaw-

ful acts of the police the seamen would not have met their death. Even though the police had fired, as was testified before the Judge at Tampico, simply to "intimidate" the seamen, such action must be regarded by the Commission as improper in the light of the principles underlying the Commission's decisions in the Swinney case, Docket No. 130,¹ the Falcón case, Docket No. 278,² and the Teodoro García case, Docket No. 292.³ In the opinions rendered in those cases the Commission discussed the reckless and unnecessary use of firearms by persons engaged in the enforcement of law.

4. It was argued in behalf of Mexico in the instant case that the Mexican Government is not responsible under international law for the acts of such minor officials as policemen. This question received consideration in the Quintanilla case, Docket No. 532, in which the Mexican Government contended that the Government of the United States was responsible for the acts of a deputy sheriff in Texas, and in which an award was rendered by the Commission in favor of the claimant. Considering the acts of the policemen in the present case in relation to the seamen, and in relation to the Mexican citizens who undertook to prevent the seamen from joining their vessel, we are of the opinion that the Mexican Government must be held responsible for the acts of the policemen. And with respect to this point we deem it particularly important to consider the comprehensive scope of Article I of the Convention of September 8, 1923, which is concerned with the jurisdiction of the Commission. In addition to a description of claims, in language similar to that frequently employed in claims conventions, there is found this additional description: "and all claims for losses or damages originating from acts of officials or others acting for either Government and resulting in injustice".

5. In support of the contentions made in behalf of the United States with respect to a denial of justice, it was alleged that there should have been a prosecution of Mexicans who appeared to be implicated in the deaths of the seamen, and that the investigation before the Judge at Tampico was of such a character as to reveal a purpose to exculpate those persons. This official may have complied with all the forms of Mexican law in conducting the investigation, as it was argued in behalf of Mexico he did. But we do not consider that occurrences pointing clearly to the commission of crime were adequately met by this investigation.

6. Three American citizens lost their lives under most unusual circumstances. There is evidence that some Mexican private citizens and some Mexican policemen undertook to prevent the American seamen from joining their vessel after the latter had been on shore leave. There is evidence given by one of the seamen who managed to preserve his life that one of his companions was felled by a blow on the head; that shots were fired at others who had entered a boat in which they intended to depart for their vessel; and that they leaped into the water to escape. During the course of an investigation of the death of the seamen before the Judge at Tampico, three private Mexican citizens testified to the effect that they were approached by a half naked American citizen and were informed by him that he had been assaulted and robbed by negroes who were at

¹ See page 98.

² See page 104.

³ See page 119.

the time near the river. These men further testified that one of them proceeded to the river bank and found four negroes about to embark in a boat whereupon he undertook to detain them; that two of the men went to bring two policemen, one of whom, when he arrived, fired shots into the air to intimidate the seamen, who jumped into the water.

7. From testimony given by Mexicans it appears that the half-naked American who had so persistently sought to obtain the arrest of negroes who had assaulted him, suddenly disappeared at the time when his presence would have been most important for the consummation of his purpose of obtaining redress. It is strange that such an important witness should not have been located by Mexican authorities. There would seem to be good reason to suppose that he could easily have been found if he were a reality. He was strikingly identified by several persons who gave testimony before the Mexican Judge, and it was testified that he could speak some Spanish.

8. The Commission believes that it has mentioned enough things shown by the record upon which to ground the conclusion that the occurrences in relation to the death of these American seamen were of such a character that the persons directly concerned with them should have been prosecuted and brought to trial to determine their innocence or guilt with respect to the death of the Americans. The conclusions of the Judge at Tampico with respect to the investigation conducted by him were treated in oral and in written arguments advanced in behalf of the Mexican Government as the judgment of a judicial tribunal. And the well-known declarations of international tribunals and of authorities on international law with regard to the respect that is due to a nation's judiciary were invoked to support the argument that the Commission could not, in the light of the record in the case, question the propriety of the Judge's finding. In considering that contention we believe that we should look to matters of substance rather than form. We do not consider the functions exercised by a Judge in making an investigation whether there should be a prosecution as judicial functions in the sense in which the term judicial is generally used in opinions of tribunals or in writings dealing with denial of justice growing out of judicial proceedings. It may readily be conceded that actions of the Judge should not be characterized by this Commission as improper in the absence of clear evidence of their impropriety. Obviously, however, the application of rules or principles asserted by this Commission in the past with respect to denials of justice will involve widely varying problems. To undertake to pick flaws in the solemn judgments of a nation's highest tribunal is something very different from passing upon the merits of an investigation conducted by an official—whether he be a judge or a police magistrate—having for its purpose the apprehension or possible prosecution of persons who may appear to be guilty of crime.

9. The Commission, considering among other things the earning capacity of the deceased and the financial support he gave the claimant, is of the opinion that an award of \$6,000 may properly be made in this case.

10. The Commission therefore decides that the Government of the United Mexican States must pay to the Government of the United States of America on behalf of the claimant the sum of \$6,000 (six thousand dollars) without interest.
