

**REPORTS OF INTERNATIONAL
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**RECUEIL DES SENTENCES
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John D. Chase (U.S.A.) v. United Mexican States

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information about him; it was disclosed that the man had only been a fortnight on the mine, and that no one knew him well. On September 19th two men who had been arrested on suspicion were questioned, but as no evidence was found warranting their detention they were released on September 22nd. On September 20th and 21st other persons were summoned and examined, one of whom was probably the last to see Eitelman on the night of September 15th, talking to an unknown man whose general description he gave. On October 3, another man, a prospector, was arrested on suspicion, but was released on the following day for want of evidence against him. On the same day the postmortem certificate was filed by the experts. On October 9, the Supreme Tribunal of Chihuahua transmitted to the Judge at Cusihuiriachic a letter from the American Consul to the Governor of Chihuahua, requesting greater activity in the apprehension of the culprits; the said Tribunal directed the judge to proceed with more speed and to report immediately, which he did. From that date on nothing is recorded, but the Mexican Agent filed evidence to the effect that the local police made efforts to get clues and to apprehend the culprits.

5. This Commission has in other cases expressed its views regarding criminal procedure, and in the light of the record of this case, and of the principles underlying the decision in the case of *L. F. Neer and Pauline E. Neer*, Docket No. 136,¹ before this Commission, it is not prepared to hold that Mexico is responsible.

Decision

The claim of the United States of America on behalf of Irma Eitelman Miller, Lillian Eitelman, and B. B. Eitelman is disallowed.

JOHN D. CHASE (U.S.A.) *v.* UNITED MEXICAN STATES

(September 26, 1928. Pages 17-20.)

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—UNDUE DELAY IN JUDICIAL PROCEEDINGS. Claimant was shot during course of altercation with a Mexican subject. Both were arrested and later released on bond, case was prosecuted with due diligence at outset, but guilt of parties was not determined after lapse of fourteen years. Claim *allowed*.

Cross-references: Annual Digest, 1927-1928, p. 217; British Yearbook, Vol. 11, 1930, p. 224.

Commissioner Fernández MacGregor, for the Commission:

1. In this claim presented by the United States of America versus the United Mexican States, \$15,000.00, currency of the United States or its equivalent, with interest on that sum at the rate of 6% per annum until the date upon which payment shall be made, is demanded on behalf

¹ See page 60.

of John D. Chase, a citizen of the United States of America, who was seriously wounded by a Mexican, Jacinto Flores, Chase being disabled, as a result, to perform physical labor of any kind. The American Agent alleged in the Memorial that, although Jacinto Flores was arrested by the authorities, tried, convicted and confined in prison for a short while, the sentence given him entailed an entirely inadequate penalty for the premeditated crime which he had committed; but in the American brief Mexico's responsibility is alleged to consist in not having taken reasonable and adequate measures to apprehend and punish the assailant after he had fled while under release on bond which had been granted him.

2. At the time the events transpired, the claimant was employed as Route Agent by the Wells Fargo Express Company, a concern for which the Mexican, Jacinto Flores, worked in the same capacity as Chase, he being, in addition, Station Agent at Puerto Mexico, Tehuantepec. On September 13, 1913, a shortage was discovered in a remittance of cash consigned to the Cashier of the Tehuantepec National Railway at Rincón Antonio; and as the high officials of the Express Company appointed Chase to investigate the theft, Chase suspected that Flores was responsible and as a result a feeling of enmity arose between Flores and Chase. It appears that each threatened the other and that thereafter there was an exchange of revolver shots between the two participants, without it being possible to affirm, in view of the circumstances involving this claim, who was the first to make threats or who was the aggressor, inasmuch as the statements made by Chase and Flores and the witnesses who were examined were confused and contradictory. Chase received a bullet wound on the second rib of the right side, the projectile going through the thorax and embedding itself under the skin on the back between the ninth and tenth ribs, near the spine. In the course of the firing a Mexican woman who happened to be there was also wounded, her body being pierced by a bullet which entered the level of the sacrum and which passed completely through her. From the evidence filed by the Mexican Agent, it would appear that it was Chase who wounded this woman.

3. All the details of the facts which are succinctly set forth above were thoroughly discussed by both Agencies, which expressed contrary views regarding the classification of the crime committed, the American Agency for its part endeavored to show that the claimant was the victim of a premeditated and treacherous assault committed by Flores; the Mexican Agency on the other hand attempted to excuse Flores, making Chase appear as the aggressor and alleging, therefore, that even if Flores did fire on Chase, he did so in the exercise of the right of self-defense. It is not necessary for the Commission to weigh all the evidence presented by Mexico, as it is not within its province to decide the degree of guilt attaching to Flores or to Chase. The only matter within its jurisdiction is to ascertain whether the Mexican authorities who took cognizance of the criminal acts which have been referred to administered justice pursuant to the principles of international law.

4. The Mexican Agency offered as evidence the record of the trial conducted by the Judge of First Instance of Juchitán, State of Oaxaca. The deliberations in this process cover a period which runs from the date upon which the claimant was wounded until the first of January, 1914, that is, a little more than three months, and during that entire

time it is seen that the Mexican authorities exercised diligence, taking all necessary steps to elucidate the facts, arresting Flores at the beginning and then decreeing his formal commitment, examining all eye-witnesses, confronting them with each other, having experts examine the wounds, etc., etc., all in accordance with Mexican law, regarding which it has not been alleged that there was a variance from the practices of civilized nations. Chase was also committed for trial to answer for his affair with Flores and for the wound he had involuntarily inflicted on the Mexican woman to whom reference has been made. The Commission does not find that any of the procedure considered warrants the opinion that there has been a denial of justice.

5. But from the evidence presented by the Mexican Government it would appear that Jacinto Flores was released on bond of a thousand pesos on the first of January, 1914, just as the claimant, Chase, had previously been released on a bond of three hundred pesos, on October 16, 1913; and it is seen from the record that after the two defendants were released, the Court which was handling the case did nothing further. Fourteen years have since passed. International justice is not satisfied if a Government limits itself to instituting and prosecuting a trial without reaching the point of defining the defendant's guilt and assessing the proper penalty. It is possible that in certain cases the police or judicial authorities might declare the innocence of a defendant without bringing him to trial in the fullest sense of the word. But if the data which exist in a case indicate the possible guilt of a defendant, even in the slightest degree, it cannot be understood why he is not tried to the extent of determining his responsibility. The instant case falls within that category. But in view of its attendant circumstances it does not appear that this denial of justice is an extreme case.

Therefore, taking into account the circumstances above set forth, I believe that an award should be made against the Government of Mexico.

Decision

The United Mexican States shall pay to The United States of America in behalf of John D. Chase the sum of \$5,000.00 (five thousand dollars), without interest.

NORTHERN STEAMSHIP COMPANY, INC. (U.S.A.) *v.* UNITED MEXICAN STATES

*(October 3, 1928, dissenting opinion by American Commissioner, undated.
Pages 20-22.)*

BLOCKADE OF PORT IN CONTROL OF INSURGENTS. Ruling in *The Oriental Navigation Company* claim *infra* followed. Claim *disallowed*.

The Presiding Commissioner, Dr. Sindballe, for the Commission:

On April 12, 1924, the steamship *Stal*, time-chartered by the Northern Steamship Company, Inc., an American Corporation, and sub-chartered by that company to the Tampa Box Company, arrived at the port of