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J. J. Boyd (U.S.A.) v. United Mexican States

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J. J. BOYD (U.S.A.) *v.* UNITED MEXICAN STATES

(October 12, 1928. Pages 78-80.)

FAILURE TO PROTECT.—DUTY TO PROTECT IN REMOTE TERRITORY. When only minor crimes had taken place before murder of American subject, with the exception of a murder committed the day before, and territory was sparsely populated, Mexican authorities and forces being established at the nearest point fifty miles away, *held* failure to afford due protection not shown.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—LACK OF DUE DILIGENCE IN CAPTURING CRIMINALS. Where posses were not sent out in pursuit of bandits who murdered American subject for several days after authorities were notified of crime, and orders of arrest of criminal were delayed and not sufficiently distributed, claim for death of such American subject *allowed*.

Cross-reference: British Yearbook, Vol. 11, 1930, p. 226.

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

On the morning of August 18, 1921, a group of men, consisting of Bennett Boyd, Cecil Boyd, Wayne MacNell, and Sixto Yáñez, while taking part in a round-up of the cattle belonging to the Carretas Ranch, District of Galeana, Chihuahua, Mexico, were attacked by a party of at least five mounted bandits. Bennett Boyd was killed. His companions attempted to defend themselves, and after a considerable number of shots had been fired, the bandits withdrew. Before doing so they stripped Bennett Boyd's body of a revolver and a pair of spurs.

The murderers have never been apprehended by the Mexican authorities.

Claim is now made against the United Mexican States by the United States of America on behalf of J. J. Boyd, an American citizen and the father of Bennett Boyd, for damages in the sum of \$25,000, U. S. currency. The claim is predicated upon alleged failure on the part of the Mexican authorities (1) to afford due protection to the residents of the District of Galeana, and (2) to take appropriate steps with a view to apprehending the murderers.

With regard to the alleged lack of protection the record shows that the civil authorities nearest to the Carretas Ranch were the authorities at Janos, about fifty miles from the Ranch, and that the only military garrisons in the district were those at Casas Grandes and Ascension, both about seventy miles away. However, the district in question being sparsely populated, those facts cannot of themselves be sufficient to establish on the part of Mexico a responsibility for lack of protection. The record further shows several acts of banditry during the time after the death Bennett Boyd, but for the time prior to his death, with the exception of a murder committed on the day before, only minor crimes, especially theft of cattle from the Carretas Ranch are mentioned, and there is no evidence to show that complaint of lack of protection ever was made to the Mexican government by the residents of the District of Galeana. Therefore, the Commission is of opinion that no responsibility on the part of Mexico can be based on the charge of lack of protection.

With regard to the second point at issue in this case the record shows that some efforts have been made by the Mexican authorities with a view to apprehending the murderers. The authorities at Janos were informed about the murder on August 19, and the next day the personnel of the Court at Janos arrived at the place of the murder where some investigations were made and the testimony of Cecil Boyd, MacNell, and Yáñez was taken. Cecil Boyd testified that one of the bandits seemed to be Francisco González. On August 23 the governor of the State of Chihuahua was informed about the murder and he sent out two posses, one of which seems to have killed one of the bandits. On August 25 a warrant for the arrest of Francisco González was issued. On September 1 the judge at Janos closed the proceedings and sent the case to the judge of first instance at Casas Grandes. On September 8 the latter issued orders for the arrest of González to the municipal Presidents of Casas Grandes and Janos. On February 7, 1922, letters rogatory were issued to all the judges of first instance requesting them to arrest González and two other persons who were now assumed to have taken part in the assault that resulted in the death of Bennett Boyd. No evidence is submitted as to what efforts were made to carry out the orders of arrest.

The Commission is of opinion that the steps taken by the Mexican authorities cannot be considered as a fulfillment of the duty devolving upon Mexico to take appropriate steps for the purpose of apprehending the murderers. Ground for adverse criticism is found in the fact that posses were not sent out in pursuit of the bandits until several days after the authorities were informed about the crime that had been committed. And negligence is clearly evidenced by the fact that orders of arrest of González were not sent to the Judges of first instance of the State of Chihuahua before February, 1922, and that such orders were never sent to the Judges of the State of Sonora, although the district of Galeana is situated at the boundary of that State.

The Commission holds that the amount to be awarded the claimant can be properly fixed at \$5,000.00 (five thousand dollars).

Decision.

The United Mexican States shall pay the United States of America on behalf of J. J. Boyd \$5,000.00 (five thousand dollars), without interest.

JACOB KAISER (U.S.A.) *v.* UNITED MEXICAN STATES

(October 15, 1928. Pages 80-87.)

CONFLICTING JURISDICTION OF SPECIAL CLAIMS COMMISSION. Claimant was arrested during period of revolutionary disturbances on charge he was a seditious propagandist. Since claim was based on deficient administration of justice, rather than revolutionary acts, *held*, tribunal has jurisdiction.

DENIAL OF JUSTICE.—ILLEGAL ARREST. Facts *held* not to establish that claimant was arrested without probable cause.