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**RECUEIL DES SENTENCES
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Norman T. Connolly and Myrtle H. Connolly (U.S.A.) v. United Mexican States

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NORMAN T. CONNOLLY AND MYRTLE H. CONNOLLY (U.S.A.)
v. UNITED MEXICAN STATES

(October 15, 1928. Pages 87-90.)

DENIAL OF JUSTICE.—FAILURE TO PROSECUTE.—FAILURE TO PUNISH ADEQUATELY. Two American aviators were forced down on Mexican territory and there killed by two Mexican subjects. The latter were found in possession of objects belonging to the aviators. After trial, they were finally sentenced to five and five and one-half years' imprisonment, respectively, for homicide during a fight. Claim *allowed* on ground no prosecution had been brought by authorities for robbery.

Cross-references: Am. J. Int. Law, Vol. 23, 1929, p. 464; British Year-book, Vol. 11, 1930, p. 226.

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

On the morning of August 16, 1919, the American Lieutenants, Cecil H. Connolly and Frederick D. Waterhouse, both of whom were attached to the Ninth Aero Squadron, stationed at San Diego, California, were detailed to field patrol. Owing to a mechanical defect or some mishap the aeroplane in which they were flying never returned to its base. It was later found on the open beach at Refugio de Guadalupe, and it was disclosed that the two lieutenants had spent about seventeen days at that place without food and that thereafter two Mexican fishermen, Calixto Ruiz, called La Changa, and Santiago Fuerte, had given them food and taken them to Los Angeles, Lower California, where they killed them on or about September 9.

On October 19, 1921, the Judge of the First District Court at Tijuana, Lower California, sentenced the two fishermen to six years' imprisonment for homicide during a fight. The case was appealed to the Fifth Circuit Tribunal at Hermosillo, Sonora, and on April 22, 1922, this Court substantially confirmed the judgment of the lower Court, only the terms of imprisonment were fixed at five years and six months for Ruiz, and five years for Fuerte.

Claim is now made against the United Mexican States by the United States of America on behalf of Norman T. Connolly and his wife Myrtle H. Connolly, American citizens and the parents of Lieutenant Cecil H. Connolly, for damages in the sum of \$60,000, U. S. currency. The claim is predicated on the allegations that (1) Mexican authorities sought to cover up all matters incident to the death of the two aviators and failed to take prompt measures to investigate the murder and bring about the apprehension of the criminals, that (2) the latter ought to have been prosecuted for robbery as well as for homicide, and (3) that the punishment meted out to the murderers was inadequate.

It seems impossible with any degree of certainty to reach a conclusion regarding the motive of the crime. The murderers pleaded that they had acted in self-defense, the aviators not having been satisfied with the food the murderers prepared for them, and one of the aviators having attacked one of the murderers, whereupon a fight followed. The United States alleges that this statement is in itself most improbable, and pointing

to the fact that the declarations of the two criminals were at variance in nearly all particulars they assert that no consideration ought to have been given to those declarations. It is further asserted that robbery no doubt had been the motive of the crime, as the criminals were in possession, after the murder, of several objects belonging to the aeroplane or to the aviators personally. The criminals, on the other hand, explained that the aviators had made them a present of the aeroplane because of their aid. Against the theory of robbery as the motive of the crime it might also be argued that at first the two fishermen had aided the aviators and given them food.

The Mexican Courts rejected the plea of self-defense, but, as already mentioned, they based their judgments on the supposition that the murder had been committed during a fight. The Commission is of opinion that those judgments cannot be considered as constituting a denial of justice.

It cannot but produce an impression of laxity, however, that no prosecution for robbery or theft was instituted. And this impression becomes stronger when some of the facts surrounding the discovery and the investigation of the crime and the apprehension of the murderers are examined. An American citizen, Joseph Allen Richards, who had found the dead bodies of the two aviators, and who at Santa Rosalía boarded an American steamer in order to inform the captain of his discovery, was arrested on—as it seems—rather specious charges of having molested corpses before an inquest had been held and of having robbed the dead bodies of some articles. On November 10, 1919, the First District Court of Lower California, having been requested by the Ministerio Público to issue warrants of apprehension against Ruiz and Fuerte, refused to issue such warrants, although it followed with great probability from testimony given by several persons during investigations undertaken by the United States with the cooperation of Mexican authorities that the said persons were the murderers. When later on, on February 17, 1920, Ruiz had been arrested by the police authorities, the same judge ordered his release, but Ruiz had then already confessed that he and Fuerte had murdered the aviators and therefore the order of the judge was not executed. A warrant for the arrest of Fuerte was not issued until January 13, 1921, at which time it appears that the record in the case, together with the prisoner Ruiz, had been transferred to the Second District Judge of Lower California. On April 12, 1921, Fuerte was arrested. It seems that he presented himself voluntarily.

For the laxity thus shown by some Mexican officials in the prosecution of the crime committed, Mexico must be responsible under international law, and as this laxity can only partly be considered as redressed by the arrest and sentence of the criminals, the Commission is of opinion that on amount of \$2,500, U. S. currency, should be awarded.

Decision

The United Mexican States shall pay to the United States of America on behalf of Norman T. Connolly and Myrtle H. Connolly \$2,500. (two thousand five hundred dollars), without interest.
