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Louise O. Canahl (U.S.A) v. United Mexican States

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LOUISE O. CANAHL (U.S.A.) *v.* UNITED MEXICAN STATES

(October 15, 1928. Pages 90-94.)

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—DILATORY PROSECUTION.—EFFECT OF CHANGE OF GOVERNMENT. Claimant's husband was murdered in territory then occupied by Villa forces. Shortly thereafter Carranza authorities took possession of the state. Orders for arrest of persons responsible were issued but no action to carry them out was taken for over seven years. Claim *allowed*.

Cross-references: Annual Digest, 1927-1928, p. 215; British Yearbook, Vol. 11, 1930, p. 225.

Commissioner Nielsen, for the Commission:

Claim in the amount of \$50,000.00, with interest, is made in this case by the United States of America in behalf of Louise O. Canahl, widow of Gilbert T. Canahl, an American citizen, who was killed in the vicinity of San Diego, near Charcas, State of San Luis Potosí, Mexico, in 1915. The claim is grounded on the contention that Mexican authorities failed to take proper steps to apprehend persons responsible for the death of Canahl, and that the negligence of the authorities constitutes a denial of justice.

Briefly stated, the following allegations are found in the Memorial with respect to the death of Canahl and the negligence of which Mexican authorities are alleged to have been culpable.

On the night of June 16, 1915, Gilbert T. Canahl attended a dance given at San Diego mine, situated about seven miles from Charcas. Late in the night several Mexican citizens who were attending the dance, engaged in a quarrel, which quickly reached a stage in which the participants were attacking one another with knives. Gilbert T. Canahl interfered as a peace-maker and attempted to restore peace. Thereupon the infuriated persons turned upon and attacked him, and while he made an effort to defend himself, he was overcome by them and brutally murdered, his head being crushed.

These facts were immediately brought to the attention of the appropriate authorities of the State of San Luis Potosí, with a view to having them apprehend and punish the persons responsible for the crime. Although these persons were known in the vicinity and to the Mexican authorities, or with due diligence might have been known to them, the authorities were dilatory in their efforts to apprehend the persons responsible for the death of Canahl, and those persons have not been punished for the crime.

In the Mexican Answer it is said that available evidence indicates that Canahl met his death as a result of a quarrel in which he took part. It is alleged that Mexican authorities immediately took steps to apprehend participants in the quarrel for the purpose of thoroughly investigating the facts and of punishing the guilty persons, if they should be found criminally responsible for the death of Canahl. It is asserted that measures taken by the authorities resulted in the apprehension of some persons; that disturbed conditions in the locality in question, due to a state of warfare, prevented further steps for a time; and that the proceedings

were resumed several years later and are still being continued. It is denied that any responsibility can be fixed on the Mexican Government "for the unfortunate death of Gilbert T. Canahl." Certain court records accompany the Answer.

In the Mexican Brief the defense is alleged that at the time Canahl was killed Francisco Villa, who was in arms against the Carranza Government, was in control of the State of San Luis Potosí, and that the Mexican Government can not be held responsible for the acts of the revolutionary faction headed by Villa. It is further said that the authorities of the Federal Government had no knowledge of the killing of Canahl, until the occurrence was brought to their attention in a communication addressed to them by the American Consul at San Luis Potosí some time in August of the year 1922, that is, about seven years after Canahl was killed.

Counsel for Mexico in oral argument analyzed the occurrences entering into the claim by grouping them for convenience under three periods.

The first period was stated to be one beginning with the date of the murder and continuing during a short space of time, when records show that investigation was made of the crime. A Mexican official determined that seven men should be arrested and arrests were made of three. Orders were given for the arrest of four other persons. It seems to have been admitted on the part of counsel for the United States that, irrespective of allegations made in the American Brief, the record does not contain evidence on which to predicate a complaint of serious neglect in this early stage of the proceedings.

There is more uncertainty with regard to the so-called third period, during which counsel for the United States contended there was evidence of neglect. It is true that no persons were apprehended. Occurrences upon which conclusions were predicated were analyzed differently by counsel, and it is difficult, if not impracticable, for the Commission to reach positive conclusions with respect to the nature of the proceedings that have been carried on.

However, the attitude of the Mexican authorities within the so-called second period is something upon which the Commission may predicate a decision. That period was said to be from the end of June, 1915, to the end of the year 1922. During this time the record is silent. After the steps which have been described were recorded the record, as was said by counsel for the United States, ends for a space of about seven years.

There was some discussion by counsel for each Government on the point whether, when Villa forces established themselves in San Luis Potosí they supplanted civilian Carranza authorities entrusted with the administration of justice, and whether when Carranza forces drove out the Villa forces the civilian authorities were again changed. There is no evidence in the record bearing on this point, which might appear to be of some importance in considering the question whether there was continuity in the administration of governmental functions, so that there could be no reason for interruption or delay or obstructions in connection with the discharge of those functions. However, this is not a controlling point in the light of facts developed by counsel for the United States with respect to the situation in the locality in which the crime was committed.

It is definitely established that Carranza authorities took possession of the State of San Luis Potosí approximately three weeks after they drove

out the Villa authorities, who had been in that region about six months. The broad contention advanced in the Mexican Government's Brief that there is no continuity between a mere revolutionary faction and the Government of a country, can not be sustained with respect to the application which it is sought to give to it in the instant case. The change of authority due to internecine disturbances may seriously interfere with the discharge of governmental functions, and doubtless the Commission may well take account of a situation of this kind in considering a complaint against lax administration of justice. But assuredly authorities responsible for law and order in a community could not properly ignore a murder just because it had been committed three weeks before rebel forces were driven from the locality in which the murder took place. A different situation could be conceived, if rebel forces had been in possession of a territory for years after a murder had been committed and if records in relation to the crime had in the meantime been destroyed, but no such situation is revealed in this case. Indeed it is shown that, when the investigation was resumed in March, 1923, and the prosecuting attorney petitioned the local Judge to issue an order for the apprehension of the persons responsible for the murder of Canahl, the Judge issued the following order under date of March 10, 1923: "Inform the prosecuting attorney that the order of apprehension which he requests was issued June 17, 1915." It will therefore be seen that the Judge recognized as valid and in force the order issued in 1915 by the so-called Villista authorities for the arrest of four suspects.

In view of the fact that it is clear that effective measures were not taken for the apprehension of the persons who killed Canahl, an award should be rendered in favor of the claimant.

In fixing the amount of this award account may properly be taken, as has already been observed, of the difficulties attending the administration of justice owing to the revolutionary disturbances. The sum of \$5,000.00 is deemed to be an appropriate indemnity.

Decision

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

WILLIAM T. WAY (U.S.A.) *v.* UNITED MEXICAN STATES

(October 18, 1928. Pages 94-107.)

PROCEDURE.—RIGHT OF CLAIMANT GOVERNMENT TO RAISE DURING ORAL ARGUMENT A GROUND FOR CLAIM NOT THERETOFORE ADVANCED.—RIGHT OF RESPONDENT GOVERNMENT TO RAISE DURING ORAL ARGUMENT ISSUE NOT THERETOFORE SPECIFICALLY ADVANCED. Upon the oral argument the Agent for the United States contended that claim was founded upon direct responsibility as well as a denial of justice. At the same time the Mexican Agent raised an issue said to have been