

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

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**RECUEIL DES SENTENCES  
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**L. J. Kalklosch (U.S.A.) v. United Mexican States**

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

(October 18, 1928. Pages 126-130.)

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**DENIAL OF JUSTICE.—ILLEGAL ARREST.—CRUEL AND INHUMANE IMPRISONMENT.** Without warrant or other legal authority, and without evidence indicating claimant may have been guilty of crime, claimant was arrested and, allegedly, imprisoned in filthy jail cell without bed, blanket or even a rag. *Held*, responsibility of respondent Government established as to illegal arrest.

**EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—BURDEN OF PROOF.—EFFECT OF NON-PRODUCTION OF EVIDENCE AVAILABLE TO RESPONDENT GOVERNMENT.** Where evidence is conflicting but evidence by claimant includes affidavits based on personal knowledge and corroborating report of American consul, while respondent Government has, without explanation, failed to produce official records presumably in its custody which would clarify the disputed facts, *held*, claim established by the evidence.

*Cross-reference:* British Yearbook, Vol. 11, 1930, p. 225.

*Commissioner Nielsen, for the Commission:*

Claim in the amount of \$12,500.00 is made in this case by the United States of America against the United Mexican States in behalf of L. J. Kalklosch. The claim is grounded on complaints made by the claimant that he was illegally arrested and imprisoned by Mexican authorities, and that he was mistreated in connection with his arrest.

The Memorial contains in substance the following allegations with respect to the occurrences out of which the claim arises:

On July 16, 1912, the claimant was arrested at Columbus, Tamaulipas, Mexico, by a lieutenant of the Mexican Army in command of Mexican forces. Without warrant or other legal authority and without just cause, the claimant was taken first to Los Esteros, Tamaulipas. He was 58 years old at the time and in delicate health, one of his legs being infirm from paralysis. Nevertheless he was required to march at a greater speed than was proper or necessary and was otherwise mistreated and humiliated by the soldiers. From Los Esteros he was taken to the town of Altamira, where he was imprisoned in a jail for three days and nights, in a filthy cell where he had to sleep on a cement floor without bed, blanket or even a rag. Although the claimant was arrested only 400 feet from his home at Columbus, he was refused permission to go there to provide himself with proper clothing for the confinement that he was to undergo. From Altamira he was taken to Tampico, where he was confined in jail for four days and nights, whereupon he was released upon order by the Court of First Instance, there being no evidence against him. It is understood that the claimant was suspected of participation in a mock or feint lynching of one J. W. Lindsay, a citizen of the United States, which took place at Columbus, Tamaulipas, on the night of July 15, 1912, an act with which the claimant had nothing to do.

The claimant, as a result of the treatment accorded him, was humiliated and was greatly injured in body and mind by unjust and unwarranted arrest and imprisonment.

Evidence accompanying the Memorial of the United States includes the following:

A lengthy despatch under date of July 25, 1912, sent by the American Consul at Tampico to the Department of State at Washington, regarding the arrest at Columbus, Tamaulipas, of seven Americans, including the claimant, Kalklosch; an affidavit made by the claimant on November 1, 1912, which he formulated at that time with respect to a claim against the Government of Mexico; an affidavit made on June 16, 1913 by C. R. Chase, who was a resident at Columbus, and one of the men arrested; an affidavit made on June 27, 1913, by J. T. Moore, a clergyman resident in Columbus, who was also arrested; an affidavit made on September 24, 1926, by F. B. Parker, who was engaged to act as interpreter for the arrested Americans by their lawyer in Tampico in 1912; a letter, under date of September 9, 1912, addressed by I. R. Clark, one of the men arrested, to the American Consul at Tampico, with respect to the occurrences out of which the claim arose.

In the Mexican Government's Answer denial is made of all the allegations in the American Memorial, and it is asserted that none of these allegations has been proved.

Accompanying the Answer is a statement of the Municipal President of Villa de Altamira in which it is stated that a Municipal Judge of the town who acted as Secretary of the Municipal Government and Director of Courts in the year 1912, made a sworn declaration that it was untrue that Louis J. Kalklosch was a prisoner in that year, or that he had been in that town, or in Columbus; and furthermore, that Kalklosch was never molested by Mexican authorities; that there were no police books or records to confirm his statements which could be proven, however, by testimony of well-known residents of the town of Altamira; and that the files of the town were burned by revolutionary forces which were quartered there during the last days of 1912. Pursuant to stipulations between the Agents, the Mexican Government further produced statements obtained from persons at Altamira in the month of March, 1927, to the effect that the claimant was never under arrest at that place.

The report of the American Consul and other evidence accompanying the American Memorial contain detailed information in relation to the occurrences out of which the claim arises. It appears that there was at Columbus an American settlement known as the American Colony, consisting of approximately 500 people. These people evidently entertained intensely religious views and were strongly opposed to intoxicating drinks or to the sale thereof in their midst. The presence in this colony of an American citizen by the name of J. W. Lindsay was very obnoxious to the other residents. Lindsay, it appears, made his living by begging to a large extent, and maintained or attempted to maintain a saloon and a house of vice.

In July, 1912, a masked party, consisting probably of seven or eight persons went to Lindsay's house, blindfolded him and conducted him to a tree where they put a rope around his neck and went through the motions of hanging him, evidently with the purpose of frightening him and causing him to leave the town. Doubtless he suffered some injury.

On the morning of July 16, 1912, the news of this outrage having been brought to the attention of the authorities of Altamira, a party of soldiers came from that town to the station of Los Esteros and proceeded to Columbus and there arrested seven men who were taken to Altamira

on the afternoon of that day and there confined in jail. At the end of three days they were committed to the Court of First Instance at Tampico, where they were again confined in a jail. Four days later Kalklosch and three other men were unconditionally released from that jail.

Obviously it was proper to take appropriate steps looking to the punishment of the perpetrators of the outrage on Lindsay. However, from the evidence in the record it appears that Kalklosch did not participate in the mock lynching; that he was in his home when this outrage occurred; and that Lindsay on more than one occasion made it known to Mexican authorities that Kalklosch had no part in this affair.

Unless the evidence accompanying the Memorial is to be rejected practically in its entirety, it must be concluded that Kalklosch was arrested without a warrant and without any cause. The statements that Kalklosch was not arrested and was not molested can only be accepted if the view is taken that in the affidavits accompanying the Memorial the affiants stated a mass of amazing falsehoods, and that the American Consul in 1912, produced out of his imagination, a lengthy report concerning arrests of Americans which never took place. Of course such things did not occur.

In the Mexican Brief it is said that of course the only evidence that could establish the disputed allegations in this case would be the court and police records, and that unfortunately, due to revolutionary troubles, the archives of the town of Altamira were destroyed in 1914. This is not a satisfactory explanation of the absence of evidence of this kind. The prisoners were taken from Altamira to Tampico, and there an investigation was conducted and formal imprisonment of the arrested men was decreed. Some, and perhaps all, of the official records relating to the arrest of the seven men were therefore in Tampico. There is nothing in the record with respect to the destruction of records at that place.

Counsel for the United States in argument called attention to Article 16 of the Mexican Constitution of 1857, in force in 1912, which provided that no one shall be molested in respect of his person, family, domicile, papers or possessions, except by virtue of an order in writing of the competent authority, setting forth the legal grounds upon which the arrest is made, an exception being made of course with respect to the arrest of persons taken in *flagrante delicto*. In the absence of official records the non-production of which has not been satisfactorily explained, records contradicting evidence accompanying the Memorial respecting wrongful treatment of the claimant, the Commission can not properly reject that evidence. The treatment of questions of evidence similar to those raised in the instant case was discussed in the case of *William A. Parker*, Docket No. 127,<sup>1</sup> and in the case of *Edgar A. Hatton*, Docket No. 3246.<sup>2</sup>

While the claim for damages in the sum of \$12,500.00 must be rejected, an award may be made in the sum of \$300.00.

#### *Decision.*

The United Mexican States shall pay to the United States of America in behalf of L. J. Kalklosch the sum of \$300.00 (three hundred dollars), without interest.

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<sup>1</sup> See page 35.

<sup>2</sup> See page 329.