

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Laura A. Mecham and Lucian Mecham, Jr. (U.S.A.) v. United Mexican States

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Laura A. Mecham and Lucian Mecham, Jr. (U.S.A.) v.
United Mexican States

(April 2, 1929, concurring opinion by American Commissioner, April 2, 1929.
Pages 168-173.)

DENIAL OF JUSTICE.—REFUSAL TO ARREST CRIMINALS. Claimant's store was robbed, the guilty parties were pursued and found, but authorities at such place refused aid, in absence of formal order of arrest, and ordered attempts to apprehend guilty parties to cease. Mexican constitution permitted arrest without such order in urgent cases. Claim *allowed*.

FAILURE TO APPREHEND OR PUNISH.—INTERNATIONAL STANDARD. Claimant's husband was killed by bandits. A posse was immediately organized and went in pursuit but bandits escaped in the mountains. Investigation was made and orders of arrest issued. No one was ever arrested for the crime, reports indicating that guilty parties lived in United States. *Held*, steps taken did not fall below the international standard.

PERSONAL LOANS OR PAYMENTS TO OFFICIALS AND SOLDIERS. Claim for unpaid loans made to examining judge and soldiers *allowed* but not payment to doctor. Such payments *held* not an outrage under international law so as to establish responsibility by mere fact of payment.

MEASURE OF DAMAGES, THEFT AND DESTRUCTION. Claim for articles stolen *allowed*. Claim for property destroyed *disallowed*, since failure to arrest persons responsible for robbery and destruction would not have resulted in recovery of destroyed property.

Cross-reference: Annual Digest, 1929-1930, p. 168.

Commissioner Fernández MacGregor, for the Commission:

In this case claim is made against the United Mexican States by the United States of America on behalf of Laura A. Mecham and Lucian Mecham, Jr., wife and son of Lucian M. Mecham, for the sum of \$26,955.70, U. S. currency, for injuries sustained by the claimants as the result of a robbery suffered by them and of the murder of the said Lucian M. Mecham, crimes which were not duly punished by the Mexican authorities.

The facts of the first case are as follows: On the night of February 11, 1921, two individuals broke into a store owned by Lucian M. Mecham in Colonia Juárez, Chihuahua, Mexico, stealing and destroying merchandise to the value of \$1,955.70. The claimants requested assistance from the appropriate authorities of the State of Chihuahua. The Municipal President of Colonia Juárez, Nicolás Reyes, started out, with several men, in pursuit of the guilty parties, found traces of the fugitives, and followed them to a ranch near the town of Janos, where they sought the aid of the municipal authorities. These authorities refused to help them stating that they did not have a formal order of arrest. Reyes and his men returned to Colonia Juárez and from there went to Casas Grandes where they also sought assistance. The Municipal President of the latter place furnished some soldiers, and the entire group returned to Janos. The Municipal President there again refused to aid in the search and threatened to arrest Reyes and his men if they persisted in continuing the chase without due warrant of

arrest. However, he informed the minor judge of the facts, who did nothing because the pursuers could give no information about the guilty parties. The Mexican authorities did nothing more.

The Mexican Agency presented as evidence the record of the proceeding instituted because of the robbery of Mecham's store. The said record corroborates in general the evidence presented by the American Agency. If it is true that a Mexican official, Reyes, did everything that he possibly could to bring about the capture of the robbers, it is equally true that another Mexican official, the Municipal President of Janos, decidedly prevented that capture. The Mexican evidence contains an explanation of the conduct of the Janos authorities; namely, that as the pursuers brought no formal warrant, arrest could not be permitted without violating Article 16 of the Constitution of the Mexican Republic, the pertinent part of which says:

"No one shall be molested in his person, family, domicile, papers or possessions, except by virtue of an order in writing of the competent authority, setting forth the legal ground and justification for the action taken."

If this provision were without exception, then the blame for preventing the pursuit would be upon Reyes, who did not take the steps necessary to comply with that important requirement; but the Commission cannot cast that reproach on this efficient officer in view of the fact that that same Article 16 contains the following exception, which in its opinion applies to the case:

"Only in urgent cases instituted by the public attorney without previous complaint or indictment and when there is no judicial authority available may the administrative authorities, on their strictest accountability, order the detention of the accused, placing him at the disposition of the judicial authorities...."

In any event, the failure to arrest is imputable to a Mexican official. The Municipal President of Janos could have done what is prescribed by Article 199 of the Code of Criminal Procedure of the State of Chihuahua¹ to take the steps necessary for the protection of the injured and the arrest of the guilty, placing, for example, police around the place where it was believed they could be found. Moreover, while a court record is not in many cases proof of the measures which are taken to arrest a criminal, that presented by Mexico reveals palpable negligence. The Judge of First Instance of Casas Grandes, about the middle of March, reported to the Governor of Chihuahua that no proceeding had been instituted against the robbers of Mecham's store, and stated that neither had it been instituted by the Minor Judge, as the Municipal President had not made the assignment which he was under obligation to make. Such proceedings were begun on June 23; and there they ended; and, as, in order to arrest a criminal in a case *non flagrante delicto*, a warrant of arrest is necessary, it is clear that none having been issued in all this time, said arrest could not even be attempted.

¹ "ART. 199. When the denunciation is made before authorities who do not have jurisdiction over the case, the latter shall notify the proper authorities immediately, taking at once under their strict responsibility adequate measures for the protection of the injured parties, the apprehension of the guilty parties or those parties presumed as such, and all other measures which might be necessary."

In view of the above, and although it is not incumbent on this Commission to examine every single step taken by the judicial or police authorities in the prosecution of a crime, the general facts set forth are sufficient, in its opinion, to warrant the assertion that the Mexican authorities fell short of their duty to protect the claimants by providing appropriate means to prosecute and punish the offenders.

With regard to the complaint of a denial of justice for not punishing the murderers of Mecham, the facts are as follows: On the night of March 18, 1922, at about 9 P. M. several bandits entered Mecham's house in the place already described, asking the occupants for what money they had. Mecham's wife was able to get away to ask for help. Meanwhile the bandits so brutally struck Mecham, who was in bed convalescing from pneumonia, that his skull was broken, leaving him unconscious and in such bad shape that he died eleven days afterwards. The bandits escaped. The facts were reported to the said Reyes, Municipal President of Colonia Juárez, and also to the Judge at Casas Grandes. The former immediately organized a group which went in search of the bandits, who had left, it appears, in a wagon, overtaking them at the hacienda of San Diego, and demanding their surrender. This was not obtained and several shots were exchanged, one horse drawing the wagon being killed by the shooting, and the other wounded. The bandits escaped into the fastnesses of the mountains. Meanwhile, at daybreak on the 19th of March, the Judge of Casas Grandes had come to the scene of the crime, and carried out the first investigations, taking note of the condition of the wounded man, appointing medical experts, taking statements of eye-witnesses, of Reyes and his companions in the chase, etc. He provided immediately for an examination of the wagon and the horses which had been left on the scene of the affray with the bandits. Having observed from the brands on the horses that they belonged to one Guillermo Bueno, the Judge went to his house, not finding him. There he interrogated his father-in-law and his wife; he asked these witnesses for a description of Bueno, and of one of his companions, and in view of the fact that every suspicion rested upon these individuals, he issued an order of arrest against them. The said order was communicated to the Municipal President and to the Chief of Social Defense. On the 20th the medical experts rendered their report. On the 22nd of March the President of Casas Grandes advised that he had already ordered that the guilty parties be sought. On the 31st of the said month letters requisitorial for arrest were issued to all the judges of the State. Afterwards the statements were again taken of witnesses already examined. On August 3, 1922, the judges of first instances of Chihuahua were asked if they had procured the arrest of the guilty parties. It is also of record that the Governor urged the Rural Police of the State to cooperate specially in the arrest, adding that he did not have reports indicating that they would be found in that vicinity, but probably in New Mexico, U.S., as Bueno and his accomplice had lived there many years.

The American Agency complains that the Judge who began the investigation was reluctant in fulfilling his duty; that he collected \$55.00 from Mrs. Mecham to go and examine the witnesses at the house of the suspected Buenos; that she had to pay \$10.00 to the doctor who was brought by the Judge to examine the wounded man; and that she likewise had to pay \$20.00 to the soldiers who came to give her protection after the assault. It alleges as another important aggravating circumstance that the judge had within his power in making his investigation in San Diego, two individuals,

father and son, who were very suspicious and who were given their freedom, in spite of the opposition of Reyes, the Municipal President; that the Judge had intentions of abandoning the case; that there are no indications in the record that any search was made at the home of the suspected Bueno.

The truth in regard to the payments made by Mrs. Mecham seems established by the statements of several eye-witnesses who gave many details concerning them. Such an act is vituperable and certainly contrary to the Constitution of Mexico (Art. 17); nevertheless, the Commission could not call it an outrage in the sense which the Law of Nations gives to that word. It seems, furthermore, that the intention of the Judge, from what can be seen, was to return the money, which appeared necessary to pay for the automobiles to go to the investigation. With regard to the sum collected by the doctor, there is the question that, besides his medico-legal services, he may have given the wounded man some professional attention.

It does not seem corroborated by the judicial record that the Judge freed two suspicious persons whom he had in his power. The declarations of the witnesses presented by the American Agency seem to refer to two individuals, who were father and son, and these, according to the record presented by Mexico, are the ones called Mora and Bueno, (the owner of the wagon). The first did not appear suspicious; the second never was before the Judge, who thereafter issued a warrant of arrest for him and his companions.

With regard to whether the judge had intentions of dropping the case, the proceedings show that he positively pursued it as far as possible.

The Commission must, in the present case, as in other cases, adhere to the substance of the facts. Even though more efficacious measures might perhaps have been employed to apprehend the murderers of Mecham, that is not the question, but rather whether what was done shows such a degree of negligence, defective administration of justice, or bad faith, that the procedure falls below the standards of international law. The Commission is not prepared to say such a thing in this case.

From the foregoing it follows that the Commission must give satisfaction only for the denial of justice and lack of protection to the property of the Mechams, implied in the case of robbery. To fix the amount of such indemnity the Commission deems it expedient to consider in this case the value of the effects stolen and which might have been recovered if the immediate arrest of the robbers had been obtained, as appeared imminent. The claimants in their affidavits give a list of the goods stolen and their prices, but in this list are included several entries for items which could not have been recovered even if the arrest had been procured and others for damages to the house and for expenses of the men who went after the robbers. The items which, for this reason should be deducted, are:

1 ton of flour emptied on the floor	\$100.00
Medicines taken and destroyed	90.00
10 small sacks of flour wasted	25.00
Face powder taken and destroyed	25.00
Damages to the building on entering it	25.00
Expenses to the men who went after the robbers, furnished in provisions and salaries	120.00
Total	385.00

There are three other items which include expenses charged by the doctor and by the Judge and the amount paid to the soldiers. Of these

items the two last should be paid, (30 and 20 dollars, respectively) as it seems that they were loans made, but not the first as there is doubt regarding the purpose for which the doctor collected it.

Nielsen, Commissioner:

I agree generally with the conclusions expressed in the opinion written by Commissioner Fernández MacGregor.

I do not concur entirely in the computation of the amount of indemnity awarded. Evidence has not been adduced to refute the evidence submitted by the United States to support the items set forth in the Memorial. The general rule of international law in a case of this kind is, in my opinion, that relied upon by the Commission in the case of *Coatesworth & Powell* (Moore, *International Arbitrations*, Vol. II, p. 2050) in which the Commission awarded an indemnity of \$50,000.00 for property losses, responsibility being based by the Commission solely on the non-punishment of wrongdoers.

Decision

The Commission decides that the Government of Mexico must pay to the United States of America, on behalf of Laura A. Mecham and Lucian M. Mecham, Jr., the sum of \$1,510.70, without interest, plus the sum of \$50.00, with interest at the rate of six per centum per annum from March 19, 1921 until the date of the last award of the Commission.

KATE A. HOFF, ADMINISTRATRIX OF THE ESTATE OF SAMUEL
B. ALLISON, DECEASED (U.S.A.) *v.* UNITED MEXICAN STATES

(April 2, 1929. Pages 174-180.)

IMMUNITY OF FOREIGN MERCHANT VESSELS FROM LOCAL JURISDICTION.—
VESSEL ENTERING PORT UNDER DISTRESS. The *Rebecca*, an American schooner, sailed from the United States in January, 1884, with cargo consigned for a Texan port and also for Tampico, Mexico. While offshore the Texan port a strong adverse wind drove the vessel to sea until it found itself off Tampico in a damaged and leaking condition. The vessel accordingly entered the latter port and lodged a protest of distress. The Mexican customs officials seized the cargo destined for Texas, without giving any receipt therefor, and arrested the master on a charge of attempt to smuggle. He was tried, acquitted and released but was rearrested and held under bond for over two months. The *Rebecca* and its cargo were sold by order of court, part of the proceeds being paid over to the Federal Treasury and the rest being distributed among certain customs employees. *Held*, facts vessel entered port under its own power and that such port was a port of call did not deprive vessel of right to immunity from local jurisdiction arising out of distress. Claim *allowed*.

DAMAGES, PROOF OF. Damages allowed for value of vessel but not for cargo and for loss and expense, when no evidence to substantiate latter items was furnished.