REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Louis Chazen (U.S.A.) v. United Mexican States

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were rendered by the claimant company. In behalf of Mexico it was stated in argument that the Mexican Government would not for a moment refuse to pay the small amount of the claim were it not for the lack of evidence.

I cannot agree with the view that the record contains nothing but the testimony of a single witness. Moreover, it seems to me that the reference to contemporaneous documents in the *Faulkner* case is not pertinent. The Commission had before it in that case copies of communications that supported sworn statements which were prepared in connection with the presentation of the case. Those communications were contemporaneous with the occurrences which were the basis of the claim. In the instant case the Commission has before it copies of things that evidently were the only written documents contemporaneous with the occurrences with which we are here concerned.

Evidence more concrete and in better form generally might have been produced in behalf of the claimant. But in the existing situation it must be considered that the case is reasonably well established by the evidence, in view particularly of the fact that no doubt is cast upon that evidence by any evidence produced in behalf of the respondent Government, and that no information is given whether an attempt was made to obtain evidence from Mexican authorities concerned with the transactions under consideration. See case of *Kalklosch, Opinions of the Commissioners, Washington, 1929*, pp. 126, 129.

LOUIS CHAZEN (U.S.A.) *v.* UNITED MEXICAN STATES

(October 8, 1930, concurring opinion by American Commissioner, October 8, 1930. Pages 20-35.)

DENIAL OF JUSTICE.—ILLEGAL ARREST.—CUSTOMS ZONE. Facts *held* sufficient to justify arrest by Mexican authorities by American subject within customs zone.

ILLEGAL IMPRISONMENT. Claim for unlawful detention beyond period permissible under Mexican law *allowed*.

CRUEL AND INHUMANE IMPRISONMENT.—MISTREATMENT DURING IMPRISONMENT. Charges of imprisonment under foul conditions and injury by guard *held* not sustained by the evidence.

CONFISCATION.—UNLAWFUL AUCTIONING OF PROPERTY TO SATISFY CUSTOMS DUTIES. Customs authorities *held* justified in sale of claimant's merchandise to satisfy import duties. Fact that such sale was delayed for a year and a half and not within time limit prescribed by Mexican law *held* not a denial of justice in absence of proof that delay caused injury to claimant. Claim for value of merchandise included in such sale on which import duties had been paid and in respect of which Mexican law had been complied with *allowed*.

Cross-reference: Annual Digest, 1929-1930, p. 163.

Commissioner Fernández MacGregor, for the Commission:

In this case claim in the sum of $21,500.00 United States currency, is made against the United Mexican States by the United States of America on behalf of Louis Chazen, a naturalized American citizen. The claim is divided into two parts, the first being for $6,500.00, the value of certain merchandise which was confiscated, and the second for $15,000.00, as damages for arrest, unlawful imprisonment and ill-treatment received at the hands of the Mexican Authorities.

It is alleged in the Memorial that Louis Chazen, of Russian birth, was naturalized in the United States on September 6, 1912; that he is a travelling merchant who, between August of 1921 and December of the same year, shipped merchandise from a place in Texas (United States of America) to Matamoros (Mexico); that on November 5, 1921, he went to Matamoros to claim the merchandise and that the Mexican officials demanded of him a sum which he refused to pay; that he complained to the Mexican customs officials whereupon he was arrested on a charge of smuggling; that without a hearing or a trial of any kind he was kept in jail for eighteen days *incomunicado;* that the Judge at Matamoros refused to hear the case and that the officials then transferred it to Nuevo Laredo, Mexico, where the Judge directed the discharge of the claimant from custody and the return to him of his merchandise and money; that he was released from custody, but that the money and merchandise were never returned to him. Claimant further alleges that he was treated cruelly while in prison which he describes as unsanitary, dirty, inadequately ventilated, infested with vermin and rats, without furniture other than two long wooden benches, and which was filled with prisoners of the lowest class. He complains particularly that during his confinement a Mexican employee struck him over the head with the butt of a revolver inflicting a scalp wound which permanently affected his hearing.

The evidence adduced by both sides in this case is voluminous. The American Agency presented, in addition to the evidence necessary to establish the American nationality of Chazen, the affidavits of various witnesses to the events, and at least six affidavits of the claimant himself, executed on May 7, and July 1, 1925, February 17, and July 3, 1926, July 9, 1927, September 7, 1928, and June 22, 1929, respectively. Further, documentary evidence covering the payment of duties on certain merchandise imported into Mexico by Chazen and a number of transit permits for this merchandise have been submitted.

The Mexican Agency filed with its answer a report rendered by *Secretaría de Hacienda y Crédito Público* with a number of annexes, and later, as additional evidence, a complete record of the proceedings in the case against Chazen prosecuted in the Second Court of Tamaulipas, Mexico.

From the report submitted by the Mexican Authorities, it appears that the claimant was arrested December 7, 1921, in the railway station at Matamoros, by an Inspector of Customs and the Commander of the Customs Guard, on a charge that he had in his possession two trunks containing clothing and other effects, which he was endeavoring to ship into the interior of the Republic, under an importation permit granted by the Customs for one trunk only and covering merchandise weighing much less than that of either of the two trunks seized.

The Mexican Agent showed that Mexican law establishes, for the security of the revenue, a zone of vigilance extending twenty kilometers from the

boundary line, within which foreign merchandise cannot be transported without a special transportation permit, called *guía de internación*. (Art. 475, 476 and 496 of the General Customs Law of Mexico). Chazen had a permit of this kind covering only 38 kilos of merchandise, while that contained in the two trunks seized weighed 156 kilos. The arrest of the claimant and the seizure of his merchandise were effected in compliance with the provisions of Article 547 of the law referred to, which is as follows:

"In the event that merchandise is imported or exported without strict compliance with all the requirements of this law, the administrative authority will immediately institute summary proceedings in which he will set forth circumstantially the facts and the declarations of the necessary witnesses, and will determine whether the merchandise is subject to additional duties, and if it appears that any punishable act has been committed, he will impose the corresponding penalty".

The inquiry having been completed, and Chazen being unable to prove that the import duties relative thereto had been paid upon the seized merchandise, or that he had the *guía de internación* for its transportation, the Custom House applied Art. 520 of the Code referred to, which is quoted as follows:

"Merchandise which is found within the zone of vigilance and with respect to which the payment of duty cannot be shown, shall be considered as imported at places not designated for the purpose; and therefore subject to additional triple duties and the persons responsible shall suffer the penalties prescribed for smuggling."

Upon making an examination of the merchandise a Customs' employee appraised it as having a value of $2,733.00. An assessment was made of the sum corresponding to the duty out of which the Government had been defrauded and of the sum equal to three times the duty which the goods should pay, showing that Chazen owed the sum of $5,667.67. The administrative decision was communicated to Chazen in order that he might, in accordance with Mexican law, enter his objections before the same administrative authority, or before the corresponding judicial authority, but although Chazen selected the latter channel, he failed to avail himself of this right, for which reason the assessment became final and the merchandise subject to sale by auction in accordance with the provision of Article 564 of the law mentioned. The auction took place in the local Custom House at Matamoros on June 12, 1923, the sale producing the gross amount of $2,056.00 which was insufficient to pay the penalties incurred by the merchandise.

The Mexican Agency stated that Mexican law provides that a violation of the General Customs Law gives rise to two proceedings: one of an administrative character, which is the one mentioned above, in order to determine the amount of the simple duty on the merchandise and that corresponding to the penalty for the violation; and the other judicial, because the infraction of the revenue law can also constitute a crime punishable with physical penalty in conformity with the provision of the Penal Code of the Federal District (Art. 514 of the Customs Law).

By virtue of the foregoing Chazen was turned over to the Judge of the Court of First Instance at Matamoros, there being no District Court in that place, and the said judicial official formally committed Chazen to jail, on the ground that he was probably guilty of the crime of smuggling. The

cause was then remitted to the District Judge of Nuevo Laredo, who had full jurisdiction thereof, and who discharged the commitment which had been issued by the auxiliary Judge, in the belief that the crime of smuggling was not present, but merely the offense of under declaration *(suplantación)* which was not punishable by physical penalty.

The prosecuting official who appeared for the Matamoros Collector of Customs, entered an appeal against this decision which was denied, whereupon the same prosecuting official pleaded a denial of appeal which was decided in his favor the record being remitted to the Fourth Circuit Court situated in the City of Monterrey, Nuevo Leon. This court after reviewing the case revoked the decision of the lower court, holding that the crime of smuggling was fully established, that the proceedings in the case instituted against Chazen should be continued and that an order for his arrest be issued.

According to the Mexican records Chazen, arrested on December 7, 1921, was kept a prisoner in the Custom House at Matamoros until December 13, when he was turned over to the Judge of the Court of First Instance, as previously stated, who directed his release on bail on the 16th of the same month. At the time when the Circuit Court ordered the prosecution against him continued, and his rearrest, Chazen had gone to the United States, and it has not since been possible to continue the proceedings.

In view of the additional evidence filed by both sides, but particularly by Mexico, the American Agency modified somewhat its averments of law which were expressed in the re-hearing of the case as follows: (a) Chazen was unlawfully detained by the administrative authorities for nearly seven or eight days before being placed at the disposition of the judicial authorities; (b) during the period of his detention he was kept in an inappropriate place and treated with unnecessary cruelty having been the victim of personal violence inflicted by his jailors; (c) Chazen was legally in possession of all the merchandise which was taken from him on December 7, 1921, and its illegal seizure by the Mexican Authorities constituted confiscation for which the respondent Government is liable; (d) assuming that the proceedings against the merchandise not covered by a *guía de internación*, were lawful, it is evident that with respect to at least 38 kilos of merchandise he had the required permit for which reason the seizure of that merchandise was unlawful, and gives the claimant the right to recover for the damages which he suffered in this regard; (e) the Mexican Government has not been able to demonstrate that the auction of the goods belonging to Chazen was conducted in accordance with the provisions of Mexican law, which invalidates the whole proceedings.

The grounds of complaint alleged by the American Agency will now be discussed:

It may be stated that the Commission finds that the Mexican Authorities had probable cause for the arrest of Chazen. Mexico, as a sovereign State can promulgate such rules as it may deem convenient in order to protect the revenue in its Customs houses and on its frontiers, and it has therefore the right to establish the zone of vigilance to which Article 496 of the General Customs Law refers. The section in question is as follows:

"The zone of vigilance extends from the East to the West, from the Gulf of Mexico to the Pacific Ocean, and from North to South, to a distance of 20 kilometers from the boundary line. The said zone will be under the supervision of the Gendarmerín Fiscal the duties of which is to prevent the importation of

foreign merchandise and the exportation of national products through places not authorized for international traffic."

Within the aforementioned zone, merchandise must be covered by the special permit provided for in Article 476 of the same law which is as follows:

"In order to facilitate the justification of the lawful origin of goods in transit within the zone of vigilance and which are not transported by railroad, the Custom Houses of the Northern border will issue to shippers upon their declaration of introduction of merchandise *(internación)*, the documents prescribed by rules and regulations." Circular No. 133, Department of Finance, June 30, 1905 (see Appendix 48-A).

The evidence submitted shows that Chazen was found within this zone with merchandise of a weight in excess of that of the *guía de internación* which he exhibited, for which reason the officers, in the belief that Article 520 of the Customs Law, quoted above, had been violated, quite properly proceeded to make the arrest. It also seems that the American Agency no longer maintains the allegation of unlawful arrest.

The contention that Chazen was held in detention by the administrative authorities for a period of time longer than that permitted by Mexican law for the delivery of an accused to the judicial authorities, is fully supported by the evidence.

It is alleged that Article 16 of the Constitution of 1917, provides that a person arrested in *flagrante delicto*, or by authorities other than judicial or by private persons, must be placed *immediately* at the disposition of the judicial authorities. It is also alleged that Article 547 of the Customs Law provides that the Collector of Customs, in the case of a violation of the said law, must render a decision within 48 hours. Reference is also made to Article 133 of the Federal Code of Criminal Procedure which provides that the authorities who effect the arrest of an accused must immediately give notice thereof to the Judge having jurisdiction. Without passing upon the pertinency of the aforementioned references the Commission finds a more clearly defined disposition of the Political Constitution of the United Mexican States which may be applicable to the case. This is Article 107, Section XII, Paragraph 3:

"Any official or agent thereof who, having made an arrest does not place the prisoner at the disposition of the Judge, within the following 24 hours shall himself be turned over to the proper authority."

Now Chazen was detained on December 7, 1921; the customs authorities should have placed him at the disposition of the Judge of First Instance of Tamaulipas on the 8th of December at the latest, but as they did not do so until the 13th, Chazen was unlawfully detained, according to Mexican law, for 5 days. This certainly resulted in an injury to him for the reason that as he obtained his liberty on bail three days after being placed at the disposition of the Judge, he would have been released 5 days earlier had he been turned over to the Judge on the day following his arrest.

International law sets no time limit for the detention of an accused before being formally remitted to the Judicial Authorities; each case must be considered on its merits bearing in mind the lofty principle of respect for the personal liberty of the individual. The Commission sees no excuse for the delay in placing Chazen at the disposition of the Judge as the Customs

administrative proceedings against Chazen would not have suffered had the accused, immediately following his arrest, been placed at the disposition of the Judge who was to preside at his trial on a charge of smuggling, since in this event the Customs Authorities would have been able to continue to question him and to proceed with the investigation of the case. The Commission is of the opinion that with regard to the 5 days in excess of the legal period of detention, Chazen is entitled to an award.

In support of the charge of ill treatment suffered by Chazen while in prison, there are his repeated affidavits to the effect that during his detention he was guarded by Mexican soldiers who were rough and abusive, and who continually insulted him because of his American nationality; that the prison was unsanitary with a leaking roof and dirty floor; that it was inadequately ventilated and infested with vermin and rats; that it was in a foul condition owing to the particles of food on the floor, etc., etc. He asserts that he was left in the prison for a day and a half without food and that the food he was given afterwards was uneatable; that two days after his confinement, while being conducted by an officer to make a statement, he saw that the officer was wearing a shirt which had been taken from one of his trunks; that he reproached him whereupon the officer struck him on the head with the butt of his revolver inflicting a severe wound from which he has never recovered. He relates that he was placed with two low class Mexicans who had fought and who were covered with blood and that the guard pushed him against them as a result of which he also was covered with blood. He states, finally, that he was denied medical attention.

The averments relative to the conditions of the prison do not appear to be corroborated by the statements of the persons who made affidavits in this regard. S. Gerhert, who visited the claimant while he was a prisoner, states only that Chazen was confined in a dirty place, and that he was in a cell with several other prisoners nearly all of whom were *peones*, dirty in appearance and in their persons. The same witness in an affidavit made three years later, explains that he visited Chazen the third day of his detention and that he furnished him with a cot and covering and also with food. The complaints of Chazen do not appear to be sufficiently proven. It is probable that he suffered certain inconveniences but it cannot be concluded that there was inhuman treatment nor treatment not up to the standards of civilized nations.

The allegation that Chazen was wounded by a pistol in the hands of a guard is supported by two affidavits of Doctor Greenberg; one made in 1922 and the other in 1928. In the first one he testifies that he attended Chazen on January 25, 1922, (about 45 days after the day on which he received the wound) and that he found him in bed suffering from an unresolved "hematoma" on the left parietal side of the head with no other external evidence of "trauma" which induced him to make a diagnosis (from the symptoms, headache, etc.) of concussion of the brain. He adds that Chazen was in bed for two weeks but was unfit for the transaction of business for a month; that he had a relapse and that he was sufficiently recovered to transact his business by the 1st of April. In the affidavit of 1928, Dr. Greenberg testified that in September of that year when he examined Chazen he found his hearing to be defective in both ears, but worse in the left ear, with some evidence of trauma in the right drum membrane; and concludes by saying that the cause of the aforementioned condition could be the result of a severe blow on the head. It is worthy of

note that the witness Gerhert who visited Chazen three days after his detention and several times afterwards, makes no mention of the wound, which according to the claimant himself, was inflicted on the third day of his imprisonment. The doubt in this connexion expressed by the Mexican Agency, seems to be substantiated by the consideration that the unresolved hematoma which was treated by Dr. Greenberg 45 days after the blow which Chazen states he received, could not have been caused by such blow, since this opened the scalp producing a hemorrhage which is antithetical to a hematoma which is a bleeding within the tissues; that the hematoma disappears after three weeks; and that the concussion of the brain of which Chazen showed symptoms on January 25, 1922, could not have been caused by the blow he might have received between December 10, and 12, of 1921. It further appears in the judicial record filed by Mexico, that on January 26, 1922, Chazen, whom Dr. Greenberg saw the day previous on the American side of the boundary line in bed and in a nervous condition, appeared in court at Matamoros where he was given an official notice which he signed. The affidavit of Dr. Greenberg of 1928 does not prove that the deafness of Chazen is the effect of the blow which he alleges he received. The deafness is of both ears and Chazen was struck on one side only; the evidence of trauma of the tympanum is on the right side and Chazen states that he was struck on the left parietal region. Evidence of so flimsy a character cannot serve the Commission as a basis for conclusions as to the facts of a blow and of its effects.

The averments (c) and (e) of the American Agency as previously enumerated, are connected and may be examined together; both tend to demonstrate that the Mexican Authorities were without authority to auction the merchandise of Chazen and to appropriate the proceeds thereof.

It has already been said that there was probable cause for the arrest of the claimant for being found within the zone of vigilance in possession of merchandise not covered by the *guía de internación*. It is now necessary to ascertain whether during the course of the administrative proceedings instituted against him, which is the means established by Mexican law for the condemnation of merchandise, Chazen proved that he had lawfully imported it into Mexico, or in other words, whether he had paid the customs duty thereon.

When he was examined after his arrest by the Customs Authorities he stated in effect that he had imported from the United States between August and December, 1921, merchandise consisting of clothing and similar articles of the approximate value of $8,000.00 United States currency; that a few days previously he had taken a part of his merchandise to Monterrey to sell it, being partially successful; that he returned to Matamoros personally carrying a part of his merchandise sending the rest by rail from Monterrey to Matamoros placing, upon his arrival at the latter place, in the same trunk all the merchandise which he had taken to Monterrey; that in the meantime he received from the United States another bundle containing merchandise on which he paid the duty and that at that time, being called to Tampico by a buyer, he intended to send by rail two trunks which contained, intermingled, the merchandise recently received and that already in Mexico; that upon his arrival at the railway station he was arrested for not having been able to show that the two trunks were covered by permits, but that he had paid the duty on all the merchandise.

No evidence was presented other than a permit for 38 kilos and the customs authorities handed down a decision on December 13, holding the

merchandise of Chazen responsible for the simple duties thereon, and, in conformity with Article 520 of the Customs law quoted herein, an additional sum corresponding to three times this amount since the merchandise was regarded as smuggled goods under Article 515 of the same law which provides that goods are smuggled when they are exported or imported through places not authorized for international traffic. Chazen appealed, as was his right, and selected, as previously stated, the judicial channel, but never perfected his appeal. The foregoing is sufficient to show that the Mexican administrative authorities were justified in selling by auction the merchandise of Chazen in order to satisfy the duties imposed by a sentence tacitly acquiesced in by the claimant.

When Chazen attempted to prove, not to the customs authorities, but during the course of his trial which was instituted in order to determine his criminal responsibility, that he had paid all customs duties, he was unable to do so satisfactorily. He presented several documents which showed that between August and December 1921, he had imported 221.50 kilogrammes of clothing of the value of $8,000.00 United States currency upon which he paid $1,034.16 duty; but it is impossible to identify the merchandise taken from him with that set out on the receipts submitted, since these are calculated upon the weight in kilogrammes without details which might assist in identifying the goods. It is further worthy of note that these receipts cover a period of four months, and it is doubtful whether the merchandise taken from Chazen was all, and the same, which he imported during that time, since it can be assumed that during the five months in question he would have sold more than he himself admits he sold on his last trip to Monterrey. There is still to be taken into consideration that many of the receipts submitted are in the name of Santillana, the broker, and not in the name of Chazen. All of this was probably appreciated by the American Agency when its counsel stated in the oral argument: "these official documents unfortunately do not permit the Commission, any more than they permitted the customs authorities at that time, to make a comparison item by item of the merchandise found in Chazen's possession with the merchandise which was represented by these permits, for the reason that the duties to which this merchandise was subject were not *ad valorem* duties but specific duties."

The Commission, in fact, has no evidence that Chazen paid the duty on the merchandise seized and the contention that he did so cannot be supported by certain alleged numerical coincidences in the total amount of merchandise imported by Chazen and in that found in his possession, since such presumptions are very weak. As the customs authorities, then, applied the law, in general, with justice, there was no confiscation in the international meaning of the word. The merchandise was taken and sold pursuant to Mexican law for non-payment of duty, and therefore, the execution of the legislative will cannot inflict an injury upon an importer.

It is also alleged that the auction sale of the merchandise subject to the payment of triple duties was not carried out in accordance with Mexican law. It is pointed out that the administrative decision was rendered December 16, 1921, and that the merchandise was not auctioned off until June 12, 1923, that is to say a year and a half later, the Mexican law providing that if within three days of the assessment of duties, payment has not been made, execution shall be levied upon property of the debtor sufficient to cover his indebtedness, unless the public treasury is in possession of the

merchandise or effects subject to the duties or has them on deposit, and in that case they shall be sold at auction in accordance with the provisions of the law. (Article 567 of the Customs Law.)

It is clear then, that in this case the auction sale did not take place within the time limit prescribed by law; but this delay cannot give rise to international responsibility, since in order that a particular formality of a proceeding which in general has been followed in strict accordance with the law, may cause such responsibility, it must be shown that it is cause of the failure of the general proceedings to do justice, or, that it be shown that such particular formality causes in itself an injury to the claimant.

In this case the delay in selling the merchandise of Chazen may have affected adversely its price, but there is no evidence to that effect. It seems rather that the product of the sale was more or less that of the value assigned to the merchandise by the Customs Inspector who made the examination when the goods were seized, that value being $2,733.00 and the auction sale bringing $2,056.00, amounts which are not very far apart. It must be borne in mind in this regard that judicial auction sales produce as a general rule a sum less than the value assigned to the merchandise.

With reference to this same auction sale it is alleged that the provisions relating thereto fixed by the General Customs law in its Article 656 were not complied with, and in particular that the prior appraisement required by the said Article was not made thus annulling the proceedings and rendering the appropriation of the value of the merchandise unlawful. The Commission, unfortunately has no evidence upon which to base an unconditional opinion on this point because the Mexican Agency presented a certified copy of the Customs' proceedings only until the decision imposing triple duties on the merchandise; so that the Commission is unable to determine the propriety of the other proceedings. It seems, though, that there is evidence that the appraisement was made pursuant to the provisions of Mexican law, since upon the initiation of the investigation made by the Customs, an inspector who examined the merchandise, appraised it. If this is related to Section I of Article 656 of the Law, which states, "The goods which pursuant to this law are to be sold at auction shall first be appraised by an expert, who may be one of the officers or employees of the office by which the seizure was effected", it seems plausible to conclude that the appraisement was made in the beginning, and in view of possible auction sale for the purpose of expediting the distraint proceedings *(accion coactiva)*.

Further, there is in the record a report of the highest treasury authority of Mexico, the Department of Finance, in which it is certified that the administrative decision was executed in accordance with the provisions of Article 564 of the said law on June 12, 1924, and there are also extracts from the proceedings had after the auction. There being, then, no evidence of unlawful procedure at the beginning, nor of error or improper application of the law in connexion with the auction sale, the presumption of the regularity of the acts of a government must be applied.

It is alleged, finally, that not all of the merchandise taken from Chazen was subject to the proceedings and penalties which the Mexican authorities applied in holding it to be smuggled. It is indicated that at least 38 kilos of this merchandise was covered by a permit and that this merchandise was separated by the arresting officers, according to their statement, and sent to the Collector of Customs for his disposition. These facts seem to be proven.

The Mexican Agency maintained the theory that all of the merchandise had been intermingled from the beginning and finally sold by auction; but it asserts further, that even assuming that the Mexican authorities had sold not only the merchandise subject to seizure, but also the 38 kilos of merchandise which had complied with the Mexican law, Mexico would not be responsible in view of the fact that the guilty merchandise, so to speak, was subject to the simple duty and to triple duty which amounted to the sum of $5,667.67 and that, as the auction sale produced only $2,056.00, Chazen was still a debtor to the Mexican Treasury for the difference. The American Agent on his part stated that the Mexican authorities undoubtedly had the right to embargo the property of Chazen to cover the debt but that there was no evidence that the proceedings had been conducted in this manner which is that strictly provided for by the Mexican law.

The Commission sustains the latter opinion, since with respect to that part of the property of an alien of which the Mexican authorities took possession without any apparent cause, no satisfactory explanation has been made and it has never been returned to the claimant.

Having in mind the foregoing it appears that Mexico is responsible for an excess of five days, imprisonment of Chazen and for the value of 38 kilos of merchandise the disappearance of which is unexplained. On the first count I believe that there may be allowed, in view of the nature of the imprisonment, the sum of $500.00 without interest. (See *Faulkner* case, Docket No. 47, paragraph 11 for awards in similar cases). On the second count there may be allowed, having in mind that the 38 kilos confiscated are of the same character as the other merchandise appraised by the Mexican authorities at the time of the auction, the lump sum of $350.00, with interest at 6 % upon this amount from December 7, 1921, the date of the seizure of the merchandise, until the date on which the Commission dictates its final decision.

Nielsen, Commissioner:

I concur in the award. However, I should not like to be understood to entertain the view that it is shown with certainty that Chazen was a smuggler, or the view that he was not the victim of improper treatment. Chazen produced considerable proof to show what goods he imported and what duties he paid, and it seems to me that he was substantially put in the position of a man on whom was imposed the burden of showing beyond a reasonable doubt that he had not been engaged in criminal practices. I do not understand that the United States contended that there was not proper cause for his detention in the first instance.

The uncertainty as to the nature and quantity of goods imported by Chazen is shown in the opinion written by Mr. Fernández MacGregor. That uncertainty is, I think, of such a nature that whatever the facts may be, the Commission, under general principles often asserted by it in the past, is precluded from rendering an award for all the damages claimed.

Counsel for the United States forcibly argued that Article 520 of the General Customs Ordinances if construed in the literal sense of the interpretation put upon it by the Mexican Agency is of such a character that its operation must result in wrongful action at variance with international

standards. However, there is not before the Commission any final, authoritative, judicial interpretation of that law. And even though it deals with property found within Mexican territory, it should probably be considered to be one concerned with the subject of importation—a so-called domestic matter. It is pertinent to bear in mind that with respect to questions of that kind international law recognizes the plenary sovereign right of a nation. Goods are imported into a country subject to the existing local law in relation to importation.

Counsel expressed the view that complete records of proceedings with respect to Chazen's goods were not before the Commission. Counsel also forcibly argued that in connection with the seizure, appraisal and sale of Chazen's goods there had not been a strict compliance with the forms of local law; that provisions of law of this kind are mandatory and cannot in any sense be regarded as directory; that therefore unless there is a strict compliance with the law, action at variance with it is void; that the disposition of Chazen's goods was void in the light of these principles; and that therefore Chazen was entitled to compensation for them. But whatever irregularities may have occurred, here again the Commission, in view of the nature of the record before it, is confronted with uncertainties.

Chazen undoubtedly was the victim of harsh treatment while he was in jail. A matter of that kind is always one of difficulty for an international tribunal. The fact may be simply illustrated by the testimony of Dr. Greenberg, who in an affidavit dated September 17, 1928, states with respect to Chazen's defective hearing that it is difficult to state the exact cause of the trouble, but that it could result from a severe blow on the head.

Of course international law does not fix the period for the detention of an accused person prior to his being given a hearing before a judge, since international law does not prescribe for the nations of the world any code of rules for the administration of criminal jurisprudence. But this Commission and other international tribunals have repeatedly awarded damages for illegal detention or excessive periods of imprisonment. International law does, generally speaking, require that an alien be given equality before the law with citizens, and equality is secured to aliens by the fundamental law of Mexico and of the United States. It is therefore of course pertinent in any given case of a complaint of unlawful detention to take account of provisions of local law.

I did not understand the argument of counsel for the United States to be that it is clearly shown that there could be justification for the sale of the separate item of 38 kilos for which Chazen had a permit. My understanding is that the argument was to the effect that, smuggling not having been proved, no goods should have been sold; that, if there were justification for the selling of any of the goods, a sufficient amount could perhaps have been obtained to satisfy the requirements of the customs laws had the goods all been properly sold at the appropriate time and not more than a year after that time; that in any event, this separate item could not properly be sold until it was shown that there was a deficiency after the sale of the other goods taken from Chazen; and that it was not shown that the item was ever by an appropriate procedure subjected to the satisfaction of any such deficiency.

Decision

The United Mexican States shall pay to the United States of America on behalf of Louis Chazen the sum of $350.00 (three hundred fifty dollars)

United States currency, with interest thereon at the rate of six per centum per annum from December 7, 1921, to the date on which the last award is rendered by the Commission, and the sum of $500.00 (five hundred dollars) United States currency, without interest.

LILLIE S. KLING (U.S.A.) *v.* UNITED MEXICAN STATES

(October 8, 1930, concurring opinion by Presiding Commissioner, October 8, 1930, concurring opinion by Mexican Commissioner, October 8, 1930, Pages 36-50.)

IDENTITY OF CLAIMANT. Claimant *held* entitled to present claim despite fact she retained her first husband's name after second marriage.

RESPONSIBILITY FOR ACTS OF SOLDIERS.—DIRECT RESPONSIBILITY.—RECKLESS USE OF ARMS. A group of American employees of an oil company was returning to the company's camp at 3.30 a.m., January 23, 1921, when several of them, who had permits to carry arms, in fun fired their revolvers in the air. A party of Mexican Federal soldiers which had been following the Americans, without the knowledge of the latter, then fired upon the Americans and killed claimant's husband. Evidence was conflicting as to whether such party was in command of an officer. No investigation thereof by the Mexican authorities was shown to have been made until 1927. Claim *allowed*.

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—EFFECT OF NON-PRODUCTION OF EVIDENCE AVAILABLE TO RESPONDENT GOVERNMENT.—BURDEN OF PROOF. The mere fact that evidence submitted by respondent Government is meagre cannot justify an award in absence of satisfactory evidence from claimant Government. When, however, a *prima facie* case has been made by claimant Government, its case should not suffer from non-production of evidence by respondent Government. Moreover, in such circumstances account may be taken and certain inferences drawn from the non-production of evidence available to respondent Government.

RULES OF EVIDENCE. International tribunals must in matters of evidence give effect to commonsense principles underlying rules of evidence in domestic law.

DUTY OF AGENTS TO SUBMIT EVIDENCE. Agents have the duty to produce all possible evidence and arguments in defence of the Government which they represent.

CONSULAR REPORTS AS EVIDENCE. The tribunal will give weight to consular reports bearing on facts of claim according to the extent to which they are based on concrete information.

Prima Facie EVIDENCE DEFINED. *Prima facie* evidence is that which, unexplained or uncontradicted, is sufficient to maintain the proposition affirmed.

MEASURE OF DAMAGES, WRONGFUL DEATH. Age, character and earning capacity of decedent taken into consideration in determining amount of award for killing of American subject.