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Minnie East (U.S.A.) v. United Mexican States

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MINNIE EAST (U.S.A.) *v.* UNITED MEXICAN STATES*(October 24, 1950. Pages 140-145.)*

DENIAL OF JUSTICE.—INADEQUATE PENALTY.—FAILURE TO ARREST.—FAILURE TO PROVIDE TRIAL.—FAILURE TO PUNISH. On September 16, 1913, an American subject was struck by a Mexican during the course of a dispute and suffered such injuries that he died the following day. An investigation was begun on September 29, 1913, as a result of which the Mexican was committed to prison on a charge of physical injuries. This commitment was later revoked and a commitment of homicide issued. No arrest was made under the second commitment, even though it was for a crime not permitting of liberty on bail. Beginning April 17, 1914, further proceedings in the case lapsed until August 17, 1917, when it was discovered the record of the case was "mislaid". The Mexican was never tried, sentenced or punished in connexion with his crime, and apparently died on March 14, 1917. Claim *allowed*.

UNDUE DELAY IN PROSECUTION.—SUSPENSION OF JUDICIAL PROCEEDINGS. An unexplained failure to prosecute for over three years *held* a denial of justice. Whether revolutionary disturbances, as alleged, suspended the administration of justice during this period must be established by trustworthy evidence.

Cross-references: Annual Digest, 1929-1930, p. 162; British Yearbook, Vol. 12, 1931, p. 167.

Comments: Edwin M. Borchard, "Recent Opinions of the General Claims Commission, United States and Mexico", *Am. J. Int. Law*, Vol. 25, 1931, p. 735 at 739.

Commissioner Fernández MacGregor, for the Commission:

The United States of America, on behalf of Minnie East, an American citizen, claims from the United Mexican States the amount of \$50,000.00, United States currency, alleging that Mexican authorities were negligent in the prosecution and punishment of the person guilty of the murder of Victor W. East, the husband of the claimant.

In the year 1913 Victor W. East, an American citizen, was in the State of Campeche, near Champotón, as the manager of the properties in that place of the International Lumber and Development Company. On September 16 of that year East, in celebration of the Mexican national holiday, gave a party during the course of which there was a great deal of drinking followed by a personal dispute between East and one Juan B. Pereyra, who struck East on the head, knocking him to the ground and inflicting injuries upon him. East was picked up and taken to his home where he died the following day.

The local Justice of the Peace upon learning of the death of East, immediately made the preliminary investigation sending, on September 29, 1913, the full record of the proceedings to the Judge of the Criminal Court at Campeche who had jurisdiction of the case and who continued the investigation. Pereyra was formally committed to prison on a charge of physical injuries and robbery (he had forcibly entered a store and taken a few bottles

of liquors). The proceedings were continued during the course of which, on November 10 of the same year, the trial Judge died. His successor, upon acquainting himself with the facts, was not satisfied with the condition of the proceedings and ordered another autopsy. Acting upon the report made by the medical experts the Judge revoked the former commitment against Pereyra and on January 7, 1914 issued another commitment against Pereyra on a charge of homicide and robbery. An appeal against this commitment was taken by the attorney of the accused which was granted January 9, 1914, under the understanding that the proceedings should not be suspended pending the appeal (*en el efecto devolutivo*). The proceedings were continued but Pereyra was not rearrested. On April 3, 1914 the Supreme Court of the State of Campeche handed down a decision sustaining the second commitment of Pereyra. As the appeal had been allowed only under the understanding that the proceedings would not be suspended (*en el efecto devolutivo*), the proceedings had continued and on the 12th of March the investigation was declared to be complete and the record referred to the Prosecuting Attorney and to the Attorney for the defense for the formulation of their respective legal conclusions. On April 3, 1914 the Prosecuting Attorney filed his conclusion which was that Pereyra was guilty of the crime of assault (*golpes*) only. On April 14, Pereyra's Attorney submitted his conclusion wherein he requested the acquittal of his client. From the last mentioned date until August 4, 1917 it does not appear that any further steps were taken in the proceedings.

On August 4, 1917 there appears in the records of the proceedings a notation which reads: "Today, August 4, 1917, I found the record of the proceedings mislaid. I so inform the Judge." It appears that at about the same time the Court had notice of Pereyra's death for which reason the Judge of Civil Registration at Champotón was requested to furnish information; but this official answered that the accused had not died in that town but on a country property in the Municipality of El Carmen. The evidence before the Commission shows that Pereyra died on March 14, 1917 as the result of wounds inflicted by some person.

The American Agency bases its allegation of defective administration of justice on the following grounds: (a) the first charge of physical injury made against Pereyra was inadequate; (b) upon the issuance of the second commitment on a charge of homicide, Pereyra should have been arrested immediately in spite of the provisional liberty which he enjoyed; (c) Pereyra was never tried on the first nor on the second charge.

The Commission is of the opinion that the Judge who issued the first commitment was in possession of sufficient facts to consider Pereyra responsible for a crime more serious than that of physical injuries. Pereyra confessed that he had struck East on the head; several witnesses saw Pereyra with the pistol in his hand striking East although they did not know whether he had struck him with his fist or with the pistol; other witnesses found East lying on the ground in a pool of blood where he had been left by Pereyra; and finally, the certificate of the doctors who made the autopsy describes a lateral wound two centimeters long in the middle of the second circle of the frontal region and two wounds in the left temporal region which had perforated the scalp and the cellular tissues of the muscle, the first one cutting the superficial temporal artery, and concludes that the cause of death was an alcoholic cerebral congestion provoked by the shock resulting from the blows received. It seems that all these elements together with the fact of the death of East, a few hours after receiving the blows, should have

caused the Judge to realize that he had before him a very serious case. This opinion is corroborated by the fact that the Judge, who succeeded the Judge who had died, immediately took this view of the case.

With respect to the contention that Pereyra should have been arrested after the issuance of the second commitment, the Commission is of the opinion that this is also well grounded. The appeal was granted in a *devolutivo* character only and this means according to Mexican law, that the proceedings must follow their regular course with the reservation that in the event of the appeal being sustained by the Appellate Court, these are to be considered as without effect. The second order of commitment did not direct the arrest of Pereyra, which was imperative, he being accused of a serious crime the penalty for which did not permit of his being granted liberty on bail or on his own recognizance. The arrest was never effected which constitutes a violation of Mexican Law and of International Law.

It is perfectly manifest, likewise, that Pereyra was never tried nor sentenced for either of the crimes with which he was charged. The proceedings lay dormant during three years without any explanation being given therefor by the Mexican Agency other than that during the period in question the Courts of the State of Campeche were suspended owing to the revolutionary conditions which extended throughout the Mexican Republic on account of the assassination of President Madero.

With relation to this point the American Agency refers to the treaty of Teoloyucan of August 13, 1914, between the constitutionalist forces, represented by General Obregón, and the federals represented by General Salas, which reads:

“The garrisons in Manzanillo, Córdoba, Jalapa and the federal forces in Chiapas, Tabasco, *Campeche* and Yucatán will be disbanded and disarmed in those places.”

This seems to indicate that until August of 1914 there were federal forces in Campeche which were under the control of Huerta. Reference was also made that, in *Las Memorias de Don Venustiano Carranza*, which are being published, it is related that General Jesús Carranza was commissioned to muster out of service the federals who were in the region of the Isthmus of Tehuantepec and in the States of Chiapas, Tabasco, Campeche, and Yucatán and in the territory of Quintana Roo, in accordance with the treaty of Teoloyucan referred to, adding that the first Constitutionalist Governor of Campeche was Lieutenant Colonel Joaquín Musel, appointed during the same August of 1914. From these facts the Agency concludes that the State of Campeche passed from the absolute control of the federal forces to that of the constitutionalist forces, so that there is no reason for admitting that there were no Courts of Justice in that place.

The Mexican Agency, on its part, sustained that the change of control from the federal forces to the constitutionalist forces was not as simple as pictured, giving the following historical facts. The revolution did not end with the Treaty of Teoloyucan; in September of 1914 Francisco Villa disavowed Carranza basing his action upon a convention assembled at Aguascalientes which appointed General Eulalio Gutiérrez as President, as a result of which the two revolutionary factions opposed each other, the forces of Carranza having to withdraw from the City of Mexico and take refuge in Vera Cruz. In the capital of the Republic the judicial authorities were suspended, the administration of justice being placed in the hands of a single provost. It was argued that if this took place in the capital, certainly

conditions would be worse in Champotón and in Campeche; that order was not established until 1917; that on the 6th of February an edict was issued for the election of federal authorities; that on the 31st of March several provisional State Governors, being candidates in the coming elections, resigned their posts; that on the same date several States were authorized to issue edicts for the election of local authorities, among them *Campeche* and Tabasco; that on the 1st of May General Venustiano Carranza became the constitutional President of the United Mexican States; that on the 10th of June the military districts (*comandancias militares*) of the Republic were abolished; that on the 30th of June constitutional order was restored to the States of Campeche, Colima, etc.

All of the foregoing considerations do not serve, however, to prove to the Commission that the State of Campeche was without Courts of Justice for three years. Certainly there had been disturbances and difficulties; but this is not sufficient to justify the conclusion that there was a complete paralyzation of all justice in one of the federal entities of the Mexican Republic.

It is pertinent to observe with relation to this point that the Commission has heard other cases in which denial of justice on the part of Mexican authorities has been alleged, these having occurred precisely between the years 1914 and 1917, without there having been pleaded as an exemption from responsibility the disappearance of Criminal Courts. In the *Faulkner* case, Docket No. 86,¹ in which unlawful arrest was alleged, the events took place in September of 1915, in the City of Vera Cruz. The Mexican Agency asserted that it was unable to submit a record of the court proceedings because they had been destroyed in a subsequent revolution, and not because there had been no courts. In the *Irma Eitleman Miller* case, Docket No. 1984,² which treats of events happening in September of 1916, in the State of Chihuahua, the Mexican Agency filed a record of proceedings which were instituted by the judicial authorities. In the *Canahl* case, Docket No. 593,³ in which was alleged a failure to prosecute and punish the murderer of an American killed in San Luis Potosí in July of 1915, the judicial proceedings were likewise submitted. In the *Morton* case, Docket No. 2179,⁴ also for denial of justice, based on events which took place in the City of Mexico in the year 1906, Criminal Court proceedings were presented. All of this demonstrates that though a revolution, at certain times, can suspend the administration of justice, it does not necessarily produce this effect, for which reason it must be shown in each case by trustworthy evidence, that there was such suspension. In the instant case mere generalities have been adduced to establish that between 1914 and 1917 the State of Campeche was without courts. Further, it seems clear that the cause of the suspension of the proceedings against Pereyra was that the records of the case were mislaid as shown by the notation above quoted dated August 4, 1917. "Mislaid" means "lost", and that loss indicates why the trial of the cause against Pereyra was not continued.

In view of all the foregoing circumstances and having in mind the precedents followed by the Commission and by other arbitral commissions, it is held that in this case the prosecution of Pereyra was conducted negligently

¹ See page 67.

² See page 336.

³ See page 389.

⁴ See page 428.

with the result that he was never punished for the crime he committed, which constitutes in international law a denial of justice.

The claimant therefore must be awarded the amount of \$7,000.00.

Decision

The United Mexican States shall pay to the United States of America on behalf of Minnie East the sum of \$7,000.00 (seven thousand dollars). United States currency, without interest.

JANE JOYNT DAVIES and THOMAS W. DAVIES (U.S.A.) v.
UNITED MEXICAN STATES

(*October 24, 1930, concurring opinion by American Commissioner, October 24, 1930.
Pages 146-150.*)

DENIAL OF JUSTICE.—DUTY TO COMMIT INSANE CRIMINALS. An American subject was killed by a Mexican who, after due proceedings, was acquitted for lack of mental competency and was never committed either to prison or to an insane asylum. *Held*, no denial of justice existed in failure to commit to an insane asylum.

Cross-references: Am. J. Int. Law, Vol. 26, 1932, p. 630; Annual Digest, 1929-1930, p. 161.

Comments: Edwin M. Borchard, "Recent Opinions of the General Claims Commission, United States and Mexico," Am. J. Int. Law, Vol. 25, 1931, p. 735 at 739.

The Presiding Commissioner, Dr. H. F. Alfaro, for the Commission:

This claim is presented by the Government of the United States of America on behalf of Jane Joynt Davies and Thomas W. Davies, mother and brother of the late Aubert J. Davies, who was murdered by a Mexican national on September 5, 1916, in the State of Lower California, Republic of Mexico.

The facts upon which this claim is based, according to the Memorial, of the American Agency, are as follows:

In the year 1916, Aubert J. Davies was a resident of the State of Lower California, United Mexican States, where he and his brother, Thomas W. Davies, were interested in a stock ranch known as "El Topo" situated in the northern District of that State. On September 5, 1916, one Adrian Corona presented himself at what is known as the headquarters of the ranch and asked Aubert J. Davies for something to eat. The latter granted the request with pleasure and promptly and willingly provided him with food. After finishing the meal, Corona requested Davies to allow him to use his rifle saying that he wished to kill some crows which were perched on the top of a nearby tree. This request was likewise granted, but instead of shooting at the birds, Corona, after retreating a few steps, aimed the weapon in the direction of Aubert J. Davies, and without a word of warning of any kind, shot and instantly killed him.

Immediately after the shooting Corona seized a horse belonging to Davies and fled. He was later apprehended and after trial by the Court