

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Jane Joynt Davies and Thomas W. Davies (U.S.A.) v. United Mexican States

24 October 1930

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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

of First Instance at Tia Juana, was sentenced to death. Upon appeal to the Supreme Court of the Northern District of Lower California, that tribunal held that while the existence of the crimes of homicide and robbery had been proven, Corona was not criminally responsible therefor having "acted in a state of mental alienation which prevented him entirely from knowing the wrongfulness of the acts committed by him". Notwithstanding that the appropriate authorities ordered Corona to be confined in the General Insane Asylum at Mixcoac, D.F., it does not appear and there is no record, that he was ever an inmate of that institution. Corona, therefore, was not imprisoned or punished in any manner for the crimes he committed.

In view of the facts set forth, the United States of America, in behalf of Jane Joynt Davies and Thomas W. Davies, mother and brother of the late Aubert J. Davies, seeks indemnity from the United Mexican States in the sum of \$25,000.00 United States currency or its equivalent, with interest.

The Mexican Agency in its answer, admits the American nationality of the claimants, and the murder of Aubert J. Davies at the hands of Adrian Corona, who executed the act while in a state of mental alienation; and maintains that the Mexican judicial authorities in everything appertaining to the proceedings instituted as a result of the murder, followed strictly the penal laws, and that their conduct cannot from any point of view be considered as being in violation of international law, justice, or equity.

The Agency also maintains, that the failure to confine Corona in some insane asylum after his acquittal, in compliance with the sentence of the Supreme Court, could not constitute an international delinquency on the part of Mexico, nor could it be considered as a cause for damages to the claimants either material or moral; and finally that even assuming that the Commission should decide that the claimants were entitled to an award, the amount claimed is exaggerated and the bases upon which it was calculated are erroneous, inasmuch as it is not a question of indemnifying them for direct damages resulting from the acts of a particular individual, but merely one of compensating them for a moral injury caused by an alleged but not substantiated denial of justice.

The Agency of the United States of America has not questioned the legality of the sentence of the Appellate Court which held that Corona was not responsible for the crimes committed by him while in a state of mental alienation. That decision was considered by counsel for the American Agency in his oral argument as absolutely correct.

It is alleged, however, as a basis for the claim that Corona was never imprisoned or punished in any manner for the crime he committed.

The acquittal of the accused excludes all idea of subsequent punishment. This acquittal was based upon Article 34 of the Penal Code of Mexico, which reads:

"Article 34.—The circumstances which exclude criminal responsibility for the infraction of penal laws are:

"1st. The violation of a penal law while the accused is suffering mental alienation which deprives him of volition, or completely prevents him from realizing the wrongfulness of the act or omission of which he is charged.

"Persons *non compos mentis* will be dealt with in the manner prescribed by Article 165."

Article 165 provides:

"Article 165.—Insane or decrepit persons who fall within the purview of sections I and IV of Article 34, shall be committed to the persons having them in charge, if by means of a solvent surety or real property they give bond,

satisfactory to the judge, for the payment of such sum as he shall designate as a penalty, before the execution of the undertaking, payable in the event that the accused shall again cause some other damage, due to the failure to take all the necessary precautions.

"If such security is not given, or if the judge considers that even with such security the interests of society would not be safeguarded, he shall direct that the accused be placed in the proper asylum, urgently recommending vigilance in their custody."

The provisions of the Article quoted exclude all idea of punishment. It is a question only of very natural measures of prevention for the purpose of preventing the insane person from causing further damage. But that same provision establishes different forms by means of which, according to circumstances, the authorities are able to comply with that duty of social protection.

Neither the Article referred to nor the sentence of the Supreme Court of Lower California, establishes, as the American Agency appears to believe, that Corona must be forcibly confined in an asylum in expiation of the crime he committed unconsciously.

The international duty of Mexico was fulfilled with the apprehension and trial of the accused and any failure or omission subsequent to the sentence which exempted him from criminal responsibility, even in the event of its being fully proven, would not involve the Mexican nation in any international responsibility. Those failures or omissions do not constitute a denial of justice such as that which results from those cases wherein, there existing a failure or omission punishable by law, the authorities of a country refuse to comply with their own legal provisions as interpreted by the courts.

The Commission, therefore, considers and so decides, that the claim of the United States of America on behalf of Jane Joynet Davies and Thomas W. Davies must be disallowed.

Nielsen, Commissioner:

I concur in the result. It is my understanding that the United States did not charge in this case any failure on the part of the Government of Mexico to take effective measures to punish the person who killed Davies. The argument of counsel evidently was that a denial of justice resulted from the failure on the part of the Mexican Government to give effect to its law and to a decision of a Mexican court, which conformably to the law had directed that the person who did the killing should be confined in an asylum. Justice required by international law is, it was argued, simply a due application of the local law, it being assumed that that law squares with international standards. The principle was invoked that a denial of justice may be predicated on the failure of the authorities of a government to give effect to the decision of its courts. The United States has a right, it was asserted, to insist that Mexican law be given application in a case involving an injury to an American.

Doubtless there is general recognition of the two principles relied upon by counsel which may perhaps be considered to be cognate principles. But it is not clear to me that contentions as to their non-observance can be sustained so as to justify a pecuniary award in the instant case. Of course one can conceive of a situation in which the failure to confine an insane person might have very grave results. For example, if Davies had been seriously wounded and not killed, his life might have been jeopardized if the insane man who shot him had been allowed to remain at liberty.

Decision

The claim of the United States of America on behalf of Jane Joynt Davies and Thomas W. Davies is disallowed.

MRS. ELMER ELSWORTH MEAD (HELEN O. MEAD) (U.S.A.) *v.*
UNITED MEXICAN STATES

(October 29, 1930. Pages 150-157.)

DUTY TO PROTECT ALIENS.—RELEVANCY OF REQUESTS FOR PROTECTION.—FAILURE TO PROTECT.—CAPACITY TO GIVE PROTECTION.—DUTY TO PROTECT IN REMOTE TERRITORY. Claimant's husband was murdered by bandits December 14 or 15, 1923, in a somewhat sparsely populated territory in which conditions of lawlessness had existed since 1910. The region was known to be infested with bandits and frequent acts of lawlessness occurred. It did not appear whether protection was requested of the authorities. *Held*, (i) whether or not requests for protection are made does not relieve authorities from their duty to protect, such requests are pertinent merely to the need for protection, and (ii) failure to protect for which respondent Government should be responsible was not established, in view of facts that place of murder was about eighty miles from Saltillo and that raiders, who committed a robbery three months previous to events complained of, were pursued into the hills and scattered.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—CURSORY INVESTIGATION.—FAILURE TO ARREST OR TRY KNOWN SUSPECTS. Following murder of claimant's husband a cursory search was made for assailants. Two members of searching patrol were indicated to have been engaged in previous robberies. Some arrests were made but no one was ever tried or punished for the crime. A voluntary witness reported to the authorities the name of the alleged criminal but no action thereon was ever taken by the authorities. Claim *allowed*.

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—ADMISSIBILITY OF EVIDENCE OF FACTS OCCURRING SUBSEQUENTLY TO FILING OF CLAIM. Evidence of facts bearing on alleged denial of justice occurring after filing of claim *held* admissible and relevant.

Cross-references: Am. J. Int. Law. Vol. 26, 1932, p. 633; Annual Digest, 1929-1930, pp. 169, 455.

Comment: Edwin M. Borchard "Recent Opinions of the General Claims Commission, United States and Mexico", Am. J. Int. Law. Vol. 25, 1931, p. 735 at 738.

Commissioner Nielsen for the Commission:

Claim in the amount of \$25,000.00 gold currency, with interest, is made in this case by the United States of America against the United Mexican States on behalf of Mrs. Elmer Elsworth Mead (Helen O. Mead), widow