

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Annie Bella Graham Kidd (Great Britain) v. United Mexican States

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panies of one country, but may be international. For this reason it is quite possible that, although the insurance contract was signed and the amount paid by a British Company, the ultimate loss was divided over many corporations, of which one or more may have another nationality. Consequently the decision on the nationality of the claim from its inception until now does not depend solely upon the nationality of the Insurer claiming, but would also require an investigation of the reinsurance contracts, subdividing the profits and losses from the original insurance.

7. The view may be taken—as is laid down in several codes—that the Insurer is, by the payment of the insurance money, subrogated to the right of the Insured, and that he is entitled to such compensation as was due to the latter, but at the same time it is evident that he can never exert any rights that did not belong to the Insured.

In the case now under consideration, the Insured party was a Mexican firm not entitled to claim compensation from their Government under the terms of the Claims Convention. By declaring themselves competent to adjudicate upon this claim, the Commission would grant to the Insurance Companies a right which the firm that suffered the loss did not have. There would be laid upon the Mexican Government a liability towards another Government, which would not have arisen out of the events had not the said firm entered into a contract to which the Mexican Government were not a party.

The Commission cannot believe that this would be a just or even a reasonable application of the Convention.

8. The motion to dismiss is allowed.

ANNIE BELLA GRAHAM KIDD (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 32, April 23, 1931. Pages 36-39. See also decision No. 3.*)

RESPONSIBILITY FOR ACTS OF BANDITS.—FAILURE TO SUPPRESS OR PUNISH. When Mexican authorities, upon being informed of killing of claimant's husband by bandits, took prompt and energetic action resulting in arrest and execution of six or eight men, claim *disallowed*.

1. This is a claim for compensation for the murder of William Alfred Kidd at El Carrizal, near Zitácuaro.

The Memorial sets out that on the 8th October, 1916, between 10 and 11 in the morning, Mrs. Kidd was in her house at El Carrizal Camp. Eight or ten men, who appeared to be of the Mexican Army, but might have been revolutionaries, arrived and started shooting. Mrs. Kidd went out to see what was happening, and these men demanded that they be given arms and horses. Mrs. Kidd replied that there were two horses, but no arms. The men then asked for Mr. Kidd, and on learning that she did not know where he was they took her into the house and commenced to search for arms. About this time Mr. Kidd arrived, and with his wife gave these men some food. After this certain members of the band began to disperse, while a few remained in the room. One of the band ordered Mr. and Mrs. Kidd and David Kidd, Mr. W. A. Kidd's brother, to stand up for execution. On being asked why they insisted on killing them, the leader replied that he was anxious that nothing should happen,

but that they required a horse belonging to Mr. W. A. Kidd. Mr. W. A. Kidd replied that it would be there soon as it was in the stable and turning around as though to order the servant to bring the horse he fell, shot by one of the band. Mrs. Kidd, with David Kidd, then made their escape, and hid in the neighbourhood. On returning afterwards they found that everything in the house had been taken except some crockery and flour. As a result of the murder of her husband, Mrs. Kidd, with five minor children, was left without means.

The late Mr. William Kidd had been earning an average of 300 pesos a month.

The amount of the claim is 75,000 dollars, Canadian currency, being 25,000 dollars in Mrs. Kidd's own right, and 50,000 dollars, or 10,000 dollars for each one of the five minor children.

2. The Mexican Agent opposed the claim in the first place because under article 11 of the Rules of Procedure, Mrs. Kidd could only, in her own right and as the legal representative of her minor children, claim for Mr. Kidd's death and not for any damage she may have sustained to her property, as the claim under this latter head should have been presented by the executor or administrator of Mr. Kidd's estate.

The Mexican Agent at the same time maintained that Mr. Kidd's murder was committed by a band of brigands and that the Mexican authorities proceeded with the necessary activity in repressing this act of brigandage, by pursuing and properly punishing the perpetrators. He produced documents showing that the Governor of the State had at once given orders to the military authorities to prosecute the bandits and to shoot them in case they were arrested. Eight of the bandits were, as a result of those instructions, taken and shot.

The fact that the murderers wore uniforms did not prove that they were part of the regular army, because soldiers, who went over to rebel forces, kept their military equipment.

The said Agent also denied that the amount of the loss suffered by Mrs. Kidd and her children had been duly proved.

3. The British Agent stated that the claim was only for the death of Mr. Kidd and therefore that it conformed to article 11 of the Rules of Procedure.

As regards the responsibility of the Mexican Government, under subdivision 4 of Article 3 of the Convention, the Agent pointed out that it had not been proved that the measures, taken by said Government, had been sufficient to repress the brigandage and to punish those who were guilty of the murder. Moreover it was his opinion that the individuals, who committed the murder, were neither brigands, nor bandits, but that they belonged to the forces of the Carranza Government. For this reason they fell within the terms of subdivision 1 of Article 3 of the Convention and it was not necessary to prove that the authorities were to be blamed.

This Agent considered the amount claimed as fair, reasonable and in proportion to the late Mr. Kidd's financial situation.

4. The Commission states that there is sufficient proof of the murder of Mr. Kidd in the circumstances described in the Memorial, but that for the adjudicating of the claim it is necessary to know whether the men, guilty of that act, formed part of the Government forces or not.

All the contemporary evidence points in the direction that the murderers were bandits. The Commission refers to the letter from the British Chargé d'Affaires to the Governor-General of Canada, dated the 23rd October, 1916 (annex 5 of the Memorial), to the Record of the Proceedings in the Constitutionalist Courts of First Instance of the District, dated the 9th October, 1916 (annex 6

of the Memorial), and to two documents filed by the Mexican Agent and containing the evidence of several witnesses interrogated in 1929. In all these papers no mention is made of soldiers, but only of bandits. It is only in affidavits sworn by claimant and her brother-in-law in the year 1924 that the view is taken that the men who killed Mr. Kidd belonged to the Mexican Army.

The Commission cannot but accept the contemporary version.

5. This being the case, the claim can only, according to the fourth subdivision of Article 3 of the Convention, be allowed if it has been established that any omission or negligence in taking reasonable measures to suppress the insurrections, risings, riots or acts of brigandage in question, or to punish those responsible for the same, has existed on the part of the competent authorities.

As regards this point, all the documents, mentioned in the preceding paragraph are unanimous in stating that the authorities, after having been informed, at once took prompt and energetic action. The Governor instructed the Military authorities to pursue the bandits and, if the culprits were caught, to shoot them at once. The result was that six or eight men were arrested and executed.

For this reason the Commission cannot admit that the authorities have been to blame. They obviously did all that was in their power and their diligence was crowned with success. The claim is therefore not covered by subdivision 4 of Article 3, nor by any other provision of the Convention.

It is not without reluctance that the Commissioners have been led to this conclusion. There is no doubt that Mr. Kidd was murdered in a most brutal manner, that by this atrocious act a young and prosperous family was entirely ruined and that an unfortunate widow and five minor children were left without means of subsistence. The Commissioners would heartily welcome any way which might be found to give compensation to this unhappy widow, but they deeply regret that, acting in a judicial function and tied to the wording of the Convention, they are not at liberty to grant an award.

6. The claim is disallowed.

DAVID ROY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 33. April 24, 1931, majority decision. Pages 39-42.*)

RES JUDICATA.—EFFECT OF AWARD RENDERED BY MEXICAN NATIONAL CLAIMS COMMISSION. Prior to the date of the *compromis*, a claimant had received 15,000 pesos Mexican on account of his claim from the Mexican Government, filed his claim with the Mexican National Claims Commission, a domestic tribunal, and received an award of 60,000 pesos Mexican from the Commission, less the 15,000 pesos Mexican previously paid. Motion to dismiss claim, filed in sum of 103,601 pesos Mexican, *disallowed*, but tribunal will take into consideration in decision on the merits the prior judgment of the Mexican National Claims Commission.

Cross-reference: Annual Digest, 1931-1932, p. 39.

1. This claim is presented on behalf of Mr. David Roy, for losses and damages sustained by him on his farm known as "Tres Hermanos" in the Municipality of Camoa, District of Aldama, State of Sonora.

It is alleged that in March 1913, revolutionary forces under the command of General Benjamin Hill entered upon the claimant's property and took posses-