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LEONOR BUCKINGHAM (GREAT BRITAIN) *v.* UNITED MEXICAN STATES*(Decision No. 109, August 3, 1931. Pages 323-327.)*

RESPONSIBILITY FOR ACTS OF FORCES.—DUTY TO PROTECT IN REMOTE TERRITORY. When remote territory was in control of rebel forces, no responsibility of respondent Government will lie for failure to suppress acts of violence or to punish their authors, even though such acts be called to attention of proper authorities.

DUTY TO GIVE WARNING OF DANGEROUS CONDITIONS.—FAILURE TO PROTECT. It is the duty of any government to give warning to inhabitants, whether subjects or aliens, of an inability to give protection in any territory. In this case, after receiving notice of two raids on the district, Secretary of State for Protection, Colonization and Industry replied that measures were being taken. No protection was thereafter extended. *Held*, claim allowed.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", *Law Q. Rev.*, Vol. 49, 1933, p. 226 at 238.

1. This is a claim for damages for the murder, by bandits known as Tiznados, of Mr. H. W. T. Buckingham at Nanchital, near Puerto Mexico (Coatzacoalcos) on the night of the 9th March, 1917.

The facts are set out in the Memorial as follows:

Mr. H. W. T. Buckingham was employed as superintendent of the Oil Exploration and Exploitation Camp of the Mexican Petroleum Company "El Aguila", S.A., in the District of Nanchital, near Puerto Mexico. On the evening of the 9th March, 1917, Mr. Buckingham was entertaining several friends at his house. At about 8 o'clock three armed men came to the house and ordered Mr. Buckingham and his three guests, Messrs. H. E. Andersen, H. Bornacini and M. Walker to go outside the house. The armed men then demanded \$1,500 and a revolver which they alleged was in Mr. Buckingham's possession. Canuto Garcia, the company's watchman, was sent to call Mr. Bannerman, the cashier, to open the safe, in order to meet the demand for \$1,500. Mr. Bannerman was only able to produce \$1,200, and the bandits told Mr. Buckingham that if he did not obtain the missing \$300 he would pay with his life. One of the bandits then asked Mr. Buckingham to give them his best shirt, and they went into the house with another bandit to obtain it. The two bandits took a quantity of Mr. Buckingham's personal property, including blankets and sheets, and forced his guests to carry the goods down to the bottom of the hill, close to the Decauville track. On the way the bandits called Mr. J. J. Pardo, the store-keeper, from his house to open the store. They took from the store, and loaded on to a small platform car, three cases of gasoline, one case of kerosene, and also various tins of provisions and biscuits. The leader of the bandits then asked for Tirso Cruz, the stableman, who at first refused to come. Mr. Buckingham, hearing the leader ask for a tin of petrol in order to burn Tirso Cruz out of his house, sent a man to persuade him to obey the orders of the bandits. The bandits accused Tirso Cruz, when he arrived, of being the cause of the assassination of one of the bandits after the raid they had made on the 5th January, 1917, but in spite of his denial, they shot and killed him. Mr. Buckingham had no idea that the bandits intended killing Tirso Cruz when he sent to persuade him to leave his

house. As soon as the shooting started, the three guests ran behind the store, but two of the bandits ran after them and wounded Mr. Bannerman. On their return to the front of the store, one of the bandits fired at Mr. Buckingham, but his rifle misfired. Mr. Buckingham commenced to run and fell after going a short distance, but as far as could be gathered, he was not then wounded. The bandits then compelled Messrs. Walker and Pardo to push the car on the track away from the river, but after going about twenty-five yards, they were ordered to stop. The bandits went to look for Mr. Buckingham and, having found him, brought him to the car. They again asked Mr. Buckingham for his revolver, which he denied having, and gave them all the money from his pockets. The party then proceeded further up the track, those pushing the car gaining slightly, as Mr. Buckingham, owing to a recent accident, was slightly lame. For some unexplained reason, the bandits suddenly shot and killed Mr. Buckingham. After this the bandits decided to go from the camp by canoe, and compelled the remainder of the party to push the car back to the river and load the canoe. Before they left they threatened Messrs. Walker and Pardo with penalties if they should give information about this raid. Mr. Bannerman died later in the day from his wounds.

The local authorities were well aware of the unsettled state of the neighbourhood. On the 5th January, 1917, a band of armed men had taken possession of the camp of the Mexican Petroleum Company "El Aguila", S.A., at Nanchital, as well as the dwelling-houses of their employees, demanding a sum of money from the manager. On learning that the manager could not pay them the money, they beat him and led him away to be shot at the wharf. On the way there they met the rest of the personnel of the camp, who had been rounded up by the remainder of the band. The bandits then proceeded to rob the personnel of the camp. The threat of shooting was not carried out. Notice of the raid of the 5th January was given to the military commander of the district of the port of Puerto Mexico (Coatzacoalcos), in a letter signed by Mr. Buckingham on the 6th January, 1917. The military commander stated that, although the occurrence was deeply regretted, he was unable to give any protection whatsoever. The Mexican Petroleum Company "El Aguila", S.A., wrote on the 3rd February, 1917, to the Secretary of State for War and of the Navy, drawing his attention to the state of affairs. This letter was acknowledged on the 10th February. Copies of the letter to the Secretary of the Department of War and of the Navy were sent to the Secretary of State for Protection, Colonisation and Industry and to the Sub-Secretary of State for the Interior. These communications were acknowledged on the 10th and 12th February, respectively. In spite of the fact that the Mexican Government were aware of the possibility of repetitions of such raids, no effort was made to afford protection to the company or the company's employees. His Majesty's Government consider that the Mexican Government, by its neglect to take reasonable precautionary measures, is responsible for the loss of Mr. Buckingham's life.

The amount of the claim is 100,000 pesos (Mexican gold). Mr. Buckingham was forty-eight years of age at the time of his death, and was in good health. His probable term of service is estimated at twelve years. His salary at the time of his death was \$350 (U.S. currency) or, say, 700 pesos (Mexican gold) a month, in addition to housing and living expenses. On the basis of 700 pesos a month for a period of twelve years, the loss suffered by Mrs. Buckingham would be 100,800 pesos (Mexican gold), but she has fixed the amount of compensation which she claims at 100,000 pesos (Mexican gold). No claim is made for her personal loss and suffering.

The British Government claim on behalf of Mrs. Leonor Buckingham the sum of 100,000 pesos (Mexican gold).

2. The Commission are of opinion that the facts on which the claim is based have been proved, and also that the acts were committed by bandits.

3. Faced by the question as to whether Mexico is to be held financially responsible, the Commission deem that the competent authorities cannot be blamed for not having taken reasonable measures to suppress the acts or to punish those responsible for the same.

No Government of a country, of the immense extent of the Mexican Republic, with scarce population, of a mountainous character and with great difficulty of communications, can be expected to furnish adequate military protection to all the isolated oil-fields, mines, haciendas and factories scattered over the territory. The oil camp where the murder was committed is in a very remote situation, and its connexions with the rest of the country are scarce and arduous.

At the time of the events the district was controlled by the rebel leader Cástulo Pérez, for whose protection against bandits and robbers a contribution was paid by the *Aguila*, as well as by other concerns. It was this leader who pursued the murderers and had them executed. It was outside the power of the Government forces to operate in the region, which was practically in the hands of others, who were superior in number, and, therefore, they cannot be blamed for not having punished the criminals.

4. But the question put forward at the commencement of the preceding paragraph has a wider scope, because the end of subdivision 4 of Article 3 of the Convention also lays responsibility upon Mexico in case the authorities were blamable in any other way.

And with such a case the Commission have, in their opinion, to deal in the present claim.

While admitting that the Government cannot be blamed because they did not prevent the murder or punish the murderers, the Commission hold that it is the duty of any Government to know the extent to which they can afford protection, and to warn subjects, as well as aliens, if they are unable to do so, leaving it to their judgment either, to remain at their own risk, or to withdraw from those isolated places, to where the hand of government does not reach.

5. In January 1917 two raids had already been made on the same oil-field. Notice was given to the Military Commander of the district, and he replied that, although the occurrence was deeply regretted, he was unable to give any protection whatsoever, an answer which left the responsibility for remaining at the camp with the "*Aguila*". But the raids of January were also reported to the Secretary of War and of the Navy, to the Secretary of State for Protection, Colonization and Industry, and to the Sub-Secretary of State for the Interior. The Secretary of State for Protection, Colonization and Industry answered, on the 10th February, 1917, that measures were being taken, and that it was hoped that the repetition of such cases would be avoided.

It is clear that, in the eyes of the Management of the concern, this answer must in itself have annulled the perfectly correct communication from the Military Commander, and must have induced the residents of the camp to believe that protection would be given, and that they ran no danger in remaining where they were.

The events have shown that this hope was false, and that the assurance given by one of the Cabinet Ministers was not followed up by acts of such a nature as to prevent a repetition of the occurrences, and worse.

The Commission regret that they cannot answer in the negative the question of whether the authorities were blamable in any way.

6. The Commission declare Mrs. Buckingham entitled to compensation, and they think it is in accordance with the principles of justice and equity to award

a sum of 31,000 pesos, which will enable her to purchase an annuity of 2,000 pesos.

7. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of Mrs. Leonor Buckingham, the sum of \$31,000 (thirty-one thousand pesos) Mexican gold, or an equivalent amount in gold.

JAMES RICHARD ANTHONY STEVENS AND MRS. GIBB (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 110, August 3, 1931. Page 328. See also decision No. 66.*)

RESPONSIBILITY FOR ACTS OF FORCES.—EVIDENCE BEFORE INTERNATIONAL TRIBUNALS. In absence of evidence enabling tribunal to classify, under the *compromis*, the forces for whose acts claim was made, claim *disallowed*.

(*Text of decision omitted.*)

F. S. WHITE (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 111, August 3, 1931. Pages 329-330.*)

DIRECT SETTLEMENT OF CLAIM BETWEEN AGENTS. Direct settlement of claim by agreement between British and Mexican Agents approved by tribunal.

(*Text of decision omitted.*)

DENNIS J. AND DANIEL SPILLANE (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 112, August 3, 1931. Pages 330-332. See also decision No. 42.*)

AMENDMENT OF CLAIM. Amendment of claim by substituting, as claimants, Dennis J. and Daniel Spillane to Messrs. D. J. and D. Spillane and Company *allowed*.

DAMAGES, PROOF OF.—EQUITY AS A BASIS FOR AWARD. Where valuation of items of damage appears exaggerated, tribunal will, in accordance with the principles of justice and equity, fix amount of damages.

1. As regards the facts on which the claim is based, the Commission refer to their Decision No. 42.

2. Following that decision, the British Agent asked leave to amend the Memorial originally filed on behalf of Messrs D. J. and D. Spillane and Company, by substituting, as claimants, Dennis J. Spillane and Daniel Spillane.

The Commission having allowed this amendment, now consider the claim as falling within the terms of the Convention.