

NICK CIBICH (U.S.A.) *v.* UNITED MEXICAN STATES.

(*March 31, 1926. Pages 65-67.*)

1. This claim is asserted by the United States of America on behalf of Nick Cibich, a young naturalized American citizen, who on the evening of May 23, 1923, being drunk in the streets of Pánuco, Veracruz (near the very center of the oil district of Tampico), was locked up in a cell by the police until the next morning, to sleep himself sober. His money, either to the amount of \$460 or \$475, was taken from him by the chief of police for safe-keeping; but was stolen during the night by a gang of liberated prisoners and faithless policemen, and therefore could not be returned to him the next morning. The United States claims an amount of \$475 (which seems to have been inferred from the amount of about 950 pesos, mentioned in the first Mexican police report, and was never mentioned by Cibich, himself, before his affidavit of October 17, 1924), with interest.

2. It is significant that the United States does not make and apparently could not make any claim for false imprisonment, but seeks only to recover the amount of money alleged to have been stolen with interest thereon. The references to the failure to try the claimant for any offense and the failure to impose on him any fine for drunkenness and the negligence of the local authorities in failing to apprehend and prosecute the offenders and the fact that among the gang of thieves were faithless policemen are all mentioned merely in an effort to impute to Mexico some sort of responsibility for the crime committed within its borders.

3. It is unnecessary here to inquire under what particular provisions of the Mexican law the Pánuco police authorities were entitled to take into custody a drunken man found upon its streets. Such authority by express statute or well-established custom exists in every civilized country of which the Commission has knowledge.

4. If Cibich had not been put in jail and his money had not been taken into custody by the police, would Mexico have been held responsible

if in his drunken condition he had been set upon and robbed by a gang of thieves? There seems no reason to believe it. Or, under the same conditions would Mexico have been held responsible because of the presence, among the thieves, of two defecting policemen? There seems no reason to believe it. If he had been imprisoned, and his money withdrawn from him and locked up in a safe place, even if this place had been invaded by the thieves after having overpowered the custodian, would Mexico have been held responsible? This too must be answered in the negative. Therefore, the claimant's case must rest on the fact that the police authorities, having taken Cibich's money in custody, did not put it in a safe and well-locked place, but placed it in the drawer of a table. This fact, it is true, appears in the first police report presented immediately after the occurrence (that of May 24, 1923), and it is repeated in the testimony of January 21, 1925 (or 1924); but a report of December 24, 1924, speaks of "deposited in the safe (*en la caja*) of the police station", and mentions the keys of this safe, and Cibich's own report of May 29, 1923, before the American Consul states upon his inquiries that it had been "deposited in the safe, and locked up," and that "the keys of the safe were delivered, in his presence, to a man in charge of guarding the jail". The allegation that the police failed to use reasonable care in safeguarding the money taken into custody by them is not confirmed by any further evidence than that above-mentioned, which does not support the claim that it was placed in an open drawer (the reports say just: "*en el cajón de la mesa*" and "*en el cajón de una mesa*"), and does not entitle the Commission to build upon it the far-reaching conclusion of official malfeasance. This is particularly true as the Memorial itself, which was never amended, alleges that the money was "placed in the safe of said jail and the keys of said safe given to one of the public guards or police in charge of said jail in the presence of the said (drunken) claimant".

5. As on the record submitted the claimant was legally taken into custody and as the money he had on his person was properly taken by the police for safe keeping, and as the weight of the evidence fails to disclose any want of reasonable care on the part of the Mexican authorities in connexion with the loss of such money, it is unnecessary for the Commission to inquire into the right to assert this claim before this Commission based on the acts or omissions of the municipal officers of Pánuco.

Decision

6. The Commission decrees that the Government of the United Mexican States is not obligated to pay to the Government of the United States of America any amount on behalf of Nick Cibich on account of the claim asserted herein.
