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MEXICO/U.S.A. (GENERAL CLAIMS COMMISSION)

THOMAS H. YOUMANS (U.S.A.) *v.* UNITED MEXICAN STATES.

(November 23, 1926. Pages 150-159.)

1. Claim for damages in the amount of \$50,000.00 is made in this case by the United States of America against the United Mexican States in behalf of Thomas H. Youmans, the son of Henry Youmans, an American citizen, who, together with two other Americans, John A. Connelly and George Arnold, was killed at the hands of a mob on March 14, 1880, at Angangueo, State of Michoacán, Mexico. The occurrences giving rise to the claim as stated in the Memorial are substantially as follows:

2. At the time when the killing took place Connelly and Youmans were employed by Justin Arnold and Clinton Stephens, American citizens, who were engaged under a contract with a British corporation in driving a tunnel, known as the San Hilario Tunnel, in the town of Angangueo, a place having a population of approximately 7,000 people. The work was being done by Mexican laborers resident in the town under the supervision of the Americans. On the day when these men were killed Connelly, who was Managing Engineer in the construction of the tunnel at Angangueo, had a controversy with a laborer, Cayentano Medina by name, over a trifling sum of about twelve cents which the laborer insisted was due to him as wages. Connelly considering the conduct of the laborer to be offensive, ejected the latter from the house in which Connelly lived and to which Medina had come to discuss the matter. Subsequently Medina, who was joined by several companions, began to throw stones at Connelly while the latter was sitting in front of his house and approached the American with a drawn machete. Connelly, with a view to frightening his assailant, fired shots into the air from a revolver. The American having withdrawn into the house, Medina attempted to enter, and his companions followed. Connelly thereupon fired at Medina with a shotgun and wounded him in the legs. Soon the house was surrounded by a threatening mob, which increased until it numbered about a thousand people. Connelly, Youmans, and Arnold, realizing the seriousness of their situation, prepared to defend themselves against the mob. Connelly's employer, Clinton Stephens, on hearing shots, went to the house and learned from Connelly what had happened. Upon Stephen's advice Connelly undertook to surrender himself to the local authorities, but was driven back into the house by the mob. The attack against Connelly when he endeavored to surrender to police authorities was led by Pedro Mondragón, a person styled the "Jefe de Manzana," with whom Connelly had been on friendly terms. Stephens, followed by a part of the mob, proceeded to the *Casa Municipal* and requested the Mayor, Don Justo Lopez, to endeavor to protect the Americans in the house. The Mayor promptly went to the house, but was unable to quiet the mob. He then returned to his office and ordered José Maria Mora, *Jefe de la Tropa de la Seguridad Pública*, who held the rank of Lieutenant in the forces of the State of Michoacán, to proceed with troops to quell the riot and put an end to the attack upon the Americans. The troops, on arriving at the scene of the riot, instead of dispersing the mob, opened fire on the house, as a consequence of which Arnold was killed. The mob renewed the attack, and while the Americans defended themselves as best they could, several members of the mob approached the house from the rear, where there were no windows and set fire to the roof. Connelly and Youmans were forced to leave, and as they did so they were killed by the troops and members of the mob. Their bodies were dragged through the streets and left under a pile of stones by the side of the road so mutilated as scarcely to be recognizable. At night they were buried by employees of the Mining Company in its cemetery at Trojes.

3. On the morning following the murder of the Americans, Federal Troops arrived and established order. On March 17, the Government of the State was directed by the President of Mexico to take all possible measures to discover those who were responsible for the murders. Of the thousand or more who made up the mob, court action was instituted against about twenty-nine. Only eighteen of this number were arrested, but the record discloses that several were released on nominal bail, and were not apprehended after their release. Five were condemned to capital punishment, but their sentences were modified. This action of the court was to no avail; when it was taken one had died, and the remaining four left town before they could be arrested. Seven were acquitted. The cases of six others were discontinued, and the charges against the remaining eleven were left open in the year 1887 for prosecution when they might be apprehended.

4. There appears to be no reason to doubt the substantial accuracy of the allegations in the Memorial upon which the claim is predicated. Some contention is made in the brief filed by the respondent Government to the effect that it is not proved by evidence in the record that the Mexican authorities were chargeable with negligence in the matter of protecting the men who were killed; or that soldiers participated in the assault on the men; or that proper efforts were not made to apprehend and punish the persons participating in the attack. We do not agree with that contention. In reaching conclusions respecting material facts we are confronted by no serious difficulties resulting from absence of or uncertainties in evidence. The riot took place in the day time. About one thousand persons participated. The incidents of the riot were therefore, of course, well known throughout the town. Pertinent facts are fully revealed by information collected and gathered immediately after the riot, by reports from American diplomatic and consular officers in Mexico, and by communications exchanged between the American Legation at Mexico City and the Mexican Foreign Office. Copies of official Mexican judicial records and other records accompany the Mexican Answer and throw considerable light on the character of the various steps taken to bring to justice the guilty persons. It is pertinent to note that counsel for Mexico in oral argument did not challenge the substantial accuracy of the evidence upon which the allegations in the Memorial with respect to the occurrences out of which the claim arises are based. However, mention may be made of some of the principal parts of that evidence.

5. Accompanying a despatch of April 2, 1880, from the American Legation at Mexico City to the Secretary of State at Washington (Annex 34), is a lengthy communication sent to the Legation by Arthur B. Kitchener, Director of the Trojes Mining Company. That communication furnishes detailed information with respect to the incidents of the riot as they are described in the Memorial, and it contains the statement that the writer and Mr. Stephens had "several witnesses who saw the soldiers later on fire on the Americans." With a despatch of May 18, 1880, from the American Minister at Mexico City to the Department of State (Annex 36), was enclosed another lengthy communication addressed by Mr. Kitchener to the Minister in reply to a request made by the latter for information regarding the steps taken by Mexican authorities to bring to justice the persons implicated in the murder. Mr. Kitchener furnishes details with regard to the arrest of a number of persons and the release on what he calls "nominal bail" of some of those who had been taken into custody. He mentions two cases in which the bondsmen of men so released were common workmen of no property or position; another case in which the bondsman was a shopkeeper.

He expresses great dissatisfaction with the manner in which the investigation of the crime was conducted. Evidence which undoubtedly is of much value in furnishing reliable information concerning the facts relative to the riot is found in a report (Annex 39) transmitted to the Secretary of State at Washington under date of May 16, 1881, by Mr. David H. Strother, American Consul General at Mexico City, who visited Angangueo for the purpose of making an investigation of the murder. Although his investigation was made a year after the riot, it seems reasonable to believe that the facts in relation to the tragedy were so vividly in the minds of persons with whom the Consul General came into contact that he was able to obtain accurate and comprehensive information. From the Consul General's report it appears to be clear that he performed his work faithfully and with the sole purpose of ascertaining the truth. The manner in which he proceeded and the sources of his information may be shown to some extent by the following extract from his report:

"In conducting any investigation of the subject in hand I thought it advisable to conceal my official character and the motive of my visit, believing that I could thus obtain a more full and impartial statement of the facts. In this way I gathered evidence from Mexicans, English and Americans, all agreeing in the main facts and confirming generally the statements we have had heretofore. Some of the persons with whom I conversed were well acquainted with all the principal parties concerned and eye witnesses of some of the facts which they narrated. All told their stories clearly and dispassionately and seemed fairly to express the settled convictions of thinking men on events, which occurring more than a year before had been carefully sifted and conclusively established."

6. With respect to the participation of the soldiers in the attack on the Americans the Consul General said:

"It is believed by those who seem well acquainted with all the circumstances, that the appearance of the troops on the ground in behalf of public order, would of itself alone have been sufficient to have quelled the riot and put an end to all further turbulent and unlawful proceedings, but to the astonishment of all, they at once took position and opened fire on the Americans in the house. This act encouraged the mob to reopen their attack with redoubled fury. The soldiers continued their fire until they had expended their ammunition killing George Arnold by a shot through the head."

7. In submitting certain conclusions at the end of the report Mr. Strother stated:

"That there would in all probability have been no fatal results from the riot had it not been for the unaccountable and scandalous conduct of the State troops."

8. The American Minister at Mexico City in his despatch of April 2, 1880, reported to his Government that upon receiving telegraphic information regarding the murder of the Americans at Angangueo, he brought the matter to the attention of the Mexican Foreign Office in a communication of March 16, 1880, in which he expressed the feeling of assurance that such prompt and energetic measures would be taken by the Mexican Government as the circumstances of the case might require. In an instruction of April 20, 1880 (Annex 35), Secretary of State Everetts directed the Minister to express to the Mexican Government, without any reference to the question of private indemnity in advance of more complete information, the confident expectations on the part of the Government of the United States that nothing would be omitted in the matter of bringing the offenders to the strictest justice

according to law. Following the receipt of Consul General Strother's despatch of May 16, 1881, the Department of State, in an instruction dated November 4, 1881 (Annex 40), directed the American Minister at Mexico City to bring to the attention of the Mexican Government claims which had been presented to the Department by relatives of the three murdered men. The Department in this communication emphasized the participation of the troops in the riot and with respect to this point said:

"These troops, at a moment when they had the mob under control, and when the complete quelling of the riot seemed an immediate possibility, in utter disregard of the obligations of their office as preservers of the peace and with wanton and deliberate violation of law, opened fire on the three Americans, instantly killing one and joining with the infuriated mob in the inhuman slaughter of the other two who were fleeing for their lives from their burning cabin, which had been deliberately set fire to over their heads.

"It seems almost needless to remark that such conduct on the part of soldiers or police, under orders to preserve the peace and protect the lives and property of peaceable inhabitants, on the plainest principles of international law and independent of the treaty stipulations between the two nations, which are contravened by such proceedings, renders the Government in whose service they are employed, justly liable to the Government of the men, whose lives were thus wantonly and needlessly sacrificed."

9. Under date of May 15, 1882, the Mexican Foreign Office addressed a communication to the American Legation denying all liability with respect to these claims (Annex 41). The Minister for Foreign Affairs, Señor Mariscal, challenged the right of the United States to intervene in the cases on the ground that the murdered men had not been matriculated under Mexican law. He asserted that there had been no negligence in the matter of giving protection to the men and denied that evidence had been furnished to prove that soldiers participated in the attack on the Americans. A reply to the Mexican Government's note was made at considerable length by the American Minister in a note of May 27, 1882, (Annex 41). In this communication the Minister referred to the participation in the riot by the Mexican officer and the men under his command as follows :

"The above-mentioned officer and soldiers under his charge confessed to having done this, alleging in excuse that they feared the vengeance of the mob had they acted otherwise. A number of the towns people were eyewitnesses of this fact. Amongst others, I may mention the following: Don Guillermo Zercero 2; Diputado de Minería, an owner of mines and smelting works in the town; Don Justo Lopez, president of the Ayuntamiento of Angangueo; Don Ruperto Menchaca, butcher, well known to the Company and Antonio Alamio, store-keeper, besides many miners and work people of the District. For above a week after the disturbance the above-mentioned Mora and soldiers were still at liberty, but were then taken into custody on evidence against them by Don Justo Lopez."

10. In an instruction of September 4, 1882, the American Minister was informed that the Government of the United States did not deem it to be advisable to press the cases further at that time.

11. The claim made by the United States is predicated on the failure of the Mexican Government to exercise due diligence to protect the father of the claimant from the fury of the mob at whose hands he was killed, and the failure to take proper steps looking to the apprehension and punishment of the persons implicated in the crime. In connection with the contention with respect to the failure of the authorities to protect Youmans from the acts of the mob, particular emphasis is laid on the participation of soldiers which is

asserted to be in itself a ground of liability. In behalf of the respondent Government it is contended that the Mexican Government and the Government of the State of Michoacán acted with due diligence in arresting and bringing to justice all persons against whom a reasonable suspicion of guilt existed; that the charge that some State troops participated in the riot is not proved by the evidence; and that, even if it were assumed that the soldiers were guilty of such participation, the Mexican Government should not be held responsible for the wrongful acts of ten soldiers and one officer of the State of Michoacán, who, after having been ordered by the highest official in the locality to protect American citizens, instead of carrying out orders given them acted in violation of them in consequence of which the Americans were killed.

12. We are of the opinion that the contentions advanced by the United States as to liability on the part of the Mexican Government are sustained by the evidence in the record. Without discussing the evidence at length, it may be stated that the Commission is of the opinion that the record shows a lack of diligence in the punishment of the persons implicated in the crime. Annex 3 accompanying the Mexican Answer reveals some interesting information with respect to the prosecution of persons who were arrested. There is not sufficient information before the Commission to warrant us in undertaking to draw any definite conclusions with respect to certain cases in which prisoners were released and other cases in which severe sentences imposed by the court of first instance were mitigated by a higher court. It may be mentioned, however, that this judicial record shows that seventeen prisoners escaped, some of them while they were at liberty on bail. Citations have been made to evidence with respect to participation of soldiers in the killing of the three Americans. We consider that evidence to be ample proof of such conduct on the part of the soldiers, and touching this point it is pertinent to note that evidence has not been adduced to disprove their guilt. It is also pertinent to note touching this point that some soldiers were arrested but were not sentenced. Evidence before the Commission does not disclose whose weapons killed the Americans, but the participation of the soldiers with members of the mob is established. It can not properly be said that adequate protection is afforded to foreigners in a case in which the proper agencies of the law to afford protection participate in murder. The claim of *Alfred Jeannotat*, under the Convention of July 4, 1868, between the United States and Mexico, was a case very similar to the present one. Speaking of the participation of soldiers in riotous acts, Umpire Thornton said:

“It has been alleged that in the above-mentioned instance the sacking was done by the released prisoners, and by a mob belonging to the population of the town; but, if it were so, it was the military force commanded by officers who put it in the power of the convicts and incited the mob to assist them in their acts of violence and plunder. It does not appear that without the arrival of the military force, which ought to have protected the peaceable inhabitants of the town, there would have been any inclination to commit such acts of violence. The umpire is therefore of opinion that compensation is due to the claimant from the Mexican Government.” (Moore, *International Arbitrations*, Vol. IV 3673, 3674.)

13. With respect to the question of responsibility for the acts of soldiers there are citations in the Mexican Government's brief of extracts from a discussion of a subcommittee of the League of Nations Committee of Experts for the Progressive Codification of International Law. The passage quoted, which deals with the responsibility of a State for illegal acts of officials

resulting in damages to foreigners, begins with a statement relative to the acts of an official accomplished "outside the scope of his competency, that is to say, if he has exceeded his powers." An illegal act of this kind, it is stated in the quotation, is one that can not be imputed to the State. Apart from the question whether the acts of officials referred to in this discussion have any relation to the rule of international law with regard to responsibility for acts of soldiers, it seems clear that the passage to which particular attention is called in the Mexican Government's brief is concerned solely with the question of the authority of an officer as defined by domestic law to act for his Government with reference to some particular subject. Clearly it is not intended by the rule asserted to say that no wrongful act of an official acting in the discharge of duties entrusted to him can impose responsibility on a Government under international law because any such wrongful act must be considered to be "outside the scope of his competency." If this were the meaning intended by the rule it would follow that no wrongful acts committed by an official could be considered as acts for which his Government could be held liable. We do not consider that any of these passages from the discussion of the subcommittee quoted in the Mexican brief are at variance with the view which we take that the action of the troops in participating in the murder at Anganguero imposed a direct responsibility on the Government of Mexico.

14. Citation is also made in the Mexican brief to an opinion rendered by Umpire Lieber in which effect is evidently given to the well-recognized rule of international law that a Government is not responsible for malicious acts of soldiers committed in their private capacity. Awards have repeatedly been rendered for wrongful acts of soldiers acting under the command of an officer. (See for example the claim of *Frederick A. Newton v. Mexico*, for the theft of property by Republican troops under Colonel Rijos, and the claim of *A. F. Lanfranco v. Mexico*, for the looting of a store at Tehuantepec by armed men under the command of the *Jefe Político* of that place—Moore, *International Arbitrations*, Vol. 3, p. 2997; also the interesting case of the German sentry who at the frontier near Vexaincourt shot from the German side and killed a person on French territory, mentioned by Oppenheim, *International Law*, 3d edit, Vol. 1, pp. 218-219; and the opinion of the Commission in the *Falcón* claim, Docket No. 278). Certain cases coming before the international tribunals may have revealed some uncertainty whether the acts of soldiers should properly be regarded as private acts for which there was no liability on the State, or acts for which the State should be held responsible. But we do not consider that the participation of the soldiers in the murder at Anganguero can be regarded as acts of soldiers committed in their private capacity when it is clear that at the time of the commission of these acts the men were on duty under the immediate supervision and in the presence of a commanding officer. Soldiers inflicting personal injuries or committing wanton destruction or looting always act in disobedience of some rules laid down by superior authority. There could be no liability whatever for such misdeeds if the view were taken that any acts committed by soldiers in contravention of instructions must always be considered as personal acts.

15. The respondent Government has not denied that, under the Convention of September 8, 1923, acts of authorities of Michoacán may give rise to claims against the Government of Mexico. The Commission is of the opinion that claims may be predicated on such acts.

16. Claim is made in this case for damages in the amount of \$50,000.00. The Commission is of the opinion that an award may properly be made in the sum of \$20,000.00.

Decision

17. The Commission therefore decides that the Government of the United Mexican States must pay to the Government of the United States of America the sum of \$20,000.00 (twenty thousand dollars) without interest on behalf of Thomas H. Youmans.