

CHARLES S. STEPHENS AND BOWMAN STEPHENS (U.S.A.) *v.*
UNITED MEXICAN STATES.

*(July 15, 1927, concurring opinion by American Commissioner, July 15, 1927.
Pages 397-401.)*

Van Vollenhoven, Presiding Commissioner :

1. This claim is put forward by the United States of America on behalf of Charles S. Stephens and Bowman Stephens, American nationals. Their brother, the American national Edward C. Stephens, a bachelor, was killed about 10 p. m., on March 9, 1924, by a shot fired by a member of some Mexican guards or auxiliary forces between Parral (Hidalgo del Parral), Chihuahua, and his residence, Veta Grande. Stephens was making the return trip from Parral, where he had passed the afternoon, travelling in a motor car in the company of two friends, a gentleman and a lady. At a point quite near the township of Villa Escobedo a shot was fired at the car, which killed Stephens instantly. The very young and very ignorant guard or soldier who caused his death, one Lorenzo Valenzuela, was

arrested by the civil authorities, but handed over on March 11 or 12, 1924, to the military authorities at their request. On April 30, 1924, however, Colonel Hermógenes Ortega, when ordered to discharge the auxiliary forces (or guards) under his command, discharged also this military prisoner. Valenzuela after his escape never was apprehended. Ortega, who was responsible for the escape, was prosecuted, and was sentenced by the Judge of First Instance at Parral on January 12, 1926, to three years' imprisonment; but apparently was acquitted on appeal by the Supreme Court of Justice of the State of Chihuahua about February 9, 1926. The United States alleges that Mexico is liable for the unlawful killing by Valenzuela, and moreover for not protecting Stephens, not prosecuting Valenzuela, and not punishing Ortega, and claims an indemnity of \$50,000.00 in favor of the deceased's two brothers, with interest thereon.

2. As to the nationality of the claim, which has been challenged, the Commission might refer to paragraph 3 of its opinion rendered in the case of *William A. Parker* (Docket No. 127)¹ on March 31, 1926. The nationality of the claim would seem convincingly established.

3. As to interests in the claim, the eldest brother of the deceased Stephens suffered a remote pecuniary loss by his death, in that the deceased together with this brother supported an aged aunt living in a sanitarium, by contributing at first the sum of \$75.00 a month, and later the sum of \$65.00 a month, an amount which the eldest claimant alone paid after his brother's death. The youngest brother, who since 1924 appears to be suffering from melancholy or some mental disorder, would seem from the record not to have sustained any financial damage. When international tribunals thus far allowed *satisfaction* for indignity suffered, grief sustained and other similar wrongs, it usually was done *in addition to* reparation (compensation) for material losses. Several times awards have been granted for indignity and grief not combined with direct material losses; but then in cases in which the indignity or grief was suffered by the claimant himself, as in the *Davy* and *Maal* cases (*Ralston, Venezuelan Arbitrations of 1903*, 412, 916). The decision by the American German Mixed Claims Commission in the *Vance* case (*Consolidated edition, 1925*, 528) seems not to take account of damages of this type sustained by a brother whose *material* losses were "too remote in legal contemplation to form the basis of an award" (the claim in the *Candlish* case was disallowed on entirely different grounds; *Consolidated edition, 1925*, 544). The same Commission, however, in the *Vergne* case, awarded damages to a mother of a bachelor son (not to his half-brother and half-sister), though "the evidence of pecuniary losses suffered by this claimant cognizable under the law is somewhat meager and unsatisfactory" (*Consolidated edition, 1926*, at 653). It would seem, therefore, that, if in the present case injustice for which Mexico is liable is proven, the claimants shall be entitled to an award in the character of satisfaction, even when the direct pecuniary damages suffered by them are not proven or are too remote to form a basis for allowing damages in the character of reparation (compensation).

4. The State of Chihuahua, during the period within which the tragic event occurred, was one among the scenes of the revolution of Adolfo de la Huerta which lasted from November, 1923, to April, 1924 (see paragraph 11 of the Commission's opinion in the *Home Insurance Company* case, Docket

¹ See page 35.

No. 73).¹ Since nearly all of the federal troops had been withdrawn from this State and were used farther south to quell this insurrection, a sort of informal municipal guards organization—at first called “defensas sociales”—had sprung up, partly to defend peaceful citizens, partly to take the field against the rebellion if necessary. It is difficult to determine with precision the status of these guards as an irregular auxiliary of the army, the more so as they lacked both uniforms and insignia; but at any rate they were “acting for” Mexico or for its political subdivisions.

5. Valenzuela, that night, was on duty with two other men, under a sergeant. They were acting apparently under the “General ordinance for the army” of June 15, 1897, which was binding also on civilians living in Mexico, and Article 176 of which obligates all individuals who are halted by sentries to answer and stop. When the four men saw Stephens’ car come near, the sergeant ordered two of them to halt it, not adding that they should fire. Nevertheless Valenzuela fired, with fatal result. It is uncertain from the record, whether the soldiers first had called out to the occupants of the car, as under the ordinance of 1897 they should have done.

6. There should be no difficulty for the Commission to hold that Valenzuela when trying to halt the car acted in the line of duty. But holding that these guards were entitled to stop passengers on this road and, if necessary, to use their guns pursuant to Article 176 just mentioned, does not imply that Valenzuela *executed* this authorization of the law in the right way. On the contrary, the use he made of his firearm would seem to have been utterly reckless. The guards should have realized that, even for foreigners aware of the conditions of the State of Chihuahua at that period, their wearing no uniforms rendered it difficult to recognize them as persons entitled to halt them, and that before indulging in stronger measures great care was indispensable because of their having the appearances of peasants, or even bandits. Being under the orders of a sergeant, the guards should have halted the car in accordance with his instructions, and Mexico contends that they were merely ordered to stop the automobile, without being ordered to fire at it. The excuse proffered by the killer that he merely intended to “intimidate” Stephens would seem too trite to deserve the Commission’s attention; see paragraph 3 of the opinion in the *Swinney* case (Docket No. 130),² paragraph 3 of the opinion in the *Roper* case (Docket 183),³ paragraph 1 of the opinion in the *Falcón* case (Docket No. 278),⁴ and paragraph 6 of the opinion in the *Teodoro García* case (Docket No. 292).⁵ Bringing the facts to the tests expounded in paragraph 5 of the last cited opinion, there can be no doubt about the reckless character of the act. To hold this means a different thing from establishing that Valenzuela’s act under Mexican law was punishable, a question which it is not for this Commission to decide; see paragraph 3 of the Commission’s opinion in the *Teodoro García* case (Docket No. 292).

7. Responsibility of a country for acts of soldiers in cases like the present one, in the presence and under the order of a superior, is not doubtful. Taking account of the conditions existing in Chihuahua then and there, Valenzuela must be considered as, or assimilated to, a soldier.

¹ See page 48.

² See page 98.

³ See page 145.

⁴ See page 104.

⁵ See page 119.

8. Apart from Mexico's direct liability for the reckless killing of an American by an armed man acting for Mexico, the United States alleges indirect responsibility of Mexico on the ground of denial of justice, since Valenzuela was allowed to escape and since the man who released him, Ortega, never was punished. Both facts are proven by the record, and reveal clearly a failure on the part of Mexico to employ adequate measures to punish wrongdoers; compare paragraphs 18 and 25 of Commissioner Nielsen's opinion in the *Massey* case (Docket No. 352).¹

9. Mexico has contended that this Commission, in any case submitted to it, can only take cognizance of facts which occurred before the filing of the Memorial, and therefore should ignore the *second* court sentence, that of February, 1926, acquitting Ortega. Since, however, in the present claim the date of the Memorial was December 17, 1925, and that of the *first* court sentence, which convicted Ortega, was January 12, 1926, it is immaterial whether Mexico's contention is right or wrong. If it is right, Ortega has been at liberty since the day on which he released Valenzuela (April 30, 1924) and never was convicted; if it is wrong, Ortega has been at liberty all that time and finally was acquitted.

10. Taking account of both Mexico's direct responsibility and its denial of justice, and of the loss sustained by the claimants as it was discussed in paragraph 3, an amount of \$7,000.00, without interest, would seem to express best the personal damage caused the two claimants by delinquencies for which Mexico is liable.

Nielsen, Commissioner :

I am of the opinion that there is legal liability on the part of Mexico in this case, and that a pecuniary award may properly be rendered in conformity with principles of law underlying awards made by the Commission in other cases. Peaceful American citizens were proceeding in an automobile in a locality where travel was neither forbidden nor restricted. I think that the record clearly shows that the killing of one of them, Edward C. Stephens, by a Mexican soldier, in the presence and under the command of an officer, was inexcusable; that the person who did the shooting was allowed to escape; and that the person who permitted the escape was not punished, although he was charged with the offense of permitting the escape of a prisoner.

Fernández MacGregor, Commissioner :

I concur in the opinion of the Presiding Commissioner.

Decision

The Commission decides that the Government of the United Mexican States is obligated to pay to the Government of the United States of America, on behalf of Charles S. Stephens and Bowman Stephens, the sum of \$7,000.00 (seven thousand dollars), without interest.

¹ See page 155.