SALOME LERMA VDA. DE GALVAN (UNITED MEXICAN STATES) *v.* UNITED STATES OF AMERICA.

(July 21, 1927. Pages 408-411.)

Nielsen, Commissioner :

1. Claim is made in this case in the amount of 50,000 pesos, by the United Mexican States, in behalf of Salomé Lerma de Galván, mother of Adolfo Pedro Galván, a Mexican citizen, who was killed in August, 1921, at Driscoll, Texas, by an American citizen named Hugh K. Kondall. The facts in the case as disclosed by the record may be briefly summarized.

2. Kondall and Galván were employed as foreman and laborer, respectively, in the construction of a bridge at a point about a half mile north of the depot at Driscoll. On the morning of August 25, 1921, Galván had a slight altercation with the son of Kondall who supplied drinking water to the workmen. It appears that Kondall was angered when he learned of the episode and proceeded to his house where he probably procured a pistol. He thereupon returned to the place where Galván was working. There is evidence that the latter, when he knew that Kondall was armed with a pistol, proceeded with a raised hammer in his hand toward the spot where Kondall and another man were standing, and that Kondall thereupon twice shot Galván who died shortly thereafter.

3. Kondall was immediately taken into custody by the local authorities and charged with murder. On August 29, 1921, he was given a preliminary hearing before a justice of the peace at which several eye witnesses of the shooting were examined. The accused was required to give a bond in the amount of $25,000 for his appearance before the Criminal District Court

of Nueces County, at its October, 1921, term. No indictment was returned against Kondall at that term of the court, but in the following March an indictment was found against him, charging him with the murder of Galván, and trial was set for April 20, 1922. Subsequently the accused was admitted to bail in the sum of $5,000.

4. Accompanying the American Answer is a copy of the criminal court docket in this case from which the following is an extract:

April 7, 1922. Case set for Thursday April 13, 1922, 10 A. M. Venire of fifty ordered for that date and hour. Writ returnable Tuesday.
April 17, 1922. Case continued by agreement.
December 14, 1922. Continued by operation of law.
4/30/23. Set for May 14. Special venire of 60 ordered.
5/14/23. Set for May 21.
5/22/23. Continued by agreement.
11/12/23. Set for 11/21.
6/5/24. Continued by operation of law.
5/8/25. Set for May 20. Venire of 50 men.
5/20/25. Continued illness of parties.

5. From additional evidence filed by the United States it is shown that the trial of Kondall was further continued at the instance of the State "because of a defaulting witness" and set for hearing at the term of court beginning on October 25, 1926, and still further continued at that term of court until April, 1927, on account of absence of material witnesses for the State.

6. The record contains an affidavit executed on November 24, 1925, by George C. Westervelt, District Attorney for the Counties of Nueces, Kleberg, Kenedy, Willacy and Cameron, Texas. It is stated in this affidavit that several subpœnas were issued for the appearance at the several terms of court of Louis F. Johnston, an eye witness to the shooting of Galván, and that the State could not safely and successfully go to trial without the production of this witness.

7. It is alleged in behalf of Mexico that there was an unnecessary delay in the prosecution of a person charged with a capital crime, and that under international law the United States should make compensation in satisfaction of a denial of justice. This case presents no difficulties. The question at issue is whether it reveals a failure of compliance with the general principle of international law requiring authorities to take proper measures to apprehend and punish a person who appears to be guilty of a crime against an alien. The Commission is bound to conclude that there was a clear failure on the part of the authorities of the state of Texas to act in conformity with this principle. There was no difficulty in the apprehension of Kondall, and a preliminary trial was promptly held. At this trial testimony was given from which it seems to be obvious that a grand jury could not properly fail to return an indictment for murder against Kondall. An indictment was found by a grand jury in March, 1922. After that it is plain that the authorities failed to take the proper steps to try the accused. There is no satisfactory explanation of continuances of the proceedings from time to time. Justification for the failure to bring the accused to justice cannot be found on the ground stated in the affidavit made by the District Attorney as late as November 24, 1925, that a certain eye witness had not been located. There is no reason to suppose that the legal machinery of the state of Texas is so defective that in a case in which a preliminary trial

reveals that there were at least five eye witnesses to the shooting of Galván the authorities during a period of six years after the shooting found themselves unable to conduct a proper prosecution. If any such defect had existed it would not be an adequate defence to the claim presented by Mexico. If witnesses actually disappeared during the course of the long delay in the trial, then as argued by counsel for Mexico, that would be evidence of the evils incident to such delay. It may be observed that the argument in behalf of the United States appeared to be directed more to the question of the measure of damages than to a justification of the delay in the proceedings against the accused.

8. I am of the opinion that in the light of the principles underlying decisions rendered by the Commission in the past an award may properly be made in this case in the sum of $10,000.

Van Vollenhoven, Presiding Commissioner :

I concur in Commissioner Nielsen's opinion.

Fernández MacGregor, Commissioner :

I concur in Commissioner Nielsen's opinion.

Decision

The Commission decides that the Government of the United States of America shall pay to the Government of the United Mexican States in behalf of Salomé Lerma de Galván the sum of $10,000 (ten thousand dollars) without interest.
