

GEORGE DAVID RICHARDS (U.S.A.) *v.* UNITED MEXICAN
STATES.

*(July 23, 1927, concurring opinion of American Commissioner, July 23, 1927.
Pages 412-416.)*

Fernández MacGregor, Commissioner :

1. This claim is presented by the United States of America against the United Mexican States demanding from the latter, in behalf of George

David Richards, an American citizen, an indemnization for damages suffered on account of the death of his father, David Emile Richards, also an American citizen, who was engaged in superintending the construction of a road in the vicinity of Merba Santa, near Chivela, State of Oaxaca, Mexico, and who was killed on August 26, 1921, under the circumstances hereinafter related: It seems that there had been difficulties between certain occupants of the land of the Chivela Estate and its owners, on account of certain taxes that the latter were endeavoring to collect from the former; the Mexican Government, upon request, had granted an escort of three soldiers for the protection of Richards, two of whom were accompanying him on horse-back at the time of the events, and upon reaching a point located several kilometers from the Yerba Santa. he was ambushed by several men who fired on him two shots, which wounded him in the upper right arm and in the right thigh; it seems that the soldiers, believing that Richards was dead, left him and went to notify their superior, who was the 2nd Lieutenant of a detachment of soldiers garrisoned in the ranch-house; the Lieutenant proceeded to the place where the attempt had been committed, and found only the body of Richards with the wounds mentioned without the appearance of having been robbed. The claimant Government alleges that the Mexican Government is responsible for the failure to afford adequate protection to Richards notwithstanding it knew the conditions of insecurity which prevailed in that region, shown by the fact that some other American and another foreigner had been killed two years before in that region, and for the failure to apprehend and punish adequately the guilty parties, although their names were known through a letter which the deceased had written during his life to a friend called Hart, an American citizen, owner of the estate, expressing to him the fear of being murdered by order of certain individuals whose names he gave.

2. With respect to the alleged lack of protection, it is proven, of course; that the Mexican Government had endeavored to safeguard the life of Richards, even placing at his disposal a special guard, which Richards himself reduced, making his trip with only two soldiers; it does not seem that anything else could be done, in view of the circumstances; it is further proven that the military authorities had detachments in that region with the object of keeping order. Attacks on the lives and property of individuals cannot be prevented many times, unfortunately, even by using the most efficacious preventive measures, and it seems that the fact, that other foreigners should have been killed there two years before, does not sufficiently prove a state of disorder which would require special measures. It is also proven that, at the request of Hart, Richards' friend, the former was furnished a detachment the services of which were satisfactory. Therefore, the allegation of lack of protection cannot be made a ground for the present claim.

3. With regard to the failure to apprehend and punish the guilty parties, the following is established in the record: due to the request of either the American Consul or Richards' friends, or due to the report rendered by the Lieutenant who proceeded at once to the scene of the events, an investigation was initiated in the Mixed Court of First Instance of the District of Juchitán, Oaxaca. It appears that the decree docketing the case was issued on August 28th, that is, two days after the murder was committed; on September 3rd, orders were issued for the apprehension of Alejandro Jiménez, Dionisio Carrasco, Mariano Mendoza and Mariano López,

presumably guilty of the crime committed, according to the letter which Richards wrote to Hart; on September 4th a decree was issued for the formal imprisonment of said men, who had already been arrested, the corpus delicti having also been proven with the autopsy made on the corpse of the deceased and with the testimony of several witnesses, including Hart; the same decree contained orders for the apprehension of Apolinar Carrasco and Otón Velázquez, who were considered also involved in the crime, but it seems that neither of these two men was found or arrested. It is presumable that the proceedings may have continued until March 17, 1922, on which date the Judge issued an order releasing the men detained, basing his action in that they had proven an alibi by showing that they were not and could not be in the place of crime, since they were in different and very distant places; on March 22, 1922, the Prosecuting Attorney filed an appeal against such decree, but the Judge did not admit said appeal until March 2, 1925; the same Prosecuting Attorney, on March 4, 1925, requested the apprehension of the accused, Velázquez and Carrasco, who had not been arrested up to that date; the case on appeal went to the Court of Appeals on March 19, 1925; the latter dictated its decision on appeal on August 1, 1925, revoking the decree which was issued by the lower court and which released the accused, and ordering them again confined in jail, the prosecution to be continued, basing itself on the fact that the testimony of the witnesses who helped to prove the alibi looked false and, specially, on the fact that the four accused could have been the intellectual authors of the crime and not its material authors only. There is no evidence showing that this apprehension may have been effected or that the prosecution may have been continued in any manner, it appearing only that a District Judge, probably in an "amparo" filed by the accused before him, granted a temporary injunction against the act complained of (probably that of re-apprehension), under date of August 15, 1925.

4. According to the foregoing facts, no irregularities appear in the procedure, which may amount to a deficiency and, therefore, carry international responsibility, until the time when the Prosecuting Attorney appealed from the decree which released the accused (March 20, 1922). From then on, there occur unexplainable delays, the first being that of the appeal having been admitted only almost three years afterwards (March 2, 1925); the Court of Appeals revoked the decree of liberty and ordered the re-apprehension of the accused on August 1, 1925, but Mexico has not presented any evidence of the continuation of the prosecution, or of their having been finally judged. More than six years, then, have elapsed without the judgment of the parties presumably responsible for Richards' death, and it appears that the delays have no excuse, for which reason Mexico is clearly liable on this ground.

5. The Government of Mexico alleged that at the time when the United States presented the claim, that is, on December 17, 1924, no claim had accrued, because the proceedings had been regular up to then, and there was, for that reason, no damage for which claim could be made, in view of the fact that the deficiencies, if there be such, did not become apparent until April 13, 1925. I believe that this argument should not be taken into consideration, because the appeal of the Prosecuting Attorney filed on March 22, 1922, should have been decided shortly thereafter and it was not, the supposed delinquents having remained free since then, and because there is the fact that two of them, Velázquez and Carrasco, were never

apprehended. The subsequent delays are incorporated into those which existed at the time of filing this claim.

6. The Government of Mexico also alleged that the present claim did not accrue prior to September 8, 1923, the date on which the two Contracting Parties in this arbitration concluded their general claims convention, and that therefore it was erroneously filed under Article VI, instead of under Article VII, of said treaty. For the reasons stated under paragraph 5, there would seem no doubt but that the present claim accrued prior to the signing of the general claims convention.

7. In view of the above considerations, I believe that the Government of the United Mexican States must pay to the Government of the United States of America, on behalf of George David Richards, the sum of \$9,000 without interest.

Van Vollenhoven, Presiding Commissioner :

I concur in Commissioner Fernández MacGregor's opinion.

Nielsen, Commissioner :

I concur with Commissioner MacGregor's conclusion as to liability on the part of Mexico in this case. In my opinion it is clear that proper steps were not taken to apprehend and punish persons guilty of the murder of David Emile Richards.

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 George David Richards, \$9,000.00 (nine thousand dollars) without interest.
