

MARY ANN TURNER (U.S.A.) *v.* UNITED MEXICAN STATES.

*(July 23, 1927, concurring opinion by Mexican Commissioner, July 23, 1927.
Pages 416-421.)*

Van Vollenhoven, Presiding Commissioner :

1. This claim is presented by the United States of America in behalf of Mary Ann Turner, an American national through the naturalization of her husband, against the United Mexican States, on account of damages suffered from the death of her said husband, Edward Turner, a naturalized American national. Turner, who in the Spring of 1899 was a locomotive engineer in Mexico, had the misfortune to be involved in a train collision on March 20, 1899, at Encinar, Veracruz, which caused the death of the fireman serving on the other colliding engine. Turner was arrested about April 1, 1899, and sent first to the prison hospital at Orizaba, Veracruz, and afterwards to the prison in that place. He was free on bail until an uncertain date after June 14, 1899; was in jail again (first in Orizaba, the last few weeks in Veracruz) until January 28, 1900; and on the last date he died, without having had a trial. The United States alleges direct responsibility of Mexico for an illegal arrest, undue and illegal delay of proceedings, and inhuman treatment in prison, all of which contributed to causing Turner's death, and claims on behalf of his widow damages in the sum of \$50,000.00, with interest thereon.

2. The nationality of the claim has been challenged by Mexico in its answer, but after the filing of additional evidence by the United States this challenge was abandoned.

3. An unjustified arrest of Turner has not been proven. Under Mexican law, negligence in causing a railway accident resulting in one's death is punishable, and both Turner and the engineer of the other colliding train, one Clark, were arrested. The fact that Clark was convicted on March 17, 1900 (two months after Turner's death), for having caused this collision certainly can not prove that in March or April, 1899, there did not exist sufficient ground for an arrest and formal imprisonment of the deceased.

4. As to undue and illegal delay of court proceedings in the District Court at Veracruz in Turner's case, Mexico has pleaded that it is impossible to produce evidence because of the court records having been destroyed by American naval forces in April, 1914. The statement, made not only in the reply brief, but repeated during the oral hearings, is palpably erroneous. Annex I of the Answer established that the records of the Veracruz jail (*el archivo de la Cárcel de Veracruz*, as the Answer says), had been destroyed in 1914, among them the record of 1900 (*los expedientes de 1900*) and that therefore the respondent Government could furnish no information about what happened to Turner *in that jail* in the last month of his life. This information obtained from the jail warden at Veracruz was transmitted by the governor of the State of Veracruz, who resides at Jalapa, Veracruz. These statements which in no wise are related either to court records, to Jalapa, or to the year 1899, are reproduced in the Mexican reply brief (filed May 24, 1927) by contending "that as stated in Annex I of the Answer, the court records of Jalapa, Veracruz, from at least 1899 to 1914, were destroyed by the Army of the United States of America at the time that these American troops landed at and were in possession and control of the port of Veracruz. Among the said court records thus destroyed the documentation of the Mexican Judiciary concerning the said Turner was to be found". Additional evidence, filed by Mexico itself on May 11, 1927, to-wit, only thirteen days before the reply brief, shows that the court records in question, if not in Veracruz, might be either in the archives of the former

or present circuit courts at Puebla, Mexico City or Querétaro, that they apparently have been mislaid or destroyed by Mexican officials, and that even at this time Mexico feels uncertain where they ought to be. This means that Mexico can not possibly, as it endeavored to do, invoke in its favor or as an excuse, this lack of counterproof proceeding from the court record, and that its absence in this case is entirely different from the situation existing in the *Faulkner* case (Docket No. 47),¹ according to paragraph 5 of the Commission's opinion in that case.

5. From the record as it stands, and especially from a letter of the American Ambassador of September 4, 1899, and one of the Mexican Foreign Minister of December 26, 1899, it would seem probable that, if some investigations were made, they must have been slow and unsatisfactory, and that the accused was not allowed to play a part of any importance in them. It need not be established that gathering evidence in the case of a railway collision of this type and in this part of the country is a simpler task than gathering evidence of a backwoods murder by unknown individuals.

6. The record contains various statements about the time during which Turner was deprived of his liberty. Mexico contends that he was arrested on or about March 20, but released on bail on March 30, 1899; the American Ambassador, on the other hand, contends that both Turner and Clark were imprisoned on April 1, 1899. Mexico alleges that Turner's bail was cancelled and he himself placed at the disposal of the Judge on or about June 14, 1899, but that while the application of the guarantor was being dispatched, Turner succeeded in escaping, and that he was apprehended in Mexico City. The date on which Turner returned to jail is uncertain. When, however, the Mexican Foreign Minister, according to his letter of September 5, 1899, to the American Ambassador, applied to the Judge at Veracruz for information about the prisoner Turner, he was never informed by that Judge (as far as the record shows) that his supposition about Turner's being in jail was erroneous; nor did this Judge, when asked for an explanation about the apparent slowness of the investigations, ever allege (as far as the record shows) that they had been seriously interrupted because of any escape of Turner. On the record as it stands, it may be safely assumed that Turner was in jail at least from about September 1, 1899, on; the more so as—according to a statement furnished by the Supreme Court of the Nation—Turner on November 27, 1899, presented a petition requesting that the indictment in his case be quashed, and he probably did not do so until after he had waited in jail a considerable length of time for a trial. Under the conditions of the record there is no reason to give Mexico the benefit of the doubt against statements made by the American Embassy, when these in themselves are probable and not contradicted by any evidence.

7. According to the Mexican federal code of criminal procedure, which was applicable, the first state of the proceedings, that of the preliminary investigations, should have ended within five months after the date on which the accused came at the disposal of the judge (some date between March 20 and April 1, 1899, both dates inclusive). If he was apprehended shortly after June 14, 1899, and therefore had been at the disposal of the Judge from about April 1, 1899, on, then he was illegally in jail from about September 1, 1899. But even if it is considered uncertain whether he was

¹ See page 67.

at the Court's disposal between June 14, and September 1, 1899, then at any rate he was illegally in jail from about November 15, 1899, on; and since the illness from which he died must have begun or at any rate increased during the two months between the middle of November, 1899, and January 28, 1900, Mexico must be liable for what befell Turner during this period of illegal custody. Though there is no convincing proof that his death was caused by his treatment in prison, there can be no doubt but that, if at liberty, he would have been able to take better measures for restoring his health than he could do either in prison, or in a prison hospital. If having a man in custody obligates a government to account for him, having a man in *illegal* custody doubtless renders a government liable for dangers and disasters which would not have been his share, or in a less degree, if he had been at liberty.

8. Ill-treatment of Turner in jail is not proven in itself. No letters written either by him or to him while he was in prison connect up his death with inhuman treatment. The evidence exclusively consists of later statements by his widow, and of manifestly exaggerated letters from his lawyer, not corroborated by any contemporary testimony from some impartial authority having firsthand knowledge. But it is proven, on the one hand, that a man reported to be of broken health, who died on January 28th, was reprimanded by a jail warden on or about January 20th because of "bad conduct" (*mala conducta*); and on the other hand, that the Judge at Vera Cruz, being requested by the Federal District Attorney for information "whether it is true that he (Turner) is almost in a dying condition", telegraphed on January 26, 1900 (only two days before Turner's death), that Turner was in "the best condition possible consistent with his position as an accused" (*se halla en las mejores condiciones posibles atenta su calidad de procesado*). Instead of observing that this statement overlooked the fact that Turner, not having been tried, should have been considered and treated as an innocent man, Mexico attempts to amplify the Judge's statement by contending that this statement shows that while in prison, Turner "constantly was of bad behavior".

9. This is a case of alleged direct responsibility for acts of authorities. Mexico, on the record, cannot be held responsible for Turner's death; but it should be held responsible for the bad effect of its illegal and careless custody on Turner's health. An amount of damages of \$4,000.00, (four thousand dollars) without interest, would seem to express best the direct pecuniary damage, grief and indignity sustained by the claimant.

Nielsen, Commissioner :

I am of the opinion that Turner was clearly the victim of mistreatment. He evidently was not in jail for the entire period of ten months between the date of his arrest on March 20, 1899, as stated in the Memorial, or some days later, and the date of his death on January 28, 1900. But though he was free on bail a part of that time, he was continuously under accusation. There is no satisfactory explanation in the record why he was not tried. Evidence in the record indicates to my mind that he was innocent of the charge preferred against him, even though his arrest may have been justified. It seems to me to be clear that the accusation against him was of such a nature that its merits could speedily have been determined by a court.

Fernández MacGregor, Commissioner :

I concur with paragraphs 1 to 6 of the Presiding Commissioner's Opinion. It appears clear to me, notwithstanding the vagueness of the evidence presented by both sides in this case, that Turner was held prisoner without being brought to trial for a period which could be from three to five months more than he should have been, according to Mexican law, and that this fact, which means a violation of human liberty, renders Mexico liable conformably with principles of international law. Therefore, I believe that the claimant must be awarded the sum proposed by 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 Mary Ann Turner, \$4,000.00 (four thousand dollars), without interest.
