

CLYDE DYCHES (U.S.A.) *v.* UNITED MEXICAN STATES

(April 9, 1929, concurring opinion by American Commissioner, April 9, 1929.
Pages 193-198.)

Commissioner Fernández MacGregor, for the Commission:

The United States of America, on behalf of Clyde Dyches, an American citizen, claims from the Government of the United Mexican States the amount of \$25,000.00, United States currency, alleging that the claimant was subjected to undue, harsh and oppressive treatment while he was a prisoner in Mexico; that he was not accorded an impartial trial; that the latter was delayed for no cause whatsoever, and that such facts, together with the atmosphere of prejudice and of personal animosity existing against the claimant, resulted in a denial of justice against him.

The facts upon which the Government of the United States grounds its contentions are, briefly, as follows:

In February 1910 Dyches took to Monterrey, Nuevo León, Mexico, a blooded horse worth \$1,500.00, United States currency. In March of the same year the claimant entered into an agreement with a Mexican named Bruno Lozano, under which the latter agreed to pay for Dyches' board and lodging, as well as for the keeping of the horse, and to allow the said Dyches half of the profits obtained from the races in which the horse would enter. The horse lost all the races in which it ran, and Lozano had difficulty with Dyches, alleging that the latter had agreed to pay half of the losses on the races. Therefore, Dyches considered the agreement terminated and sold the horse to two men named Sepúlveda and Aguilar, stipulating, in addition, that he would retain the horse in order to continue racing it.

Lozano brought suit against Dyches in August, for the amount of \$1,500.00, Mexican currency, and the Judge who tried the case ordered the attachment of the animal, appointing as depositary a brother of Lozano who lived in a ranch called "Rinconada". It appears that Dyches finally won the suit; but before then, and while the horse was still in deposit, he wanted to get it back; the Judge allowed him only to go to see it in the

ranch where it was. In one of the inspections Dyches made of the horse—on May 8, 1911—he met Bruno Lozano and as he told Dyches that he would never again get the horse back, Dyches clandestinely returned during the night, seized the horse and rode him away with the intention of taking it to the United States. Three days later Dyches was arrested to answer the charge of theft of which he had been accused by Lozano.

The criminal procedure was carried out slowly, and finally Dyches was sentenced on May 31st, 1912, to the penalty of imprisonment for six years and nine months and to a fine of 1,000.00 pesos, as guilty of the theft of the animal. The claimant appealed from such a decision, and thus it was reviewed by the Supreme Court of the State of Nuevo León, which in April 28, 1913, affirmed the decision of the lower Judge but increased the penalty of imprisonment to eight years and five months, which should be counted from May 17, 1911. Dyches having appealed for protection (*amparo*) against this decision, the Supreme Court of Justice of Mexico, in the month of November, 1913, protected the claimant, stating that his act in having taken the horse from Lozano's stable did not constitute the crime of theft. In view of this decision, the Supreme Court of the State of Nuevo León amended its decision, finding Dyches guilty only of having entered the premises without the consent of the owner, and adding that the incarceration already suffered by Dyches was sufficient penalty for the offense he had committed.

It is alleged that, in being arrested by five Mexican rural guards, Dyches was beaten and abused, and that the rural guards enticed him to escape in order to kill him under that pretext; that he was firmly tied with his hands behind him while being taken to Monterrey by railroad, this causing him pain and discomfort; that on his arrival at the jail in Monterrey upon request of Lozano, the jailkeeper confined him in a dark cell where he was for 72 hours, without a bed, *incomunicado*, and suffering from a toothache which was driving him mad, without being given medical attention. It is alleged further that the Judge of First Instance at Monterrey and the police authorities were influenced by the Lozano brothers whose political connections were powerful.

As regards the judicial procedure, several rights granted by the Mexican Constitution were violated, it is alleged, to the prejudice of the accused; the formal commitment was decreed without the *corpus delicti* having been established, as required by the criminal laws of Mexico; several persons, incompetent and untrustworthy, were used as interpreters for Dyches, among them, two individuals who had been or were accused of some crime before the same Judge; and above all, the fact is emphasized that the period of investigation took longer than the Mexican law permits adding further that the proceedings of the criminal action resulted in the claimant, who, at the most, was liable of a slight offense, being imprisoned for more than two and one-half years, which fact constitutes a denial of justice.

The Mexican Agency, in defense of this claim, alleged: that the nationality of the claimant was not proved; that the Mexican law considers equal to theft the unlawful taking of a movable thing, even though executed by the owner himself, if the thing is in the possession of another as a deposit decreed by an authority, as happened with the horse in question, which had been taken from Dyches in order to turn it over to Lozano by virtue of the attachment decreed by the Judge; that although Dyches alleged the attachment of the horse was illegally decreed—since the horse no longer belonged to him but to Sepúlveda and Aguilar,—and furthermore, that

the attachment had already been lifted, the horse continued deposited under the law, in view of the fact that the decree of the Judge lifting the attachment was pending on appeal entered by Lozano; that the courts of the State of Nuevo León had reason to consider Dyches guilty; and finally that there is no proof of bad treatment inflicted on the claimant.

As regards the question of nationality, in the opinion of the Commission, there is sufficient evidence to prove that Dyches was a citizen of the United States. In the record there is an affidavit by the mother of Dyches stating that he was born in the city of Granger, Williamson County, Texas, on June 28, 1888; another affidavit by an older sister of the said claimant stating the same facts, and the statement of Dyches himself in this respect. Since the perfectly definite facts of date and place of the claimant's birth are established in these affidavits by persons who are in the best position to know them through their ties of relationship, and as there is no circumstance contradicting the same, the Commission adheres to its previous opinions with respect to the probative weight of affidavits and to the matter of nationality.

Moreover, in this case of an alleged illegal trial and defective administration of justice, the Commission finds itself confronted with a decision of the Supreme Court of Justice of Mexico,—the highest court in the nation, and in fact one of the three branches into which its Government is divided,—in which decision final justice is granted correcting the error that the local lower Courts may have made in finding the claimant guilty. Bearing this in mind, it might be said that there is no denial of justice in this case, but on the contrary, a meting out and fulfillment of justice. If the term within which all proceedings against Dyches were effected had been a reasonable one, it would be necessary to apply hereto the principle establishing the non-responsibility of a State for the trial and imprisonment of an alien, even though he is innocent, provided there has been probable cause for following such procedure. In this case, considering the facts stated, and since Article 349 of the Criminal Code of the State of Nuevo León considers equal to theft the unlawful taking of a thing, even though executed by the owner himself, if the said thing is in the possession of another as a deposit decreed by an authority, it appears that there was sufficient cause for proceeding against Dyches. The Supreme Court of Justice of the Mexican nation finally applied the law, conscientiously examining the charges made against Dyches and found him innocent, for which reason he would have no right to ask for indemnification for the deplorable error of the local courts which injured him. All the defects of procedure of which the claimant complains were, so to say, erased by the last decision which rendered justice to him. Thus, there is no need to consider the propriety or impropriety of the interpreters employed not meeting the requirements prescribed by the law, nor of taking into account that this or that legal step was not taken.

But the fact remains that the procedure was delayed longer than what it should reasonably have been, in view of the simple nature of the case. Counsel for the American Agency has pertinently observed that Dyches remained deprived of his liberty for a period of two years and seven months, having committed no other offense than that of entering into the house of a person without his consent, an offense which the Mexican law punishes with a maximum penalty of from two months, to one year's imprisonment; that the Supreme Court of the State of Nuevo León, in complying with the final decree of the Supreme Court of Justice of Mexico, stated that the

term of imprisonment which the claimant had suffered was sufficient penalty for the only offense of which Dyches was liable, therefore setting him free. The American Agency observed also that under the Code of Criminal Procedure of the State of Nuevo León the preliminary investigation in a criminal cause should be concluded, *at the latest*, within the term of three months, when dealing, as is the case here, with offenses which should be tried by minor judges, (Article 103 of the Code of Criminal Procedure), and that the preliminary investigation in this case undoubtedly exceeded this term.

The evidence submitted by both parties before the Commission is not sufficient for it to obtain an exact idea of the term in which such preliminary investigation was effected, but all the evidence, reasonably construed, shows that this term was exceeded; it readily appears that the decision in first instance was dictated on the 31st of May, 1912, that is, one year after Dyches was apprehended. In other cases the Commission has expressed its opinion that there is no rule of international law fixing the period in which an alien accused of an offense may be detained in order to investigate the charges made against him, adding that it was deemed convenient to consider the local laws in order to decide this question. Applying that test to the present case, and considering that the only offense attributable to Dyches, according to his own confession, merited a maximum penalty of one year, in case it had been of the most serious character, it seems reasonable to believe that within that period, or a little longer, the claimant should have been finally sentenced, thus resulting that he was unduly imprisoned for nearly 18 months. This long and unjustified delay constitutes a denial of justice, and taking into consideration the precedents established for these cases by other arbitral Commissions, as well as by this Commission, it appears that Dyches may be granted an award of \$8,000.00.

Nielsen, Commissioner:

Unfortunately the records before the Commission are so meagre that it is impossible to obtain satisfactory information regarding the strange proceedings in this case which resulted in the imprisonment for a period in excess of two and a half years for what at most was a very trifling offense, namely, entering premises without the consent of the owner.

No doubt it is a general rule that a denial of justice can not be predicated upon the decision of a court of last resort with which no grave fault can be found. It seems to me, however, that there may be an exception, where during the course of legal proceedings a person may be the victim of action which in no sense can ultimately be redressed by a final decision, and that an illustration of such an exception may be found in proceedings which are delayed beyond all reason and beyond periods prescribed by provisions of constitutional law. In my opinion that principle would be applicable in a case like the one before the Commission in which clearly unjustifiable delays took place in the proceedings before State courts which finally terminated with a sentence of eight years and five months for robbery of which Dyches was not guilty, following which sentence Dyches sought redress from the Supreme Court of the Nation by *amparo* proceedings.

Decision

The United Mexican States shall pay to the United States of America, on behalf of Clyde Dyches, the amount of \$8,000.00, (eight thousand dollars), United States currency, without interest.