

WALTER H. FAULKNER (U.S.A.) *v.* UNITED MEXICAN STATES.

*(November 2, 1926, separate opinion by American Commissioner, November 2, 1926.  
Pages 86-96.)*

1. It is alleged in the Memorial and other parts of the record presented by the American Government that Walter H. Faulkner, who was born and has ever remained an American national, lived in 1915 at San Antonio, Texas, U. S. A., his profession being an interpreter's; that in the fall of said year he visited Tampico, Tamaulipas, Mexico, and from there proceeded on a business trip to Veracruz, Veracruz, Mexico, where he arrived on September 25, 1915; that at the end of said month he was waiting there for the arrival of a steamer due on or about October 2, to take him back to Tampico; that in the afternoon of September 30, 1915, he was induced to visit a police office, was submitted there to a search of his pockets and clothes without being told the charge or suspicion against him; that he thereupon was confined until October 7 in a house of detention in the center of the town where conditions were extremely bad; that he did not discover until on or after October 4 the charge or suspicion against him to be that of having circulated counterfeit Carranza money; that from October 7 till October 11 he was confined in the Allende prison in the same city, where conditions were tolerable; and that on October 11 he was released, the Judge declaring that no sufficient evidence for the charge or suspicion against him was available. For the damages sustained in his honor, time lost, and well-being he claims \$50,000.

2. The claimant complains of seven acts on the part of Mexican authorities:

- a. He was arrested without any sufficient ground;
- b. He was not told the grounds of the charge or suspicion existing against him; a fact which prevented him from proving his innocence;
- c. He was placed in a house of detention where he suffered maltreatment;
- d. He was denied for several days communication either with the American consul or with friends;
- e. He was not heard or examined until after some one hundred and two hours;
- f. He was transferred from one prison to another in a way repugnant to his self-respect;
- g. While he was in detention his hotel valise was opened and searched.

3. The Commission holds that on the face of the record the allegations under f and g cannot in themselves furnish a separate basis for complaints. They are incidental to the treatment of detention and suspicion, and if consistent with Mexican law do not in themselves contain anything contrary to international rules or duties. It is neither sustained nor proven that the authorities in applying these measures to the claimant violated the Mexican law of procedure or any other Mexican statute.

4. The allegation of the claimant that he has been placed and kept from September 30 to October 7, 1915, in a house of intolerably bad conditions (allegation c) has been challenged by stating that it is supported only by affidavits of the claimant himself; that it is impossible for the Mexican Government to rebut it because of the destruction of the records in the de la Huerta insurrection of 1923-1924; and that therefore, in

accordance with decisions of former international tribunals, the Commission should not accept as sufficient evidence these statements of the claimant alone, made as late as 1925 or 1926. The Commission, however, sees that the claimant's recent affidavits are supported by the fact that on October 4 and 6, 1915 (prior, therefore, to October 7, 1915) he wrote letters of complaint to the American consul at Veracruz, and that nothing has been adduced to militate against the contention that the jail conditions he describes really existed in the down-town house of detention at Veracruz. The Commission holds the record convincingly establishes that the claimant has been in the said house of detention from a date some days prior to the date of his first letter to the American consul (October 4) up to October 7, the date on which he entered the Allende prison.

5. The allegation made by the claimant that he was arrested without any sufficient ground (allegation a) is most difficult to decide on the face of the record. The claimant states so, allowing for no other possible reasons of charge or suspicion against him than the fact that he came from Tampico where counterfeit Carranza money was being made and issued, and that an unnamed person might have declared that he had been seen circulating counterfeit money at El Paso, Texas. The Commission does not need any theory about presumption of lawfulness of governmental acts to hold, that in the matter of justification of an arrest the mere statement of the person who suffered the arrest can not be deemed sufficient. Furthermore, the explanation given for the circumstance that the Mexican Government can not submit to this Commission extracts from its police and judicial records in the case is a reasonable one (to wit, because of their destruction in 1923-1924). The record seems to indicate that, apart from one exception (the day of first examination), the Mexican rules of procedure have been followed; it at least does not show the contrary. The same Judge, who was so careful as to tell the claimant on Saturday, October 9, 1915, that on Tuesday, October 22, the legal period for his detention would elapse and who set him free on the preceding day about noon, mentions in his decree "the proceedings had up to this time"; it is difficult to assume this Judge to have been careful about periods and forms and careless as to the main point, the existence of any ground for the investigations. The fact that the period of detention elapsed on October 12 can not be interpreted as meaning that the period of three days, provided by article 132 of the Federal Code, had been calculated from either October 7 or 8, for then it would have ceased on October 10 or 11; but it might well mean that two procedures took place, one in a local court, and the other in a military court. The claimant himself states that on or about October 5 he was heard twice, even at so late an hour as eleven p. m., which would seem to show activity on the part of the local judicial authorities, and re-examined on or about October 6, and that in the Allende prison he was examined again on October 9. Where, in case the formalities of procedure had been evidently neglected, a presumption of lack of material grounds for the detention might have had probability, it would seem reasonable—once the record gives the impression that in the main the formalities of Mexican procedure have been complied with—to suppose their having been applied to some material basis for charge or suspicion, and not to proceedings without any foundation whatsoever as required both by the Code and by the Constitution. At any rate the record can not be said to contain convincing evidence as to absence of sufficient grounds for judicial

proceedings, as would be necessary for assuming an international delinquency. The fact that nothing appears about personal steps taken in Faulkner's interest by either the American consul or the acting special representative of the State Department at Veracruz, once they had been informed, can only strengthen the impression that there might have been some ground for charge or suspicion on the part of the Mexican authorities.

6. The allegation that the claimant was not allowed for four days to know the charge or suspicion sustained against him (allegation b) must, if proven, have great weight with this Commission. It is suggested by the two letters the claimant wrote from prison to the American consul, that he was given a first hearing and information only between October 4 and October 6; a fact which would have been illegal in the light of article 98, paragraph 2, of the said Federal Code in connection with article 20 of the Mexican Constitution of 1857. It is, however, of more importance to know, whether Faulkner at the time of his arrest understood or was told what was the charge or suspicion against him, such being a matter of prime importance for any person deprived of his liberty (allegation e). If the legal period for having a regular hearing of the person under detention had been transgressed, as seems to have been the case, such transgression in itself might have found some excuse in the turbulent and unsettled character of those times and in the press of work on the authorities, and can not be deemed to amount to an international delinquency; whereas there would be scarcely an excuse if, with respect to the fact of informing the claimant about the character of his case, he had been treated with undue and unnecessary harshness. Here again, however, it is doubtful whether this serious lack of duty on the part of the authorities may be inferred from the sole statement in the claimant's letter of October 4, 1915, and whether therefore there exists convincing evidence as to this point as well.

7. The allegation of the claimant (allegation d) that he was not allowed for several days to communicate with his consul would, if proven, also have weight with the Commission. The Commission holds that a foreigner, not familiar with the laws of the country where he temporarily resides, should be given this opportunity. It is not clear, however, from the record when and how the liberty to communicate was given the claimant; his letter of October 4, 1915, to the consul appearing, from its wording, not to have been the first communication tendered.

8. The allegation of the claimant (paragraph 4, *supra*) that he was placed for several days in a house of detention where conditions were extremely bad (repulsive filth, human excrement, no provision for sanitation, insects, rats) might have been easily negated by showing that such conditions do not exist at Veracruz or did not exist there in the fall of 1915. Making allowance for some apparent exaggerations in the claimant's presentation of facts, there is for the Commission every reason to hold that the claimant has been in this house of detention for some five days under conditions that were, for an educated man, intolerable. Maltreatment, apart from the conditions of the house, not only is not proven, but the record seems to show the contrary.

9. The Commission, eliminating from the claimant's complaints everything which might be due to misinterpretation or misrepresentation on his part, and for which the declaration of the claimant alone can hardly be considered sufficient evidence, views the fact that, as the records stands, he must be taken to have been detained for several days in a house of

detention under intolerable circumstances of indignity and inconvenience, and that possibly the harshness of this situation has been increased by the silence of the authorities for some days on the motives for his detention. Even if all other complaints were unfounded or unproven or improbable, these complaints remain, corroborated as they are by letters written from the house of detention at a time where misrepresentation might have withheld from the claimant the American Consul's assistance, and written to an American consul by a man who himself had been an American Consul. These statements of 1915 can not be rebutted by presenting them either as mere suppositions on his part or as afterthought of some ten years later. It therefore has to be examined whether either this first fact alone or these two facts combined constitute an international delinquency on the part of Mexico.

10. As the Commission expounded in its opinion in the case of L. F. H. Neer, it holds that the test lies in the application of international standards. That Mexico, just as all other civilized nations, is aware of these standards is apparent from what the claimant states about the Allende prison; the reliability of his complaints about the down-town building is even rendered more probable by the quite different manner in which he expresses himself not only on the Allende prison, but even on the "better and more healthful compartment" he occupied in the down-town building during October 6 and 7 (or 5 and 6). The Commission holds that, even in case there might have been sufficient ground for the arrest, here at any rate was a treatment of apparent international insufficiency for which the record furnishes convincing evidence and for which Mexico is liable. Whether there was sufficient ground for the arrest remains entirely doubtful; but as there certainly is not convincing evidence to the contrary, Mexico can not be held liable for an international delinquency in that respect.

11. The determination of damages to be allowed in cases of this type is necessarily uncertain. In the Topaze case, the umpire held after due investigation (Ralston, Venezuela Arbitrations of 1903, p. 331) that a sum of \$100 per day (or: not exceeding \$100 a day) "seems to be the one most usually acceptable" and "is apparently the favored allowance by arbitrators". The Commission is willing to follow these precedents, but realizing how much the value of money has changed feels bound to increase them fifty per centum. Cases of allowing damages for illegal imprisonment are most similar to the present one, and in such cases tribunals often allowed a gross sum without interest. The Commission is prepared to follow this precedent too. Calculating the amount in the manner most favorable to the claimant who alleges to have been kept for seven days in the first house of detention, the Commission holds that, on the face of the record, full satisfaction is given him by allowing \$1,050 without interest.

#### *Decision*

12. On the above grounds, 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 Walter H. Faulkner \$1,050 (one thousand and fifty dollars), without interest.

#### *Separate opinion*

I concur in the award of an indemnity of \$1,050.00. However, I desire briefly to indicate my views with respect to legal contentions advanced by

each Agency in this case, and to point out that my acquiescence in an award providing indemnity merely for mistreatment in one of the jails in which Faulkner was imprisoned is due to uncertainties in the record which unfortunately have not been explained. I think the case presents a grievous injury to a respectable American citizen. The facts in the case are indicated and analyzed in the opinion signed by my associates.

The claim is based on charges of false arrest and detention and mistreatment of Faulkner, who was arrested and discharged without being brought to trial. Foreigners of course are in no manner exempt from the operation of criminal laws of the country of their sojourn. The acquittal of an alien after trial does not of itself justify a demand for indemnity. And the same is true respecting the release of an alien without subjecting him to trial. But international law requires that, in connection with the execution of penal laws, an alien shall be accorded certain rights such as are guaranteed under the laws of Mexico and under the laws of civilized countries generally both to aliens and nationals. There must be some ground for an arrest, or as said in terms of domestic law, there must be probable cause; a person is entitled to be informed of the charge against him; and he must be given opportunity to defend himself. Apart from questions respecting the observance of such rights, indemnities have frequently been awarded by international tribunals in cases in which aliens have been grossly mistreated during imprisonment. It is alleged in the Memorial of the United States that none of these rights was accorded to Faulkner, and that he was illtreated while under confinement.

These charges are denied in the Answer and in the Brief filed by the Mexican Government. In the oral and in the written argument it was contended that the claimant was guilty of laches in not bringing his complaint to the attention of the Mexican Government, and contentions were advanced with respect to the burden of proof resting on the claimant to establish his case, and the insufficiency of the evidence produced to substantiate the charges made against Mexican authorities.

While the arguments with respect to the insufficiency of proof to establish charges underlying the claim were very forcefully presented, it seems to me that in a number of respects the manner in which the claim was defended revealed the weakness of the defense. The proposition advanced in the Mexican Government's Brief that "Ordinarily it is incumbent upon the party alleging a fact to introduce evidence to establish it" may readily be conceded. And it is undoubtedly true that, whenever it is sought to ground important conclusions on an affidavit filed by a person in whose behalf claim is made, it is desirable that his testimony be confirmed by the testimony of others. But it seems to me that the contentions advanced by the Mexican Government go too far in an attempt to discredit the effect of Faulkner's affidavit, and in the argument with respect to burden of proof, and also in the reliance which is placed upon a rule of municipal law and of international law relative to a presumption of the propriety of the acts of officials.

While Faulkner's affidavit was generally rejected as proof of things of which Faulkner complains, it was repeatedly cited as proof of things which it was deemed to be proper to advance in defense of the claim. It was said that the claimant has done nothing to establish that he was imprisoned in what is called in the record the "downtown jail", and such imprisonment is specifically denied, although there are several communications accompanying the Memorial which show that as early as October 4, 1915, Faulkner had been in communication with the American Consul at Veracruz com-

plaining bitterly against his imprisonment. Moreover, with a dispatch of October 7, 1915, to the Department of State, the American Consul at Veracruz transmitted copies of communications dated October 5 and 7, 1915, respectively, to the American representative at Mexico City by which it is shown that he requested that representations regarding Faulkner's imprisonment be made to the Mexican authorities. The supposition can not be indulged in that Faulkner, prior to the date on which he was placed in the Allende jail, evidently October 7, was complaining about being in what he calls a "hell hole", or that the American Consul was addressing the American representative in Mexico City with respect to the imprisonment of Faulkner when there had been no imprisonment.

With regard to the value of Faulkner's testimony I may observe that it seems to me that his affidavit shows an intent to furnish a fair and accurate statement of facts. For example, while considering himself arbitrarily imprisoned without the slightest cause, throughout the period of his detention in two different jails, he gives details indicating that his condition was somewhat alleviated when he was placed in the Allende jail.

Counsel for Mexico, while asserting the insufficiency of evidence to meet the burden of proof which he insisted rested upon the claimant, referred to the principle stated by the Commission in its opinion in the claim of William A. Parker (Docket No. 127), in which the Commission asserted it to be the duty of the two Agencies to search out and to present to the Commission all facts throwing any light on the merits of a claim.

But little adjective law has been developed in international practice. The principle just mentioned is found in the Hague Convention of 1907 for the pacific settlement of international disputes to which a large number of nations including Mexico and the United States are parties. Article LXXXV of that Convention reads as follows:

"The parties undertake to supply the tribunal as fully as they consider possible, with all the information required for deciding the case."

To be sure, no provisions of the Hague Convention of 1907 are incorporated directly or by reference into the Claims Convention of September 8, 1923. But this Commission has given effect to the principle underlying Article LXXXV and both Agencies have expressed their intention to observe it. In the light of that principle it seems to me that clearly the charge of mistreatment of Faulkner in the so-called "downtown jail" can not be said to have failed because of lack of substantiation in that it is supported merely by Faulkner's affidavit. Had it been desired to discredit the affidavit on this point it would doubtless have been possible to produce for that purpose evidence describing the condition of the jail.

With respect to the charge of absence of probable cause for the arrest of Faulkner, it was contended in behalf of the Mexican Government that there was no supporting evidence other than that of Faulkner's affidavit. It was said that records were destroyed, so that the Mexican Government could not furnish evidence with regard to the reasons for Faulkner's arrest. Even though written records have been destroyed, there may be persons connected with the arrest who might testify with regard to orders given or orders received with reference to Faulkner's arrest and the reasons given at the time of the arrest for that action. The steps taken by the Mexican authorities to obtain information from persons having knowledge of the arrest are discussed in some detail in the Brief filed by the United States. However, since I concur in an award of indemnity for mistreatment only, I will not discuss this point.

I desire briefly to comment upon the argument made in the Mexican Government's Brief and in the argument of counsel with respect to laches with which it was contended Faulkner was chargeable in not bringing his complaint to the attention of the Mexican Government. I am of the opinion that it is a general practice among nations to receive complaints or claims, involving what is described in terms of domestic law as tortious acts on the part of authorities, through diplomatic channels, and not directly from aliens who may consider themselves aggrieved by such acts. However, touching the contention that Faulkner was guilty of laches, so that the Mexican Government was not put on notice with regard to his complaint, it may be observed that he complained very promptly and emphatically to an American Consular officer, who in turn communicated with an American representative in Mexico City, who undoubtedly brought the matter to the attention of Mexican authorities there. Furthermore, I am of the opinion that in an international arbitration the principle of laches can be invoked for whatever its legal effect may be only with respect to the rights of nations parties to the arbitration. International tribunals have in some instances declared that one government should not call upon another government to respond in damages when such action, after a long lapse of time, clearly puts the respondent government in an unfair position in making its defense, particularly in the matter of collecting evidence, and raises a presumption of the nonexistence of a just claim which would have been presented had it ever existed. The instant claim is not a proceeding instituted by Faulkner against the Mexican Government, and the merits of the case must be determined not in accordance with some law defining Faulkner's rights against the Government of Mexico, but conformably to the relative rights of the two nations under international law. In a case coming before a commission charged with the judicial determination of cases arising since the year 1868, for which no provision has been made by the two Governments since that date, a case in which the underlying grievances were, I feel certain, brought to the attention of Mexican authorities in 1915, the right of the United States to maintain the claim can not, in my opinion, be defeated or in any way affected by a plea of laches.

Fred K. NIELSEN,  
*Commissioner.*

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