

C. W. PARRISH (U.S.A.) *v.* UNITED MEXICAN STATES.

(*July 23, 1927, concurring opinion by American Commissioner, July 23, 1927, dissenting opinion by Mexican Commissioner, undated. Pages 473-482.*)

Van Vollenhoven, Presiding Commissioner :

1. This claim is made by the United States of America against the United Mexican States on behalf of C. W. Parrish, an American national. Parrish, who was an employee (passenger conductor) of the Ferrocarril Sud-Pacífico de México (Southern Pacific Railroad of Mexico) and who in the Summer of 1910 performed his duties in the State of Sonora, was on July 24, 1910, arrested at Guaymas, Sonora, on a charge of swindling and embezzlement, and sent to Mazatlán, Sinaloa; was tried there in January, 1911, convicted on February 6, 1911, and sentenced to an imprisonment of two years and eight months; but was released from the jail at Mazatlán in May or June, 1911, as a consequence of disturbances caused by the Madero revolution. He then returned to the United States. It is alleged that the arrest, the trial and the sentence were illegal, that the treatment in jail was inhuman, and that Parrish was damaged to the extent of \$50,000.00, which amount Mexico should pay.

2. To the challenge of the claimant's citizenship and to his forfeiture of the right to protection applies what is said in paragraphs 2 and 4 of the opinion in the *Chattin* case (Docket No. 41).¹

3. The circumstances of Parrish's arrest, trial and sentence were as follows. In the year 1910 there had arisen a serious apprehension on the part of several railroad companies operating in Mexico as to whether the full proceeds of passenger fares were accounted for to these companies. The Southern Pacific Railroad of Mexico applied on June 15, 1910, to the Governor of the State of Sinaloa, in his capacity as chief of police of the State, co-operating with the federal police, in order to have investigations made of the existence and extent of said defrauding of their lines within the territory of his State. The Governor on June 17, 1910, delegated a police inspector, a police officer, and two persons they selected (a young

¹ See page 282.

laborer and a very young woman) to secure evidence to establish crimes of this type; the four persons, however, did not confine their investigations to the State of Sinaloa, but went as far as Guaymas, Sonora. Parrish was serving at the time on the track between Navojoa, Sonora, and Guaymas, Sonora. The group of four succeeded in provoking delinquencies of the brakeman Domingo Juárez, who served on the same line and the same trains where Parrish acted as passenger conductor. They reported to the Governor on July 9, 1910; the Governor, after consulting the Attorney General of his State, had the report forwarded to the Judge at Mazatlán, on July 18, 1910. The Judge, by telegram of July 22, and rogatory letters of July 23, 1910, requested his colleague at Nogales, Sonora, to have Parrish arrested, which he was on July 24, 1910, at Guaymas. On July 25, 1910, the Judge at Nogales notified his colleague by telegram that Parrish was held at his disposal, whereupon the Judge at Mazatlán requested the Court at Nogales by telegram and letter of July 25 and again on July 27 to issue a decree of formal imprisonment against Parrish. From July 25 on the Judge at Nogales (two successive judges) did all he could to avoid illegalities and delays in Parrish's case; he three times explained to his colleague at Mazatlán why his request did not fulfil the legal requisites necessary for a decree of formal imprisonment and therefore could not be complied with, particularly as the Nogales Court was not even entitled to submit Parrish to the hearing which must precede any formal imprisonment. Moreover he notified him on July 27, that the seventy-two hours allowed for solitary detention were about to expire. Probably because of this last message, the Judge at Mazatlán on July 28 requested by telegram the Federal Government to order Parrish transferred from Guaymas to Mazatlán; a telegram which, according to the Secretary of Justice, did not reach him until August 1. The Federal Government's measures for Parrish's transfer were not completed until August 10, 1910, whereupon Parrish was conveyed to Mazatlán. He arrived there on August 12, 1910, was given a hearing on August 13, and was declared formally imprisoned on the same day. From July 24 to August 13, 1910, he had been in jail without any information as to the grounds for his detention and without any hearing. In the meantime, on August 3, 1910, his case had been consolidated by the Court at Mazatlán with those of Chattin, Haley, Englehart and five Mexicans. On August 15 and 16, 1910, Parrish was confronted with the two police officers and their assistants who had been delegated by the Governor of Sinaloa. No subsequent investigations of any kind to obtain proof of Parrish's guilt appear to have ever been made. Parrish was kept under arrest until the end of January, 1911, at which time the case against another conductor, Chattin (Docket No. 41), was mature for trial. After all these months of preparation and a trial at Mazatlán, during both of which Parrish, it is alleged, lacked proper information, legal assistance, assistance of an interpreter and confrontation with the witnesses, he was convicted on February 6, 1911, by the said District Court of Mazatlán as stated above. The amount involved in Parrish's case was eighteen Mexican pesos. The case was carried on appeal to the Third Circuit Court at Mexico City, which court on July 3, 1911, affirmed the sentence. In the meantime (May or June, 1911) Parrish had been released by the population of Mazatlán which threw open the doors of the jail in the time elapsing between the departure of the representatives of the Díaz regime and the arrival of the Madero forces.

4. It has been alleged, in the first place, that Parrish was illegally deprived of his liberty. The irregularity established consists in this, that the Judge at

Mazatlán requested his transfer ordered on July 28 (or August 1) instead of on July 25. The deplorable circumstance of Parrish's detention during twenty days without any information or hearing would seem due to the fact that it took the Federal Government ten days of circuitous action before so simple a thing as the transfer of an arrested man from one State to another could be decreed. Against the decree of Parrish's formal imprisonment no appeal was instituted. Only in case the Judge at Mazatlán illegally took cognizance of Parrish's alleged felony and illegally requested his arrest, and in doing so was guilty of an outrage, bad faith, wilful neglect of duty, or apparent insufficiency of action, Mexico could be held liable on account of Parrish's arrest.

5. It has been alleged that Parrish was illegally turned over to the Judge of a neighboring state, Sinaloa, where the alleged felony had not been committed and where therefore the Court had no authority to try the case. On September 3, 1910, Parrish's lawyer protested against what he alleged to be wrongfully assumed jurisdiction; but he apparently did not do so in the forms required by Mexican law, and the question had to be considered as not having been raised before the Court. The sentence rendered February 6, 1911, though liberal in quoting articles of statutes applied by the Court, is silent on this matter of jurisdiction, and so is the decision on appeal of July 3, 1911. Quotations from Mexican law have been submitted by the Mexican Agency, establishing that the District Court at Mazatlán could legally take cognizance of Parrish's alleged felony committed in Sonora, quotations controverted by the United States. Nothing in the record of the court proceedings shows that the Judge paid any attention to this point of law. Neither did the appellate tribunal in its decision say one word to dispel the doubt, though both from the Mazatlán court record and from its own knowledge it must have seen the problem. However unsatisfactory this appears, it is not for this Commission to assume that a technical point of Mexican law has been misinterpreted by two courts. There would seem to be convincing evidence, however, that, if the transfer was illegal, this illegality has caused Parrish an essential damage; for during the correspondence mentioned in paragraph 3 above, relative to Parrish's formal imprisonment, the Judge at Nogales was just as prudent, conscientious and active as the Judge at Mazatlán was careless, unconscientious and indifferent regarding a man's freedom.

6. Irregularity in the court proceedings in the case of Parrish is alleged on the ten grounds mentioned in paragraph 12 of the opinion in the *Chattin* case. Here applies all of what has been said in paragraph 6, 7, 8 and 10 of the opinion in the *Halcy* case (Docket No. 42),¹ except (a) that in Parrish's case there does not appear one reason for linking up his case with those of his colleagues, nor for postponing his trial until the day of *Chattin's*, and (b) that during the greater part of the court proceedings he had no counsel. It should be pointed out emphatically that in Parrish's case as well there not only was insufficiency of preparatory investigations by the Judge, but that after the undecided and unsatisfactory confrontations held on August 15 and 16, 1910, there is no trace of any further investigation whatsoever, scanty and deficient though the evidence before the Judge was; nor is there a trace of any effort whatsoever to shed light on Parrish's case from the evidence in the cases of the other conductors, or on their cases from

¹ See page 313.

Parrish's. The only light the Judge received was from dangerous hearsay reported by the general manager of the railroad company, who never was confronted with Parrish, and from the very dangerous documents submitted by the same manager to the Judge and never disclosed to the accused. Undue delay of court proceedings from August 16, 1910, to January 27, 1911, is apparent.

7. It is alleged that Parrish has been convicted on insufficient evidence. Here applies what is said in paragraph 24 of the opinion in the *Chattin* case (Docket No. 41) ¹ and in paragraph 11 of that in the *Haley* case (Docket No. 42). ²

8. Mistreatment of Parrish in jail is not proven. Here applies paragraph 28 of the opinion in the *Chattin* case. Even Mrs. Parrish did not complain of inhuman treatment of her husband, so far as the record shows. Parrish had been ill while in jail and went to the hospital for some time.

9. An illegal arrest of Parrish is not proven. Incompetency of the Judge who tried the case is not proven. Irregularity of court proceedings is proven with reference to absence of proper investigations, insufficiency of confrontations, withholding from the accused the opportunity to know all of the charges brought against him, undue delay of the proceedings, making the hearings in open court a mere formality, and a continued absence of seriousness on the part of the Court. Insufficiency of the evidence against Parrish is not convincingly proven; intentional severity of the punishment is proven, without its being shown that the explanation is to be found in unfair-mindedness of the Judge. Mistreatment in prison is not proven. Taking into consideration, on the one hand, that this is a case of direct governmental responsibility, and, on the other hand, that Parrish, because of his escape, has stayed in jail for eleven months instead of for two years and eight months, it would seem proper to allow in behalf of this claimant damages in the sum of \$5,000.00, without interest.

Nielsen, Commissioner:

I concur in the Presiding Commissioner's conclusion with respect to liability in this claim. My views regarding the case are stated to some extent in the opinion which I wrote in the claim of *B. E. Chattin*, Docket No. 41.

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 C. W. Parrish, \$5,000.00 (five thousand dollars), without interest.

Dissenting opinion

Fernández MacGregor, Commissioner:

1. I differ with the opinion rendered by my two colleagues in the case of conductor Claude W. Parrish, who was tried before a Mexican court for the crime of fraud and breach of trust. The general reasons for my dissent

¹ See page 282.

² See page 313.

are those set forth in my separate opinion in the case of *Chattin*, Docket No. 41, and I shall only treat here the points on which the two cases differ.

2. The Presiding Commissioner concludes in paragraph 9 of his opinion in this case, that it is not proven in the Parrish case that there has been illegal arrest or incompetency of the Judge who tried the case; but he points out that the vacillations of the Judge of Mazatlán in obtaining the apprehension of Parrish by the Judge of Sonora and then in having the prisoner placed at his disposition caused a delay which was prejudicial to the claimant. This delay lasted twenty days, from July 24th to August 13, 1910. It is doubtless that the Judge of Mazatlán did not comply exactly with the requisites of Mexican law with respect to letters rogatory, but it is to be noted that whatever may have been the difficulties of the requesting Judge and the Judge who received the request the latter placed the prisoner at the disposition of the former on July 27th, that is, three days after the accused had been arrested, for which reason, on July 28th, the Judge of Mazatlán asked the Federal Government of Mexico to provide for the transfer of Parrish from Nogales to Mazatlán. The Federal Government issued the corresponding orders some time between the 1st and 12th of August, on which date Parrish was already in Mazatlán. Perhaps the prisoner's transfer might have been made more rapidly, but I do not believe, as already stated with regard to the *Chattin* case, that an arbitral commission may examine the governmental action of any State in its slightest details, as it may be supposed in the present case that the administrative machinery required certain steps which consumed the time above stated. With regard to this delay, what was said in paragraph 6 of my opinion in the *Chattin* case applies; in general, Parrish's trial was carried out within the periods fixed by Mexican law, and, therefore, the minor delays which may be pointed to between different steps in the proceedings disappear when the final result is considered, which was that the proceedings were terminated in due time.

3. The above-mentioned delay gives rise to another charge that the accused did not know the cause of his prosecution, during the twenty days that he was outside of the jurisdiction of the Judge in Mazatlán. I believe that this charge is refuted by merely reading Article 20 of the Mexican Constitution of 1857, which says: "*In all criminal causes, the accused shall have the right to be informed of the reason for the prosecution*". This means that this right, as well as the others stipulated by Article 20, accrue at the time when the accused is at the disposition of the competent Judge—the one who will conduct the proceedings—and not, for instance at the time when he is summoned to court by another Judge. This jurisprudence has been established by the Supreme Court of Mexico in the following decisions: May 30, 1881, amparo Ciriaco Vazquez, before the District Judge of Sonora; November 3, 1881, amparo Pedro García Salgado, before the First District Judge of the State of Mexico. (See the opinion of Lic. Ignacio Vallarta in this last case.)

4. Although I believe that the question of jurisdiction between the courts of a State is purely domestic (the international decisions cited by the Government of the United States all refer to international jurisdiction), I believe it pertinent to explain that, in my opinion, the District Judge of Mazatlán was competent to try Parrish. According to the information that this Judge had before him, there was probable cause to suppose that the four conductors and other employees of the railroad were defrauding the company; that

is, were committing the same crime or connected crimes. Article 330 of the Federal Code of Criminal Procedure provides that connected crimes are those committed by different persons, even if at diverse times and places, but through agreement between them; so that the Judge could order the consolidation and, therefore, consider himself competent to pass on Parrish's case, even though the latter had committed his crimes in the State of Sonora. Chapter III of the Code cited provides for the possibility of carrying out the consolidation of causes when they are in different courts and not only when they are in the same court. It must be taken into consideration, moreover, that probable cause is sufficient for the consolidation of proceedings just as for the arrest of an accused, for, as the procedure of consolidation is an economical measure to carry out certain proceedings more rapidly and to determine more easily all their circumstances, such measure is taken at the beginning of the prosecution, when there is yet no conclusive evidence of any kind, as it would be illogical to wait until the end of a prosecution before decreeing said measure of consolidation which, at this stage, would prove utterly useless. At any rate, as stated above, the question of jurisdiction can not cause damage to an accused except in very special and definite cases, as, for example, when the accused is tried by a military tribunal instead of a civil tribunal; consequently, a violation in this matter can not carry international liability.

5. With regard to the evidence which the Judge took into consideration in convicting Parrish, it must be repeated that he in no manner considered the secret documents of the Los Angeles detectives (paragraph 7 of my opinion in the Chattin case). The Judge received the testimony of four witnesses, two of them police officers, who affirmed unanimously the fact that Parrish had accepted tickets purchased illegally from a brakeman; that such tickets were different from those used on the day when the two officers and their companions made the trip; the value of the tickets was 18 pesos; conductor Parrish admitted that he worked on the railroad the day of the trip of Barraza and his associates; it is doubtless that the brakeman could not have committed any fraud against the railroad company without the knowledge of the respective conductor, who was precisely placed by the company in order to prevent fraud; consequently, the requisites fixed by the Mexican Criminal Code for the crime of fraud, defined in Article 414 of the Criminal Code of the Federal District, were fulfilled. Article 415 provides that the defrauder shall suffer the same penalty that would be imposed on him had he committed larceny; larceny by an employee, according to Article 384 of the same Code should be punished with two years' imprisonment; according to Article 406, breach of trust constitutes an aggravating circumstance, and when there are aggravating circumstances the maximum penalty may be imposed; now, then, according to Article 69, the maximum of a penalty is calculated by adding to the medium a third part of its duration, which results in a penalty of two years, eight months, fixed by the Judge of Mazatlán and affirmed by the Third Circuit Court.

6. In the opinion of the Presiding Commissioner in this case it is charged that there was no cause for the consolidation of the Parrish case with those of his three associates. It must be noted that Parrish's crime was the same as that of brakeman Domingo Juárez and that according to the investigation made by the Mexican police, Camou (another brakeman) was the one who directed them, together with said Juárez, to obtain illegal passage

from him. Camou's criminal act was connected with that of Conductor Haley and the latter with that of Chattin (according to the opinion of the Presiding Commissioner himself), so it is clear that the Judge of Mazatlán could legally decree the consolidation of all those cases.

7. It is said that the accused Parrish did not have counsel. On the reverse of folio 99 of the original record it is stated that when he gave his preliminary statement on August 13, 1910, he appointed Lic. Rosendo L. Rodriguez as his counsel. On the reverse of folio 100 it is noted that at the time that the latter was to be notified of his appointment he was temporarily absent from the city. On August 20th Counsel Rodriguez appeared before the Court to accept his appointment (reverse of folio 103). It is true that Counsel Rodriguez resigned September 6, 1910 (folio 110), and that his resignation was immediately communicated to the accused. It does not appear that the accused, who was informed of the resignation of his counsel, appointed another attorney immediately; but it does appear that the accused Parrish continued to be defended by his counsels Fortino Gómez (folio 143 and 156) and Adolfo Arias (folio 163). Besides, I do not find that the fact that an accused does not appoint counsel, being able to do so or to request it, constitutes any international violation; there would be a violation of this kind if the accused had not been permitted to have counsel.

8. The claim should be disallowed.