

*Decision*JOSEPH A. FARRELL (U.S.A.) *v.* UNITED MEXICAN STATES*(October 29, 1930. Pages 157-161.)**Commissioner Fernández MacGregor, for the Commission:*

The United States of America, on behalf of Joseph A. Farrell, an American citizen, claims from the United Mexican States the amount of \$10,000.00, United States currency, alleging that he was unlawfully arrested and subjected to harsh and severe treatment during the period of his imprisonment by Mexican authorities.

The claimant was the master mechanic of the "La Fe Mining Company" which operated in Guadalupe, Zacatecas, Mexico. On October 22, 1910, the claimant was on duty inspecting the raising and lowering of a tank. One of the Mexican laborers named Calvillo executed his task improperly for which he was reprimanded by the claimant who also struck him on the shoulder; this resulted in a dispute which culminated in two consecutive physical encounters between the two men. On the following day Calvillo went to the Company's warehouse which was in charge of a French citizen named Langot, asking his permission to speak to the claimant, which Langot refused. Calvillo became threatening whereupon Langot went to the claimant and asked him for his revolver; Farrell advised him to call the police, which he did; but as the police did not arrive and as Calvillo's attitude

became more threatening, Langot again asked the claimant for his revolver, this time obtaining it, and went out again. Calvillo tried to enter at all costs rushing towards the door whereupon Langot fired five shots at him killing him instantly.

The Mexican authorities took cognizance of the crime instituting the corresponding proceedings during the course of which the claimant, on November 11, 1910, was arrested charged with (a) attempt to commit murder, (b) carrying prohibited weapons, and (c) being an accomplice to the murder of Calvillo. The Judge of the Court of First Instance, on February 16, 1911, rendered a decision acquitting the claimant of the crimes of attempted murder and carrying prohibited weapons, and sentencing him as an accomplice to the murder of Calvillo to the penalty of ten years' imprisonment. The claimant appealed from that sentence and the Supreme Court of the State of Zacatecas, on April 4 of the same year, handed down its decision acquitting him of all the charges which had been made against him, for which reason he was released. The decision of the Supreme Court was a majority opinion, since one of the Justices voted to confirm the sentence of the lower court.

The American Agency in its oral argument withdrew the imputation made in its brief that the Mexican Judge of the Court of First Instance harbored racial prejudice against American citizens which impelled him to convict Farrell.

In the same oral argument mention was made that the Commission has established the precedent that certain irregularities of procedure cannot be redressed even when a final sentence doing justice is rendered, referring especially to the *Dyches* case in which the following was said:

"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 nonresponsibility 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..... 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." (Majority opinion, *Opinions of Commissioners*, 1929.)

"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." (Opinion of Commissioner Nielsen, *Op. cit.*.)

Based on this opinion the American Agency alleged that in the instant case, the Commission, in accordance with the principles of international law, could examine the final decision rendered by the Supreme Court of Zacatecas for the following reasons: 1, because the evidence submitted against the claimant in the Court of First Instance was so unsatisfactory as to warrant his immediate release; 2, because during the period of his detention the claimant was subjected to ill treatment; and 3, because he was held *incomunicado* for a period of twenty days.

The Commission finds at once that the instant case differs from the *Dyches* case, Docket No. 460, in the fact that in that case it was proven that the judicial proceedings were unduly delayed in violation of the Mexican law; in the instant case it appears that the proceedings were conducted entirely within the period designated by the law, the proceedings in both courts having lasted approximately five months. In this regard the Attorney of the American Agency stated:

"The proceedings, it would seem to me, were conducted with unusual celerity. There was no cause of complaint regarding delay. The case commenced October 23, 1910, and was finally disposed of by a decision of the Supreme Court on April 5, 1911. So I really think it was very quick action on the whole."

Entering upon an examination of the alleged injuries of the claimant, the Commission is of the opinion that there was probable cause for his arrest. Against him were the statements of several witnesses to the effect that they had seen him quarrel and struggle with Calvillo; the latter had been killed by Langot with the pistol of the claimant who had previously shown him how to use it. The Penal Code of Zacatecas considers as accomplices those who "furnish the instruments, arms or other means adequate for the commission of the crime if they know the use which is to be made of such instruments or means". The American Agency argues that the claimant did not know for what purpose Langot required his revolver. This was an essential fact which had to be established during the course of the proceedings. Now, if there was probable cause for the arrest, and if the proceedings were in accordance with the laws of Mexico, there is no violation of international law, since an alien is subject to all the penal laws of the country in which he lives, provided these are applied bona fide, and even though a charge is not proven.

As to the other part, there is not sufficient evidence to establish that the claimant was subjected to physical ill-treatment during his imprisonment, inasmuch as the affidavits on this point lack the precision required to sustain the allegation.

Finally, the charge against the respondent Government with relation to the holding of the claimant *incomunicado* for twenty days, must likewise be considered as not sustained. The American Agency even asserted that the Mexican law which permitted *incomunicación* for such a long period "is below the required standards with respect to the treatment to be accorded to aliens subjected to prosecution", insisting that prolonged *incomunicación* deprives the accused of the right of defense.

The Commission is not prepared to state that a law which permits the *incomunicación* of an accused in a manner implying neither cruelty nor interference with the right of defense, is in violation of international law. The *incomunicación* permitted by the Code of Criminal Procedure of Zacatecas (Article 340) must take place in such a manner as not to prevent the giving to the person so held all the assistance compatible with the object of that

measure; the person held *incomunicado* may speak to other persons or communicate with them in writing, in the discretion of the Judge, provided that the conversation takes place in the presence of this official or that the letters be sent through him unsealed. Under these conditions, and if it does not totally prevent the accused from having an attorney to defend him, *incomunicación* does not imply a violation of international law. In the instant case the *incomunicación* suffered by the claimant took place in accordance with the law during the first days of the proceedings, from November 11, to December 1, 1910. It is of record that the accused was able to defend himself fully from the beginning to the end of the proceedings, and that finally, by virtue of that defense, he was acquitted. There is, therefore, no cause for responsibility chargeable to the Mexican Government, on this ground.

In view of the foregoing, the instant claim must be disallowed.

Decision

The claim of the United States of America on behalf of Joseph A. Farrell is disallowed.
