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Walter J. N. McCurdy (U.S.A.) v. United Mexican States

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PARSONS TRADING COMPANY (U.S.A.) *v.* UNITED MEXICAN STATES.

(*March 5, 1929. Pages 135-137.*)

CONTRACT CLAIMS.—RESPONSIBILITY FOR ACTS OF *de facto* GOVERNMENT.—EFFECT OF DOMESTIC STATUTE OF LIMITATIONS.—*Stare Decisis*. Claim for goods sold and delivered to respondent Government during Huerta regime *allowed* pursuant to prior rulings. Defence based upon Mexican law requiring presentation of such claims to Mexican Government within fixed period *overruled* pursuant to prior rulings.

(*Text of decision omitted.*)

WALTER J. N. McCURDY (U.S.A.) *v.* UNITED MEXICAN STATES.

(*March 21, 1929, concurring opinion by American Commissioner, March 21, 1929. Pages 137-150.*)

DENIAL OF JUSTICE.—MISCONDUCT OF OFFICIALS.—MISCONDUCT OF AUTHORITIES DUE TO UNDUE INFLUENCE.—EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—QUANTUM OF PROOF. When charge of misconduct of officials due to undue influence is made, *held*, evidence of the highest and most conclusive character must be furnished to establish such a charge.

IRREGULARITIES IN JUDICIAL PROCEEDINGS.—FAILURE TO PROVIDE COUNSEL TO ACCUSED. Claim based on irregularities in judicial proceedings must rely on matters of substance rather than matters of form. Basic irregularities, including trial of accused without counsel, *held* not established.

TRIAL WITHOUT PROBABLE CAUSE. Evidence before Mexican authorities *held* sufficient to justify trial.

UNDUE DELAY IN JUDICIAL PROCEEDINGS. Eight months *held* not undue period in the circumstances for investigation of claimant's guilt by the courts.

CRUEL AND INHUMANE IMPRISONMENT. Claim that claimant received inadequate living allowance during imprisonment *held* not established by the evidence.

Cross-references: Annual Digest, 1929-1930, p. 165; British Yearbook, Vol. 11, 1930, p. 225.

Commissioner MacGregor, for the Commission:

Claim in the sum of \$50,000.00, United States currency, is made in this case by the United States of America against the United Mexican States on behalf of Walter J. N. McCurdy, a citizen of the United States, a victim, it is alleged, of illegal acts of the Governor and the Secretary of State of the State of Sonora, as well as of the courts of said State, in com-

mitting a denial of justice, and of the authorities that subjected him to maltreatment while he was in prison.

The American Agency states that McCurdy was a lawyer who for several years represented the Yaqui Copper Company, an American corporation, which owned mining properties in the districts of Sahuaripa and Ures, in the State of Sonora, Republic of Mexico. The President of the said Company, one W. P. Harlow, in the year 1902, presented to Rafael Izabal, Governor of Sonora, as a gift, 5,000 shares of the Yaqui Copper Company. During that same year of 1902, McCurdy denounced one thousand (1,000) mining claims in the District of Sahuaripa, adjoining the property of the Yaqui Copper Company, for which reason Harlow tried to purchase them from McCurdy. Both, discussed the matter during a trip especially planned by Harlow in that same year, and upon McCurdy's refusal to sell, bitter and violent discussions ensued. McCurdy returned to the United States, Nogales, Arizona, where he remained from November, 1902, to March, 1903, on which date he returned to the mines upon Harlow's request, in order to discuss further the sale of the mining claims. On his arrival at the mines he did not meet Harlow, and continued his journey to Hermosillo, Sonora, hoping to find him there. When he arrived at a small village called Suagui de Batuc he was arrested at the instance of Harlow who had complained that he (McCurdy) had made threats against him. The Court dismissed the case for lack of evidence; but following his discharge McCurdy was rearrested upon a warrant issued by the Court of First Instance at Hermosillo, Sonora, on the charge of an attempt to murder W. E. Pomeroy at the "Rancho de Calaveras" four months before, that is to say, on November 10, 1902. Consequently, McCurdy was conveyed to Hermosillo and confined in jail there.

It is alleged that the attempted murder did not take place and that the facts occurred as follows:

On the 10th of November, 1902, when Harlow and his companions visited the mines, the party stopped at the "Rancho de Calaveras" for a dinner that had been prepared by W. E. Pomeroy, who was Superintendent of the Yaqui Copper Company. Someone asked McCurdy to demonstrate his skill as a marksman; he drew his pistol and started to shoot against a wall in the patio. At that time Pomeroy entered; McCurdy ceased firing saying to the newly arrived: "What do you want, Bill?" Pomeroy replied: "Nothing now" and left; McCurdy resumed his shooting exercise. It is alleged that while McCurdy was in jail he was visited by one Charles R. Miles, agent and broker of Harlow, who told him, that he (McCurdy) would be liberated at once and paid \$5,000.00, if he would sign a deed to the mining properties. McCurdy refused the proposition. Soon afterwards, McCurdy, against whom, as it appears, jail regulations were not strictly enforced, accompanied the jailer to the railroad station. The following day, McCurdy was visited by Francisco Muñoz, Secretary of State of the State of Sonora, who, after reproaching him for having gone to the station, also offered to release him if he would comply with the terms submitted by Miles. Furthermore, after this alleged interview, it is said, McCurdy was conveyed by a Mexican Captain to the offices of Miles. Miles insisted in his offer and received another refusal from McCurdy. That same afternoon McCurdy was compelled to enter the jail proper, when he was informed by the jailer, that the Secretary of State of the State of Sonora, Muñoz, had ordered that he be held *incomunicado*, as Miles had complained that he (McCurdy) had threatened his life.

McCurdy was in jail from March 22, 1903 to January 22, 1904, during which time, he was subjected to several trials. McCurdy alleges that during the time the proceedings were conducted against him, the rights and privileges that the Mexican law grants were not accorded to him, and that he was maltreated during the entire time of his imprisonment, all due to the illegal influence exercised by the Governor and Secretary of State of the State of Sonora, instigated by Harlow.

The American Agency grounds its conclusions as to the responsibility of the Mexican Government for the aforementioned facts on the following considerations:

(a) There was collusion on the part of Harlow and the Mexican officials to entice McCurdy into Mexico and have him arrested making various unjustified charges against him for the purpose of forcing him to sell his mining properties. The participation of the Governor and Secretary of State of the State of Sonora in this conspiracy is an official act for which the Mexican Government must respond.

(b) The court proceedings instituted to elucidate the charges preferred were characterized by repeated acts of injustice and impropriety.

(c) The failure of the Mexican courts to try McCurdy promptly constitutes a denial of justice according to international law.

(d) McCurdy was ill-treated during his imprisonment.

The American Agency grounds the first assertion on the following evidence:

(1) An affidavit of the claimant himself, in which he states that the Governor of Sonora was presented by Harlow with a gift of 5,000 shares of the Yaqui Copper Company, and that Muñoz, Secretary of State of the State of Sonora, visited McCurdy at the jail in Hermosillo offering to release him if he would agree to sell his mining properties; in the same affidavit the claimant affirms that Harlow told him that the influence of the Governor and Secretary of State of Sonora had been secured, and that the former had full control over all other officials of the State of Sonora.

(2) An affidavit of one Starr K. Williams asserting that it was generally known that Harlow had important business with the Governor and Secretary of State and that they had full control over the actions of the Courts and judges of the State of Sonora; that several Mexican officials told him that McCurdy would be released as soon as he would sign the necessary papers for the sale of his mines; that he had been informed and believes that the Governor as well as the Secretary of State of Sonora were stockholders of the Yaqui Copper Company.

(3) Another affidavit made by Bim Smith who asserts more or less the same as stated by Starr K. Williams.

(4) An affidavit of one Win Wylie in which he affirms that Harlow was a man that would stop at nothing and had boasted of having considerable influence with the authorities of Sonora, which affiant believes to be true.

(5) An affidavit of W. E. Pomeroy in which affiant states that Harlow had a great deal of influence with Izabal and Muñoz.

(6) An affidavit of Marshall P. Wright in which he asserts that it was generally rumored at that time, that the Governor of the State of Sonora and other officials were interested in the Yaqui Copper Company and that the said Harlow had influence with the Mexican authorities of the aforementioned State of Sonora.

Regarding such an important point as this there is no other proof.

In view of the foregoing evidence in the record, the Commission can not attribute any undue influence to the Mexican authorities. Although, in other cases, (*William A. Parker*, Docket No. 127¹, and *G. L. Solis*, Docket No. 3245)², the Commission has stated that it would consider certain facts as proved, even if they were only supported by affidavits, it declared likewise, that in each case the value attached to such affidavits would be estimated in accordance with the circumstances surrounding the fact under consideration. In this case it is endeavored to prove misconduct, in a grave degree, of Mexican officials and therefore the Agency advancing the charge should submit evidence of the highest and most conclusive character. In the judgment of the Commission it is not proven that the Governor of Sonora received the 5,000 shares referred to by McCurdy.

McCurdy asserts in his affidavit that he wrote the letter dictated by Harlow, in which the latter presented Governor Izabal with the shares in question. Even though this fact might, for the sake of argument, be considered as established, it has not been proven before the Commission that said letter was received by its addressee, or if he received it, that he accepted the donation of the shares. Furthermore, even in the supposition that the shares might have been accepted by the Governor, it has not been fully established that such gift induced him to unduly intervene in the proceedings that McCurdy's associates started against him. The rest of the affidavits submitted by the American Agency for the purpose of corroborating McCurdy's assertion, only contain statements that the affiants heard a rumor to the effect that the Governor was a stockholder of the Yaqui Copper Company and that he had great influence over the authorities of Sonora. Affidavits constitute full proof either when stating acts of the affiant or acts that said affiant knew directly, but when they contain hearsay evidence or only refer to rumors, their value diminishes considerably, at times to such an extent as to become void. It must be presumed that in the books and other documents of the Yaqui Copper Company, the names of the stockholders appeared; copies or transcripts of these books' contents might have had great probative value before this Commission. But such proof has not been submitted and the vague considerations as to the possible loss of such books and documents due to the long time elapsed since the facts referred to took place, are not sufficient to justify its absence. In view of the foregoing, and, as the trial record submitted by the Mexican Agency as proof, as will be shown hereafter, does not substantiate the alleged undue influence of the Mexican authorities against McCurdy, the Commission rejects this phase of the claim.

In order to judge as to the propriety or impropriety of the proceedings instituted against McCurdy by the Mexican authorities, it should be borne in mind that in the present instance the case under consideration was decided in the first instance by a judge at Hermosillo, and reviewed on appeal by the Supreme Court of Sonora, whose decision must be considered, according to Mexican law as *res judicata*. The Commission in considering the alleged denial of justice must rely upon matters of substance rather than on matters of form, inasmuch as the existence of some irregularities in the proceedings against an offender does not necessarily constitute sufficient ground in itself to justify a declaration of such denial of justice.

¹ See page 35.

² See page 358.

The Commission on various occasions has expressed its opinion in this respect, following the well established international jurisprudence.

Briefly, three charges were preferred against McCurdy:

(a) Attempted homicide on the person of W. E. Pomeroy. (Proceedings initiated March 19, 1903.)

(b) Forgery of Harlow's signature on certain telegrams. (Proceedings initiated March 25 of the same year.)

(c) Fraud committed against Harlow, by means of a money order. (Proceeding initiated March 27 of the same year.)

The version of the claimant as to the charge of attempted homicide, has been hereinbefore set out. The facts established before the Judge differ from such version, as Pomeroy himself appeared accusing McCurdy of attempting to murder him at the "Rancho de Calaveras", after insulting him and firing at him four times with his pistol without hitting him. The eye witnesses that were duly examined by the Judge in the case corroborated the testimony of Pomeroy and though afterwards some of them modified their declarations to the effect that they did not believe that it was the intention of McCurdy to kill Pomeroy, inasmuch as they had later seen both to be on friendly terms, and even sleep together, but such assertion in regard to the opinion that the witnesses had as to McCurdy's action would not change the existence of the facts. The Judge ordered the examination of the witnesses introduced by McCurdy, among them two Americans who seemed important, residing in Washington, D. C., who were examined through letters rogatory, and these also, in general, corroborated the charges made by Pomeroy. The latter, in an affidavit now before the Commission affirms that the charge of attempted murder against McCurdy was false, that he and McCurdy never had any disagreement, that no bad feelings existed between them at any time, and that the said McCurdy did not, at the time stated, or at any other time ever make any malicious assault upon him. This surprising declaration was made in October 1926, and consequently it was never known by the Judge who was trying McCurdy.

In view of these facts, it appears that the Judge had sufficient grounds to try the claimant.

The same may be said as to the second charge, forgery. Upon receipt of Harlow's complaint the Judge ordered that the necessary investigations be made, requesting also an expert's report on the signature attributed to Harlow affixed to the two telegrams alleged to have been forged. The penmanship experts were both of the opinion that the signature was not Harlow's, but could not ascertain whether it was written by McCurdy. However, two employees of the telegraph office where the telegram had been deposited testified that McCurdy personally had delivered the telegrams in question.

With regard to the charge of fraud, it appears from the court records submitted by Mexico, that Charles R. Miles filed complaint before the Court of First Instance of Hermosillo accusing McCurdy of having addressed to him a telegram in November, 1902, stating that he had drawn against the said Miles, under instructions and on account of Harlow, for a certain amount of money, and in favor of the Banco de Sonora; that an employee of said Bank presented to Miles said draft for \$200.00 which was immediately paid, in the belief that Harlow had given instructions to McCurdy for that purpose. Thereafter, upon settling his accounts with Miles, Harlow denied having instructed McCurdy to pay the sum in question for his

account. McCurdy did not deny having sent the telegram. Harlow on his part declared that he had never authorized McCurdy to draw either in favor or against any person in his name, and with this information the Judge instituted the proceedings and rendered final judgment.

In the light of the foregoing facts, the Commission is of the opinion that the Mexican judicial authorities had probable or sufficient cause to prosecute McCurdy in view of the charges preferred against him by his associates.

The American Agency contended that according to Mexican laws, even if there were cause for the provisional detention of McCurdy, there were no grounds for his formal detention, as for such action it is required that the *corpus delicti* be established. In this respect, reference is made to Article 233 of the Code of Criminal Procedure of the Federal District, which reads:

"The formal or temporary arrest can only be decreed in the presence of the following requisites:

"1. That the existence of an illicit act deserving corporal punishment be fully established."

The Commission does not feel justified in accepting this argument, because as admitted by both Agencies, the Code of Criminal Procedure of the Federal District of Mexico is not applicable to a case tried in Sonora; besides, it considers that probably there is a difference between *establishing the Corpus Delicti* and "*proving the existence of an illicit act*", a consideration which is corroborated by the fact that it frequently occurs that the *corpus delicti* cannot be established at the outset of the preliminary judicial investigation, but only in the course of the trial, and in many cases not until the conclusion of it. If for the arrest of a criminal there were a requisite to the effect that the *corpus delicti* should be established from the very beginning, many crimes would perhaps remain unpunished, and furthermore, it could perhaps be said that a legislation containing such a provision would possibly violate international law, inasmuch as it would hinder the State in complying with its foremost duty of administering justice. In the judgment of the Commission the facts in the instant case as known by the Judge were sufficient to hold McCurdy guilty, even if the further actions and depositions of his associates, especially as are now known by the Commission, may give rise to a doubt as to the latter's culpability, and suggest the belief that perhaps McCurdy was a victim of the contrivances of his own associates.

The American Agency asserts that McCurdy was denied the right to appoint counsel during the trial and that the Judge accepted Miles as interpreter, though he appeared as McCurdy's accuser.

With respect to the lack of counsel, the fact does not appear sufficiently proved. After the initiation of the proceedings, (April 22, 1903), McCurdy applied for the examination of some witnesses in his favor, which is granted by the Judge; McCurdy writes in Spanish a petition to the Judge, quoting provisions of Mexican laws, which suggests that either he had a legal advisor who drafted such documents in his favor, or that he conducted his own defense in Spanish knowing also the Mexican laws; nothing else is required by the Mexican Constitution of 1857. (Art. 20, Par. V.) Furthermore, in the diplomatic and consular correspondence submitted by the American Agency, the following documents may be found: Note from the Chargé d'Affaires *ad interim* of the United States of America in Mexico addressed to the Consul of the United States in Nogales, dated April 14, 1903, acknowledging receipt of a representation *made by McCurdy and his attorneys* regarding his confinement in jail at Hermosillo; a note from the

Consul of the United States in Nogales, to the Assistant Secretary of State of the United States, dated April 18 of the same year, in which it is stated that McCurdy is not held *incomunicado*, and further that "able counsel has been employed in his behalf." The fact that it does not appear from the court record that counsel for McCurdy was not appointed until September 17, 1903, does not contradict the aforementioned trustworthy testimony of consular agents of the United States.

Regarding the fact that Miles was admitted as interpreter in the proceedings instituted against McCurdy, notwithstanding that Miles was his accuser, the Commission finds that Miles was introduced first by Pomeroy as his own interpreter, on preferring the charge of attempted homicide against McCurdy, and then by the latter when he rendered his preliminary depositions, in two of the proceedings instituted against him. The Commission is surprised by the act of the Judge accepting Miles as interpreter even though presented, as he was, by two of the parties in the proceedings, but does not consider such action of the Judge as seriously defective. It also bears in mind that when the Judge himself had to name an interpreter he appointed persons not interested in the cases referred to.

The American Agency also contends that after McCurdy's attorney had been appointed, the Judge ordered that the records be kept in the safe of the Court, disregarding the disposition of the Mexican Constitution providing that all proceedings must be public. The Commission observes that the translation made into English of the expression "reservado del Juzgado" as "safe of the Court", is not precise and may lead to a misinterpretation. But aside from this the Commission conceives that there may be periods in a proceeding during which the records cannot be delivered to the public, even if they are at the disposal of the interested parties; such action would not be contrary to international law, especially, bearing in mind that several countries follow in matter of criminal procedure, the so-called inquisitorial or secret method such as was established in the State of Sonora, no one having ever pretended to consider such procedure as below the normal standards of civilization. The Mexican Judge gave the order in question basing it on certain provisions of the Code of Criminal Procedure of the State of Sonora, and as the American Agency has not submitted the wording of such provisions in order to enable the Commission to ascertain whether the Judge disregarded them, it cannot consider that the Mexican authorities were in default on this account.

The American Agency also alleges that the decisions themselves rendered by the courts of Sonora show a defective judicial procedure. The judicial record submitted by the Mexican Agency as evidence reveals the following:

On November 5, 1903 the Judge declared that there were grounds for dismissal in connection with the charge of fraud, in view of the fact that the offended party, that is to say, Miles, did not ratify his accusation, which meant a condonation in favor of McCurdy. On the 11th of the same month and year the Judge rendered his sentence in regard to the other two offenses attributed to McCurdy, finding him guilty for the crime of attempted homicide and sentencing him to 10 months, imprisonment, effective from March 27, 1903; and acquitting him, on the contrary, of the charge of falsification of telegrams.

McCurdy appealed and the Supreme Court of Sonora declared that the lower court had unduly discontinued the charge of fraud, as it was not clearly shown that the accuser of McCurdy, Miles, had condoned the offense. Miles had been summoned without observing the formalities

required by Mexican law and the Supreme Court decided that under the circumstances the sole absence of Miles could not signify a condonation of the offense. Therefore, and as McCurdy, was being prosecuted for three offenses whose proceedings were consolidated, the Supreme Court considered inopportune the sentences that the lower court had rendered on the other two offences of attempted homicide and falsification of telegrams, and ordered the said lower court to restore the proceedings, that is to say, to summon Miles with the corresponding formalities in order to inquire of him, whether he would uphold his complaint against McCurdy or not. The Commission does not find any violation in this procedure which has been objected to by the American Agency, alleging that it signifies that McCurdy was tried two times for the same offense, in disregard of the provisions of the Mexican Constitution. There was not a new trial; the Judge of First Instance merely limited himself to perform a requirement that had been omitted; therefore he summoned Miles, and as said Miles withdrew his complaint; the lower court, on the 8th of January, 1904, rendered a second sentence, imposing on the defendant, for the crime of attempted homicide only, the penalty of ten months imprisonment, acquitting him of the charge of forgery as this offense had been pardoned by the offended Miles, and of the charge of falsification of telegrams, as the Judge declared: "though it is true that the circumstances of the proceedings create an indication and a very strong presumption against the innocence of McCurdy, but not in so plain and irrefutable a manner as to constitute the proof required by Article 210 of the law cited in order to render an impartial decision finding the defendant guilty." The defendant appealed again from this sentence and the Supreme Court of Sonora rendered its final judgment on March 5, 1904, declaring McCurdy guilty of an attempted crime, but without declaring whether this crime was attempted homicide or attempted assault, as it could not be ascertained which had been the intention of McCurdy in firing upon Pomeroy; thus the legal ground of the previous sentence was modified, but did not change the penalty imposed. However, as to the forgery of signatures, the Supreme Court not only found that it existed, but that there existed also a falsification of telegrams, deserving, according to the Penal Code of Sonora, a year's imprisonment. In view of this, the Court sentenced McCurdy to the penalty of 2 years' imprisonment for the crime attempted and for falsification of a telegraphic dispatch.

There is not sufficient proof to establish that either of the two tribunals misrepresented the facts brought before them, nor that they maliciously applied the Mexican law.

The attempted homicide on the person of Pomeroy was reasonably substantiated by the depositions of said Pomeroy and seven witnesses. The offense consisting of falsification of telegrams was also reasonably established through the accusation of Harlow, by the expert's report stating that the signatures appearing thereon were not affixed by Harlow, and by the testimony of two of the telegraph office employees who saw McCurdy when he deposited same.

It has not been alleged that, considering the offenses attributed to McCurdy, the corresponding penalties for the punishment thereof, as provided for by the Mexican laws, had not been applied; it has only been alleged that the offenses did not exist, but the Commission is of the opinion, that such offenses at least as they were known to the courts of Sonora, were reasonably established.

The American Agency alleges, that at any rate the trial was subjected to undue delays and that the Mexican courts could have rendered a decision sooner than they did. The American Agency has not referred to any adequate Mexican provisions that might have been violated in this respect. In other instances the Commission has deemed it appropriate to guide itself by provisions of domestic laws that may exist in this regard. Now, from a general viewpoint it considers that, even though it deems that the investigation of the charges preferred against McCurdy could have been carried out with more promptness, the time spent by the Mexican Judge (eight months) is not so much out of proportion as to constitute a denial of justice. Judging the case in general, it does not appear under the circumstances that the Mexican Courts can be charged with bad faith, negligence or gross injustice, and this opinion is corroborated by those of the American Consular authorities expressed at the time of the occurrences. It appears from the documents submitted by the American Agency as part of its evidence, that said authorities had intervened on behalf of McCurdy from the first days of the month of April. From the outset, the same authorities transmitted to the Embassy in Mexico, as well as to the Department of State McCurdy's complaints, and also from the outset said Consular authorities as well as the Mexican authorities, gave assurances to the effect that the proceedings were being conducted in accordance with the law and that all guarantees were being granted to McCurdy. The American Consul, Morawets, telegraphed to the American Embassy in Mexico as follows: "McCurdy having fair and speedy trial. Is not *incomunicado*. Have made him a personal visit." He further stated in a communication, confirming said telegram, that: "... his trial is progressing in due form under Mexican law. Able Counsel has been employed in his behalf and the executive officers of Sonora assure me that his trial shall be absolutely fair and speedy." (Note dated April 18, 1903.)

The last charge preferred against the Mexican Government is to the effect that its authorities treated McCurdy inhumanly during the time of his imprisonment. In this regard it is stated in paragraph 18 of the American Memorial that during the entire period of McCurdy's confinement in the prison at Hermosillo he received only twenty "centavos" daily for his support, equivalent to about eight cents U. S. currency, and that had he not received private assistance, he would not have had enough for his sustenance, so as to avoid serious impairment of his health. This assertion is supported only by the statement of the claimant himself. It is not shown that McCurdy filed such complaint with the American authorities at the time of his confinement and in the light of the opinions rendered by this Commission in similar cases, this charge cannot be considered as proven.

Nielsen, Commissioner:

I concur in the conclusions reached in Commissioner MacGregor's opinion that the record does not justify the Commission in predicating a denial of justice on the decision of the court in the conviction of McCurdy. However, in forming my opinion it is not necessary to reach the conclusion that McCurdy was clearly guilty of the charges brought against him by his associates. Indeed there is little doubt in my mind that he was the victim of a conspiracy on the part of those associates with whom he was at odds.

Pomeroy, who is said to have made the most serious charge against McCurdy before the court, has furnished for use in the case before the Commission an affidavit in which he states that Harlow "caused the arrest

of the said W. J. N. McCurdy" on a charge of assault with a deadly weapon with intent to commit murder on Pomeroy, and that "said charge was false." I am inclined to believe that Pomeroy is now telling the truth. He evidently desires to fix on Harlow the blame of making a false charge.

It was contended by the United States that it was doubtful that Pomeroy made a charge of attempted homicide before the court, and that possibly Miles, who was unfriendly to him and who served as interpreter before the court, misinterpreted Pomeroy. In my opinion the evidence does not warrant a definite conclusion to this effect. Of course the court had not before it the statement that Pomeroy now makes branding as false the charge the record shows he made against McCurdy.

It seems to me that it can scarcely be said that the testimony furnished by men of standing such as Thurston and Brown corroborates testimony of others given against McCurdy. But in any event, the testimony of these two Americans did not help McCurdy.

At this time the Commission can not, in my opinion, in the light of the record, reconstruct the numerous, varied and strange occurrences that enter into the difficulties between these Americans and into the trial of McCurdy in Mexico. In the main, if not entirely, we must be governed in reaching conclusions by the court record. In my opinion it seems odd and unfortunate that the judge who pronounced sentence on McCurdy had before him only that record. The judge who saw and probably questioned witnesses was supplanted before sentence was pronounced on McCurdy. Evidently the judge who sentenced McCurdy neither heard the testimony nor saw the witnesses, and in a serious case was guided merely by the meagre, summarized record which had been laid before him. If McCurdy attempted to kill Pomeroy, it is indeed strange that the latter should defer four months making his charge and in the meantime freely associate with the former. There is evidence that the two were frequently together; that they stayed in the same hotel; and some evidence that they slept together in this interval between the shooting and the time that the charge was preferred against McCurdy.

I do not understand that the United States undertakes to predicate a violation of international law or a denial of justice on any single, specific act, but rather that it is contended that a combination of improper acts resulted in a denial of justice. I presume that denials of justice growing out of judicial proceedings for the most part occur in that way.

Decision

The claim of the United States of America on behalf of Walter J. N. McCurdy is disallowed.
