

LEONARD E. ADLER (U.S.A.) *v.* UNITED MEXICAN STATES.

*(November 2, 1926, separate opinion by American Commissioner, November 2, 1926.
Pages 97-100.)*

1. Claim is made by the United States of America in this case for indemnity in the sum of \$15,000.00 in favor of Leonard E. Adler, an American citizen, who, it is alleged, was wrongfully and arbitrarily arrested by Mexican authorities, held under imprisonment, and during the period of detention prevented from obtaining much needed medical assistance. The occurrences of which account must be taken in passing upon the merits of this claim are not all clearly explained either by the evidence filed with the Memorial or by that accompanying the Answer. The most important allegations in the Memorial are grounded almost solely on an affidavit made by Adler (Annex 4), the substance of which is as follows:

2. In 1917 Adler was in the employ of the Marconi Wireless Telegraph Company of America as a radio operator and was assigned for service on the Mexican steamship *Mexico*, owned by a Mexican company, which had a contract with the Marconi Company for the rental of radio apparatus installed on the vessel. When the ship arrived at Progreso, Yucatan, in the early part of December, 1917, it was boarded and taken possession of by Mexican soldiers under the command of a Mexican officer, who informed the Captain of the *Mexico* that no one would be permitted to leave the vessel. The officer stated that the vessel had been commandeered by the Mexican Government. By order of the officer guards were placed at the ship's gangway.

3. On December 30, 1917, the commander of the Mexican soldiers entered the radio cabin of the vessel and directed the transmission of a message. Adler informed the officer that the message could not be sent except upon the payment of the cost of transmission the amount of which he made known to the officer. The officer thereupon refused to pay the regular rates and ordered Adler and another operator on the vessel, Lloyd Brasher, to their cabin and placed a guard outside of the door. About January 5, 1918, the captain of the vessel received orders to proceed to Veracruz, Veracruz, Mexico, with the vessel, which arrived at that place about January 7, 1918. Some time after arriving at Veracruz Adler and Brasher were permitted to go ashore. They visited the American Consul with a view to obtaining information with respect to the detention of the ship. About half an hour after leaving the Consul's office they were arrested and brought to a police station near the wharf. They were questioned and searched, and after several hours of waiting in the station personal possessions which had been taken from them were returned, and the men were taken aboard the *Mexico*.

4. On or about January 20, 1918, Adler became afflicted with a high fever. Several abscesses appeared on his body and his right limb became swollen and gave him much pain. With Brasher he again went ashore with the intention of seeing the American Consul. On the way to the Consulate the two were arrested and once more brought to the police station, where they were questioned and searched. A Mexican soldier told them that they were suspected of being spies. They were kept at the station throughout the day without food and water. A police attaché inquired of Adler what was the matter with him, and Adler spoke of the fever and the abscesses from which he was suffering. The police attaché rendered no assistance. In the evening of January 20, possessions of the two detained men which had been taken from them were returned to them, and they were again brought aboard the vessel.

5. In March, 1918, the guard on the vessel was reduced, and the ship was ordered to proceed to Progreso. On arrival at that place Adler consulted Dr. H. E. Gimler, Public Health surgeon in the service of the United States. Dr. Gimler examined Adler and stated that he was suffering from blood poisoning and advised him to return to a hospital in New Orleans, as there were no facilities for treatment in Progreso.

6. On March 25, 1918, the vessel was released by the Mexican Government and sailed for New Orleans, where it arrived on March 28, 1918. There Adler was placed in a hospital and remained a patient for the greater part of seven months.

7. The detention of the vessel under guard of Mexican soldiers for the period stated in Adler's affidavit is corroborated by affidavits made by Brasher. (Annexes 5 and 6 to the Memorial.)

8. The record is not clear with respect to the precise character of the detention of the steamship *Mexico*. The Commission of course can not question the sovereign control of the Mexican Government over a Mexican vessel in Mexican ports. The evidence before us does not warrant a conclusion that the detention of the vessel was the result of unauthorized acts of Mexican military authorities for whose arbitrary conduct, resulting in inconvenience and severe physical injuries to Adler, the Mexican Government under international law is responsible. The question for determination therefore is, whether, following the detention of the ship, Mexican authorities forcibly compelled Adler to remain upon it and prevented him from obtaining medical treatment. With respect to this particular point the only evidence before the Commission is the affidavit of Adler. That evidence is not discredited by the conclusion we feel constrained to reach that Adler's affidavit does not furnish evidence to support a charge of false imprisonment and an aggravated degree of ill treatment.

9. It is stated in the affidavit that, on the arrival of the *Mexico* at Progreso on December 29, 1917, Mexican soldiers boarded the vessel and guarded the gangway, and that the captain of the vessel was told that no one would be permitted to leave it. A temporary measure of this kind could not in itself be the basis of a charge of wrongful imprisonment. The affidavit also contains allegations with respect to the detention of Adler and Brasher by police both at Progreso and at Veracruz and the return of the two men to the ship under escort of the police. It also appears from Adler's affidavit and from the affidavit of Brasher that the vessel proceeded to Veracruz under guard. Whatever action the guards may have taken to detain persons on board, it seems to be certain that the main purpose of the guard was to control the movements of the vessel. In the absence of positive evidence to the effect that, during the course of the detention of the ship, Adler made known to the Mexican authorities a desire to leave the vessel and to seek proper medical treatment where it might be obtained, and that he was refused permission to do so, we do not feel justified in declaring that he was clearly the victim of unwarranted arrest and detention and maltreatment for which under international law damages should be assessed against Mexico. With respect to this uncertainty in the record and with respect to whatever annoyance and inconvenience Adler may have been subjected to by being detained on shore, it may be observed that the Commission has heretofore broadly indicated a standard by which it considers it must be guided in making judicial pronouncements with respect to alleged wrongful acts of authorities directed against private persons. The Commission has expressed the view

that it can not render an award for pecuniary indemnity in any given case in the absence of convincing evidence of a pronounced degree of improper governmental administration.

Decision

10. In the absence of evidence of this kind in the instant case, the Commission decides that the claim must be dismissed.

HARRY ROBERTS (U.S.A.) *v.* UNITED MEXICAN STATES.

(November 2, 1926. Pages 100-106.)

ILLEGAL ARREST. Evidence *held* not to establish that claimant was arrested without probable grounds.

DILATORY PROSECUTION. When claimant was imprisoned for several months without trial in contravention of Mexican law, *held*, an indemnity is due.

CRUEL AND INHUMANE IMPRISONMENT. Evidence *held* to establish that claimant was imprisoned under sub-standard conditions.

INTERNATIONAL STANDARD.—EQUALITY OF TREATMENT OF ALIENS AND NATIONALS. Equality of treatment of aliens and nationals is not the test of international responsibility when aliens are not treated in accordance with the ordinary standards of civilization.

1. This claim is presented by the United States of America in behalf of Harry Roberts, an American citizen who, it is alleged in the Memorial, was arbitrarily and illegally arrested by Mexican authorities, who held him prisoner for a long time in contravention of Mexican law and subjected him to cruel and inhumane treatment throughout the entire period of confinement.

2. From the Memorial filed by the Government of the United States and accompanying documents, the allegations upon which the claim is based are briefly stated as follows: Harry Roberts, together with a number of other persons, was arrested by Mexican Federal troops on May 12, 1922, in the vicinity of Ocampo, Tamaulipas, Mexico, charged with having taken part in an assault on the house of E. F. Watts, near Ebano, San Luis Potosí, Mexico, on the night of May 5, 1922. The claimant was taken prisoner and brought to Tampico, whence he was taken to Ciudad Valles, San Luis Potosí, where he was held under detention until he was placed at liberty on December 16, 1923, a period of nearly nineteen months. It is alleged that there were undue delays in the prosecution of the trial of the accused which was not instituted within one year from the time of his arrest, as required by