

PETER KOCH (ALSO KNOWN AS HEINRICH KOCH) (U.S.A.) *v.*  
UNITED MEXICAN STATES

*(October 18, 1928. Pages 118-120.)*

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*The Presiding Commissioner, Dr. Sindballe, for the Commission:*

On July 10, 1912, after darkness had fallen, the power boat *Ella*, on board of which were the owner, Peter Koch, a naturalized American citizen, and a sailor, Albert Lundquist, was boarded by a Mexican customs official and the rowing crew of this official's boat in the bay of Ensenada, Lower California, off the coast of Todos Santos Islands. The Mexicans wore no uniform and Koch and Lundquist—believing they were robbers, it is alleged—resisted them, trying to start the engine of the boat. As a result hereof the Mexicans treated Koch so brutally that severe wounds and bruises were still to be seen nine days after. On board the *Ella* the Mexicans found a small quantity of guano.

The *Ella* was taken into the harbor of Ensenada. Koch was charged with having resisted the authorities and with having stolen guano from Todos Santos Islands, Lundquist with having resisted the authorities. They were detained under arrest until February 1, 1913, when they were released because of insufficient evidence.

Claim is now made against the United Mexican States by the United States of America on behalf of Peter Koch for damages in the sum of \$10,000, U. S. currency. The claim is based upon the allegations that (1) the brutal manner in which the claimant was treated when his boat was searched by the customs official constitutes an international delinquency, that (2) the arrest was illegal, that (3) the Mexican authorities illegally refused to grant the claimant his liberty on bond pending trial, and that (4) the rights guaranteed an accused by Mexican law were not granted the claimant.

The Commission is of opinion that there can be no doubt that the brutal manner in which the claimant was treated when the *Ella* was searched constitutes a delinquency for which Mexico must be responsible under international law.

Whether or not there was probable cause for the arrest of the claimant, is somewhat doubtful. With regard to the charge of resistance of the authorities the explanation of the claimant that he had no reason to believe that the persons boarding the *Ella* on July 10, 1912, were officials, seems probable. With regard to the charge of theft, his explanation was that he had taken the guano from the San Clementine Island, which belongs to the United States, and that his boat had drifted to the bay of Ensenada because the engine was disabled. This explanation was not believed. It appears that the Mexican authorities—wrongly—believed that there was no guano on the San Clementine Island. On the other hand, the American Consul at Ensenada states in a dispatch of August 8, 1912, that it "is probable that Koch will be convicted, at least on the charge of resisting the officers." And, on appeal, the formal order of

imprisonment of the judge of the First Court of the District of Lower California was confirmed by the Third Circuit Court. Under those circumstances, the Commission would not feel justified in basing an award on the supposition that the arrest in itself was illegal because of lack of probable cause.

Also the refusal of releasing Koch under bond pending trial was ratified by the Third Circuit Court, and the Commission is of the opinion that this refusal can hardly be said to constitute an international delinquency.

With regard to the question whether or not the rights guaranteed an accused by Mexican law have been granted the claimant, it has been argued by Counsel for the United States, that he was held under arrest for three days, namely from July 10 to July 13, before his case was presented to a Court for preliminary consideration, and that the formal order of imprisonment was not issued until July 16, while the Mexican Constitution of 1857 prescribed that a preliminary examination should take place within forty-eight hours from the time the accused was placed at the disposition of the judge, and that no detention should exceed three days unless warranted by a formal order of imprisonment. It seems doubtful, however, whether the arrest of the person of the claimant took place before July 13. Counsel for the United States has further pointed to the long period of time during which the claimant was detained, and the Commission is of opinion that in this respect a wrong has been inflicted upon the claimant, and that Mexico must be responsible for that wrong. It is argued by Counsel for Mexico that the time-limit fixed by Mexican law has not been exceeded. But this argument cannot be conclusive, since the meaning of provisions fixing a time-limit for the duration of a detention is to establish a guarantee for the accused, but not to authorize detention during the maximum period of time in any case, even in the smallest.

Now, the case in question was not very complicated and no evidence whatever has been produced to show what kind of investigations have been carried on during the detention of the claimant. It further positively appears from the record that the investigations before the Court were finished in September, and that at that time recommendation was made to the Mexican Government that the claimant should be discharged because of lack of evidence.

The Commission is of opinion that the amount to be awarded the claimant can be properly fixed at seven thousand dollars.

*Nielsen, Commissioner:*

I concur in the conclusion with respect to liability in this case.

#### *Decision*

The United Mexican States shall pay to the United States of America on behalf of Peter Koch (also known as Heinrich Koch) \$7000. (seven thousand dollars), without interest.

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