

A. L. HARKRADER (U.S.A.) *v.* UNITED MEXICAN STATES

(October 3, 1928. Pages 66-68.)

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

On Sunday, November 19, 1922, two Americans, Wert D. Harkrader and Dan McKinnon, who were visiting Calexico, California, for the purpose of obtaining employment at this place, went across the boundary between the United States and Mexico to Mexicali, Lower California. They arrived in this town between noon and one p. m. Having taken lunch and some drinks at various places, they started back in the direction of Calexico about two o'clock. They passed a Mexican cabaret where some dancing and music were going on, and Harkrader went into the cabaret, McKinnon waiting for him on the outside. At that time a Mexican addressed McKinnon suggesting that he and his friend take a drive to see the sights of Mexicali in his Ford car that was standing close by with a chauffeur sitting in it. When Harkrader came out of the cabaret, McKinnon told him of the proposal of the Mexican, and they agreed to accept it. Thereupon the four men started, the Mexican chauffeur

and McKinnon sitting in the front seat, Harkrader and the second Mexican in the rear seat. The chauffeur drove to a gasoline station where he took on oil and gasoline. Then he drove around the town, gradually working toward the outskirts, and finally he drove along a road leading from the town into the country. Having proceeded about a mile and a half along this road, the Mexican who was sitting in the rear seat drew his gun, ordered the driver to stop the car, and asked the two Americans to deliver up their money, which they did without making any resistance. Harkrader was then ordered into the front seat between McKinnon and the chauffeur, and the car drove farther into the country, the Mexican in the rear seat holding his gun upon the two Americans all the time. At a turn in the road a big wagon, drawn by six mules, was noticed approaching, and as the two vehicles met McKinnon leaped from the automobile. The armed Mexican fired two shots at him, both of them wounding him. He feigned death until the automobile with his friend and the two Mexicans had gone. Then he started back toward Mexicali. He overtook the mule-drawn wagon and was permitted to ride. Afterwards a Ford automobile came along the road and by that he was taken to the police station at Calexico. Here his wounds were dressed by a doctor called for the occasion, and afterwards he was conveyed by an ambulance to the hospital at El Centro where he remained until December 6.

In the evening of November 19, the lifeless body of Harkrader was found by two Mexicans at the roadside about five miles from Mexicali. The murderers have never been apprehended. The above statement of facts is taken from the affidavit of McKinnon.

Claim is now made against the United Mexican States by the United States of America on behalf of A. L. Harkrader, the father of the deceased and citizen of the United States, for damages in the sum of \$25,000, U. S. currency, for failure on the part of the Mexican authorities to take appropriate steps with a view to the apprehension and punishment of the murderers.

It appears from the record that the Chief of the Police at Mexicali was informed of the facts related by McKinnon by the American Chief of Police at Calexico on November 19, at 5 p. m., and that he immediately ordered a pursuit of the murderers. A commission of policemen departed in the evening of November 19, and another commission departed the following morning. The latter commission located the body of Harkrader, which, as mentioned above, had already been found in the evening of November 19 by two Mexicans, but none of the two police commissions succeeded in apprehending the murderers, and further investigations, including an examination of McKinnon, were equally unsuccessful. It is argued by Counsel of the United States that no endeavor seems to have been made to ascertain who the driver of the mule-drawn wagon was, and it is especially emphasized that McKinnon does not appear to have been questioned as to what persons he and Harkrader and the two Mexicans met with during their drive, although it would have been of the utmost importance for the investigation to have obtained the testimony of the man at the gasoline station who sold oil and gasoline to the car in question. It appears, however, that the record of the investigations submitted by the respondent government on which the criticisms of Counsel of the United States is based, is incomplete, so that it does not follow with certainty that negligence, such as contended by the claimants, actually has been shown. The Commission further is of the opinion that

its conclusion whether the investigation that took place was below the minimum standard required by international law must be based on a broad and general view of the steps taken rather than on a criticism of some particular point. And on the whole, it seems that in the present case considerable efforts were made. It is also stated in dispatches to the American Department of State from the American Consul at Mexicali that in his opinion the Mexican authorities were doing their best.

*Decision.*

The claim of the United States of America on behalf of A. L. Harkrader is disallowed.

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