

MRS. CLARA WILLIS (U.S.A.) *v.* UNITED MEXICAN STATES
(*May 17, 1929. Pages 325-327.*)

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

On July 17, 1911, between ten and eleven o'clock, A. M., when Milton K. Willis and Jack Ricks, two employees of the California-Mexico Land and Cattle Company, had just returned from a trip to the camp where they were stationed, located near Mexicali, Lower California, Mexico, two persons, one Epifanio Gallegos and Regino Avilez rode up on horseback to the said camp. They were asked to dismount, which they did. They inquired about some horses. Willis questioned Gallegos about some vile language he was supposed to have used in speaking of the employees of the company, and after a wordy altercation between Willis and Gallegos some shots were exchanged between them, the result of which was that Willis was killed by Gallegos and that Gallegos was hit in the right hand and Avilez, who was unarmed, shot through the chest by Willis.

The Sub-Prefecture of Mexicali, which was informed of Willis' death on July 19, 1911, took the testimony of Ricks on July 23, and the testimony of Gallegos and Avilez on August 2. The record of the proceedings was submitted to the Court of First Instance of Mexicali on August 14. Pursuant to the order of the court Gallegos was arrested and prosecuted. On April 21, 1912, Gallegos was acquitted, it being assumed by the Court that he had acted in self-defense. In accordance with Mexican Law, the proceedings of the court were reviewed by the Superior Court, which, it appears, made no observations with regard to the decision.

The United States contends that the criminal proceedings undertaken by Mexican officials in the investigation of the death of Willis and the conduct of the trial of Gallegos resulted in a denial of justice according to established principles of international law.

Before the Sub-Prefecture Gallegos and Avilez both stated that Willis had fired two shots at Gallegos with a revolver, before Gallegos fired his shot, and that Willis fired a third shot at Gallegos at the same time when Gallegos fired at Willis. Ricks testified, according to the record of the Sub-Prefecture, that he went into a tent before the shooting began, that from inside the tent he heard two shots being fired almost simultaneously, that he then took a rifle, from under Willis' bed and that when he went out, he saw Willis, who was down on his knees, shoot Avilez through the chest and then fall forward. He added, according to the same record, that because of the confusion of the moment he could not tell how many shots were fired between Gallegos and Willis, who were the only ones who used their arms.

As to the procedure before the court very little is known, the court record having been destroyed by fire. In the decision of the court the following passage is found:

"Whereas; third, That in the presence of the court, Epifanio Gallegos, John B. Ricks and Regino Avilez, confirmed their declarations, deposing in fact as they had done before the secretary of the Sub-Prefecture, all of their statements being in accord, except with reference to the number of shots fired, as Ricks, in confrontation with the defendant, stated that he could not ascertain the exact number of them due to the excitement of the occasion."

On February 8, 1913, Ricks made a deposition before the American Consul at Mexicali. On this occasion he stated that when he went out of the tent with Willis' rifle, he found that the rifle was empty although it had been loaded in the morning, and that Gallegos, in leaving the camp on his horse, had pulled some cartridges out of his pocket, saying, "Here's your cartridges—the reason you could not shoot". He said that he had testified to the same effect before the court, but that this part of his testimony had not been taken down. He further stated that he had examined Willis' gun after the shooting and had found that only two shots had been fired by Willis, so that Willis could have fired only one shot at Gallegos.

According to the testimony of Gallegos and Avilez before the Sub-Prefecture the cartridges were taken from Willis' rifle during a struggle for possession of the rifle which took place when Ricks came out of the tent. That such a struggle took place, is testified to by Ricks also.

It is not possible for the Commission to arrive at a definite conclusion with regard to the question as to whether Gallegos or Willis shot first. In view of the short distance between the two persons, it seems improbable that the explanation of Gallegos and Avilez to the effect that Willis started the shooting by firing two shots at Gallegos without hitting him is correct, but it cannot be inferred with any degree of certainty from this, or from any of the evidence submitted, that Gallegos was the attacking party.

With regard to the procedure it appears that the Sub-Prefect was a brother of Gallegos, and in view hereof the preliminary investigation must be considered as having been improperly carried out. Whether or not this has been remedied during the court procedure, cannot be established with certainty. The court records are not available. It is explained by the Mexican Agency that the records were destroyed in connection with the burning of a building in which they were kept. It appears, however, from the above quoted passage of the court decision, that the testimony of the witnesses was taken by the judge, so that, in the light of the available evidence, the Commission would not be justified in assuming that the court proceedings were improper. It was argued by counsel for the United States that, in view particularly of the nature of the evidence taken before the Sub-Prefecture, further testimony should have been developed before the court. But it is impossible from the meagre record before the Commission to determine the precise nature of the proceedings which took place before the court. Even assuming that the court proceedings were properly carried out, the possibility exists that the improper preliminary investigation may have affected the final result of the proceedings, but, in the opinion of the Commission, the mere possibility hereof does not afford a sufficient basis for giving a pecuniary award.

Decision

The claim of the United States of America on behalf of Mrs. Clara Willis is disallowed.
