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**RECUEIL DES SENTENCES
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A. L. Harkrader (U.S.A.) v. United Mexican States

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person is interested in a case. No principle of domestic or international law would sanction such an arbitrary disregard of evidence.

It seems to me that whatever may be said with regard to the desirability or necessity of having testimony to corroborate the testimony of a claimant, a statement need not be regarded in the legal sense as unsupported even though it is unaccompanied by other statements. Statements of claimants may be impeached by information showing them to be incorrect, and they may be corroborated by statements showing them to be correct. Evidence produced by one party in a litigation may be supported by legal presumptions which arise from the non-production of information exclusively in the possession of another party, and this well-known principle of domestic law is one to which it seems to me an international tribunal is justified in giving application in a proper case. But few concise rules of adjective law have been developed in international practice, but it is proper for an international tribunal to give effect to certain elementary principles applied by domestic courts.

Decision

The United Mexican States shall pay the United States of America on behalf of Daniel Dillon \$2,500. (two thousand five hundred dollars) without interest.

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

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

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—INTERNATIONAL STANDARD. Evidence *held* not to show that measures taken to apprehend or punish persons guilty of murder of an American subject and wounding of another fell below international standard from a broad and general point of view.

Cross-reference: Annual Digest, 1927-1928, p. 226.

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.

G. W. McNEAR, INCORPORATED (U.S.A.) *v.* UNITED MEXICAN STATES

(October 10, 1928, concurring opinion by American Commissioner, October 10, 1928. Pages 68-73.)

DENIAL OF JUSTICE.—ILLEGAL DETENTION OF PROPERTY. Claimant sold two carloads of wheat to a Mexican importer under bills of lading which were not to be delivered until payment of purchase price. Goods were seized by Mexican customs authorities on ground they were property of Mexican importer, who was charged with payment of import duties and fees. Claimant requested court to order return of goods, showing facts of his ownership, but court ordered goods to be released only on provisional payment of import charges. Goods were then sold to satisfy such charges and a surplus was realized. Claimant then requested Mexican authorities to pay him value of wheat seized and sold but this request was denied. Claim for value of wheat *allowed*.

Cross-reference: Am. J. Int. Law, Vol. 23, 1929, p. 461.

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

During May and June 1907 George W. McNear, an American citizen, now deceased, sent two carloads of wheat, sold to S. Montemayor, Ciudad Juárez, Mexico, on a cash basis, by the Southern Pacific Railroad, one, containing 610 sacks, valued at \$1124.90, U. S. currency, from Portland, Oregon, in car No. 83074, and the other, containing 479 sacks, valued at \$1019.90, U. S. currency, from Port Costa, California, in car No. 30758. The Southern Pacific Railroad issued bills of lading according to which the two shipments were consigned to the order of McNear, Ciudad Juárez, via El Paso, where S. Montemayor, care of J. T. Woodside, was to be notified. Sight drafts for the purchase price were sent to the Agency of the Banco Minero at Ciudad Juárez for collection. The bills of lading were attached to those drafts, and the Bank was instructed to deliver the bills of lading to Montemayor upon payment of the drafts only.

In El Paso the two cars with wheat were transferred to the Mexican Central Railway, by which they subsequently were taken to Ciudad Juárez. It seems that Montemayor or a representative of him took care