

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Macedonio J. García (U.S.A) v. United Mexican States

23 November 1926

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regarded as unreliable—and it may be observed that no attempt was made to discredit it as such—there would still be no evidence showing negligence on the part of the authorities.

Decision

7. The charge of a denial of justice made in the Memorial is therefore not sustained, and the Commission accordingly decides that the claim must be disallowed.

MACEDONIO J. GARCÍA (U.S.A.) *v.* UNITED MEXICAN STATES.

(November 23, 1926. Pages 146-149.)

JURISDICTION. Claim for loan to Adolfo de la Huerta, Governor of Sonora, for assisting in revolutionary movement, *held not per se* outside jurisdiction of tribunal. Loan being payable after period covered by *compromis held* outside jurisdiction of tribunal.

LOAN TO OFFICIAL. Evidence *held* insufficient to establish responsibility of respondent Government for loan to official.

1. This claim is made by the United States of America against the United Mexican States in behalf of Macedonio J. García, an American citizen, to obtain the payment of \$161,000.00 with interest from May 31, 1920, in settlement of loans said to have been made by the claimant, the amount of \$150,000.00 being delivered on or about March 30, 1920, to Adolfo de la Huerta, Governor of Sonora, and the sum of \$11,000.00 being delivered in two parts, one of \$5,000.00 and the other \$6,000.00 United States currency during the month of May, 1920, to certain military officers. It is stated in the Memorial that García took a receipt for the amount of \$150,000.00 from de la Huerta "in the name of and for the United Mexican States"; that the latter agreed to repay this sum "on behalf of the United Mexican States"; that for the delivery of the other sums García also received a receipt signed by de la Huerta "acting for and on behalf of the Mexican Government"; and that de la Huerta likewise agreed to repay these sums. It is further alleged that on or about May 31, 1920, the three receipts were delivered to de la Huerta, who "for and on behalf of the Mexican Government" gave to García in exchange for the three receipts one receipt for the total sum of \$161,000.00 in which de la Huerta "on behalf of the Mexican Government promised and agreed to repay to claimant the said sum of \$161,000.00". It was argued in behalf of the claimant Government that the Government of Mexico is liable under the principles of international law to pay the sum of \$161,000.00 loaned to de la Huerta, who, in accordance with the so-called "Plan of Agua Prieta," was the "Supreme Chief of the Sonora Revolution," which occurred in Mexico in the spring of 1920; that the revolution was successful and resulted in the election of de la Huerta as Provisional President of Mexico and in the subsequent election of General Obregón as President, the latter assuming office on December 1, 1920; and that the receipt given by de la Huerta to García after his election as Provisional President is conclusive proof that the loans were made, and that the Government of

Mexico is bound under principles of international law to pay the obligations of successful revolutionists.

2. In behalf of the Mexican Government it is contended that the Commission has not jurisdiction over the claim because (a) whatever may be the status of García under the law of the United States, he is under Mexican law a Mexican citizen by virtue of Mexican parentage, and (b) that the claim is excluded from the jurisdiction of the Commission as falling within the category mentioned in Article I of the Convention of September 8, 1923, of claims "arising from acts incident to the recent revolutions."

3. The American citizenship of García is proved by a record of his birth on March 2, 1879, in Cameron County, State of Texas. There was laid before the Commission a naturalization certificate showing that Macedonio García was naturalized as an American citizen on November 26, 1869, by the order of the County Court in the same county. We have no doubt that this order is a record of the naturalization of the claimant's father. Macedonio García having been naturalized as an American citizen on November 26, 1869, the Mexican Government was obligated at that time, pursuant to Article I of the Convention concluded July 10, 1868, between the United States and Mexico, to recognize his American citizenship acquired about ten years prior to the birth of his son, the claimant in this case. Even if there were a doubt in our minds with respect to the status of Macedonio García, we are of the opinion that the right of the United States to intervene in behalf of the son could not be challenged solely on the basis of the telegram of October 13, 1923, before the Commission, which was transmitted by the Mexican Consul at Brownsville to the Mexican Agent in which telegram it is stated that Macedonio García was born in 1847, in Matamoros, Tamaulipas.

4. The receipt bearing date of May 31, 1920, for \$161,000.00, which is signed "The Supreme Chief of the Revolution, Adolfo de la Huerta," translated, reads as follows:

"I hereby declare that Macedonio J. Garcia, has furnished the amount of \$161,000.00 in the way of a loan for assisting the revolutionary movement which I have the honor to be the head of, and which should be paid when the federal public Hacienda is found to be in a favorable situation for making this reimbursement."

5. It is argued in behalf of the United States that it is unmistakably shown by this receipt that payment of the obligation to which it refers was not due until subsequent to May 31, 1920; that it follows that the claim based on the nonpayment of the obligation did not arise between November 20, 1910, and May 31, 1920, the period which, according to the Claims Convention of September 10, 1923, embraces claims arising during recent revolutions and disturbed conditions in Mexico. We take that view, and therefore do not sustain the contention raised by the Mexican Agency that the claim comes within the category of claims "arising from acts incident to the recent revolutions."

6. In behalf of the respondent Government it has been argued that, it being assumed that money was loaned by García as described in the Memorial, that act was a participation by him in Mexican politics as a result of which, under international law he lost the right to invoke the protection of the United States, and the latter has no right to intervene in the case. Arbitral decisions were cited to support this contention. The Commission is of the opinion that no question of jurisdiction can properly be raised by the contentions made in behalf of the Mexican Government on this point which

is one the pertinency of which could only be considered in connection with the question of the validity of the claim under international law.

7. We deem it to be unnecessary to consider this matter, for the reason that, apart from other questions raised in the case, we are of the opinion that the evidence before the Commission in relation to the interesting transactions in question does not justify an award such as that asked for by the United States. The only evidence produced by the claimant Government other than that relating to the nationality of the claimant, is an affidavit made by the claimant and the receipt of May 31, 1920, signed, "Adolfo de la Huerta." There is no definite evidence throwing light on the contents of the receipts said to have been given by de la Huerta for the sums of \$150,000.00, \$6,000.00, and \$5,000.00, respectively; there is no definite evidence whether such sums were actually delivered and to whom; and apart from García's affidavit there is no evidence whether all of these three sums were originally loans or contributions. Excepting the claimant's affidavit there is no evidence to authenticate the receipt of May 31, 1920, signed "Adolfo de la Huerta." Finally, it is important to note that, while in the Memorial there is an allegation of liability for an overdue obligation evidenced by the receipt of May 31, 1920, the receipt recites that the sum of \$161,000.00 should be paid when the Federal Public Treasury is found to be in a favorable situation for making reimbursement. It has not been shown to the Commission that, it being assumed that the receipt evidences an obligation binding on the Mexican Government, it rests with the claimant to fix the time of payment according to his views of the conditions of the Public Treasury. And we do not consider that it would be within the province of the Commission to make any determination with reference to that point.

Decision

8. For the reasons stated above, the claim is disallowed.

THOMAS H. YOUMANS (U.S.A.) *v.* UNITED MEXICAN STATES.

(November 23, 1926. Pages 150-159.)

RESPONSIBILITY FOR ACTS OF FORCES.—DIRECT RESPONSIBILITY.—MOB VIOLENCE.—DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—FAILURE TO PROTECT. Mexican military forces, under command of officer, instead of protecting American citizens attacked by mob, opened fire on Americans, as a result of which all were killed either by armed forces or by mob. No one appeared to have been punished for the crime, though some prosecutions were begun. Claim *allowed*.

Cross-references: Am. J. Int. Law, Vol. 21, 1927, p. 571; Annual Digest, 1925-1926, p. 223; British Yearbook, Vol. 8, 1927, p. 184.

Comments: Edwin M. Borchard, "Important Decisions of the Mixed Claims Commission, United States and Mexico," Am. J. Int. Law, Vol. 21, 1927, p. 516 at 521.