

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES  
ARBITRALES**

**Daniel R. Archuleta (U.S.A.) v. United Mexican States**

10 October 1928

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There is not presented to the Commission any case of a seizure and sale of goods for non-payment of duties and the failure of the owner of the goods to apply within a prescribed statutory period for the proceeds of the goods less the amount of the import duties. The goods were seized on the theory that they belonged to Montemayor, and they were retained on that theory. There is no evidence to indicate that it was necessary to sell these goods for non-payment of duty. Had the wheat been seized and sold in accordance with Mexican law for non-payment of duties, and had McNear failed to apply for the proceeds less the amount of the duties, he would have no complaint, because obviously the execution of proper decrees or legislative enactments with respect to the sale of goods for non-payment of duties could result in no wrongdoing to an importer.

Whatever may be said with regard to the original seizure, it is clear that the continued detention without compensation was wrongful. I do not understand that the Mexican Government denied compensation to McNear on the ground that he did not resort to legal remedies. Clearly their denial was based on the ground that he was not the owner of the goods. And whatever legal remedies, if any, may have been open to him against wrongful seizure or detention or both, that point has been eliminated by Article V of the Convention of September 8, 1923. Citation was made in the written and the oral argument by counsel for Mexico to the *Canadian Claims for Refund of Duties* decided by the tribunal under the Agreement of August 18, 1910, between the United States and Great Britain. Those cases are not pertinent to the instant case. In those cases the United States made it clear to the tribunal, which sustained the argument of counsel for the United States, that the United States had not invoked the rule of international law with respect to the exhaustion of legal remedies. It was shown that neither the question of the application of that rule nor provisions of the arbitral agreement in relation thereto was pertinent to a decision of the case upon the law and facts thereof.

*Decision.*

The United Mexican States shall pay to the United States of America on behalf of G. W. McNear, Incorporated, \$2,144.80 (two thousand one hundred forty-four dollars and eighty cents) with interest at the rate of six per centum per annum from July 25, 1907, to the date on which the last award is rendered by the Commission.

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DANIEL R. ARCHULETA (U.S.A.) *v.* UNITED MEXICAN STATES

(October 10, 1928. Pages 73-77.)

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NATIONALITY.—EVIDENCE NECESSARY TO REBUT PROOF OF NATIONALITY.

When evidence was furnished that decedent was born in the United States and held legislative offices in the State of Colorado, fact that he was referred to as a person of Spanish-American parentage *held* not sufficient to rebut conclusion that he was an American national.

EFFECT OF RIGHT TO OPT FOR MEXICAN NATIONALITY UPON AMERICAN NATIONALITY. A person born in territory ceded by Mexico to the United States, who had a right to opt for Mexican nationality under the treaty of cession, considered to be an American national in absence of proof that he exercised such option.

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—EVIDENCE NECESSARY TO ESTABLISH DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—DUTY TO PROTECT IN REMOTE TERRITORY.—EFFECT OF LACK OF RECORDS OF RESPONDENT GOVERNMENT. Allegations of denial of justice must be established by proof. Mere silence of Mexican records concerning killing of American subject *held* not sufficient to establish responsibility. Where American subject was killed at his mine in remote region and evidence was lacking as to failure to apprehend and punish those guilty, claim *disallowed*.

*Cross-reference:* Annual Digest, 1927-1928, p. 302.

*Commissioner Nielsen, for the Commission:*

Claim in the amount of \$30,000.00 is made in this case by the United States of America against the United Mexican States in behalf of Daniel R. Archuleta, son and sole heir of Antonio D. Archuleta, who was killed in 1918, in the vicinity of Pilares de Nacozari, Sonora, Mexico. The claim is grounded on an assertion of a denial of justice growing out of the failure of Mexican authorities to take adequate steps to apprehend and punish the slayer of the deceased.

The following allegations, briefly summarized, are made in the Memorial with respect to the death of the claimant's father and with respect to the negligence of which the Mexican authorities are said to have been culpable:

The deceased was the holder of patents to mining properties known as the Zulema and Zulemita mines located in the vicinity of Pilares de Nacozari, Sonora. At times previous to the year 1918, the deceased was accustomed to proceed from his home in the State of Colorado to Mexico for the purpose of working the aforesaid mines. About the month of November, 1917, he made his last visit to the mines, intending to return to his home in the United States about May, 1918.

On or about March 21, 1918, the claimant, then residing at Pagosa Springs, Colorado, received a telegram dated March 21, 1918, which was sent to him from Douglas, Arizona, informing him that his father had been murdered near his mine in Mexico, and that the body had been found on March 16, 1918, in a decomposed condition.

Some days after the murder of the claimant's father when the body was discovered, the authorities at Pilares de Nacozari visited the house of the deceased and there made a perfunctory investigation of the murder, ascertaining that the contents of the house were in a disturbed condition, which led to the conclusion that robbery had been the motive of the murder. It appeared that the murder occurred in the house, from which the body was dragged about 75 feet into a tunnel several hundred feet distant from the house, where it was found. Although the authorities arrested several persons suspected of the murder, including a young man about twenty years of age, they failed to continue a conscientious investigation of the murder, placed the "suspected criminals" at large, and

did nothing to clear up the crime with a view to apprehending and punishing the murderers.

In the Mexican Answer it is denied that the citizenship of the deceased is sufficiently proved "for the purposes of the present claim", since "the Memorial does not allege or prove the American citizenship of the parents of the deceased, but rather it appears from the annexes to the Memorial that they were Spanish-American (Mexican) and according to Mexican Law, the deceased was Mexican". Even though the parents of the deceased were Mexicans, that of course is not proof that the deceased was not himself an American. It might be supposed that possibly he possessed a dual nationality, but no contentions appear to be raised in the Mexican Answer or in the Brief that the United States is espousing a claim of a person with a dual allegiance.

The reference somewhere in the record to the deceased as a man of Spanish-American parentage casts no doubt on his American citizenship in the light of the evidence before the Commission. There is no reason why the Commission should question the American nationality of the deceased in the absence of evidence to rebut the evidence submitted to prove his nationality. There is evidence in the record that the deceased was born in the United States. Furthermore, there is pertinent evidence that he occupied important legislative offices in the State of Colorado which evidently he could not have lawfully held had he been an alien. Considerable weight has been given to evidence of this kind by courts of the United States and by international tribunals. On this point see the case of *Robert Eakin* under the convention of May 8, 1871, between the United States and Great Britain, *Hale's Report*, p. 15; *Canevaro Case* before the Permanent Court of Arbitration at The Hague, 1912, *Ralston, The Law and Procedure of International Tribunals*, p. 183; *Boyd v. Thayer*, 143 U. S. 135.

While no contention is made in behalf of the respondent Government with respect to the point of dual nationality, it may be observed that it seems to be clear that there can be no serious question as to the American nationality of the claimant's grandfather. There is evidence in the record that he was born in Colorado in 1836. He being born in territory ceded by Mexico to the United States, Article VIII of the treaty concluded February 2, 1848, between the United States and Mexico by which the territory was ceded, operated to sever his allegiance to Mexico, unless he elected within a year from the date of the exchange of ratifications of the treaty to retain his Mexican nationality. There is no evidence that he opted for Mexican citizenship, and there is some evidence to the contrary.

The instant case, while similar to numerous other cases that have come before the Commission as regards the complaint which it involves, possesses certain unusual difficulties in view of the character of the record.

Pertinent evidence in connection with the allegation of negligence on the part of Mexican authorities is unfortunately meagre. It appears that the death of the claimant's father did not come to the notice of the Department of State of the United States until the year 1922. Instructions to American consular officers in Mexico resulted in revealing very little information regarding the circumstances surrounding the death of the claimant's father. In a letter under date of August 15, 1922, signed by a Mr. R. Hiler and sent from Moctezuma to the American Consulate

in Nogales, Sonora, is found the following sentence: "The authorities had a boy about 20 yr old in jail one or two days after that nothing was done as there was no one to press the matter."

In behalf of Mexico it is alleged that Mexican authorities made every possible effort to clear up the facts in relation to the crime, but that this proved to be impossible in view of the absence of clues, and in view of the fact that the crime was committed in a lonely spot and was not discovered until a long time after it was committed. Certain court records of a local court at Pilares de Nacozari accompany the Mexican Answer to show the steps taken by the authorities.

It is contended in behalf of the United States that these records furnish evidence that no energetic action was taken by the authorities. It is true that the records contain but very scant information, and are not such as to create a definite impression that effective measures were employed by the authorities. However, the United States has produced practically nothing bearing on the question of negligence.

The Commission is not called upon to give effect to any rule of evidence with regard to the burden of proof. It must decide the case on the strength of the evidence produced by both parties. It should perhaps not assume, particularly in view of certain matters appearing in the record, that the copies of documents presented by the Mexican Government furnish a complete record of the steps taken to apprehend and punish the guilty person. It may be noted that in a communication signed by R. Hiler, which was furnished by the United States, reference is made to the arrest of a boy 20 years old. This is not recorded in the Mexican court records. The same is true with regard to the statement in the American Memorial that several parties suspected of murder were arrested and that "the suspected criminals" were placed at large. Indeed there is no indication of any evidence in the record on which this statement is based, and no such evidence has been found. When it is said that "suspected criminals" were released, it is presumably meant that certain persons arrested on suspicion of having committed murder were released. And if such arrests were made, it can not of course be assumed, in the absence of evidence showing probable cause why they should have been held for trial, that they were improperly released.

The Commission being guided by principles which it has frequently asserted with respect to the convincing character of evidence which is necessary to sustain a charge of an international delinquency such as is alleged in this case, is constrained to dismiss the claim in the absence of such evidence.

*Decision.*

The claim made by the United States of America in behalf of Daniel R. Archuleta is disallowed.

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