

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

**Adolph Deutz and Charles Deutz (A Co-Partnership) (U.S.A.) v. United Mexican
States**

17 April 1929

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passed through the warden's office where they found the warden who said nothing.

Decision

The United Mexican States shall pay to the United States of America on behalf of Hazel M. Corcoran \$6,000 (six thousand dollars) United States currency, without interest.

ADOLPH DEUTZ and CHARLES DEUTZ (A CO-PARTNERSHIP)
(U.S.A.) *v.* UNITED MEXICAN STATES

(April 17, 1929. Pages 213-216.)

NATIONALITY, PROOF OF. Evidence of birth, residence, voting and jury service in the United States *held* sufficient proof of American nationality.

CONTRACT CLAIMS.—NECESSITY OF TENDER OF DELIVERY. Refusal of delivery of part of order of goods by Mexican Government *held* sufficient basis for claim for refusal to accept entire order. When, however, no tender of delivery whatever of any part of an order of goods was shown, claim *disallowed*.

MEASURE OF DAMAGES. LOSS OF PROFITS. Claimants contracted to deliver certain merchandise to the Mexican Government and, although partial delivery was tendered, the latter refused to accept the same. Claimants thereafter sold such goods for less than cost and ceased further deliveries under the contract. *Held*, as to the delivered goods, claimants are entitled to the difference between the contract price and cost price of the goods plus the losses sustained on resale, and, as to the undelivered goods, their loss of profits measured by contract price less cost price less overhead.

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

In this case claim in the sum of \$103,540.32, United States currency, with interest thereon, is made against the United Mexican States on behalf of Adolph Deutz and Charles Deutz, a copartnership, doing business under the firm name of A. Deutz and Brother, for alleged failure of the Mexican Government to fulfill obligations arising out of four orders for textile merchandise placed with the claimants in 1920 by departments of the Mexican Government.

Both of the claimants stated in affidavits that they were born in the United States, and there is further evidence to show that during a long period of time they have been residents of the United States and that they have exercised the privilege of voting at various elections and of serving on several juries. The Commission is of the opinion that this sufficiently establishes the American citizenship of the claimants.

The orders placed were as follows:

Order No. 202

50,000 meters gray khaki at \$1.09 per meter	\$54,500.00
25,000 meters Oceanic duck at \$2.398 per meter	59,950.00
15,000 meters white duck at \$1.09 per meter	16,350.00

Order No. 1951.2506

30,000 yards navy blue twill at \$1.20 per yard	\$36,000.00
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Order No. 261

50,000 meters gray khaki at \$1.09 per meter	\$54,500.00
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Order No. 263

25,000 meters dyed duck at \$2.616 per meter	\$65,400.00
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The merchandise, being of a special character, could not be purchased in the open market, but had to be manufactured. Partial delivery was made in the latter part of April and the first part of May 1920 of the orders for gray khaki, Oceanic duck and navy blue twill, by placing the goods, in accordance with the terms of the orders, at the disposal of the Mexican Government at Laredo, Texas, the proper authorities being informed of such delivery. They did not, however, receive the merchandise, and after several months they formally refused to accept it. The claimants themselves then disposed of the goods so delivered. None of the merchandise ordered has been paid for by the respondent Government and no reason justifying the cancellation of the orders has been given.

As the merchandise delivered, referred to in the preceding paragraph, was not accepted by the Mexican Government, the Commission is of the opinion that the claimants were justified in assuming that no merchandise of this character would be accepted and that, therefore, the claimants are entitled to recover the losses sustained by them in respect to both the delivered and undelivered goods of this character. In the case of that portion of the above-mentioned merchandise which was actually delivered, the loss may be computed by taking the difference between the contract price, (\$81,003.60), and the total cost of such goods to the claimants, (\$43,976.99), which is \$37,026.61, and adding thereto the loss sustained by the claimants in reselling the goods at a price below the cost price, which amounts to \$7,875.96, making a total loss of \$44,902.57 on this portion of the transaction.

As regards the undelivered portion of orders for merchandise of the above character the claimants' loss may be regarded as the loss of profits suffered by them as a result of the failure of Mexico to complete its contract. This loss of profits may be regarded as the difference between the contract price and the total amount which the claimants would have expended had they made delivery of the merchandise. In computing the loss of profits the Commission must therefore take into account an item of overhead expense of 18.49 per cent of the contract price, an item of expense which the claimants would have incurred had they made delivery of the merchandise. The total contract price of the undelivered portions of the orders for goods of the above-mentioned classes is \$123,970.38, from which must be deducted the claimants' cost price of \$64,283.65, and also an overhead expense of 18.49 per cent of the contract price, or \$22,922.13, leaving a balance of \$36,764.60, which represents the loss of profits on the undelivered portion of these goods. It should be stated that in making claim before this

Commission, the claimants, in computing their losses, deducted the overhead expenses from the amount of their claim.

With reference to the remaining goods covered by the orders, that is, the white duck and dyed duck, it appears that the claimants made no delivery of any merchandise of this character. Neither did they inquire of the Mexican Government whether it would accept delivery of merchandise of this character. The Commission is of the opinion that consequently the claimants are not entitled to be reimbursed on account of any loss sustained by them on this class of merchandise.

Decision

The United Mexican States shall pay to the United States of America on behalf of Adolph Deutz and Charles Deutz the sum of \$81,667.17 (eighty-one thousand six hundred sixty-seven dollars and seventeen cents) United States currency, with interest at the rate of six per centum per annum on the specifically stated loss of \$7,875.96 (seven thousand eight hundred seventy-five dollars and ninety-six cents) from May 1, 1920, to the date on which the last award is rendered by the Commission.

LOTTIE SEVEY (U.S.A.) *v.* UNITED MEXICAN STATES

(April 17, 1929. Pages 216-218.)

NATIONALITY, PROOF OF.—EFFECT OF CLAIMANT'S STATEMENTS CONCERNING HIS NATIONALITY. Fact that decedent testified he was born in Mexico *held* not sufficient to overcome other proof of American nationality.

FAILURE TO PROTECT. Fact that local authorities showed partiality to labourers in mine, of which decedent was superintendent, *held* not sufficient to establish a failure to protect against murder of decedent for which claim is made.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—UNDUE DELAY IN INVESTIGATION. Fact that authorities did not arrive on the scene of murder of American subject for approximately four hours *held* not to involve undue delay. Claim *disallowed*.

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

In this case claim in the sum of \$25,000, United States currency, is made against the United Mexican States by the United States of America on behalf of Lottie Sevey, an American citizen, for alleged failure to give adequate protection to Mose T. Sevey, the husband of the claimant, who on October 20, 1920, was shot and killed by one Ramon Navarro, and for alleged failure to take appropriate steps to apprehend and punish the murderer.

During oral argument Counsel for Mexico called attention to the fact that the American nationality of the deceased is not clearly established by the evidence before the Commission. He was registered as a voter in Arizona in 1916, and according to the entry on the register his place of birth was Utah. Before his death, however, he testified that he was born at Colonia