

The Girl or God?

The Don Miquel Chavez Will Contest

By Mark Thompson

There appears to be little doubt that Santa Fe businessman Miguel Chavez earned the designation placed on his death certificate by his executor/personal representative—"capitalist!"¹ Yet as an early day Warren Buffet, he was also rightly credited with the title "philanthropist." When he died a widower, all of his four children having predeceased him, the *Santa Fe New Mexican* justifiably anticipated a considerable testamentary gift to charity.² After all, this was the man who donated the statue of Bishop Lamy,³ located in front of St. Francis Cathedral, and the money for a building at St. Michael's College.⁴

The expectations of the *Santa Fe New Mexican*, and undoubtedly the charitable beneficiaries, were met when the terms of the will were disclosed at the end of December 1928. "Miguel Chavez Leaves over Half Million Dollars to Catholic Church and to Orphans and Poor of Santa Fe and of Albuquerque."⁵ But in the second week of January 1929, the other shoe dropped, this time in the U. S. District Court for the District of New Mexico:

Colorado Woman Seeks to Break Will of Miguel Chavez; Claims entire \$500,000 Estate. Carolina C. Salazar Alleges She is 46 years of Age and Illegitimate Daughter of Wealthy Real Estate Owner of Santa Fe; Says She Was Recognized as His Daughter and Was Born at Park View (*sic*), Rio Arriba County; Says She Was not Mentioned in the Will.⁶



The plaintiff alleged jurisdiction based upon diversity of citizenship⁷ and filed as an equitable action against the executor, Santa Fe businessman Carl A. Bishop, the Archbishop of the Archdiocese of Santa Fe, St. Vincent's Sanitarium and Orphans' Home and Industrial School, as well as the nieces and nephews of Chavez who received specific bequests. The defendants eventually argued that the controversy was "a matter to be determined by the Probate Court of the County of Santa Fe."⁸ Perhaps because the plaintiff clearly sought equitable and personal relief against the execu-

Statue of Archbishop J.B. Lamy located in front of St. Francis Cathedral.

tor and others, Judge Colin Neblett did not explain his rejection of the defendants' argument. Although the U. S. Supreme Court eventually, in 1946,⁹ questioned the scope of the so-called "probate exception" to federal court jurisdiction, it was only in 2006 that Justice Ruth Bader Ginsburg, with no dissent, attempted to give the exception a very strict construction if not a decent burial.¹⁰



Miguel Chavez. Photo courtesy Palace of the Governors (MNM/DCA), #50926

The plaintiff's substantive law allegations were based upon the New Mexico statutes: born illegitimate, she was legally "recognized" by Miguel Chavez as his child;¹¹ Chavez failed to name her in his will and therefore, as to her, Chavez is deemed to have died intestate;¹² and because she was his only direct intestate heir, she was entitled to his entire estate. As might be expected, the case would be decided on both the applicability of the "recognition" statute and the evidence submitted to establish the fact of recognition. The defendants hammered on the idea that any recognition by Chavez came before the effective date of the statute,

February 24, 1887,¹³ what might have been called the "recognition with impunity" argument because evidence of recognition before that date could not be used against him.

If the parties briefed the issue, written briefs did not make it into the court file and Judge Neblett, ruling against the defendants, did not elaborate on his reasons, merely admitting the evidence.¹⁴ Plaintiff's legal team was led by former Supreme Court Justice, Clarence J. Roberts, author of three published opinions involving the 1887 statute, including the landmark community property decision, *Beals v. Ares*.¹⁵ None of these three cases provided a direct answer to defendants' argument, but one can imagine Judge Roberts, as he was called in the press, dazzling the court with his views on the law of descent and distribution. Perhaps Roberts' co-counsel, Charles Brice, contributed to the plaintiff's argument with the view that New Mexico had never followed the common law with respect to illegitimate children and that the 1887 statute, together with its amendments in 1889,¹⁶ was "remedial" and should be liberally construed, a view he adopted as a Supreme Court justice in 1938.¹⁷ Not that this argument in and of itself should have been determinative, but one can imagine that whatever these two lawyers argued to Judge Neblett carried considerable weight.¹⁸

The trial opened August, 1, 1929, in Tierra Amarilla, with Judge Neblett hearing testimony from the first of 60 witnesses eventually called by the plaintiff.¹⁹ The plaintiff was required to prove that the

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recognition by Chavez was “general and notorious,” and certainly the lawyers were taking no chances that they would fail to meet that somewhat vague standard. Probably the most dramatic testimony at this first stage was that of several elderly Parkview residents who remembered Chavez hosting a party at the home of Carolina’s mother, Luisa Lovato, to celebrate Carolina’s baptism.¹²⁰

Much of the evidence at the second Santa Fe phase dealt with the knowledge of other members of Chavez’s family and that of his wife’s family. But the defense also called forty-two witnesses, according to the clerk’s trial notes, in an attempt to diminish the impact of the plaintiff’s case. Several witnesses testified that Chavez had told several people that he had no relatives, and one witness testified that Chavez told him that “God gave me my money and I’m going to give it back to God.”²¹

At the close of the evidence, Judge Neblett immediately announced from the bench that the plaintiff had prevailed,²² and, on August 29, 1929, filed a judgment directing the executor to pay nothing to the beneficiaries named in the will and to recognize Carolina Salazar as the daughter and only heir at law. The defendants immediately appealed to the newly created 10th Circuit Court of Appeals,²³ basing the appeal primarily on their argument that evidence of recognition by Chavez was inadmissible.²⁴ Although news of a settlement did not find its way into the newspapers immediately, the parties stipulated that the appeal should be dismissed and the 10th Circuit so ordered on April 5, 1930.²⁵

Mark Thompson is a former member of the State Bar of New Mexico and an occasional contributor of history articles to the Bar Bulletin.

¹ Miguel Chavez, death certificate no. 337 (1928), New Mexico Bureau of Public Health, Santa Fe.

² “Miguel Chavez Dies After Short Illness: Liberal Benefactor of Catholic Schools,” *Santa Fe New Mexican*, December 14, 1928, p. 7.

³ The inscription on the side of the base reads, in Spanish, “Donated by Miguel Chavez, Santa Fe, 1915.” (Photo courtesy of the author.)

⁴ The photo of Chavez with the unfinished bust, according to the notes on the back of the copy retained by the Museum of New Mexico, Photo Archives

Division, was taken about the time of the dedication of the building in 1927. (Photo courtesy Palace of the Governors (MNM/DCA), Negative no. 50926.)

⁵ *Santa Fe New Mexican*, December 24, 1928, p. 2.

⁶ *Santa Fe New Mexican*, January 8, 1929, p. 6. See also, “Suit is Filed to Break Will of Miguel Chavez,” *Albuquerque Journal*, January 9, 1929, Morning ed., p. 1.

⁷ *Carolina C. Salazar v. Carl A. Bishop, et al*, No. 1916E (D.N.M. Feb. 2, 1929). It is not clear why the complaint carries a February filing date when the newspapers clearly reported the filing in early January.

⁸ “Additional Objections and Exceptions of the Defendants,” filed August 29, 1929.

⁹ *Markham v. Allen*, 326 U.S. 490 (1946).

¹⁰ *Marshall v. Marshall*, No. 04-1544, decided May 1, 2006.

¹¹ New Mexico Code 1915, § 1850.

¹² New Mexico Code 1915, § 5870.

¹³ N.M. Laws 1887, ch. 32, § 9.

¹⁴ “Mrs. Salazar Scores Point in Her Suit For Chavez Estate,” *Santa Fe New Mexican*, August 16, 1929, p. 7.

¹⁵ 25 N.M. 459, 185 Pac. 780 (1919). The other two cases, more directly dealing with illegitimate children, were *Grates v. Garcia*, 20 N.M. 158, 148 Pac. 493 (1915) and *Wallace v. Blanchard*, 26 N.M. 181, 190 Pac. 1020 (1920).

¹⁶ N.M. Laws 1889, ch. 90, § 21.

¹⁷ *State v. Chavez*, 42 N.M. 569, 82 P.2d 900 (1938).

¹⁸ The lawyer “firepower” brought to bear on this case may be unprecedented in New Mexico history. In addition to Judges Roberts and Brice, the plaintiff was represented by Manuel A. Sanchez and the then incumbent U.S. Senator, Sam G. Bratton, later a judge on the U.S. Court of Appeals for the Tenth Circuit. The defendants were represented by E. R. Wright, J.O. Seth, David Chavez Jr., later a U.S. District Court Judge for Puerto Rico and then New Mexico Supreme Court Justice and last, but certainly not least, Charles Fahy, who eventually left New Mexico to become a labor lawyer in Washington, D.C. and was appointed by President Truman to the U. S. Court of Appeals for the District of Columbia Circuit in 1949.

¹⁹ “Chavez Estate Case Opens,” *Albuquerque Journal*, August 2, 1929, morning ed., p. 1.

²⁰ “Miguel Chavez Threw Party When Carolina Was Baptized Old Timers of Parkview Say,” *Santa Fe New Mexican*, August 9, 1929, p. 5.

²¹ “Miguel Chavez Said He Had No Relatives, Say Witness To His Will,” *Santa Fe New Mexican*, August 15, 1929, p. 2.

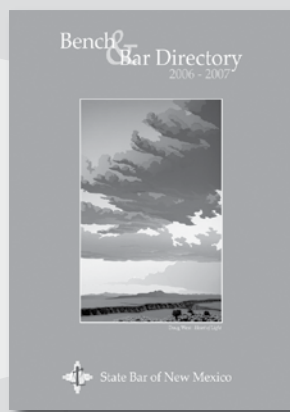
²² “Mrs. Salazar Is Winner of Lawsuit For Chavez Estate. Judge Neblett Holds She is Illegitimate Daughter of Don Miguel,” *Santa Fe New Mexican*, August 17, 1929, p. 1.

²³ “Chavez Estate Case Will Go To High Court,” *Albuquerque Journal*, August 18, 1929, morning ed., p. 3.

²⁴ Assignment of Errors, filed November 14, 1929.

²⁵ *Bishop v. Salazar*, 41 F.2d 988 (10th Cir. 1930).

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