

**HERON V. GARCIA, 1947-NMSC-004, 51 N.M. 1, 176 P.2d 680 (S. Ct. 1947)**

**HERON  
vs.  
GARCIA et al.**

No. 4988

SUPREME COURT OF NEW MEXICO

1947-NMSC-004, 51 N.M. 1, 176 P.2d 680

January 30, 1947

Appeal from District Court, Rio Arriba County; William J. Barker, Judge. Action by Kenneth A. Heron against Frank Garcia, treasurer of Rio Arriba County, New Mexico, and others. From an adverse judgment, the plaintiff appeals.

Motion for Rehearing Denied February 24, 1947

**COUNSEL**

Kenneth A. Heron, of Chama, per se. Reed Holloman, of Santa Fe, for appellees.

**JUDGES**

McGhee, Justice. Bickley, C.J., and Brice, Sadler, and Lujan, JJ., concur.

**AUTHOR: MCGHEE**

**OPINION**

{\*1} {1} Requested findings of fact were made by plaintiff and defendants and the case was decided by the trial judge, Hon. William J. Barker, only four days prior to the effective date of his resignation. He acted on the requested findings and conclusions of the defendants but in the stress of closing pending cases before the effective date of his resignation overlooked acting on plaintiff's requested findings and conclusions, {\*2} many of which are material to a decision in this case.

{2} As the judge who tried the case is out of office, we realize that the remanding of this case for findings and conclusions will necessitate a new trial, but we feel the questions of fact can be better decided by one who hears the witnesses and who personally inspects the records than if we were to make our own findings of fact as was done in Merrick v. Deering et al., 30 N.M. 431, 236 P. 735.

**{3}** The judgment of the District Court will be reversed, and the case remanded for a new trial, and it is so ordered.