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De Garmendía Case

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DE GARMENDÍA CASE

Damages awarded for the destruction of property for the public benefit by order of the legitimate authorities.

Interest can not justly be charged against the Government except from the date of the demand for compensation, unless the delay in presenting the claim is satisfactorily explained.¹

BAINBRIDGE, *Commissioner* (for the Commission):

The United States of America on behalf of Corinne B. de Garmendía, as sole legatee under the will of Carlos G. de Garmendía, deceased, presents a claim against the Government of Venezuela for the sum of \$ 111,274.63, said claim being based upon the following statement of facts:

First. That on July 7, 1877, Carlos G. de Garmendía, a naturalized citizen of the United States, made with the Government of Venezuela, through its minister of the interior, a contract to establish steam-vessel communication between New York City and the ports of La Guaira and Puerto Cabello, the Government of Venezuela, in consideration of the advantages to accrue to the entire country from such communication, binding itself to aid the enterprise with a monthly subsidy of \$ 4,000 (Venezuelan). The contract was to "remain in full force and power for the term of two years."

The enterprise commenced operations December 15, 1877, and from that date the Government of Venezuela paid punctually the monthly subsidy of \$ 4,000 (Venezuelan) until January 15, 1879. In March, 1879, the Government gave notice to de Garmendía's agents that it would no longer continue paying the subsidy, there being then due and unpaid one-half the monthly subsidy for January and the whole of that for February. De Garmendía continued the steamship service until May, 1879, at which time it was discontinued on account of the nonpayment of the subsidy. For this breach of contract a claim is made for the unpaid subsidy from January 15, to December 15, 1879, in the sum of \$ 44,000 (Venezuelan), with interest at 3 per cent per annum.

Second. That in 1874 one H. de Garmendía made a contract with the Government of Venezuela to establish a permanent factory for the manufacture of ice in the city of Caracas, with branches at La Guaira and Puerto Cabello. In order to establish the depot, a frame house, with all the machinery and requirements of the enterprise, was imported from the United States into Venezuela. In 1879, on account of the stoppage of the payment of the subsidy to the steamship line operated by Carlos G. de Garmendía, and the consequent discontinuance of the steamers, the ice enterprise could no longer be carried on, and in payment of advances made by Carlos G. de Garmendía, the house and ice plant were conveyed to him by the said H. de Garmendía. In April, 1879, General Guzmán Blanco ordered the destruction of the house containing the ice plant. That said house had been imported and placed in La Guaira at a cost of \$ 10,000 (Venezuelan), and was at that time rented for the sum of \$ 150 (Venezuelan) per month. A claim is made for \$ 10,000 (Venezuelan) the value of the house, with legal interest from the date of its destruction, and also for the deprivation of the rent.

In the month of December, 1889, de Garmendía presented his claim to the Venezuelan Government and urged its payment. It is insisted before this Commission that de Garmendía's claim was recognized and acknowledged by the Government of Venezuela in the following record in the ministry of the treasury:

¹ On subject of interest see Italian - Venezuelan Commission (Cervetti Case), and German - Venezuelan Commission (Christern Case), in Volume X of these Reports.

[Translation]

COMMITTEE OF EXAMINING ACKNOWLEDGMENT OF DEBTS

Caracas, February 27, 1890.

The claim of Mr. Carlos G. de Garmendía, amounting to 431,500 bolivars, having been examined by this committee, the President of the Republic orders that 40,000 bolivars be paid on account; let the corresponding order for payment be taken to the Sala de Centralización. The word "Perforate" follows, altered to the words "pay it," without being removed; and file this record.

The President,

JOSÉ M. LARES

The above-named sum of 40,000 bolivars was paid to de Garmendía, in acknowledgment of which he gave the following receipt:

CARACAS, February 26, 1891.

I have received from the Government of the United States of Venezuela the sum of 40,000 bolivars, as follows:

Four thousand bolivars in money and 36,000 bolivars in titles of 1 per cent monthly, on account of two claims I have presented, and which have been accepted and recognized in this form:

	<i>Venezuelan</i>
Value office plant in La Guaira destroyed and material thrown away in April, 1879.	\$ 10,000
Interest to date for 10 years and 10 months, at 3 per cent annual	3,708
For the rent of ten years, at \$ 1,800	18,000
Subsidy on the balance of contract for steamers between New York and Venezuela, 11 months, at \$ 4,000	44,000
Interest at 3 per cent per year for 11 years and 1 month	15,059
	90,767
Total	

Received on account \$ 10,000 described as above.

CARLOS G. DE GARMENDÍA

Between the lines the word "been".
Correct.

C. G. DE G.

The meaning and effect of the record above quoted are open to some doubt. Under date of July 3, 1891, de Garmendía made a request of the ministry of the treasury for a certified copy of this record. Whereupon the director of finance of the department of hacienda, in compliance with the foregoing, states that the record to which the preceding representation of Señor Carlos G. de Garmendía refers, is to the following effect:

Carlos G. de Garmendía claims 431,500 bolivars as principal and interest for damages suffered under the contract which he had with the Government for a steamship line and an ice plant. As Señor de Garmendía does not verify this claim except upon his statement the junta believe the claim inadmissible. Continuing, there is a note which appears to be in the writing of Dr. Juan S. Rojas Paúl, which states as follows: "Let there be paid on account of this claim \$ 10,000 in notes."

On the other hand, in a letter to de Garmendía, dated August 21, 1893, José M. Lares, who signed the record in question as president of the board of inquiry, and recognition of debts, says in explanation of the wording of said instrument:

In perforating or canceling the accounts that were paid that word was undoubtedly put upon yours without noticing that it had not been paid in full, but that part of the amount of your claim was carried on *account*, which indicates clearly that your claim was acknowledged by the President and that it still remained pending but for the balance.

For reasons hereinafter made apparent, the Commission is not disposed to determine the claim upon any technical construction of this disputed acknowledgment. Upon its merits, the claim is clear enough. The subsidy contract was executed on the part of Venezuela by Dr. Laureano Villanueva, who is described in the instrument as "minister of state in the home office (of the Federal Executive of the United States of Venezuela) fully authorized by the national Executive."

Article 9 of the contract provides as follows:

The Government of Venezuela in consideration of the advantages which the official service and the entire country will have from this way of communication, binds itself to aid the enterprise with a monthly subsidy of 4,000 Venezolanos which will be handed in Caracas to Messrs. Nevett & Co., the consignee of the steamers.

The steamship enterprise commenced operations on the 15th day of December, 1877. The Government of Venezuela paid the monthly subsidy until January 15, 1879. It then stopped payments and in March following notified the agents of de Garmendía, Messrs. Nevett & Co., that it would pay them no longer.

Article II provides: "This contract will be in full force for the period of two years."

The contract was executed July 7, 1877. It expired by limitation, therefore, on July 7, 1879. From January 15, 1879, the contract had five months and twenty-two days to run. Its breach entitled de Garmendía to the amount of the subsidy for this unexpired term.

In every case of breach of contract the plaintiff's loss is measured by the benefit to him of having the contract performed; and this is therefore the measure of his damages. (Sedgwick on Damages, sec. 609.)

The amount which would have been received if the contract had been kept, is the measure of damages if the contract is broken. (*Alder v. Keighley*, 15 M. and W., 117.)

On January 9, 1880, Messrs. Hellmund & Co., the agents of Mr. de Garmendía at La Guaira, were served with the following notice:

[Translation]

Caracas, January 9, 1880.

Messrs. G. HELLMUND & Co., *La Guaira*.

Under date of yesterday the citizen minister of hacienda says to this office what follows: "The illustrious American having been informed that the frame house used as an ice depot in the port of La Guaira greatly prevents the employees of the custom-house from duly watching that port, he has thought it indispensable to destroy it, in order to leave that place open; and he has ordered me to address myself to you to please indicate the means conducive to the fulfilling of the indicated proposal, advice which I have the honor of participating to you as the guardians of said house, that you may order its evacuation as soon as possible, and to inform this office what day this will be carried out."

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The ice house was, therefore, not destroyed until sometime in January, 1880, and its destruction was deemed necessary as an act of public utility. De Garmendía was entitled to compensation for the actual value of the property and interest thereon for the time payment was wrongfully delayed. But he was clearly not entitled also to the rent which forms so large an item of his claim, and which is included in the amount alleged to have been acknowledged. After the destruction of the ice house by the Venezuelan authorities, de Garmendía could have no claim for being kept out of the use of the property, but only one for the equivalent value of the property in money and interest

thereon for the time he was without fault of his own kept out of the use of that sum. (Sedgwick on Damages, sec. 316.)

As indicated above, this claim originated in the years 1879 and 1880. Mr. de Garmendía, however, made no demand upon the Venezuelan Government for its adjustment until the month of December, 1889. Can Venezuela be justly charged with interest during this long interval? I think not. The delay in presenting the claim is not satisfactorily explained, and the Government was not in default until it at least had proper notice that Mr. de Garmendía was asserting his right to compensation.

The following payments have been made upon this claim: On February 6, 1891, the sum of \$ 10,000, as evidenced by Mr. de Garmendía's receipt of that date; on or about May 9, 1896, the sum of \$ 1,000; and on or about January 15, 1898, the sum of \$ 1,600 gold, the last two payments having been made to the claimant herein, as evidenced by her letter to Senator McComas.

In view of the foregoing, allowance will be made: (1) For the unpaid balance of subsidy, the sum of \$ 22,933.31 (Venezuelan).

(2) For the ice house at La Guaria the sum of \$ 10,000 (Venezuelan).

The principal sum of \$ 32,923.31 (Venezuelan) will bear interest at the rate of 3 per cent per annum from December 2, 1889, deducting the amounts paid. On this basis the balance due on December 31, 1903, the anticipated date of the final award by this Commission, is the sum of \$ 30,538.19 (Venezuelan), equivalent to the sum of \$ 29,363.64 in gold coin of the United States.

HENY CASE

(By the Umpire:)

The deficiency of an instrument for want of recording so as to make it invalid as against third parties cannot be invoked by a trespasser or tortfeasor to nullify it, and damages will be allowed a party whose interest is evidenced by such an instrument.

Damages will not be allowed for the interruption of the ordinary course of business in the territory where war exists, since it is an inevitable result of a state of war.¹

BAINBRIDGE, *Commissioner* (claim referred to umpire):

Emerich Heny, the claimant herein, was born in Germany in 1846 and emigrated to the United States in 1867, where he was naturalized as a citizen thereof in the superior court of the city of New York on October 15, 1872. Two years later he removed to Venezuela where he has since resided. In 1883 he was married to Bertha Benitz, of Caracas, one of the children and heirs of Carlos Benitz, deceased. The Benitz heirs were the owners of an estate situated at Las Tejerías, near Caracas, said estate being known as "La Fundación." Upon his marriage Heny undertook the management and cultivation of the estate, and he also rented an adjoining plantation known as "El Palmar," which he cultivated on his own account.

In the months of September and October, 1892, a revolution called the "Legalista" was in progress in Venezuela, which ultimately proved successful, resulting in the overthrow of the then existing government. During this revolution the contending forces passed over "La Fundación" and destroyed the crops, seized the horses, cattle, and other property, and exacting from the owners of the estate loans of money and supplies for the troops, inflicting a loss, as claimed, aggregating 143,098 bolivars, equivalent to \$ 27,617.91 in United States gold.

¹ See Dix Case, *supra*, p. 119.