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American Electric and Manufacturing Company Case (damages to property)

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It appears from the record that the Venezuelan Government had granted a monopoly of the business of towing vessels across the bar at Maracaibo, and that the grantee of the privilege used in that business but one tugboat, which, at the time its services were required by the *Mark Gray*, was employed in the service of the Government itself.

The learned counsel for the United States urges on behalf of the claimants, that the Venezuelan Government has made itself directly responsible for the demurrage and loss in this case, by granting the towage monopoly and then preventing the towage company from rendering the service by taking for the Government's own use the single tugboat operated by the company.

But the right of the Government of Venezuela to grant the franchise in question, by virtue of its proprietary interest in and exclusive jurisdiction over its territorial waters, is indisputable. And it is difficult to perceive wherein the Government, by making the grant, assumed any liability for the acts or omissions of the grantee. If such liability arises from the terms of the grant, that fact does not appear in evidence before the Commission. The protest of Captain Sawyer states:

That according to the agreement made by the contractor for towage with the Government of Venezuela, the said contractor is bound to keep tugs constantly ready for service at the Maracaibo bar.

A showing that the contractor did not keep tugs constantly at the bar is rather proof of his failure to observe his agreement with the Government than of the Government's liability to those who may have suffered from such failure, which is the claim made here.

Nor does the fact that the Government was employing in its service the only tugboat used by the contractor for towage fix a liability upon Venezuela for losses sustained by those who were unable, because of its employment by the Government, to secure the service of the tug. That circumstance may, indeed, have occasioned a loss to the claimants; but if so, it was not injuriously brought about by any violation of their legal rights and is *damnum absque injuria*.

The claim must be disallowed.

AMERICAN ELECTRIC AND MANUFACTURING CO. CASE

Owner is entitled to compensation for the seizure by the Government of property which it appropriates to its own use during a revolution for military purposes, and which is damaged while in its possession.

Claim for damages suffered by reason of the bombardment of a city, the bombardment being the necessary consequence of a legitimate act of war on the part of the Government, disallowed.

PAÚL, *Commissioner* (for the Commission):

The claim of the American Electric and Manufacturing Company against the Venezuelan Government is based on two distinct groups of facts. The first is the taking possession of by the Government of the State of Bolívar on May 26, 1901, of the telephone office and service of the line for the use and convenience of the military operations during the battle, which took place in Ciudad Bolívar, until the 29th of said month, against revolutionary troops, and the damages which the property so occupied suffered in consequence thereof, owing to acts of destruction performed by the revolutionists. The amount claimed for such damages is the sum of \$ 4,000.

The second group of facts consists in the damages suffered by the telephonic line in August 1902, during the bombardment of Ciudad Bolívar by the vessels of the Venezuelan Government, the claim on this account being for \$ 2,000.

By the documentary evidence presented it is proven that when the loyal troops of the Government were fighting the rebels of Ciudad Bolívar, Gen. Julio Sarria, constitutional President of the State, ordered the absolute interruption of all the telephonic service with the exception of the instruments which connected the house of said general with the military commander; the administrator of the custom-house; the marine custom's office; the police inspector's office; the telegraph office, and such other places as are stated in the note which he sent to Mr. Eugenio Barletta, manager of the company, dated May 26, 1901, and ordered also the occupation of the central office of the company, and stationed near the machinery an armed guard, which remained there until the town was evacuated by the Government troops.

It is also proven that the revolutionary forces destroyed the posts and wires of the lines and caused damages in the central office, destroying the switch boards and forcing the employees to abandon the office.

The general principles of international law which establish the nonresponsibility of the Government for damages suffered by neutral property owing to imperious necessities of military operations within the radius of said operations, or as a consequence of the damages of a battle, incidentally caused by the means of destruction employed in the war which are not disapproved by the law of nations, are well known.

Nevertheless, the said principles likewise have their limitations according to circumstances established by international law, as a source of responsibility, when the destruction of the neutral property is due to the previous and deliberate occupation by the Government for public benefit or as being essential for the success of military operations. Then the neutral property has been destroyed or damaged by the enemy because it was occupied by the Government troops, and for that reason only.

It is the seizure of private property for the public use and its loss or destruction while so employed, whether by the enemy of the Government, that entitles the owner to payment. Even if it be morally certain that the enemy would himself take the property and use it, depriving the owner of it forever, still, its destruction by the Government entitles the party to compensation. (See Grant's case, 1 Ct. Claims, p. 41; and observations of Ch. J. Taney in *Mitchell v. Harmony*, 13 Howard, 115.) We must hold, even in such case, that the public has received the value of the property, by embarrassing its enemy by its destruction, and is bound to make just compensation. It can never be just that the loss should fall exclusively on one man, where the property has been lawfully used or destroyed for the benefit of all. (*Putegnat's Heirs v. Mexico*, 4 Moore Int. Arb., 3720.)

The seizure of the office and telephonic apparatus by the Government at Ciudad Bolívar, required as an element for the successful operations against the enemy, the damages suffered and done by the revolutionists as a consequence of such seizure, gives to the American Electric and Manufacturing Company the right to a just compensation for the damages suffered on account of the Government's action.

The claimant company, exhibiting evidence of witnesses, pretends that the damages caused amount to the sum of \$ 4,000, but it must be taken into consideration that the witnesses and the company itself refer to all the damages suffered by the telephonic enterprise from the commencement of the battle which began on the 23d of May, whilst the seizure of the telephonic line by the Government which is the motive justifying the recognition of the damages, only took place on the 26th, which reduces in a notable manner the amount

for damages which has to be paid by the Government and therefore the damage is held to be estimated in the sum of \$ 2,000.

With reference to the second section of the claim for the sum of \$ 2,000 for damages suffered by the telephonic company during the bombardment of Ciudad Bolívar in August, 1902, these being the incidental and necessary consequences of a legitimate act of war on the part of the Government's men-of-war, it is therefore disallowed.

No interest is allowed for the reason that the claim was never officially presented to the Venezuelan Government.

In consequence thereof an award is made in favor of the American Electric and Manufacturing Company for its claim against the Venezuelan Government in the sum of \$ 2,000 American gold.

LASRY CASE

Under the interpretation of the protocol the Commission not limited in adjudication of claims to such evidence only as may be competent under technical rules of common law. Evidence taken under sanction of an oath administered by competent authority will be accorded greater weight than unsworn statements, informal declarations, etc.¹

BAINBRIDGE, *Commissioner* (for the Commission):

This claim is submitted upon the following documents:

First. Two letters of claimant, both dated May 16, 1901, addressed to the Department of State, in which he sets forth that he is a naturalized citizen of the United States, domiciled in Venezuela; that on November 11, 1899, the troops of General Colmenares, a detachment of General Castro's army, entered Belén, where claimant resided and was engaged in business as a merchant and farmer, took away his cattle and horses, and looted the better part of the goods and provisions in his business establishment; and he summarizes his alleged losses as follows:

	<i>Gold</i>
29 head of cattle, at \$ 20 per head	\$ 580
Merchandise	15,000
2 saddle horses, at \$ 125 each	250
Cash	50
Total	15,880

Second. A statement signed by various parties claiming to be residents of Belén before the jefe civil of the parish to the effect that on the 11th day of November, 1899, the cattle Mr. Lasry had in his pasture were taken by the forces of General Colmenares and that the better part of the goods stored in his establishment was looted by said forces; and furthermore that Mr. Lasry had always attended to his business without mixing himself in the politics of the country, or in anything else which could affect his condition as a neutral tradesman.

Third. A statement signed on October 3, 1901, by J. Benody and J. A. Parmente in the presence of the secretary of the United States legation at Caracas to the effect that Isaac J. Lasry was, during the revolution existing in Venezuela in November 1899, practically ruined by the sackage of his

¹ See the German - Venezuelan Commission (Faber Case) in Volume X of these Reports.