

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Irene Roberts Case

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cleared by the Venezuelan consul during the period in question did not receive the permission to navigate the Orinoco in view of one of the aforesaid aims;

But whereas, on the other side, evidence, as was said before, shows that the Government had sufficient reasons to believe claimant, if not assisting the revolutionists, at least to be friendly and rather partial to them, it can not be recognized as a proof of unlawful discrimination that the Government, holding in view the aim of the prohibition and defending with all lawful measures its own existence, did not give to claimant the permission it thought fit to give to the above-mentioned ships;

And whereas therefore no unlawful act or culpable negligence on the part of the Venezuelan Government is proved that would make the Government liable for the damages claimant pretends to have suffered by the interruption of the navigation of the Orinoco River, this item of the claim has to be disallowed.

The last item of this claim is for \$ 25,000, for counsel fees and expenses incurred in carrying out the above examined and decided claims;

But whereas the greater part of the items of the claim had to be disallowed;

And whereas in respect to those that were allowed it is in no way proved by evidence that they were presented to and refused by the Government of the Republic of the United States of Venezuela, and whereas therefore the necessity to incur those fees and further expenses in consequence of an unlawful act or culpable negligence of the Venezuelan Government is not proved, this item has, of course, to be disallowed.

For all which reasons the Venezuelan Government owes to claimant:

	<i>United States gold</i>
For detention and use of the steamers <i>Masparro</i> and <i>Socorro</i> , 36,000 pesos, or	\$ 27,692.31
For goods delivered for use of the Government	308.00
For passages	224.62
Total	28,224.93

While all the other items have to be disallowed.

APPENDIX TO THE CASE OF THE ORINOCO STEAMSHIP COMPANY

Memorial, Brief of United States agent, Answer of Venezuelan agent, Replication of United States agent. (See original Report, pp. 97-141 — not reproduced in this series.)

IRENE ROBERTS CASE

A government is responsible for the acts of violence and pillage committed by its troops when under the command of their officers.

Claim duly presented on behalf of claimant is not barred by lapse of time before final adjudication or settlement. ¹

Award of \$ 5,000, in addition to actual damage, made for losses that must have been contemplated by the wrongdoers.

¹ See *infra*, p. 223, (Spader Case) and the Italian - Venezuelan Commission (Contini Case, Giacomini Case, Tagliaferro Case) in Volume X of these *Reports*.

BAINBRIDGE. *Commissioner* (for the Commission):

William Quirk, a native citizen of the United States, came to Venezuela in 1867, to engage in the business of raising sea-island cotton. He first rented a small plantation known as "Guayabite," which he worked successfully for about eighteen months. Satisfied that the soil and climate of Venezuela were adapted to the culture of a fine quality of cotton, he succeeded in April, 1869, in interesting several merchants of Caracas, who advanced him money, with the aid of which in that year he raised a profitable crop, and returned the borrowed capital with interest at 12 per cent.

In the latter part of 1869, the firm of H. L. Boulton & Co., of Caracas, contracted with Mr. Quirk to raise sea-island cotton on a larger scale. The agreement was that Boulton & Co. were to provide Quirk with sufficient capital which, added to his own, would enable them to raise the crop and ship it to Liverpool, the net proceeds to be divided equally between them. Pursuant to this agreement a part of the estate known as "Tocorón" in the State of Aragua was rented. Boulton & Co. state:

"Upon this property we found nothing but a house in a very dilapidated condition and the lands most suited to us in a state of forest, for the most part, and the rest covered with tall grass, called gamblot. The first thing we had to do was to make the house habitable for Quirk and his family, then fence in our property, cut down the forest, pluck up the gamblot by the roots, so that it should not destroy the cotton, and repair to a certain extent, sufficiently to preserve our crop, the water courses."

They brought from the United States all the necessary implements and machinery and thirty-four laborers familiar with the methods of cotton raising. The prospects were so favorable that Boulton & Co. finally agreed with Quirk to continue the planting of cotton for three years, two of which they were to participate in and the third to be for Quirk's sole account. On April 19, 1871, they had already taken off the principal part of the crop and were preparing to take in a second, and arrangements were entered into to plant the crop of 1872.

This was the situation when on April 19, 1871, about 300 regular soldiers under the command of General Rodriguez, and constituting part of the army of General Alcántara, the civil and military governor of the State of Aragua, came to Tocorón, took prisoner and tied with a rope Quirk's bookkeeper; took from the stables 6 horses and a mule belonging to Quirk; entered the dwelling house, which they searched; used threatening and abusive language toward Quirk and his family; compelled his wife to deliver up claimant's revolver, and then left the premises, threatening to return and kill the claimant and destroy the place. Mr. Quirk claimed the protection of his flag and besought the officer in command to desist, but was told by the latter that he was "carrying out strictly the orders of General Alcántara." After this outrage Quirk considered it unsafe for himself or his family to remain at Tocorón, and he left the next day for Caracas. There he claimed the protection of the President, General Guzmán Blanco, who told him that he could not interfere with or control General Alcántara. Quirk then returned to Tocorón, disposed of his household furniture at a sacrifice, and brought to Caracas his machinery, farming utensils, and his American employees. An inventory and appraisalment of the immovable property on the plantation was made on May 5, 1871, by order of the local court, and a valuation placed thereon of 21,265 pesos. The property taken by the troops on April 19 was valued at 1,725 pesos. In June, 1871, Mr. Quirk returned with his family to the United States, where he died on May 25, 1896.

On November 4, 1871, the Government of the United States, through its legation at Caracas, presented to the Venezuelan Government a claim on behalf of William Quirk for the losses and injuries sustained by him as a result of the events above narrated. The claim was the subject of an extended diplomatic correspondence between the two Governments, but no settlement thereof was ever reached.

The United States now presents to this Commission, on behalf of Frances Irene Roberts, administratrix of the estate and sole heir at law of William Quirk, deceased, a claim for the crop and immovable property at Tocorón, based upon the appraisal made in May, 1871; for the value of the property taken away by the troops on April 19, 1871; for the loss upon household and other furniture; for the profit that would have been made on the crop of 1871, and for indirect losses; said claim amounting in the aggregate to the sum of \$ 187,168.03.

The learned counsel for Venezuela in his answer does not controvert the main facts upon which this claim rests, but he raises the following objections:

1. That it does not appear from the proof adduced that the Venezuelan soldiers who caused the injury obeyed orders of their superior officers or that the latter could have prevented the injury; and that therefore the responsibility of the authors of the deed ought to have been first followed up.

2. That Mr. Quirk was only the manager of the estate for Boulton & Co., and that he ought, therefore, in order to fix equitably the amount of the claim, to have produced the contract which he had entered into with said firm.

3. That the claim is barred by the lapse of time.

It is probably true that acts of pillage committed by soldiers absent from their regiments and not under the direct command of their officers do not affect the responsibility of their Government, and that such acts are considered as common crimes.¹ But this was not the fact here. Quirk complained on the day following the outrage directly to General Alcántara, and stated to him that the officer commanding the soldiers had replied to his appeal that his property and himself be respected, that he (the officer) was "carrying out strictly the orders of General Alcántara." It is clear from all the evidence that the troops were acting directly under the command of General Rodriguez, who in turn was acting directly under the orders of the civil and military governor of the State.

The second objection was also raised by the Venezuelan Government in the course of the diplomatic correspondence regarding this claim. The United States minister in a note dated April 30, 1872, addressed to the minister of foreign relations, transmitted a letter to him from Messrs. Boulton & Co., setting forth that no written contract existed between them and Mr. Quirk. The learned counsel for the United States attaches to his replication in this case a letter of Boulton & Co., dated January 9, 1872, addressed to the United States minister at Caracas, Mr. Pile, showing the arrangement with Quirk to be that already herein set forth. It provides for a joint enterprise in the raising of sea-island cotton in Venezuela on a somewhat extended scale. Boulton & Co. were to put into the enterprise the principal part of the capital, and were to receive in return not interest on money loaned, but profits produced by capital invested. Quirk was to add thereto his more limited capital, as well as his wider knowledge and experience of the business in a general super-

¹ See the Netherland - Venezuelan Commission (Henriquez Case) in Volume X of these *Reports*.

vision of the enterprise, and to receive in return not wages or salary for services rendered, but a moiety of the net proceeds of the crop produced.

The Commission has jurisdiction over all claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments. This claim has remained unsettled for over thirty years. It was diligently prosecuted by the Government of the United States in a diplomatic correspondence extending from November 4, 1871, to April 22, 1875, but no final agreement upon the subject was ever reached. The claim arose subsequent to the Commission of 1866, and it did not fall within the jurisdiction of the Commission of 1889. There has been no opportunity for its adjudication by arbitration prior to its submission here. It was brought to the attention of the Venezuelan Government within a few days after its inception. The essential facts which fix the liability of Venezuela were not then and are not now denied. The contention that this claim is barred by the lapse of time would, if admitted, allow the Venezuelan Government to reap advantage from its own wrong in failing to make just reparation to Mr. Quirk at the time the claim arose.

The questions for determination here are the fact of Mr. Quirk's individual loss or injury, the liability of the Venezuelan Government therefor, and the amount, if any, of compensation due.

It is urged that the relation existing between Quirk and Boulton & Co. was that of debtor and creditor. But the tenor of Boulton & Co.'s letter introduced in evidence hardly sustains this contention. The interests of each in the joint enterprise appear to have been distinct and are so regarded in this decision. Boulton & Co. state that they make "no mention of their own losses," as they prefer to put forth "no claim in their own name against the Government of Venezuela." The citizenship of Boulton & Co. is not shown in evidence, and this Commission can not assume jurisdiction of any claim for their losses put forth in the name of a citizen of the United States.

On the other hand, Mr. Quirk was not merely the manager of Boulton & Co. He invested his own capital in the enterprise and was entitled to one-half the profits. The specific amount of his investment is not stated, but from all the evidence it is believed that a reasonably accurate estimate of his pecuniary losses can be made. The property taken by the troops on April 19, 1871, is claimed as his own, and its value is proved to have been 1,725 pesos. For loss on his furniture and his personal expenses he claims the sum of 5,000 pesos. It appears from Boulton & Co.'s letter that on the date of the injury the principal part of the crop of 1871 had been taken off and preparations were then making for the second crop. An allowance of 2,000 pesos is believed to be a reasonable valuation of Mr. Quirk's share in the profits of this crop. Upon the total sum of 8,725 pesos, interest is allowed at the rate of 3 per cent per annum from January 1, 1872, to December 31, 1903, making the sum of 17,100 pesos equivalent to the sum of \$ 13,154.61 United States gold.

But the responsibility of Venezuela does not end here. The testimony is uniformly to the effect that Mr. Quirk was a peaceable and law-abiding man, engaged in an enterprise of practical benefit to the State as well as to himself. Even General Alcántara on April 27, 1871, certifies to Quirk's "perfect impartial and circumspect conduct," as pertaining to his condition as a foreigner. The evidence is equally clear and uncontroverted that the attack upon him and his family was wholly without justification or excuse. The act was committed by duly constituted military authorities of the Government. It was never, so far as the evidence shows, disavowed or the guilty parties punished. Under these circumstances well established rules of international law fix a liability

beyond that of compensation for the direct losses sustained. Other consequences are presumed to have been in the contemplation of the parties committing the wrongful acts and in that of the Government whose agents they were. The derangement of Mr. Quirk's plans, the interference with his favorable prospects, his loss of credit and business, are all proper elements to be considered in the compensation to be allowed for the injury he sustained.

To the amount hereinbefore designated is added, in view of the considerations above mentioned, the sum of \$ 5,000. An award will therefore be made in this claim for the sum of \$ 18,154.61 in gold coin of the United States.

JARVIS CASE

Payment of bonds issued in consideration of services rendered in support of an unsuccessful revolution against the constituted government of a country with which the United States is at peace, cannot be enforced.

A subsequent contract made in aid or furtherance of the execution of one infected with illegality, partakes of its nature, rests upon an illegal consideration, and is equally in violation of the law.

The decision of the political department of the United States Government that no conclusive evidence as to the existence of a *de facto* government exists, must be accorded great weight as to the fact, and in any event is conclusive upon its own citizens.

BAINBRIDGE, *Commissioner* (for the Commission):

The memorial states:

1. That on or about the 14th day of April, 1863, the Republic of Venezuela did, for value received, duly make, execute, and deliver unto one Nathaniel Jarvis, a native citizen of the United States, its bonds or certificates of indebtedness in the amount of \$ 81,000, consisting of 81 bonds of \$ 1,000 each, bearing interest at the rate of 7 per cent per annum, payable semiannually, part thereof maturing within five years from the date thereof and the balance within ten years from said date.

2. That thereafter the said Nathaniel Jarvis, being then still the lawful holder and owner thereof, did, for value, duly indorse and deliver the aforesaid bonds unto his nephew, Nathaniel Jarvis, jr., a native citizen of the United States, who remained the lawful owner and holder thereof until the time of his death, which occurred on the 10th day of January, 1901; that the said Nathaniel Jarvis, jr., left a last will and testament, by which he devised and bequeathed all his property to his two daughters, the claimants herein, whereby said claimants became the lawful owners and holders of said bonds.

3. That said bonds were at their maturity duly presented for payment, but that payment of both principal and interest has been most unjustly withheld from the claimants and their predecessors in interest by the Republic of Venezuela, without any legal, equitable, or moral excuse or justification, and that there was on April 14, 1903, justly due and owing to claimants by the Republic of Venezuela on the said bonds the sum of \$ 307,800, principal and simple interest.

4. That no other person has any interest in the claim, excepting that claimants' attorney and counsel, Anderson Price, and one Charles N. Dally are contingently entitled for services to a share or part of the recovery, and that 26 of said bonds have been lost or mislaid and are not now in the possession of claimants.