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ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Jarvis Case

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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.

The bonds upon which this claim is based are in the following form;

[Translation]

REPUBLIC OF VENEZUELA

Treasury of the Province of Caracas.

For 1,000 dollars.

Bond in favor of Mr. Nathaniel Jarvis, or to his order, for one thousand dollars, money of the United States, payable in the term of five (ten) years counted from this date.

The interest at the rate of seven per cent per annum, which may accrue to the aforesaid sum, shall be paid every six months, the whole in conformity with the resolution of the treasury department issued to-day.

Caracas, April 14, 1863.

The Comptroller

A. EYZAGUIRRE

The Treasurer

M. R. LANDS

The resolution referred to in the bonds is in the following terms:

DEPARTMENT OF THE TREASURY,

Caracas, April 14, 1863.

Resolved, It appears from the proceedings that Mr. Nathaniel Jarvis, a citizen of the United States of North America, lent to His Excellency Gen. José Antonio Páez, in 1849, the sum of 23,500 hard dollars, in the value of a steamer named *Jackson* or *Buena Vista*; and also, that of 15,450 hard dollars in the amount of 3,000 equipments and 100,000 balled cartridges, the payment moreover having been stipulated with said Jarvis of the amount of 2,458 hard dollars, for various indemnities, all amounting to the sum of 41,408 hard dollars. And the Government, considering that the service rendered by Mr. Jarvis in the period mentioned was very opportune, since its object tended to defend the cause of morality under the auspices of the illustrious citizen, overthrowing the ominous domination that oppressed the Republic, and, moreover, that it would not be just or right that that foreigner who so generously contributed to aid, with uncommon disinterestedness, the triumph of the same cause, whose principles this day prevail under the administration of a great number of citizens who fought for it, should suffer damages for the default of the payment of a claim, to a certain point sacred; and, finally, that the application of said objects to the end designed is justified, the Government resolves that the credit which Mr. Nathaniel Jarvis claims, with, moreover, the interest of 7 per cent per annum, be admitted. Instruct the auditor-general to notify the treasury of this province to accredit in its account the sum expressed of 41,408 hard dollars, and the interest previous to the liquidation thereof, which shall be satisfied when the embarrassed circumstances of the national exchequer will permit it.

For His Excellency:

ROJAS

It is a copy.

The subdirector of the department of the treasury.

J. A. PEREZ

Briefly stated, the facts are that Gen. José Antonio Páez, who had been from 1830 to 1838 the first President of Venezuela, was in 1849 in exile. In that year he undertook an expedition to overthrow the then existing Government of Venezuela. It was in aid of this enterprise that Nathaniel Jarvis, a citizen of the United States, rendered General Páez the opportune service referred to in the foregoing resolution, in the loan of the steamer *Jackson* or *Buena Vista*, the munitions of war and advances of money designated. But the expedition was unsuccessful, and the steamer, munitions, and General Páez

himself were captured by the Government within a few weeks. Páez was imprisoned for a time and then was again sent out of the country. He went to New York where he remained until 1858, when he was invited to return to Venezuela. In 1860 he was accredited as minister to the United States. Returning to Venezuela in 1861 he was, on August 29, proclaimed at a public meeting of the citizens of Caracas "supreme civil and military chief of the Republic."

On September 10, 1861, he took possession of the Government as supreme chief of Venezuela and issued a decree containing the following:

The people of Caracas, to whom entire liberty was left to deliberate in the use of their sovereignty, spontaneously ratified this vote and appointed me civil and military chief of the Republic with full power to pacify and reconstruct it under the popular republican form. At La Victoria I was met by the commission sent to present me the vote of the capital (Caracas) and to request my acceptance. But I feel satisfied, fully satisfied, with the uniformity of the vote of Caracas and of this province (Caracas). I am still ignorant of the will of the Republic. National opinion is, and has always been, the guide of my conduct.

The Páez government continued until June, 1863. It was never recognized by the United States as the government of Venezuela. In a dispatch to Minister Culver, dated November 19, 1862, Mr. Seward, Secretary of State, said, referring to the disordered condition of Venezuela:

The United States deem it their duty to discourage that (revolutionary) spirit so far as it can be done by standing entirely aloof from all such domestic controversies until, in each case, the State immediately concerned, shall unmistakably prove that the government which claims to represent it is fully accepted and peacefully maintained by the people thereof.

And furthermore:

This Government has thus far seen no such conclusive evidence that the administration you have recognized (i. e., the Páez government) is the act of the Venezuelan State as to justify acknowledgment thereof by this Government.

On April 24, 1863, ten days after the Jarvis bonds were issued, the treaty of Coche was signed between the representatives of Páez and Falcón providing for a national assembly, which convened on June 17 following and appointed General Falcón President. The Falcón government was subsequently officially recognized by the United States.

It is to be observed at the outset of the consideration of this claim that the bonds themselves show that they were issued "in conformity with the resolution of the Treasury Department," issued on the same date. The resolution thus referred to in the bonds states that the consideration upon which they were based was the opportune service rendered by Mr. Jarvis to General Páez in 1849, which service "tended to defend the cause of morality under the auspices of the illustrious citizen, *overthrowing the ominous domination that oppressed the Republic,*" and declares that "it would not be just nor right that that foreigner who so *generously contributed to aid*, with uncommon disinterestedness, the triumph of the same cause, whose principles this day prevail under the administration of a great number of citizens who fought for it, should suffer damages for the default of the payment of a claim to a certain point sacred." In view of this fact it is idle to argue that "if an inquiry could now be made as to whether the debt represented by the Jarvis bonds was a legal one it would establish a dangerous precedent," and that "no one would be safe in buying and selling national bonds." The Jarvis bonds and the resolution of April 14, 1863, are indissolubly united, and, construed together, inform the world of the insufficient basis upon which they stand.

These bonds, then, were issued in consideration of the opportune service and generous aid rendered by Nathaniel Jarvis to General Páez in 1849, in the latter's attempt to overthrow the then existing Government of Venezuela. There is not the slightest doubt about that. Nor is there the slightest doubt but that Mr. Jarvis's opportune service and generous aid to General Páez in 1849 were in violation of his duty to his country and in disobedience to its laws. Under the Constitution of the United States a treaty between the United States and a foreign government is part of the supreme law of the land. In 1849 the treaty concluded January 20, 1836, between the United States and Venezuela was in full force and obligatory upon both nations; and by the first article of that treaty it was declared that —

there shall be a perfect, firm, and inviolable peace and sincere friendship between the United States of America and the Republic of Venezuela, in all the extent of their possessions and territories, and between their people and citizens, respectively, without distinction of persons or places.¹

The only Venezuela known to international law in 1849 was the recognized Government of that country and with it the Government of the United States was at peace under the treaty. This treaty was binding upon Mr. Jarvis as a citizen of the United States, and he could lawfully do no act nor make any contract in violation of its provisions.

It was also provided in the second section of Article XXXIV of the treaty of January 20, 1836, that —

If any one or more of the citizens of either party shall infringe any of the articles of this treaty, such citizen shall be held personally responsible for the same, and harmony and good correspondence between the two nations shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation.²

It would seem to be a fair inference from the wording of a resolution of April 14, 1863, and from all the evidence here presented, that Jarvis furnished General Páez with the ship *Jackson*, the 3,000 equipments, and 100,000 balled cartridges from the United States. Referring to his preparations for the expedition of 1849, General Páez in his autobiography says (vol. 2, p. 469):

Además de los recursos indicados, contaba con un buen vapor de guerra y fusiles que debían venir de los Estados Unidos.

It is undisputable that Nathaniel Jarvis, a citizen of the United States, and presumably within its jurisdiction, supplied General Páez with a vessel and munitions of war intended for use in a military expedition or enterprise against a Government and people with whom the United States Government was at peace. The inference is strong, if not irresistible, that Jarvis violated the neutrality laws of the United States in such measure as to have rendered himself liable to a criminal prosecution therefor. (Rev. Stats., secs. 5283 and 5286.)

The language of the resolution of April 14, 1863, with regard to Mr. Jarvis's opportune service and generous contribution to the aid of the Páez cause in 1849, precludes the consideration of the original transaction as a mere commercial venture on the part of Jarvis, such as might have been undertaken without a violation of the laws of neutrality. Mr. Jarvis was, according to the evidence, in Caracas at the time the bonds were issued, and the resolution undoubtedly expresses the basis on which he was then urging his claim as well as the true basis of the original obligation.

¹ Treaties and Conventions between the U. S. and Other Powers, 1776-1887, p. 1119.

² *Idem*, p. 1128.

It is not deemed necessary, however, to determine whether Jarvis violated the letter as well as the spirit of the neutrality laws of the United States. He did violate the treaty then existing between the United States and Venezuela. He did violate the established rule of international law, that when two nations are at peace all the subjects or citizens of each are bound to commit no act of hostility against the other.

In *Dewutz v. Hendricks*, 9 Moore C. B., 586 (S. C. 2 Bing., 314), it was held to be contrary to the law of nations for persons residing in England to enter into engagements to raise money, by way of loan, for the purpose of supporting subjects of a foreign state in arms against a government in friendship with England, and no right of action attached upon any such contract.

In *Kennett v. Chambers* (14 How., 38), the Supreme Court of the United States held that a contract by an inhabitant of Texas to convey land in that country to citizens of the United States, in consideration of advances of money made by them in the State of Ohio, to enable him to raise men and procure arms to carry on the war with Mexico, the independence of Texas not having been at that time acknowledged by the United States, was contrary to the latter's national obligations to Mexico, violated the public policy of the United States, and could not be specifically enforced by a court of the United States. In the course of his opinion in this case, Chief Justice Taney said:

The intercourse of this country with foreign nations, and its policy in regard to them, are placed by the Constitution of the United States in the hands of the Government, and its decisions upon these subjects are obligatory upon every citizen of the Union. He is bound to be at war with the nation against which the war-making power has declared war and equally bound to commit no act of hostility against a nation with which the Government is in amity and friendship. This principle is universally acknowledged by the laws of nations. It lies at the foundation of all government, as there could be no social order or peaceful relations between the citizens of different countries without it. It is, however, more emphatically true in relation to citizens of the United States. For, as the sovereignty resides in the people, every citizen is a portion of it and is himself personally bound by the laws which the representatives of the sovereignty may pass, or the treaties into which they may enter, within the scope of their delegated authority. And when that authority has plighted its faith to another nation that there shall be peace and friendship between the citizens of the two countries, every citizen of the United States is equally and personally pledged. The compact is made by the department of the Government upon which he himself has agreed to confer the power. It is his own personal compact as a portion of the sovereignty in whose behalf it is made. And he can do no act, nor enter into any agreement to promote or encourage revolt or hostilities against the territories of a country with which our Government is pledged by treaty to be at peace, without a breach of his duty as a citizen, and the breach of the faith pledged to the foreign nation. And if he does so, he can not claim the aid of a court of justice to enforce it. The appellants say in their contract that they were induced to advance the money by the desire to promote the cause of freedom. But our own freedom can not be preserved without obedience to our own laws, nor social order preserved if the judicial branch of the Government countenanced and sustained contracts made in violation of the duties which the law imposes, or in contravention of the known and established policy of the political department, acting within the limits of its constitutional power.

But it is strongly urged here that the nature of the original consideration is immaterial; that the claim is upon the bonds of 1863, not upon the contract of 1849; and that the act of the Venezuelan Government in 1863 in recognizing the obligation and issuing its bonds in payment thereof was the sovereign act of an independent nation and was final and conclusive and binding upon the Venezuelan people and all succeeding governments of that country.

Differences of opinion may possibly exist as to the political ethics which would justify a temporary ruler in paying his personal debts with national obligations; but certainly none can exist as to the legal proposition that a subsequent contract made in aid and 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 opportune service rendered by Jarvis in 1849 in violation of law created no legal obligation on the part of Páez, much less on the part of the Government of Venezuela. And a past consideration which did not raise an obligation at the time it was furnished will support no promise whatever. (3 Q.B., 234; Harriman on Contracts, 33; Bouvier's Law Dict., title Consideration.)

Essentially the argument of claimants is that the bonds are specialties, importing a valid consideration, and that their issuance as the act of the Venezuelan Government is binding upon it. The claimants have endeavored to show that the power in virtue of which the bonds were issued was the medium through which the authority of the States was conveyed and by which it was bound. In this they have failed. So far as the claimants are concerned, the issuance of the Jarvis bonds was not the "act of the Venezuelan Government." It is doubtless true that the question whether the Páez government was or was not the de facto government of Venezuela at the time the bonds were issued is one of fact. But the decision of the political department of the United States Government on November 19, 1862, that there was no such conclusive evidence that the Páez government was fully accepted and peacefully maintained by the people of Venezuela as to entitle it to recognition must be accorded great weight as to the fact, *and is in any event conclusive upon its own citizens*. And certainly the evidence that the Páez government was "submitted to by the great body of the people" was no stronger on April 14, 1863, when the Jarvis bonds were issued and, when as a matter of historical fact, it was encompassed by its enemies and tottering to its fall.

The language employed by Mr. Hassaurek in his opinion in the cases of the *Medea* and *Good Return* (3 Moore Int. Arb., 2739), decided by the United States and Ecuadorian Commission of 1865, may not inappropriately be quoted here. He says:

A party who asks for redress must present himself with clean hands. His cause of action must not be based on an offense against the very authority to whom he appeals for redress. It would be against all public morality and against the policy of all legislation if the United States should uphold or endeavor to enforce a claim founded on a violation of their own laws and treaties and on the perpetration of outrages committed by an American citizen against the subjects and commerce of friendly nations. * * * As the American Commissioner I could not sanction, uphold, and reward indirectly what the law of my country directly prohibits. * * * He who engages in an expedition prohibited by the laws of his country must take the consequences. He may win or he may lose; but that is his own risk. He can not, in case of loss, seek indemnity through the instrumentality of the government against which he has offended.

The claim must be disallowed.

WOODRUFF CASE

(By the Umpire):

A provision in a contract made with a nation to the effect that all doubts and controversies, arising by virtue of the contract, should be referred to the local courts of Venezuela and decided according to its laws, and that such doubts or controversies, as well as the decisions of the Venezuelan courts thereon, shall never be