

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

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**RECUEIL DES SENTENCES  
ARBITRALES**

**Bance Case**

1903-1905

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(1) Value of goods seized as per inventory . . . . .	\$ 2,433.97
(2) Amount lost in advances made to balata gatherers who ran away . . . . .	5,974.07
(3) Value of the balata gum stolen by said men, 64,800 pounds, at 50 cents per pound . . . . .	32,400.00
(4) Salaries paid to employees since December, 1900. to February, 1901, 3 months, at \$ 225 per month . . . . .	675.00
(5) One breech-loading shotgun and one revolver taken from my representative . . . . .	135.00
(6) Expenses occasioned by the case, such as traveling . . . . .	2,500.00
(7) Attorney's fees in Ciudad Bolivar, as per receipt, 7,800 bolivars . . . . .	1,500.00
(8) Indemnity for personal time, attention, inconvenience, etc., occasioned in defense of the case . . . . .	10,000.00
(9) Indemnity for the loss of the gathering season 1901, for which arrangements and contracts had been made . . . . .	52,000.00
(10) Indemnity for the loss of all business prospects of my enterprise at Amacura . . . . .	100,000.00
	207,618.04
Or less amount obtained by sale of goods remaining, sold by order of the court of Hacienda, paid my agent at Ciudad Bolivar, November 4, 1901 . . . . .	936.92
	206,681.12

The learned counsel for Venezuela interposes as a defense to this claim that the proceeding of the revenue officers in seizing the claimant's goods was in perfect accord with local legislation. But it is evident from the record in the case that a reasonable inquiry would have disclosed the fact that Monnot had imported the goods prior to the time the Government of Venezuela took possession of the territory. Mr. Monnot's representative testifies that at the time he made "energetic protests" against the seizure.

Only partial restitution was made to the claimant after the dismissal of the case. He is entitled to compensation for the proximate and direct consequences of the wrongful seizure of his property. In the similar case of *Smith v. Mexico*, decided by the United States and Mexican Commission of 1839 (4 Moore International Arbitrations, 3374), an award was made for the value of property lost or destroyed, pending the judicial proceedings, with a reasonable mercantile profit thereon.

Items 1, 4, and 5 of his claim are allowed. To this amount is added the sum of \$ 2,000 for expenses incurred by him in consequence of the suit. From this total of \$ 5,233.97 must be deducted the sum of \$ 936.92, the amount obtained by sale of the goods restored by order of the court. Interest is allowed upon the balance of \$ 4,297.05, at 3 per cent per annum, from December 4, 1900, to December 31, 1903, the anticipated date of the final award by this Commission.

As to the remaining items of the claim, the evidence is insufficient to establish any liability therefor on the part of the Government of Venezuela, and they are hereby disallowed.

BANCE CASE

A receiver in bankruptcy only acts as administrator of the property of the bankrupt party, and individual credits can not be considered as the private property of any creditor.

Claim dismissed without prejudice.

PAUL, *Commissioner* (for the Commission):

Dr. J. B. Bance, as receiver in the bankruptcy of Ernesto Capriles, claims from the Government of Venezuela, on behalf of Weeks, Potter & Co., Seabury

& Johnson, and Johnson & Johnson, American creditors of this bankruptcy, the sum of 15,576 bolivars, which is the proportionate amount corresponding to them in a credit of 200,000 bolivars, held by Capriles against the Venezuelan Government, which credit is now judicially in the hands of the receiver for its collection.

The failure only deprives the bankrupt party of the administration of his property, which then goes to his creditors, represented by the receiver, but in no way does it alter the essence of the property, rights, and actions, which continue to belong to the said bankrupt until an agreement is arrived at, and, failing this, until the final liquidation and adjudication of the property amongst the creditors in proportion to their claims and according to their rank as judicially classified.

Ernesto Capriles, being a Venezuelan, all his property, rights, actions, and liabilities in the bankruptcy case are governed by the Venezuelan law, and are subject to the procedure and decision of the tribunal under which the bankruptcy is investigated.

The receiver, representing the creditors, only acts as administrator of the property of the bankrupt party, and it is not possible to consider any individual credits from the total estate as the private property of any one creditor.

For the above-mentioned reasons the collection of a credit originally owned and still owned by a Venezuelan citizen can not be admitted before this Commission, and therefore this claim must be dismissed for want of jurisdiction, without prejudice to the claimant as representative of the creditors of Capriles in his capacity of receiver.

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#### UPTON CASE

Prayer that Government be compelled to acknowledge on its records claimant's performance with requisites of his contract with Government dismissed for want of jurisdiction.

The taking of private property for public use involves an obligation to compensate the owner.

A person assumes all risks, as well as advantages, of his residence abroad.

BAINBRIDGE, *Commissioner* (for the Commission):

On December 23, 1892, the Government of Venezuela granted a concession to José Trinidad Madriz for the "canalización y navegación por vapores calado del Río Tocuyo," and on the day following Madriz assigned said contract and concession to José Rafael Ricart. On May 1, 1897, the claimant herein, a native citizen of the United States, bought from Ricart, previously authorized by the Government to make the transfer, said concession and all rights and privileges connected therewith and granted thereby. It is alleged that all the foregoing instruments were duly recorded as provided by law.

The claimant avers that the concession referred to is of great value, to wit, more than \$ 1,000,000, and that if in the future by reason of insurrection or other cause the Government of Venezuela shall violate the terms of said contract, or revoke it in fact or by obstruction to its operation, he would be damaged in that sum. He states, however, that he has heretofore ever found the Government inclined to recognize and in fact recognizing its obligations under and the validity of said contract. He alleges that he has fully complied with all the terms, conditions, and requirements of the concession on his part.

He asks as a preliminary item of his claim that this Commission shall establish as of record for the future the fact and decision confirming the acts of memo-