

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Upton Case

1903-1905

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& 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.

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-

rialist, and directing the Government of Venezuela to make acknowledgment upon its official records of his compliance with the terms of the contract.

In regard to this item of the claim, it is sufficient to state that the Commission has no jurisdiction to grant the relief asked. It is clearly not a "claim" within the meaning and intent of the protocol of February 17, 1903, constituting this Commission.

The remaining items of the claim are enumerated as follows:

(a) Loss of the launch <i>Protector</i>	\$ 3,500.00
(b) Loss of steel lighter	4,002.25
(c) Loss of steamer <i>Parupano</i>	8,714.75
(d) Loss of 575 sacks of coffee and all chattels at El Salto de Diablo	10,015.00
(e) Loss of money by expulsion of colonists	3,988.43
Total	30,220.43

(a) The steam launch *Protector* was bought by the claimant for his use in making trips from Puerto Cabello to the Tocuyo River and along the coast and had been thus used for a year or more. The boat was 40 feet long, 8½ feet beam, and 3½ feet draft. In 1900, while the claimant was in the United States, certain revolutionists armed and equipped a steamer on Lake Valencia and used her to molest the Government, whereupon Gen. Federico Escarra, administrator of the maritime customs at Puerto Cabello, seized the *Protector* against the protest of claimant's agent for the purpose of putting her on flat cars on the English railroad to take her to Lake Valencia, where, armed with Government guns and troops, she was to be used against the steamer of the revolutionary party. In transporting the launch to the railway she was so badly damaged by careless or inefficient handling as to be rendered totally useless.

Claimant alleges that she could not be repaired at Puerto Cabello, and that although he has diligently endeavored to do so, he has been unable to sell the boat or any part thereof; and he claims for her destruction the sum of \$ 3,500.

It appears from the evidence that the Government paid the expenses of removing the launch from the streets of Puerto Cabello to a vacant lot where, it is alleged, the boat has remained absolutely useless ever since.

The seizure of the launch may have been justified by the necessities of the State, but it was a taking of private property for public use and involved the obligation of just compensation to the owner. The evidence is sufficient as to the fact of the taking of the boat and that as a result thereof it was rendered useless. But as the launch appears to have some value, and as it still remains the property of the claimant, an award of \$ 3,000, with interest thereon at 3 per cent per annum from October 15, 1900, to December 31, 1903, is hereby made as compensation for the loss or damage sustained by the claimant upon this item.

(b) The claimant states that he is the owner of a duplicate steel hull with boiler intended for a flat-bottomed stern-wheel steamer or for use as a lighter, which was, in 1902, mounted on blocks and covered in the yard of the electric-light company at Puerto Cabello. In July of that year the military authorities of the Government, in order to resist an attack by revolutionists upon the city, constructed a line of barricades, and finding the said hull near the line of defense, filled it with, and piled thereon and about it, stones, rocks, and sand of great weight. It was discovered later that the weight thus put upon it greatly damaged the hull, and, upon complaint of the agent of the claimant, the stones, sand bags, etc., were removed by the Venezuelan authorities.

Memorialist asserts that said hull was rendered useless and that without it the boiler is a complete loss, and he asks an award in the sum of \$ 4,002.25.

The evidence of various parties cognizant of the facts is presented showing the condition of the hull prior to its being used in the manner and for the purpose above described and the injury sustained, the witnesses stating that the hull was rendered useless for the purpose for which it was intended, and that the repairs will cost as much as to build a new one.

The same principle is applicable here as in the foregoing item. The right of the State, under the stress of necessity, to appropriate private property for public use is unquestioned, but always with the corresponding obligation to make just compensation to the owner thereof. It is believed, however, from all the evidence here presented, that the sum of \$ 2,000, with interest thereon at 3 per cent per annum from July 15, 1902, to December 31, 1903, will fully compensate Mr. Upton for whatever loss or damage he has sustained on this item of his claim.

As to the remaining items of this claim it is evident from the claimant's own statement that the losses set forth in his memorial arose from the disturbed condition of the country, due to the civil war then existing in Venezuela, and not from any acts of the Venezuelan Government or its agents, specially directed against the claimant or his property. Under these circumstances the claimant's privileges and immunities were not different from those of other inhabitants of the country. He must be held, in going into a foreign country, to have voluntarily assumed the risks as well as the advantages of his residence there. Neither claimant nor his property can be exempted from the evils incident to a state of war to which all other persons and property within the same territory were exposed. As to these items, therefore, the claim must be disallowed.

DEL GENOVESE CASE

Award made in favor of claimant for back payments and for work done under contractual obligation, but no interest allowed on delayed payments because of written waiver of claimant.

PAÚL, *Commissioner* (for the Commission):

This claim is based on a breach of a contract entered into by Virgilio del Genovese, the claimant herein, and the Government of Venezuela, through its department of public works, on the 26th day of January, 1897, for the extension of West Ninth street, in this city.

The various items of the claim are as follows:

	<i>Bolwars</i>
First. Balance due, under contract, on account of sections first and second, completed and accepted, as per statement of director of the bureau of roads, etc., April 11, 1903	158,704.05
Second. Extra stonework and filling on sections first and second made necessary by increased length of culverts	32,370.53
Third. For work done to date of this claim (June 29, 1903) on section 3, which has not been fully completed because of failure on the part of the Government of Venezuela to make payments for completed works, as agreed, as follows:	
Total amount agreed to be paid on account of said section, as per article 3 of the contract.	203,358.51
Less amount necessary to complete unfinished portion of the work	4,000.00
	199,358.51