

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Turnbull. Manoa Company (Limited), and Orinoco Company (Limited) Cases

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the same time judge as to the validity or nullity of the same. To obtain said nullity the municipality should apply for a lawsuit to the competent tribunals.

The contract was not submitted to the National Congress in its regular sessions of 1894, for its approval or disapproval, as required by the constitution then in force, and required also by the one actually in force; but it is not just that said omission should be ascribed to the contractor, Rudloff, but to the national Executive, to whom the compliance of said formality corresponded.

It is evident that the Government of Venezuela owes the claimants an indemnification for having suddenly put a stop to a contract which their legator, Henry F. Rudloff, was carrying out; but the undersigned thinks that the amount they demand, of 3,698,801 bolivars, is exceedingly exaggerated, and he agrees to grant them an indemnification of \$75,745 United States gold.

TURNBULL, MANOA COMPANY (LIMITED), AND ORINOCO COMPANY
(LIMITED) CASES

(By the Umpire:)

A party to a contract containing a covenant obligating the other party to perform certain obligations, has no right to declare the contract null and void, and must apply to the courts to have it set aside.

In order that a party to a contract containing the clause that "any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic" may make a claim before an international tribunal for damages for its breach, he must first go before the local courts and obtain a judgment that this breach of the contract took place.

A contract containing the clause "any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic," can not be declared void by one of the parties thereto for the nonfulfillment of any of the covenants, and it remains legally existing until so declared by the local tribunals, and another contract made with another party to take effect in case the first contract should become void has no value unless the first contract has been declared by the local tribunals to be inoperative, and no damages will lie for the supposed breach of the second contract.

A claim based upon the payment to the government of a sum of money for rights which the government could not concede, and which rights the claimant was prevented from enjoying by said government, will be allowed for the sum so paid with legal interest from the date of payment.

(These claims were filed separately but grouped in the decision.)

BAINBRIDGE, *Commissioner* (claim referred to umpire):

On the 22nd day of September, 1883, a contract was celebrated in the city of Caracas, Venezuela, in the words and figures following, to wit:

[Translation]

The minister of fomento of the United States of Venezuela, duly authorized by the President of the Republic, of the one part, and Cyrenius C. Fitzgerald, resident of the Federal territory Yuruari, of the other part, have concluded the following contract:

ARTICLE I. The Government of the Republic concedes to Fitzgerald, his associates, assigns, and successors for the term of ninety-nine years, reckoning from the date of this contract, the exclusive right to develop the resources of those territories, being national property, which are hereinafter described.

(1) The island of Pedernales, situated to the south of the gulf of Paria, and formed by the gulf and the Pedernales and Quinina streams.

(2) The territory from the mouth of the Araguaio, the shore of the Atlantic Ocean, the waters above the Greater Araguaio to where it is joined by the Araguaito stream; from this point, following the Araguaito to the Orinoco, and thence the waters of the upper Orinoco, surrounding the island of Tortola, which will form part of the territory conceded, to the junction of the José stream with the Piacoa; from this point following the waters of the José stream to its source; thence in a straight line to the summit of the Imataca Range; from this summit following the sinuosities and more elevated summits of the ridge of Imataca to the limit of British Guayana; from this limit and along it toward the north to the shore of the Atlantic Ocean, to the mouth of the Araguaio, including the island of this name, and the others intermediate or situated in the delta of the Orinoco, and in contiguity with the shore of the said ocean. Moreover, and for an equal term, the exclusive right of establishing a colony for the purpose of developing the resources already known to exist, and those not yet developed of the same region, including asphalt and coal; for the purpose of establishing and cultivating on as high a scale as possible agriculture, breeding of cattle, and all other industries and manufactures which may be considered suitable, setting up for the purpose machinery for working the raw material, exploiting and developing to the utmost the resources of the colony.

ART. II. The Government of the Republic grant to the contractor, his associates, assigns, and successors, for the term expressed in the preceding article, the right of introduction of houses of iron or wood, with all their accessories, and of tools and of other utensils, chemical ingredients, and productions which the necessities of the colony may require; the use of machinery, the cultivation of industries, and the organization and development of those undertakings which may be formed, either by individuals or by companies which are accessory to or depending directly on the contractor or colonization company; the exportation of all the products, natural and industrial, of the colony; free navigation, exempt from all national or local taxes, of rivers, streams, lakes, and lagoons comprised in the concession, or which are naturally connected with it; moreover, the right of navigating the Orinoco, its tributaries and streams, in sailing vessels or steamships, for the transportation of seeds to the colony, for the purpose of agriculture, and cattle and other animals, for the purpose of food and of development of breeding; and, lastly, free traffic of the Orinoco, its streams and tributaries, for the vessels of the colony entering it and proceeding from abroad, and for those vessels which, either in ballast or laden, may cruise from one point of the colony to another.

ART. III. The Government of the Republic will establish two ports of entry at such points of the Colony as may be judged suitable, in conformity with the Treasury Code.

The vessels which touch at these ports, carrying merchandise for importation, and which, according to this contract and the laws of the Republic, is exempt from duties, can convey such merchandise to those points of the colony to which it is destined and load and unload according to the formalities of the law.

ART. IV. A title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the colony.

ART. V. Cyrenius C. Fitzgerald, his associates, assigns, or successors are bound:

(1) To commence the works of colonization within six months, counting from the date when this contract is approved by the Federal council in conformity with the law.

(2) To respect all private properties comprehended within the boundaries of the concession.

(3) To place no obstacle of any nature on the navigation of the rivers, streams, lakes, and lagoons, which shall be free to all.

(4) To pay 50,000 bolivars in coin for every 46,000 kilograms of sarrapia and cauche which may be gathered or exported from the colony.

(5) To establish a system of immigration which shall be increased in proportion to the growth of the industries.

(6) To promote the bringing within the law and civilization of the savage tribes which may wander within the territories conceded.

(7) To open out and establish such ways of communication as may be necessary.

(8) To arrange that the company of colonization shall formulate its statutes and establish its management in conformity with the law of Venezuela, and submit the same to the approbation of the Federal Executive, which shall promulgate them.

ART. VI. The other industries on which the law may impose transit duties shall pay those in the form duly prescribed.

ART. VII. The natural and industrial productions of the colony, distinct from those expressed in Article V, and which are burdened at the present time with other contracts, shall pay those duties which the most favored of those contracts may state.

ART. VIII. The Government of the Republic will organize the political, administrative and judicial system of the colony, also such armed body of police as the contractor or the company shall judge to be indispensable for the maintenance of the public order. The expense of the body of police to be borne by the contractor.

ART. IX. The Government of the Republic, for the term of twenty years, counting from the date of this contract, exempts the citizens of the colony from military service and from payment of imposts or taxes, local or national, on those industries which they may engage in.

ART. X. The Government of the Republic, if in its judgment it shall be necessary, shall grant to the contractor, his associates, assigns, or successors a further extension of six months for commencing the works of colonization.

ART. XI. Any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic.

Executed in duplicate, of one tenor and to the same effect, in Caracas, September 22, 1883.

Señor Heriberto Gordón signs this as attorney of Señor Cyrenius C. Fitzgerald, according to the power of attorney, a certified copy of which is annexed to this document.

[SEAL] M. CARABAÑO

Minister of Fomento

Heriberto GORDÓN

The foregoing contract was approved by the Congress on May 23rd, 1884, and a copy thereof with the approbation was published in the Official Gazette, No. 3257, on May 29th, 1884, and it was afterwards published in and among the laws and decrees of Venezuela. (Recopilación, Vol. XI, p. 98.)

On the 19th of February, 1884, an extension of six months was granted to Fitzgerald to commence the work of colonization, the extension to count from March 22 of that year. (Official Gazette, No. 3182.)

On June 14, 1884, Cyrenius C. Fitzgerald granted and assigned said contract-concession to the Manoa Company (Limited), a corporation created, organized and existing under and by virtue of the laws of the State of New York.

On August 24, 1884, one J. M. Laralde, government secretary, in the absence of the citizen governor of the territory of Delta, certifies to the arrival at Pedernales on that date of the North American steamer *Wandell*, with Mr. Thomas A. Kelly, superintendent of the Manoa Company (Limited), C. E. Fitzgerald, engineer of the same company, and other employees thereof.

On September 21, 1884, Luis Charbone, national fiscal supervisor, temporarily in charge of the government of the Federal territory of Delta, certified that the

Manoa Company (Limited) had commenced the erection of a building and to colonize at the mouth of the river Arature on the 10th of that month, "in conformity with what is established in the contract celebrated between the General Government and Mr. C. C. Fitzgerald on the date of the 22nd of September 1883."

On the 14th of November, 1884, the following certificate was given:

FEDERAL TERRITORY OF THE DELTA,
OFFICE OF THE GOVERNMENT OF THE TERRITORY.

I, Manuel M. Gallegos, governor of the Federal territory of the Delta, on petition of Mr. Thomas A. Kelly, resident administrator of the Manoa Company (Limited), domiciled in Brooklyn, Phoenix Building, 16 Court street, United States of America, certify that on the 24th of August of the present year arrived at this port on the steamer *Wandell* the above-mentioned Mr. Thomas A. Kelly, Mr. C. E. Fitzgerald, engineer of said company, and various employees of the same, so complying with the stipulations of article 5 and of the prorogation authorized on the 19th of February of this year of the contract celebrated with the Federal executive by Mr. C. C. Fitzgerald, of whom the above-mentioned Manoa Company is the successor.

Pedernales, November 14, 1884, 21st of the law and 26th of the Federation.

Manuel M. GALLEGOS

On the 7th of October, 1884, the following resolution was issued from the ministry of fomento (Official Gazette, No. 3345):

Resolved, The Cabinet having considered the solicitude of Mr. Heriberto Gordón, attorney for the Manoa Company (Limited), in which he asks, whether there is any contract, anterior or posterior, which impairs or limits the rights which the said company has acquired as successor to the contract celebrated with Mr. C. C. Fitzgerald on the 22d of September 1883, the President of the Republic has seen fit to declare that the Manoa Company (Limited) has perfect right in accordance with the contract to exploit the products which are to be found within the limits of the lands comprised in this concession.

Communicate it and publish it.

For the National Executive:

Jacinto LARA

In May, 1885, the Manoa Company (Limited) shipped by the brig *Hope* a consignment of about 338,068 kilograms of asphalt mining and refining machinery, material for houses and wharves, and a steam launch for work on piers, etc. Under date of May 23, 1885, the minister of fomento addressed a note to the minister of hacienda asking for order of exemption of duties on shipment per brig *Hope* under the terms of the Fitzgerald contract.

On March 4, 1885, the Manoa Company, by C. C. Fitzgerald, its president, notified the Venezuelan Government that the agitation of the boundary dispute between Great Britain and Venezuela seriously interfered with the plans of the company in the development of the concession. Fitzgerald stated that he had been notified by the agents of the British Government that the latter would not permit the development of the resources of or the establishment of industries in such part of the concession as was claimed by it, and would maintain a force for the purpose of hindering trespass thereon. In view of this Fitzgerald requested of the Venezuelan Government a clear statement of the guarantees to be expected in the future as to any interference with the company's rights because of such invasion, and that whatever the result of the negotiations between England and Venezuela, the time lost thereby by the company should not be counted against the company.

On the 1st day of January, 1886, Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary of the United States of Venezuela to various courts of Europe, on the one part, and of the other George Turnbull, American

citizen, residing in New York, 115 Broadway, and then in London, entered into a contract at Nice; *ad referendum*, of which articles 1 to 11 were identical with the articles of corresponding numbers in the Fitzgerald contract, with change of names of concessionary. Article 12 of the Turnbull contract is as follows:

This contract shall enter into vigor in case of becoming void through failure of compliance within the term fixed for this purpose of the contract celebrated with Mr. Cyrenius C. Fitzgerald the 22nd of September, 1883, for the exploitation of the same territory.

On the 9th of September 1886, the following resolution was issued from the ministry of fomento (Official Gazette, No. 3852):

UNITED STATES OF VENEZUELA,
MINISTER OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,

Caracas, September 9, 1886.

Twenty-third year of the law and twenty-eighth of the federation:

Resolved, Señor Heriberto Gordón, with power from C. C. Fitzgerald, celebrated on the 22d of September, 1883, with the National Government, a contract for the exploitation of the riches existing in lands of national property in the Great Delta, and the works ought to have been begun within six months from the aforesaid date. In spite of such time having elapsed without commencing the works the Government granted him an extension of time for the purpose; and inasmuch as said contractor has not fulfilled the obligations which he contracted, as stated in the report of the director of national riches, specifying in reference as to article 5 of the contract in question, the councilor in charge of the presidency of the Republic, having the affirmative vote of the Federal council, declares the insubsistency or annulment of the aforesaid contract.

Let it be communicated and published.

By the National Executive:

G. PAZ SANDOVAL

On the 10th of September, 1886, the following resolution was issued from the ministry of fomento (Official Gazette. No. 3852):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,

Caracas, September 10, 1886.

Twenty-third year of the law and twenty-eighth of the federation.

Resolved, By disposition of the citizen Federal councilor of the Republic and with the affirmative vote of the Federal council is approved the contract celebrated by the illustrious American, Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary of Venezuela to various courts of Europe, with Mr. George Turnbull for the exploitation of the Delta of the Orinoco, of the following tenor:

Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary of the United States of Venezuela to various courts of Europe of the one part, and of the other George Turnbull, American citizen, residing in New York, 115 Broadway, and at present in London, have settled and arranged to celebrate the following contract *ad referendum*:

(Here follow articles 1 to 11, inclusive, which are identical with the articles of corresponding numbers in the Fitzgerald concession, with change of names of concessionary.)

ART. 12. This contract shall go into effect in case of the becoming void through failure of compliance within the term fixed for this purpose of the contract celebrated

with Mr. Cyrenius C. Fitzgerald, the 22d day of September, 1883, for the exploitation of the same territory.

Done three of one tenor to a single effect in Nice the 1st of January, 1886.

GUZMÁN BLANCO

Geo. TURNBULL

[L. s.]

Let it be communicated and published.

For the Federal Executive:

G. PAZ SANDOVAL

The Guzmán Blanco-Turnbull contract was approved by act of Congress on the 28th of April, 1887 (Official Gazette, No. 4048).

On the 13th of March, 1888, the following resolution was issued from the ministry of fomento (Official Gazette, No. 4290:)

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,

Caracas, 13th of March, 1888.

Resolved, Señor George Turnbull having purchased 500 hectares of waste lands, situated on both banks of the Caño Corosimo, Manoa district of the Federal territory of Delta, and acquired the ownership, in conformity with the law, of the mine of iron denominated Imataca, situated in the said lands, the President of the Republic, with the vote of the Federal council declares, on the petition of the interested party, that the said mine and lands constitute a property apart from the concession made to said Turnbull according to the contract celebrated on the 1st of January, 1886, and consequently is not submitted to the conditions and obligations of the said contract, but is governed by the decree regulating the law of mines in force.

Let it be communicated and published.

For the Federal Executive:

Manuel FOMBONA PALACIO

On the 14th of March, 1888, the ministry of fomento issued the following document (Official Gazette, No. 4292):

The President of the Republic, with the vote of the Federal council:

Whereas it appears that Señor George Turnbull has applied to the Government to grant definite title of ownership of a mine of iron, which, by virtue of the right secured to him by article 23 of the decree regulating the law of the matter, he has accused before the governor of the Federal territory of Delta, which mine is found situated in the Manoa district of the same territory, 1,000 meters from the left margin of the Caño Corosimo starting from a point distant 2,500 meters from its debouchment in the Orinoco, upon a hill called Loma del Monte which runs east and west and whose geographical position is latitude north 8 degrees 29 minutes, longitude west 61 degrees 18 minutes, Greenwich — accusation which has been confirmed by the presentation of the provisional title of said mine issued with date of the 30th of October of the year last past by the governor of the territory, and the requisites provided by the decree regulating the law of mines, dictated the 3rd of August, 1897, having been fulfilled — has ordered to concede to Señor Turnbull the ownership of the said mine in all the extension which belongs to it and in respect to all the deposits of iron comprised in the same, in conformity to the denunciation of law made before the said governor. The present title shall be recorded in the respective office of registry, and give right to the concessionary and his successors, for the term of 99 years, to the exploitation and possession of the said mine, with the restrictions of law, and without burden imposed on its mineral products, which are found in the case determined article 40 of the regulating decree already mentioned.

Given, signed, sealed, and countersigned, in the Federal palace at Caracas, March 14, 1888, twenty-fourth year of the law and thirtieth of the federation.

Hermógenes LOPEZ

Countersigned: The minister of fomento.

Manuel FOMBONA PALACIO

UNITED STATES OF VENEZUELA,
 MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,

Caracas, 13th of March, 1888.

The law of public lands and the decree regulating the law of mines in force, having been complied with in the accusation made by Mr. George Turnbull, of 500 hectares of public lands for use in the exploitation of the mine of iron which he possesses, denominated Imataca, situated on both margins of the Caño Corosimo, in the district Manoa of the Federal territory of Delta, the President of the Republic, with the affirmative vote of the Federal council, has disposed that the corresponding title of adjudication shall be issued.

Let it be communicated and published.

For the Federal Executive:

Manuel FOMBONA PALACIO

On the 14th of March, 1888, the ministry of fomento issued the following document:

UNITED STATES OF VENEZUELA,
 MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES.

Having observed the formalities prescribed in the law of June, 1882, and in the decree regulating the law of mines in force, the National Executive, with the affirmative vote of the Federal council, has declared the adjudication, with date of the 3rd instant, in favor of the citizen, George Turnbull, of 500 hectares of waste lands which form the superficies of the mine of iron which said Señor George Turnbull possesses, denominated Imataca, which lands he acquires for uses of the exploitation of said mine, and are situated in the jurisdiction of the Manoa district of the Federal territory of Delta. The land surveyed is bounded on its four sides by lands of national property, conceded by contract to Señor George Turnbull. The 500 hectares surveyed are divided in two sections: 100 hectares to the north of the stream Corosimo, which commences near the village of Manoa and which comprise part of a hill which runs east and west; and 400 hectares to the south of said stream, including part of the Imataca range denominated "Loma del Monte", where is situated the mine of iron owned by Señor Turnbull. The adjudication has been made for the price of 7,100 bolivars in coin, equivalent to 20,000 bolivars of the 5 per cent national consolidated debt, which the purchaser has made over to the office of the board of public credit; and the Government having disposed that the title of ownership of said lands be issued, the subscriber, the minister of fomento, declares, in the name of the United States of Venezuela, that, by virtue of the completed sale, the dominion and ownership of said lands is from now transferred in favor of the purchaser, Señor George Turnbull, with the respective declarations expressed in articles 6, 7, and 8 of the law cited, which, in their letter and contents authorize the present adjudication, and whose terms must be considered as clauses decisive in this respect.

Caracas, 14th of March, 1888.

Twenty-fourth year of the law and 30th of the federation.

Manuel FOMBONA PALACIO

On the 28th of June, 1888, the following resolution was issued from the ministry of fomento (Official Gazette, No. 4382):

UNITED STATES OF VENEZUELA,
 MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,

Caracas, 28th of June, 1888.

Resolved, The requirements of the decree regulating the law of mines in force, having been complied with, by Señor George Turnbull in the accusation of the mine

of asphalt which he has discovered in the district Guzmán Blanco of the Federal territory delta on the borders of the Pedernales channel, on the island of the same name; and having been presented the provisional title of ownership of the mine issued by the governor of aforesaid Federal territory delta, in conformity with article 9 of the aforesaid decree, the President of the Republic, with the vote of the Federal council, resolves: That the definitive title of ownership to the above-cited mine of asphalt for ninety-nine years shall be issued in favor of Mr. George Turnbull.

Let it be communicated and published.

For the Federal Executive:

CORONADO

On the 30th day of June, 1888, the following document was issued by the ministry of fomento:

The President of the Republic, with the vote of the Federal council:

Whereas it appears that Señor George Turnbull has petitioned the Government to issue definite title of ownership of a mine of asphalt which, by virtue of the right conceded by article 23 of the decree regulating the law of the matter, he has accused before the governor of the Federal territory Delta, which mine is situated in the district Guzmán Blanco of the territory mentioned, on the shores of the stream of Pedernales on the island of the same name, upon a visible extension of 1,300 meters in length by 500 in width, which runs northeast to southwest, and whose geographical position is as follows: Latitude north, 10 degrees, 11,7; longitude 62 degrees, 12, 24 west of the meridian of Greenwich; which accusation he has proved by the presentation of the provisional title to said mine, issued under date of the 9th of January of the current year by the governor of the territory; and the requisites provided by the decree regulating the law of mines of August 3, 1887, having been fulfilled, has disposed to concede to Señor George Turnbull the ownership of the said mine in all the extensions which belong to it and in respect of all the deposits comprised in the same, in conformity with the denunciation of law made before the said governor.

The present title shall be registered in the respective office of registry, and give right to the concessionary and to his successors, for the term of ninety-nine years, to the exploitation and profit of the said mine, and without that burden on its products imposed on any mine by reason of being in the case determined by article 40 of the regulating decree already mentioned.

Given, signed, sealed, and countersigned in the Federal palace in Caracas, the 30th of June, 1888, twenty-fifth year of the law and 30th of the federation.

Hermógenes LOPEZ

Countersigned: The minister of fomento.

Vicente CORONADO

On the 3d day of October, 1888, the ministry of fomento issued the following document:

THE UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES.

The formalities prescribed in the law of June 2, 1882, concerning the matter having been observed, the National Executive, with the affirmative vote of the Federal council, has declared the adjudication of this date in favor of Señor George Turnbull of 200 hectares of public lands, destined for the uses of the exploitation of a mine of asphalt which the purchaser possesses, situated in the district Guzmán Blanco of the Federal territory Delta, in the island of Pedernales, and whose boundaries are: Upon the north, groves of mangrove trees and the mine of asphalt which Señor Turnbull actually exploits; upon the south, uncultivated waste lands and the lake denominated Angosturita; upon the east, plains and groves of mangroves; upon the west, agricultural plantations pertaining to various residents of Pedernales, and also some groves of mangroves. The adjudication has been made for the price of 2,970 bolivars in coin, equivalent to 8,000 bolivars of the 5 per cent national consolidated debt,

which the purchaser has made over in the office of Public Credit; and the Government having disposed that the title of ownership of said lands shall be issued, the undersigned, the minister of fomento, declares in the name of the United States of Venezuela that by virtue of the completed sale the dominion and ownership of said lands is henceforth transferred in favor of the purchaser, Señor George Turnbull, with the respective declarations expressed in article 6, 7, and 8 of the law cited, which in their letter and contents authorized the present adjudication, and whose terms must be considered as clauses decisive in the matter. Caracas, October 3, 1888. Twenty-fifth year of the law, and 30th of the federation.

Vicente CORONADO

On the 18th of June, 1895, the following resolution was issued by the ministry of fomento (Official Gazette, No. 6433):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,

Caracas, June 18, 1895.

Resolved. On April 28, 1887, the national Congress approved the contract ad referendum which was made in Nice the 1st day of January, 1886, by Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary to several courts of Europe, and the North American citizen, George Turnbull. The Government had undertaken in that contract to grant for a term of ninety-nine years to the aforesaid George Turnbull the right to exploit the riches found in a large portion of the grand delta of the Orinoco and an exterior portion of territory in Guayana, Lower Orinoco, including the islands of Tortola and Aragua, together with all the franchises in connection with the colonization, exploitation, and development of the aforesaid territories. The national Executive, on its part, has complied with all the obligations incurred upon as per the contract, and it being evident that the cessionary citizen, George Turnbull, during the eight years elapsed since the celebration of the said contract, excepting some steps taken for the exclusive benefit of his own convenience, has not complied with any of the obligations stipulated, neither has he exercised any act in favor of the interests of the nation, nor by any means profitable to the development of the natural riches of the regions that were the object of the concession, the President of the Republic considering as injurious and fruitless to the nation the concession granted to the citizen George Turnbull, has decided to declare the annulment of the contract ad referendum, signed at Nice the 1st day of January, 1886, which was approved by the Executive of the Republic on September 10th of the same year, comprising in the same case of nullity and insubsistency of the aforesaid contract the concession of the "Imataca" iron mine, definitive title to which was issued March 13, 1888, and the concession of the asphalt mine situated in the island of Pedernales, the definitive title of which was issued June 28 of the same year, as well as any other rights, titles, or concessions deriving from the said contract.

Let this be communicated and published.

By the national Executive:

Jacinto LARA

On the same day, to wit, the 18th day of June, 1895, the ministry of fomento issued the following resolution (Official Gazette, No. 6433):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,

At Caracas, June 18, 1895.

Resolved. After having considered in the cabinet the petition addressed to this ministry by the Manoa Company (Limited), which among other things solicits the ratification, confirmation, and execution in its favor of all the rights and privileges

conceded to Cyrenius C. Fitzgerald on the 22nd day of September, 1883, by the contract declared insubstantial on the 9th day of September, 1886, the President of the Republic, after examination of the same, has declared the caducity, for reason of want of faithful compliance with its obligations and stipulations of the concession of George Turnbull, and has substituted therefor in the same rights and privileges the aforesaid contract, and has seen fit to dispose and authorize the said Manoa Company (Limited), within six months reckoning from the date of this resolution, to renew its works of exploitation in order to the greater development of the natural riches of the territories embraced in said concession, hereby confirming it in all the rights stipulated and granted to said Fitzgerald by the said contract of September 22, 1883. And the said Manoa Company (Limited) shall report to the national Executive from time to time through the organ of this ministry all of the works carried on by it in execution of said contract, in order that the Government may be enabled to judge of its compliance with the obligations of said contract in conformity with the spirit and the magnitude of its stipulations.

Communicate and publish.

By the national Executive:

Jacinto LARA

On the 10th of July, 1895, a resolution was issued by the ministry of fomento as follows (Official Gazette, No. 6451):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,

Caracas, July 10, 1895.

Resolved, After having considered in the council of ministers the petition addressed to this office by the Citizen George Stelling, vice-president of the board of directors of the National Anonymous Company called " Mines of Pedernales," requesting the modification of the resolution issued on June 19, last, by which the general concession granted to the Citizen George Turnbull was declared null, in order to except from the said annulment the mine of Pedernales and the 200 hectares of public lands belonging to the aforesaid company, the President of the Republic, after studying the document filed by the petitioner and taking into consideration:

First. That in accordance with article 28 of the mining law under which the definitive title to the asphalt mine of the Pedernales Island was granted, said title " can be transferred to any person able to contract."

Second. That as per article 50 of the same laws and the documents filed by the petitioner on November 19, 1890, date on which Citizen George Turnbull transferred to the National Company " Mines of Pedernales " the above referred mining concession and the 200 hectares of public lands needed for its exploitation, the definitive title issued had not been voided or annulled inasmuch as the cessionary had been exploiting the mine therein mentioned; and finally, that the National Company " Mines of Pedernales " obtained the property through a good title, has been possessing in good faith and has been and is now exploiting the said asphalt mine, as per evidence shown in the documents which were filed, so that respecting the said mine the failure of fulfillment on the part of the concessionary, upon which the said resolution of June 10 of the present year is based, is not applicable; does hereby resolve in equity and justice that the said resolution of June 19 last, in which the contract celebrated with the Citizen George Turnbull was declared null, does not in any way affect the rights, legitimately acquired, of the asphalt mine of the Pedernales Island, nor the 200 hectares of land destined to its exploitation by the National Anonymous Company, called " Mines of Pedernales," which company shall, consequently, be at liberty to go on with the works of the aforesaid mine and the 200 hectares of public land referred to.

Jacinto LARA

On November 20, 1896, the following resolution was issued from the ministry of fomento (Official Gazette, No. 6877):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,

Caracas, November 20, 1896.

Resolved, Having considered at the council of ministers the petition addressed to this department by Citizen George Turnbull, therein proving — as per the documents attached thereto — that the said George Turnbull lawfully obtained the definitive title to the iron mine called “Imataca,” situate on both banks of the Caño Corosimo of the Manoa district of the Federal territory Delta; that he complied with the requirements of the land laws, and paid for the price of the adjudgment of 500 hectares of land which comprise the superficial area of said mine; that by virtue of George Turnbull having acquired the aforesaid mine and lands, the national Executive, by resolution of March 13, 1886, declared that said mine and lands constitute a separate property from the Manoa concession granted to the above-mentioned Turnbull as per contract made January 1, 1886, not being subject therefor, to the obligations of the aforesaid contract, but which will be ruled by the decrees regulating the mining laws; that it is also proved that the above-mentioned Turnbull has maintained the aforesaid mine in exploitation, according to the legal regulation, and finally, that at the Ciudad Bolívar custom-house the mining taxes were paid corresponding to the 500 hectares which formed said mining concession; the citizen President of the Republic has thought fit to decide: that the resolution of this department of June 18, 1895, published in the Official Gazette of June 19 of the same year, marked No. 6433, declaring the annulment of the contract made January 1, 1886, with the above-mentioned Turnbull for the exploitation of a portion of the Delta of the Orinoco, does in no way affect the rights legitimately acquired by him to the “Imataca” iron mine, which is hereby excluded from the aforesaid resolution, together with the 500 hectares of land forming its superficial area, and, consequently, the citizen George Turnbull, remains authorized to continue the exploiting of the mine and public lands referred to.

Let it be notified and published.

For the national Executive:

Manuel A. Díaz

On the same day the following resolution was issued by the minister of fomento (Official Gazette, No. 6877):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,

Caracas, November 20, 1896.

Resolved, Having considered at the council of ministers the petitions addressed to this department by the Citizens J. A. Radcliffe, J. A. Bowman, James P. Elmer, Francisco de P. Suarez, Luis Aristigueta Grillet, George N. Baxter, and Ellis Grell, in behalf and by authority of the companies called “Manoa Company, Limited,” “Orinoco Mining Company,” and “Orinoco Company, Limited,” as well as to reports and other documents filed; the citizen president of the republic, wishing to put an end to the difficulties which have presented themselves preventing the exploitation of the delta of “the Orinoco concession,” otherwise known as “The Manoa,” referred to in the resolutions of June 18, 1895, has thought fit to recognize as valid the transfer made by the “Manoa Company, Limited” to the “Orinoco Company, Limited” of all its rights and title to and in the aforesaid concession with the exception of the “Imataca Iron Mine,” situate on both banks of the Caño Corosimo in the Manoa district of the old Federal territory Delta and the 500 hectares of public lands which comprise its superficial area, as well as the asphalt mine called “Minas de Pedernales,” situate in the island of the same name, together with the 200 hectares destined for its exploitation. He acknowledges, likewise, as valid

the work and all other acts of the "Orinoco Company, Limited" (successor to the "Manoa Company, Limited") done and performed by them in fulfillment of the terms of the resolution of June 18, 1895, and the President of the Republic disposes that the said company be granted the exemption from payment of custom-house duties on machinery and other effects, imported through the Ciudad Bolivar custom-house destined to the works of said concession; and, finally, that all the facilities be granted to the interested parties for the aforesaid exploitation providing such facilities be not in opposition to the laws and resolutions of the Republic in force.

Let it be notified and published.

For the national Executive:

Manuel A. Díaz

On the 10th of October, 1900, the following resolution was issued by the ministry of fomento (Official Gazette, No. 8053):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,

Caracas, October 10, 1900.

Resolved, Considering that the contract celebrated September 22, 1883, with Cyrenius C. Fitzgerald, and on which the Orinoco Company, Limited, now bases its rights for the exploitation of the natural riches in the Delta of the Orinoco and colonization of the land conceded, has now no legal existence, for that it was declared void for failure of performance of what was in it stipulated; that in April, 1887, the national Congress approved a contract celebrated with the North American citizen, George Turnbull, in the same regions and with the same clauses, and in all equal with that of the Manoa Company, Limited, (cessionary of Fitzgerald) declared void, which was also for the same clauses declared in caducity on the 18th of June, 1895; and that on the same day of the said month and year, this office issued an Executive resolution restoring to the Manoa Company, Limited, the rights and privileges conceded by the original contract with Fitzgerald in 1883; and

Considering (first) the contract celebrated with C. C. Fitzgerald having been declared void for failure of compliance with article 5th, this can not be considered in vigor without the intervention of a new contract approved by the national congress; (second) that the legislature of the State of Bolivar, in its ordinary session of 1899, adopted a joint memorial to the national congress, declaring that the company cessionary of the contract celebrated with Fitzgerald had not complied in its fourteen years of existence with any of the clauses established in article 5 of the said contract and that this interferes with the interests of the Venezuelans for exploiting the natural products of that region of the Republic; and (third) that according to the notes and reports forwarded to this office by the authorities of the different places of the region to which refers the concessions already mentioned, all concur in the failure of performance of the same and of the palpable evils which it occasions, as well to the national treasury as to the individual industries.

The supreme chief of the Republic has seen fit to dispose: That the mentioned contracts are declared insubsistent.

Let it be communicated and published.

For the national Executive:

Ramón AYALA

The following provisions of the constitution of Venezuela adopted in 1881 and in force on September 22, 1883, are pertinent to the consideration of these claims. Similar provisions are found in the later constitutions of the Republic.

By paragraph 15, article 13, of this constitution the States of the Federation agree to cede to the Government of the Federation the administrations of the mines, public lands, and salt deposits, to the end that the former shall be governed by a system of uniform exploitation and the latter for the benefit of the people.

Title 5, section 1, article 66, provides in relation to the powers of the Executive:

Besides the foregoing powers of the United States of Venezuela, he, with the deliberative vote of the Federal Council, shall exercise (*inter alia*) the following:

PAR. 2. Administer the public lands, the mines and the salt deposits of the States by delegation of an authority from the latter.

PAR. 6. Celebrate contracts of national interest in accordance with the laws and submit the same to the legislature for its approval.

Title 5, section 2, article 69, provides in relation to the ministers as follows:

The ministers are the natural and public organs of the President of the United States of Venezuela. All his acts shall be subscribed by them, without which requisite they shall not be complied with nor executed by the authorities, by employees, or by private individuals.

Among the powers of the Congress enumerated in Title 4, section 5, article 43, is the following, paragraph 17:

To approve or reject the contracts concerning national works which the President, with the approval of the Federal council, shall make, without which requisite they shall not become effective.

Of the high Federal court the constitution in Title 6, section 2 of article 80, provides, paragraph 9a, that it shall —

Take jurisdiction of the controversies which result from the contracts or negotiations which the President of the Federation may celebrate.

The act of Congress of May 7, 1881, providing for the organization of the high Federal court, prescribes in regard to the said court that it shall have the power (*inter alia*):

To take jurisdiction in the first and sole (*única*) instance —

First. Of the judicial matters comprised in the attributions 1, 2, 3, 4, and 9 of article 80 of the constitution, and in No. 30 of article 13.

These three claims are so intimately related in respect of the facts and circumstances out of which they arise that they are herein considered together.

The Fitzgerald contract of September 22, 1883, was executed in strict conformity with constitutional requirements. It was signed on behalf of the Government by the minister of fomento, "duly authorized by the President of the Republic." It was approved by the Federal council. It was submitted for approval to the National Legislature, and was by it approved, on the 23d day of May, 1884, and it received the formal sanction and signature of the President on May 27, 1884. It was published in the Official Gazette, No. 3257, on May 29, 1884.

The instrument thus solemnly executed constituted a bilateral contract, giving rise, as between the parties thereto, to certain mutual rights and obligations. The Government of Venezuela granted to Fitzgerald, his associates, assigns, and successors, for the term of ninety-nine years, reckoning from the date of the contract, the exclusive right to develop the resources of the territories designated; and, for an equal term of years, the exclusive right of establishing a colony for the purpose of developing the resources already known to exist, and those not yet developed of the same region, including asphalt and coal. The Government agreed that a title in conformity with the law should be granted to the contractor (Fitzgerald) for every mine which might be discovered in the colony. Fitzgerald agreed to perform the stipulations of Article V in respect to exploration and colonization therein set forth. The parties mutually

agreed that any questions or controversies which might arise out of the contract should be decided in conformity with the laws of the Republic and by its competent tribunals. The constitution of the Republic provided that the high Federal court had jurisdiction of the controversies which might result from the contracts celebrated by the President.

Fitzgerald assigned the contract-concession to the Manoa Company, Limited, on June 14, 1884. The evidence shows that the company, within the time stipulated in the contract and its prorogation of February 19, 1884, commenced the work of exploitation and colonization. It proceeded with the work until in the spring of 1885 it encountered serious difficulties resulting from a domestic revolution headed by General Pulgar, and from the aggression of the British Government upon the territories included within the concession. The company duly notified the Venezuelan Government of these difficulties.

In December, 1885, one George Turnbull, a citizen of the United States, entered into negotiations with Gen. Guzmán Blanco, ex-President of Venezuela, and at that time occupying the position of envoy extraordinary and minister plenipotentiary of Venezuela to various courts of Europe, and these negotiations resulted in the signing at Nice on January 1, 1886, of an ad referendum contract substantially of the same purport and tenor as the Fitzgerald contract, granting to Turnbull the same rights and privileges in the territories designated as had previously been conceded to Fitzgerald and his assigns, and containing the provisions that it should become effective in case of the becoming void through failure of compliance within the term fixed for this purpose of the Fitzgerald contract for the exploitation of the same territory.

The time fixed for beginning the work of colonization in the Fitzgerald contract expired on September 22, 1884, prior to the Guzmán Blanco-Turnbull agreement, and no evidence is presented here of any complaint by the Government of Venezuela of nonfulfillment with its terms on the part of the concessionaries prior to that date, nor is any evidence presented of authority on the part of Guzmán Blanco in his capacity as envoy extraordinary and minister plenipotentiary to various courts of Europe to enter into the contract with Turnbull for a concession for the public lands and mines — that power being by the constitutional provisions above quoted vested in the President of the Republic. The article recognizes the then existence and validity of the Fitzgerald concession. But in view of the well-known dominant influence of Guzmán Blanco in Venezuelan affairs at the time, and the practical certainty of its ratification the obvious effect of the Turnbull agreement was to work grave injury to the interests and credit of the Manoa Company, Limited.

On the 9th of September, 1886, by Executive resolution issued through the ministry of fomento, "the councilor in charge of the Presidency, having the affirmative vote of the Federal council," declared the insubsistency or annulment of the Fitzgerald concession upon the ground that the contractor had not fulfilled the obligations of the contract as stated in the report of the director of the national riches, specifically referring to the provisions of Article V thereof. One day later an Executive resolution declared the approval of the Guzmán Blanco-Turnbull contract of January 1, 1886; and said contract was approved by Congress on April 28, 1887.

It is perfectly evident that the question whether or not the Manoa Company, Limited, had fulfilled the obligations of the contract, or any controversies as to that fact, was a question or controversy arising out of the contract, determinable, according to law and the agreement of the parties, only by the competent tribunals of the Republic. The Government of Venezuela, being a party to the contract, was not competent to decide such a controversy. The jurisprudence of civilized States and the principles of natural justice do not

allow one party to a contract to pass judgment upon the other. If the Government had any reason to believe that the grantees of the concession —

had, by misuser or nonuser thereof, forfeited their rights, then it should have itself appealed to the proper tribunals against the said grantees, and there, by due process of judicial proceedings, involving notice, full opportunity to be heard, consideration, and solemn judgment, have invoked and secured the remedy sought. (Salvador Commercial Co. Case. — For. Rel. U. S., 1902, p. 871.)

Nemo debet esse judex in propria sua causa.

Moreover, the Executive resolution of September 9, 1886, annulling the Fitzgerald contract, was an illegal assumption of power. Under the constitution of Venezuela the Executive was clothed with no such prerogative. Jurisdiction of controversies arising out of contracts celebrated by the President was vested solely in the high Federal court. (Par. 9, art. 80, Const. and Law of May 7, 1881.)

The decree, in the absence of legal authority in the Executive to issue it, was an absolute nullity.

The decision of the high Federal court under identical constitutional provisions rendered August 23, 1898, in the case of the New York and Bermudez Company would seem to be conclusive upon the point. That company claimed under a contract similar to that under consideration here. On January 4, 1898, the contract of the New York and Bermudez Company, for alleged failure of performance by the concessionary, was declared null by Executive resolution. The matter was brought by petition of the company before the high Federal court, which, by its judgment of August 23, 1898, declared that —

the Executive resolution passed by the National Government, dated the 4th of January of the present year, declaring broken and determined the contract of which the New York and Bermudez Company is concessionary, is null and void.

The court says in its opinion:

The only point for our investigation is whether or not the Executive resolution which has given rise to the petition of the representative of the New York and Bermudez Company constitutes an act of usurped authority.

Notwithstanding the Executive resolution of September 9, 1886, the Fitzgerald contract remained subsistent and effective to vest in the grantees all the rights and privileges therein designated. And it follows that the subsequent approval of the Guzmán Blanco-Turnbull contract could not operate to invest Turnbull with the same rights and privileges, inasmuch as the Government could not grant to Turnbull the rights which it had previously granted to and which were legally existing in the grantees of the Fitzgerald contract.

It appears from the evidence that on March 14, 1888, the President of the Republic, with the affirmative vote of the Federal council, declared the adjudication in favor of George Turnbull of 500 hectares of land which forms the superficies of the "Imataca" iron mine, under the formalities of the law relating to waste lands of June 2, 1882. The adjudication was made for the price of 7,100 bolivars in coin, equivalent to 20,000 bolivars of the 5 per cent national consolidated debt, which it is alleged Turnbull made over to the office of the board of public credit; and the Government having disposed that the title of ownership of said lands be issued, the minister of fomento declared in the name of the United States of Venezuela that by virtue of the completed sale the dominion and ownership of said lands was transferred in favor of the purchaser, George Turnbull.

On the same day, the President of the Republic, with the vote of the Federal council, pursuant to the provisional title to the "Imataca" mine, issued by the governor of the Federal territory Delta on October 30, 1887, to George Turnbull, and in accordance with the provisions of the decree regulating the law of mines, dictated August 3, 1887, conceded to George Turnbull the ownership of said mine in all the extension which belongs to it and in respect of all the deposits of iron comprised in the same; giving to the said Turnbull as concessionary and his successors for the term of ninety-nine years the right to the exploitation and possession of said mine.

On the 30th of June, 1888, the President of the Republic, with the vote of the Federal council, conceded to George Turnbull a definitive title to the mine of asphalt situated in the district of Guzmán Blanco in the Federal territory Delta on the island of Pedernales, "the requisites provided by the decree regulating the law of mines of August 3, 1887, having been fulfilled."

On October 3, 1888, the national Executive, with the affirmative vote of the Federal council, declared the adjudication in favor of George Turnbull of 200 hectares of public lands, "destined for the exploitation of a mine of asphalt which the purchaser possesses," situated in the district of Guzmán Blanco of the Federal territory Delta in the island of Pedernales. The adjudication was made for the price of 2,970 bolivars in coin, equivalent to 8,000 bolivars of the 5 per cent national consolidated debt, which Turnbull is alleged to have made over to the office of public lands; and the Government having disposed that the title of ownership of said lands shall be issued, the minister of fomento declared in the name of the United States of Venezuela that by virtue of the completed sale the dominion and ownership of said lands was henceforth transferred in favor of the purchaser, George Turnbull.

It is difficult to perceive in what manner these grants to George Turnbull can be sustained, in view of the fact that at the time they were made the Fitzgerald contract had not been judicially declared forfeited and was in full force and effect. The lands and mines described in the Turnbull titles are within the territory designated in the Fitzgerald concession. The Government of Venezuela by the latter instrument conceded to Cyrenius C. Fitzgerald, his associates, assigns and successors for the term of ninety-nine years, the exclusive right to develop the resources of —

the island of Pedernales [and] the territory from the mouth of the Araguao, the shore of the Atlantic Ocean, the waters above the Greater Araguao to where it is joined by the Araguaito stream; from this point, following the Araguaito to the Orinoco, and thence the waters of the upper Orinoco, surrounding the island of Tortola, which will form part of the territory conceded, to the junction of the José stream with the Piacoa; from this point following the waters of the José stream to its source; thence in a straight line to the summit of the Imataca Range; and from this point following the sinuosities and more elevated summits of the ridge of Imataca to the limit of British Guayana; from this limit and along it toward the north shore of the Atlantic Ocean, and, lastly, from the point indicated, the shore of the Atlantic Ocean to the mouth of the Araguao, including the island of this name and the others intermediate or situated in the delta of the Orinoco, and in contiguity with the shore of the said ocean.

Moreover, and for an equal term of years, the Government of Venezuela conceded to the grantees of the Fitzgerald contract —

the exclusive right of establishing a colony for the purpose of developing the resources already known to exist and those not yet developed of the same region, including asphalt and coal, etc.

And, furthermore, the Government of Venezuela agreed with Fitzgerald, his associates, assigns and successors that —

a title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the colony.

If the grants to Turnbull are valid, then the language of the Fitzgerald franchise is meaningless, for on any such theory the Government of Venezuela could by piecemeal take away from the grantees of the Fitzgerald concession and give to others every right or privilege therein conferred. It is perfectly clear that the Government, having in 1883 transferred the exclusive right of developing and exploiting the resources of the territory in question to Fitzgerald and his assigns, could not in 1888 transfer to Turnbull the right to any part of their sources of that same territory, for the plain and simple reason that the Government could not transfer what it did not possess. That he who is prior in time is stronger in right is a maxim of both the civil and the common law. The Fitzgerald concession of September 22, 1883, not having been declared forfeited by any competent judicial authority, after notice, hearing, and judgment, was in 1888 a legally subsisting and valid agreement, binding upon both the parties to it, vesting in the grantees the exclusive right of exploitation of the Delta territory and the island of Pedernales and imposing upon the Government of Venezuela the obligation to grant a title in conformity with the law to Fitzgerald or his assigns for every mine discovered in the colony. The Turnbull titles of 1888 were in derogation of these prior rights and obligations and vested in the grantee no rights whatever. They were altogether null and void.

The hostile and arbitrary acts of the Government, which the Manoa Company (Limited), assignee of the Fitzgerald contract, was wholly powerless to prevent, were calculated to and, it is alleged, did paralyze the operations of the company, impaired its credit, and prevented the further prosecution of its work of exploitation. So matters stood until, on the 18th of June, 1895, the Government declared the annulment of the Turnbull contract of January 1, 1886, and the definitive titles to the Imataca iron mine and the Pedernales asphalt mine, which had been issued to Turnbull in 1888, and on the same date the Government reaffirmed the Fitzgerald contract of September 22, 1883, and authorized the Manoa Company (Limited), within six months from that date, to renew its works of exploitation in order to the greater development of the natural riches of the territory embraced in said concession, requiring the company to report to the National Executive from time to time through the ministry of fomento all of the works carried on by it in execution of the contract.

These resolutions of June 18, 1895, in no wise changed the legal status of the various interested parties. The Fitzgerald contract had never been legally annulled. The Guzmán Blanco-Turnbull contract of January 1, 1886, and the Turnbull titles of 1888 had never been legally effective, but were invalid ab initio. The resolution in favor of the Manoa Company, however, amounted to an authorization by the Venezuelan Government to the renewal of the work of exploitation and colonization, a permission of which the company promptly availed itself, as its reports presented in evidence here clearly show.

On the 10th of July, 1895, the Government, at the instance of the National Anonymous Company, "Mines of Pedernales," resolved that "the resolution of June 19 (18) last, in which the contract celebrated with the citizen, George Turnbull, was declared null," did not in any way affect the rights legitimately acquired of the asphalt mine of the Pedernales Island, nor the 200 hectares of land destined to its exploitation by the National Anonymous Company, called "Mines of Pedernales," which company was, consequently, at liberty to go

on with the works of the aforesaid mine and the 200 hectares of public land referred to.

On the 20th of November 1896, upon the petition of George Turnbull, the President of the Republic thought fit to decide that the resolution of June 18, 1895, declaring the annulment of the contract made January 1, 1886, with the above-mentioned Turnbull for the exploitation of a portion of the Delta of the Orinoco, did in no way affect the rights legitimately acquired by him to the "Imataca" iron mine, which was thereby excluded from the aforesaid resolution, together with the 500 hectares of land forming its superficial area, and, consequently, the citizen, George Turnbull, remained authorized to continue the exploitation of the mine and public lands referred to.

These resolutions are merely reassertions of the original Turnbull titles of 1888, and, like their originals, are in plain derogation of the prior and subsisting rights of the grantees of the Fitzgerald concession, and altogether null and void. The National Anonymous Company, "Mines of Pedernales", could not have occupied the position of innocent purchaser, inasmuch as the Fitzgerald contract had been for many years a matter of public record.

On the 16th of October, 1895, the Orinoco Company was organized under the laws of the State of Wisconsin, and on the following day the Manoa Company (Limited), conveyed to the said Orinoco Company the property described in the Fitzgerald concession until September 21, 1892, excepting, however, the Pedernales asphalt mine and the Imataca iron mine. On February 4, 1896, the Orinoco Mining Company was incorporated under the laws of the State of Wisconsin, and on February 10, 1896, the Orinoco Company conveyed to the Orinoco Mining Company all its rights in the concession as transferred to it by the Manoa Company (Limited), (i. e., reserving and excepting the Pedernales asphalt mine and the iron mine of Imataca).

The Orinoco Mining Company on October 1, 1896, filed in the office of the secretary of state of the State of Wisconsin an amendment to its articles of association, changing its name to Orinoco Company (Limited); and on October 17, 1896, the Manoa Company (Limited) and the Orinoco Company certified to the transfer of title of all the lands, rights, interests, privileges, and immunities originally granted by the Fitzgerald contract (except as to the asphalt and iron mines) to the said Orinoco Company (Limited). The Manoa Company (Limited), on May 15, 1895, conveyed to William M. Safford the location of the Imataca iron mine; and the same company had on October 17, 1895, conveyed to Samuel Grant the Pedernales asphalt deposits. These conveyances are evidently explanatory of the reservations and exceptions as to the said properties in the transfer above set forth.

On November 20, 1896, the President of the Republic of Venezuela, "wishing to put an end to the difficulties which have presented themselves, preventing the exploitation of the Delta of the Orinoco, otherwise known as the 'Manoa,' referred to in the resolutions of June 18, 1895," recognized as valid the transfer made by the "Manoa Company (Limited)" to the "Orinoco Company (Limited)" of all its rights and titles to and in the said concession, with exception of the mine of iron, "Imataca," situated on both banks of the stream Corosimo, in the Manoa district of the old Federal territory Delta, and the 500 hectares of public lands which comprise its superficial area, and of the mine of asphalt called "Minas de Pedernales," situated on the island of the same name, together with the 200 hectares of public land destined for its exploitation. He acknowledged likewise as valid the work and other acts of the "Orinoco Company (Limited)" (successors to the "Manoa Company (Limited)" done and performed by them in fulfillment of the terms of the resolutions of June 18, 1895, and disposed that the said company be granted the exemption

from payment of custom-house duties on machinery and other effects imported through the Ciudad Bolívar custom-house destined to the works of said concession; and that all facilities be granted to the interested parties for the aforesaid exploitation, providing such facilities be not in opposition to the laws and resolutions of the Republic in force.

On December 30, 1896, James A. Radcliffe, receiver of the Manoa Company (Limited), William M. Safford and George N. Baxter, trustees, conveyed to the Orinoco Company (Limited), its successors and assigns, the contract and concession of September 22, 1883. The deed recites that at a special term of the supreme court of the State of New York, a court of general jurisdiction, sitting in the county of Kings, on the 3d day of March, 1896, it was, among other things, ordered, adjudged, and decreed by the said court in a certain action then pending, and which was commenced on the 14th day of February, 1896, between Randolph Stickney and the Manoa Company (Limited) for a sequestration of the property of said company, pursuant to the laws of the State of New York, that the said James A. Radcliffe be appointed permanent receiver of said Manoa Company (Limited), and that by its judgment of November 11, 1896, said court ordered the said receiver to sell at public auction all the rights, title, and interest of said Manoa Company (Limited) in and to said concession to the highest bidder and make report of said sale to the court, and that said receiver did on the 28th day of November, 1896, sell said property to William M. Safford and George N. Baxter, they being the highest bidders; and that said report of the receiver was afterwards confirmed and the receiver ordered to make a deed to the parties named, which was done; and that the said Safford and Baxter declared that they bid in said property as trustees for the Orinoco Company (Limited), and that the said Safford and Baxter in the execution of said trust joined in said deed to the Orinoco Company (Limited).

The Orinoco Company (Limited), on July 22, 1897, entered into a contract with the Orinoco Iron Company, a corporation organized under the laws of the State of West Virginia, whereby it granted to the said iron company the right to mine and ship any and all deposits of iron ore on the Fitzgerald concession which it had the right to exploit under its contract for the unexpired term thereof in consideration of certain stipulated royalties. The president of the Orinoco Iron Company was Albert B. Roeder, its secretary was Benoni Lockwood, jr., and its treasurer was James E. York.

It appears from the evidence that on the 30th day of March, 1895, George Turnbull, then residing in London, entered into a contract with one Joseph Robertson, of London, as trustee of a syndicate thereafter to be formed and called the Orinoco Iron Syndicate (Limited), under the English companies acts of 1862 to 1890, the object of which syndicate was to examine, test, and work the "Imataca" iron mine and to output and market iron ore, timber, and other commercial products on the land during the period of one year from the date of their shipment of the first cargo therefrom; if the said syndicate should be satisfied with the result of their trial, they were to register a limited company under said acts within twelve months for the purpose of acquiring the said property, which Turnbull agreed to lease and convey with his whole rights and interests therein and the ores and minerals therein and thereunder. The syndicate was bound on or before January 15, 1896, to intimate to Turnbull whether or not they intended to go on with the formation of said company. The Orinoco Iron Syndicate was afterwards formed and, on September 18, 1895, adopted the agreement between Turnbull and Robertson of March 30, previous.

The English company, the Orinoco Iron Syndicate (Limited), chartered the schooner *New Day* and shipped therein to Venezuela its employees, machinery.

material, and supplies. The *New Day* proceeded to Manoa, where on January 20, 1896, the machinery, materials, and supplies were landed. For failure to land at the proper port of entry, Ciudad Bolívar, the *New Day* and her cargo were denounced by Gen. Joaquín Berrio, the then administrator of customs at said port, and proceedings were instituted in the national court of hacienda of Ciudad Bolívar against the schooner, her captain, and the Orinoco Iron Syndicate (Limited), resulting in a judgment on May 9, 1896, imposing a fine upon the syndicate of 249,985.17 bolivars. This judgment was affirmed on September 24, 1896, by the high Federal court. On November 14, 1896, the court of hacienda decreed the embargo of all the rights, shares, and belongings which the Orinoco Iron Syndicate had in the lands and mines of Manoa. On October 18, 1898, the said court ordered the sale, by public auction, of the rights of exploitation acquired by the Orinoco Iron Syndicate (Limited) in the iron mines of Manoa, situated on both banks of the Corosimo stream, so as to pay with the product the duties owing, according to the liquidation made to the national treasury and to General Berrio, denouncer and apprehender of the contraband introduced, and the other expenses and costs of suit; that the said right of exploitation acquired in the iron mine of Manoa by the said company had been appraised by experts appointed for that purpose at 200,000 bolivars; that the rights which the company had in the mine of Manoa included 500 hectares of surface according to the acknowledgment of right made by the National Executive in a resolution of November 20, 1896.

Pursuant to the above-cited order of the court of hacienda the judicial sale took place in the said court on November 18th, 1898. Benoni Lockwood, jr., being the highest bidder at the sale, was declared the purchaser of the property sold upon his offer of 120,000 bolivars, to be paid within fifteen days from the date of sale. Robert Henderson was nominated the depositary. The court declared that the condition stipulated in Lockwood's proposition being complied with he should be put in possession of the auctioned rights, and that a certified copy in due form of the sale should be issued to him to serve as title of property. The time for payment was extended to December 20. On December 19, Carlos Hammer, with power of attorney from Benoni Lockwood, jr., paid into the court the sum of 120,000 bolivars, the purchase money of the Manoa or Imataca mine, and demanded a certificate of sale. The court declared well and duly performed the payment of the purchase money and ordered that the proper certificate be issued to Lockwood, and that he be given, in virtue of his title, the actual possession of said mine. The power of attorney executed by Lockwood to Hammer states that the purchase of the mine was made by him in the name of and representing the Orinoco Company (Limited), and that in consequence the title of the property must be made out in favor of said company, to which corporation the rights exclusively belonged by virtue of the purchase made by him.

In its memorial the Orinoco Company (Limited) alleges that it adopted this course with the object of quieting its title to the "Imataca" iron mine as against the claims of George Turnbull.

On November 29, 1898, Benoni Lockwood, jr., in consideration of the sum of \$23,026, to him paid by the Orinoco Company (Limited), conveyed to the said company all his rights, title, and interest in and to the "Imataca" iron mine, meaning and intending to convey all his rights, title, and interest in and to the premises purchased by him at a judicial sale at Ciudad Bolívar on the 18th day of November, 1898.

Mr. Turnbull protested against the judicial sale under the execution issued from the national court of hacienda at Ciudad Bolívar, and on November 21, 1898, filed a petition in the second hall of the high Federal court at Caracas

that the proceedings relative to the case in the said court of hacienda be remitted to the second hall of the high Federal court for review; and, therefore, the latter court on February 21, 1899, held that Turnbull had proven by authentic documents which he had exhibited and which were in the expediente that he was the legitimate owner of the mine referred to, and that the said court declared without force the auction sale carried out with reference to the iron mine "Imataca," and that said mine was affected by said rule. But afterwards, upon appeal to the third hall of the high Federal court, the foregoing judgment of the hall of second instance was, on May 6, 1899, reversed, and declared to be revoked "en todas sus partes" (in all its parts).

In the month of May, 1899, George Turnbull brought an action in the court of first instance of the Federal District, civil division, against Benoni Lockwood, jr., the Orinoco Iron Company, and Gen. Joaquín Berrio for damages resulting from the condemnation proceedings and sale at Ciudad Bolívar, alleging that the English syndicate — the Orinoco Iron Syndicate — had had no right whatever in the Imataca mine, and that therefore the execution against said mine was illegal and the sale thereunder void. Benoni Lockwood, jr., having declared before the court at Ciudad Bolívar that he was acting on behalf of the Orinoco Company (Limited) Turnbull afterwards joined said company in the action, in order, as the court states, "that it should be declared that said company had no right of action against him nor claim over his mine Imataca by virtue of the so-called auction sale which took place at Ciudad Bolívar before the national judge of hacienda since the English syndicate had no rights." On jurisdictional grounds the claims against Berrio were withdrawn. The cause then proceeded, counsel for the remaining defendants answering in obedience to the directions of the court, but not in any respect accepting the jurisdiction and the validity of the proceedings.

The court then sustained its jurisdiction against Lockwood and the American company and entered judgments as follows: On the claim for damages that the proof for Turnbull was insufficient, and judgment was accordingly entered for Benoni Lockwood, jr., and the corporation sued; and as to the second part of the action, the court held that as George Turnbull has, with the documents registered in the sub-office of the Federal District and dated the 14th and 19th of March, 1888, issued by the President of the Republic, proved his ownership of an iron mine situated at Manoa, in the State of Guayana, and also his ownership of 500 hectares of unreclaimed lands which form the superficies of the iron mine denominated Imataca, and by the resolution of the 20th of November, 1896, that the said lands and mine constitute a property, legally acquired by Turnbull, apart from the Manoa concession which had been declared forfeited; and as the Orinoco Company (Limited) opposed this title by a title given by an auction on the 18th of November, 1898, before the judge of hacienda of Ciudad Bolívar, which auction took place in virtue of an execution against the Orinoco Iron Syndicate (Limited) an English syndicate, and as in this respect the court was of opinion that the said title is not sufficient to lessen the rights and privileges which Turnbull has as proprietor in the said mine, because in the first place it did not appear that Turnbull intended to grant his property or any part thereof to any company, and much less was it proved before the judge and auctioneer that the Orinoco Iron Syndicate (Limited) had rights over the mine now in dispute, because for that purpose it would first have been necessary to have sought for the title from which the existence of those rights was derived in order to make the auction sale feasible, and to furnish the purchaser such knowledge of what he was buying, that in the presence therefore of the title shown by plaintiff and that set in opposition by the American company the court declared that it must maintain George Turnbull in the rights and privileges granted by

law to legal owners and give judgments against the Orinoco Company (Limited) holding that said company had no rights of action against Turnbull and no rights to enforce on his mine, Imataca, by reason of the title herein referred to.

The foregoing judgment was rendered in the hall of the tribunal of the first instance, civil division of the Federal District, in Caracas, on June 7, 1900. On July 27, 1900, in the magistrate's court of Ciudad Bolívar, it was decreed:

That having considered the application of the judge of the district of Dalla Costa, dated the 20th instant, in which, as the executing officer of a judgment of the civil division of the court of first instance, he asks the assistance of armed forces to enable him to execute the said judgment, by the reason of the resistance on the part of parties required and condemned to deliver possession of the Imataca mines, situated in the jurisdiction of Della Costa, and also considering the representation of Mr. Juan Padrón Uztáriz, as the attorney of George Turnbull, in whose behalf the delivery of said property is to be made under said judgment, this civil and military court, in conformity with the legal prescriptions in the matter of civil authorities aiding the judicial, as is proper in this case, doth order that there shall be placed at the disposal of said judge of the district of Della Costa, 20 armed men under the command of Colonel Uscategui, belonging to the military force of this place, in the name of the State, to enforce said judgment.

Accordingly, on August 4, 1900, proceedings were taken as set forth in the following certificates:

Juan E. Pino, acting secretary of the judge of the district in commission, certifies that pursuant to the measures adopted by the mandate of execution, given on the 19th day of June, 1900, by the judge of the civil court of the first instance in the Federal District, there is found an act as follows: In the Manoa region of the Della Costa district, on the 4th of August, 1900, there was constituted a judge of the said district at the iron mine of Imataca, on the side of the mountain, in which location is found the principal location of said mine. And in view of the objection made by the representatives of the Orinoco Company (Limited) to the transfer of the effects belonging to George Turnbull, then proceeded to comply with the mandate and execution given on the 19th of June, 1900, by the judge of the court of first instance in the civil court of the Federal District, by taking formal possession of said mine and all its appurtenances in the presence of the witnesses José Maria Escobar and Augusto Parejo Gaines. The court being held at the above-mentioned place, the above-mentioned judge solemnly declared, in the name of the Republic and by the authority of the law, that George Turnbull, represented by Juan Padrón Uztáriz, is placed in possession of the immovables, consisting of 400 hectares to the north of the Corosimo River and 100 hectares to the south of the same river, conforming to the title of the said property given the 14th of March, 1888, and reaffirmed the 20th of November 1896. Having accomplished which, the court was afterwards transferred to the banks of the Corosimo River, where were found the buildings and other appurtenances of the above-mentioned mining establishment, and it was again declared, equally in the name of the Republic and by authority of the law, that the owner, George Turnbull, is placed in possession of the following property: The railroad line that goes to the mine, its rolling stock and other appurtenances; a large house and two small living houses; two sheds covered with zinc; two small houses covered with zinc; a house and six sheds of straw for laborers, and about 3,500 tons of iron ore situated at the above-mentioned river and taken out of the mine. There presented themselves H. H. Verge and P. Mattei manifesting, the first in his character as superintendent of the Orinoco Company (Limited), and the second authorized by George B. Boynton, who protested in the most solemn manner against the above-mentioned acts, and in consequence made a written protest, in accordance with the above action. Furthermore, the court imposed on all those present the obligation that they are to respect all acts legally done and to abstain and avoid any act that might impede or interfere with the owner, George Turnbull, or his representative, in exercising the rights that they are entitled to.

In a communication addressed to the Secretary of State of the United States, dated December 18, 1900, G. E. Hinnau, "of counsel for George Turnbull," states that the court of first instance in the Federal District at Caracas, being a duly constituted court of competent jurisdiction, had, on June 9, 1900, finally and conclusively adjudicated and by decree confirmed the tenor of the resolution of the Government of Venezuela, finding, as in said resolution recited, that the title to the Imataca mines was vested in said Turnbull, and that no other person had or possessed any right, title, or interest therein, and having no such title, any possession adverse to said ownership was unlawful; and that from such findings and a mandate and decree thereon made by said court, dated the 19th day of June, 1900, there is no appeal; that pursuant to the adjudication and mandate of said court, and in the enforcement and effectuation thereof, the proper authorities on the 4th day of August, 1900, placed said Turnbull, through his agent, Juan Padrón Uztáriz, in possession of the property and its appurtenances; and that the court, for the purpose of thereafter maintaining Turnbull in the lawful maintenance of such property, ordered and decreed by perpetual injunction that all persons be thereafter enjoined and restrained from impeding or interfering with the rights of said Turnbull in and to said mines and property.

It is, however, to be observed that the judgment of the civil division of the court of first instance of the Federal District is *res adjudicata* solely upon the issue properly before it for its determination; that the Orinoco Company (Limited) was a party to the proceedings in said court only in its capacity as grantee of the rights and interests, if any, obtained by Benoni Lockwood, jr., by virtue of the judicial sale at Ciudad Bolívar on November 18, 1898, under the execution against the Orinoco Iron Syndicate (Limited); that the judgment of the court was that "in the presence of the title shown by plaintiff (Turnbull), and that set in opposition by the American company (to wit, as the record shows 'a title given by an auction on the 18th of November, 1898, before the judge of hacienda of Ciudad Bolívar'), the tribunal must maintain George Turnbull in the rights and privileges granted by law to legal owners," and that "the company has no rights of action against him (Turnbull), and no rights to enforce on his mine, Imataca, by reason of the title herein referred to." In other words, the court held that the Turnbull titles of March, 1888, were to be sustained in opposition to the title obtained by Benoni Lockwood, jr., in virtue of the judicial sale, declared invalid, of November 18, 1898.

It is evident from the record that the prior valid and subsisting rights of the Orinoco Company (Limited) as cessionary of the Fitzgerald contract of September 22, 1883, were not before the civil division of the court of first instance of the Federal District in the case of *George Turnbull v. Benoni Lockwood, jr., et al.*, and therefore that they are in no manner affected or determined by the judgment of said court in that action. Rulings of courts must be considered always in reference to the subject-matter in litigation and the attitude of the parties in relation to the point under discussion.

Moreover, as has been shown heretofore, jurisdiction of the Fitzgerald contract vested, constitutionally, in the high Federal court alone.

On the 10th of October, 1900, it was, through the ministry of fomento, resolved:

Considering that the contract celebrated September 22, 1883, with Cyrenius C. Fitzgerald, and on which the Orinoco Company (Limited) now bases its right for the exploitation of the national riches in the Delta of the Orinoco and colonization of the lands conceded, has now no legal existence, for that it was declared void for failure of performance of what was in it stipulated; that in April, 1887, the National Congress approved a contract celebrated with the North American citizen, George Turn-

bull, in the same regions and with the same clauses and in all equal with that with the Manoa Company (Limited) (cessionary of Fitzgerald), declared void, which was also for the same causes declared in caducity on the 18th of June, 1895; and that on the same day of the said month and year this office issued an executive resolution restoring to the Manoa Company (Limited) the rights and privileges conceded by the original contract with Fitzgerald in 1883; and

Considering (first) the contract celebrated with C. C. Fitzgerald having been declared void for failure of compliance with article 5, this can not be considered in vigor without the intervention of a new contract approved by the National Congress; (second) that the legislature of the State of Bolívar, in its ordinary session in 1899, adopted a joint memorial to the National Congress, declaring that the company concessionary of the contract celebrated with Fitzgerald had not complied in its fourteen years of existence with any of the clauses established in article 5 of the said contract, and that this interferes with the interests of the Venezuelans for exploiting the natural products of that region of the Republic, and (third) that according to the notes and reports forwarded to this office by the authorities of the different places of the region to which refers the concession already mentioned, all concur in the failure of performance of the same and of the palpable evil which it occasions, as well to the national treasury as to the individual industries, the supreme chief of the Republic has seen fit to dispose:

That the mentioned contracts are declared insubsistent.

Let it be communicated and published.

For the National Executive:

Ramón AYALA

The evidence presented here discloses that in the joint memorial adopted by the legislative assembly of the State of Bolívar, it was by that body resolved:

ARTICLE 1. To solicit the National Congress to order the necessary dispositions to the end that shall be petitioned by the competent organ, and shall be declared by the high Federal court the rescission of the contract celebrated by the National Executive with the citizen, Cyrenius C. Fitzgerald, his associates, assigns, and successors, the 22nd of September, 1883, which was approved by the Congress in session the 23rd of May, 1884.

It is furthermore significant that in the National Congress on April 7, 1899, the special commission appointed to consider and report concerning the resolution of the legislative assembly of the State of Bolívar with reference to the Fitzgerald contract, reported to the citizen president of the chamber of deputies proposing to the chamber that it remit said resolution to the National Executive, in order that it resolve what is convenient, but that on April 26, 1899, when the chamber of deputies considered in session the foregoing report, the deputy, Doctor Martínez, proposed —

That at the end of said report, where it says, "in order that it resolve what is convenient," it shall say: "*In order that they be submitted to the high Federal court, to the end that that tribunal shall resolve the affair in conformity with justice.*"

And this proposition was voted approved.

Clearer and more conclusive evidence (except the constitutional provision itself) could not be required than the foregoing action of the chamber of deputies on April 26, 1899, and the decision of the high Federal court in the New York and Bermudez case hereinbefore cited, to demonstrate that jurisdiction of the Fitzgerald contract vested solely in the high Federal court, and that such executive resolutions as those of September 9, 1886, and of October 10, 1900, declaring said contract insubsistent are illegal assumptions of power and null and void.

The question whether or not the grantees of the Fitzgerald concession had fulfilled its conditions was remitted by the agreement itself to the competent tribunals of the Republic, to be there determined in conformity with the laws.

But it may be remarked that the evidence shows that various high officials of Venezuela, including the governor of the Federal territory of the Delta, certify that within the time limit of the contract the concessionaries had commenced the work of exploitation "in conformity with what is established in the contract." When the Government on June 18, 1895, authorized the Manoa Company (Limited) to renew its work of exploitation and colonization the reports made by the company to the Government presented in evidence show that the company actively resumed the prosecution of the enterprise. Furthermore, it is to be observed that complaints of nonfulfillment of the Fitzgerald contract come with small grace from the Government of Venezuela. Evidence is not wanting here that shortly after the signing of the alleged contract between Guzmán Blanco and George Turnbull in Europe the Government of Venezuela ordered the governor of the Federal territory of Delta to require the Manoa Company (Limited) to suspend its operations. The hostile, arbitrary, and vacillating course of the Government toward the grantees of the Fitzgerald concession from the illegal annulment of their contract on September 9, 1886, to the equally illegal annulment on October 10, 1900, was calculated to paralyze every effort to fulfill their obligations, destroy their credit, create expensive litigation, and involve in financial ruin every person induced to invest his capital in the company's enterprises in reliance upon the good faith of the Venezuelan Government. Enterprises of pith and moment require for their successful prosecution and depend upon the stability of rights the protection of law, the sacredness of obligations, and the inviolability of contracts. Of all these elements necessary to success the grantees of the Fitzgerald contract were deprived by the arbitrary acts of the Venezuelan Government, which in equity and justice can not now be heard to complain that the said grantees did not, in the presence of such obstacles and in opposition to the unlawful exercise of superior force, fulfill their obligations.

The twelfth article of the collusive Guzmán Blanco-Turnbull contract of January 1, 1886, shows that George Turnbull had full knowledge of the exclusive rights and privileges possessed by the grantees of the Fitzgerald concession within the territories described. With this knowledge Mr. Turnbull's efforts then and thereafter were persistently directed toward the dispossession of said grantees from the rights lawfully vesting in them by virtue of that contract. His status throughout the history of this remarkable case has been that of a mere stranger and trespasser seeking to divest the prior lawful and subsisting titles vesting by and through the Fitzgerald concession.

And it is a common maxim that he who has the precedency in time has the advantage in right; not that time, considered barely in itself, can make any such difference, but because the whole power over a thing being secured to one person, this bars all others from obtaining a title to it afterwards. (1 Fonbl. Eq., 320.)

The basis of Mr. Turnbull's claim against the Government of Venezuela presented to this Commission is the alleged interference with and deprivation of the titles obtained by him in 1888 to certain lands and mines. But these titles were knowingly sought and secured by him in derogation of the rights of the grantees of the Fitzgerald concession. His titles were void and his possession unlawful *ab initio*.

Mr. Turnbull complains of the Venezuelan Government:

First. That by reason of certain acts of said Government he was prevented from either improving or selling his said property, and that he thereby sustained a loss of upward of \$50,000.

Second. That by reason of certain other acts of the Venezuelan Government he was deprived of the consideration agreed to be paid him under his contract

of the Orinoco Iron Syndicate for the lease of said property, and was unable to make any other contracts with respect thereto, or to develop or take the products of said mines, and was thereby damaged to the extent of £140,000.

Third. That by reason of certain acts of the Venezuelan Government he was deprived of the use and occupation of said property, and prevented from concluding any contracts, or to use, develop, lease or, sell said property, or the minerals or product thereof, from November 20, 1896, to June 8, 1900, and was thereby damaged in the sum of \$500,000.

Fourth. That between the years 1893 and 1900 he expended and caused to be expended the sum of \$120,000 in the United States and England in travel, legal disbursements, fees to the Government of Venezuela, legal expenses of negotiating, promoting, and procuring six several contracts for the leasing, testing, and sale of said property, all of which contracts were made ineffectual and void by reason of the spoliation of titles to said property by said Government and the withholding of the use, possession and occupation thereof.

The Manoa Company (Limited) in its memorial alleges respecting the damages and injuries caused said company by the acts of the Government of Venezuela:

First. That if by reason of the force and effect of the resolutions of September 9. and September 10, 1886, and the act of Congress of April 28, 1887, or of any or either of them, said company was divested of its rights, titles, and interests in and to the Fitzgerald concession. it was damaged thereby in the sum of \$5,000,000.

Second. But that if the said resolutions and act did not have that effect, it was, by their consequences, prevented from the development and exploitation of the resources thereof, and the receipts of the rents, revenues, royalties, and profits which it would have derived therefrom between the date thereof when its rights thereto had been repudiated by the Government, and the date of the resolution of June 18, 1895, when its said rights were confirmed, reaffirmed, ratified, acknowledged, and re-established; which rents, revenues, royalties, and profits said company estimates, in view of all the then existing conditions and circumstances of the case, would have amounted to the sum of \$300,000.

Third. That if the resolution of July 10, 1895, by its force and effect divested said company of its right, title, and interest in or to the mine of asphalt, it was damaged in the sum of \$250,000; but that if it did not have that effect or operation then the said company was damaged thereby in the nominal sum of \$1,000.

Fourth. That by the effect thereof as a slander of its title to the entire concession and each and every part of it, by the assertion immanent in that resolution and an obvious implication from it that the title and rights of the said company to its entire concession were liable at any time to be arbitrarily and summarily divested and annulled in like manner, either totally or in fragments, at the discretion or caprice of the Executive authority and without due process of law, it was damaged in the sum of \$2,000,000.

Fifth. That if the resolution of November 20, 1896, by its force and effect divested said company of its rights, title, and interest in or to the mine of Imataca and its appurtenant lands, it was damaged thereby in the sum of \$1,000,000; but that if it did not have that effect, then said company was damaged thereby in the nominal sum of \$1,000.

The Orinoco Company (Limited) complain of the Government of Venezuela:

First. That on account of the acts and doings of said Government and its officers touching the sale under execution issued from the national court of hacienda at Ciudad Bolívar, and for the damages caused by it and them to said

company by the deprivation of said company of its lawful possession of the mine of Imataca under the claim that the Government had a lien thereon in consequence of the judgment in said court against the Orinoco Iron Syndicate; and by the exaction and appropriation of the purchase price thereof and the costs, expenses, and disbursements caused thereby, and the ejection from and deprivation of said mine, that said company was damaged in the sum of \$125,000.

Second. That by reason of the Executive resolution of the 10th of October, 1900, declaring insubstantial the contract of September 22, 1883, the company lost the profits of a certain contract entered into by it with Charles Richardson and his associates for the lease of the asphalt mine on the island of Pedernales, and was thereby damaged in the sum of \$100,000.

Third. That by reason of said resolution the company lost the opportunity of completing an agreement with Messrs. Moore, Schley & Co. for the exploitation of the Imataca iron mine, and was damaged thereby in the sum of \$100,000.

Fourth. That the company on the 10th day of October, 1900, had concluded negotiations with Messrs. Power, Jewell & Duffy, of Boston, whereby it was stipulated that for a certain consideration the said parties should pay into the treasury of said company as and for a working capital with which to prosecute its intended operations on the concession the sum of \$2,800,000, but that by reason of the Executive resolution of October 10, 1900, the said parties refused to execute the proposed contract and abandoned the same, whereby the company lost the benefit and advantage thereof and was damaged in that sum.

Fifth. That, if under the constitution and laws of the Republic of Venezuela, the resolution of October 10, 1900, had the effect to divest said company of its rights, titles, and interests in and to the contract of September 22, 1883, the company was damaged in the sum of \$10,000,000; and if it be otherwise and said resolution was an act of usurped authority beyond the competence of the Executive power, then the company was damaged thereby in the aggregate of the damages mentioned as having been occasioned thereby; but that the company advisedly limits its claim against the Republic of Venezuela for the damages occasioned by said resolution of October 10, 1900, to the sum of \$1,000,000, for which it demands the judgment and award of this tribunal.

Sixth. That if it be considered that by force of the constitution and laws of Venezuela the Orinoco Company (Limited) has been divested of its rights, titles, and interest in and to certain land and mining concessions granted by the Government since the date of the resolution of October 10, 1900, the company makes claim on that account for the reasonable value thereof which it alleges upon information and belief exceeds the sum of \$1,000,000; but if it be considered that the said land and mining concessions are of no force or validity as against the elder patent and paramount title of said company under its contract, then the company claims only nominal damages for and on account of the granting of the same in manner and form but without legal effect upon the right of said company to have and exploit the same.

In view of all the foregoing I am of the opinion:

First. That the contract-concession entered into on the 22nd day of September, 1883, by and between the Government of Venezuela and Cyrinius C. Fitzgerald, granting to the said Fitzgerald, his associates, assigns, and successors for the term of ninety-nine years the exclusive right to develop the resources of certain territories therein described, and the exclusive right of establishing a colony for the purpose of developing the resources already known to exist

and those not yet developed in the same region, and other rights, privileges, and immunities therein specifically enumerated, is and since the 29th day of May, 1884, has been a valid subsisting contract, lawfully vesting in the grantee Cyrenius C. Fitzgerald, his associates, assigns, and successors all the rights, privileges, and immunities in the said contract set forth.

Second. That George Turnbull obtained no rights of property, either in the concession as a whole, under and by virtue of the alleged contract of January 1, 1886, or to the lands and mines of Pedernales and Imataca, under and by virtue of his alleged titles.

Third. That the Fitzgerald contract-concession being subsistent, the Manoa Company (Limited) is entitled to an award generally for the wrongful interference with and deprivation of the exercise of its rights and privileges under the said contract-concession by the Government of Venezuela from the 9th day of September, 1886, to the 18th day of June, 1895, justly commensurate with the loss or injury sustained thereby; and in particular to an award for damages, however nominal, for injuries sustained relative to the Pedernales asphalt mine and to the iron mine of Imataca.

Fourth. That the Fitzgerald contract-concession being subsistent, the Orinoco Company (Limited) is entitled to an award generally for the wrongful interference with and deprivation of the exercise of its rights and privileges under the said contract-concession by the Government of Venezuela, from the 10th day of October, 1900, to the 14th day of January, 1901, justly commensurate with the loss or injury sustained thereby; and in particular to an award for the amount paid into the national court of hacienda on the 19th day of December, 1898, together with interest on said sum at the rate of 3 per cent per annum from said date to the 31st of December, 1903, the anticipated date of the final award by this Commission.

GRISANTI, *Commissioner* (claim referred to umpire):

"The Manoa Company (Limited)" sets forth a claim against the Republic of Venezuela, the memorial of which ends as follows:

Your orator claims, however, that by the effect thereof as a slander of its title to the entire concession and each and every part of it, by the assertion immanent in that resolution and an obvious implication therefrom, that the title and rights of the said company to its entire concession was liable at any time to be arbitrarily and summarily divested and annulled in like manner, either totally or in fragments, at the discretion or caprice of the Executive authority and without due process of law; that it was in fact damaged in the sum of \$2,000,000 and more; and if said resolution of November 20, A.D. 1896, by its force and effect divested said company of its said right, title, and interest in or to said mine of Imataca and the appurtenant lands aforesaid, that it was damaged thereby in the sum of \$1,000,000; but if it did not have that effect or operation, then that said company was damaged thereby in the nominal sum of \$1,000.

On September 22, 1883, a contract was celebrated between the Government of Venezuela and Cyrenius C. Fitzgerald, approved by the National Congress on May 23, 1884, whereby was conceded unto said Fitzgerald, his associates, successors, and assigns, for the term of ninety-nine years, the exclusive right to exploit the resources of the territories of national property referred to in Article I of said contract; as also the exclusive right for the same term to establish a colony, to develop the resources known, and also those as yet not exploited in said region, including asphalt and coal; for the purpose of establishing and cultivating on as high a scale as possible agriculture, breeding of cattle, and other industries and manufactures which may be considered suitable, setting

up for the purpose machinery for working the raw material, exploiting and developing to the utmost the resources of the colony.

Fitzgerald undertook to commence the works of colonization within six months, counting from the date when said contract was approved by the Federal council (art. 5) — that is to say, from the date of its being granted (September 22, 1883) — the Government having promised that, if in its judgment it should be necessary, it should grant to the contractor a further extension of six months for commencing the said works (art. 10).

On the 7th day of February, 1884, Dr. Heriberto Gordón, acting as Mr. Fitzgerald's attorney, requested that said Mr. Fitzgerald should be conceded the further extension of time referred to in said article 10; and by resolution of the 19th of the same month it was so conceded, to be counted from the 22d of the following March.

In the course of said extension of time — on the 14th of June — Fitzgerald assigned the contract to "the Manoa Company (Limited)," and on April 10, 1886, seven months and ten days after said extension had elapsed. Doctor Gordón, attorney for said company, addressed a petition to the minister of agriculture (fomento), the last part of which (pp. 64, 65, and 66 of the record) is as follows:

Therefore, in compliance with instructions given me by "the Manoa Company (Limited)," I beg to apply to the Benemérito general, President of the Republic, through your respectable organ, beseeching him most entreatingly and urgently to declare by resolution that to "the Manoa Company (Limited)" are not imputable the circumstances which have prevented it, up to the present, from carrying out works in accordance with the contract celebrated between the Government and C. C. Fitzgerald on September 22, 1883, of which it is an assignee; and that, therefore, said contract is in force, and the company in possession of all its rights, as in the extensions accorded will not be computed the time elapsed up to the present.

Throughout all of said solicitude, and particularly in the above-inserted paragraph, "the Manoa Company (Limited)" confesses through its attorney, Doctor Gordón, that at that date (April 10, 1886), a long time after the extension had expired, it had not commenced to fulfill the contract, and likewise admits considering it annulled. And considering only in fact that the company held such an opinion, can it be accounted for that the company should request the Government to promulgate a resolution declaring *that the causes which had prevented it from carrying out the contract are not imputable to it; that therefore the contract is in force and the company in possession of all its rights, as in the extensions accorded will not be computed the time elapsed.*

The above-mentioned petition was followed on September 9 by this resolution, to wit:

Resolved, Señor Heriberto Gordón, with power from Señor C. C. Fitzgerald, celebrated on the 22d of September, 1883, with the National Government a contract for the exploitation of the riches existing in lands of national property in the Grand Delta, and the works ought to have been begun within six months of the aforesaid date. In spite of such time having elapsed without commencing said works, the Government granted him an extension of time for the purpose; and inasmuch as said contractor has not fulfilled the obligations which he contracted, as stated in the report of the director of territorial riches, specifying in reference to article 5 of the contract in question, the councilor in charge of the presidency of the Republic, having the affirmative vote of the Federal council, declares the insubsistency or annulment of the aforesaid contract.

In any other case the lawfulness of said resolution would be doubtful, but in the present one it is not; firstly, because "the Manoa Company (Limited)" has authentically declared the facts whereon it is based; secondly, because said

company tacitly acknowledged the annulment of the contract; and, lastly, because the company itself made the National Government a judge as to the enforcement or termination of the contract, when requesting it to declare the enforcement of said contract, whereby it authorized the Government ipso facto to promulgate its annulment.

As an explanatory argument of the unlawfulness of the above-inserted resolution, quotation is made of the judgment passed by the high Federal court on August 23, 1898, declaring the insubsistency and nullity of the Executive resolution of January 4, of said year, whereby the contract of the "New York and Bermudez Company" was declared terminated and void.

Without discussing said decision, which in our opinion is erroneous, as shown by the reasonings contained in the voto salvado of three of the judges (Official Gazette, No. 7421, dated September 17, 1898), we shall undertake to establish that the case of the "New York and Bermudez Company" and that of "the Manoa Company (Limited)" are entirely different, whereas the claimant company, in the aforementioned petition, authentically confessed the insubsistency of its contract, the forfeiture of its rights, and requested the National Government to ratify the same, which confession and petition the "New York and Bermudez Company" did not make. And the most obvious evidence of the difference between the two cases is that "the Manoa Company (Limited)" did not apply to the high Federal court to request that the resolution of September 9, 1886, be declared void.

"The Manoa Company (Limited)" alleges as the principal cause for preventing it from fulfilling the obligations contracted, the British invasion, for, according to the claimant company's statement, the British authorities were apt to hinder its use and full power over a considerable portion of the territory marked out in Article I of the contract.

In an article inserted in the *Evening Post*, New York, dated February 10, 1896, we find the following account:

Mr. Fitzgerald especially attributes the subsequent misfortunes, decadence, and collapse of the Manoa Company solely to the British invasion.

But there are some peculiar facts in this connection. Mr. Fitzgerald, when requested to point out on the map the location of the sawmill, indicated it as above specified. Now, that particular spot is to the westward of the Schomburgk line; and every one familiar with the geographical aspects of British claims in the Guiana controversy knows that they never extended in the interior so far as to approach any part of the course of the Orinoco River.

Moreover, the Anglo-Venezuelan diplomatic correspondence appertaining to McTurk's proceedings of 1884 shows that his assertion of British jurisdiction did not extend farther west than the Amacuro River, i. e., the coast limit of the Schomburgk line. Guzmán Blanco, as Venezuela's plenipotentiary in London, reviewed in a note to Lord Salisbury, dated July 28, 1886, all the circumstances of the McTurk affair, and in it there is no allusion to forcible British acts west of Amacuro. In his communication Guzmán Blanco cites a note written by McTurk, *from the right bank of the Amacuro*, to Mr. Thomas A. Kelly, resident manager of the Manoa Company, stating that he (McTurk) had received notice that the company was going to erect a sawmill at the mouth of the Barima, and warning him against such encroachment. This seems to establish that the British Government's interference with the Manoa Company in 1884 had in view only the prevention of the company's intended programme for intrusion east of the Schomburgk line, and involved no interference with the sole improvements made by the company up to that on the grant.

Accordingly there was nothing to deter the Manoa corporation from pushing forward its *mercantile, agricultural, commercial, manufacturing, shipping, and mining business* in territory exclusively Venezuelan, with the Orinoco sawmill settlement as a basis. Besides, the really valuable portions of the concession for the purposes of immediate development (including the Pedernales asphalt property) were those which lay

to the west of the Schomburgk line, and which could have been worked in absolute security of ownership under the laws of Venezuela.

An affidavit of Mr. Jerome Bradley, ex-president of the Manoa Company (Limited), rendered on October 21, 1886, filed at the United States circuit court in Brooklyn (case of Everett Marshall *v.* The Manoa Company *et al.*) reads as follows, to wit:

I have read the affidavit of C. C. Fitzgerald, verified July 30, 1887. It is untrue that I was informed by his (Fitzgerald) son George, upon the latter's return from Venezuela, that the lumbering operations upon said grant were discontinued in 1884 owing to the interference of the British Government claiming the territory; but, on the contrary, I allege that the same were discontinued for the reason that the Manoa Company did not pay, and had not the means to pay, the few men employed by them to cut lumber and transport it to the sawmill; that the sawmill spoken of was not upon that portion of said grant to which a claim was made by the British Government. The said sawmill was distant from that portion of the grant over 50 miles. (Taken from an insertion of Mr. Turnbull's appended to this claim.)

This shows that the British invasion is only a pretext alleged by the claimant company so as to conceal the real cause of its collapse, which was its inability to raise funds for commencing the works of colonization and fulfilling the other obligations to which it was bound under the contract. Moreover, the company never protested against the aforementioned resolution (although said company asserts to the contrary) nor applied to the Federal court to demand its annulment. Said company was well aware that on lawful grounds it was at a loss; that the executive act was based on true facts and in conformity with justice.

On January 1, 1886, Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary of Venezuela to various courts of Europe, celebrated a contract on behalf of Venezuela with Mr. George Turnbull, the same as that as the Manoa Company (Limited); but said contracts, besides requiring for its legal validity the approval of the President of the Republic with the affirmative vote of the Federal council, as also the sanction of Congress (Article 66, attribution 6 of the constitution of 1881), in article 12 stipulates as follows:

This contract shall enter into vigor in case of the becoming void through failure of compliance within the term fixed for this purpose of the contract celebrated with Mr. Cyrenius C. Fitzgerald the 22d of September, 1883, for the exploitation of the same territory.

The referred to contract was approved by the Federal council on September 10, 1886, and by Congress on April 28, 1887; that is to say, after the Manoa Company's contract became void; therefore the Turnbull contract did not deprive said company of the rights it had forfeited and which the Republic of Venezuela had newly acquired.

On June 18, 1895, and at the request of the Manoa Company (Limited), the National Government issued a resolution, ordering that—

due authorization be given to the said Manoa Company (Limited), within six months, reckoning from the date of this resolution, to renew its works of exploitation in order to the greater development of the natural riches of the territories embraced in said concession; hereby confirming it in all its rights stipulated and granted to C. C. Fitzgerald by the contract of September 22, 1883; and the said Manoa Company (Limited) shall be bound to report to the national Executive from time to time through the organ of this ministry of all and every work done by it in execution of said contract in order that the Government may be enabled to judge of its compliance with the obligations of said contract in conformity with the spirit and the magnitude of its stipulations.

The contract of the Manoa Company (Limited), being insubsistent through it not complying the obligations thereunder, and also in view of the contents of the Executive resolution dated September 10, 1886, could not, in virtue of the Executive resolution already inserted, revive said contract, but had to be issued anew in conformity with the National Constitution of 1893; that is to say, that it had to be celebrated by the President of the Republic with the affirmative vote of the Government council and with the approval of Congress. Article 44 of the constitution which establishes the duties of Congress, contains, under No. 16 the following:

To approve or deny such contracts of national interest as the President of the Union may have celebrated, and without which they can not be carried out into effect.

The Executive resolution of June 18, 1895, was, and is, absolutely inefficacious for giving existence to a contract that had become void ten years before.

The claimant company presents as a proof of the subsistence of its contract a resolution issued by the minister of fomento on February 26, 1886, which in no wise refers to said contract but to another, as I shall forthwith show. Hence the text of the resolution:

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO,
DIRECTION OF TERRITORIAL RICHES,
Caracas, 26 February 1886

Year twenty-second of the law and twenty-seventh of the federation.

Resolved, In view of the petition of Citizen Heriberto Gordón, as attorney to C. C. Fitzgerald, assignee of the contract for colonization and exploitation of a part of the waste lands of the former State of Guayana, celebrated on May 21, 1884; the President of the Republic, with the vote of the Federal council, has resolved: That for the effects of the extensions of time fixed for the performance of said contract, the time elapsed since the 11th of June, 1885, up to this day, be not computed, and that consequently the mentioned contract continue in force and the concessionary is in possession of all his rights.

Let it be published.

For the Federal Executive:

J. V. GUEVARA

This resolution refers to the contract celebrated by Dr. Heriberto Gordón on his own behalf for colonizing the waste lands situated in the former State of Guayana, which are comprised within the limits expressed in Article I.

The Manoa contract was celebrated on September 22, 1883, and approved by the National Congress on May 23, 1884; the Gordón contract was celebrated on May 20, 1884, and its approval by the legislature took place in the 12th of June of the same year.

Owing, no doubt, to a mistake, which I have corrected, the claimant company has adduced the mentioned resolution as evidence.

"The Manoa Company" considers itself as being the owner of the Imataca iron mine and the Pedernales asphalt mine, alleging such ownership in view of article 4 of the contract; and whereas in 1888 the Government of the Republic conceded the definite title to said mines to Mr. George Turnbull, who previously fulfilled the formalities of law in force at the time, said company pretends to be dispossessed and on the ground of such erroneous opinion lays one of its claims.

The memorial states as follows:

Afterwards, on or about the 13th day of March, A.D. 1888, the authorities of the Republic conceded and issued to said Turnbull, in form of law but without right the

definite title to the said iron mine of Imataca; and afterwards, on the 28th day of June of that year, they conceded and issued unto him in like manner and form the definite title to said mine of asphalt; and afterwards put said cessionary in possession thereof and of the lands comprising the superficial area of the same and intended for their use in the exploitation thereof; the definite title of which lands also said authorities about the same time conceded to said Turnbull.

All of said arbitrary acts and doings were accomplished without notice to said company or other process, legal proceeding, or opportunity to them to be heard, and were in manifest derogation of its rights.

The basis which the claimant company pretends to have for the series of mistakes contained in the two foregoing paragraphs is article 4 of the contract, to wit:

ART. IV. A title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the colony.

The claimant company holds that, in virtue of said clause, every mine discovered in the territory described in article 1 of the contract belongs to it, whoever the discoverer may be. A gross absurdity, which baffling interest alone could have led the claimant company to believe. The Government of Venezuela undoubtedly celebrated the contract which is being subject to analysis, with a view to develop the natural riches and colonization of the mentioned territory, and according to the curious meaning given to article 4 by the company, the exploitation of the mines depended exclusively on their will, so that if said company did not wish to discover any, nobody could denounce one, even if he discovered it.

Furthermore, the article provides that a title should be granted in conformity with the law to the enterpriser on every mine he discovered; that is to say, that if the company discovered a mine, it had, in order to obtain said title, to comply with the legal formalities.

Since 1883, when the Manoa contract was signed, up to 1887, when Turnbull obtained his title to the iron mine of Imataca and to the asphalt mine of Peder-nales, five mining codes were in force in Venezuela, to wit: one of March 13, 1883; one of November 15, 1883; one of May 23, 1885; one of May 30, 1887; and an organic decree of the latter issued on August 3, 1887.

All of said codes are based on the principle that mines are the property of the State wherein they are situated, the administration alone of the same being in charge of the Federal Executive; therefore it has to be taken for granted that whosoever wishes to exploit a mine, even he who discovers the same on his own grounds, must previously obtain a corresponding title thereto. For such obtainment the following formalities, briefly stated, have to be complied with:

Whoever may intend to exploit mines shall notify the president of the State or the governor of the territory wherein the mines discovered are located, so that they may be entered in the register which must be kept by the secretaries of said functionaries. (Art. 11.)

The petition for a concession shall be published once only in the official gazette of the State or territory, as the case may be, or in default thereof in the paper of largest circulation, or if the latter does not exist either, it will suffice to post placards or advertisements in the municipality where the mines are located during thirty days. (Art. 12.)

In every petition for mines addressed to the president of the State or to the governor, accordingly, the number of mines requested must be expressed, as also the district, municipality, or colony wherein such are contained; if these are not private, municipal, or waste lands, the name must be stated of the engineer or public surveyor who is to measure them and make out the plans, which acts

will take place after having published a notice to that effect in the press, in order to inform the adjacent neighbors thereof, so that they may assist at said acts. Plans made only by engineers or surveyors having a title, will be considered authentic and will alone produce legal effect in the matter of mensuration and plans contained in the records of mines. (Art. 16.)

Once the mensuration takes place, the record, together with the plans made, is turned over to the mining inspector for him to verify the acts, which in its turn, and in addition to his report, is all forwarded to the ministry of fomento. (Art. 17.) Thereupon, and in view of the record and its merits, the national Executive decides as to whether it will or will not grant the concession. (Art. 19.)

The Manoa Company (Limited) should have complied with all said formalities in order to obtain a title to the aforesaid mines, and it did not do so. The only judicial effect which can be attached to article 4 of the contract is the right of the company to be preferred when in competition with any other discoverer, in conformity with articles 13, 14, and 15 of the referred-to law.

Article 13 provides that—

Those who think to have a right to oppose others who have petitioned for mining concessions in virtue of the preceding articles, may present their petitions to the president of the state or to the governor of the territory. These petitions will be registered in the same order of their presentation, stating the day and hour thereof, and the only notification to the parties concerned therein will be published in the official gazette three times in the course of a month, or placards and advertisements will be posted as mentioned in the foregoing article.

On the expiration of said thirty days, and the formalities provided in the preceding articles having been fulfilled, the president or governor, as the case may be, will decide with regard to the petitions for concessions, and his resolution will refer also to the merits of oppositions, if such oppositions have been made.

After said decision has been given no oppositions will be admitted, and the favored party or parties will be authorized by the president or governor accordingly, to proceed to the exploration and other preparatory acts required for putting the record in a condition to be considered, and to enable him to issue or deny a title of concession, reporting the same to the national Executive. (Art. 15.)

The provisions quoted are those of the law of November 15, 1885.

If, as before stated, whenever a person discovers a mine in his own territory he must, in order to obtain a title thereto, comply with the formalities provided under the respective law, all the more reasons why the claimant company should have complied with the same is that under the contract of September 22, 1883, no other right to the territory designated in article 1 was conceded to it than that of exploiting the natural riches therein contained.

In the opinion of the Venezuelan Commissioner, as the claimant company has no title of ownership of the aforesaid mines nor made any opposition to Turnbull when he attempted to acquire them, the claim of said company in regard to such mines is absolutely groundless.

“The Manoa Company (Limited),” has not shown that it fulfilled the obligations imposed under the contracts of September 22, 1883, and consequently it is deprived of any right to claim for losses sustained through the annulment of said contract. In effect, it would be the most flagrant violation of equity — which has to be the basis for the decisions of this tribunal — to acknowledge the rights which a contract concedes to a contractor without considering that said contractor has not fulfilled the obligations he was under, and that these are correlative to said rights.

Lastly, “The Manoa Company (Limited),” raises its claim to the exorbitant amount of \$2,000,000 without producing the slightest evidence to prove that the losses alleged amount to that sum. I am firmly convinced that this high

tribunal has to be extremely exigent and conscientious in examining and appreciating to evidence produced in support of claims, as otherwise it might inadvertently serve the unbounded avarice of unscrupulous claimants.

GEORGE TURNBULL

Let us now analyze Mr. Turnbull's claims.

One is for \$500,000, at which amount the plaintiff reckons the damages and losses which a judicial proceeding against "the Orinoco Iron Syndicate" caused him.

This part of the claim is perfectly groundless, as the said proceeding was quite legal, and the most decided and efficacious protection was tendered by the Government of Venezuela to Mr. George Turnbull's interests.

At the national court of finance at Ciudad Bolívar a judgment of confiscation was given against the English schooner *New Day*, of which the captain was John W. Baxter, on account of having discharged at Manoa a cargo that had been transhipped at Barbados from the steamers *Java*, *Yucatan*, *West Indian*, and *Spheroid*, and which cargo had been shipped at London and Liverpool by the Orinoco Iron Syndicate (Limited) to the port of Ciudad Bolívar, addressed to that same company, the manager of which was Mr. George Turnbull. And whereas Manoa is not a port authorized for foreign trade, nor had the schooner obtained a permit to discharge goods therein, the fact was denounced at the national court of hacienda, and said court, in the exercise of its legal duties, passed the corresponding judgment thereon. Said judgment having been finally determined, a sentence was delivered declaring that the schooner *New Day*, together with its boat, tackle, and other appurtenances, were liable to the penalty of confiscation, as also was the cargo discharged at Manoa, in conformity with No. 6, article 1, law 21 of the Code of Hacienda, to wit:

ARTICLE 1. The objects which are liable to the penalty of confiscation are those included in each of the following cases:

- First. * * *
- Second. * * *
- Third. * * *
- Fourth. * * *
- Fifth. * * *

Sixth. The cargo of any vessel which attempts to load or discharge, or which is found loading or discharging, or which may have loaded or discharged, in ports not equipped therefor, along the coasts, in bays, inlets, rivers, or on desert islands, with permission and authorization of the law in the premises, and the vessel, together with all its tackle and appurtenances, and the canoes, boats, lighters, or other vessels which may be used for the purpose, shall suffer the same penalty.

That same judgment condemned Capt. John W. Baxter to pay *mancomún et in sólido* with "the Orinoco Iron Syndicate (Limited)," as the owner and shipper of the cargo, the fiscal duties in addition to the double of these duties, etc. Said condemnation is contained in the provisions of No. 3, article 2, of the cited law 21, to wit:

ART. 2. Besides the loss of the merchandise or effects which may have been the subject of the suit brought to declare the confiscation, and the boats and other vessels, wagons, beasts of burden, and lashings, as the case may be, the transgressors shall incur the following penalties:

- First. * * *
- Second. * * *

Third. In the sixth case the captain of the vessel and the owner of the cargo, together with the loaders or unloaders, shall jointly and severally (*mancomún et in*

sólidum) suffer a fine of twice the custom dues, and the captain shall suffer an imprisonment of from six to ten months.

The above quoted sentence was confirmed by the high Federal court in the following terms:

The minutes of the procedure having been analyzed by this department, it is noted: That the evidence clearly shows that the facts denounced by the administrator of the custom-house at Ciudad Bolívar; that all the extremities of law have been correctly complied with; that the sentence has not been applied for; that therein the penalties of law have been enforced; and that the fisc is not prejudiced; wherefore in conformity with paragraph 2, article 34 of the law of confiscation in force, administering justice, authorized thereto by the law, this procedure is approved in all its parts. (Official Gazette, No. 6829, October 2, 1896.)

This sentence effected, and as the value of the ship and cargo did not suffice to cover the penalties imposed, the rights acquired for exploitation of the iron mine of Imataca by "the Orinoco Iron Syndicate (Limited)" were denounced and offered for sale.

Mr. Turnbull, finding his ownership over the Imataca mine endangered in view of the aforesaid sale, applied to the Government, requesting protection of his rights, and it was forthwith and most fully accorded in a resolution issued on December 10, 1898, by the ministry of agriculture, industry, and commerce (the name at that time of the ministry of fomento), with that view, as affirmed by the claimant himself in his memorial.

Said resolution was telegraphed to the judge of hacienda at Ciudad Bolívar, but arrived after the sale of the aforementioned rights of exploitation had taken place. Turnbull appealed to the court against the sale, and the Federal court decided that the appeal was unlawful.

Subsequently, Turnbull sued Messrs. Benoni Lockwood, jr., and the Orinoco Company (Limited) before the primary court of the Federal District for damages and losses through their bidding at the sale of his Imataca mine, and furthermore sued said company for the annulment of the definite title derived from the sale. On June 7, 1900, a sentence was passed on this case, declaring that "the Orinoco Company (Limited) had nothing to claim against him (Turnbull), nor had it any rights to claim on his Imataca mine with regard to the title already mentioned."

The reasons assigned and the documents quoted prove most evidently that Mr. George Turnbull has no right whatever to demand anything of the Government of Venezuela on account of the claim analyzed. On the contrary, the Government of the Republic always readily sought to protect Mr. Turnbull's interests. In order that this claim might be partially legal, it would have been necessary that the claimant had acknowledged that the sentence passed on the Orinoco Iron Syndicate (Limited) by the national court of hacienda at Ciudad Bolívar, and confirmed by the high Federal court, was notoriously unjust or was a denial of justice; this Mr. Turnbull has not even attempted to do, and if he had, it would have been impossible for him to prove it, as said sentence is entirely in conformity with Venezuelan laws.

Mr. George Turnbull alleges that his having been deprived of the Imataca mine since the annulment of his contract (resolution of June 18, 1895) until his said Imataca mine was excluded from such annulment (resolution of November 10, 1895), impeded him from celebrating any contract and from developing and receiving the benefits of the mines, and that thereby he lost £140,000.

Turnbull ascribes the aforesaid loss to the fact that "the Orinoco Iron Syndicate (Limited)" rescinded its contract celebrated with him for exploiting the Imataca mine. This assertion is denied by the authentic facts which

were related while analyzing those alleged as the grounds for the former claim. In fact, it is evident that the above-mentioned syndicate did not rescind its contract on account of the reasons assigned, but that it dispatched the schooner *New Day* to Manoa with machinery and other articles necessary for making assays for the exploitation of the Imataca mine, but, as said ship was found to be discharging its cargo at a port not authorized for foreign trade, the corresponding lawsuit was brought against it, and the final sentence thereof declared that the ship and cargo, together with its tackle and appurtenances, had incurred the penalty of confiscation; all having been complied with in conformity with Venezuelan law. According to Turnbull himself, his affairs with said syndicate were rescinded, owing to the referred to calamity. If such a calamity occurred through Turnbull's fault he ought to take upon himself the injurious consequences thereof; if the same occurred through the syndicates fault, it had no right to rescind the contract, and Turnbull could demand of it payment for damages and losses. In consequence thereof the claim under analysis is deprived of all legal grounds.

There is another general feature common to all of Mr. Turnbull's claims, and that is the want of evidence in regard to the damages he pretends to have suffered, and which he reckons at really fabulous amounts. With regard to the detention of three of his ships during one month, effected by a Government official, he does not even mention his name, and the claimant affirms that as soon as the Government heard of this, they replaced the said employee and put the ships at liberty, which means that the Government tendered their protection to Mr. Turnbull's interests. And as regards the stealing and destruction effected in 1893, of the tools and machinery placed at the mines by the claimant, he himself declares that such injurious acts were committed "*by certain individual who were revolting against the Government,*" which shows that such acts were an infringement of common law, and that Turnbull should have applied to the courts of justice to denounce or report the perpetrators thereof and demand of them lawful civil atonement.

THE ORINOCO COMPANY (LIMITED)

This company claims to be paid \$125,000 for damages alleged to have been caused through its having bought the Imataca mine, at a judicial sale before the court of hacienda at Ciudad Bolívar, and through the court of common pleas of the Federal District having declared in a sentence issued on June 7, 1900, that the mine belonged to Turnbull.

When analyzing the claims of said Turnbull, we minutely stated everything relative to the confiscation suit brought against "the Orinoco Iron Syndicate (Limited)" before the national court of hacienda at Ciudad Bolívar, and we fully showed the lawfulness of said tribunal's proceedings, for which reason we shall briefly demonstrate the entire want of grounds for this claim.

This want of grounds for the claim and its wrongfulness are evidenced in the memorial itself, which, on the other hand, shows, besides, the negligence and unskillfulness wherewith the company and its representatives carried on the whole affair. The fact is that in said memorial it is admitted that Mr. Benoni Lockwood, jr., took no care to ascertain, before becoming a purchaser, what rights were about to be sold, or whether such rights actually belonged to the Orinoco Iron Syndicate (Limited), against whom said action was brought, and said gentlemen thought, without reading the respective titles, that "said syndicate was assignee of all of the rights which had been claimed by said Turnbull to said premises, and being assured and advised by said Berrio, and supposing and believing that said sentence was a lien upon, and that the pur-

chaser of said premises at said sale would therefore acquire, all the rights of said Turnbull or said syndicate to the possession, development, or exploitation of said mine, and the title of ' the Orinoco Company (Limited) ' thereto be effectually and finally quieted as against the same, etc.," he became a purchaser thereof. All of which evidently proves that Lockwood fell into a series of deplorable mistakes, and " the Orinoco Company (Limited) " holds the inconceivable absurdity that Venezuela must indemnify it for the injurious consequences thereof.

Mr. Baxter, the direct representative of " the Orinoco Company (Limited) ," did not share in Mr. Lockwood's mistakes, as having powerful reasons to doubt that " the Orinoco Iron Syndicate (Limited) " was the owner of the mine, and in doubt also as to whether said sale were legal he refused to deliver to Lockwood the 120,000 bolivars, which was the price of the sale, and did not effect said payment until much later, having done so in virtue of an agreement which the claimant says he made with Gen. Celis Plaza and General Berrio, etc. We repeat that, in the fourth paragraph of the memorial, destined to expound and support this claim, its insubsistency is shown.

The high Federal court in its last sentence pronounced the unlawfulness of the recourse to appeal against said sale which Turnbull had pretended, and then said Turnbull brought an action against Benoni Lockwood, jr., and " the Orinoco Company (Limited) ," in which case a definite sentence was passed on June 7, 1900, its dispositive part being as follows, to wit:

For the above reasons the tribunal administering justice in the name of the Republic declares groundless the part of the action brought for injury and damages by George Turnbull against Benoni Lockwood, jr., American citizen, resident in New York, and " the Orinoco Company (Limited) ," an American corporation organized in conformity with the laws of the State of Wisconsin, as is shown by the power produced, and of effect the other part in which the said Turnbull asks that it be declared that " the Orinoco Iron Company " has no right of action against him, and has no rights to enforce on his mine Imataca. No special order is made as to costs.

No claim arising from said sentence is just, except to prove that the same is notoriously unjust; furthermore, " the Orinoco Company (Limited) " was satisfied with said decision, since it did not attempt the recourse to appeal against it, which is granted under article 185 of the code of civil procedure, and which provides as follows, to wit: " On all definite sentences issued in first instance appeal is given, except when special disposition is made to the contrary. "

And lastly, the real purchaser is Mr. Benoni Lockwood, jr., and not " the Orinoco Company (Limited) ; " whereas if by said sale the company sustained damages whatever, it ought to claim compensation of the former, and not of the Government of Venezuela.

It is extremely surprising that the sale having been for 120,000 bolivars, the company should inconsiderately raise this claim to \$125,000.

It has most clearly been shown that the claim analyzed entirely lacks grounds, and therefore must be disallowed.

The second claim of " the Orinoco Company (Limited) " is supposed to arise from the executive resolution issued on October 11, 1900, whereby the nullity and insubsistency of the Fitzgerald contract of September 22, 1883, was declared.

" The Orinoco Company (Limited) " sets forth this claim as assignee and successor of the " Manoa Company (Limited) " in regard to the Fitzgerald contract. From a judicial point of view the position of both companies is identical, and consequently the reasons which I exposed on analyzing said contract suffice for rejecting, as I absolutely do reject, this claim.

I therein proved that the resolution of September 9, 1886, is quite legal:

First, because the "Manoa Company (Limited)" confessed authentically the facts which are the grounds thereof; secondly, because the company itself acknowledged the forfeiture of the contract; and, lastly, because it made of the Government a judge as to the subsistency of said contract, which, having been annulled, could not revive through a resolution, but was essentially necessary that it should be issued anew, fulfilling all the requisites and formalities wherewith it was originally issued.

REMARKS IN REFERENCE TO "THE MANOA COMPANY (LIMITED)" AND TO "THE ORINOCO COMPANY (LIMITED)"

The Venezuelan Commissioner can not accept the alternative and doubtful form in which the aforementioned companies set forth some of their claims.

"The Manoa Company (Limited)" states, that if by reason of the force and effect of said resolution of September 9, 1886, the Fitzgerald concession was annulled the company estimates the damages sustained at a certain amount; but that if said resolution did not attain legal efficiency, then the compensation demanded amounts to a different sum. And in the same way it sets forth its claims for the Imataca and Pedernales mines.

"The Orinoco Company (Limited)" adheres to the same alternative form in setting forth its claims regarding the contract and aforesaid mines.

Such a form is inadmissible according to the spirit and meaning of the protocol in the first place, because every claimant must set forth his claims in categorical and not in doubtful terms, as the Commission entirely lacks jurisdiction to decide as to the validity or nullity of a contract and of titles of ownership, and because it has been organized to entertain claims of United States citizens for obtaining indemnification for damages and losses caused by acts of the Government, or of Government officials; wherefore, whenever this Commission examines the lawfulness or unlawfulness of a resolution of the Government from which a claim derives, it is with a sole view of awarding an indemnification in case of said resolution being unlawful, and of denying it if it is lawful; but this Commission entirely lacks jurisdiction for declaring a resolution inefficacious and making its effects void.

The Government of Venezuela in organizing the mixed commissions appointed judges, and not authorities capable of annulling its acts.

For the same powerful reasons the writer does not admit the arguments of the honorable commissioner on the part of the United States, Mr. Bainbridge, especially those affirming the existence of the Fitzgerald contract and those denying validity to the titles of ownership of the Imataca and Pedernales mines issued by the Government of Venezuela.

In virtue of the reasons stated, the opinion of the Venezuelan Commissioner is that the claims marked Nos. 45, 46, and 47 set forth by George Turnbull, "the Manoa Company (Limited)," and "the Orinoco Company (Limited)," respectively, must be absolutely disallowed.

BARGE, Umpire:

A difference of opinion arising about these three claims between the Commissioners of the United States of North America and the United States of Venezuela, they have duly referred to the umpire, and as they all have the same origin and follow the same order of facts the umpire thought it well to consider them jointly, and having fully taken in consideration the protocol, and also the documents, evidence, and arguments, and likewise all the other communications made by the parties, and having impartially and carefully examined the same, has arrived at the decision embodied in the present award.

Whereas in the month of September, 1883, the Government of Venezuela entered into a contract with Cyrenius C. Fitzgerald for the exploitation of the natural products of a certain extent of territory, which contract reads as follows:

The minister of fomento of the United States of Venezuela, duly authorized by the President of the Republic, of the one part, and Cyrenius C. Fitzgerald, resident of the Federal Territory of Yuruary, of the other part, have concluded the following contract:

ARTICLE I. The Government of the Republic concedes to Fitzgerald, his associates, assigns and successors, for the term of ninety-nine years, reckoning from the date of this contract, the exclusive right to develop the resources of those territories, being national property, which are hereinafter described.

1. The island of Pedernales, situated to the south of the Gulf of Paria and formed by the gulf and the Pedernales and Quinina streams.

2. The territory from the mouth of the Araguao, the shore of the Atlantic Ocean, the waters above the Greater Araguao, to where it is joined by the Araguaito stream; from this point, following the Araguaito to the Orinoco, and thence the waters of the upper Orinoco, surrounding the island of Tortola, which will form part of the territory conceded, to the junction of the José stream with the Piacoa; from this point following the waters of the José stream to its source; thence in a straight line to the summit of the Imataca range; from this summit following the sinuosities and more elevated summits of the ridge of Imataca to the limit of British Guayana; from this limit and along it toward the north to the shore of the Atlantic Ocean to the mouth of the Araguao, including the island of this name and the others intermediate or situated in the delta of the Orinoco and in contiguity with the shore of the said ocean. Moreover, and for an equal term, the exclusive right of establishing a colony for the purpose of developing the resources already known to exist and those not yet developed of the same region, including asphalt and coal; for the purpose of establishing and cultivating on as high a scale as possible agriculture, breeding of cattle, and all other industries and manufactures which may be considered suitable, setting up for the purpose machinery for working the raw material, exploiting and developing to the utmost the resources of the colony.

ART. II. The Government of the Republic grant to the contractor, assigns, and successors, for the term expressed in the preceding article, the right of introduction of houses of iron or wood, with all their accessories, and of tools and of other utensils, chemical ingredients and productions which the necessities of the colony may require; the use of machinery, the cultivation of industries, and the organization and development of those undertakings which may be formed, either by individuals or by companies, which are accessory to or depending directly on the contractor or colonization company; the exportation of all the products, natural and industrial, of the colony; free navigation, exempt from all national or local taxes, of rivers, streams, lakes, and lagoons comprised in the concession or which are naturally connected with it; moreover the right of navigating the Orinoco, its tributaries and streams, in sailing vessels or steamships, for the transportation of seeds to the colony for the purpose of agriculture, and cattle and other animals for the purpose of food and of development of breeding; and lastly, free traffic of the Orinoco, its streams and tributaries, for the vessels of the colony entering it and proceeding from abroad, and for those vessels which, either in ballast or laden, may cruise from one point of the colony to the other.

ART. III. The Government of the Republic will establish two ports of entry, at such points of the colony as may be judged suitable, in conformity with the treasury code.

The vessels which touch at these ports, carrying merchandise for importation, and which, according to this contract and the laws of the Republic, is exempt from duties, can convey such merchandise to those points of the colony to which it is destined and load and unload according to the formalities of the law.

ART. IV. A title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the colony.

ART. V. Cyrenius C. Fitzgerald, his associates, assigns, or successors are bound:

1. To commence the works of colonization within six months, counting from the date when this contract is approved by the Federal council in conformity with the law.

2. To respect all private properties comprehended within the boundaries of the concession.

3. To place no obstacle of any nature on the navigation of the rivers, streams, lakes, and lagoons, which shall be free to all.

4. To pay 50,000 bolivars in coin for every 48,000 kilograms of sarrapia and cauche which may be gathered or exported from the colony.

5. To establish a system of immigration which shall be increased in proportion to the growth of the industries.

6. To promote the bringing within the law and civilization of the savage tribes which may wander within the territories conceded.

7. To open out and establish such ways of communication as may be necessary.

8. To arrange that the company of colonization shall formulate its statutes and establish its management in conformity with the laws of Venezuela, and submit the same to the approbation of the Federal Executive, who shall promulgate them.

ART. VI. The other industrial productions on which the law may impose transit duties shall pay those in the form duly prescribed.

ART. VII. The natural and industrial productions of the colony, distinct from those expressed in Article V and which are burdened at the present time with other contracts, shall pay those duties which the most favored of those contracts may state.

ART. VIII. The Government of the Republic will organize the political, administrative, and judicial system of the colony, also such armed body of police as the contractor or company shall judge to be indispensable for the maintenance of the public order. The expense of the body of police to be borne by the contractor.

ART. IX. The Government of the Republic, for the term of twenty years, counting from the date of this contract, exempts the citizens of the colony from military service, and from payment of imposts or taxes, local or national, on those industries which they may engage in.

ART. X. The Government of the Republic, if in its judgment it shall be necessary, shall grant to the contractor, his associates, assigns, or successors a further extension of six months for commencing the works of colonization.

ART. XI. Any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic.

Executed in duplicate, of one tenor and to the same effect, in Caracas, 22nd September, 1883.

Señor Heriberto Gordón signs this as attorney of Señor C. Fitzgerald, according to the power of attorney, a certified copy of which is annexed to this document.

[SEAL]

M. CARABAÑO
Minister of Fomento
Heriberto GORDÓN

And whereas the term fixed in Article V, 1, of this contract, on the petition of Fitzgerald, was extended to six months more, to count from the 22d of March, 1884;

And whereas during this term, v. g., on the 14th of June, 1884, this concession was transferred from Fitzgerald to "the Manoa Company (Limited);"

And whereas on the 9th of September, 1886, a resolution of the Federal Executive declared this contract "insubsistente ó caduco;"

And whereas on the 28th of April, 1887, the Congress approved a contract passed in Nice on the 1st of January, 1886, between Guzmán Blanco, envoy

extraordinary and minister plenipotentiary of the United States of Venezuela to various courts of Europe, and George Turnbull, which contract reads verbally as the above-mentioned contract with Fitzgerald, except that an Article XII was added, reading as follows:

This contract shall enter into vigor in case of the becoming void through failure of compliance, within the term fixed for this purpose, of the contract celebrated with Mr. Cyrenius C. Fitzgerald the 22d of September, 1883, for the exploitation of the same territory;

And whereas on these contracts, respectively, are based the claims of "the Manoa Company (Limited)," all the claims but one of "the Orinoco Company (Limited)," and the claims of George Turnbull, it has to be considered what rights to claim for damages against the Venezuelan Government these contracts give to the claimants, "the Manoa Company (Limited)," "the Orinoco Company (Limited)," and George Turnbull, and what obligations on the side of the Venezuelan Government to grant to the said claimants what they claim for can be based upon these contracts:

First, as to the Fitzgerald contract, purchased by the "Manoa Company (Limited)," as being prior in date;

Whereas this contract in due form was lawfully performed, all its stipulations, of course, were binding upon both contracting parties as long as the contract legally existed.

Now, whereas claimants' claims center in the assertion that this contract was unlawfully annulled by the Venezuelan Government, and while it is for losses suffered in consequence of this unlawful annulment that damages are claimed, it has to be examined —

Whether the contract was unlawfully annulled; and, if so,

Whether this unlawful action gives a right to the claimant to claim for damages and imposes a duty on the Venezuelan Government to grant what is claimed;

Now, whereas the incriminating act of the Venezuelan Government is the resolution of the Federal Executive of September 9, 1886, this resolution has to be considered. It reads as follows:

El Señor Heriberto Gordón, con poder del Señor C. C. Fitzgerald, celebró el 22 de Setiembre de 1883 con el Gobierno Nacional un contrato para explotar las riquezas que se encuentran en terrenos de propiedad nacional en el Gran Delta, debiendo empezar los trabajos dentro de seis meses contados desde la fecha expresada, y aunque transcurrido este término sin dar principio á ellos, el Gobierno le concedió una prórroga para verificarlos; y como el indicado contratista no ha cumplido las obligaciones que contrajo, según se expresa en el informe del Director de Riqueza Territorial especificados en el mismo, refiriéndose al artículo 5 del contrato en que se determinen; el Consejero Encargado de la Presidencia de la República, con el voto afirmativo del Consejo Federal declara insubsistente ó caduco el expresado contrato.

Comuníquese y publíquese.

Por el Ejecutivo Federal:

G. PAZ SANDOVAL

Reading this resolution it is clear that the contract was declared "insubsistente ó caduco" for the reason that the contracting party (claimant) had not done what in Article V of the contract he pledged himself to do.

Now, whereas this Article V reads as stated above, and whereas it is quite clear by evidence, not only that the claimant on the said 9th of September 1886, had not complied with one of his obligations; whereas even at the end of the prolongation of six months that was granted as a term to begin the works of colonization this colonization can not be said to have begun, as the

sending of an engineer and some employees on the 24th of August can not be said to be "commencing the works of colonization" (even if the then governor of the Federal Territory of the Delta, on the petition of the claimants' administrator stating the arrival of these employees, added the words "so complying with the stipulation of Article V," because this authority could only state the facts, and was not the legal authority to judge whether by these facts claimant complied with the stipulation of the contract); whereas further on the original contractor himself, director of the claimant company, stated even as late as September, 1885, that claimant had not commenced the works of colonization;

That claimant had not established a system of colonization;

That claimant had not promoted the bringing within law and civilization the savage tribes which might wander within the territory conceded;

That claimant had not opened up and established any ways of communication, and that claimant had not even arranged that the company of colonization should formulate its statutes.

And whereas the claimant company itself as late as April 10, 1886, stated in a petition to the Government of Venezuela that it had not realized the works it was pledged to realize by the contract;

But that by the same evidence is shown that the claimant company, through its pecuniary position, could not have realized what by contract it was pledged to do, as, according to the company's president himself, the company from October, 1885, to November, 1886, never had in cash more than \$6, and in that time did not spend a farthing for the execution of the contract, while during all that time the drafts drawn by the company's Venezuelan attorney, Mr. Heriberto Gordón, were protested, as they could not be paid, with the exception of two for \$400 each, which were paid by Mr. Safford, and not by the company's cash;

And whereas evidence shows that in January, 1885, stockholders resolved for the execution of the contract to issue \$5,000,000 in bonds, which in November of that year were secured by mortgage on the concession, and for which even until November, 1886, not a penny was received by the company, that even the printing of the bonds could not be paid, and that Fitzgerald, who had sold the concession for 44,750 shares of \$100 nominal each, in July, 1886, was willing to sell them for a few thousand dollars. The facts alleged as a reason for declaring the contract "insubsistente ó caduco" are proved, and it is clearly shown by evidence that on the 9th of September, 1886, the claimant company had in nowise fulfilled any of the duties imposed by the contract.

Now, whereas it is settled that there were sufficient reasons to declare the contract "insubsistente ó caduco," it has to be seen if by the declaration of the Federal Executive the contract really was annulled. And then it has to be remembered that the question could be and really has been put whether No. 1 of Article V of the contract was a condition, the nonfulfillment of which would retroact, so that it were as if the contract had never existed — in which case the resolution would be a simple act whereby it was stated that the contract did not exist, that it was "insubsistente" — and the contract would really not exist;

Or whether this No. 1 — as all the other numbers of Article V — was an obligation, the nonfulfillment of which would be a sufficient reason for making the contract "caduco" — that is to say, to annul the contract that was till then really existing — which annulment, according to the general principles of equity, accepted by the laws of almost all the civilized nations, could not be executed by one of the parties, but had to be pronounced by the proper judge.

Now, whereas Article V expressly says that the concessionary, his associates, assigns, and successors "se obligan" (pledge themselves) to begin within a

certain time, and whereas they could not begin without a concession, because they would have had no right to work according to the concession on the Government grounds granted by the concession if they had not this concession; and whereas they could not have this concession, the contract by which it was granted not existing;

It seems evident that according to the will of contracting parties (the supreme law in this matter) this No. 1 of Article V, as all the other numbers of this article, was an obligation and not a condition;

Wherefore the mentioned executive decree can not be regarded as a mere declaration that the contract was "insubsistente," but has to be regarded as an act by which the Government declared it "caduco" — that is to say, "annulled it" — which act could never have the effect of really annulling the contract, because in cases of bilateral contracts, the nonfulfillment of the pledged obligations by one party does not annul the contract ipso facto, but forms a reason for annulment, which annulment must be asked of the tribunals, and the proper tribunal alone has the power to annul such a contract — this rule of the law of almost all civilized nations being in absolute concordance with the law of equity, that nobody can be judge in his own case.

This annulment is superfluous, of course, when both parties agree that the contract is annulled because the obligations were not fulfilled, and the executive decree in question can not be regarded as anything more but a communication on the part of the Government that it thought the contract was ended, to which the other party could agree or not agree as it thought fit; and if it did not think this fit the contract would subsist until its annulment was pronounced by the proper tribunal.

In consequence of all the beforesaid we stand here before the case of a contract between two parties, of which one, disregarding all the pledged obligations, gave more than sufficient reason for the annulment of the contract, while the other acted as if the contract were annulled by its own declaration of that annulment, in that way disregarding (as if not existing any longer) an always still lawful existing contract.

Now, it might be asked, if absolute equity without regard to technical questions would allow to one of the parties the right to a claim based on a contract, the existence of which is, it is true, unjustly denied by the opposing party, but all the stipulations of which contract were trespassed by that same demanding party.

But there is more to consider.

It has not to be forgotten that the contract in question has an Article II reading as follows:

Any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic;

which article forms part of the contract just as well as any of the other articles, and which article has to be regarded just as well as any of the other articles, as the declaration of the will of the contracting parties, which expressed will must be respected as the supreme law between parties, according to the immutable law of justice and equity: *pacta servanda*, without which law a contract would have no more worth than a treaty, and civil law would, as international law, have no other sanction than the cunning of the most astute or the brutal force of the physically strongest.

It has to be examined, therefore, what parties intended by introducing this article in the contract; and in how far does it interfere with the claims herein examined?

Now, whereas it is clear that in the ordinary course of affairs, when nothing especially was stipulated thereupon, all questions and controversies arising for reason of the contract would have to be decided by the competent tribunals and in conformity with the laws. There must be looked for some special reason to make this stipulation, and to induce parties to pledge themselves expressly to a course of action they would without this special pledge be obliged to follow just as well. There must be a meaning in the article which makes the judges by law judges by contract as well; and this meaning can be no other but that parties agreed that the questions and controversies that might arise for reason of the contract should be decided only by the competent tribunals of the Republic, and therefore not by the judges of the country, of the other party, if he be a foreigner, nor by arbitration either national or international, while it is not to be overlooked that it is not said in the contract that *the claims* of one party against the other should be judged (that is to say, allowed or disallowed) by the mentioned judge only, but that only these judges should decide about the *questions and controversies* that might arise; which decision of course implies the decision about the question whether the interpretation of the contract by one of the parties, or that party's appreciation of facts in relation to the contract were right, and therefore could be a good reason for a claim for damages, so that properly speaking there could be no basis for a claim for damages, but the decision of these expressly indicated judges about this question or controversy.

Wherefore if one of the parties claims for damages sustained for reason of breach of contract on the part of the other party, these damages can, according to the contract itself, only be declared due in case the expressly designed judges had decided that the fact, which according to the demanding party constituted such a breach of contract, really constituted such a breach, and therefore formed a good basis whereon to build a claim for damages. Parties have deliberately contracted themselves out of any interpretation of the contract and out of any judgment about the ground for damages for reason of the contract, except by the judges designed by the contract; and where there is no decision of these judges that the alleged reasons for a claim for damages really exist as such, parties, according to the contract itself, have no right to these damages, and a claim for damages which parties have no right to claim can not be accepted. Parties' expressly expressed will, and their formal pledge that for reason of the contract no damages should be regarded as due by those declared due by the indicated judges, must be respected by this Commission, when judging about a claimed based on such a contract, just as well as all the other stipulations of that contract, and therefore it can not declare due damages that parties in that contract solemnly themselves declared not to be due.

And whereas all the claims of the Manoa Company (Limited), as well as all the claims but one of the Orinoco Company (Limited) are claims for damages based on points that are questions and controversies arisen for reason of the Fitzgerald contract;

And whereas not one decision of the competent tribunals of Venezuela about these questions and controversies that would make these damages due was laid before the Commission, while according to the contract itself between parties only such damages should be due which were asked on such grounds as would have been declared good grounds by these tribunals, the Commission can not declare due the damages claimed which the parties, by contract, declared not to be due.

And therefore it can not allow these claims.

Now, as to the claims of George Turnbull.

Whereas, as was shown above, on the 1st of January, 1886, on the 11th of

September, 1886, and on the 27th of April, 1887, the Fitzgerald contract was as yet legally existing, the Republic of Venezuela could not dispose on behalf of Turnbull of what it already had disposed on behalf of another, and therefore, Turnbull obtained no right whatever of property in the concession under and by virtue of the contract confirmed by Congress on the 27th of April, 1887;

And whereas the mines of Pedernales and Imataca formed part of the still existing Fitzgerald concession, Turnbull's alleged titles to these mines are equally void;

And as all his claims are based on this void contract and these void titles, they can not be allowed.

Lastly, as to the claim of "the Orinoco Company (Limited)," that is not based on the Fitzgerald concession.

Whereas evidence shows that on the 19th of November, 1898, Carlos Hammer, with power of attorney from Benoni Lockwood, jr., in the name of and representing "the Orinoco Company (Limited)," paid to the Venezuelan Government the sum of 120,000 bolivars for rights purchased on a judicial sale on November 18, 1898, which rights, as evidence shows, the Republic could not dispose of, and out of the possession of which rights claimant was expelled by the proper authorities of that Republic;

This unduly received sum of 120,000 bolivars has to be restored to him who unduly paid it.

Wherefore the Republic of the United States of Venezuela shall have to pay to "the Orinoco Company (Limited)" the sum of 120,000 bolivars, or \$23,076.93, with interest at 3 per cent per annum from the 19th of November, 1898, to the 31st of December, 1903.

THE AMERICAN ELECTRIC AND MANUFACTURING CO. CASE

(By the Umpire:)

A clause contained in a contract that "doubts and controversies which may arise in consequence of this contract shall be settled by the courts of the Republic in conformity with its laws" does not preclude the claimant from demanding damages from the Government for the breach by it of a collateral promise.

The breach of a promise to do an illegal act can not be made the basis of a claim, and a promise by the Government to annul an existing contract containing the clause that "doubts and controversies that may arise in consequence of this contract shall be settled by the courts of the Republic and in conformity with its laws" is a promise to do an illegal act.

GRISANTI, *Commissioner* (claim referred to umpire; no opinion by the American Commissioner):

The American Electric and Manufacturing Company deduces a claim against the Republic of Venezuela, adducing as the grounds for it, the facts stated in its memorial, some of which denoting most importance, will presently appear in this statement.

In May, 1887, the Government of Venezuela made a contract in virtue of which they granted Aquilino Orta —

the right to establish telephonic communication within the towns and cities of the Republic and between the same; also in the country districts and country villages and between both; and further, to extend the same communication outside of Venezuela by such means as he may deem most suitable.