REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Volkmar Case

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It most certainly was. That is the natural, judicial effect of an assignment, and as the one in question is pure and simple — that is to say, that it is not subject to any conditions, either suspensive or resolutory — the mentioned extinguishing effect took place definitively and perpetually from the very moment of signing the contract.

It is alleged that no price was able to be got for the sale of the property assigned in payment, and that it fell to ruin. This fact is very unlikely, as the transaction was carried out in 1890, at a time when Venezuela reached its greatest material prosperity. The property assigned in payment consisted of coffee plantations, and at that time the hundredweight of this grain was worth ——.[1] But even admitting such allegation to be a fact, it could not revive the credit, as its extinction was complete and forever.

Before closing, the writer begs to state a few more remarks which he considers unnecessary but not irrelevant.

In the charter party of the vessel *Irene*, Sonneville appears acting as proxy for Charles M. Burns, British subject; the latter then is the real charterer and the only owner of the rights acquired as such.

When Sonneville thought that France might tender him some protection he addressed the French consul at Caracas (December 12, 1888); then the Venezuelan-French Mixed Commission, which at that time was sitting here (April 6, 1890); then the minister for foreign affairs of the French Republic (May 8, 1890), requesting his help and advising the latter besides that if the intervention of his Government be considered unlawful he should forward the documents to the minister of foreign affairs of Great Britain with the view already mentioned. The request having purely and simply been denied by the French Government and the documents returned to Sonneville, the claim arises out of the hands of the present solicitors, not out of its own dust, as the Phœnix of the fable, but out of nothing — that is to say, out of a dedition in payment which is not contained in it.

In virtue of the reasons explained, it is the opinion of the Venezuelan Commissioner that the referred-to claim must be entirely disallowed.

VOLKMAR CASE

Compensation can not be demanded for neutral property accidentally destroyed in the course of civil or international war.

BAINBRIDGE, *Commissioner* (for the Commission):

The claimant is a native citizen of the United States, residing in the city of Puerto Cabello, Venezuela. In the year 1892 he was the sole owner of the electric light plant of that city. On the 22nd, 23rd, and 24th of August, 1892, the forces of General Crespo, who was engaged in a revolution, ultimately successful, against the then existing government, attacked the city of Puerto Cabello, and during the engagement the power house, lines, lamps, and machinery of the claimant suffered damage amounting, as claimed, to the sum of 84,160 bolivars, for which sum, with interest, an award is asked.

The evidence presented in support of this claim is amply sufficient to prove the fact and nature of claimant's loss, but it fails to establish any liability on the part of the Government of Venezuela therefor. It is perfectly clear that the losses complained of were the result of military operations in time of flagrant

[1] Left blank in original.

war, and for such losses there is, unfortunately, by established rules of international law, no redress. Such losses are designated by Vattel as " misfortunes which chance deals out to the proprietors on whom they happen to fall," and he says that " no action lies against the State for misfortunes of this nature, for losses which she has occasioned, not willfully, but through necessity and by mere accident in the exertion of her rights."

As a principle of international law, the view that a foreigner domiciled in the territory of a belligerent can not expect exemption from the operations of a hostile force is amply sustained by the precedents you cite and many others. Great Britain admitted the doctrine as against her own subjects residing in France during the Franco-Prussian war, and we, too, have asserted it successfully against similar claims of foreigners residing in the Southern States during the war of secession. (Mr. Evarts, Secretary of State, to Mr. Hoffman, July 18, 1879. Wharton's Int. Law Dig., sec. 224.)

" The property of alien residents," says Mr. Frelinghuysen, Secretary of State, " like that of natives of the country, when 'in the track of war,' is subject to war's casualties." (Wharton's Int. Law Dig., vol. 2, sec. 224, p. 587.)

The rule that neutral property in belligerent territory is liable to the fortunes of war equally with that of subjects of the State applies in the case of civil as well as international war. In Cleworth's case, decided by the American and British Claims Commission of 1871, a claim was made for the value of a house destroyed in Vicksburg by shells thrown into the city by the United States forces during the bombardment. The Commissioners said: " The United States can not be held liable for any injury caused by the shells thrown in the attacks upon Vicksburg." And the same principle was applied in the case of James Tongue *v.* The United States to a claim for property destroyed by the bombardment of Fredericksburg on the 11th, 12th, and 13th days of December, 1862. (Moore Int. Arb., 3675.)

In view of the foregoing considerations the claim must be disallowed.