REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Mixed Claims Commission Belgium-Venezuela

7 March 1903

VOLUME IX pp. 319-347

NATIONS UNIES - UNITED NATIONS

MIXED CLAIMS COMMISSION
BELGIUM-VENEZUELA
CONSTITUTED UNDER THE PROTOCOL OF
7 MARCH 1903

REPORT: Jackson H. Ralston — W. T. Sherman Doyle, *Venezuelan Arbitrations of 1903,* **including Protocols, personnel and Rules of Commission, Opinions, and Summary of Awards, etc., published as Senate Document No. 316, Fifty-eighth Congress, second session, Washington, Government Printing Office, 1904, pp. 261-290.**

PROTOCOL OF AGREEMENT BETWEEN THE PLENIPOTENTIARY OF HIS MAJESTY THE KING OF THE BELGIANS AND THE PLENIPOTENTIARY OF VENEZUELA FOR SUBMISSION TO ARBITRATION AND PAYMENT OF ALL UNSETTLED CLAIMS OF THE GOVERNMENT AND SUBJECTS OF BELGIUM AGAINST THE REPUBLIC OF VENEZUELA[1]

His Majesty the King of the Belgians and the President of the Republic of Venezuela having deemed it expedient to conclude the above mentioned protocol to that end have appointed as Their Plenipotentiaries: His Majesty the King of the Belgians: Baron Moncheur, The President of Venezuela: Herbert W. Bowen, Who, after having communicated to each other their full powers found in due and good form, have agreed and signed the following protocol:

ARTICLE I

All Belgian claims against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the Commission hereinafter named by the Belgian Government or the Belgian Legation at Caracas shall be examined and decided by a Mixed Commission which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by His Majesty, the King of the Belgians, and the other by the President of Venezuela.

It is agreed that an umpire may be named by the Queen of The Netherlands.

If either of said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire are to be appointed before the first of May, 1903.

The commissioners and the umpire shall meet in the City of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations and shall be competent to decide any question on which the commissioners disagree.

Before assuming the functions of their office, the commissioners and the umpire shall take solemn oath carefully to examine and impartially to decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the records of their proceedings. The commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity without regard to objections of a technical nature or of the provisions of local legislation.

The decisions of the commission, and in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be payable in Belgian gold or its equivalent in silver.

ARTICLE II

The commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished

[1] For the French text see pp. 261-264 of original Report referred to on preceding page.

by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim, and to hear oral or written arguments made by the agent of each Government on every claim.

In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the day of their first meeting, unless the commissioners or the umpire in any case extend the period for presenting the claim, not exceeding three months longer.

The commissioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and in case of their disagreement, the umpire shall examine and decide within a corresponding period from the date of such disagreement.

ARTICLE III

The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose, each commissioner shall appoint a secretary versed in the language of both countries, to assist them in the transaction of the business of the Commission. Except as herein stipulated, all questions of procedure shall be left to the determination of the Commission, or in case of their disagreement, to the umpire.

ARTICLE IV

Reasonable compensation to the commissioners and to the umpire for their services and expenses, and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

ARTICLE V

In order to pay the total amount of the claims to be adjudicated as aforesaid and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose, and alienate to no other purpose, beginning with the month of March, 1903, thirty per cent in monthly payments of the customs-revenues at La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of the Hague Tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of Venezuela in respect of the above claims shall have been discharged.

The reference of the question above stated to the Hague Tribunal will be the subject of a separate protocol.

ARTICLE VI

All existing and unsatisfied awards in favor of Belgium shall be promptly paid, according to the terms of the respective awards, or according to any new arrangement that the Government of Venezuela may make in conformity with article VI of the protocol signed February 13, 1903, by Mr. Herbert W. Bowen and Sir Michael Herbert.

Done at Washington the seventh day of March, 1903.

[SEAL] Herbert W. BOWEN

[SEAL] Baron MONCHEUR

PERSONNEL OF BELGIAN-VENEZUELAN COMMISSION

Umpire. — J. Ph. F. Filtz.
Belgian Commissioner. — F. Goffart.
Venezuelan Commissioner. — Pedro Vicente Azpurúa, until July, 1903, when he was followed by — Carlos F. Grisanti.
Venezuelan Agent. — F. Arroyo-Parejo.
Belgian Secretary. — Charles Piton.
Venezuelan Secretary. — Emilio de Las Casas.

OPINIONS IN THE BELGIAN-VENEZUELAN COMMISSION

PAQUET CASE (Expulsion)

(By the Umpire):

The right of nations to expel foreigners from, or prohibit their entrance into the national territory is generally recognized, if they are prejudical to public order; but when these measures are resorted to, the Government of such foreigners is entitled to know the reasons therefor, and if such explanations are refused, the act of expulsion is to be considered as arbitrary and indemnity must be paid to those expelled or prevented from entering. [1]

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

The claim presented by Mr. Paquet, because of his expulsion, contains five counts.

	Francs
Direct damages, traveling and hotel expenses	50,000
Indirect damages, divided into three counts	230,000
Total	280,000

The Venezuelan Commissioner contends that the entire claim of 280,000 francs should be rejected because, in his judgment, Venezuela had the right to expel Mr. Paquet and therefore owes him no indemnity.

The Belgian Commissioner has renounced the indirect damages of 230,000 francs; he does not demand anything except direct damages, traveling and hotel expenses, etc., and these even he reduces from 50,000 to 4,500 francs.

The Belgian Commissioner does not dispute the right of expulsion invoked by Venezuela, so long as this right is a consequence of the right to protect the State; but by reason of this very fact it is important that it be employed to this end and to no other. The constant practice among European governments has been never to refuse to give to the representative of a nation of the party expelled the reasons which have moved the Government expelling him to exercise this right. The demand, therefore, that this be done in this case does not seem unreasonable.

The Government of Venezuela employed a measure of severity against the claimant. There is no proof that it took this course in order to protect itself in accordance with the line of conduct adopted by all the countries represented

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[1] See the Italian - Venezuelan Mixed Claims Commission (Boffolo Case and Oliva Case) in Volume X of these *Reports*.

in Venezuela — Germany, England, the United States, Spain, Italy, France, the Netherlands, and Belgium.

The Belgian Commissioner must therefore consider it as unwarranted, and maintain the liability of the Government.

This principle having been established, the Belgian Commissioner invokes it very moderately, demanding in lieu of the 280,000 francs claimed, the sum of 4,500 francs for the expenses of various kinds to which the claimant had been put by reason of his temporary expulsion.

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

Mr. Noberto Paquet claims an indemnity from the Government of Venezuela because it prevented his wife in the first place (in August, 1902) and afterwards himself and wife (last June) from disembarking in the port of La Guaira. Mr. Paquet says literally:

> The act of preventing my wife in the first place and afterwards myself from entering Venezuela, after having allowed us to depart more or less freely, constitutes an unwarranted expulsion. This expulsion was carried out without formalities and without explanation of any sort.

And Mr. Paquet demands reimbursement for his expenses of travel, hotel, and maintenance in Trinidad of a family composed of six persons from the end of August and beginning of September, 1902, until the end of May and beginning June, 1903; the expenses of moving, etc.

In the last session I expressed the opinion that said claim should be disallowed, because there is no convincing proof in the record of the facts which he alleges as the foundation of the claim, and because even if such proof did exist, since the Paquets are foreigners and are domiciled at Port of Spain, the Government of Venezuela exercised a perfect right in prohibiting them from entering the national territory, a right which publicists acknowledge and which governments assert and exercise.

The Belgian Commissioner accepted the claim for 4,500 bolivars. The Venezuelan Commissioner rejected it absolutely, alleging that, so far as he is concerned the question is not one of amount but of principle, and he expresses his regret that it was not possible for him to consent to a matter of that nature.

> A foreigner may be expelled from French territory by a simple administrative act, provided his presence appears dangerous to public order. (Law of Dec. 3-11, 1849, arts. 7-8.)

If hospitality imposes duties, he who offers it also imposes greater ones on him receiving it. He who accepts hospitality in order to more surely take advantage of and deceive his trusting benefactor loses his right to hospitality.

The right of expulsion with which the Government is armed against the resident foreigner who inhabits the French soil transiently or permanently is explained, therefore, by the violation of his duties as a guest whereby he has made himself culpable; but even if he had respected them, the measure of expulsion taken against him will, nevertheless, be found to be justified for high political reasons because of the rights of public policy with which the authorities are vested, for the public interest and for the national safety, which they alone are able to determine. (André Weiss, Elementary Treatise on Public International Law, p. 34; see also Pradier-Fodéré, Public International Law, vol. 3, No. 1857, p. 1078.)

Because of the reasons expressed it is the opinion of the Venezuelan Commissioner that the aforesaid claim should be absolutely disallowed.

FILTZ, *Umpire:*[1]

The umpire having examined and studied the record, and considering —

That Mr. N. A. Paquet, a Belgian subject, domiciled in Caracas, claims the sum of 280,000 bolivars for damages, direct and indirect, traveling expenses and hotel expenses, because the Government of Venezuela prevented him from landing at La Guaira;

That the claim has been reduced by the Belgian Commissioner by the sum of 250,000 bolivars for indirect damages, and insisted upon only for direct damages, estimated at 4,500 bolivars;

That the right to expel foreigners from or prohibit their entry into the national territory is generally recognized; that each State reserves to itself the exercise of this right with respect to the person of a foreigner if it considers him dangerous to public order, or for considerations of a high political character, but that its application can not be invoked except to that end;

That, on the other hand, the general practice among governments is to give explanations to the government of the person expelled if it asks them, and when such explanations are refused, as in the case under consideration, the expulsion can be considered as an arbitrary act of such a nature as to entail reparation, which is aggravated in the present case by the fact that the attributes of the executive power, according to the Constitution of Venezuela, do not extend to the power to prohibit the entry into the national territory, or expelling therefrom the domiciled foreigners whom the Government suspects of being prejudicial to the public order;

That, besides, the sum demanded does not appear to be exaggerated —

Decides that this claim of N. A. Paquet is allowed for 4,500 francs.

PAQUET CASE (Concession)

(By the Umpire:)

If a person by reason of a permit from the Government is induced to spend time and money, he is equitably entitled to an indemnity, if the permit is revoked without sufficient reason.

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

In deciding to refuse all indemnity for the arbitrary taking away from the claimant of the waste waters of the Asylum of the Feeble Minded, the Commissioner of Venezuela stands upon two facts:

1. There was no concession.

2. If there were a concession, it was not made forever, as the claimant alleges, but for an undefined time only.

The Commissioner of Belgium maintains that Mr. Paquet has a right to an indemnity of 50,000 francs, which he claims, and he bases his opinion upon the following:

The document conceded by the municipal council is a document in proper form, engrossed upon sealed paper, which was executed in accordance with all the formalities required by law to guarantee the claimant against future eviction.

The municipal council employs in it the term itself *conceder* to express the right which it created in favor of Mr. Paquet.

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[1] For a French translation see: Descamps - Renault, *Recueil international des traités du XX^e siècle*, année 1903, p. 882.

There exists, therefore, a true concession, and, supposing that the term of it be undefined, the authorities lacked the right to revoke it without indemnity.

In order to convince one's self of this, it is sufficient to recall the facts of the negotiations before mentioned.

Sewage waters pollute the place, engender fevers, and injure the public health. This condition exists without anybody being able to find a remedy for it. An intelligent man arrives, whose laborious studies have prepared him to relieve this difficulty. He finds not only a means of rendering the place healthy, but even a method of transferring the evil existing into a font of benefit. Is it just, is it equitable that he should be allowed to apply his idea, guaranteeing him a benefit; that he should be allowed to undergo all the expenses of construction, that the people should profit by reason of the public health thus obtained, and that when the experiment is concluded, when the petitioner is about to profit from that idea, which until to-day has not been of benefit except as to the others, that he should then be deprived of his property without indemnity?

Nobody will sustain it. It would be to deny the modern laws concerning property in ideas.

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

Mr. Noberto Paquet claims the payment of 100,000 bolivars because the Government of Venezuela has deprived him of the use of the waste waters of the asylum, formulating his claim in these terms:

On November 8, 1898, the municipal council of Caracas, considering a petition which I had directed to it and demanding the assurances and formalities requisite, conceded to me in perpetuity the use of the waste waters of the asylum of Catia to use for irrigating my plantation of Agua Salud.

This claim is based on two great errors into which Mr. Paquet has fallen, and, unfortunately, with him, the Belgian Commissioner.

Paquet thinks that the municipal council made him a perpetual concession, and the wording of the documents, relative to the matter, makes it manifest that it was neither a concession nor was it perpetual. The fact is, the municipal council sanctioned the following:

Resolved, That the petition of citizen Noberto Paquet be allowed, granting him the permission which he has asked, to make use for an undefined time of the waste waters which flow out of the asylum of Catia, running freely through the gulch of Agua Salud, conducting them by means of a pipe line to his plantation situated on the said Agua Salud.

As will be seen from the text of the resolution, the council gave to Paquet the mere *permission* to make use of the waste waters, etc.

A *permission* is essentially revocable, and can confer no rights on the person who obtains it, nor impose any obligation on the one giving it. It did not, therefore, constitute any juridic link between the municipal council and Mr. Paquet. That permission could have ceased legally at the moment when the council should consider it advisable to revoke it, and if one considers it from this point of view, he will cease entirely to believe that the permission was given for an *undefined time*, a condition which better shows, if that be possible, the perishable and revokable character of the permission.

The words " *temps indéfini* " and their equivalent in Spanish mean that the stipulation to which they refer has no fixed term and may cease at any moment.

I have demonstrated what I asserted at the beginning of this argument, that is to say, that the claim analyzed is based upon two errors, namely:

(1) That the *permission* to which the resolution refers confers a right upon Mr. Paquet.

(2) That the words *undefined time* signify perpetually.

Secondarily, I put forward the following considerations:

It does not appear, in a credible way, that the Government has deprived the plantation of Agua Salud of said waste waters because, aside from the fact that the letter from Sister Anacleta lacks authenticity, the claimant limits himself to formulating his demand in this vague and indefinite way:

> I succeeded, nevertheless, on account of my imperturbable tenacity, in maintaining in some sort of fashion the irrigation by the waste waters * * * until January, 1901. It was then that a high authority intervened in a decisive manner, which permitted the others to convert to their own benefit the waste waters upon the fields next to the asylum, a practice which is, on the other hand, very unhealthy.

Lastly, if the permission to use the waste waters conferred any rights it would have created a servitude in favor of the property, Agua Salud, and since this belongs to Mr. Emelio Franklin, it would not be Paquet but Franklin who would have the right to claim.

For the reasons expressed, it is the opinion of the Venezuelan Commissioner that the claim under consideration, which Mr. Paquet makes, should be disallowed absolutely.

FILTZ, *Umpire:*

The umpire having examined the record and considering —

That on November 5, 1896, at the request of Mr. N. A. Paquet, the municipal council of Caracas granted him the permission to make use for an undefined time of the waste waters which run out of the hospital of Catia and which flow freely by way of the ravine of Agua Salud, conducting them by means of a pipe line to his rural estate, " Agua Salud; "

That some time thereafter this permission was withdrawn from him;

That, in order to prove this fact, Mr. Paquet relies upon the letter of Sister Anacleta which is to be found in the record. This letter is not authenticated, as has been noted by the Commissioner of Venezuela; nevertheless, I accept its contents as the expression of the truth;

That it is superfluous to discuss the differences which might exist between a concession and a permission;

I do not even care to dispute the right to withdraw a permit of concession running for an undefined time; but when a permit is withdrawn from anyone, by virtue of which he has been put to expense and labor and accomplished a great public service, draining a part of the city in order to take advantage of his ingenuity, at the moment he was about to enjoy the results of his labor, and this in order that it may be of advantage to others, it would certainly be equitable to indemnify him.

Unfortunately for Mr. Paquet, from the aforesaid letter, which I ought to accept in its entirety as the truth, it is manifest that Mr. Paquet performed labor in the interior of the asylum in order to take this waste water which occasioned serious damage, stopping for several days the supply of drinking water which came from the canal Polvorin, which left the establishment entirely unprovided with water;

That Mr. Paquet himself has abused the permission which was granted him appears to him (the umpire) to be of sufficient weight to justify its revocation, and it is this fact alone that prevents him from allowing the claim.

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POSTAL CLAIM

(By the Umpire:)

Interest will not be allowed upon a claim, if it is not demanded in the claim itself.

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

Article 33 of the Universal Postal Convention (signed June 15, 1897), a convention signed by almost all the nations of the world, and among others by Venezuela and by Belgium, says literally:

2. Payment of the accounts of transit expenses relating to a period of service must be effected with the least possible delay, and, at the latest, before the expiration of the first six months of the following period of service. In any case, if the office which has transmitted the account has not received during that period a correcting observation, the account is considered as duly accepted. This provision likewise applies to the uncontested observations made by one office relative to the accounts presented by another. When the term of six months has passed, the amounts due from one office to another office are subject to interest at the rate of 5 per cent per annum, dating from the day of expiration of said term.

3. The offices interested are, however, at liberty to make, by mutual agreement, arrangements other than those formulated in the present article.[1]

This text gives rise to no doubt, and in No. 2 a general rule is established; by No. 3 it is permissible that it be replaced by means of special agreement.

Has the term of six months allowed, at the end of which the expense of transportation that were due for the year 1898 should have borne interest, expired? Evidently.

Does there exist a special agreement which supersedes the general rule? It is possible that it will be alleged that the acceptance on the part of Belgium in July, 1900, of an arrangement for the extinguishment of the debt by means of the series of monthly payments of 250,296 francs, since no interest has been mentioned, constitutes a tacit renunciation of interest, but the suspension of the payments in June, 1901, has annulled this tacit agreement.

If, therefore, there exists a part agreement that agreement has ceased to exist and the debt is governed by the general rule contained in article 2.

Therefore the Belgian Commissioner proposes the following award:

The Venezuelan-Belgian Commission decides that the debt for 8,249.36 francs, which the Government of Venezuela owes, is allowed.

(2) This sum shall be increased by interest at 5 per cent from June 1, 1901, until the day of payment.

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

The Commissioner of Venezuela has the honor to make the following observations:

In the claim for 8,249 francs 36 centimes for expenses of transportation of correspondence, the payment of interest has not been demanded upon that sum, and since it is indispensably requisite, in order that the Commission may take jurisdiction of and decide the claim, that said claim shall have been made, it is clear in the present case that the Commission can not allow interest which has not been demanded.

In Article I of the protocol, signed at Washington on February 13, of the current year by the plenipotentiaries of Belgium and Venezuela, it says that —

All Belgian claims against the Republic of Venezuela, which have not been settled by diplomatic agreement or by arbitration between the two Governments

[1] U. S. Statutes at Large, vol. 30, p. 1691.

and which shall have been presented to the Commission hereinafter named by the Belgian Government or by the Belgian legation. * * *

Consequently, the payment of interest has not been claimed either by the Government of Belgium or by the legation of Belgium at Caracas.

Secondly, I make the following argument:

The cause which has prevented the Venezuelan Government from effecting the punctual payment of the sum named consists in civil war, which possesses the character of *force majeure* and excuses the payment of interest, in accordance with article 1191 of the civil code:

The debtor is not obliged to pay damages if these are the consequences of an accident or force majeure, which has impeded him from refraining to do, or doing, that which he was obliged to do, or that he has done that which was forbidden.

For these reasons I am of opinion that there is no reason to demand the payment of interest with which the Belgian Commissioner has increased the demand.

FILTZ, *Umpire:*

The umpire having studied and examined the documents and the record and considering:

That, the demand for interest has not been presented in the claim itself;

That, besides it is contrary to the terms of the protocol;

For these reasons declares that the demand for interest made by the Commissioner of Belgium is disallowed.

COMPAGNIE GÉNÉRALE DES EAUX DE CARACAS

DECISION ON JURISDICTION

(By the Umpire):

Under the terms of the protocol, the Commission has jurisdiction to examine and decide the claim of a Belgian corporation, even though some of its stockholders may not be Belgians.

DECISION ON MERITS

(By the Umpire):

The failure to perform a contract for the payment of certain bonds issued by the Government of Venezuela in payment for certain properties purchased of claimant gives the claimant a right to claim indemnity, even though the bonds were made payable to bearer.

Where the property conveyed was encumbered by a bond and mortgage, formal registration of a satisfaction of the mortgage can not in equity be demanded when the evidence clearly shows that all but a few of the mortgage bonds have been paid and the claimant is willing to amply secure the grantee against loss on account of the outstanding bonds. The objection to the payment founded on the above would be one of a technical nature, which is expressly barred by the protocol.

Evidence can not be introduced to show that bonds issued for the payment for property were delivered at 40 per cent of their nominal value where the contract of transfer expressly states that the bonds were issued at par.

(The allegations contained in the memorial sufficiently appear in the following opinions. This plea to the jurisdiction was the first step taken by the Venezuela Government in opposition to the claim.)

ANSWER OF VENEZUELA ON JURISDICTION

To the Honorable Members of the Mixed Venezuelan-Belgian Commission:

The undersigned, agent of the United States of Venezuela, has studied the claim presented by the Compagnie Générale des Eaux de Caracas, and respectfully shows to the tribunal:

Before answering the claim upon its merits the undersigned must present to the consideration of the honorable arbitrators a preliminary objection which requires a previous decision.

By the protocol signed in Washington between the two Governments only the claims owned by Belgian subjects can be submitted to the decision of this honorable Commission; it is necessary, therefore, for the claimant company to prove that all the special bonds issued by Venezuela, as the price for the assets of the enterprise, are held by Belgian subjects.

The undersigned considers that this is an essential condition to give jurisdiction to the tribunal.

Moreover, the Government of Venezuela, in refusing to continue the regular payment of the special debt created to make payment for the aforesaid sale, has done so because it considers indispensable the fulfillment of a requirement to which the company is obligated by the internal law — viz, the cancellation of the mortgage which it made, by which it guaranteed the payment of 27,400 bonds at 500 francs each — because it is to be noted that when the enterprise was sold to the Government no mention of this incumbrance was made.

In case the honorable tribunal should consider the objection interposed without foundation, the undersigned will proceed to answer the claim, without any delay, upon its merits.

PRELIMINARY QUESTION AS TO JURISDICTION

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

In his answer, dated July 18, 1903, the agent of the Venezuelan Government sets forth, incidentally, that if Venezuela has suspended the payment of the waterworks debt it has been because of a mortgage which ought to have been canceled according to local legislation.

It would be easy to meet this objection if the explicit prohibition which the protocol provides for recourse to local legislation did not render such refutation completely useless.

The true objection should be formulated thus:

By the protocol signed at Washington between the two Governments only claims owned by Belgians can be submitted to this Commission; it is therefore necessary that the company should prove that all the bonds issued by Venezuela in payment for the assets of the company are held by Belgian subjects. The undersigned considers that this is an essential condition to give jurisdiction to the tribunal.

In case this tribunal should consider the objection unfounded, the undersigned will proceed to answer the claim upon its merits without any delay.

This objection is magnified even more by the Venezuelan Commissioner, who demands not only that the company should prove that all the holders are Belgians, but also that it is the owner of the claim which it presents.

In order to refute the objection of the Venezuelan agent, it is sufficient to determine the nationality of the party claimant.

The Compagnie Générale des Eaux de Caracas is a corporation organized in Brussels on February 3, 1891, before Mase Van Halteren, a notary, as is shown by the copy of the Monitor, which is found in the record.

It is therefore a juridic Belgian person, and in that capacity submits to the Belgian-Venezuelan Commission the fact of the nonperformance on the part of the Venezuelan Government of a contract signed by both parties October 31, 1895.

If the objection of the Venezuelan agent had any merit, that is to say, if it were necessary to deny the benefit of a judgment favorable to the claimant to all the bondholders who were not Belgians, with all the more reason would it have been necessary to claim in all the mixed commissions by separating the stockholders and bondholders of corporations which may have claims pending before them.

Very well, the claims of the German railway and the two English railways have been examined on their merits by the English and German commissions.

The objection to the jurisdiction made by the agent of Venezuela before the Commission is not, therefore, justified.

With respect to the exaggeration which the Venezuelan Commissioner has made, in seeking to make the claimant prove in advance that it possesses all the bonds of the debt issued; it arises from an imperfect idea of the foundation of the claim.

The claim of the company has not been made for the certain number of bonds of the waterworks debt which it may possess, but it has its origin in the contract of 1895, to which the company is a party, a contract which it has executed, and which the Government of Venezuela has not fulfilled; which has given to the first party a cause of action against the second, a right which it is exercising at this moment.

Therefore the proof that the company is the owner of its claim is the contract itself, the text of which and the nonfulfillment of which are undeniable.

Besides, it is well to note the manner in which the company has presented its claim.

The liquidators limit themselves in their memorial to proving the debt which the Government has contracted by reason of the negotiation concerning the waterworks, and have taken good care not to demand that the payment be made to them personally, leaving it entirely to the judgment of the Commission to decide if such a course should be taken or, if it deems it preferable, to make the debt payable to a sound financial establishment which it shall charge with the disbursement to all the bondholders; and consequently the Belgian Commissioner asks that, passing over the objections presented by the defendant, the Commission decide that it has jurisdiction and the claim is admissible.

GRISANTI, *Commissioner* (claim referred to the umpire on question of jurisdiction):

La Compagnie Générale des Eaux de Caracas claims the payment of 10,175,000 bolivars, represented by 20,350 bonds payable to bearer of the *special waterworks debt*, besides 2,967,708.33 bolivars interest on this debt from August, 1897, until June of the present year.

This claim is founded upon the following facts:

By the contract executed on October 31, 1895, La Compagnie Générale des Eaux de Caracas sold and transferred to the Government of Venezuela the contract which it had acquired for developing the distribution of water in Caracas, the ownership of all the works and installations, its properties, and the assets which it had against its creditors, all for the price of 10,792,440 bolivars in bonds of the special debt of the waterworks of Caracas, created by Executive decree of the aforesaid date, October 31, 1895.

This debt is similar to the consolidated debt at 5 per cent created by the law of public credit dated July 8, 1891.

The first and essential requisite which the company should fulfill, and which it has not fulfilled, is to prove in a convincing manner that it is the owner of the claim which it urges — that is to say, that it is the owner of the 20,350 bonds of the special debt which are still in circulation — or, at least, that the owners of these bonds are Belgian subjects, and as these bonds are payable to bearer it can not make other proof than the presentation of these bonds themselves.

These bonds are doubtless owned by individuals of various nationalities, and a great part of them belong to Venezuelan citizens.

Very well, the obscure and irregular manner in which La Compagnie Générale des Eaux de Caracas presents its claims would lead to the absurdity that this Mixed Venezuelan-Belgian Commission constituted to examine and decide Belgian claims — that is to say, claims of the Belgian Government or of Belgian subjects — should examine and decide a claim in which persons of many nationalities are concerned, and it would bring us to a still greater absurdity, if that be possible, if some Venezuelans should appear to be protected in their interests by His Majesty the King of Belgium. This would be a flagrant violation of Article I of the protocol, by virtue of which this tribunal has been created.

The Belgian Commissioner assumes that the Compagnie Générale des Eaux de Caracas has made itself liable with respect to the holders of the bonds of the debt, but besides the fact that this would leave in existence the absurdity already expressed in the foregoing paragraph, this act itself would go to demonstrate that the company is urging a claim which is not owned by it, that it is demanding the payment of a debt which does not belong to it, or at least does not belong to it to the extent of which it is trying to make recovery.

" En fait de meubles la possession vaut titre " is a principle sanctioned by article 2279 of the Belgian civil code, by article 1141 of the French civil code, by article 1126 of the Italian civil code, and by article 1100 of the Venezuelan civil code, and said principle applies to bonds payable to bearer.

568. Le principe que les créances peuvent être revendiquées reçoit exception quand elles sont constatées par des titres au porteur. Cela est admis par tout le monde; cependant le code ne parle pas plus de l'exception que de la règle, mais l'exception et la règle se justifient par les raisons qui ont fait établir la maxime qu'en fait de meubles la possession vaut titre. Pourquoi la possession est-elle considérée comme un titre de propriété quand il s'agit de meubles corporels? Parce qu'ils se transmettent de main en main, sans qu'on dresse acte de la transmission. Or, il en est ainsi des effets au porteur: le nom qu'on leur donne prouve que le payement doit être fait à celui que est porteur de l'effet; il est donc réputé créancier, c'est-à-dire propriétaire. Ainsi il n'y a aucune différence entre ces titres et les meubles corporels en ce qui concerne le mode de transmission, donc ils doivent être soumis à un seul et même principe.

La cour de cassation l'a jugé ainsi par un très ancien arrêt, sur le réquisitoire de Merlin. Dans l'espèce, il s'agissait de vingt-six récépissés d'un emprunt, conçus en forme d'effets au porteur. Ces effets avaient été acquis par une société de commerce; l'un des associés en disposa au profit d'une concubine; les associés les réclamèrent contre le possesseur. La cause de la défenderesse était on ne peut pas plus défavorable; le premier juge se prononça contre elle, mais sa décision fut réformée par le tribunal d'appel de Bruxelles. En principe, dit la cour, les effets au porteur sont réputés être la propriété de celui qui en a la possession, à moins que celui qui les revendique ne justifie qu'ils lui ont été volés ou qu'il les a perdus et qu'ils ont été trouvés par le possesseur. (Laurent, *Principes de Droit Civil*, vol. 32, p. 585.)

If the owner of a bond payable to bearer has not got the right to recover it from its actual possessor, except it may have been stolen or lost, how can it

be just that the Compagnie Générale des Eaux de Caracas should claim from the Government of Venezuela the payment of all the bonds of the special debt of the waterworks of Caracas, without showing that it is the owner of all these bonds?

The Compagnie Générale des Eaux de Caracas is not vested with any legal right to represent the bearers of the bonds of the waterworks debt nor does there exist between it and them any legal relation; and this being so, on what principle of equity and justice can it rely to demand the payment of the total sum of said debt?

The undersigned does not deny that the Compagnie Générale des Eaux de Caracas is a juridic person in so far as it is necessary to accomplish its liquidation, nor that its nationality is Belgian. What he denies is, that this company is owner of the claim which it advances.

For the reasons expressed it is the opinion of the Venezuelan Commissioner that the true creditors of the Government of Venezuela for the waterworks debt are the holders of the bonds; so that the Compagnie Générale des Eaux de Caracas ought to show that it is the legitimate holder of the 20,350 bonds, the payment of which it demands, or to limit its claim to the number of bonds which it has in its possession.

FILTZ, *Umpire:* [1]

The umpire having examined and studied the documents in the record and considering:

That Article I of the protocol of Washington declares that the Commission has jurisdiction to examine and decide all Belgian claims against the Republic of Venezuela which have not been settled by diplomatic agreement between the two Governments, and which may have been presented to the Commission by the Belgian Government or by the legation of Belgium at Caracas;

That the present claim has not been settled by diplomatic agreement between the two Governments, and that it has been presented to the Commission by the agent of the Government at Caracas;

That the claimant company's Belgian character has not been disputed, and that it has not lost it, because among the holders of the bonds which have been issued by the Government of the Republic persons of a different nationality are found;

For these reasons declares that the Commission has jurisdiction and orders that it proceed to decide upon the merits without delay.

ANSWER OF THE VENEZUELAN AGENT ON THE MERITS

Honorable Members of the Mixed Venezuelan-Belgian Commission:

In conformity with the decision rendered by the honorable umpire of this Commission, deciding that it has jurisdiction to examine and decide the claim presented against the Government of Venezuela by the Compagnie Générale des Eaux de Caracas, the writer, as agent of the Republic, proceeds to make answer to the claim upon its merits.

By Article I of the contract entered into by the minister of hacienda and public works, duly authorized by the President of the Republic and by virtue of the authorization given by the National Congress on May 25, 1895, on the one part, and Noberto Paquet, as representative of the aforesaid company, on

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[1] For a French translation see: Descamps - Renault, *Recueil international des traités du XX^e siècle*, année 1903, p. 883.

the other, the latter agreed to cede and transfer to the National Government all the rights vested in it by the contract entered into with the municipality of Caracas on July 11, 1900.

By Article III of said contract the National Government obligated itself to pay as the price of said transfer the sum of 8,625,800 bolivars in bonds of a special domestic debt, at 5 per cent per annum, at par.

By Article IV the company renounced all the rights which it had acquired by the contract of July 1, 1893, relative to the construction of a second pipe line from Macarao to Calvario for the sum of 3,000,000 bolivars which the company ought to have received on that account; and it also ceded the mains existing in Caracas, which it had begun to lay on account of said work, to the National Government, without the latter's having to pay for it, since the price of these was included in the 8,625,800 bolivars provided for in Article III.

By Article V the company also transferred to the National Government all the bills receivable which it held against its customers for water rates and for connections, as well as those against the municipal rents and the Government itself, for the price of 80 per cent of their original amount.

It was stipulated that to effect the payment for said assets, and after having ascertained them, the amount of said special domestic debt of which Article III speaks, and which was sufficient to cover them, should be offered at auction for cash.

By the sole paragraph of Article V the Government reserved to itself the right to buy from the company, at the inventoried price, all its materials in its warehouse not included in those mentioned in Articles II and IV, paying for them in the same manner established for the payment for the assets.

Later, availing itself of the right which it reserved by this article, the Government bought from the company said materials for the sum of 333,311.61 bolivars.

In accordance with the foregoing stipulations the Government issued bonds of the special domestic debt to the value of 10,729,199.44 bolivars in the following manner:

		Bolivars
Price of the transfers agreed upon by Article II and IV of the contract which the company made to the Government		8,625,000.00
Value of the assets, which according to the liquidation made by the minister of public works showed a balance due the extinct company at 80 per cent	471,598.09	
Value of the materials which the company had in its ware-houses and which the Government bought in entirety as per inventory	333,311.61	
Total	804,909.70	
Estimating these amounts at 37.40 and 36.77 per cent, respectively, makes		2,167,199.44
Giving a grand total of		10,792,199.44

It is to be noted that the Government reserved itself the right also to which the company or its successors in interest also bound itself, to call in the bonds of said debt within the term of two years, paying it in gold at the rate of 40 per cent.

Afterwards the Government, by successive amortizations, diminished this sum to the amount of 10,175,000 bolivars.

For several years thereafter the Government was properly attending to the payment of this debt, when it learned that the property of the enterprise purchased was encumbered by a mortgage, of which no mention had been made

in the deed of transfer, and foreseeing the possibility of the setting aside of the sale it ordered the suspension of the payment.

The liquidators of the company alleged that they had effected a cancellation of the 16,700 mortgage bonds for bonds of the debt issued by the Government of Venezuela, with the exception of eight, which might be considered as lost or destroyed, and that by this exchange, agreed to by the holders of the former preferred obligations, had extinguished, by means of the novation of security, the mortgage which guaranteed them.

The attorney-general of the nation, specially commissioned to treat this matter with Mr. Ferdinand Goffart, one of the liquidators of the company, accepted this view, but demanded at the same time the formal proof of the novation alleged, which could not be other than a delivery in the hands of the purchaser of all the preferred bonds called in.

The attorney of the liquidators did not consent to make this delivery except upon Belgian territory, to which the Venezuelan Government could not agree.

The payment of the 61,000 bolivars, which it is alleged in the memorial of claimants was demanded by the Government of Venezuela, was nothing but the equivalent of the registration fees, caused by the cancellation of the mortgage, a formality which ought to be complied with by the company, since it had sold goods which were not unencumbered, and according to the principles of civil law it was and is obliged to cure the defects of said sale.

The matter remained in suspense and has so continued until its presentation to this honorable Commission.

As will be seen, therefore, the fault of the company itself, the grantor, has been the motive for the suspension of the payments of the special debt, created by the Government of Venezuela to cover the price of the sale.

The agreement of October 31, 1895, remains to-day in full force and effect and the claimant can not demand anything but its strict fulfillment. The Venezuelan Government is disposed to accomplish this provided that the formality demanded be complied with. This proceeding is just and equitable.

With respect to the payment of interests on account of delay, which the company demands, the undersigned finds himself obliged to oppose it, since said delay was occasioned by a reason chargeable to the company itself, and was in obedience only to a reasonable and legitimate measure adopted by the Venezuelan Government for the security of its rights.

The writer has thus answered the claim of the Compagnie Générales des Eaux de Caracas, but at the same time he takes the liberty to call to the attention of the honorable arbitrators that it is a precept of international law, generally recognized by all civilized nations, that the recovery on obligations of bonds issued by a State should not give rise to international claims.

Lord Palmerston, in a circular letter addressed to the British foreign agents, in January, 1848, in effect maintains that to trust one's capital to a foreign government is to realize a speculation; to invest in loans made by foreign governments or to buy upon the exchange foreign bonds constitutes a mercantile or financial operation, as any other of that kind; the risk which is inevitable in this latter is also inseparable from the subscriptions to the loans of states; the creditors should never lose sight of the possibility of a bankruptcy, and they should not find fault except with themselves in case they lose their money. (Hall, International Law, 4th ed., p. 294, note.)

The same opinion has been sustained by the well-known publications of Rolin-Jaequemyns, a member of the Institute of International Law. (See Pradier-Fodéré, Public International Law of Europe and America. Vol. I, p. 620 et seq., par. 405.)

OPINIONS ON MERITS

GOFFART, *Commissioner* (claim referred to umpire on its merits):

The umpire having ordered at the session of July 28th, that this case should be determined on its merits, the agent of the Venezuelan Government has set up his various defenses.

These go to show that the Venezuelan Government has suspended the fulfillment of the agreement of 1895 because of fears of eviction resulting from a mortgage which encumbered the real properties acquired; that this mortgage has been extinguished by novation, but that the Government requires the proof of this novation, demanding the delivery of the old bonds into the ministry of public credit in Caracas, after which the Government will resume the payment of the debt.

This argument has been rejected by common accord by the two Commissioners; thereafter, each one of them has stated the final opinion which he holds.

The Venezuelan Commissioner asks that the judgment order that the Compagnie Générale des Eaux de Caracas, in liquidation, should effect the cancellation of the mortgage which encumbers the real properties which it ceded to the Government and that, this formality having been observed, the Government shall resume the payment of the special debt of the waterworks.

The Belgian Commissioner opposes the cancellation of the mortgage as useless, the rights growing out of the mortgage having already been extinguished, this objection becoming thenceforth "simply an objection of a technical nature" which the protocol precludes explicitly from being invoked.

It being established that the agreement of 1895 has provided for the sale on time, in which the vendor has fulfilled its obligations but the vendee has not proceeded in the same matter, the Belgian Commissioner demands that the time be declared lapsed, so far as concerns the Government of Venezuela, and that it be recognized as debtor in the sum of 10,565,199.44 bolivars.

Mr. Umpire, of all the claims submitted to the ten mixed commissions which are actually sitting in Venezuela not one is more simple, more evident, more incontestable than that which we submit to-day to your judgment.

In 1891, there was constructed, in this city, a system for the distribution of water. This system gave general satisfaction. Eight years ago the Government bought said water system, and since that time has received the considerable revenue which it produces.

It is six years since the company has hoped vainly to be paid. Such is the essential, undeniable fact which dominates the argument, a fact which will serve as a guide for your judgment.

I seek to establish in this opinion:

1. That the position of the company is unassailable in law.

2. That it is even less assailable in equity; and I shall terminate in formulating reasons which support the judgment which I propose, which judgment is the only one which can guarantee its legitimate rights to the claimant.

How is the claim of the company juridically presented?

We find ourselves confronted by a contract entered into on October 31, 1895, between the ministers of hacienda and public works on the one part and the representative of the company on the other. This contract was submitted to the ratification of Congress in 1896. In three successive readings it was discussed and approved by the Chamber of Deputies. In three successive readings it was discussed and approved by the Senate. It was regularly proclaimed. The consent of the contracting parties could not be invested with greater or more

solemn formalities. The tie of the legal relation created by the agreement of 1895 is perfect, and does the Commissioner of Venezuela seek to deny it—

but [says he] a mortgage encumbered the real properties of the company. This mortgage is yet recorded in the public register; to comply with Venezuelan law the Government ought, therefore, to be released, after which the agreement would again assume its force.[1]

It is noted by the Commissioner of Venezuela that his opinion is in formal contradiction to the attitude assumed by the Government itself after the proclamation of its decree for the suspension of payment. On September 28, 1897, Doctor Grisanti, then the legal adviser of the company, announced to it that the Government had suspended its payment, alleging the poverty of the treasury, and purposed to resume it as soon as its resources would permit (and they have never permitted it).

It was not until three years later, in 1900, when, perceiving the necessity of justifying its course in one way or another, the Government charged its councilors to give a juridic explanation of its conduct.

After a protracted examination they only find one way to arrive at it. The following decree appeared in the Gaceta Official of November 30, 1900 (see Exhibit No. 1):

UNITED STATES OF VENEZUELA,
MINISTRY OF THE TREASURY AND PUBLIC CREDIT,

Caracas, November 30, 1900.

Resolved, In view of the communication which the citizen minister of public works has addressed to this department, in which he asks that the resolution which is in conformity with civil law be taken, and which he proposes as a safeguard for the rights of the National Government, because of the existence in the office of the public register of this capital of a recorded mortgage on all the properties, rights, and actions of the Compagnie Générale des Eaux de Caracas, prior in date to the sale which it made of them to the Government, and considering:

That from the documents submitted by the minister it appears really that the mortgage was made on June 25, 1891, by Mr. H. E. Boyer, representative of the aforesaid company, upon all its properties, rights, and actions; and that it appears, furthermore, that that mortgage has not been taken up, which causes the National Government to fear a future injury by eviction from the property sold on October 31, 1895, the supreme chief of the Republic resolves:

To suspend from this day the payment of what may be owed to this company with respect to the purchase price, or with respect to the extinguishment of and the payment of interest on the special domestic debt of the waterworks of Caracas until the vendor shall have removed the danger, or until it may give a sufficient guaranty, in accordance with the tenor of article 1475 of the code.

Let this be declared and published by the National Executive.

R. TELLO MENDOZA

Now then, what does article 1475 of the civil code say? It is the reproduction of article 1653 of the Belgian and French codes, which is expressed in these terms:

ART. 1653. If the purchaser is disturbed, or has a just motive for so fearing, by an action, be it on account of a mortgage or be it on account of recovery, he can suspend the payment of the price until the vendor has removed the cause of disturbance, if he does not perfer to give bond, unless it has been stipulated that notwithstanding the disturbance the purchaser shall pay.

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[1] Summary from opinion; see *infra*, p. 345.

Here there has never been any disturbance of possession. The company furnishes authentic proof that all the mortgage bonds, except eight, have been canceled. It offers to deposit in the bank which may be designated 4,000 francs as security, which shall serve to take up these eight bonds at par, which it has not been able to find.

It has, therefore, complied in every way with provisions of the article invoked by the Government. The Government is in no sort of danger. It is a fact to be noted that in making the decree of 1900 the Venezuelan jurists had arrived at a conclusion identical with that reached by the Belgian lawyers.

The noteworthy opinion of Mr. van Dievoet, which is to be found in the record, should be cited in full, but I will quote only the passage most pertinent:

> The only guaranty which the Venezuelan Government, now actually the possessor of the property which had been mortgaged in favor of the bondholders, could demand is the proof of the return of these obligations to the possession of the company which had issued them and their cancellation, no matter how they had been acquired, as, for example, by documentary evidence of their return and cancellation.

Therefore, there is an identity of opinions. According to the view of the Venezuelan Government, as well as that of Mr. van Dievoet, the proof of the cancellation of the bonds is all that we can ask.

The company has furnished it, invested with the character of absolute authenticity. Thenceforth, by the terms themselves of the decree of the President of the Republic, Venezuela ought to resume the execution of the agreement of 1895.

I have, therefore, demonstrated that the action is unassailable in law, even if the example of my honorable opponent did not pass that point, but I have imposed upon myself, in the course of the labors of this Commission, the obligation of examining the claims upon a basis of absolute equity. It is my duty to do it here also.

Does the agreement of 1895 create a legal relation juridically unassailable? No doubt; but is it clearly so in equity? In other words, is the purchase made by the Government well worth the sum which it promised to pay for it? I state without hesitation that it is.

By the agreement of 1895 the Government acquired:

1. The rights owned by the company by virtue of its municipal contract of July 11, 1890 for the exploitation and distribution of water and the construction of a system of sewers.

2. All the works and installations which it had constructed, such as they were at that time — that is, in perfect condition and operation.

3. The right to construct a second main from Macarao to Caracas (contract July 1, 1893) for the sum of 3,000,000 francs, as well as all the pipes at that time brought to Caracas for this purpose.

4. All the bills receivable for water rents at that time owed by individuals or by the authorities.

5. All the supplies of material in the warehouse at an inventory price.

And what did all this represent? That is what we have to show.

Let us take up now the first contract of July 11, 1890.

In the execution of this contract the company took up and exploited the following supplies of water. Macarao, which furnishes 120 liters per second; Catuche, 20 liters per second; total, 140 liters per second, or 12,000 cubic meters per day.

The company was obliged to furnish gratuitously to the municipality 1,000 cubic meters. There remained for sale 11,000 cubic meters per day. The

water system has on the average 5,000 customers, who according to article 15 of the contract, should receive for 100 francs per year 1½ cubic meter per day, or, say, 7,500 cubic meters, equal to 500,000 francs. There remained 35,000 cubic meters in excess, which were sold at the very remunerative price of 50 centimos per cubic meter.

It is to be noted that public establishments, hospitals, offices, hotels, etc., should be served with water all day, and that the excess supply was always consumed.

	Bolivars
On this account there would be a profit of 35,000, at 50 centimos per cubic meter	638,750
More than 5,000 francs already received	500,000
Total	1,138,750

Besides it had a commercial business of sanitary installations, which was worth 60,000 francs per year. It had commenced the construction of sewers (2 kilometers were constructed), and according to the terms of article 17 of the contract the houses of Caracas were obliged to connect themselves with this system and to pay on this account 4 francs per meter of frontage.

Estimating the number of houses at 8,000, and the average frontage at 8 meters. we have a profit of 256,000 francs. Total profits, 1,454,750 francs.

Now, then, according to the last publication of the Government, the expenses of operation did not exceed 57,300 francs. Increasing considerably this sum, and estimating it for the water service at 100,000 francs, and for the sewer system at 200,000 francs, it is found that the expenses would be 300,000 francs; net profits. 1,154,750 francs, which the first contract would have produced if the Government had fulfilled its promises.

But there is a second contract, that of July 1, 1893, by which all waters which might be conducted by means of a second pipe line which was to be constructed should belong to the company. That is to say, 10,000 cubic meters per day or more, which the company was to sell at the excess rate, or 50 centimes per cubic meter annually, producing 1,825,000 francs. Total from both contracts, 2,979,500 francs. And the Government, 200,000 francs.[1] Net profits per year, 2,779,500 francs.

Such are the benefits which the company ought to have realized by virtue of the two excellent contracts which it possessed. Even reducing these profits to one-half, say to 1,500,000 francs, if it be considered that the contracts were for forty years, it will be seen what a prosperous business the company had.

These rights — this business — were what the Government acquired.

After the detailed account which I have just made it will not occur to anybody to say that the rights ceded were not worth much more than the sum of 10,792,199.44 francs which was demanded.

I refrain from giving the reasons which have brought me to this conclusion.

The contract signed in Caracas in 1895 between the Government and the company transferred all its real estate, rights, and actions. These should have been paid for by a certain number of monthly intallments of 50,000 francs each:

1. The net profit in the exploitation of the water system;

2. The excess from the various reserves, or portions of the revenue, destined for the payment of the national domestic debt of 6 per cent.

What has the Government done with these revenues freely set aside?

[1] The increase ought to be compensated by the increase in the consumption of public establishments. — Goffart.

Exactly nine months after the signing of the contract it simply suppressed the second by its law of July 16, 1896, by which law the Government divided its revenues among all its creditors, and no mention was made of the company, just as though it did not exist.

Now, this second guaranty was one of the most important. By the last report published (1901-2) it had yielded a sum of 1,439,000 francs, sufficient in itself to pay off the whole debt in seven years.

The first guaranty still remained — the net profit of the waterworks system.

We have shown how, after six years, the Government had kept it entirely for itself, alleging the poverty of the treasury, but in this respect also an official document exists which shows the application of this guaranty to other purposes to the loss of the company.

By an agreement dated April 24, 1903, entered into between the minister of public works and Mr. Llamozas, the system of waterworks had been granted to Mr. Llamozas without one word being said concerning the prior obligations toward the company, without any more mention being made of it than if it did not exist.

There had been a promise of payment made with the express mention of the resources to be applied thereto. The promise of payment has not been kept. Two official acts have ceded to others the guaranties given to the company.

It is not possible to find a more complete or flagrant breach of a contract.

The Belgian Commissioner asks that judgment be rendered against the Government, and that the debt be declared demandable for the sum of 10,565,199.44 francs.

In brief, the claim of the Compagnie Générale des Eaux de Caracas is so evidently just that it does not seem to leave room for discussion.

The Venezuelan Commissioner has not so considered it. He has sought to confine me to my rights at law, and the law supports my reasoning.

The cause has been submitted to the infallible contest of computation, and the computation shows my right.

From this double proof the proposition, which I announced at the commencement of this argument, is shown with more force — " of all the matters submitted to the examination of the ten mixed commissions, which are actually sitting in Venezuela, not one is more simple, more evident, more incontestable than that which we submit to your judgment ".[1]

GRISANTI, *Commissioner* (claim referred to umpire on its merits):

By a resolution of the National Congress, adopted May 25, 1895 the national Executive was authorized to bring to a close a negotiation instituted with the Compagnie Générale des Eaux de Caracas, for the purpose of acquiring the rights which said company had in the enterprise, and to substitute in the control thereof the Government of the Republic. (Doc. 260, Rep. of the Min. of Public Works, 1896, Vol I, p. 199.)

Therefore the citizen minister of the treasury appointed a commission to examine the matter, composed of Messrs. Augustin Alveledc, A. Valarino, S. A. Mendoza, José Herrera, and Antonio Vallero Lara, all persons of the highest integrity in this city, who made a report under date of the 20th of May which is copied below:

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[1] With this opinion several exhibits were submitted:

I. Extract from the Gaceta Oficial, November, 1900, showing resolutions concerning the mortgage on record in public register's office.

II. Record showing the cancellation of mortgage bonds.

III. Statement showing expenses of operation of the water company.

Bearing in mind the request which you have been pleased to make of us, and being desirous to contribute and to the extent of our good will, to give you a patriotic solution to the question which you have submitted to our judgment, we fulfill our duty in saying to you:

1. That what seems most to conform to the interests of the municipality would be to compel the company of waters and sewers of Caracas to strictly fulfill the original contract in all its parts; but taking into consideration that the modifications afterwards made would place the company in a situation which, though in itself false, would nevertheless enable it to maintain a more or less extended lawsuit, we are of opinion that the rescission of said contract would be the most fitting step that could be taken in order to prevent new dangers from arising against the sacred interests of the community.

2. We believe that the rescission of the contract, and of the one made with the Government for the construction of a new pipe line, ought to be effected on a basis of equitable indemnity composed thus:

(*a*) Of the sum total which the expenses actually realized and incurred by the company in the new works would reach, calculated by experts.

(*b*) Of the sum which the company may have paid in cash to obtain the contract; and

(*c*) Of the sum which in reason ought to be allowed as a remuneration for its works.

3. The sum total thus being fixed which the Government ought to pay to the company on account of rescission, we believe this ought, by preference, to be effected in cash, or, if the condition of the public treasury does not permit it, by a special debt at a moderate rate of interest; since, in the manner indicated in the agreement, which is in bonds of the national debt 6 per cent interest at 40 per cent of their nominal value, we find that every new issue of a debt already created would be contrary to sound economic principles, which would depreciate the value of the floating debt in a severe manner, causing grave injury and which, financially, would burden the public treasury with a very high rate of interest of 15 per cent per annum upon the sum paid.

By a resolution of the minister of public works, dated May 29, Mr. José Herrera y Irigoyen, who was a member of the commission before mentioned, was named to discuss with the representative of the company the details and conditions of the contract, which had to be made, and afterwards Dr. Jorge Nevett, an engineer, was named for the performance of said duty in conjunction with Herrera y Irigoyen who, after several conferences with the representative of the company, Mr. Paquet, addressed to the minister of public works a communication and resolution which appear in the exhibits A and B.

The aforesaid documents proved in a most evident manner that the Compagnie Générale des Eaux de Caracas, by means of its duly authorized representative, Mr. Noberto Paquet, refused to accept the price in gold which would have completed the negotiation with the Government of Venezuela, preferring to accept it in the special debt, and thus the company entered into a speculation in the public debt of Venezuela, engaging in a sort of speculation, risky in the extreme, and the adverse consequences of which it now desires to recover from the Republic.

By the contract of October 31, 1895, the Compagnie Générale des Eaux de Caracas ceded and transferred to the Government of Venezuela all the rights and actions which its contract conferred upon it, in the terms which appear in Exhibit No. 3, for the price of 8,625,000 bolivars in bonds of a public debt created to that end — all of which appears in article 3 of said contract of transfer, which reads as follows:

ART. 3. As a total price of this transfer the National Government shall pay the Company the sum of eight million six hundred and twenty-five thousand bolivars

(8,625,000), which shall be made in bonds in the special domestic debt of 5 per cent per annum at par. The issue of this debt shall be made in the manner prescribed by the decree of this date.

By article 5 of the contract the company transferred also to the National Government its bills receivable against its consumers at 80 per cent of their nominal value, a concession which should also be paid for in said debt.

By virtue of the Executive decree of October 31, 1895, a national debt was created which was called Deuda Especial Interna de las Aguas de Caracas, with interest at 5 per cent per annum, and which was included in the debts which constitute the public internal credit of Venezuela.

The regular payment of this, as well as all the other debts, was interrupted because of the civil war, and as the Government afterwards discovered that the goods, rights, and actions which the company had sold it had been mortgaged, it officially suspended the payment of interests which it owed to the company, the Government relying upon article 1475 of the Civil Code of Venezuela, which is identical with article 1653 of the Civil Code of Belgium, and which reads as follows:

Si l'acheteur est troublé, ou a juste sujet de craindre d'être troublé, par une action, soit hypothécaire, soit à la revendication, il peut suspendre le payement du prix jusqu'à ce que le vendeur ait fait cesser le trouble, si mieux n'aime celui-ci donner caution, ou à moins qu'il n'ait été stipulé que nonobstant le trouble l'acheteur payera.

So far the history of the negotiation. Let us pass to a detailed examination of the different points which it embraces.

When the Government of the Republic demanded the cancellation of the mortgage, the company definitely acknowledged the duty which it was under to satisfy said demand, in a note addressed by Mr. Goffart to the attorney-general of the nation, which reads as follows:

Caracas, *March 11, 1901.*

YOUR EXCELLENCY: I have the honor to notify you that I am authorized by the three liquidators of the Compagnie Générale des Eaux de Caracas to raise the mortgage which encumbers the enterprise of the waterworks and its real estate. Be kind enough to let me know what the Government will do as soon as this mortgage shall be legally satisfied.

By the intercession of this same representative and by a note dated August 20, 1901, the company definitely denied said obligation, which it had, in the above note, so definitely and categorically acknowledged, alleging for such a refusal that the mortgage had been extinguished by the creation of a new security.

You have here the text of the argument contained in a note addressed to the attorney-general of the nation on August 29, 1901:

Ainsi que vous ne l'ignorez pas, Monsieur le Procureur-Général, la Compagnie Générale des Eaux de Caracas en cédant son capital social au Gouvernement du Vénézuéla, et en obtenant l'adhésion de tous les obligataires qui ont échangé les obligations primitives contre le titre de rente vénézuélienne, a opéré aux termes de l'article 1271, page 2 du code civil belge (d'accord en cela avec le code vénézuélien), novation de créance par substitution d'un nouveau débiteur à l'ancien qui est déchargé par le créancier, c'est-à-dire dans l'espèce par tous les obligataires, la novation, vous ne l'ignorez pas, emporte extinction de l'obligation primitive qui est remplacée par la nouvelle dette. Cette extinction est si complète que même les privilèges et hypothèques afférents tombent de plein droit. Il ne saurait y avoir de doute à cet égard; l'article 1278 du code civil est formel; il dit: " Les privilèges et hypothèques de l'ancienne créance ne passent point à celle qui lui est substituée, à moins que le créancier ne les ait expressément réservés".

To answer such a strange argument it is sufficient for me to say, that, in the opinion which the company then entertained a substitution of the debtor had been effected by substituting the Venezuelan Government for it in the obligation to pay the mortgage debt; but such a concept is entirely without foundation. In fact, such a substitution could not have been effected unless the Government should have consented to assume said obligation of the company, and this consent has not been shown.

Now the company alleges that the mortgage has become, extinct because of confusion, an argument weak in the extreme, because such an extinguishment is consummated when the mortgage creditor becomes the owner of the property mortgaged, and in the present case the holders of the mortgage bonds issued by the company have that character, and the owner of the real estate mortgaged is the National Government.

Now the Belgian Commissioner has presented me with a notarial certificate going to prove that the liquidators of the company have annulled and canceled all the bonds except eight, which have not been presented to it.

The only proper and correct method of canceling the mortgage is to register the document of cancellation in the subordinate office of the register of this department, and this for the following reasons:

(1) Because it is thus provided in the Venezuelan law, the only one applicable to the case, the law of Belgium being similar to it. (Law of December 16, 1851, article 92 to 95, both inclusive.)

(2) Because, in conformity with the legislation of Venezuela, real estate situated in the Republic is governed by Venezuelan laws. (Art. 8, Civil Code.)

(3) Because in Venezuela and in all nations the laws which establish the requirements for the constitution and cancellation of mortgages are matters of public policy.

Let us proceed now to examine the claim of the company.

The first thing that arrests the attention in examining the claim of the Compagnie Générale des Eaux de Caracas is that the company does not formulate concretely and concisely the claim which it seeks to bring forward, limiting itself to setting forth in the conclusion of its memorial, as follows:

> The total amount of the special debt of the waterworks of Caracas, created by the decree of November 2, 1895, was 10,792,199.44 bolivars, represented by 21,584 bonds of 500 bolivars each; and the script or coupons 199.44 each, which we leave aside. On the 1st of January, 1901, according to the Yellow Book, the amount which we could claim was reduced in accordance with the demand made to 10,175,000 bolivars, represented by 20,350 bonds. The interest in arrears amounts on the 1st of June next to 2,967,708.33 bolivars, according to the account in Exhibit No. 6, which brings the total amount of the debt to 13,142,708.33 bolivars.

Nor does the agent of the Belgian Government specify the demand, limiting himself in the note which he addressed to this Commission on 18 June last to presenting the claim of the company in Belgian gold or its equivalent in silver for 10,000,000 bolivars, a claim which the undersigned rejects absolutely; wherefore the decision of this matter has been submitted to the umpire, to whom the writer has the honor to address himself.

After all it must be borne in mind that the company has not fulfilled the first and prime requisite of every claimant, which is to prove in a convincing manner that it is the owner of the claim which it presents; that is to say, that it is the holder of all the bonds of the waterworks debt which still remain in circulation.

This point the writer had the honor to submit at a previous session to Mr Filtz, the umpire, who reserved his decision on it for a future occasion.

To-day the writer can say that it is absolutely impossible for the company to furnish that proof, because it is not the owner of all the debt, as is shown most clearly by the paragraph of the memorial of its liquidators, which reads as follows:

On the 1st of June, 1901, according to the Yellow Book, the amount which we could control was reduced, on account of payments effected, to 10,175,000 bolivars, represented by 20,350 bonds.

And this is also shown by the certificate of the manager of the Bank of Caracas, which I present (Exhibit C), which proves that the said institution is the owner of 100,000 bolivars' worth of the waterworks debt, and has on deposit from divers persons, none of whom is the company, nor a Belgian subject, 52,500 bolivars' worth.

If the company were the holder of all the waterworks debt, the payment of which it demands, it could have set out exactly the payment made, of which the Yellow Book of 1901 speaks, and there would not be found in the Bank of Caracas the 152,500 bolivars of bonds of which the certificate of Manager Breca speaks.

This is sufficient to demonstrate the justice of my opinion in maintaining that bonds payable to bearer ought not to be the subject of an international claim, and in case they were, that only their actual holders could demand their payment.

This evidently proves also the gross inaccuracy of the company in demanding the payment of a public debt which does not belong to it, in its entirety, and without proving even that it is the owner of a part of it. Such a claim, if it should be declared well founded, would perpetrate a flagrant injustice against the Republic of Venezuela.

Let us now enter upon another class of considerations.

By the contract of October 31, 1895, the company ceded and transferred to the National Government all the rights and actions which it had acquired by its original contract of July 11, 1890, for the exploitation and distribution of the waters of Caracas, all the rights and actions ceded to it by its contract of July 1, 1893, for the construction of a new pipe line from Macarao, and the bills receivable which it held against its patrons.

The price of all these grants was fixed in the conferences previous to the negotiation at 3,000,000 bolivars in gold, but Mr. Noberto Paquet at that time representative of the company, refused to receive payment in gold, expressing himself in these terms:

I find all the details of the operation satisfactory; but I find myself obliged to make the following observation, referring to Article II: " Not being able to accept the payment in gold, it is also useless to accept the sum of 3,000,000 bolivars which, on the other hand, I insist does not cover the value of the property of the company."

This amount depends upon the rate of interest which is fixed upon the debt in question.

The payment of the grant and the transfer were made, therefore, to the company in bonds of a debt especially created with this object, and which was called the special debt of the waterworks of Caracas, which the company received at 40 per cent of its nominal value, which raised the total price of the bonds to 10,792,000 bolivars.

The foregoing, which is evidenced by convincing documents, shows that the Compagnie Générale des Eaux de Caracas refused definitely to permit payment in gold, a payment which would have terminated once and for all its negotiation with the Government, and preferred to receive it in bonds; the company thus

entering into a speculation in the public debt of Venezuela and running the risks inherent in this speculation.

The company counted on easy gains. It received 8,000,000 and odd bolivars in bonds at 40 per cent for what was valued at 3,000,000 bolivars, and considering the prosperity of Venezuela at that time it hoped, with reason, that that debt, if it did not reach par, would at least be quoted at 50, 60, or 70 per cent.

The company did not count, and nobody counted, on the depreciation of price in our export products, especially coffee, nor upon the revolutions which have devastated the country; and taking undue advantage of this Mixed Commission it demands the extortion that it should be ordered paid 13,142,708.33 bolivars in Belgian gold or its equivalent in silver; that this Mixed Commission should make the transaction more profitable than the company ever dreamed of.

But this can never be, because it involves the most flagrant violation of the protocol which provides, in Article I, that in case of the disagreement of the Commissioners, the umpire shall decide all claims upon a basis of absolute equity.

As has been shown, upon the Government of Venezuela paying the price of the transfer in bonds of the special domestic debt of the waterworks of Caracas — a debt included in the public internal debt of Venezuela and subject to the law of July 8, 1891, every juridic tie between the Government of Venezuela and the company ceased, since the latter received the price in money which the contracting parties had stipulated; and the obligations which the Government contracted by the Executive decree, made on October 31, 1895, only established a juridic relation between the Government of Venezuela and the holders of the bonds of that debt.

In any case the company, no longer as an assignor of these contracts, but as a holder of the part of that debt, would only have the right to demand from the Government of Venezuela the strict fulfillment of the duties which said decree imposed upon it, that is to say:

Articles 1 and 2: To pay, in quarterly installments falling due from the 15th to the 25th of February, May, August, and November of each year, the interest of the special domestic debt of the waterworks of Caracas.

Article 3: That 50,000 bolivars monthly was fixed as the amount of the payment of the interest and extinguishment of the special domestic debt of the waterworks of Caracas. Of this amount there should be offered every six months at auction the surplus which may remain after the payment of the interest corresponding to the half year.

Article 4: The auctions with which the foregoing article deals shall be conducted on the 15th of July and the 15th of December each year, or as soon thereafter as possible, if either of these dates should fall on a legal holiday, and concerning them all the provisions established by the law of July 8, 1891, should be observed.

Sole article: It is within the power of the National Executive to raise the amount which must be offered at auction every six months.

In view of the reasons expressed it is the opinion of the undersigned:

1. That the Compagnie Générale des Eaux de Caracas is under the strict obligation of canceling the mortgage which it placed upon all the real estate of the waterworks company, by a document recorded in the register of Caracas on June 25, 1891, and that that cancellation must be made in conformity with the law of Venezuela; that is to say, in the same form which the mortgage was made.[1]

[1] The company seems to have refused to record the release of the mortgage in the public register's office because of an exorbitant fee proposed to be charged.

2. That it would be a scandalous violation of the protocol, by virtue of which this Commission is constituted, to oblige Venezuela to redeem in gold at its normal value the waterworks debt, which was issued at 40 per cent of said value by an agreement between the Government of Venezuela and the company.

3. That the only right which the company has to the bonds of the waterworks debt, of which it is the holder, is to exact the strict fulfillment of the Executive decree of October 31, 1895, which created said debt; that is to say, the reestablishment of the quarterly payment of interest and the semiannual extinguishment of the debt, and that therefore that right is the only one that ought to be upheld by a judgment based upon the principles of equity and justice.[1]

FILTZ, *Umpire* (decision on the merits): [2]

The umpire, having studied and examined the documents and arguments in the record, and considering:

That as a result of the contract made on October 31, 1895, the Government of Venezuela has constituted itself the successor in interest to all the real estate, rights, actions, bills receivable, and supplies in the warehouse of the Compagnie Générale des Eaux de Caracas, in liquidation;

That by reason of its acquisitions it has acknowledged that it is indebted for the sum of 10,792,199.44 bolivars;

That by said contract of October 31, 1895, and the decree thereto annexed, it has promised to pay the interest and extinguishment of this debt at the rate of 50,000 bolivars per month;

That after having entered into this contract and after having paid, by way of extinguishment, a part of this debt for a certain space of time the Government suspended all payment; considering:

That by reason of the differences relative to the requisite proof that the company owns all the bonds which were delivered to it in place of its assets, that the claim of the Compagnie Générale des Eaux de Caracas, in liquidation, is based upon the failure to fulfill in its entirety the aforesaid contract;

That this contract, insofar as it goes, is the law between the parties, contains in itself the proof that the company is the owner of its claim, and that the Belgian character of the claimant has not been disputed. It is not to be considered whether foreign bondholders can indirectly take advantage of its action; considering:

That the defendant gives as a reason for its failure to fulfill the contract the existence of a mortgage which encumbers the real estate of the company, and demands the cancellation of this mortgage;

That is is clearly proven by the argument that the Government suspended the payment in 1897, alleging the poverty of the treasury, and that its decree

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[1] To this opinion there were annexed several exhibits referred to therein:

Exhibit A. A letter dated July 16, 1895, from Messrs. Herrera and Nevett, the minister of public works;

Exhibit B. A proposition of settlement with the National Government made by Herrera and Nevett on July 15, 1895, together with a letter from Señor Paquet of the same date refusing acceptance of payment in gold;

Exhibit C. A letter from the Bank of Caracas, dated July 24, 1903, stating that in the vaults of said bank there were bonds of the special domestic debt of the waterworks of Caracas to the amount of 152,500 bolivars; not printed herein.

[2] For a French translation see: Descamps-Renault, *Recueil international des traités du XX^e siècle*, année 1903, p. 885.

concerning the danger of eviction arising out of the mortgage was made 30 November 30, 1900; that is, three years later;

That it is proven by an authentic document produced in the arguments that all the bonds issued and guaranteed by this mortgage have been taken up and canceled, with the exception of eight, for which the company has constituted itself a guarantor;

That as all danger of eviction has vanished, by reason of this fact, the necessity for canceling the mortgage is reduced to a mere technical objection, of which the protocol explicitly takes no account;

That the argument of the Commissioner of Venezuela, that the company took the bonds at 40 per cent of their nominal value, is contradicted by the text itself of the contract, in which it has been formally stipulated that these bonds were delivered at par; considering:

That the contract of 1895 created a time obligation, for the fulfillment of which certain revenues of the treasury were set aside and expressly designated;

That. notwithstanding this agreement, another use was made of the revenues so apportioned;

That, so far as concerns the debtor, the time may therefore be considered to have run out;

That, notwithstanding this, it is just that the debtor should have security; that by reason of the fulfillment of the present judgment it should be exempt from all obligations contracted by reason of the contract to which we have alluded, for these reasons, judging upon a basis of absolute equity, decides:

That the Compagnie Générale des Eaux de Caracas, in liquidation, shall deposit within the space of two months, counting from the present judgment, in the vaults of the Société Générale pour Favoriser l'Industrie Nationale of Brussels the sum of 4,000 francs, which shall be exclusively applied to the redemption at par of the eight bonds issued by it, and which it has not been able to recover.

The simple notification by the depository to the Venezuelan Government through the legation of Belgium at Caracas, shall be entirely sufficient to prove the fulfillment of this obligation.

The claim of the Compagnie Générale des Eaux de Caracas, in liquidation, against the Government of Venezuela for the failure to fulfill the obligations expressed in the contract made October 31, 1895, and the decree thereto annexed, is well founded.

The Government of Venezuela is declared to be a debtor in the sum of 10,565,199 bolivars and 44 centimos in gold, payable as is stipulated in Article V of the protocol. This sum shall be delivered to the Société Générale pour Favoriser l'Industrie Nationale of Brussels, which shall make thereof the following use:

The amount of each monthly installment, after reducing therefrom the bank charges, shall be divided by 21,131, and will give as a quotient the amount of extinguishment of each bond corresponding to the past month, an extinguishment which shall be paid to the holder upon presentation of the bond.

At the same time that there shall be divided among the holders the last monthly installment, the bonds shall be withdrawn perforated for cancellation, concerning which an authentic record shall be made, which must be sent to the Government of Venezuela.

The amounts which shall be left after effecting this operation shall be returned to the Government of Venezuela, with the exception of the sum necessary to take up at par the bonds which have not been presented. When the terms of prescription shall have run out this sum shall be returned to the Government of Venezuela.