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Paquet Case (concession)

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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.

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.