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**RECUEIL DES SENTENCES
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Stevenson Case (interlocutory)

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(6) Wharton, vol. 2, sec. 238, p. 679: A claimant in a foreign state is not required to exhaust justice in such state when there is there no justice to exhaust. (Mr. Fish, Sec. of State, to Mr. Pile, May 8, 1872. MSS. Inst. Vene.)

(7) 13 Howard, 115 (*Mitchell v. Harmony*): Private property may be taken by a military commander for public use, in cases of necessity, or to prevent it from falling into the hands of the enemy, but the necessity must be urgent, such as will admit of no delay, or the danger must be immediate and impending. But in such cases the Government is bound to make full compensation to the owner.

(8) 13 Wall., 623 (see Wharton, vol. 3, sec. 328, p. 247): Where private property is impressed into public use during an emergency, such as a war, a contract is implied on the part of the government to make compensation to the owner.

(9) Wharton, vol. 2, sec. 248, p. 710: If the nation disposes of the possessions of an individual the alienation will be valid for the same reason; but justice demands that the individual, be recompensed out of the public money. (Vattel, Book 1, Ch. 22, sec. 244.)

(10) Moore, 3720-3721 (*Elliott's case*; Lieber, umpire): It was held that General Corona had undoubtedly a right to appropriate Elliott's property if necessary for defense or to devastate it, if the war required it, but the Government must pay.

(11) Wharton, vol. 2, sec. 248, p. 711 (*Meade case*): On these facts the following conclusions were reached by the Court of Claims:

* * * * *

A debt due to an American citizen from a foreign government is as much property as houses and lands, and when taken for public use is to be paid in the same manner.

The cases hereinbefore quoted and referred to were considered by the umpire in making up his decision in this case, and are submitted to be incorporated into said opinion as authorities in support of the same. Nos. 1, 2, 3, 4, 5, and 6 go to sustain the position of the umpire as to objection No. 1. Nos. 7, 8, 9, 10, and 11, his position as to objections Nos. 2 and 3.

STEVENSON CASE

An international claim is not barred by prescription when it appears that there has been no laches on the part of claimant or his government in its presentation for payment.

PLUMLEY, *Umpire*:

This case came to the umpire solely on the preliminary objection of the honorable Commissioner for Venezuela that it was barred by limitation. The history of the case discloses that it was presented to the British Mixed Commission sitting at Caracas in 1869; that the Venezuelan Commissioner refused to consider the case in the ground that the proofs were formalized posterior to the date of the convention for the settlement of pending claims. It resulted that this, with several other cases similarly objected to, was withdrawn on the part of Her Majesty's Government, with the express reservation that such withdrawal was to be without prejudice to the claims.

Reference is made to this claim by Her Majesty's minister resident at Caracas in a letter dated at Caracas, April 25, 1872, and addressed to the claimant at Trinidad, in which, after stating the course of the claim before the Commission, this statement appears:

and that since the Venezuelan Government have declared that owing to civil warfare they can not attend to the arrangement or payment of foreign claims.

There is further reference to this claim by the British foreign office May 28, 1888, in a letter addressed to Mrs. Julia Stevenson, of Trinidad, widow of the late claimant, answering what is termed therein as her petition in regard to this claim, of date the 26th of April, 1888, and this extract is taken from such answer:

I am to inform you that since the withdrawal of this claim from the Mixed Commission of 1869 it has, together with many others, been classed as unrecognized by the Government of Venezuela. These "unrecognized" claims have not been lost sight of by Her Majesty's Government, but it is clear there is no chance of payment of any individual claim being made unless by a general settlement of all, and of this there is at present no prospect. Under these circumstances his lordship regrets that he is unable to hold out any hope of an early settlement.

It appears from the facts gathered with reference to the presentation before the Mixed Commission of 1869 and from the letters from which extracts have been quoted that the Venezuelan Government was in 1869, if not before, fully advised of the existence of this claim and of the details of which it was composed; that the Venezuelan Government had been addressed upon the subject of this claim since the withdrawal from the Mixed Commission, and had announced to the representative of the British Government that, owing to civil warfare, they could not attend to the arrangement or payment of it. By reference to the communication of May 28, 1888, it is learned that, some time subsequent to the communication of 1872 and the date of this last-named letter, this case had been brought up before the Venezuelan Government, and it was found placed among their list of "unrecognized" claims. It is also learned from this later communication that Her Majesty's Government was keeping track of this claim with others of its class and was simply waiting for such time as there could be made a general settlement of all such claims. Pursuant to that purpose, the British Government has taken advantage of this its first opportunity, and has presented the claim agreeably to its plan and its assurance to the claimant's widow.

It also appears that both of these communications were in reply to letters of inquiry or of petition, first from the claimant himself and lastly from his widow.

From this statement of the case as it appears before this Commission there can be claimed with right no laches on the part of either the British Government or of the claimant or his estate.

When a claim is internationally presented for the first time after a long lapse of time, there arise both a presumption and a fact. The presumption, more or less strong according to the attending circumstances, is that there is some lack of honesty in the claim, either that there was never a basis for it or that it has been paid. The fact is that by the delay in making the claim the opposing party — in this case the Government — is prevented from accumulating the evidence on its part which would oppose the claim, and on this fact arises another presumption that it could have been adduced. In such a case the delay of the claimant, if it did not establish the presumption just referred to, would work injustice and inequity in its relation to the respondent Government.

This case presents neither of these features. When first produced before the Mixed Commission of 1869, the claim for \$ 13,277.60 for injuries to the Río de Oro estate was alleged to be of date February, 1859, as was also the claim for \$ 77,645 on account of the La Corona, Mapirito, and San Jaime estate. The claim of the Bucural estate for \$ 43,660.80 was laid as happening in 1863, and the claim of the San Jacinto estate for \$ 1,260 was laid in 1869, March 6. So that the earliest claim was about ten years old, the next in order only six years, while the last claim was so late as to have been in fact subsequent to the

convention establishing that Commission. Here was placed before the Government a careful list, in number and character, of the losses suffered, and the different estates on which each separate claim rested, with the dates on which the different claims arose. This gave the respondent Government an opportunity to acquaint itself with the facts and to obtain counterproofs if found available or important. Since the withdrawal of this claim from the Mixed Commission of 1869 there can be no just allegation of laches properly chargeable to either the claimant or the claimant Government. The delay has been either in the inability or the unwillingness of Venezuela to respond to this claim. The occasion of this unwillingness and the reasons why it was placed on the list of "unrecognized" claims are properly matters for proof and consideration before this Commission, but it would be evident injustice to refuse the claimant a hearing when the delay was apparently occasioned by the respondent Government.

The umpire holds, therefore, that the case is properly before this Mixed Commission to be considered on its merits, and it is returned to the Commission for that purpose.

TOPAZE CASE

Award of £ 20 each for officers and £ 10 each for seamen for one day's imprisonment held not excessive

PLUMLEY, *Umpire*:

The *Topaze*, a British steamship, was at Puerto Cabello on the 9th of December, 1902, shortly after the establishment of the British Pacific blockade. At 8 p. m. the captain and crew were taken from the ship by an armed guard to the custom-house without opportunity to put on reasonable clothing or to lock up their berths, and at 10 p. m. they were taken under armed guard and imprisoned in a small and badly ventilated cell, and were compelled to sleep on the stone floor. There were 10 officers and a crew of 20. They were thus confined until 10.30 at night of the next day, and, owing to the bad smells and want of ventilation, many of the crew were ill. No food was provided, and what they had was sent in by friends. They were taken back to their ship under an armed guard, and while absent various articles belonging to the crew were stolen. These facts are taken from the memorial in this cause, and there are no contradictory facts alleged by Venezuela.

Upon these uncontested facts the umpire was requested by the honorable Commissioner for Venezuela to express his unofficial opinion upon the question whether a demand by the British Government for £ 20 each on behalf of officers of the ship and for £ 10 each for the crew in the case as made is an excessive amount.

While it did not seem to the umpire at the time of the inquiry that it was in excess of the ordinary demand in such cases, he thought it important and wise that his answer should be given after reflection and upon some basis of action resting upon similar cases before commissions and the accompanying decisions. Following out that thought, he has made some investigation, and now brings forward the result for the use of the honorable Commissioner for Venezuela.

The umpire has had recourse to Moore on International Arbitrations, and the cases to be given are taken from the different volumes of that work.

(1) H. R. Smith (p. 3310): This was an arrest during the American civil war for treason. He was held fourteen weeks, or ninety-eight days, and before the British-American Commission was unanimously allowed \$ 1,540, which is an average of a little less than \$ 16 a day.