REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Asphalt Company Case (on merits)

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the arrest, and in each case it turned out that the cause was not sufficient in proof to require a hearing. The persons thus arrested were men of more or less substance and character, but none, exclusive of those receiving the two high sums awarded, occupied any particular official rank or position, and the awards in each case meant substantially the measure in the given case of the value set on individual liberty and the indignity to that personal liberty by an unauthorized and unlawful arrest and detention. Excluding the two large sums as not being of particular value in this inquiry and taking the sixteen cases remaining, we find that the average sum allowed is a little over $ 161 a day. Out of the sixteen cases there are four for sums less than $ 100 a day. There are six at $ 100 a day, or approximately that sum, and there are five for more that $ 200. Judged by this analysis of the opinions of other arbitral tribunals, the sum of $ 100 seems to be the one most usually acceptable, while a sum less that $ 100 is quite in the minority.

The purpose of the umpire has been to obtain as nearly as might be the average judgment of arbitral commissions on matters of import similar to the one in question, and aside from that criterion the cases were taken substantially in the order in which they appeared in the work cited, and hence are worthy of reliance as expressing the common finding upon this question by several different commissions.

It will be noted that in the case in hand there was no claim that the parties arrested and detained had themselves committed any offense or done any wrong against the Government of Venezuela, which is a proper feature to consider in estimating the indignity of arrest and detention to the individual and the complaining government.

The umpire believes, therefore, that he can properly advise, unofficially, the honorable Commissioner for Venezuela that a sum not exceeding $ 100 a day is not an excessive demand, but approaches the minimum sum rather than the maximum allowed in cases for illegal arrest and detention, and is apparently the favored allowance by arbitrators.

OPINIONS ON MERITS

Compagnie Générale des Asphaltes de France Case

A Venezuelan consul resident abroad has no right to demand of the captain of a vessel that he procure passports as a condition precedent to the clearing of his ship, and no Venezuelan law on this subject can possibly affect the case, which is governed by international law.

A Venezuelan consul who assumes to collect customs duties at Trinidad on goods to be entered at Venezuelan ports commits an act of Venezuelan sovereignty on British soil, which is an offense to the latter Government.

The refusal of the Venezuelan consul to clear a vessel for Venezuela, on the ground that because of complaints made of him to the colonial authorities at Trinidad his Government had refused him permission to make such clearances, is unlawful, because it is an act which not even a sovereign could perform for such a cause.

Ports in the hands of revolutionists can not be closed by governmental order or decree.[1]

Blockade of such ports can only be declared to the extent that the government declaring it has the naval power to make it effective.

Governments are alike responsible for the acts of their agents, whether such acts be directed or only ratified by silence or acquiescence.

Expenses of translations in preparation of claim allowed.

[1] See Italian - Venezuelan Commission (De Caso Case and Martini Case) in Volume X of these *Reports*.

PLUMLEY, *Umpire*:

The commissioners failing to agree on this claim it came to the umpire for his consideration and decision thereon.

The claimant is an English company, incorporated under the companies acts, having its office at 19 Coleman street, London, E. C., and owning a mining concession which it purchased at Guanipa, in the State of Sucre, Venezuela, upon which it commenced operations in March, 1902, the product being asphaltum or bitumen. In the prosecution of its work of mining it was obliged to depend solely for its laborers and food therefor upon importations from Trinidad, which laborers and food were sent to Guanipa from Port of Spain in sailing craft chartered by the company.

April 15, 1902, the company's attorney at Trinidad applied to the Venezuelan consul at Port of Spain to clear one of the company's sailing craft with a supply of food for the laborers at its mining concession, the goods to be shipped to Guanipa. This such consul refused to do unless he was then and there paid the full duties chargeable in Venezuela on such goods imported into that country, and also the sum of $ 20 for passports which had been on a previous occasion required by such consul to be issued to certain of the company's laborers. Under the compulsion of necessity, in order to prevent suffering among these laborers, and under a protest, the company's attorney paid to the consul the full amount of such duties, and also the required sum of $ 20 for the passports.

June 12, 1902, an agent of the company, a merchant of Port of Spain, asked such consul to clear the company's chartered vessel, the British cutter *Euterpe*, bound for Pedernales, in Venezuela. This the consul refused to do unless paid in advance the import duty payable in Venezuela and $ 20 for passports for persons then taking passage, as required in the previous instance. Again, under the compulsion of urgent necessity, the agent paid such consul said sum of $ 20 for passports and the full sum of said import duties, paying the duties on the ship's stores only, as she was leaving in ballast.

June 30, 1902, said agent again applied to such consul for a similar clearance, and it was granted under and upon the same conditions (except as to passports) as last previously mentioned and upon the payment of the full import duty payable in Venezuela.

On and after the 10th day of July, 1902, such consul refused to clear any vessel at all on behalf of this company, stating as his reason therefor that the company had made complaint to the colonial authorities at Trinidad of his previous action, as above stated, and that the permit enabling him to clear vessels for the mining companies had been withdrawn.

As a result of this refusal the company was unable to make use of its schooner *Euterpe*, lost three months of the charter, and was forced to maintain the crew while the ship was idle. It was also prevented from sending food and supplies to the mines, and the employees at that place, being in the verge of starvation, were compelled to leave their employment and go to Trinidad in open boats, and all mining operations of this company ceased.

It appears in the case that throughout the period from July 10 and afterwards other vessels were cleared by such consul for other mining companies in Venezuela.

The total claim, including cost of preparing the same, is £ 240 18s. 5d.

It also appears in the case that the ports of Pedernales and Guiria were during a part of the time covered by this complaint, if not during all of such time, in the hands of the revolutionists, and the country around about was also in their hands; and the fact that the port of Pedernales was understood by the consul to be in the hands of revolutionists at the time he was applied to, just previous

to the 15th of April, 1902, to clear the boat, was given by him as a reason why he was unable to dispatch the boat, since that was a port where this particular boat would call to pay the customs duties; but he, on being assured that the revolutionists had left Pedernales for Maturín on the 4th of that month, promised to dispatch the boat whenever the agent of the company was ready; but it was following this statement by the consul that the necessary papers were presented to him by the company's agent, and he declined to grant the clearance unless the sum of $ 20 for passports, issued on a previous occasion, was then paid him, and it was immediately following the payment of the $ 20 that the consul then declined to issue the clearance unless the full customs duties, which should be collected at a Venezuelan port, were paid to him in Trinidad in advance. Offers were then made by the agent of the claimant company several times, on the 14th and 15th of that month, to leave the amount on deposit with the consul, with the understanding that if the revolutionists collected anything on account of duties such payment was to be deducted from the amount so placed on deposit; but to this the consul would not consent.

It also appears, from the examination of the blue book, whenever a cargo was taken it had to go to the port of Guiria, as the boat could only enter the port of Pedernales when in ballast; that the proposition to go to Pedernales was on the occasion when the company's boat went in ballast, and because Guiria was at the time in the hands of the revolutionists. For the latter reason the consul refused to make out a clearance for Guiria, and the suggestion of Pedernales was made by the claimant's agent because of such refusal; and the reason the consul gave for demanding the duties at Trinidad was that he was afraid their boat might come across revolutionists, who would collect them. It also appears that the consul on one of these occasions required the agent of the claimant company to make out his papers in blank with permission to the consul to fill in the destination, and that the consul filled in the name of Guanipa, which was, in fact, a virgin forest, having no settlement excepting that of the claimant company, and having no Venezuelan representative there, and although the consul wrote in the papers the name of the commandant of Guanipa, there was no such person there and no government official of any kind.

It also appears, as early as April 23, 1902, that the colonial secretary, by order of the British governor at Trinidad, advised the consul that in demanding customs duties payable on the cargo of such vessels to the Government of Venezuela he had exceeded his powers and had assumed the right to commit an act of Venezuelan sovereignty on British territory.

It further appears that, in connection with refusing the dispatch unless the import duties were payable in advance, it was threatened that unless so paid the vessels would be destroyed as soon as they reached Venezuelan waters by the Venezuelan ship of war then in the harbor of Trinidad. It is also understood to be historic that on June 28, 1902, navigation of the Orinoco was prohibited by presidential decree, and in the same decree the extent of its coast line which embraced its mouth was declared blockaded, and the ports of Guiria, Caño Colorado, and La Vela de Coro were declared closed to navigation.

The honorable commissioner for Venezuela denies pecuniary losses to the company, since the duties were not in fact collected in Venezuela; insists that the refusal of clearance for Guanipa and the demand for passports were lawful, and that in nothing has the company suffered losses or made payment whereby it has a rightful claim against the Government.

The learned agent for the claimant Government does not press the repayment of the sum of $ 20 for passports paid April 15, 1902, and hence this part of the claim is not entertained by the umpire.

The question of passports as presented is not that the captain of the *Euterpe*

asked for them or for their extension on June 12, in which case there would be no question that the consul should receive a proper fee therefor, but the claim is that the consul made the issuing of passports for that occasion and the payment of his fees therefor one of the conditions precedent to his clearance of the boat, and that this requirement it was unlawful for him to make; that such demand was in violation of international agreement and the general laws and principles of commerce, and hence was in fact an illegal extortion of money for which a right of recovery exists.

Concerning passports the umpire understands the law to be that the Venezuelan consul resident at Trinidad has not the authority to issue them to a British subject, and can only countersign them *if requested* so to do; that it was wholly in the right of the captain of the *Euterpe* to sail for any port in Venezuela without having the passports of his passengers countersigned by the Venezuelan consul at Trinidad; that the matter of passports had nothing to do with the clearance of the *Euterpe*, and that it was error for the Venezuelan consul to insist upon their being a condition precedent to such clearance. No law of Venezuela, were there such, could change this right, which does not come from national but from international law. A Venezuelan law, as the umpire understands it, is limited in its application to Venezuelans. This holding as to passports seems to be in conformity with the Venezuelan law published in the Official Gazette at Caracas Monday, June 19, 1899.

To assume to collect in Trinidad import duties on goods to be entered at Venezuelan ports was an act of Venezuelan sovereignty on British soil. It was wholly without right and directly against the right of sovereignty which inhered in the British Government only. It could not be countenanced or permitted by and was a just cause of offense to that Government.

To take the other step and make the payment of these duties on British soil a condition precedent to the clearance by the Venezuelan consul of a British ship bound for a Venezuelan port was a most serious error on the part of such consul.

As between nations, the proprietary character of the possession enjoyed by a State is logically a necessary consequence of the undisputed facts that a State community has a right to the exclusive use and disposal of its territory as against other States, and that in international law the State is the only recognized legal person. (Hall's International Law, p. 48.)

Consular jurisdiction depends on the general law of nations, existing treaties between the two Governments affected by it, and upon the obligatory force and activity of the rule of reciprocity. * * * (Wharton, vol. 1, sec. 124, p. 797.)

A consul of the United States in a foreign port has no power to retain the papers of vessels which he may suspect are destined for the slave trade. (Wharton, vol. 1, sec. 124, p. 798, citing 9 Op. Attys. Gen., p. 426.)

The act of the Haitian legislature referred to can not be regarded as in conformity with that stipulation. It authorizes the consuls of that Republic to charge exorbitant fees on exportations from the United States; among others, 1 per cent on the value of cargo of the vessel. This, besides being illiberal in its character, is tantamount to an export duty, acquiescence in which by this Government would be a concession to that of Haiti of an authority in ports of the United States which has not been conferred on this Government by the Constitution. (Wharton, vol. 1, sec. 37, p. 143.)

In that reply the Haitian minister was informed, with respect to that portion of his note which related to the authentication by the consular officers of Haiti in this country of the invoices of the cargoes of vessels bound to the ports of that country, that the charge of 1 per cent on values for that proceeding is, after the most deliberate consideration, believed to be unduly exorbitant and tantamount to an export tax, which it does not comport with the dignity of this Government to allow to be exacted by any foreign authority within the jurisdiction of the United States.

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The Government of the United States being by its Constitution expressly prohibited from levying an export tax, it can not allow any foreign power to exercise here in substance or in form a right of sovereignty denied to itself.

No denial was made of the right of the Haitian Government at its discretion, so far as this may not have been limited by treaty, to impose duties on the cargoes of vessels from this country arriving in Haitian ports, but it was complained most positively that the present grievance of a consular fee of this character exacted in our ports is in its form derogatory to the sovereignty of the United States and that this character was not removed from it by the Haitian citation of the axioms of political economy that all duties are ultimately paid by the consumer. (Wharton, vol. 1, sec. 37, p. 144.)

[The charge of] 40 cents a head on cattle exported from Key West to Cuba is held by the Government of the United States to be a restriction on commerce of the United States and a burden onerous on American citizens engaged in American commerce, and must have the effect of excluding them finally from the Spanish colonial markets. It is a charge, moreover, upon whatever ground it may be placed, that is in itself anomalous. (Summary from Wharton, vol. 1, sec. 37, pp. 147-148.)

Our complaint is that as our commercial intercourse with Spain is mainly with her possessions in this hemisphere, exorbitant consular charges on United States vessels and their cargoes bound to such ports are virtually an export tax, which assuredly no foreign government can be allowed to exact in our ports, especially as such a power has not been granted to this Government. (Summary from Wharton, vol. 1, sec. 37, p. 156.)

There is but one way in which the proposal to collect 10 cents per ton of cargo from the vessels of the United States in Spanish ports could be regarded as defensible under international law, and that is by abandoning altogether the sophistical contention that it is a consular fee and collecting it as a distinct import tax *levied in Spanish ports* in addition to customs and other import dues prescribed by existing law. If *so levied* and collected on all foreign cargoes *brought within Spanish jurisdiction* without distinction of flag, this Government could not controvert the perfect right of Spain to adopt such a measure, but it could not look with equanimity on any partial measure the practical result of which would be the imposition of a discriminating duty of 10 cents per ton against the cargoes of vessels going from the United States to ports of Spain. (Wharton, vol. 1, sec. 37, p. 156.)

It does not appear to this Government a sufficient or just reparation for a wrongful act admittedly perpetrated by the Spanish officers of the consulate at Key West since 1876 to give orders that hereafter the wrongful tax shall not be collected. The case is conceived to be one where no less a reparation than the return of the illegally collected excess could satisfy either the right pertaining to the United States or the high sense of justice of Spain. It will doubtless be enough for you to call the attention of the minister of state to this point to insure the cheerful correction of the oversight and a prompt offer to refund the overcharge in question. (Wharton, vol. 1, sec. 37, p. 158, quoting Mr. John Davis, Sec. of State, June 23, 1883, to Mr. Foster.)

It is not material to the determination of the two preceding questions to discuss here other points which might be regarded as involved. So far as they have juridical value they will be treated inferentially at least in disposing of the questions next to be considered.

It was not in accordance with commercial usage, international law, or treaty agreement between the British Government and the Venezuelan Government that the Venezuelan consul should refuse clearance to the British ship *Euterpe* for Venezuelan ports because the asphalt company had complained to the colonial authorities of his previous acts. It is true he claimed that because of such complaints his Government had refused him permission to make such clearances. This, if true, would not aid the refusal, because it is an act which even a sovereign power could not rightfully perform for such a cause. But the umpire acquits Venezuela of any such charge. The consul must have misinterpreted his instructions in that regard. To destroy the established and

important business of several companies established under the concessions and with the direct approval of the Government, to imperil the lives of a large number of laborers for such a frivolous reason might seem possible to the consul, but it is without the comprehension of the umpire, and he is confident no such order based upon such a reason ever issued from the hands of the Venezuelan Government.

You will state that this Government does not question the right of every nation to prescribe the conditions on which the vessels of other nations may be admitted into her ports; that, nevertheless, those conditions ought not to conflict with the received usages which regulate the commercial intercourse between civilized nations; that those usages are well known and long established, and no nation can disregard them without giving just cause of complaint to all other nations whose interests would be affected by their violation; that the circumstance of an officer of a vessel having published in his own country matters offensive to a foreign government does not, according to those usages, furnish a sufficient cause for excluding such vessel from the ports of the latter * * *. (Wharton, vol. 1, sec. 37, p. 140, quoting Mr. Conrad, Acting Sec. of State, to Mr. Barringer, Oct. 28, 1852.)

An arbitrary refusal of the Spanish consul at New York to authenticate the signature of the Secretary of State, "an act appropriately belonging to the consular functions," on the ground that "he or his Government had conceived some displeasure toward the persons who have executed some of the papers accompanying the signature of the Secretary," is in contravention of international law and practice. (Wharton, vol. 1, sec. 123, p. 792, quoting Mr. Marcy, Sec. of State, to Mr. Magallon, Jan. 19, 1854.)

There shall be between all the territories of His Britannic Majesty in Europe and the territories of Colombia a reciprocal freedom of commerce. The subjects and citizens of the two countries, respectively, shall have liberty freely and securely to come with their ships and cargoes to all such places, ports, and rivers, in the territories aforesaid, to which other foreigners are or may be permitted to come, to enter into the same, and to remain and reside in any part of the said territories, respectively; also to hire and occupy house and warehouse for the purposes of their commerce, and, generally, the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce; subject always to the laws and statutes of the two countries, respectively. (Treaty of Apr. 18, 1825, between the Government of Great Britain and State of Colombia, ratified and confirmed by the Government of Venezuela, Oct. 29, 1834, Art. II.)

Indeed, the honorable Commissioner for Venezuela carefully avoids making any allusion to this statement of the consul and rests his opinion upon the other branch of the consul's contention, namely, that his action was founded on the fact that the port of Guiria was occupied by the rebels, stating that the consul "is forbidden to communicate with authorities imposed by the revolution." Such being the case, the consul must obey. It is also true that on June 28 the National Executive had declared all of these ports closed.

However important it was to Venezuela in its fight for the integrity of its Government to close these ports, it is historic that it was unable physically to establish an effective blockade of any of the ports in question. To close ports which are in the hands of revolutionists by governmental decree or order is impossible under international law. It may in a proper way and under proper circumstances and conditions in time of peace declare what of its ports shall be open and what of them shall be closed. But when these ports or any of them are in the hands of foreign belligerents or of insurgents, it has no power to close or to open them, for the palpable reason that it is no longer in control of them. It has then the right of blockade alone, which can only be declared to the extent that is has the naval power to make it effective in fact. [1]

[1] See the Italian - Venezuelan Mixed Claims Commission (De Caro Case, and Martini Case) in Volume X of these *Reports*.

There is, however, one form of closure which states are not free to adopt. In case they are attempting to put down a domestic revolt, they can not shut up ports in possession of the insurgents by merely declaring them no longer open to trade. Great Britain maintained this position successfully in 1861 against both New Granada and the United States. The Government of each of these countries claimed a right to close, by municipal regulation and not by blockade, certain ports held by revolted citizens. The discussion which followed made it quite clear that such a claim can not be sustained. A state is free to exclude both foreign and domestic vessels from any harbor over which it actually exercises the powers of sovereignty. But when its authority is at an end, owing to insurrection or belligerent occupation by a hostile force, it must fall back upon warlike measures; and the only warlike measure which will lawfully close a port against neutral commerce is an effective blockade (Lawrence, p. 584. Also cites Wharton, International Law Digest, secs. 359, 361. Glass, Marine International Law, pp. 105-107. Also see Hall, p. 727, where there is a note treating at length on this subject.)

It is noticed that the Venezuelan minister for foreign affairs lays much stress upon the fact that the consul of that Government at Trinidad warned some of the steamers not to repair to ports which were in possession of the insurgents, and claims that by going thither, despite the warning, they violated the law, and, therefore, that the Venezuelan Government is exonerated from accountability. Such an act, if it have any force, is obviously tantamount to blockade by proclamation only, an expedient which it might have been hoped was long since as obsolete as it is contrary to the law of nations. (U. S. - Vene. Claims Com., Convention of 1892, p. 454, J. C. B. Davis, Acting Sec. of State.)

The consul's warning and his threat of confiscation were alike unlawful. The danger of giving such warnings, if they are acted upon by the parties warned, is illustrated in the award that was rendered unanimously by the British - American Commission against the United States (United States Commissioner Fraser delivering the opinion) on account of a warning given by an officer of the United States Navy (Edward C. Potter) to a British vessel not to enter the port of Savannah after he had prevented her from entering the port of Charleston, when in fact no effective blockade was then established against Savannah. (See Vol. VI, Papers relating to the Treaty of Washington, pp. 153, 252-254. U. S. - Vene. Claims Com., Convention of 1892, pp. 488-489.)

The United States adheres to the following principles:

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Third. Blockades, in order to be binding, must be effective. (Mr. Seward, Sec. of State, to Mr. Jones, Aug. 12, 1861; Wharton, vol. 3, sec. 342, p. 280.)

The mandate of the Mexican Government was obviously tantamount to a blockade by notification merely, the illegality of which has invariably been asserted by the United States, and has been agreed to by Mexico in the treaty. (Wharton, vol. 3, sec. 361, p. 372. Mr. Forsyth, Sec. of State, to Mr. Monasterio, May 18, 1837, MSS., Mex.)

(England took the same position toward Brazil in 1827. Wharton, vol. 3, sec. 361, p. 372.)

It may be admitted that neither France nor the United States has acknowledged the legality of the blockade of an extensive coast by proclamation only, and without force to carry the same into effect. (Wharton, vol. 3, sec. 361, p. 372. Mr. Webster, Sec. of State, to Mr. Sartiges, June 3, 1852, MSS., France.)

Thus it has ever been maintained by the United States that a proclamation or ideal blockade of an extensive coast, not supported by the actual presence of a naval power competent to enforce its simultaneous, constant, and effective operation on every point of such coast, is illegal throughout its whole extent, even for the ports which may be in actual blockade; otherwise every capture under a notified blockade would be legal, because the capture itself would be proof of the blockading force. This is, in general terms, one of the fundamental rules of the law of blockade as professed and practiced by the Government of the United States.

And if this principle is to derive strength from the enormity of consequences resulting from a contrary practice, it could not be better sustained than by the terms of the original declaration of the existing Brazilian blockade, combined with its subsequent

practical application. (Wharton, vol. 3, sec. 359, p. 353. Mr. Forbes, minister of the United States to Buenos Ayres, to Admiral Lobo, commanding the Brazilian squadron blockading Buenos Ayres, February 13, 1826. Brit. and For. St. Pap.)

Lord John Russell said, " The question is one of considerable importance. The Government of New Granada has announced, not a blockade, but that certain ports of New Granada are to be closed. The opinion of Her Majesty's Government, after taking legal advice, is that it is perfectly competent for the government of a country in a state of tranquillity to say which ports shall be open to trade and which shall be closed; but in the event of insurrection or civil war in that country it is not competent for its government to close the ports that are de facto in the hands of the insurgents, as that would be an invasion of international law with regard to blockade." (Wharton, vol. 3, sec. 359, p. 355.)

This Government, following the received tenets of international law, does not admit that a decree of a sovereign government closing certain national ports in the possession of foreign enemies or of insurgents has any international effect unless sustained by a blockading force sufficient to practically close such ports.

Mr. Lawrence thus states the rule drawn from the positions taken by the administrations of Presidents Jefferson and Madison during the struggles with France and England which grew out of the attempt to claim the right of closure as equivalent to blockade without effective action to that end: " Nor does the law of blockade differ in civil war from what it is in foreign war. Trade between foreigners and a port in possession of one of the parties to the contest can not be prevented by a municipal interdict of the other. For this, on principle, the most obvious reason exists. The waters adjacent to the coast of a country are deemed within its jurisdictional limits only because they can be commanded from the shore. It thence follows that whenever the dominion over the land is lost by its passing under the control of another power, whether in foreign war or civil war, the sovereignty over the waters capable of being controlled from the land likewise ceases." (Wharton, vol. 3, sec. 361, p. 376. Lawrence's note on Wheaton, Pt. III, ch. iii, sec. 28, 2nd annotated ed., 846.)

Professor Perels, judge of the imperial admiralty court in Berlin, in a treatise on international maritime law, published in 1882, holds that there can be " without blockade no closure of a port not in possession of the sovereign issuing the decree." (Wharton, vol. 3, sec. 361, p. 378.)

Mention is made in the memorial that throughout the same period in which the consul was refusing to clear the vessels of the claimant company he was clearing the vessels of other mining companies, subjects or citizens of certain other countries who had concessions or mining interests in Venezuela accessible through the same ports. This might be an important factor, but as the claim is determined on other grounds, it does not become necessary or wise to consider it or to pass upon it.

The umpire holds that the contentions of the claimant government concerning compulsory payment for passports and of duties and damages for detention of the *Euterpe* are well founded, and that the question of responsibility of Venezuela for the acts of their consul at Trinidad is found in the failure of the Government of Venezuela, after knowledge thereof, to make seasonable disclaimer of his acts and seasonable correction of his mistakes. If the respondent Government authorized or directed some of these acts, or only ratified them by silence and acquiescence, its responsibility is the same. In determining the issues raised in this case, especially those following June 28, 1902, the umpire is not passing, in any part, upon the propriety or wisdom of the governmental policy of Venezuela in that regard. He can readily assume that it seemed to those in power that the exigencies of the situation required drastic measures for the preservation of the national life. In such case, however, it must have been appreciated that loss would ensue and that reparation therefor must follow.

A State is responsible for, and is bound by, all acts done by its agents within the limits of their constitutional capacity or of the functions or powers intrusted to them. When the acts done are in excess of the powers of the person doing them the State is

not bound or responsible; but if they have been injurious to another State it is, of course, obliged to undo them and nullify their effects as far as possible, and, where the case is such that punishment is deserved, to punish the offending agent. It is, of course, open to a State to ratify contracts made in excess of the powers of its agents, and it is also open to it to assume responsibility for other acts done in excess of those powers In the latter case the responsibility does not commence from the time of the ratification, but dates back to the act itself. (Hall's International Law, 4th ed., sec. 106, p. 338.)

In case of Saml. G. Adams *v.* Mexico, brig *Geo. B. Prescott.* Here the brig arrived at Tampico, Mexico, shortly after the garrison had declared for the reactionary revolution of Zuloaga, and subsequently General Garcia of the constitutional government besieged and blockaded the place, and as the brig was leaving the port after having paid all port dues he claimed her, demanding that the dues, amounting to $ 38, should be paid to him. In consequence of the refusal of the master to comply with his demand the brig was detained for a number of days. Claim was made before the Commission for the detention, and it was allowed. (Moore's Int. Arb., 3065.)

In case of the *Galaxy*, before the United States - Mexican Commission, convention of 1839. The vessel entered the river Tabasco, in Mexico, intending to proceed up the stream to the city of that name. In consequence of " political disturbances " she was not permitted to do so. The captain and his ship were kept at the mouth of the river from January 1, 1830, till the 5th of February following, by order of the military commandant of the city of Tabasco, " in consequence of political dissension in which the said commandant was engaged with the commandant of the principal bar." The umpire and commissioners joined in allowing for the detention of the vessel and for the detention of the captain. (Moore, 3265.)

In case of the *Only Son.* Mr. Bates, umpire of the mixed commission under the convention between the United States and Great Britain of 1853, awarded $ 1,000 to the owners of the schooner *Only Son* for the wrongful action of the collector of customs at Halifax, Nova Scotia, in compelling the master of the schooner, whose intention was merely to report for a market and proceed elsewhere if circumstances rendered it advisable, to enter his vessel and pay duty on his cargo. The amount allowed was about the amount of the duties paid. In the diplomatic correspondence which preceded the British Government acknowledged its liability to pay any loss sustained by reason of the act of the collector, but claimed that no loss was suffered. (Moore, 3404-3405.)

In the case of the *William Lee*, whaling ship, detained three months by the captain of the port, who refused to give him a clearance. During its detention ship was damaged so that $ 4,000 was required to repair, and the whaling season was over. The Government of Peru admitted their liability for the sum required to repair the ship, and there was added to this by the umpire $ 1,500 for expenses during detention, and interest at the rate of 6 per cent per annum and a certain amount for demurrage, so that all amounted to $ 22,000. (Moore, 3405-3406.)

In the case of the *Labuan,* American and British Claims Commission, treaty of May 8, 1871. On the 5th of November, 1862, ship was in New York laden with merchandise destined for Matamoras. On that day her master presented the manifest to the proper officer of the custom-house at New York for clearance, but such clearance was refused, and refusal continued up to the 13th of December, 1862, on which date it was granted. The memorial claimed that the ship was detained by reason of instructions received by the custom-house officers from the proper authorities of the United States to detain the *Labuan* in common with other vessels of great speed destined for ports in the Gulf of Mexico, to prevent the transmission of information relative to the departure or proposed departure of a military expedition fitted out by the authority of the United States. Damages were claimed in the nature of demurrage at the rate of $ 1,000 per day, thirty-eight days. The Government of the United States claimed a right through necessary self-protection to detain the ship. The counsel for the claimant maintained that the detention of the *Labuan* was, in effect, a deprivation of the owners of the use of their property for the time of the detention for the public benefit; that it was, in effect, a taking of private property for public use, always justified by the necessity of the State, but likewise always

involving the obligation of compensation. He cited 3rd Phillimore, 42, and Dana's Wheaton, 152, n.

The Commission unanimously made an award in favor of the claimant for $ 37,392. (Moore, 3791.)

In the case of the brig *Ophir*. In the mixed commission between the United States and Mexico, under the convention of April 11, 1839. This vessel was detained at Vera Cruz in consequence of an inhibition issued by the local authorities of the territory of the departure of a vessel from the port. This inhibition was based upon the existence of local political disturbance. The umpire awarded $ 400, with interest, for its detention. (Moore, 3045.)

See also Moore, 3119-3120, 3624-3625, 4612-4617; Maxims of Heffter, adopted and found in Woolsey's International Law, 85-86.

It does not appear to this Government a sufficient or just reparation for a wrongful act, admittedly perpetrated by the Spanish officers of the consulate at Key West since 1876, to give orders that hereafter the wrongful tax shall not be collected. The case is conceived to be one where no less a reparation than the return of the illegally collected excess could satisfy either the right pertaining to the United States or the high sense of justice of Spain. (Wharton, vol. 1, sec. 37, p. 158.)

The umpire is not disregardful of the claim of the honorable Commissioner for Venezuela that, since the duties were not, in fact, again paid, the claimant company has suffered no loss, and hence, in equity, has no rightful demand for their repayment; but it is the opinion of the umpire that an unjustifiable act is not made just because, perchance, there were not evil results which might well have followed. The claimant Government has a right to insist that its sovereignty over its own soil shall be respected and that its subject shall be restored to his original right before consequent results shall be discussed. The umpire having found that the requirement of import duties before clearance was an unlawful exaction and a wrongful assumption of Venezuelan sovereignty on British soil, it is just and right, and therefore justice and equity, that these duties be restored to the claimant company.

The honorable Commissioner for Venezuela having objected to an allowance for expenses attending the preparation of this claim the umpire allows only so much thereof as was incurred in making translations for the use of this Commission, which sum he deems just and equitable.

The umpire expresses his hearty appreciation of the able and thorough manner in which this case has been presented to him both orally and in writing by the members of this Commission who have performed that duty for their respective Governments.

The umpire allows interest at the rate of 3 per cent per annum for one year, and holds the respondent Government liable to the claimant Government in the sum of £ 214, for which amount the award may be prepared.

KELLY CASE

Participation in a revolutionary movement so as to deprive the claimant of the right of intervention by his government, must be proved beyond all reasonable doubt in order that it may be pleaded as a valid defense to a claim for the value of neutral property destroyed by government troops.

PLUMLEY, *Umpire*:

This is the case of James Nathan Kelly, a native of the island of Trinidad, a British subject, and who for some thirteen years prior to the 12th of March, 1901, had lived near Río Grande, not far from Guiria, and was a shopkeeper and the owner of a cocoa plantation, and was also the owner of a cutter of about 3 tons. He complains that in January, 1900, some $ 100 worth of goods