

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Santa Clara Estates Case (Supplementary Claim)

1903

VOLUME IX pp. 455-460



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

in which this railway lies. Along with the presumption which stands by the side of the respondent Government that it will care to do its duty and will do its duty in this regard stand the historic facts that it fought in these sections until defeated and remained until driven out, and it went out not because it was weak and powerless, but because it was overcome by the superior strength of the revolutionary forces. In the judgment of the umpire it did not protect because it could not protect. After the blockade and the brief time necessary for recuperation of national strength, made necessary by the conditions attending and following the blockade, that section of the country had the first attention of the respondent Government, and it threw into that territory sufficient force under capable generals to defeat and drive out the revolutionist army. Hence so much of the claim as is found in the numbers above named in Appendix N is disallowed.

SUMMARY

	<i>Bolivars</i>
Total allowance by Commissioners	771,667.12
Total allowance by umpire	335,842.69
Interest to date of award	119,896.93
Expenses (translations, official authentications, copies for Commission)	1,796.25
Total	1,229,202.99

Judgment may be entered for the sum of £ 48,681.33.

SANTA CLARA ESTATES COMPANY CASE (SUPPLEMENTARY CLAIM)

The titular government has no right to collect taxes on property which have already been paid to a revolutionary government which had gained control over the portion of the national territory wherein the property is located, and taxes so collected must be returned.

PLUMLEY, *Umpire*:

In this case the Commissioners agreed that some indemnity was due to the claimant Government from the respondent Government on account of so much of the damage as occurred to the claimant through the acts of the Government or its authorities or agents; but they did not fix that amount, leaving the appraisal of damages to the umpire, and disagreed wholly as to that part of the claim representing damages and losses to the claimant through the acts of revolutionary forces and authorities.

The facts show that the Santa Clara Estates Company carried on business in the Orinoco district of Venezuela; that from the month of May, 1902, to May, 1903, the district where this property was situated was entirely in the hands of Matos revolutionaries or the so-called revolution of liberation. This body established itself as the government of that section of the country and to a certain extent entered upon the discharge of governmental functions. The business of the company was the raising of live stock on their several estates known as "Santa Clara," "Bombal," and "Guara," all situate in the State of Sucre, in the district of Sotillo. Their losses consists in the taking of their live stock for the uses of the revolution. There is no question that the property was taken in the manner alleged and that the company sustained large losses in consequence. The contention arises through the question whether under the particular circumstances detailed in the case there is ground for ignoring the ordinary rule concerning the responsibility of the titular government for

the acts of revolutionaries. The learned agent for the British Government claims that it was negligence of the titular government to so long allow its revolted subjects to maintain an independent government; that there is a limit which must be reached within which the Government must reduce the revolutionaries to subjection, declare the independence of the revolted territory, and thereby permit the foreign governments to take the protection of their subjects into their own hands, or accept the liability to pay compensation for the damages suffered at the hands of the revolutionary authorities because of apparant and actual negligence and inactivity. He submits that in this case the first step, that of reduction to subjection, was not taken within a reasonable time; that a whole year beyond that proper limit of time during which the Venezuelan Government were justified in tolerating an independent government, for, he alleges, one determined battle was enough to dispose of the whole trouble; and that since they had not reduced the revolting subjects to subjection, nor permitted their independence, they had incurred responsibility after a reasonable time for the injuries committed by the Government in fact which the titular government allowed to remain and to be in control within the territory in question.

In regard to this argument of the learned British agent it is the opinion of the umpire that more dependence should be placed upon the actual diligence applied by the titular government to regain its lost territory and to suppress the revolutionary efforts than upon the mere question of time taken to accomplish that end; and the umpire recalls that Great Britain contended for seven years against the revolt of the thirteen American colonies before it consented to separation; that the United States of America fought the secession of the Confederate States for more than four years before it regained its revolted territory and had subjected the rebellious citizens to its control. And neither Great Britain nor the United States, notwithstanding the length of time intervening between the revolt and the termination of the same, admitted or discharged any liability to foreign governments for the acts of the revolutionaries in question. Other pertinent illustrations might be drawn from history more remote and more recent wherein a similar rule of nonliability under circumstances where the length of time elapsing between revolt and subjection by the titular government or success on the part of the revolutionary forces was greater than in the present case.

The issue in this regard is to be determined in the answer to this question. Was the length of time during which this independent government existed the result of the inefficiency and negligence of the Government in its general efforts to put down the revolution and to regain its lost territory throughout the whole country of Venezuela, or was it due to the extent, strength, and force of the revolution itself?

A brief résumé of the history of Venezuela for a short time preceding this revolution of liberation, as well as the facts connected with that revolution, becomes necessary.

It is generally accepted that not far from June, 1900 the country had become generally pacified and had accepted the administration of General Castro. Tranquillity prevailed, however, for only a very limited period. It was first seriously disturbed in the latter part of October, 1900, by a revolt at Yrapa, under Gen. Pedro Acosta, which was not suppressed until the following February. In the meantime there occurred the insurrectionary attempt of Gen. Celestino Peraza at La Mercedes. Then in July, 1901, came Gen. Carlos Ráangel Carboras from Colombia, where he had been in hiding, aided by Colombian soldiers, and soon gathered in the western part of Venezuela an army of 4,000 men; in the early part of the succeeding August another force

invaded Venezuela by way of Colombia, and in early October there was the revolution of Gen. Rafael Montillo in the State of Lara. About this time Gen. Juan Pietri made an effort to combine the disaffected citizens in and around Caracas. All of these revolts were immediately met and in due time defeated; but they called for military movements in different directions and of considerable magnitude. They occasioned much loss of blood and national treasure, so that when the revolution of liberation, under General Matos, was launched upon the country in the latter part of December, 1901, it is historic that the Government had to enter upon its defense with very limited resources of men and money at its command, while the revolutionary forces were greatly aided financially by General Matos.

Almost simultaneously with the uprising in the east following the proclamation of General Matos there were similar uprisings in the west; there were fierce battles between them and the Government troops, with a general trend of victory toward the revolutionists, and by the latter part of March, 1902, much of the west and the greater part of the east had passed under their control. There were also naval contests favorable to them, and by the middle of May the governor of Trinidad advised the British foreign office that all Venezuelan ports except La Guaira were in the hands of the revolutionists. It was then that General Matos entered the country by the way of Carúpano and began his victorious march toward Caracas; and it was at this time that a portion of the garrison at Ciudad Bolívar revolted under Col. Ramón Farreras, and that city and the State of Guayana soon passed into revolutionary hands. There were also the advancing troops of the revolutionaries from the west to meet the uprisings then occurring in La Guaira, in the valleys of the Tuy, and in Guaripo, and with them to join the Matos forces which were at this time coming from the east; and this union was effected in early October. During all this period there had been constant, able, and strenuous effort on the part of President Castro, his officers and troops, to stay this rapidly rising and forceful tide of rebellion and to beat it back; but it was not until the combined revolutionary forces met him at La Victoria and battled with him for twenty days that he was able to deal them a destructive and disastrous blow. This signal defeat staggered the revolutionary forces and many of them disbanded, while the Government succeeded in regaining from them some of its interior and coast towns.

Close upon the heels of this signal triumph of the Government forces began the incident of the concerted action of the allies, and until the middle of February following all efforts of the Government were stayed and its powers paralyzed by the impending belligerent operations of the allied Governments and the actual state of blockade of all the ports of the country.

Certainly no charge of negligence can be placed against the National Government in this immediate crisis of its history. After the blockade was raised and peace between Venezuela and the allied Governments assured, the National Government assumed offensive operations against the revolutionary forces in the west, and the victory of General Gomez at El Guapo on the 13th, 14th, and 15th of April of the present year resulted in the practical overthrow of the revolution of that section of the country, and after the battle of El Guapo the troops of the Government were at once used in the restoration of the national power in the States of Varacua and Lara, and the defeat of the rebel armies in those sections resulted in their general surrender and the hurried escape of General Matos and his leading generals to Curaçao and the proclamation by Matos, on the 11th of June, at Curaçao, declaring the war at an end. Shortly after this declaration of peace on the part of Matos the Government repossessed itself of all parts of the national territory excepting that portion adjacent to

and within the city of Bolívar, and the attention of the Government was immediately and successfully directed against this last stronghold of the rebellion, and the revolution of liberation was at an end.

A war in which there were in a little over one year twenty sanguinary battles, forty battles of considerable character, and more than one hundred lesser engagements between contending troops, with a resultant loss of 12,000 lives, can hardly suggest passivity or negligence on the part of the National Government toward the revolution; and the umpire is impressed with the fact that such control as the revolutionists obtained in certain portions of the country was owing rather to the financial aid which it received through its chief, Matos, who, with the great body of men under his standard, made a combination for a time irresistible and overwhelming, than to any weakness, inefficiency, or negligence on the part of the titular government. In other words, history compels a belief that the Government did in fact what it has a right to have assumed it would do — made the best resistance possible under all the existing circumstances to the revolutionary forces seeking its overthrow. As previously suggested, it will be noted that the titular government met the revolution of liberation under Matos after several successive lesser revolutions which seriously taxed its military powers in men and treasure and necessarily depleted both; and that for some three months during the revolution its ordinary sources of income through its ports were entirely lost to it, and, while something of a national spirit was aroused by the occasion of the concerted action of the allied governments, its treasury suffered seriously.

It is therefore the opinion of the umpire that there was no undue delay on the part of the Government in the restoration of its power in the district under consideration, and that it was not through the weakness, inefficiency, or passivity of the Government that the revolution of liberation remained in control for the time named, but rather through its inherent strength in men, materials, and money, and in certain assisting circumstances.

The learned British agent would meet the ordinary assumption of diligence on the part of a government to regain its lost control of territory and to secure its lost control of its inhabitants by the fact that its recent efforts to compel repayment of taxes after these taxes had been once paid to the revolutionary government may be taken as having been contemplated by the Government during its delay in regaining such control; but, as the umpire finds, historically and not by assumption, that there has been no negligence or undue delay on the part of the National Government, the able and ingenious argument of the British agent in that regard can not prevail.

There remains to consider the validity of his contention that since Venezuela is now collecting taxes for the period when the revolutionaries were in control the National Government have thereby incurred a necessary responsibility for not having adequately protected its inhabitants in consideration for the taxes paid.

It is incontestably true that with the duty to pay public taxes flows the right of protection and the conscientious and careful discharge of all imposed public duties by the Government to which this tribute is made; that with the right to demand and exact revenue for the support of government stands the correlative duty to be competent and willing to discharge its public functions and conserve the welfare of the taxpayer, and that the one can not rightfully or lawfully exist in the absence of the other; but we have found it to be historically true that the Government of Venezuela was neither competent nor present to perform in any part its governmental functions at the place and within the period in question. They had wholly lost their sovereignty over this district and it was wholly out of their control and independent of the titular government,

and the attempt to obtain or the obtaining of a second payment of public dues does not disturb the revolutionary status, while the original payment of taxes to the revolutionary government only makes more emphatic its complete control of the situation during the period in question.

While there is no question that the collection of taxes by the Government for the period during which it had lost its sovereignty over the territory in question is indefensible in law, logic, and ethics, the respondent Government is not a pioneer in this respect.

The United States of America may claim priority over them. In the war of 1812 between that country and Great Britain the latter country captured and held thereafter until the declaration of peace the town of Castine, in the State of Maine. After peace had been declared and evacuation had taken place the United States collector of customs for that port claimed a right to exact duties for goods which had been imported through the custom-house while it was in charge of the British Government, and to which latter Government the duties had been paid. The case went to the United States Supreme Court, and, under the title of *United States v. Rice*, is found in 4 Wheaton, 246, Justice Story giving the opinion, from which the umpire makes a brief quotation:

The sovereignty of the United States over the territory was of course suspended, and the laws of the United States could no longer be rightfully enforced there or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender the inhabitants passed under a temporary allegiance to the British Government, and were bound by such laws, and such only, as it chose to recognize and impose. From the nature of the case, no other laws could be obligatory upon them, for where there is no protection or allegiance or sovereignty there can be no claim to obedience. Castine was, therefore, during this period, so far as respected our revenue laws, to be deemed a foreign port, and goods imported into it by the inhabitants were subject to such duties only as the British Government chose to require. Such goods were in no correct sense imported into the United States. The subsequent evacuation by the enemy and resumption of authority by the United States did not and could not change the character of the transactions. * * * The goods were liable to American duties when imported, or not at all. That they were not so liable at the time of importation is clear from all that has already been stated, and when, upon return of peace, the jurisdiction of the United States was reassumed they were in the same predicament as they would have been if Castine had been a foreign territory ceded by treaty to the United States and the goods had been previously imported there. In the latter case there would be no pretense to say that American duties could be demanded, and upon principles of public or municipal law the cases are not distinguishable. The authorities cited at the bar would, if there were any doubt, be decisive of the question. But we think it too clear to require any aid from authority.

The umpire holds, therefore, that the effect of the respondent Government in claiming and receiving a payment of taxes for a period of time when it had lost its sovereignty over the district in question, and could neither render protection nor receive obedience, is simply to make the respondent Government liable for a return of those illegally exacted taxes, as was held in the Italian-Venezuelan Mixed Claims Commission, now sitting at Caracas, by Ralston, umpire, in the matter of the Kingdom of Italy on behalf of Luigi Guastini,¹ to which reference may be had for a more extended discussion of the principles involved and for important citations and quotations there found.

Such exaction of taxes is without right; but it does not follow that there is an assumption on the part of the Government for the acts of revolutionaries. While the payment of taxes to the revolutionists did import the correlative duty of

¹ See Volume X of these *Reports*.

protection from them, for they were in a position and were bound in right and honor to grant it, there is certain logic in the astute contention of the learned British agent and there is grave error on the part of the officers of the Government if they demand such payment; but these wrongful demands can not change history or reverse international law.

Hence it follows that upon neither of the grounds held by the learned British agent can the losses of the claimant be considered of such a character that the National Government is bound to render him compensation for losses or injuries caused by the action of revolutionary troops; and so much of the claim is disallowed.

For that portion of the claim resting upon the action of the Government forces and authorities the umpire allows the sum of £ 492, which includes such expenses in the preparation of the claim as, in his judgment, should be allowed.

DAVIS CASE

Where goods imported into Venezuela are by mistake or misrepresentation delivered by the customs officials to others than the consignee, the consignor can not maintain a claim against the Government of Venezuela when it appears that the wrongful delivery was only possible through the negligence of the consignor.

PLUMLEY, *Umpire*:

This case came to the umpire through the disagreement of the honorable Commissioners.

The umpire finds the decisive facts to be that Lanzoni, Martini & Co., an Italian company doing business in Venezuela as railway contractors and miners, contracted with Messrs. John Davis & Son, a British firm doing business at Derby, England, on or about the 26th of February, 1901, for certain goods in the line of the claimant company, consisting of oil for miners' safety lamps, lubricating oil, miners' safety-lamp glasses, and the like, and that on the 26th of February, 1901, these goods were shipped by the claimant company to go forward to the port of Guanta, in Venezuela, for the use of the said Lanzoni, Martini & Co. These goods were to be given up to Messrs. Lanzoni, Martini & Co. by the shipping agents of the claimant company in exchange for cash against bills of lading, which later were forwarded with the accounts to Messrs. Ruys & Co., of Amsterdam, for their collection, and on the 11th of April, 1901, the Dutch steamer *Prins Willem III*, from Amsterdam, put in at the port of Guanta, bringing these goods. The certified manifest showed that these goods were sent by Messrs. Hoyman & Schurman, of Amsterdam, to Guanta, consigned to Messrs. John Davis & Son, to the order and account of said company. It further appears that Messrs. Ruys & Co., of Amsterdam, had not succeeded in obtaining the cash of Messrs. Lanzoni, Martini & Co., and it appears that this Amsterdam company, shipping agents of the claimant company, did not forward such bills of lading to any agent or representative of the claimant company in Guanta or Barcelona, or send any instructions, suggestions, or restrictive orders to the customs officer at Guanta concerning the delivery of said goods only on payment therefor or otherwise; but on the 12th of April Messrs. Lanzoni, Martini & Co. applied to the customs officer requesting a certified copy of the consular invoice received by the customs-house stating that they had received no consular invoice, but had received the commercial invoice, and declaring that the goods in question had come for them and their use.

Mr. Lanzoni corroborated his statement by reading to the customs officer, correspondence which his company had had concerning these goods. The