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Motion for interest on awards (on merits)

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MOTION FOR ALLOWANCE OF INTEREST ON AWARDS FROM THEIR DATE UNTIL THEIR PAYMENT

Under the terms of the protocol interest can not be allowed on the claims from the date thereof until they are paid.[1]

PLUMLEY, *Umpire*:

His Britannic Majesty's agent before the British-Venezuelan Mixed Commission moved that interest be allowed upon all awards at the rate of 5 per cent. per annum from the date of the award to the date of payment, and supported his motion with an able argument. To this motion the honorable Commissioner for Venezuela opposed an able opinion. After careful consideration of the question, the honorable Commissioners finding themselves unable to agree, joined in sending the question to the umpire for his decision.

Interest eo nomine is by contract expressed or implied.

Both the claimant and the respondent Government quote Article III of the protocol to sustain on the one hand the claim for interest and on the other hand to deny it.

It reads as follows:

> The British and Venezuelan Government agree that the other British claims, including claims by British subjects other than those dealt with in Article VI hereof and including those preferred by the railway companies, shall, unless otherwise satisfied, be referred to a mixed commission constituted in the manner defined in Article IV of this protocol, and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim.

The learned British agent finds in this paragraph not only a warrant that interest may be awarded, but that it should be awarded in each case at a specified rate until date of payment. This right and duty to award interest is found by the learned British agent in the fact that the award is to be " in satisfaction " of each claim; that the date of payment of the award is uncertain and may not take place for many years; that " when the date of payment of a sum due in satisfaction of a debt is uncertain, it is an universally recognized principle that interest should accrue; " that if interest is not allowed from the date of the award to the date of payment " the Commission will not have satisfied the claim as required by the protocol."

He grants and claims that " the decision of this question must necessarily turn on the exact terms of the protocol constituting the Commission."

From the part of said protocol above quoted the honorable Commissioner for Venezuela finds, on the contrary, that the " powers of this Commission are merely and exclusively confined to awarding each claimant a determined sum " when their claims are found to be just. He also relies upon the terms of the protocol, and not only fails to find therein the warrant for the allowance of interest on awards by the Commission, but holds further that " the clear and precise terms of the protocol bar all discussion on this point."

It will be observed that the Commission is not authorized or permitted to name the time when, the manner by which, or the means through which the award is to be satisfied or paid. Examination of the protocol will show that elsewhere therein the high contracting parties have themselves provided for all this and for security as well. As to a certain class of claims, there is an agreement as to the amount due in satisfaction. In Article III, however, it is agreed that there is a question to be submitted to arbitration, which question seems to be,

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[1] To like effect see Italian - Venezuelan Commission (Cervetti Case) in Volume X of these *Reports*.

What, if anything, is the amount due to the claimant from the respondent Governement on the account as presented? A mixed commission, to be provided for in the next succeeding article of the protocol, " shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim." Have the commissioners, by the terms of the submission, anything to do with the satisfaction of the *award*. Are they asked to consider anything but the quality of each claim, and, if allowed at all, to decide upon the amount which will satisfy it? Is not the word " amount " sufficient in its use? What the claimant Government asks by this motion is that this Commission settle the amount which satisfies the justice of the claim, and also fix a rate of interest which shall attach to that amount and follow it until the award itself is satisfied by payment, and that an agreement to this effect may be found —nay, is found — in the language quoted when considered, as all parts of a treaty should be, in reference to all other parts thereof.

Amount. 1. The sum total of two or more sums or quantities. The aggregate, as the amount of 7 and 9 is 16; the amount of the day's sales.
2. A quantity or sum viewed as a whole. * * *
3. The full effect, value, or import; the sum or total; as, the evicence, in amount, comes to this. (*Century Dictionary*, Vol. I, p. 191.)

It would seem that amount, as it is used in the provision quoted in the protocol, means, and only means, a certain round sum to be awarded in satisfaction of the *claim*, which in itself may include the original sum and interest thereon to the time of the award. The whole question of satisfaction of the award is provided for elsewhere in the protocol. If interest is to be allowed on the basis of a contract, the intent of the high contracting parties to so contract is the thing sought, and it must be gathered, if found anywhere, primarily and principally in the foregoing quotation taken from the protocol. Both claimant and respondent Governments so agree. And the claimant Government makes no reference to any other part of the protocol, resting their claim for interest solely upon said quotation. But do not the provisions of the protocol, as found in the language quoted, limit the action of the Commission to an examination of the claim and a determination of the certain amount in pounds sterling to be awarded the claiman ? Is there to be found in the other parts of the protocol, or in the facts leading up to it and surrounking it, or in some interpretation put upon it by both parties, that which will control the quoted provision and so enlarge its scope as to render it consistent with the position of the learned British agent? It seems to the umpire that the other parts of the protocol show a purpose and plan on the part of the two Governments to settle all details for themselves, excepting the claims submitted in Article III, and by and for themselves to settle the means of payment thereof and the security therefore. It would seem to the umpire, from a careful reading of the protocol, that the only question left open for the determination of the Commission was the question of the claims themselves, and that concerning these claims, they were to determine whether in justice and equity there was anything due and, if so, how much; and, if he were obliged to determine the question unaided by reference to collateral facts or by the use of other proper means, he would be obliged to hold such to be the rule. Will examination of the facts leading up to the protocol and collateral with it remove or more firmly establish this belief? This is to be seen.

In the British Blue Book for 1903, under date of December 18, 1902, page 178, in an extract from a communication of the Marquis of Lansdowne to Sir F. Lascelles, it is said by the marquis that the —

court of arbitration will have to decide both on the material justification of the demands and of the ways and means of their settlement and security.

The Hague Court of Arbitration, and not a mixed commission, was the proposition then under consideration, which distinction is uniformly observed throughout the correspondence between the British Government and the German Government and between the British Government and their officials.

On page 182 of said book there is a communication of the British Government to the United States embassy, where, in paragraph 3 of said communication, it is stated —

the arbitrator will have to decide both about the intrinsic justification of each separate claim and about the manner in which they are to be satisfied and guaranteed.

In this communication the President of the United States or The Hague tribunal was the arbitrator referred to.

On page 183 of said book is found a memorandum of a communication made to Mr. White, December 23, 1902, and paragraph 3 of the reservations contained in said memorandum has this:

It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

In this communication it was understood that either the President of the United States or The Hague tribunal was to be the arbitrator, and it was expected and required of them that they should determine, settle, and provide for these additional propositions.

There is a draft of a letter to the American ambassador at Berlin, found on page 191 of said book, in which the position of the German Government is stated and previous communications are referred to. In the closing part of said letter there is found this language:

Besides which he (President Castro) must especially make clear in what manner he intends to pay the demands contained in that memorandum or to give security for that amount.

On page 208 of said book, number 233, the Marquis of Lansdowne, in a dispatch to Sir Michael Herbert, after referring to other conditions previously named to the ambassador at Washington, makes in the last paragraph this statement:

The question of guaranties for the satisfaction of the remaining claims would also have to be carefully examined, and we were engaged in preparing instructions to you upon these and other points.

From these extracts and, better still, from a careful reading of the entire correspondence contained in said book, it will be seen that the final adjustment between the allied powers, and more especially between Great Britain and Venezuela, was a matter of careful consideration, made especially apparent by the very systematic use of similar language in different communications, from which may be deduced the fact that the protocol itself is in structure and language a work of much care and thought. A careful reading of all the communications contained in said Blue Book will disclose no reference, direct or indirect, to the question of interest, or to compensation for delay in payment, while there is constantly presented a requirement as to the means of payment, and, if payment is not to be made at once, of adequate security therefor. A return to the protocol itself will show in the preamble, " Certain differences have arisen between Great Britain and the United States of Venezuela in connection with the claims of British subjects against the Venezuelan Government."

Article I of the protocol provides, among other things, that the Venezuelan Government recognizes "in principle the justice of the claim," etc. Article II of the protocol provides that "The Venezuelan Government will satisfy at once, by payment in cash or its equivalent," certain classes of claims, and then comes Article III, which provides for the submission to a mixed commission of the class of claims which have been brought before us for an examination and decision as to the amount to be awarded in satisfaction of each claim.

In the instructions from the Marquis of Lansdowne to Sir Michael Herbert, No. 234 of Blue Book, January 13, 1903, on page 212, there appears this statement:

Other claims for compensation, including the railway claims and those for injury to or wrongful seizure of property. * * *

And, near the top of the page —

His Majesty's Government will be ready to accept in satisfaction of these claims either a sufficient cash payment or a guaranty based on security which must be adequate, and which the Venezuelan Government must be bound not to alienate for any other purpose.

Further proposing that —

Before the amount to be actually handed over to claimants of this class is finally decided, a commission, upon which Venezuela would be represented, should be appointed to examine and report upon the amount to be awarded in satisfaction of each claim. * * * Should a cash payment have been accepted by His Majesty's Government, they will be prepared to refund any surplus which may be available after the examination.

It appears from this instruction that when a mixed commission was under consideration it was to follow a settlement on the part of Venezuela either by a gross sum paid to Great Britain, which was by that Government estimated at £ 600,000, or, if not paid at once, the other alternative was a satisfactory guaranty; and in either case it was agreed that an examination of the respective claims for the purpose of fixing the amount due in each claim should be made by a mixed commission; and it was not proposed that they should possess any other power and there was no other duty to rest upon them, except to settle the amount of each claim, which amount, naturally, would be the same whether it was to be paid in cash or was to be adequately secured. This is brought out again in the recapitulation made in this same set of instructions, beginning at the bottom of page 212 of said book:

(*b*) Other claims for compensation, including the railway claims and those for injury to, or wrongful seizure of, property, must be met either by an immediate payment to His Majesty's Government or by a guaranty adequate, in your opinion, to secure them. These claims can, if this be desired, be examined by a mixed commission before they are finally liquidated.

There is no suggestion here as to any power given to, or any potency in, the Commission, except that of examination of the respective claims, in which they were to determine whether the claims were just and equitable, and, if so, to settle the amount. To The Hague tribunal and to the President there were to be given other powers which were to be asserted by them in lieu of the agreement concerning such matters which was effectually made between the allied powers and Venezuela. The President declined to act, and an agreement was finally concluded in which there was an unalienable right given by Venezuela to the powers in and concerning the customs duties received at the two principal ports of Venezuela, so that the alternative proposed, if cash was not immediately paid, was in fact settled in the protocol.

There is another important factor to be considered in arriving at the question of whether interest was in the mind of either of the high contracting parties. Examination of the Blue Book shows that the Marquis of Lansdowne insisted, in association with the other allied powers, that there should be given them preferential treatment over the peace powers in the payment of their claims out of the 30 per cent of customs to be set aside for their liquidation.

Mr. Bowen insisted that Venezuela must give similar treatment to all creditor nations. In connection with the discussion that took place in reference to this question of preference see No. 241 of Blue Book, page 219, of date January 25, 1903, when the Marquis of Lansdowne was informed by Sir Michael Herbert of the anticipated annual income of the two ports of La Guaira and Puerto Cabello, which was set by him at 10,000,000 bolivars, while 29,000,000 bolivars was considered to represent approximately, the claims of the peace powers. In the Marquis's reply of January 26, 1903 (Blue Book, 219), he reduces this income to pounds sterling, and finds 30 per cent to be, approximately, £ 213,000. He estimates the claims of the blockading powers at £ 900,000, and puts the claims of the peace powers in pounds sterling at 1,148,574. He then proceeds to deduce from all these facts, that there could be an arrangement to extinguish the claims of the allied powers in five years, and that this could be done without injuriously affecting the interest of the other creditor powers. The thought of the Marquis of Lansdowne is expressed definitely in No. 254, page 222 of the Blue Book, in his interview with the German ambassador, January 29, 1903.

The German Government had stated that this 30 per cent, in their judgment, should be set apart for the sole purpose of liquidating the claims of the blockading powers; but they were informed by the Marquis of Lansdowne that it seemed worthy of consideration —

> Whether, if the part of the customs revenues was appropriated, not for the satisfaction of the claims of all the creditor powers, but for that of the British, German, and Italian claims alone, we might not be content with rather less than the full 30 per cent referred to. It seemed to us that the allocation of an annual sum sufficient to extinguish our claims in, say, six years, might be enough for our purpose, and we had instructed Sir M. Herbert to discuss the question with his German and Italian colleagues.

Again in No. 256, February 1, 1903, Blue Book, p. 223, in his instructions to Sir Michael Herbert, the Marquis of Lansdowne says:

> An arrangement by which the claims of the blockading powers should be extinguished in six or seven years would, we believe, leave it possible for a *similar settlement* to be made with the *other powers*.

It must be borne in mind that the 30 per cent of the customs revenues of these two ports was the one sole guaranty and means of payment proposed, and it was definitely understood that no better, or other, could be, or would be, offered; and the entire discussion relative to preferential treatment was concerning payment out of the fund thus to be obtained. This may be seen by reference to the Blue Book and the different communications found therein.

To extinguish £ 900,000 in six years would require £ 150,000 each year; this would leave £ 63,000 each year to apply on the claims of the peace powers, aggregating during the six years £ 576,000, and reducing the claims of the peace powers to £ 770,514 at the end of the six years. Then with the full £ 213,000 to be applied each year it would require three years and a half for their complete liquidation, or about nine and a half years in all. Add interest, however, at 5 per cent to the £ 900,000 and the first year's payment to the allied powers would be £ 195,000, leaving £ 18,000 to apply on the claim of the peace powers. Their interest would be £ 57,423, and hence there would be an

increase in their claims that year of £ 39,425. Carry this same plan throughout the six years, lessening each year the amount of interest on the claims of the blockading powers, and increasing each year, by so much, the amount to apply on the claims of the peace powers and the result would be, that, when the six years had ended, the debt to the allied powers would have been paid, and there would be an increase on the part of the claims of the peace powers of £ 59,125, so that their claims at that time would be brought up to £ 1,207,639. Can this situation be reconciled with an intelligent proposition by an intelligent statesman, that the allied powers could be paid off in six years, and substantially *similar* treatment be given the peace powers, and *all* out of the 30 per cent? A situation that actually increased the indebtedness of the peace powers during the entire time in which the allied powers were being paid. It would seem impossible to reconcile such a statement.

As another test, take the hazard that the customs receipts permanently fall off just one-half, and that the debts aggregate as estimated £ 2,048,510. The interest at 5 per cent would be sufficient to exhaust the entire income and the debts would *never* be paid. Is it possible that these able Governments regarded the proposition to set aside these customs receipts as any kind of security if the reduction of one-half thereof would take away all possibility of payment? Again, when the umpire reached Caracas in the spring of 1903, he found that intelligent residents of the city were fearing that the aggregate allowance by the Commissioners would be £ 5,000,000. Were that to prove true and the income remain at £ 213,000, and interest was to be allowed at 5 per cent, the indebtedness would increase at the rate of £ 37,000 each year. With the interest factor in, there is all this uncertainty and possible permanent unliquidation. With the interest factor out, there is a sum constant each year in some amount to reduce the indebtedness and a certainty of final liquidation.

Again, if the very high rate of interest named (high in connection with a secure government indebtness) had been understood as pledged, would either party to the submission at The Hague have involved itself in the trouble and large expense, in the aggregate, to determine which should be obliged first to let go of so good an investment?

Again, when the Marquis of Lansdowne was suggesting that a part of the 30 per cent would answer the demands of the blockading powers and that a part thereof would be sufficient to wipe out their indebtedness in six years, what fraction of the 30 per cent did he have in mind? Without interest, in such case there would be reserved to the allied powers approximately 21 per cent, and there could be tendered to the peace powers 9 per cent during each of the six years. With interest, the allied powers would the first year absorb $27^1/_2$ per cent, and there would then be $2^1/_2$ per cent for the peace powers, with the actual final result suggested that the peace powers would have their indebtedness increased during the six years. While the proposition of 21 to 9 was not of such a character as to offend the other powers, allowing the standpoint of the allied powers to be taken or not, the other proposition could not have been offered or received with dignity, and it is impossible to conceive that it was in the mind of so eminent a gentleman as the Marquis of Lansdowne.

Although the time of payment is not in terms expressed, a certain method of payment, with security, is devised which begins liquidation at once and concludes in from six to ten years according as the claimant Government is or is not a preferred creditor, as it assumes to be. These awards are substantially in that class of debts where by the agreement an option is granted to the debtor to pay on or before a certain time. It is also a secured debt, which quite frequently appeals to a creditor as superior to an unsecured debt bearing interest. Preceding the protocol, the claimant Government insisted upon an immediate

cash payment or satisfactory guaranties. It was given the guaranty. The two Governments, on their own part, made every provision for payment and security and left only to the Commission the examination of the claims presented. To examine and, if allowed, to award upon the claims presented the amount due thereon is the apparent power given to the Commission. In the judgment of the umpire there is no power inherent in a mixed commission to affix interest to the awards beyond the life of the Commission. The recovery of interest on the judgments of a court is a matter of statute, as understood by the umpire. Interest only follows the judgment if so provided by statute. (Thompson *v.* Monrow, 2 Cal., 99; 56 Am. Dec., 318.) If such power is to exist it must be by grant from the parties who created it; and if the awards are otherwise to draw interest it is from other source and other cause than a naked order of the Commission.

In the Claims Commission between the United States of America and Venezuela, under convention of April 17, 1867, the treaty provided that —

> semi-annual interest shall be paid on the several sums awarded at the rate of 5 per cent per annum from the date of the termination of the labors of the Commission. (Moore's Int. Arb., vol. 5, 4810.)

Similarly for the Mixed Commission between the same countries, under convention of December 3, 1886, the same rule as to interest on awards was provided in the treaty. The said treaty also recognized the propriety of allowing interest on the claims, when they were of a proper character. In the American and British Claims Commission treaty of May 8, 1871 (Moore's Int. Arb., vol. 5, 4327), there was, ordinarily, an allowance of interest at the rate of 6 per cent per annum from the date of the injury to the anticipated date of final award. Examination of that treaty will show a corresponding silence on the question of interest on awards, with the protocol under consideration. The United States and Mexican Claims Commission, under convention of February 1, 1869, had very able members as Commissioners, and as umpire during the latter part of the sittings Sir Edward Thornton, who, in the closing part of his labors, passed upon this question of interest, but allowed it only from a certain specific time up to a date usually described as the date of final award. (Moore, vol. 2, 1317-18.)

In the United States and Mexican Claims Commission, under convention of April 11, 1839, the question of interest was disposed of similarly. (Moore, vol. 4, 4325.) Between the same parties, under the act of 1849, interest in the particular case referred to on page 4326 of Moore is denied for the reason given, and in the Spanish Commission of 1871 (Moore, 4327) interest was denied.

It will be noted that in article 6 of the treaty of December 5, 1885, between the United States of America and Venezuela it was especially provided that —

> In the event of interest being allowed for any cause and embraced in such award, the rate thereof and the period for which it is to be computed shall be fixed, which period shall not extend beyond the close of the Commission.

In the convention for the arbitration of the claims of the Venezuela Steam Transportation Company of January 12, 1892, article 5 of the treaty provided that —

> If the award shall be in favor of the United States of America, the amount of the indemnity, which shall be expressed in American gold, shall be paid in cash at the city of Washington, in equal annual sums, without interest, within five years from the date of award.

In the case of the Peruvian indemnity fund left with the Attorney-General of the United States to distribute he held that —

> The charge for interest is rejected, it being incompatible with the principles which appear to have been adopted by the two Governments in concluding the convention.[1]

In the preliminary provision made for the settlement of the civil war claims, so called, immediately between Great Britain and the United States of America, it was especially set out that each Government was required to pay the amount awarded against it within twelve months after the date of the final award, *without interest.* (Moore's Int. Arb., vol. 1, 690.)

In the Chinese indemnity cases found on page 4629 of Moore, 12 per cent interest was allowed to a certain date, covering in most cases the period of three years, and they were induced to give this liberal rate —

> by consideration of the fact that some time must elapse before the complete collection of the indemnity through the Chinese custom-houses could be effected; and they intended to make their awards the final settlement of the question of interest.

In the matter of indemnity for slaves between Great Britain and the United States of America, there was a claim for damages of the nature of interest on the part of the United States against Great Britain. On page 375, volume 1, of Moore, begins the discussion of this claim on the part of Great Britain, and the opposition is divided into three parts:

> (1) Principles of justice and equity; (2) the authority of precedents; and (3) a reasonable and necessary construction of the convention.

And it is urged under the last head, that if the convention intended the creditors to receive damages as well as the value of the slaves —

> it was inconceivable that the power should not have been given to the Commissioners to ascertain by evidence the amount of such damages; and if it was intended that interest should be arbitrarily fixed upon as the standard of damages it was equally inconceivable that the convention should have been silent upon the subject.

It is argued that in the convention between the United States and France of September 30, 1800,[2] there was an express provision for interest, and a similar stipulation in a subsequent treaty between the same parties,[3] and, from these facts, that whenever, in a treaty, the United States meant to stipulate for interest, they took care to include an express provision to such effect. There are other references of a similar character which might be made to Moore, but the umpire forbears.

Where it has appeared that there were objections to interest in the cases quoted, the objection has been to interest on the claims then before the Commissioners. The question of interest on awards to time of payment was not the matter then under consideration.

The Geneva tribunal, from the magnitude of the questions at interest, the quality of the countries involved, and the high character of the agents of the respective governments and of the arbitrators as well, occupies a position of unique importance among even the great arbitrations of the past. That the Geneva tribunal allowed interest on the claims but did not allow any interest to attach to the award, the umpire considers very significant.

The umpire believes it to be safe to hold that this Commission has no power not directly conferred upon it by the protocol.

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[1] Moore, Vol. 5, p. 4595.
[2] Treaties and Conventions between the United States and Other Powers, p. 322.
[3] *Ibid.*, p. 356.

Interest *eo nomine* is a matter of contract. The protocol, the contract in question, does not in terms provide for interest. Neither does the language used import interest; nor is it to be implied from the language used. (16 American and English Encyclopædia of Law, 999; III. Grounds of Allowance of Interest, and notes 2, 3, 4, and cases therein cited; Ib., IV. Contracts to Pay Interest, and notes 8, 9, 10, and cases therein cited; Ib., p. 1001, subhead 4, Construction, (*a*) in General, and notes 2 and 3, and cases there cited; Ib., 1002, subhead 3, Implied Contracts, (*a*) in General, and note 1 on p. 1003, and cases there cited.)

Upon the question of an implied contract and as aiding in determining the question of interest, it may be well to remember that the general practice of nations in cases of submission to arbitration has not been to provide for interest on the awards until date of payment; that to so provide is quite the exception.

There is to be considered also the general rule that nations do not pay interest except when especially written in the contract. Lawrence says in Law of Claims against Governments, etc., page 218:

> Upon ordinary claims the Government is not liable for interest unless by contract so providing. (See note 78 on same page and following pages.)

The force of this general rule is to negative any implied contract between nations to pay interest where there is an agreement between them and nothing is said about interest. (16 American and English Encyclopædia of Law, 1005, subhead Implication Negatived and note 3, and cases there cited; Ib., 1005, subhead (*b*), Knowledge of Custom, and note 5 and cases there cited.)

Damages are sometimes assessed for delay of payment or detention of property at the rate and of the nature of interest, but there is here no default to be considered, and there will not be if the respondent Government in good faith carries out its terms of payment, even if it takes many years to liquidate the indebtedness. (16 American and English Encyclopædia of Law, 1007, subhead (*b*) Express Contracts to Pay Money, (1) In General, and note 4 and cases there cited; Ib., 1013; Ib., 1014, subheads (*a*) and (*b*), notes 5 and 6, and cases there cited; Ib., 1015, note 2, and cases cited.)

As bearing upon the wisdom, propriety, or value of an award of interest to attach and to follow the award, where such an order is not sustained by the clear language of the convention constituting the Commission, and as bearing upon the question of jurisdiction in the Commission to make such an award under such circumstances, the consistent and practically concurrent action of the many commissions composed of distinguished bodies of men, there is great significance on the almost prevailing and constant practice of the rule not to allow interest. Indeed, the umpire has been unable to find a single instance where under substantially the same terms of submission as are contained in the protocol under consideration there has been any such allowance of interest.

The award of the Mixed Commission in respect of British mineral oils claims in France of 1874, produced by the claimant Government as an authority for its motion, does not disturb this proposition of the umpire. The terms of that submission were —

> To settle, as hereinafter directed, questions concerning duties levied in France on British mineral oils, *as well as to consider and report on any other questions which the high contracting parties agree or shall agree to refer to it* — [1]

and, if the umpire reads correctly, interest was only allowed by this Commission in cases where judgments had been pronounced, and for the purpose of meeting the terms of those judgments.

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[1] British and Foreign State Papers, Vol. LXIII, p. 211.

It must also be regarded as of importance that all of the other commissions sitting in Caracas at this time have failed to allow interest on awards — some, probably, because it was not asked for; in others, because it was directly denied as being beyond the power given by protocols. This not only adds the weight of the judgments of the many eminent men who have thus passed upon this question, but throws into the discussion of the question certain features of inequity in case it should be allowed to one only of the claimant Governments. Especially is there force to this thought in connection with Germany and Italy, who, with Great Britain, formed the blockading powers and claim preferential treatment out of the common source provided for the liquidation of all claims. They are to be paid in parts proportionate to the amount of their respective awards, and it is not equitable that Great Britain should have profit in a 5 per cent dividend on awards for six years' delay in payment while Germany and Italy are delayed equally, but without recompense, and the date of the final payment to them be deferred still further because of the increased burden placed upon the common fund by reason of such interest. If the protocol plainly required such an inequity to exist between these two parties the umpire would have no alternative but to make the allowance. These deductions bear largely upon the question of the probable intent when the result of a certain line of action is being considered, and it prevents a judgment, where in the discretion of the umpire it might be allowed if it would produce equity, when in fact it would produce inequity.

As the result of all this consideration the umpire is not satisfied that he has any warrant or authority under the protocol to favorably entertain the motion of the learned British agent in the matter of interest on awards until payment, and he therefore denies the motion.

INTEREST ON DIPLOMATIC DEBT CASE

Venezuela held liable for interest at legal rate on ascertained liquidated amounts acknowledged by her to be due.

PLUMLEY, *Umpire*:

The honorable Commissioners having failed to agree upon either class of claims presented by the memorial in this case, it comes to the umpire for his determination.

The memorial calls for simple interest at the rate of 6 per cent on two classes of claims.

Class 1 is claims agreed to by the Venezuelan minister for foreign affairs and Her Majesty's representative at Caracas, Mr. Edwards, in 1865.

Class 2 is awards made by the Mixed Commission constituted by the Anglo-Venezuelan claims convention of the 21st September, 1868.

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The British Government has always claimed of the Venezuelan Government interest at the rate of 6 per cent as an integral part of the claims under class 1; but the umpire fails to find that the respondent Government ever formally consented to the payment of any interest until the decree of May 23, 1876, when, as the umpire understands it from the information in hand, 3 per cent bonds were proposed by Venezuela in payment of these agreed claims and also in payment of the awards made by said Mixed Commission. This proposition the