

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Puerto Cabello and Valencia Railway Case (on merits)

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They have been law-abiding and helpful, not harmful, to the land of their domicile. The claim in question had its origin in a British subject, J. P. K. Stevenson. At his decease it came by the widow and the legitimate children of Mr. Stevenson. As held by the umpire herein, it lost its original status in regard to the widow and children born in Venezuela. It retains its original status in the persons of the two sons, who were born British subjects.

From the testimony received from the respondent Government since the umpire returned to the United States of America, there appears, casually, a statement that Juan had deceased recently. Since no reference is made to this fact by the representative of the respondent Government, the umpire has a right to assume that such Government regards the incident of his death not to disturb the status fixed in him at the time of the presentation of this case to the Mixed Commission. The Chopin case, found in Moore, International Arbitration, page 2506, is full warrant for such a conclusion. Such would be the opinion of the umpire independent of the Chopin case. It meets the requirements, viz: (a) British citizenship at the time of the origin of the claim; (b) British citizenship at the time of the presentation of the claim before the Commission. When thus presented, a right to recovery vested in those then having a lawful claim.

The decision of the umpire is therefore unaffected if since then Juan has deceased.

The claim of the widow and of the children, who are held herein to be Venezuelans, is disallowed without any prejudice to their rights as Venezuelans before any proper tribunal. Under the Venezuelan law of distribution, as it was at the time of the death of J. P. K. Stevenson, the widow and the children each take an equal share of his estate. There are, then, thirteen equal shares into which this claim is divided. Two of these shares are allowed. For a portion of the time covered by this claim the legal rate of interest in Venezuela was 6 per cent; for the remainder of the time it was 3 per cent. Beginning at the time the claim was presented to the Claims Commission of 1868-69 interest has been calculated at the legal rate. There is no proof that the respondent Government had been informed previously of the claims of 1859 and 1865. Those of 1869 originated after the convention creating that Claims Commission. Certainly the respondent Government could make no compensation until a claim had been duly presented, and hence it could not be, until then, in default. Interest as damages begins only after default.

The award will be made for £8,940.

PUERTO CABELLO AND VALENCIA RAILWAY COMPANY CASE

A government is not liable for damages suffered by property which is situated in the track of war.

Where an agreement in a contract existed to refer all controversies to local courts, not more than the legal rate of interest can be allowed on amounts due the company when the Government insisted that such amounts were incorrect and the company had no resort to the local courts.

PLUMLEY, *Umpire*:

This is a claim presented by the British Government for and on behalf of the Puerto Cabello and Valencia Railway Company, asking an award of £319,381 4s. 9d. on account of arrears of guaranty and accrued interest thereon, together with a small sum due for freight.

This case came early before the Mixed Commission, but its consideration was deferred for some time that a settlement might be secured between the company and the Government which would obviate the necessity of its determination by this tribunal. When it became evident that the parties could not reach a point of agreement the honorable Commissioners, with the efficient aid of the learned agents of both Governments, undertook to reach a decision. After careful and painstaking effort it was found impossible by the honorable Commissioners to reconcile their serious differences and the case was sent to the umpire for him to decide.

He acknowledges his indebtedness to the claimant company and its efficient secretary, to the learned British agent and the honorable Commissioner for Great Britain for the careful preparation and presentation of the several claims of the company and of the proofs in support of the same, both direct and collateral; also his like indebtedness to the respondent Government, its learned agent and its honorable Commissioner for a like painstaking presentation of the points in defense and the proofs to sustain them. But, notwithstanding the wisdom thus assembled in his aid, the umpire has found the consideration of the various questions in issue to be quite complex and not at all easy of safe and wise solution. He has given the matter his most careful, persistent thought and has brought to bear upon the various questions involved such authorities and precedents as were at his hands and has reached conclusions which he conscientiously believes to be approximately just and equitable.

The Puerto Cabello and Valencia Railway Company (Limited) was organized to take over a concession made to Messrs. Cutbill, Son & De Lungo and to their associates or successors by the Government of Venezuela, of date February 24, A. D. 1885, which concession was negotiated of that date by Gen. Guzmán Blanco, ambassador extraordinary of the United States of Venezuela, then resident in the city of London, England, and was approved and confirmed by the Congress of the United States of Venezuela sitting in Caracas on the 18th day of April, A. D. 1885.

Article 4 of said concession stipulated that the Messrs. Cutbill, Son & De Lungo and their associates and successors would organize a joint stock company (limited) for the construction and the working of the railroad provided for in said concession from Puerto Cabello to Valencia and to construct the same complete for the sum of £820,000.

Article 3 of the said concession settled the width between the rails and provided for the equipment of the road with locomotives, carriages, and wagons indispensable for the complete traffic, and having the solidity and modern quality of railroad construction, and having also the station houses and goods sheds indispensable for its use and for the line of the railway. The right to construct and to operate this railway was an exclusive one for ninety-nine years from the date of its completion. The Government also conceded free importation of all the materials, machinery, tools, implements, and provisions which might be required for the construction, maintenance, and working of the railway; freed its property during the said ninety-nine years from all taxes or like contributions of all and every kind; freed its employees from all military service; conceded 150 meters of land on each side of the line of the railroad where the lands were public, and gave right of eminent domain over lands of private ownership, and permitted a free cutting of all timbers required for the construction of the railway in the forests belonging to the nation.

Article 19 of the concession provided that —

All questions arising in respect to the fulfillment of this contract will be determined by the competent tribunals of Venezuela.

Article 12 of the concession provided that —

The railway company shall have the benefit of the guaranty of 7 per cent on the total sum of £820,000 above referred to, which can be issued in ordinary shares and in bonds in the proportions most convenient to the company. The said guaranty to begin on the completion of the railway, ready to be opened for public traffic.

As a part of this concession the Government subscribed in ordinary shares at par to the amount of £160,000.

The claimant company was incorporated under the companies acts, 1862 to 1883, and was registered in England on the 26th day of September, 1885. Its capital is £820,000, of which amount the Venezuelan Government subscribed for £160,000 in the share capital and continued to hold these shares until March, 1896, when it sold them to the Southwestern of Venezuela (Barquisimeto) Railway Company, reserving its interest in all dividends accrued or accruing to that date.

The transfer of the concession by Cutbill, Son & De Lungo to the said railway company was made on the 29th day of September, A. D. 1885.

The share capital of the company was divided into 46,000 shares of £10 each. The balance of the capital was provided for by the issue of debenture bonds to the amount of £360,000; £20,000 of these were not issued in fact, but were retained in the treasury of the company, where they still remain, as the umpire understands it.

The railway was opened to public traffic and the guaranty began according to its terms on April 1, A. D. 1888, although the work of construction had not then been completed. The total amount expended in the contract of construction of the railway and equipment was £782,216 17s. 6d., leaving of the £820,000 the sum of £37,783 2s. 6d. The capital expenditure was increased from time to time, and, as is shown by the company's balance sheet of December 31, 1902, had amounted to £790,899 3s. 7d., leaving £29,100 16s. 5d. unexpended, of which the sum of £20,000 had been reserved by the company for working capital.

The respondent Government being in arrears upon its guaranty and having made representations to the claimant company of its inability to meet the agreement at 7 per cent, by mutual concession, hereinafter to be referred to in detail, on May 26, 1891, the guaranty was reduced from 7 per cent to 5 per cent per annum and the arrears up to December 31, 1890, inclusive, were discharged by the respondent Government.

For the year 1893 only, the company shows receipts in excess of the sum claimed by it in discharge of the guaranty of the respondent Government.

In addition to the questions arising under said guaranty, there is raised the question of liability or nonliability by the respondent Government for injuries received by the property of the railway company in the successful revolution of 1892 and the unsuccessful revolution of 1898.

The claim for a deficit of railway receipts to be made good to the company through the Government guaranty begins with the year 1891, and concludes, so far as this Commission is concerned, December 31, 1902. Connected with this question of guaranty is the disputed point of the right to the respondent Government to its share of the net earnings of the claimant company, when the guaranty of the Government is met, during the time the Government was a shareholder in said claimant company. The respondent Government also contends that this guaranty does not cover the £20,000 reserved as working capital.

REVOLUTIONARY CLAIMS

It was settled for this Commission by the opinion of the umpire in the claim of the Bolivar Railway Company¹ that the respondent Government, subject to certain exceptions, was liable for the acts of successful revolutionists and for the acts of the titular government as well, the liability in either case being predicated upon the same state of evidential facts. The facts stated, constituting the cause of complaint of 1892, appear to come within this established rule of liability; hence it does not become necessary to take these sums away from the accounts and they are allowed as and of the annual accounts as presented. It is quite possible that if the umpire had before him the specific details of expenditure he might find it necessary to point out certain parts as being allowed distinctively on the ground of the responsibility of the Government for its own acts and the acts of successful revolutionists outside of its guaranty, and there might be some item that would be disallowed as not coming within either feature of the case; yet, viewed as a whole, being destitute of any such detailed information, he will pass the whole as a rightful charge, as above stated.

Concerning the sums charged of March 29 and of June 28, 1898, it is to be said that had these injuries been received at the hands of the Government, or of successful revolutionists, they might be allowed; but as the result of the acts of unsuccessful revolutionists, which is the character in which they appear before the umpire, they can not be allowed. As the property destroyed is clearly a part of the plant — a part of its capital expenditure — it does not come under the guaranty and therefore the Government is not liable under that head. Hence this amount must be deducted from the accounts of 1898.

The claim of November 11, 1899, falls within the general rule of nonliability for damages which occur in the track of war, or during battle, or bombardment, and can not be allowed. Being a part of the plant itself and therefore a part of the company's capital expenditure, it falls within the class referred to in the preceding paragraph and is, likewise, not within the guaranty. There is, therefore, no governmental liability under this claim, in either aspect, and it is disallowed.

THE £20,000 DEBENTURE BONDS NOT ISSUED

Concerning the question whether the guaranty of the respondent Government was upon the fixed and certain sum of £820,000, or was upon the actual constructional expense, it may be said, that, fortunately, the Government and the railway company early concurred in their interpretation of this very general expression in the concession so far as to make clear that both held it to be a guaranty that the enterprise would yield annually a net revenue of 7 per cent on the capital expenditure necessary to the completion of the railway and its indispensable equipment, but whether that expenditure was fixed and determined in advance, or whether it was not to exceed a certain sum, seems to be the question undetermined and in dispute. As an estimate it was too high. It was agreed that the capital should be obtained through the issue of shares and bonds in such proportions of each as best suited the interests of the company. It is contended by the Government, and such has been its contention certainly since 1896, that the nonissued £20,000 of bonds are not entitled to the benefit of the guaranty.

If there had been no settlement and arrangement in 1891, the umpire would have no serious difficulty in sustaining the Government's contention. It is clear to the mind of the umpire that by the first arrangement it was a guaranty

¹ *Supra*, p. 445.

at 7 per cent upon the essential capital expenditure, which was not to exceed £820,000. There is evidence that such was the better judgment of the directors of the railway company.

On May 26, 1891, there was made a new agreement between the claimant company and the respondent Government founded upon a new consideration, namely, upon mutual concessions. In consideration, among other things, that the Government would pay upon the fixed sum of £820,000, the railway company consented to reduce the guaranty to 5 per cent per annum, and in consideration that the railway company would consent to such reduction the Government consented to accept the fixed sum £820,000 as the basis of reckoning. This is the umpire's interpretation of their agreement, which is in terms as follows:

ARTICLE I. In view of the difficulties which have presented themselves, and of those which might present themselves in the future, with regard to the payment of the 7 per cent guaranteed by the Government of Venezuela to the Puerto Cabello and Valencia Railway Company, inasmuch as the said guaranty weighs very heavily on the country, and this company being perfectly organized, the Puerto Cabello and Valencia Railway Company agrees that from the 1st of January of the present year of 1891, the Government of Venezuela only guarantees an interest of 5 per cent annually on the sum of £820,000, which is the fixed capital in the original contract, and upon which the guaranteed interest has up to now been calculated. Consequently article 12 of the 24th February, 1885, remains annulled, relative to the 7 per cent.

To remove any question upon this point, to settle favorably to itself a mooted question of this importance, was one of the very important considerations for the large concession here made by the claimant company.

Solely because of this agreement and of the consideration entering into the same, it is the judgment of the umpire that the fixed sum of £820,000 was then made the certain and established basis upon which to reckon said guaranty.

WORKING EXPENSES UNDER A GUARANTY

It having been determined by the apparent agreement and acquiescence of both of the parties to the contract that the guaranty stated in such general terms in the concession was in fact a guaranty of net revenue, it becomes important to determine what charges are to be included in working expense and, therefore, to be deducted from the gross receipts in order to leave that net annual revenue which it is guaranteed shall equal £41,000. In principle there is apparent agreement. In details of application of this principle there is apparent serious disagreement.

The claimant company, through its efficient secretary, has supplied the Mixed Commission with the annual, or semiannual accounts of about 80 different railroads situated in various parts of the world, railroads both large and small, guaranteed and unguaranteed. These accounts were furnished in order that the tribunal might, through inspection and comparison, ascertain, if such was the fact, a general method of railroad bookkeeping and a general placing of certain expenses to the different accounts, as, for instance, working expense, and under that head the respective subdivisions to contain in the revenue account both the income and the expenditures from all the different sources and occasions of each. The umpire has availed himself of this large area of opportunity, and has carefully examined them with reference to the different classes of expenditure and the proportionate charge to capital, gross income, and length of railway. He appreciated at the start that a small railway would have, relatively, a larger charge for oversight and management than a

larger railroad, and the inspection which he has made proves his anticipations to be correct.

From some of these railway accounts he has been unable to determine the length of the railway in miles, and in a few instances he has not been sure of the proper exchange to be reckoned, and therefore he has not taken them into consideration. In regard to the average expense per mile of railway, placed by the different accounts to general charges or equivalent expressions, he has assembled 50 railway accounts, has ascertained the number of miles in each of these 50 railways, and the expense per mile existing under the head of "general charges." The railways so analyzed by him have varied in extent from 21 miles to many thousand. The highest charge per mile under this head has been £274 per mile and the lowest found was £16. The average expense under this head is a little less than £80. There are 34 miles of railway belonging to the claimant company, and at this charge per mile the "general charges" would be £2,720. The "general charges" allowed by the umpire range from £6,070 in 1891 to £3,234 in 1902 and the average expenses per mile from a little more than £172 in 1891 to a little more than £95 in 1902. As the average found for the 50 railways, as above stated, is £2,720 for 34 miles of railway and the average per mile is £80, it is readily to be seen that the lowest allowance made by the umpire is in excess of the average.

The "general charges" allowed by the umpire, as explained in another part of this opinion, divided by 34, the number of miles of railway, giving the expense per mile under that head, will be here stated:

1891	£6,070 ÷ 34 =	£178+
1892	4,861 ÷ 34 =	143-
1893	4,791 ÷ 34 =	141-
1894	5,298 ÷ 34 =	155+
1895	4,549 ÷ 34 =	133+
1896	5,275 ÷ 34 =	155+
1897	4,499 ÷ 34 =	132+
1898	4,273 ÷ 34 =	125+
1899	4,023 ÷ 34 =	118+
1900	3,557 ÷ 34 =	104+
1901	3,535 ÷ 34 =	104-
1902	3,234 ÷ 34 =	95+

This makes for the twelve years an average of £132 to the mile and an average allowance for the 34 miles of £4,488.

The umpire will now name the railways which he has examined and used to obtain this average if "general charges" per mile as hereinbefore stated. He will state the companies both by number and by name. Should he have occasion hereinafter to refer to these different companies or any of them he will employ the number only. These numbers are, of course, of his own adoption, although they correspond to the numbers placed before the different accounts by the secretary of the claimant company up to and including No. 53; thereafter the numbers used by him and by the umpire do not correspond.

- No. 1. The Great Eastern Railway Company.
- No. 2. London, Brighton and South Coast Railway Company.
- No. 3. Great Central Railway Company.
- No. 4. Midland Railway Company.
- No. 5. Great Western Railway Company.
- No. 6. The Great Northern Railway Company.
- No. 7. London and Southwestern Railway Company.
- No. 8. Lancashire and Yorkshire Railway Company.

- No. 9. London, Tilbury and Southend Railway Company.
- No. 10. Breton and Merthyr - Lydfil Junction Railway Company.
- No. 11. Alexandra (Newport and South Wales) Docks and Railway.
- No. 12. Isle of Wight Central Railway.
- No. 13. Great Northern Railway Company (Ireland).
- No. 14. East Indian Railway Company. Guaranteed by British Government.
- No. 15. Assam - Bengal Railway Company. Guaranteed by British Government.
- No. 16. South Indian Railway Company (Limited). Guaranteed by British Government.
- No. 17. The Barsi Light Railway Company (Limited).
- No. 18. Bengal - Dooars Railway Company.
- No. 19. Bengal Central Railway Company (Limited). Guaranteed by British Government.
- No. 20. The Bengal and Northwestern Railway Company (Limited).
- No. 21. Rohilkund and Kumson Railway Company (Limited). Guaranteed by British Government.
- No. 22 to No. 24 inclusive. The Nisam's Guaranteed State Railways Companies (Limited).
- No. 25. Bengal Nagpur Railway Company (Limited). Guaranteed by British Government.
- No. 26. Bengal Company (Limited). Guaranteed by British Government.
- No. 27. Indian Portugal Guaranteed Railway Company (Limited).
- No. 28. Burma Railways Companies (Limited). Guaranteed by British Government.
- No. 29. Demerara Railway Company. Guaranteed by Great Britain.
- No. 30. Quebec Central Railway Company.
- No. 31. Egyptian Delta Light Railway Company (Limited). Guaranteed by Egypt.
- No. 32. Sungoi (Malay Ujong Peninsula) Railway Company (Limited). Guaranteed.
- No. 33. Canadian Pacific Railway Company.
- No. 34. Grand Trunk Railway Company.
- No. 35. New York, Ontario and Western Railway Company.
- No. 36. Missouri, Kansas and Texas Railway Company.
- No. 37. The Mexican Southern Railway (Limited).
- No. 38. The Western Railway of Habana (Limited).
- No. 39. Macuta Railway Company (Limited). Guaranteed.
- No. 40. The Cuban Central Railways (Limited).
- No. 41. Leopoldina Railway Company (Limited). Guaranteed.
- No. 42. The Interoceanic Railway of Mexico.
- No. 43. Espirito Santo and Caravellas Railway Company (Limited). Guaranteed.
- No. 44. Salvador Railway Company (Limited). Guaranteed.
- No. 45. Lima Railway Company (Limited).
- No. 46. The Dorada Railway Company (Limited).
- No. 47. Alegeciras Railway Company (Limited).
- No. 48. Great Southern of Spain Railway Company (Limited).
- No. 49. The Zafra and Huelva Railway Company (of Spain).
- No. 50. Alsoy and Candia Railway and Harbor Company (Limited).
- No. 51. The Ottoman Railway Company, from Smyrna to Aden.
- No. 52. West Flanders Railway Company. Guaranteed.
- No. 53. The Metropolitan Railway Company (Limited).
- No. 54. Bohia Blanca and Northeastern Railway Company (Limited).
- No. 55. Argentine Great Western Railway Company (Limited).
- No. 56. The Northwestern of Uruguay Railway Company. Guaranteed.
- No. 57. The Great Western of Brazil.
- No. 58. The Midland Uruguay Railway Company (Limited). Guaranteed.
- No. 59. The Central Uruguay Railway of Montevideo (Limited).
- No. 60. Buenos Ayres and Pacific Railway Company (Limited).

- No. 61. La Guaira and Caracas Railway Company (Limited).
- No. 62. The Bolivar Railway Company (Limited).
- No. 66. Venezuelan Central Railway Company (Limited).
- No. 69. Atchison, Topeka and Santa Fe Railway Company.
- No. 70. Chicago, Burlington and Quincy Railroad Company.
- No. 71. New York Central and Hudson River Railroad Company.
- No. 72 to No. 75, inclusive. Pennsylvania Railroad Company.
- No. 76. Reading Company.
- No. 77. Baltimore and Ohio Railroad Company.
- No. 78. Erie Railroad Company.
- No. 79. Lehigh Valley Railroad Company.

Nos. 32, 38, 39, 40, 42, 43, 44, 45, 46, 49, 50, 52, 53, 54, 55, 56, 57, 60, 61, 62, 63, 65, 66, 67, 68 were not used in determining the average general charges per mile of railway, either because the mileage was not given or that for some other reason it was not available to the umpire's use in that respect.

Inspection of the accounts of these different railway companies was made for the purpose of ascertaining in detail their charges to revenue account in comparison with the different items so charged by the claimant company. With quite possibly some errors, the following results were obtained:

No. 1. There were no charges to revenue account for depreciation and no charge for renewals as such.

No. 2. There were no charges for depreciation or for renewals as such in revenue account, and general insurance was paid out of net revenue.

No. 3. There were no charges for depreciation or for renewals as such in revenue account.

And the same may be said of Nos. 4, 5, 6, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22 to 24, inclusive, 25, 26, 27, 28, 32, 35, 36, 42.

Of No. 7 the same may be said as of No. 3, so far as revenue account is concerned; but in net revenue there is found a reserve for renewals.

In No. 8 there is no charge for depreciation, but an amount is set aside out of revenue for renewals.

No. 9 sets aside in revenue account an amount for depreciation of locomotives, carriages, and wagons as a special fund, and sums are set aside to renew permanent way, to construct station buildings and to make additions and improvements to stations and signals.

In No. 13 interest was paid on the reserve fund from net revenue, and no insurance was charged against the general revenue account.

No. 30 is destitute of charges, the same as No. 3, and places cost of ballasting, compensating claims, etc., in net revenue.

No. 38 has no charge for depreciation and does not place renewals in current expense.

No. 40 is the same as No. 3 in regard to depreciations and renewals, but places the amount for exchange in net revenue.

In No. 41 it is stated that there is no charge for depreciation of furniture; "it is paid for when it occurs." The loss or profit of exchange is placed in net revenue "when it occurred."

No. 44 has a charge in revenue account for depreciation of furniture and the difference in exchange, but not for renewals.

No. 46 places a charge for depreciation of furniture in net revenue.

No. 47 places a charge for depreciation of furniture, and also a difference in exchange in net revenue.

No. 49 places its loss on exchange in revenue account.

No. 50 charges for depreciation of rails and rolling stock for the year in revenue account; also charges off against that account bad debts, loss on its exchange, and interest on debenture bonds, etc.

No. 51 charges interest, commission, and exchange against the revenue account.

No. 64 charges loss on exchange and furniture depreciation to net revenue, and has no charge for renewals as such.

No. 65 charges loss on exchange and commissions, etc., in net revenue, but has no charge for depreciations or renewals as such.

No. 66 puts loss on exchange in current-revenue account.

If the umpire has not erred in his examination, the following railways are those having guaranties from the British Government, viz: 14, 15, 16, 19, 21, 25, 26, 28, and 29; and if he is not in error there are guaranties by other governments in Nos. 22 to 24, 27, 31, 32, 41, 44, 56, and 58.

The umpire has carefully analysed the accounts of all these companies, excepting a few not easily reducible to pounds sterling, and has compared "gross receipts" with "general charges," as well as "capital expenditure" with the same, and he is made to know from these examinations that the average per cent charged is much less in these companies than is the per cent allowed by the umpire in these two regards in the allowance which he has made for "general charges" during the years over which his inquiry extends, in connection with the claimant company's "gross receipts" and "capital" on the one hand and "general charges" on the other.

The examination of the accounts of these different railways in regard to the class of expenditure which has been regarded as proper to be charged to capital expenditure instead of to revenue account, or even to net revenue, shows that the different companies have had a wide area of plan and method, but that the usual rule is not to charge to revenue account anything in the way of construction, although it may be of a minor character. Among the items charged to capital expenditure taken from the accounts of these different railway companies are found the following, namely: New engines, carriages, gas fittings for carriages, screw couplings for cattle wagons, continuous brake works, additional machinery, additional cartage stock, widening lines, additional works at stations, new docks, enlargement of stations, extension of shops, additional siding, new works, remodeling of goods yard, engine shed, offices, additional improvement of water supply sheds, reconstruction of viaducts, conversion of brakes, automatic machinery, tools for companies' workshops, cottages, enlargement of yards, heating apparatus, lighting, fencing road crossings, increasing waterway, deepening foundation of bridges, repairing damages by floods, ballast and permanent way, bridge of two spans of 30 feet to each span in place of one span of 20 feet, two horse boxes, alterations and additions to tramways, buildings, custom warehouse, surveys, new culverts and cattle guards, medicine chest, engineers' instruments, office furniture, lights, barges, tugs, water service, turntable, receiving shed, drainage, water meters, additions to boilers, paving new yard, oil tanks, water tank, new signals, drinking trough, extension of cross siding, alteration to sidings, extension of telephone wires, installation of electric lights in coaches, new level crossings, bell signals for level crossings, strengthening bridges, renewal of line.

As a part of the documentary evidence introduced by the claimant company are letters from the secretaries of the various South American railway companies for the most part guaranteed, together with a copy of a part of the concession made by Chile to guaranteed railways and the Republic of Uruguay concerning the same.

In the letter of the secretary for the Brazil Great Southern Railway Company (Limited), of date April 28, 1903, he speaks of London office expenses, maintenance of way, works, and station, and repairs of rolling stock as being approved by the Brazilian Government, which Government is guarantor of

that railway in terms very largely like the guaranty in question. It will be observed that there is no statement that renewals of these different kinds of property were either claimed or approved by the Brazilian Government. In regard to exchange he says:

Notwithstanding the great depreciation of the milreis the Government insists upon the accounts being kept at the par value (2s. 3d.).

The Government of Chile gave a railway concession to Mr. Gustave Lenz in 1884, and a portion of that concession is made a part of this documentary evidence. From that part of the Chilean concession which is submitted it is learned that there is a guaranty of 5 per cent per annum, at a certain fixed exchange value, for twenty years on the fixed and certain sum of \$30,000 for every kilometer of the line delivered for public use and that when the net proceeds exceed this 5 per cent the excess goes to the Government treasury to aid in reimbursing the Government for the sums paid out under said guaranty. These net proceeds are settled at 40 per cent of the gross proceeds for the first ten years and at 45 per cent for the remaining ten years. But by far the most important and valuable single document submitted by the claimant company, outside of its own reports and papers, is the document containing the "Regulations for fiscal intervention in railways guaranteed by the State," prescribed by the Republic of Uruguay.

Article 7 of said regulations states the books which the companies must keep for the exclusive service of the bookkeeping relating to the Government, and to that end these requirements are made:

a. The traffic receipts, according to the monthly reports which are sent in from the station, and other operations which may be regarded as receipts from the working of the line.

b. The expenses of working, which will include wages and salaries due to the staff, consumption charges, and those for materials and labor employed in the repairs of the line, and their maintenance in a sufficient state for service.

It is understood that every class of construction which may imply improvements of the line, as also other extraordinary expenses foreign to the working will be considered as capital expense, and consequently ought not on any account to figure in its ledger. (See art. 18 of law of 27th August, 1884, and also arts. 25 to 28, inclusive, to these regulations.)

(The italics are in the original.)

In article 24, under chapter 8, supplementary, there are found the following provisions:

The charges for maintenance and working, to which paragraph *b* of article 9 refers, will comprise:

First. All the ordinary and extraordinary repairs which may be of a necessary character.

Second. Taxes of all kinds paid by the companies to the state, and custom-house duties, should there be any.

Third. The general estimate of employees on salary or by day, including the London board.

There are excepted from these charges:

First. The interest and amortization on arrangements made by the companies, and especially those which the latter may have made for the carrying out of works, in cases where the capital guaranteed by the state has been insufficient.

Second. Amounts invested in favor of establishments which do not exclusively pertain to the working of the railway.

ART. 25. From the working account there will also be excluded the expenses which may pertain to capital account (*cuenta de capital*) and first establishment charges (*primer establecimiento*), as, for example:

The finishing of works, whether noted or not in the official report of the provisional approval of the works or at the time of delivering the lines over for working.

The expenses which may result from works executed in a notoriously defective and insufficient manner, or which may have to be rebuilt or added to within a very short time after opening the line to public service.

Works destined to secure drainage, the construction of which had been delayed until the line had commenced working.

Cuttings which may have to be consolidated and widened.

Embankments whose slopes may have to be cased.

Works situated in the proximity of level crossings (art. 18 of the reglementary decree of September, 1884), and which have not been made before opening the line for traffic.

The erection of palisades or barriers (art. 17 of decree named), the execution of which may have been omitted before handing the line over to public service.

The fencing (art. 30 of the same), which may have been omitted.

ART. 26. The charges more or less directly necessary for the working up of traffic and which, by article 18 of the law of 27th of August, 1884, refer to the *improvements which ought to be computed as net revenue* (should they figure in the accounts) are the following, commissions excepted:

Works for widening stations, laying second lines or sidings, increase of rolling stock, construction of engine sheds, construction of repairing sheds, construction of roofs of goods sheds.

The installation of water stations (*tomas de agua*) for the engine service, with tanks or deposits.

The installation of turntables and cranes in the stations which may not have them at present.

There are also comprised in this category:

All classes of reconstruction, such as larger water tanks, change of turntables, cranes of larger dimensions, and every class of work it may be necessary to reconstruct with new or different materials.

All these changes correspond to capital account.

To avoid a double employment of the account for original installation, the amount corresponding to provisional installation will be charged to maintenance.

ART. 27. The companies will give previous notice to the control office of all classes of work to be executed, whether as repairs or constructions required to keep the line in an efficient state for service, such as works of art in general, raising embankments, ballasting the line, etc., for which purpose they will send the plans of said works and the estimates, with full details, to the control engineers.

ART. 28. Without the previous approval of the control engineer in writing, all works provided for in the foregoing article which may be effected on the line will be considered as improvements, or for the private convenience of the companies, and consequently will not enter into the category of working expenses.

In addition to this documentary evidence and with reference thereto the umpire has consulted the authorities accessible to him which bear upon such matters, and after careful reading and thought he has decided to adopt the following as correctly stating the working basis, viz:

The phrase "net earnings" has been defined as "the excess of the gross earnings over the expenditures *defrayed in producing them*, aside from and exclusive of the constructing and equipment of the works themselves." (23 Am. Eng. Encycl. of Law, 1st ed., 612.)

Citing Bradley, judge, in *Union Pacific Railroad Company v. U. S.*, 99 U. S., 402. Also, citing Belfast, etc., *R. Co. v. Belfast*, 77 Me., 445, where Peters, chief judge, defines the net earnings of a railroad as —

The gross receipts less the expenses of operating the road to earn such receipts.

Interest on debts is paid out of what remains — that is, out of the net earnings.

* * * When all liabilities are paid, either out of the gross receipts or out of the net earnings, the remainder is the profit of the shareholders to go towards dividends, which in that way are paid out of the net earnings. (2 Cook on Corporations, 5th ed., 1165, sec. 546, note 5, citing in said note *St. John v. Erie Railroad*, 10 Blatch., 271 279; s. c. affd. 22 Wall., 136; *Warren v. King*, 108 U. S., 389.)

A distinction quite usually recognized is made in the books between net revenue and net profits. Out of the former floating debts are to be paid and the interest thereon and interest on the funded debts. Out of the former a reserve is made for depreciation and for renewals; allowances for losses are set aside, and all permanent improvements of roads and rolling stock, or of additions thereto, or extensions thereof are paid when not charged to capital expenditure.

On consideration of the evidence adduced and herein referred to, on consideration of the law applicable to such matters herein referred to, and in virtue of his duty to decide all questions submitted in accordance with justice and equity, the umpire decides that in this case the proper test to be used to determine what are or are not working expenses is found in answer to the question, Is it an expense which aided in or was a necessary incident to the production of the gross receipts? Such expenses, when deducted from the gross receipts, will show the net earning for any given year. Whatever of expense, whatever of payment made which does not fall within the fair scope of this test must be charged elsewhere than to working expenses. There may be large net revenues and yet there be no dividends, because of the necessary payments therefrom, and the wise, prudential setting aside of sums of money as reserves for renewals, extensions, and betterments, all which may be provided for, if such be the will and policy of the shareholder, out of net revenues, but none of them are working expenses in the sense to be used here and are not, as against the respondent Government, to be chargeable to the gross receipts. With the plant all provided in advance, did the given expense aid, or was it properly incurred, in gaining gross income? If yea, then it may be rated as working expense; if nay, then it can not be.

In many — indeed, in most — particulars, this has been the plan of book-keeping pursued by the claimant company, but there are some exceptions. The company has reserved out of net revenue a fund to provide for additions to its rolling stock; it has established a renewal fund and has supplied it from the net revenue; it has paid the interest on its debenture bonds out of net revenue; out of the same fund it has cared for its doubtful assets; it has paid its income tax and some of its traveling expenses out of net revenue. But, on the other hand, it has also placed in working expense a certain annual charge for renewal of locomotive and a certain annual charge for depreciation of furniture; it has charged to working expense money paid for insurance of the property of the company; it has charged similarly payments made on account of exchange between Venezuela and England of the money earned by the company in Venezuela; it has charged to this same account all of the expense of the company in England, and during a portion of the time, at least, it has charged to working expenses the cost of its agency at Caracas.

Were it not for the question of guaranty which rests upon net revenue as the determinable quantity of its annual responsibility it would not be of serious importance whether this or that should be placed to working expense or deducted from net revenue; but as the matter stands before the umpire this question assumes great importance.

In the judgment of the umpire it is not what shall be deducted before a dividend may be declared and is determinable by no such standard. It is, what are the revenues in hand for all purposes after deducting that, and that only,

which is properly chargeable to operating expenses? The test which the umpire will employ has already been stated and is found in this expression:

Net earnings are properly the gross receipts less the expenses of operating the road to earn such receipts.

Those expenses of operating which aid or are intended to aid in its earnings, which result from endeavors to earn, or which are essential to the existence of the company are the only expenses to be charged to gross receipts against this guaranty.

Apply this rule to the accounts of the company as presented in the abstracts of expenditure on revenue accounts.

There first appears a charge of "repairs of station and building." It is the opinion of the umpire that there can be no fair question concerning the propriety of this charge. These buildings and stations were furnished as a part of the capital expenditure and now aid in producing the gross annual income; they are one of the means whereby the patronizing public have convenient access to the cars and proper protection for themselves and their freights. Betterments and improvements should not be included, and presumably they are not. The language employed would exclude such. These repairs are necessary to keep up their efficiency, to continue their valued service. Unless these are kept in a fair state of preservation the company would be unable to properly serve the public and must lose at least a measure of its patronage. Having furnished them as a part of its capital expenditure the company may make to them ordinary repairs out of its gross income, because such repairs come properly and easily within the established test.

Then come "repairs and removals to permanent way." Under this general charge is found maintenance, ballasting, clearing landslides, rails, fastenings, and sleepers. If these charges cover only ordinary repairs necessary to the running of the road, they come under the same rule already promulgated concerning repairs to stations and buildings. Examination of some of the early charges, especially for sleepers, rails, and fastenings, excites wonder that so large a sum should be so soon required in the respect named, and suggests strongly that these repairs so soon made might well have been to take the place of unfit materials when first laid down; but no such inference can properly be drawn to be acted upon and the umpire is relieved from any duty in this regard, as the objection of the Government does not rest at all upon such a state of facts, but rests instead upon the hypothesis that as charged they are not proper working expenses. Hence, while if he had the details before him and they were specifically objected to, the umpire might find that some of the items charged under this head were of the nature of betterments and improvements and so not chargeable here; without these details and without such specific objections it remains for him to decide upon the charges as they appear, and as charged he finds that since they are essential to the earnings of the gross income, since the expenditure is incidental to and connected with the continuing efficiency of the plant, since such repairs must have been in the mind of the guarantor as expenses incident and essential to the maintenance of the enterprise, they are properly chargeable to the gross receipts. A similar line of reasoning cares for repairs and renewals of bridges, walls, culverts, and drains, to locomotive, carriage, and wagon repairs, to water supply, to workshop, and to repairs to machinery and tools. The wages of the operatives, employees, foremen, and clerks in these several lines and in the more immediate operation of the railroad do not permit of question, if the guaranty is allowed to rest, not upon the gross income, but upon gross income less operating expenses.

Similar reasons apply to the charge for telegraph expenses. Under the

head of general charges, that which has already been said applies with equal force to the administrator and staff and storekeeper and staff. An efficient superintendence and direction of the energies of the subordinates; a careful prevision and supervision of its affairs are easily most important factors in the gross earning of the company, on the husbanding of its resources, in the safeguarding of its line and of its property, in the marshaling and management of its business. It will be borne in mind in all these matters that no details are before the umpire. It is the general character of the charge alone with which he has to deal. Being such, and such only, he must hold the charge last above referred to be proper and necessary in the development and management of the company's business and as easily passing the established test. For these there must be an office or offices, hence office expenses are allowed; for the conduct of its business there must be stationery, telegrams, and postage, and these are allowed. To incite and procure patronage reasonable advertisement is no doubt necessary, and it is allowed. There must of necessity be some traveling expenses. If the question were as to amount and the details were before the umpire some of the annual charges in this regard might well be carefully examined. For instance, in 1891, when these expenses mounted to £713 1s. 6d., or about £21 to the mile, or over £2 to the day, including Sundays. But there are no details before the umpire and he can only deal with general features. Superintendence of a railroad, care for its line, its properties, and the like require more or less traveling, and they are therefore a proper charge against the gross income.

The umpire understands the charge for medical attendance to be for services rendered to employees and passengers, if accident and injury occur. If this is a correct view, and he has no doubt that it is, then he considers such expense as a wise use of the gross income and as easily passing the adopted test.

Similarly the law charges. No suggestion is made that they have to do with other than the incidental matters which necessarily arise in the operation of a railway from year to year, and they are therefore in aid of its gross income. In protecting the company against unjust claims, in giving advice to promote wise action on the part of its officers, in asking and passing upon its current contracts a good lawyer could and presumably did greatly aid and protect the company, enhance its prosperity, and either increase its earnings or prevent their unlawful diminution. Therefore this charge in the Valencia account passes the required test. "Sundry expenses" and "compensations and allowances" having been before the Government in many annual accounts, and meeting with no specific objection, are rightfully assumed by the umpire to be not open to objection and are rightfully considered by him as containing items in detail not objectionable to the Government and of a character beneficial to the company in aid of its annual receipts or as necessarily incidental to its earnings. It would certainly be unfair to the company to assume to the contrary when the question easily could have been raised and the character of such of those charges as were objectionable have been exploited before him for his consideration and decision.

Under the head "General charges, London," the remarks made under the head of "General charges, Valencia," may be held to apply here, and so printing and stationery, office rent and cleaning, advertisement, postage, and telegrams pass the required test. The Government must have reckoned in reference to such expense when it made its guaranty. The company being a British company it necessarily must have its office in England, hence reasonable rent and care thereof are proper charges. In the absence of proof, or even suggestion, to the contrary, the umpire, in fairness to the company, must hold the presumption that those were in aid of income.

Traveling expenses in England do not appeal to the umpire as susceptible of

any such finding, and, so far as they are specifically stated, he will feel bound to disallow them, as they apparently fail to come within the established test.

The charges for directors, auditors, trustees, and other offices in London are disallowed. It is true that the concession provided for the organization in London of a joint-stock company to construct and to operate this railway. Such being the agreement, there is an assumed contract to permit the necessary and reasonable annual expense attending the corporate existence of such company. This reasonable annual expense must be measured by the importance of the railway and the size of its annual income. It has done a small business only, and the general charges of London and Valencia are too large for the business. Gross income bears pretty nearly all its fair share of the burden when it cares for the services which produce it. This production is all necessarily Venezuelan in its character, quality, quantity, and origin. Management in Venezuela has a direct and important bearing upon gross income. Official service in London is of no value to that income any further than it is essential to the existence of the company. The greater part of these official cares in London deal only with the wise administration of net revenue as between the company and its creditors, between the company and its shareholders, in regard to reserves, renewals, and dividends, and therefore the greater part of such expense should be placed upon the department which causes it or which it serves. The umpire has learned from the inspection he had made of other guaranteed companies, even including those of Uruguay, that some of this expense is allowed as against gross income, and were there only this question to consider he would allow a certain round sum for each year. But he is conscious that he has allowed a considerable amount each under working expense which should have been charged either to net revenue or capital expenditure. He could make no deductions, for he had no details. He has decided to make a set-off of the amount covered by this head to meet such allowances, feeling that thereby he does no injustice and establishes no noxious precedent.

Insurance is for the protection of the capital of the company. It is a wise provision against serious loss of its capital. If fire occurs and destruction follows, the charge for rebuilding, in the judgment of the umpire, could not be placed in working expense as against the Government's guaranty. The means of reconstruction must be found in such cases in net revenue or in capital expenditure. Hence, the annual expense to protect net revenue or capital account must be charged against the account it protects, which is not gross receipts, and it is therefore not a part of working expense. It does not at all aid in the production of gross income. It utterly fails to pass the required test, and as against the Government and its guaranty must be disallowed.

Exchange is subject to the same objection in the main. It is true that so far as it was incurred in payment for stores and for materials and the like, where such payments were made to secure a cheaper article and at a lesser expense, it might well be considered, and might well have been charged as a part of the cost of those materials and stores; and if the umpire had such charges before him properly segregated from the general sum, he would be pleased to allow them. Inspection, however, will determine that, as a rule, the greater part of this exchange was not incurred in the payment for stores from abroad. The whole amount of stores got in all lines in 1891 amounted to £5,410 7s. 6d., and if there be added all of the London general charges which are allowed herein against working expense the sum is £6,341 12s. The balance to net revenue account that year was £32,008 9s. If we add to £6,341 12s. the sum of £1,943 10s., which is the amount disallowed in the London general charges, there is a total sum of £8,285 2s., which added to the net revenue account makes, approximately, the sum sent to London, viz. £40,294 11s. This assumes that all stores

were bought abroad. The share in the exchange expense for such stores that year would be, approximately, as 40 to 5. The whole exchange charged is £140 18s. 9d. The exchange for stores therefore would be, approximately, one-eighth of this, or a little over £17, which is upon the assumption, as stated before, that all stores were bought abroad. If the umpire knew that such was the case he could allow this sum of £17, but as he knows nothing as to where the purchases were made he can make no correct division, and he is again compelled to disallow all, because he has not the details and because, in principle exchange, as a whole, is objectionable as a charge upon working expense. It is a proper charge upon the account which it aids, which is not gross receipts, save as to an inconsiderable and indeterminable part.

In the judgment of the umpire, depreciation of furniture has no more place here than a general charge or several special charges for depreciation of the entire plant. That such depreciation exists, notably as to locomotives, rolling stock, ties or sleepers, rails, bridges, and the like, depreciations which can not be met by repairs, the same as in the matter of furniture, is apparent. None of these, however, are charged to working expense, nor should they be, nor should these be so charged. It is not an expense; it does not represent a cash outlay. It has not, in fact, lessened the gross income. It belongs with other proper reserves, to be set aside by the directors out of net revenue.

As between the income and the shareholder it is well placed; as between the company and its guarantors it has no place.

The same stricture is to be made upon the charge in the locomotive department for locomotive renewals. A proper provision for a foreseen demand is a prudential act; but it is to be so charged off, not as a part of the working expense, but out of net revenue in the reduction of net profits. It may come in before the division of net profits as dividends; but it is not a working expense; it is not a cash outlay; it is a retention of money by the company in its treasury to provide for a cash expenditure some time to be made. It has no place as against the Government as a guarantor.

The charge for the drawing office which appears in some of the accounts does not appeal to the umpire as being a proper charge under working expense. It must have reference to designs or plans for new structures and new property, for betterments, extensions, or improvements of the railway plant. It can not be in aid of repairs of machinery or of plant. So it appears to the umpire, and hence he disallows it. If any part of the charge was for work in aid of the gross income or was a proper charge against it as herein defined, the umpire regrets that it was not more clearly expressed. As it is stated, it is outside of the test adopted and can not be allowed as a proper charge against the guarantor.

As a part of the London expense all law charges are objectionable to the umpire as not being capable to assist in the production, or to protect the production, of the gross income of the company. Undoubtedly these charges were proper as against the company and would be a proper tax upon its net revenue, but they do not seem to have part in working expense as against the guaranty.

A similar conclusion is forced upon the umpire in regard to the Venezuelan agency fees. The work of this agency appears frequently before the umpire in the papers before him as representing the company in interviews with the Government in endeavors to agree with it and to secure from it the amount of the guaranty which the company claimed to be due. Shall the company charge against the Government the expense which it has incurred in such matters? In such case the Government would be bound to determine whether it would be better to yield its contentions at once or to pay the expense of both attack and defense. Clearly this charge had no part in the production of the

gross income, or any part in protecting it, nor was it an incident necessarily connected therewith, but has evidently only to do with what occurs between gross income and subsequent results. To the company it is a proper charge, and the expense was proper, but it is not a proper charge against the Government as a guarantor.

In the London general charges there appears one for inspection of stores, which seems in principle a correct charge against gross income, as it has apparently to do with a proper care for the materials through whose use the income materializes. That it is too much or too little is not the question raised before the umpire. It being in his judgment correct in principle, it is allowed.

Summarizing under this head, the umpire allows as proper working expenses all charges appearing under "No. 7 A, maintenance of ways, works, and stations;" all charges under "No. 8 B, locomotive department," except "locomotive renewals", all charges under "No. 9 C telegraph expenses;" all charges under "No. 10 D, traffic expenses;" all of "No. 11 E, general charges, Valencia," except "insurance, exchange, depreciation of furniture, drawing office, and agency;" all of "No. 12 F, general charges, London," except the first item of "directors," etc., "traveling expenses and law charges." That which is excepted under these general heads are held not to be proper charges against gross receipts as a part of working expense when considered in reference to determining the deficit properly chargeable in any year to the Government under this guaranty.

Neither locomotive renewals, agency fees, nor law charges in London account were in any of the charges prior to the settlement of 1890.

The Government, through its honorable Commissioner, admits a liability of £73,000 10s. 3d. and denies a liability for any sum of a greater amount.

INTEREST UPON THE UNPAID DEFICITS

On the one hand the claimant company demands interest at 5 per cent on each annual balance, and on the other hand all interest is denied. The respondent Government insists that the nonpayment of the guaranty is the fault of the claimant company in denying and resisting the reasonable claims and objections of the respondent Government; that it has always been ready to pay the sum due when ascertained; that there has been no default on its part in fact; that it was the undetermined balance and nothing else; that the courts of Venezuela have always been open for the determination of that balance, that the claimant company as a part of the concession and guaranty had agreed that the Venezuelan courts should settle all matters of agreement before them, and therefore that the delay is the fault wholly of the claimant company and not at all that of the respondent Government, and that therefore interest, as damages, is not to be charged against it; that there is no claim that there was or is any agreement to pay interest.

There is no inconsiderable force to this argument of the honorable Commissioner for Venezuela. The umpire finds that there were just objections to the account as presented and to the claims as made, and he is well satisfied that no interest should be allowed in a punitive sense.

But by the laws of Venezuela interest on overdue accounts may be allowed at 3 per cent when there is no agreement concerning interest in the contract. If interest is to be allowed here, it is on the ground that the claimant company has been without the use of certain sums of money of which use the respondent Government has had a corresponding benefit. Equity would require compensation for such use in order to secure a fair and perfect balance between the

two parties. When the claimant company secured the concession and the guaranty it undoubtedly knew the lawful rate of interest in Venezuela when no rate was prescribed in the contract. If it were then unwilling to content itself with such lawful rate in case of default or delay of payment, it should have secured a stipulation for a more favorable rate. That it did not do this must be taken as sufficient proof that it rested content upon the lawful rate. Again, the respondent Government knew its lawful rate of interest at the time of entering upon such contract of guaranty, and in therein providing that all questions in dispute should be determined by its courts, where only the lawful rate could be considered and adjudged, it in effect secured a stipulation that both of the contracting parties were to abide by the lawful rate. Always since 1896 the attitude of the respondent Government toward these accounts has been as now. During all this time there has been opportunity to the claimant company to have recourse to the courts for a settlement of the questions in dispute. Denial of justice through these courts can not be assumed. That the company preferred instead to obtain its alleged rights through diplomacy and agreement is clearly its privilege; but its action has an important bearing upon the rate of interest to be allowed when more than the law rate is asked. To the reasons which have governed the umpire in his previous decisions upon the rate of interest where there was no agreement that the courts of Venezuela should settle the matters in dispute, there is here added the very important effect of such an agreement upon the question of whether the lawful rate should prevail.

The umpire decides that interest at the rate of 3 per cent per annum, the lawful rate, is to be reckoned from the time when default began to the time of this award. As some time must elapse after the year has closed before the exact conditions can be transmitted to the Government, as a reasonable time must then elapse for inspection, explanation, final audit, and allowance, and as there then must be a reasonable time before, in due course of procedure, the warrant in payment can issue, the umpire fixes as the sufficient time for all this one year after the account closes before default begins.

DIVIDENDS CLAIMED BY THE GOVERNMENT

The respondent Government claims the allowance of dividends on £160,000 up to and including December 31, 1895. Its contract with the Southwestern of Venezuela (Barquisimeto) Railway Company (Limited) making sale of said shares especially reserved such right; hence the purchasing company has no claim upon and no right to any profits which may have been earned in any way, or which may accrue to the claimant company in consequence of the payment by the Government of its guaranty covering the period named. It is inequitable that the purchasing company should be enriched over and above its fair contract in that regard; neither is there equity in permitting the remaining £300,000 of share capital to have all of the profits belonging to the entire share capital to the loss of the respondent Government who by paying its guaranty carries into the company's treasury the profits to be divided. As stated by the learned agent for Great Britain, although it is not a universal method it seems a better one where dividends are to be paid that they be paid to those who are registered as shareholders at the time when dividends are declared.

The reasons for this are such as are stated by the learned agent, and they are controlling in the mind of the umpire; yet there is something very incongruous and manifestly unfair in requiring Venezuela to make good an annual net income based upon the entire capital when £160,000 of this is the property of that Government; to compel it to reckon its liability to indemnify its own

property and still have no interest in the proceeds. The anomaly, the incongruity, and the inequity of this has grown upon the umpire to such an extent and effect that he is impelled through his sense of right and justice to make a more equitable, seemly, and honorable arrangement. He regards it the contractual duty of the respondent Government to make good its obligations to the company to the extent even of paying the entire sum of £41,000. But when the amount necessary to do this in any year is determined, and when all proper sums having been charged off by the directors there appears a clear net profit out of which dividends may be declared, then let it be determined what per cent may be so divided, and ascertain the share of the Government therein upon this £160,000. The sum thus obtained shall be deducted from the amount which otherwise the respondent Government would pay under its guaranty and the remainder shall be the amount due on such guaranty in that year. This will save to Venezuela her equity. It will not harm the Southwestern of Venezuela (Barquisimeto) Railway Company, as it took the shares subject to the right of the respondent Government in the profits of those years; it will do no harm to the claimant company, for it has only to charge off as satisfied the sums which would otherwise be placed to the credit of those shares and make its dividends upon the remaining shares in the same manner and to the same effect as it proceeded to do with the earnings of the company in its action of 1891, where, in accordance with the terms of the settlement of May 26, of that year, the Government waived as a part of the consideration for the concession all interest in and right to the dividends which might be declared out of the net revenues of the company up to and including December 31, 1890. The remaining capital gets all of its interest in the profits of those years, while as concerning Venezuela, serious wrong, injustice, and inequity is prevented. To illustrate, take the conditions of 1892. To obtain the true net revenue for this purpose, as estimated by the umpire, deduct from the amount charged in the claimant company's account for working expenses for that year as follows:

	£.	s.	d.
Locomotive renewals	500	0	0
Paid for insurance	149	15	4
Depreciation of furniture	100	7	10
London expenses, in part	1,873	0	0
Total deduction	3,213	19	2
The working expenses, as stated in the account for that year, are	36,602	2	0
Reduce this by said	3,213	19	2
And working expenses are held at	33,388	2	10
The gross receipts named in the account were	40,473	4	4
Subtract therefrom these working expenses	33,388	2	10
And there is obtained the sum of	7,085	1	6
To this is to be added the sum of	116	1	8
found on the credit side of No. 5 net revenue account for 1892.			
The result is the total net revenue, viz'.	7,201	3	2
On the debtor side of the said No. 5 net revenue account there is charged interest on debenture bonds	23,800	0	0
Income tax	467	0	0
In all	24,267	0	0
which is the sum to be paid out of the net revenue when enriched by the Government's guaranty.			

As soon as the umpire has taken from working expenses, as stated in the company's accounts, the sum of £3,213 19s. 2d., and that sum, less £ 500 for

locomotive renewals, viz, £2,713 19s. 2d., must be added to expenditure of net revenue, as stated in said accounts, viz, £24,267, and there is then a total charge upon that account of £26,985 19s. 2d. The guaranteed net earning is £41,000. Subtracting therefrom the entire expenditures on account of net revenue, viz, £26,985 19s., 2d. and there is obtained the sum of £14,014, which sum is net profits and available for dividends.

This is a little more than 3 per cent on £460,000, the entire share capital; stated more exactly, it is .03046 plus. This per cent calculated upon £160,000, Venezuela's interest in the share capital, and the result thus obtained is the equity of Venezuela in these net profits, namely, £4,873 12s. Toward the net revenue the company contributes the difference between its working expense and its gross receipts, which, as determined by the umpire, is £7,084 1s. 6d. To this may be added £116 1s. 8d., which is found on the credit side of No. 5, as above stated, and there is then had £7,200 3s. 2d. as the sum total of net revenue produced by the company, which, taken from the guaranteed revenue of £41,000, gives the sum for which Venezuela is responsible, viz., £33,799 16s. 10d. From this may be deducted the sum found to be Venezuela's interest in the net profits for that year, viz, £4,873 12s., and in this final remainder of £28,926 4s. 10d. there is expressed the sum for which the respondent Government was liable in 1892. To this sum add interest from December 31, 1893, to the date of the award.

(NOTE. — The £500 for locomotive renewals deducted by the umpire is not added to net revenue expenditure as are the other deductions because (a) unlike them it was not at this particular time an expense, but a part of a fund reserved; (b) when it was in fact expended it was not to renew or even to replace existing locomotives, but to purchase an additional one; (c) it may be properly charged to capital even if expended in renewals in fact during the five years for which the Government remained a shareholder, as the life of an ordinary locomotive is rated above eight years, and no locomotive was in use on this railway until the spring of 1892, and the interest of the respondent Government as a shareholder is reckoned only to December 31, 1895; (d) from all of the facts it seemed inequitable to be added to net revenue expense in order to obtain the respondent Government's interest in the revenue remaining.)

Aside from the years 1891-1895 the several amounts due from the respondent Government on account of its guaranty are ascertained in substantially the same manner as in 1892, as above set forth.

Those in 1891 and 1892 will now be specifically set forth, beginning with the year 1891.

From the working expense as stated by the claimant company in its abstracts of expenditures in revenue account, page 14, 15, 16, and 17, there are to be deducted the following:

	£	s.	d.
Locomotive renewals	500	0	0
Insurance	149	15	0
Exchange	140	18	9
Depreciation of furniture	87	19	4
Drawing office	42	0	7
London expenses, in part	1,943	10	0
Deducting this sum of	2,864	3	8
from the entire working expenses as stated by the company, viz'	32,359	4	3
and there is found the sum of	29,395	0	7
which is the true working expense of that year as settled by the umpire. Deducting this sum from the gross receipts which are	64,267	13	3

	£	s.	d.
and the net earnings are established at	34,872	12	8
The credit side of net revenue contains the items of transfer fees and interest amounting to	55	1	3
which, added, make the total net revenue, viz	34,927	13	11
This sum taken from the guaranty of	41,000	0	0
gives as a difference the sum of	6,072	6	1

The debtor side of "No. 5, net revenue account," year of December 31, 1891, has the following:

	£	s.	d.
Debenture interest	23,800	0	0
Income tax	456	11	0
Traveling expenses	180	0	0

To this must be added the amount taken by the umpire from working expenses, less £500.

	£	s.	d.
Locomotive renewals, viz.	2,364	3	8
and there is found	26,800	14	8
which is the sum to be paid out from net revenue before net profits can be considered. This sum deducted from the guaranteed net revenue of	41,000	0	0
leaves the net profits available for dividends, viz.	14,199	5	4

The per cent per pound is obtained and applied as in 1892, with a result that	4,938	14	0
is to be deducted in behalf of Venezuela from the difference as obtained, viz: from	6,072	6	1
and it is found that	1,133	12	1

is the sum guaranteed for that year by the Government of Venezuela to the claimant company, it being the actual deficit after allowing Venezuela its fair equity in the net profits of that year. As the year 1893 will show a surplus of earnings over expenditures, interest will be allowed on the sum just obtained from December 31, 1892, to December 31, 1893, at 3 per cent per annum, which is, substantially

Making a sum total December 31, 1893, of

The year 1893 was peculiar in that there was no deficit. For this year there must be deducted from the account as stated by the company —

	£	s.	d.
Locomotive renewals	500	0	0
Insurance	166	8	4
Exchange	249	18	9
Depreciation of furniture	91	16	2
London expenses, in part	1,703	0	0

Making a sum of	2,711	3	3
which, taken from the gross expenses as stated, viz.	41,390	4	9
leaves the sum of	38,679	1	6
as the gross expense allowed by the umpire for that year. Reduce the gross receipts for that year, namely	82,488	17	2
by this sum and there is found the net earnings, namely	43,809	15	8
There is to add to these net earnings the transfer fee found on page 12 of accounts, viz.	2	5	0
and there is the total net revenue for the year of	43,812	0	8

There was retained for use a part of the net revenue because the guaranty had not been paid and there was nothing set aside for renewals; hence, in this calculation, to arrive at the equity of Venezuela, no deduction need be made but the whole of the net profits may be used in determining and settling the accounts of Venezuela with the claimant company. The net profits are determined by deducting from the net revenue which is, as last above written, £43,812 0s. 8d., the sum set aside on the debit side of "No. 5, net revenue account for the year ending December 31, 1893," namely, debenture interest, £23,800, income tax, £311 13s. 1d., and the amount taken from gross expenses by the umpire, less locomotive renewals, being £2,211 3s. 3d., making the sum of £26,322 16s. 4d., which leaves as net profits the sum of £17,489 4s. 4d.; in which Venezuela has an equity to the amount of £6,080.

The deficit of 1891, with interest for one year added, as found by the umpire was £1,167 15s. 1d.; to this add the deficit of 1892, £28,926 4s. 10d., and there is a combined sum of £30,093 16s. 11d. From which deficit take the ascertained equity of Venezuela above stated, viz. £6,080, and there is the sum of £24,013 16s. 11d., on which interest at 3 per cent is to be cast from December 31, 1893, to the date of the award.

The guaranty for 1894 liquidates at £11,594 4s. 5d. Interest from December 31, 1895, at 3 per cent, to day of award.

(NOTE. — The reserve for doubtful debts mentioned on the debit side of No. 5, net revenue account, is added in making up the debts to ascertain net profits.)

The guaranty for 1896 liquidates as £4,051 12s. 6d. Interest at 3 per cent per annum from December 31, 1896, to date of award.

(NOTE. — Income tax return is added to transfer fees and interest on the credit side of No. 5, net revenue account, of this year. Balance of the cost of engine No 10, £1,618 13s. 1d., is not added to the debit side. It should be placed to capital expenditures, as against the Government guaranty.)

After 1895 the equity of Venezuela in the net profits ceased and thence forward it is only important to carefully scan and correct if need be, the charges made to working expense.

It appears from the report of the directors in the year 1895 that —

Considerable improvements were effected in improving the waterways and preparations were made to move a portion of the line at Mater Piedra from its present proximity to the river to a position less likely to suffer from floods in the future.

In the report of the directors for 1896 it is said that "the improvements at Mater Piedra, referred to in the report for 1895, have been completed and others are in progress," but examination of the financial statements of both years shows in neither any charge to capital expenditure or to net revenue accounts, and there is no reference to improvements as such under the head of "maintenance of way, works, and stations." Although in fact these expenditures are probably included under that head in each of these years the umpire can only say that if they had been shown to him as so appearing in working expense he would have transferred them in 1895 to capital expenditure as against Venezuela that thereby her equity in the profits might have been protected, and in 1896 to net revenue account as against Venezuela that her guaranty might have been thereby equitably protected.

If their policy be to hold their capital to a fixed sum and to improve gradually and make better the railroad in its way and equipment out of the net earnings of the plant as against its shareholders it is of no particular importance whether these charges are placed against gross assets or net revenue. Against the guarantor, however, it is of importance; and in the opinion of the umpire such improvements can not be made a tax upon the revenue obtained through the

guaranty. The peculiar inequity of any such charge is apparent when, as in this case, there is a guaranty upon a sum which they estimated to be the cost of equipment and construction, but which is in fact an overestimate to the amount of £34,818 1s. 5d., as appears by report of December 31, 1883, and there was unused of this, as appears from the report of December 31, 1902, £21,100 16s. 5d. In the agreement of May, 1901, the claimant company reduced the per cent of the guaranty from 7 to 5, but as one of the conditions and considerations of such deduction it held Venezuela to the letter of the guaranty as to amount. It behoves the company to be careful to respond to the spirit of the original agreement in dealing with betterment and improvements.

Cook, in his work on Corporations, fifth edition, pages 1166, 1167, 1168, 1169, 1170, and notes, as cited by the umpire, is full authority for each and every position taken by him in reference to these accounts. Depreciations, renewals, and reserves as such should never be made a part of the working expenses. All betterments and improvements must be charged upon capital or net revenue, and upon the one or the other as the peculiar conditions of each may require. That any of these should be charged to working expenses is not even discussed. The working principle there suggested is that nothing be charged to capital unless the productivity or earning capacity is by such expenditure increased. Following this principle, Cook places additional equipment a proper charge to capital. Let it always be understood that the umpire does not presume to instruct the claimant company in its method of bookkeeping or in its management of its business. He only is to determine how far those methods are right and just as affecting the guaranties of the respondent Government and its equity as a shareholder in the divisible profits of the company when such guaranty is made good.

In 1896, making from working expenses as charged in the accounts of that year the same character of deductions as made in 1895, in all £3,220 7s., from the working expenses as charged, which were £30,675 19s. 1d., and there is found the true working expense of £27,455 12s. 1d. These gross working expenses deducted from gross receipts, viz, £60,472 18s. 6d, and the net earnings of the year of 1896 are established at £33,017 5s. 5d. This sum deducted from the guaranteed amount, viz, £41,000, shows the sum due from the Government on account of its guaranty to be £7,982 13s. 7d., upon which interest is to be reckoned at 5 per cent per annum from December 31, 1897, to the date of the award.

Proceeding in the same manner as to the accounts of 1897 and the amount due under the guaranty for that year is found to be £17,411 13s. 2d., to which is to be added interest from December 31, 1898, at 3 per cent per annum to the date of the award.

In 1899 the amount due under the guaranty is made less than it would otherwise be by the additional deduction of the amount charged in the account for injuries received at the hands of the revolutionists, which the umpire has disallowed and which therefore must be taken out of the amount. The final result is that £26,896 11s. 4d. is the amount due on the guaranty for that year and interest is to be reckoned at 3 per cent per annum from December 31, 1899, to the date of the award.

The guaranty for 1899 liquidates at £19,245 18s. 10d., and interest is to be reckoned at 3 per cent per annum from December 31, 1900.

The guaranty for 1900 liquidates at £26,769 7s. 4d., to which interest is to be added at 3 per cent per annum from December 31, 1901, to the date of the award.

For 1901 the amount under the guaranty is £32,828 13s. 4d., and interest is to be added at 3 per cent per annum from December 31, 1902, to the date of the award.

For 1902 the sum is £36,967 9s. 6d., and interest is to be added at 3 per cent per annum from December 31, 1903, to the date of the award.

The aggregate sum found to be due from the Government of Venezuela to the Government of Great Britain on account of and for the benefit of the claimant company on account of its guaranty is in the aggregate, as to principal sum, £207,722 11d., and is in the aggregate as to interest £24,022 7s., making the total sum due from the respondent Government to the date of the award £231,794 7s. 11d.

The umpire does not add to this the sum called for on freight account, because if it were to be treated as paid by this award it must be added to the gross earnings of the year 1902, and in that event the guaranteed sum would be made less by just so much as the amount of the freight so added to the gross earnings. If the umpire is not in error, all of the sums for which the respondent Government stands as guarantor it could require the company to earn if it had a sufficient amount of business of its own to equal what otherwise would be the deficit in the gross earnings of the company for any year. Hence it matters not, excepting as there would be in such case increased working expense, and therefore a larger sum to be earned in gross to produce a net of sufficient sum, whether the Government pays for freight and passengers or pays it out as guaranty, only when, as in this case, the working expenses are already charged, and hence are not to be increased, whether the Government pays in terms for traffic or solely upon guaranty.

The award will therefore be made for the sum of £231,794 7s. 11d.

