

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

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**RECUEIL DES SENTENCES  
ARBITRALES**

**Pieri Dominique and Co. Case**

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Should the Government of the United States, either by its neglect in pressing a claim against the foreign government or by extinguishing it as an equivalent for concessions from such government, impair the claimant's rights, it is bound to duly compensate such claimant. *Id.*, sec. 220, vol. 2, p. 566.

On a careful review of the history of this claim from its origin to this day, enlightened by study and reflection, fortified in principle, and controlled by reason, responsive to his conscientious conception of duty, the judgment of the umpire is clear and positive that the compromise arranged between the honorable Governments February 24, 1891, followed by the award of the honorable President of the Swiss Federation, December 15, 1896, were, "acting together," a complete, final, and conclusive disposition of the entire controversy on behalf of M. Antoine Fabiani. Therefore the claim presented before this tribunal, and, on disagreement of the honorable commissioners, coming to the umpire, and there entitled "Antoine Fabiani No. 4," is disallowed, and the award will be prepared accordingly.

NORTHFIELD, *July 31, 1905.*

EXHIBIT IN FABIANI CASE — AWARD UNDER CONVENTION OF 1891

(Exhibit not reproduced. For the original text of the award under Convention of 1891 see Moore's *History and Digest of International Arbitrations*, Vol. V, pp. 4878-4915.)

PIERI DOMINIQUE & Co. CASE <sup>1</sup>

Prevention by the chief of the custom-house at Carúpano of the beneficial use of the tramway enterprise by the claimant was without right and the injuries resulting are properly chargeable to the respondent Government.

Suspension of the tramway traffic by order of the municipal council of Carúpano is equally without right, and the injuries resulting are properly chargeable to the respondent Government through this municipal division thereof.

Suspension of the tramway traffic by order of the municipal council of Carúpano that the private aqueduct company might use its streets to lay the pipe lines of the company whereby serious injury resulted to the claimant must be met with a proper recompense by the city and is here properly chargeable to the claimant Government through and because of said municipality.

<sup>1</sup> EXTRACT FROM THE MINUTES OF THE SITTING OF MAY 12, 1903

The arbitrators proceeded then to the examination of the claim presented by Messrs. Pieri and Nasica, of which the different parties are the object of the following decisions:

The claim of Mr. Nasica, amounting to 1,500,000 bolivars, is rejected by the commission; the claim of the Messrs. Pieri & Co., amounting on the one hand to 3,730,000 bolivars and on the other for acts posterior to May 23, 1899, to 280,400 bolivars, is accepted in its *ensemble* for 600,000 bolivars by M. de Peretti.

The French arbitrator considers that the continual hindrances brought by the municipal authorities of Carúpano to the exploitation of the line of tramways have rendered the latter so difficult that the rescission of the contract ought to be pronounced. In exchange for the indemnity which he demands for the concessionary the city of Carúpano will remain in possession of the line, of the depot, and of the cars which constitute the actual material existing.

M. de Peretti adds that he has been able during his trip to Carúpano to prove that the last war had completely stopped the exploitation; the line, of which the rails have been torn up in several places, is cut in two by four barricades; the depot, which has served as a military hospital, is partly demolished and the cars have almost all been put out of service.

(Continued on p. 140.)

- The defects and faults of the street following and resulting from the laying of these pipe lines by the aqueduct company, after their condition was known to the city and they were accepted in that condition, and which defects and faults resulted in serious injury to the claimant, the damages resulting are properly chargeable to the respondent Government through this municipality, having special reference to the fact that the claimant had resumed use of the streets on the formal statement of the municipality that they were in proper condition therefor.
- The arrest and imprisonment of the claimant on the oral order of the civil chief without warrant, his detention for twenty-four hours in prison, and his subsequent discharge on payment of the jail fee without intervention of court or tribunal of any character is wholly unjustifiable and is a proper subject of indemnity.
- The losses accruing to the claimant through the sale of his houses not being the direct and approximate result of any cause for which the respondent Government is responsible no damages can accrue.
- Because the claimant Government and the respondent Government agreed in the protocol constituting this commission that payment of awards made should be in the 3 per cent diplomatic debt of Venezuela and because that such diplomatic debt has a value at present very much below par, it is urged by the claimant Government that the umpire add a sufficient amount to his award to make it as valuable to the claimant as though the award was payable in gold. This interference with the solemn compact made between the two nations is justified on the part of the claimant Government upon the ground of the inequality which exists between it and the other governments which have recently had arbitral relations with the respondent Government. The arrangement for payment in the one case permitted a long delay in payment, without interest. This arrangement requires immediate payment through its diplomatic debt with interest at a low rate. The inequity, therefore, is not very pronounced, and if it were the umpire regards himself incompetent to make the award suggested.

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OPINION OF THE VENEZUELAN COMMISSIONER

These claims amount to 5,510,400 francs, made up as follows:

	<i>Francs</i>
Claim of Pieri Dominique . . . . .	3,730,000
Claim of A. L. Nasica . . . . .	1,500,000
Claim of Pieri Dominique & Co. . . . .	280,400
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Total . . . . .	5,510,400

In the records of these claims there are connected two claims for indemnity against the Government of Venezuela, presented on the 6th of July, 1895, to

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Doctor Paul is in favor of according only 20,000 bolivars to Mr. Pieri for the destruction of the printing office and 150,000 bolivars for the damage caused to the company of tramways by the last war and for the abandonment which M. Pieri had to make to the municipality of Carúpano of the concession of the tramway, of the depot, and of the material which makes up the exploitation of the said line. He refuses to acknowledge for the interested party the right to an indemnity from the fact of his dispute with the municipal authorities.

Doctor Paul presents the reading of the memoir containing the arguments upon which he bases his opinion. After the discussion, the arbitrators each maintaining his opinion, it is agreed that this claim will be submitted to the umpire.

the governor of Martinique by L. Nasica for the sum of 1,500,000 francs and by Pieri Dominique for the sum of 3,730,000 francs, for outrages committed against their persons and property by the people and authorities of Carúpano, on the 21st of June, 1895. Besides, other documents have been presented according to which Pieri Dominique & Co. claim the sum of 280,400 francs for several acts originated by the war during the years 1901 and 1902 in the city of Carúpano, and which, it is alleged, caused damage to the Tramways Enterprise, the property of Pieri Dominique.

Paragraph 3, article 2, of the protocol of Paris, dated the 19th of February, 1902, provides —

that, if several claims for indemnities based on different facts are presented by the same claimant, and one of them is in the case of being submitted to the proceeding established in article 2, the other shall be added to it to be the object of one only settlement.

The two claims for indemnity presented by Pieri Dominique are based, the one on facts that took place in the years 1895 to 1896 and the other on different facts occurred in 1901 to 1902; but as the former is in the case of being submitted to the proceeding established in article 2 of the protocol, the latter must be the object of the simultaneous examination of this commission, that one same decision may be rendered concerning both of them.

The claim of A. L. Nasica is based on the following:

Annex No. 55:

	<i>Francs</i>
1. The destruction of a printing press and the robbery of all the material and merchandise . . . . .	600,000
2. The blows and wounds received . . . . .	600,000
3. The physical and moral sufferings undergone on account of the persecution of which he was a victim . . . . .	300,000
Total . . . . .	1,500,000

That of Pieri Dominique:

	<i>Francs</i>
1. The abandonment of the Tramways Enterprise, the exclusive privilege of which was to last 38 years and the average revenue of which, taking as a basis the progressive increase, may be valued at 80,000 francs a year . . . . .	3,000,000
Annex No. 55:	
2. Damage done on the day of the outrage, destruction of the printing press, of a large part of the tramway material, robbery of different objects, and demolition of a part of the immovable . . . . .	70,000
3. Forcible and difficult realization, in view of the absolute want of security, of twelve houses, the yearly rent of which is 9,000 francs . . . . .	300,000
4. The physical and moral sufferings, traveling expense, and residence out of Venezuela, far from his family . . . . .	360,000
Total . . . . .	3,730,000

The evidence presented with regard to the facts to which these two claims are confined having been examined, it is found: That Pieri Dominique bought this enterprise at a public auction on the 8th of May, 1891, in the town of Carúpano, from the liquidator of the joint stock company, "Tranvias de Carúpano," for the sum of 38,500 bolivars. Pieri Dominique continued the exploitation of the Carúpano Tramway without any obstacle until early in March, 1895, when he desired to build a branch line to have wagons pass before the custom-house, and carrying out this purpose, he laid the rails; that this being done, the collector of customs, who was absent from the place, notified him on his return from Caracas, of the order to remove the rails, because they

obstructed the traffic indispensable for the operations of the customhouse; that at the same time the municipal council ordered Pieri to stop the works he was doing on the tramway line until after the commission of surveyors appointed to that purpose should report as to whether said works did or not interfere with the free traffic; that Pieri obeyed the order of the council and even requested it that the commission appointed should be at once directed to examine the points of the line that he would indicate and that required to be repaired in order to render traffic comfortable and secure; that the commission rendered its report and expressed the opinion —

that the portion of the line lying between the wharf and the custom-house must be restored to its primitive state — that is to say, to that in which it was before the contract with Messrs. D. Pieri & Co. had been entered into; that the municipal council approved said report and ordered the same to be transmitted for their compliance therewith to D. Pieri & Co., said company being free to establish the branch line in the lower part of the mound, which it was its duty to previously bring to the knowledge of the council, as well as any other reformation it might in the future pretend to make on the general line.

It also appeared to be proved that Pieri Dominique, who considered himself prejudiced in the rights granted him by his concession, *did not proceed to adduce those rights in a contentious action before the competent tribunals of the State*, in conformity with article 8 of his contract, but on the 10th of June, 1895, he issued a flying sheet, entitled: "To the public and to justice," in which he qualified in insolent terms the action of the collector of customs and of the municipal council; that a few days after, Pieri Dominique, being associated to A. L. Nasica, placed him in charge of the direction of a printing office he had in the same house of the tramway station, and there the first issue was edited of a newspaper entitled "El Eco del Oriente," which contained an editorial article written by Nasica, offensive to the local constituted authorities and especially depressive for the people of Carúpano; that on the 21st of June, two days after the appearance of said newspaper, the place where the printing press was was invaded by a group of people, who had a quarrel with Nasica, the result of which was that the types of the printing press were thrown to the street, as well as its materials; that Nasica fled with some confusion; that Pieri hid in the house of a friend, and that both of them cautiously embarked two or three days after for the island of Trinidad.

The alarm consequential to these occurrences, which assumed an especially serious character for the numerous French colony, that, as is well known, forms the principal portion of the merchants of Carúpano, gave occasion to the fact that, the very day said occurrences took place, said colony published a manifestation signed by its principal members (Annex No. 57), in which the following protest was made:

And as those assertions (those copied from the editorial article of the first issue of *El Eco del Oriente*) are absolutely untrue, as far as the French residing in this region of the Republic are concerned, we, as citizens of France, declare that far from being the objects of hatred and persecutions we have been treated by the authorities of the nation, of the state, and of the municipalities, with the same consideration they bestowed upon us before the lamentable interruption of the diplomatic relations between Venezuela and our beloved native land. We make this protest because we believe that man must, in all the acts of his life, profess fealty to truth and justice.

On the same date another manifestation was published, signed by the same French citizens, together with some Venezuelans (Annex No. 57) in which it is stated:

The undersigned, French and Venezuelan citizens, believe it to be their duty to make it to appear that we are satisfied with the actions and conduct of Gen. Froilan Caliman, the collector of customs, in the maritime custom office at this port, who, without departing from the route of the law, makes efforts to contrive the means of facilitating our operations with said office, for which reason we recognize in this official a good servant, who tries to maintain the national Government the confidence of which he enjoys, in high repute; and we are persuaded that his presence at the post he holds constitutes a guaranty for our interests and a security for the honest merchants of the East.

The aforesaid protest and manifestation are signed by, besides other respectable members of the French colony, Messrs. Franceschi & Co., Joucla & Co., Rafalli Hermanos, Augustin Lucca & Co., A. Vicentelli O., Vicentelli & Santelli, Federico Benedetti, Andres Pietri, and Juan A. Auberon, and it is to be observed, as a very especial circumstance, that Messrs. Franceschi & Co. were at the time partners of Pietri Dominique & Co. in the enterprise of the Tramway of Carúpano.

It appears proved by the investigation made by the consular agent of France at Carúpano, by order of the vice-consul of the same nation in Caracas, and by the answers given to said consular agent by Messrs. F. Benedetti, Dr. B. Bermúdez, J. Blascini, F. Massiani, Santos Ermini, J. Vicentelli O., and Joaquin Hiques (Annex D No. 7):

First. That a mob penetrated the house where Pieri's printing press was and threw all the utensils of the printing press into the streets.

Second. That the enterprise of the Tramway suffered nothing by that event, it being untrue that a part of the tramway station was destroyed.

Third. That what happened to Pieri's printing press was due to an insulting and degrading editorial article of the paper edited at said printing office and directed against the local and national authorities and the citizens.

Fourth. That it was the people who, in a moment of indignation against those who injured it, exercised that vengeance.

Fifth. That it is untrue that the mob went to and entered the private house of Pieri Dominique.

Sixth. That no superior official of the custom-house, no member of the municipal council, no local authority was among the assailants of the printing press.

Seventh. That the police only arrived too late at the place where the event took place and that it did not know how to show the energy or the activity necessary to prevent the disorder.

Eighth. That Pieri and Nasica were hidden for two or three days in a private house and then abandoned the country, going by land via Rio Caribe and Yaguaraparo.

Ninth. That there was no arrest and no investigation made by the local authorities; and

Tenth. That, in view of the condition of the printing press, that was worked by the hands and the long time it had been in use those who knew it only give it a value of 4,000 francs.

For the best appreciation of these events the Venezuelan arbitrator considers the definition given by the vice-consul of France in Caracas in an official note dated the 5th of May, 1896, addressed to his excellency Mr. Hanotaux, the minister of foreign affairs of France, of the character of the two parties interested in the claim, Messrs. Pieri and Nasica, in the following words:

Mr. Pieri has a pretty great natural intelligence, very little instruction, an iron temper, and an obstinacy equal to his temper. He possesses a most inveterate sentiment of property, and openly resists whomsoever violates his rights, and that

with very little patience, for his violent temper is not guided by learning or prudence.

Mr. Nasica is little recommendable a personage, who puts his intelligence and learning to the service of all his vices. Wherever he has been he has left victims.

And further on the same note says:

As Mr. Pieri had a printing press, Nasica, who has an easy pen, advised Pieri to establish a newspaper to defend his interests and those of the colony. No member of the colony approved this idea, but Mr. Pieri, mastered by Nasica and feeling aggrieved in his interests, accepted the proposal, and *El Eco del Oriente* was established. The terms of its articles are very violent and could only be permitted to the natives.

The opinion expressed by the vice consul of France regarding Nasica is ratified in more vivid colors in the statement made by Mr. Jean Toussaint Santi, a proprietor at Ajaccio (Corsica), before the minister of foreign affairs of Venezuela on the 18th of August, 1895, a copy of which is inserted in these records. Santi states therein —

that he knew Nasica as being a man capable of all the acts of meanness that a perverse mind might perform, and that he knew, moreover, that he belongs to a family of outlaws and criminals.

It does not appear in the records that Nasica took any other step after he presented, in company with Mr. Pieri, to the governor of Martinique his claim for a part of the indemnity, amounting to 1,500,000 francs, in which he entered as pertaining to him the same printing press pertaining to Pieri and valued it at the sum of 600,000 francs. After having taken into consideration all the foregoing statements, which are proved by the records, the Venezuelan arbitrator is of opinion that the destruction of the printing press of Mr. Pieri Dominique was the deed of a popular vengeance against those appearing responsible for the injurious writings of the newspaper which was edited in said printing-press; that the enterprise of the tramway did not sustain any damage through those occurrences, and it appears from the records that the service of the enterprise was not interrupted; that the damage done to Pieri by the destruction of the printing press does not exceed 4,000 bolivars, and that for said damage only the authors of or accomplices in the aggression were responsible; that this responsibility ought to have been alleged in pleading by the owner of the printing press against those condemned as authors of or accomplices in the facts occurred on the 21st of June, 1895; that the want of energy, of which the police gave proofs, to stop or prevent the aggression of the mob, and the omission on the part of the competent authorities to have the preparatory proceedings instituted in order to prosecute the respective criminal suit against those appearing to be guilty, render them liable to responsibility for noncompliance with their duties; that it must also be taken into consideration that the conduct of Pieri and Nasica renders them largely responsible for the provocation that gave rise to the popular mob.

Appreciating in a spirit of justice all these circumstances, the Venezuelan arbitrator is therefore of opinion that the largest indemnity to be allowed to Pieri Dominique for the destruction of his printing press and the damages which were the consequence thereof is the sum of 20,000 bolivars, and he hereby allows it for this respect.

In regard to the other facts and consequences alleged by the claimant relative to the enterprise of the tramway, to the abandonment thereof, the forcible and difficult disposal of the houses pertaining to him, and to moral sufferings proceeding from his being far from his family, they are destitute of all ground and proof and are inconsistent to serve as the basis of the claim he pretends.

Far from proving that Pieri Dominique abandoned his enterprise on account of the events of the 21st of June, 1895, the documents produced show that the tramway continued to run without interruption immediately after those events and that the exploitation of the business was continued for several years; that Pieri Dominique returned to Carúpano in March, 1896, and resumed the management of his enterprise without any menace or aggression against his person; that according to the avowal made by Pieri before this tribunal, as appears from the records of the proceedings of the sitting of the 9th instant, Pieri bought five or six years ago — that is to say, after the occurrences of the 21st of June, 1895 — from the firm of Franceschi & Co., which was associated in the enterprise of the tramway, the interest of the latter in the business for the sum of 24,000 francs, which fact evidently proves that the assertion is groundless that Pieri was compelled to give up the enterprise, for the abandonment of which he claims the sum of 3,000,000 francs.

The questions arisen between the municipal council of Carúpano and the enterprise of the tramway on account of the drawing of the line, of the construction of the waterworks and the breaking of a bridge by the rains, which have been alleged to show the animosity of the authorities against the enterprise, do not absolutely prove that attitude. These questions are those that ordinarily occur between municipal corporations and the enterprises directly connected with the traffic and public works in the streets of a town. The local laws and the contracts provide the manner in which they are to be determined, the interested parties applying in due time to the competent judicial officials. It appears from the records that Pieri Dominique abstained from following the procedure established by the laws and by his contract and accepted the facts, continuing the exploitation of the tramway under the conditions and circumstances that were the result of the report of the commission of surveyors and of the orders of the municipal council of Carúpano. As regards the construction of the waterworks, if they temporarily prejudiced the interests of the tramway company, it had an action against the joint stock company "Acueducto de Carúpano," of which Mr. Vicente Giuliani Franceschi, a member of the firm Franceschi & Co., associated in the enterprise of the tramway, was the president. (Annex 50.)

For all the reasons aforesaid the Venezuelan arbitrator considers entirely groundless the claim for indemnity entered by Pieri Dominique against the Government of Venezuela, as far as it concerns the enterprise of the tramway of Carúpano up to the 23d of May, 1899, amounting to the sum of 3,660,000 bolivars.

Posterior to that date it appears proved that from March, 1902, on account of the several attacks that the town of Carúpano has suffered on the part of revolutionary troops and of the National Government the enterprise of the tramway has sustained damages, its traffic having been completely interrupted; that at several points the rails have been forced out and the line cut by barricades; that the draft animals of the tramway were taken by the military forces commanded by Gen. Calixto Escalante; that the wagons and carts have sustained deteriorations and are unserviceable on account of the occupation of the station and depot buildings by troops of the government quartered therein. It also appears proved that Pieri Dominique is compelled to abandon, *as he did*, the exploitation of his contract by the circumstances narrated and that in virtue of that abandonment *he has offered before the legation of France* to leave the depot building, the rails, wagons, and all the materials and implements used in the exploitation to the benefit of the municipal council of Carúpano, putting an end to the concession and waiving any claim that might derive therefrom in his behalf. Appreciating in their just value *the damages sustained* by the enterprise *from the interruption of the traffic in March, 1902, and the seizure of its*



*animals up to the last occurrences* the equitable and proved value of the materials, deposit, and all of that constituted its working capital, which, as appears from the records, cost for Pieri the sum of 62,000 bolivars, as well as of the other circumstances which represent for Pieri the gain frustrated of his enterprise, and in view of the circumstances under which the town of Carúpano had been placed, on account very especially of the continued revolutions which from four years ago have rendered that kind of enterprise almost unproductive, even in towns like Caracas, which have not been the theater of deeds of arms, the arbitrator is of opinion that the largest indemnity that may be allowed to Pieri Dominique for all those reasons is the sum of 150,000 bolivars.

As to the claim of L. Nasica for the sum of 1,500,000 francs, Nasica having no right to the printing press destroyed, no share pertains to him in the indemnity allowed for said destruction; and as the other particulars on which he bases his claim for indemnity are entirely groundless and show by themselves the indecorous condition of this claim, it is absolutely disallowed.

In short, the Venezuelan arbitrator is of opinion that as full indemnification the sum of 170,000 bolivars should be allowed to Pieri, with the declaration of his abandoning in favor of the municipal council of Carúpano the concession of the tramway, the depot, the stock in hand, and all the material of exploitation.

CARACAS, *May 12, 1903.*

NOTE BY THE VENEZUELAN COMMISSIONER

*Francs*

This claim, in its part concerning Pieri Dominique & Co. and Pieri Dominique, for the sums of . . . . .	3,730,000
and . . . . .	280,400
Total . . . . .	4,010,400

was accepted by the French arbitrator for the sum of 600,000 bolivars, rejecting the claim of Nasica for 1,500,000 francs. The part relative to Pieri was, therefore, referred to the decision of the umpire.

CARACAS, *the date above written.*

OPINION OF THE FRENCH COMMISSIONER

As is shown by the minutes of the session of the mixed commission of May 12, 1903, the Venezuelan and French arbitrators have both considered that Mr. Pieri had presented a well-founded claim and that he was entitled to an indemnity. But Doctor Paúl and myself have differed in opinion upon the amount of this indemnity. While I have reduced to 600,000 bolivars the sum of 4,010,400 bolivars claimed by the party interested, my colleague has reduced it to 170,000 bolivars. It is to be noted that the Venezuelan arbitrator, in conformity with the opinion of the French arbitrator, has pronounced, like him, the rescission of the contract which bound the contractor to the municipality of Carúpano to abandon to this latter in exchange for an indemnity "the concession of the tramway, the depot, and the material which constitutes the exploitation of the line". Doctor Paúl is then convinced that Mr. Pieri finds himself, not through his own fault, but because of a position he has been compelled to assume, unable to recommence work in his concession, and this inability, in my opinion, is not due to a state of war. It is solely based upon the malevolence of the municipality of Carúpano and the determination of the authorities of the State and the city to deprive Mr. Pieri of a concession they wish to operate themselves. At the time of my visit to Carúpano I was able to prove *de visu* that the last war had completely arrested the exploitation; the

rails had been torn up and in several places had been cut in two by four barricades. The depot, which had been used for a military hospital, was partly demolished by shells, and the cars had nearly all been put out of service, but all these damages were reparable.

Since March, 1903, Carúpano has been cleared of revolutionary bands. Since the month of July last the present Government has finally triumphed over the revolution and caused peace to reign throughout the Venezuelan territory. Dossier No. 8, prepared after May 12, 1903, proves that Mr. Pieri was not able to take up the exploitation of his enterprise because of the hostility of a part of the population, hostility which has the same causes as the malevolence of the State and municipal authorities, if indeed the latter does not explain and has not created the former.

Why, then, after having recognized implicitly the impossibility of Mr. Pieri's renewing the exploitation, does Doctor Paul refuse "to acknowledge for the interested party the right to an indemnity, from the fact of his dispute with the municipal authorities," when the said "disputes" (*démêlés*) have truly caused this impossibility? Moreover, does not this refusal, following the payment of the indemnity of 170,000 bolivars for damages caused by the incident of 1895 and the civil war, show clearly that even in the mind of the Venezuelan arbitrator the 170,000 bolivars do not represent an indemnity sufficient for all the damages of every nature to which Mr. Pieri was subjected, including the loss of the concession?

In fixing at 600,000 bolivars the indemnity to be accorded to Mr. Pieri, who claimed 4,010,400 bolivars, I have desired to accord him a sum which might represent exactly the material damage which has been caused him. I have not wished to increase it by a special indemnity which would be of a penal character for the State and municipal authorities. The latter, however, would have merited it because of the stubbornness with which they have unjustly pursued and tormented a citizen stranger, the possessor of a perfectly regular contract. It seems from numerous authentic pieces of evidence contained in the dossier and from information that I have gathered on the spot that the enterprise of the tramway of Carúpano has brought in and can bring in for the future to the concessionary from 30,000 to 40,000 bolivars a year. If one does not take into account the high return of money in Venezuela, more than a million of capital should be allowed to Mr. Pieri. On the other hand, it is well to remark that according to the common opinion of the two arbitrators Mr. Pieri ought to abandon the concession to the municipality. The latter will be anxious to exploit it, and the benefits which it will receive will represent almost exactly in capital the indemnity accorded to Mr. Pieri. Venezuela would thus withdraw without disadvantage from the unfortunate position in which the actions of the local authorities of Carúpano have thrust her.

Finally, it is to be considered that according to the terms of the protocol this indemnity must be paid in bonds of the diplomatic debt and not in gold. From the fact of this concession consented to by the French Government to permit the Venezuelan Government to settle its debts with greater ease the amount of the indemnity is found to be really reduced. The real amount of these bonds is far, at this time, from reaching half their nominal value. The granting to Mr. Pieri of an indemnity of 600,000 bolivars would then permit the Venezuelan Government to free itself for 240,000 or 250,000 bolivars from a claim the settlement of which would assure to the Venezuelan administration an annual income of 30,000 to 40,000 bolivars.

MARCH 25, 1904.

## ADDITIONAL OPINION OF THE VENEZUELAN COMMISSIONER

I must call the honorable umpire's attention to the fact that when I agreed in the opinion of the French commissioner declaring the rescission of the contract binding the claimant to the municipality of Carúpano, and the abandonment to the latter, for an indemnification of the concession, such as it is, the deposit made and the materials destroyed or damaged, for which in my opinion I stated that Mr. Pieri should also be indemnified, I was not prompted by the fact, as the French commissioner avers, that I was convinced —

that Mr. Pieri finds himself, not through his own fault, but because of a position he has been compelled to assume, unable to recommence work in his concession, and —

that inability is not due to a state of war, adds my colleague, but is solely based upon the malevolence of the municipality of Carúpano, and the determination of the authorities of the State and the city to deprive Mr. Pieri of a concession they wished to operate themselves.

In my written opinion read at the meeting of May 12, 1903, which, translated into English, I submit herewith to the honorable umpire, there is nothing whatever to show the conviction ascribed to me by my learned colleague, and I can not let such statements go unchallenged, as such motives are entirely foreign to the reasons I had to form my opinion in this case.

I have declared the rescission of the contract between Mr. Pieri and the municipality of Carúpano, because from the statements made by Mr. Pieri in his claim, his decided will to discontinue the operation of the Carúpano tramway is clearly shown, and because about the time the claim was entered (February, 1903) and at the time we — the two commissioners — rendered our decision (May 12, 1903), Carúpano was in a state of siege because of the continuation of the revolutionary movement led by General Rolando, which ended in July, after the attack and capture of Ciudad Bolívar. These facts are universally known.

I have endeavored, in my opinion, since Mr. Pieri showed his purpose to abandon the operation of the tramway and in view of the fact that the circumstances at the time did not permit the immediate renewal of the operation of the line because of the seizure and destruction of the materials, to conciliate the private interests of the claimant and his manifest will to abandon the business, with the interests of the community, which could not be left at the mercy of a person who, during his intercourse with the local authorities, had shown himself not to be animated by a conciliatory spirit, but, on the contrary, by the earnest desire to constantly provoke disagreements and scandals.

To estimate the amount of a just indemnification, I have used the data furnished by the documents submitted on the real cost of the business, the value of the building or depot and that of the rolling stock, cars in use, and animals. I have not estimated any exaggerated, imaginary, or eventual profits, because the determination of Mr. Pieri to discontinue the operation of the tramway line plainly showed that the business does not yield profits, but losses, because of the decline of business in Venezuela by reason of continued revolutions and the considerable falling off in price of the principal export product of the country. In proof of this, there is the fact that the two tramway lines existing in Caracas, where there has been no fighting and where there is a population of 80,000 inhabitants, have not been able to pay dividends to their stockholders for the last four years, and that the stock is quoted below 50 per cent.

The decided purpose the French commissioner ascribes to the authorities of the State and the city of depriving Pieri of the grant they wish to operate them-

selves does not seem to have other foundation than the statement made by the French consular agent in a communication to his minister in Paris February 10, 1897, to the effect that General Rolando, then President of the State of Bermúdez, had made Mr. Pieri a proposition to buy the tramway for a sum in the neighborhood of 35,000 francs. General Rolando ceased to be the chief authority of the State of Bermúdez eight years ago, and it has not been established that the authorities which succeeded him in the State and city of Carúpano have desired either to buy or to take the business. The sum of 35,000 francs which we are told General Rolando offered during an era of peace and prosperity in the State of Bermúdez being far below the sum I have granted, plainly shows how exaggerated is the estimate made by my learned colleague, fixing in the sum of 600,000 bolivars the indemnification of Mr. Pieri.

I had not in mind, as my learned colleague implies in his brief, when I declared for the abandonment by Mr. Pieri of the tramway concession to the municipality, that the latter would hasten to operate it and that the profits derived from such operation should approximately represent the indemnity granted Mr. Pieri. Far from this, my sincere belief which no one can suspect of being biassed, is that under the present condition of business in Venezuela, and especially in the towns of the eastern section of the country, which have suffered more than any others from the effects of the last revolution, the operation of a tramway line in a town like Carúpano is unproductive and that neither the authorities nor the municipality of that city have any interest whatever in becoming the owners of such line. I make this statement, in case the honorable umpire should in his award deem it more equitable for both parties that Mr. Pieri continue the operation of the concession of the Carúpano tramway, since he now desires it, during the years his contract has to run and to limit the indemnification which should then be granted to him to the value of the mules and material either lost or damaged by the Government forces during the military operations of the last war.

This statement, which I make as the commissioner for Venezuela, is the more indispensable, as in the latest brief submitted by the French commissioner it is not only stated, but affirmed, that according to evidence obtained after May 12, 1903 — date of our respective opinions — Mr. Pieri has been prevented from renewing the operation of the tramway because of the hostility shown by a portion of the inhabitants of Carúpano. While this assertion has no other support than the word of the party concerned and lacks corroboration by trustworthy evidence to give it weight, it shows the intention to convey to the mind of the honorable umpire an impression different from the true situation which the Carúpano tramway concern occupies as a profitable business in order to obtain a compensation for future profits entirely unjustified. On the other hand, the notes and letters appended to the brief of the French commissioner, as Exhibit 8, deal with facts subsequent to May 12, 1903, when the two commissioners investigated and rendered their decision on Mr. Pieri's claim, and the production of the same at this time before the honorable umpire is contrary to the rules of procedure governing this commission, since it can not deal with facts other than those which have taken place, according to the extended jurisdiction granted by paragraph 2, article 2, of the Paris protocol, up to the date of the 23rd of May, 1903.

I must take advantage of this opportunity to challenge the statement made by the French commissioner at the end of every one of his briefs of the fact that, according to the terms of the protocol, the indemnities awarded by this commission are payable in 3 per cent bonds of the diplomatic debt, and that from this concession granted by the Government of France to that of Venezuela to facilitate the payment of the latter's debts, it appears that the amount of

the indemnity is greatly reduced at present, as the real value of said bonds is not one-half of their nominal value. The honorable umpire will find on page 499, Venezuelan Arbitrations of 1903, Ralston's Report, in the case of the Decauville Company before this same commission,<sup>1</sup> my opinion as the Venezuelan commissioner, altogether rejecting the claimant's contention that an allowance should be made to compensate for the lowest cash value the bonds of the diplomatic debt might obtain. The French commissioner, in his decision, concurred in my opinion, by which it was acknowledged that the commission had no jurisdiction to alter or change the method of payment established by the protocol, by advancing theories which might affect the nominal value of the bonds of the diplomatic debt, as such method of settlement on the part of Venezuela of the sums awarded by the commission was a matter exclusively concerning the two contracting parties and in no wise subject to the jurisdiction of the arbitration commission, called upon to examine only the proofs of the facts and the justice and sound foundation of the claims for indemnification, estimating the measure of damages by the established proof of such damages and not by the kind of money, whether cash or bonds, in which Venezuela is to discharge the awarded liability.

In regard to the other points covering my estimation of the damages which I deem justified in the claim of Mr. Pieri, the liability affecting the Venezuelan Government by reason of certain established facts and the amount of indemnity I have granted for the abandonment or rescission of the tramway contract, taking into consideration the value, as appearing from the proofs, of such business and the fair compensation for the price of the concession as an industrial investment, I hereby ratify in all its parts my opinion of May 12, 1903, whereby I allow for all indemnification the sum of 170,000 bolivars.

NORTHFIELD, VT., *February 8, 1905.*

#### ADDITIONAL OPINION OF FRENCH COMMISSIONER

After having read the additional opinion of my honorable colleague, I can only maintain the conclusions of my memoir. I think I ought, moreover, to make the following observations:

My honorable colleague declares that in his opinion one can not raise anything which indicates his conviction that Mr. Pieri finds himself, not by his own fault, but from the fact of the situation which is thrust upon him, unable to renew the exploitation of his concession. It is, however, it seems to me, the logical conclusion which can be drawn from the decision rendered by Doctor Paúl. If he does not have this conviction, why has he accepted the rescission of the contract which I have judged equitable and necessary? It is not, I imagine, merely to be agreeable to Mr. Pieri. It is really because my honorable colleague has thought, as I have, that the position of the claimant was such that circumstances independent of his will prevented him absolutely from renewing the exploitation of his concession. Only Doctor Paúl is of the opinion that the ruin of Mr. Pieri is due merely to the hindrances which the revolution has placed in the way of the exploitation, while I consider that to these hindrances has come to be added the open and declared hostility of the Venezuelan authorities which was manifested repeatedly several years before the commencement of the revolutions.

If one refers to the text of the minutes of the sitting of May 12, 1903, he may read there the phrase which I have cited. Doctor Paúl "refuses to acknowledge for the interested party the right to an indemnity from the fact of his dispute with the municipal authorities." I have the right to conclude from this that the indemnity accorded by Doctor Paúl represents merely the damages caused

<sup>1</sup> *Supra*, p. 15.

by the revolution and is not a sufficient compensation for the losses sustained by Mr. Pieri. It is sufficient to review the dossier to note the fact that from 1895 to 1899 — that is to say, during a period previous to the revolution — Mr. Pieri was the butt of continual persecutions from the Venezuelan authorities. At every moment they stopped his tramways under different pretexts, they created difficulties for him at pleasure, they chose as if by chance the place where the tracks were established to pass canals which they might have placed farther away, etc.

The umpire will be able to convince himself of these facts by perusing the dossier. It is these repeated manifestations of the municipality of Carúpano which have convinced me that the latter wished to exploit itself the line of tramways, and that it was trying by all possible means to dispossess the concessionary. I have nowise been brought to this opinion, as my colleague thinks, by the fact that General Rolando offered to purchase the concession for a sum of 35,000 bolivars. This offer is but one proof the more in support of my opinion, but it has not been the determining proof. Doctor Paúl concludes, moreover, from this amount that the concession was not worth more. But it is well to remark that the proposition of General Rolando was not followed by any result, Mr. Pieri having without doubt judged the offer to be derisory; it is clearly seen that according to the documents contained in the dossier this sum of 35,000 bolivars represents the income which the enterprise of the tramway might yield annually.

The documents presented after May 12, 1903, have no other end than to demonstrate that there exists in fact a declared hostility against Mr. Pieri, since peace has now reigned in Venezuela for long months. This unfortunate concessionary is prevented from gaining his livelihood by taking up again the management of his concession. They also demonstrate that the concession has no such low value as my colleague would like to have believed, since without the persistent ill will of the municipality and of the population Mr. Pieri would find an advantage in again taking up the exploitation of his line. Whatever Doctor Paúl may say about it, Mr. Pieri was perfectly right, according to the protocol, in submitting these documents to the umpire. I searched in vain in section 2 of article 2, quoted by my colleague, the provision which would prevent Mr. Pieri from presenting the documents because they are posterior to May 12, 1903. On the contrary, I find that section 3 of the same article formally authorized him to do so.

I would particularly call the attention of the umpire to the enormous reduction which I have made in my decision from the amount of indemnity demanded, and I persist in thinking that the sum of 600,000 bolivars is the minimum which can be given to Mr. Pieri in compensation for vexations and losses which he has suffered and in exchange for his concession and his material. This reduction appears still more considerable if we take into account the depreciated currency with which the Venezuelan Government is to pay its indemnity. In regard to this I ought to bring up the manner in which my honorable colleague looks at this public debt. I should prefer not to be obliged to say that the Venezuelan Government wished to profit from the condescension, which alone among all the foreign governments the French Government has shown toward it, to allow it to free itself from its debts at a reduced rate and not to pay them integrally. In consenting to this concession of not being paid in gold the French Government has in no way wished to place its nationals, the victim of pillage or of denials of justice, in a position inferior as compared to the nationals of other countries placed under the same circumstances; it has wished only to permit Venezuela to acquit itself more easily in giving to the claimants in place of gold these bonds redeemable after a long time.

Can we conclude from this fact that it is forbidden the arbitrators in the fixing of an indemnity in equity to take into account the depreciation of the money which is to be given in payment? Can we say that this changes the mode of payment established by the protocol? The arbitrators have, to the contrary, a strict duty, and they can not fail without wounding equally equity and good sense to take account of the manner in which their award will be executed in such fashion that the sum which they have awarded shall be in fact paid. Otherwise their awards would be only deceptive. When my Government invested me with the duties of arbitrator it remitted entirely to my conscience in all that which considers fundamentally the claims which I might have to examine; it has only remarked that equity commanded me to take account in the fixing of indemnities of the depreciation of the bonds of the diplomatic debt.

The protocol would in fact be vitiated if the arbitrators did not take account of this article 3, which declares that the indemnities will be paid in bonds of the diplomatic debt. In reading this article the arbitrators are informed that the indemnities will be paid in a certain money; they ought to take notice of this to conform to the letter of the protocol and also to its spirit, which is a spirit of equity. So I can not help express my profound astonishment to read in the additional memoir of my honorable colleague the phrase which begins thus: "The French commissioner in his decision (Decauville affair) concurred in my opinion." etc. In the matter of the Decauville affair I have given no other opinion than that which is laconically expressed in the minutes of the sitting of June 15, 1903, which is as follows:

The examination of the claim of Mr. Decauville is then taken up, in favor of which is recognized by common agreement a sum of 41,400 bolivars.

On the contrary, my colleague will kindly remember that I have in every affair which has been submitted to us each time demanded that account must be taken of the depreciation of the diplomatic debt. And at every time, to arrive at an agreement, he has consented to raise slightly the amount of the indemnity, declaring that this should not be mentioned either in the minutes or in the report which he would present to his Government. I hold, in principle, that this correction should be made, and I should consider myself as having failed in my duty and having been forgetful of equity if I had neglected a single time to take account of the manner of payment of indemnities and tolerated that the Venezuelan Government should thus receive an unjust benefit, to the detriment of the victims of the abuses of power, of pillages, and of denials of justice.

NORTHFIELD, *February 11, 1905.*

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#### OPINION OF THE UMPIRE

On the 2d of May, 1882, a lawful contract of concession was made by and between the president of the State of Bermúdez, of the United States of Venezuela, and José Gabriel Nuñez Romberg, of the city of Cumaná, of said State, for the purpose of promoting and encouraging the means of communication in that section, which contract, among other things, provided that the government of the State granted permission to the concessionary to construct tramways or railways in the cities of Cumaná, Carúpano, and Maturin of that State, and also to establish ways of communication under the system named between different points of the section referred to, the works to be the property of the enterprise, but with the obligation to devote them to the transportation of passengers and merchandise at prices lower than those then existing between those sections

and in those cities and in accordance with tariffs to be approved by the government of the State of Bermúdez.

The concessionary was authorized to transfer to others, in whole or in part, the rights passing to him under the contract; also to use for the railways aforesaid the necessary streets or public walks, but in a way not to cause injury or obstruction to traffic. The enterprise was exempted from all State and national taxation, with the privilege of obtaining like exemption from municipal taxation through the action of the respective municipal councils. This concession was to continue for the term of fifty years, to be reckoned from the date of the inauguration of the first line of tramways or railways created under this contract, and when said fifty years had terminated, the enterprise, with all its property was to pass to and become the property of the State of Bermúdez.

On the 20th of the same month the enterprise was duly exempted from municipal taxation by the city of Carúpano.

Thereafter the anonymous company of "Tramways of Carúpano" was duly organized, the privileges herein named were duly ceded to the said company, and the enterprise of the tramways was inaugurated and installed in the city of Carúpano.

At a date not material this company, the "Tramways of Carúpano," went into liquidation, and its liquidator, on the 8th day of May, 1891, sold at auction to Pieri Dominique the said enterprise, including the privileges contained in the concession aforesaid, so far as the same referred to the city of Carúpano. The price paid therefor was 38,500 bolivars. It became the property of Pieri Dominique & Co., the other member being the house of Franchessi & Co., of the city of Carúpano, Pieri's interest in the company being much the larger part.

Under the management of Pieri Dominique & Co. the enterprise was extended and enlarged, and for some four years proved quite successful. The income for the year 1891-92 was 30,232 bolivars, and there was a steady increase to 1894-95, when it had reached 47,200 bolivars.

It was in the year 1895 that difficulties began, culminating in the very serious affair of June 21, 1895, which continued through the intervening years up to the sitting of this mixed commission in Caracas in 1903, of a degree more or less troublesome each year, to the great detriment and loss of the company.

Before the sitting of this mixed commission at Caracas in 1903 Pieri Dominique had become the sole owner of the tramways and of the concession, paying for the share of Franchessi & Co. the sum of 24,000 bolivars.

The claim of A. L. Nasica was dismissed by the honorable commissioners of France and of Venezuela at their sitting in Caracas, and there was reserved for the umpire only the claim of Pieri Dominique for himself and for Pieri Dominique & Co., he being the only person interested at the time this claim was presented before the mixed commission and the only person interested at the present time in the claim. The award is to be for his sole benefit.

The nationality of the claimant is unquestionably French, and there is a difference of opinion between the honorable commissioners only as to the amount which should be awarded the claimant for the damages and indemnities to which he is entitled.

The aggregate claim submitted by Pieri Dominique in his own behalf and as the successor of Pieri Dominique & Co. is 4,010,400 francs, covering injuries alleged to have been committed on his person and property commencing June 21, 1895, and continuing from time to time up to the conclusion of peace in 1903. After submitting this claim, and while the mixed commission was sitting at Caracas in 1903, Pieri Dominique appeared before the commission and suggested and consented that the award be made on the basis that he



surrender the enterprise, including all the privileges of the concession, to the municipal council of Carúpano.

When the case came on for hearing before the honorable mixed commission it was the opinion of the honorable commissioner for Venezuela that the sum of 20,000 francs was a sufficient indemnity for the damages suffered in the person and in the property of the claimant on account of the events of June 21, 1895, and those which are prior or subsequent, but immediately connected therewith or naturally flowing into or therefrom. For so much of the damages suffered by the claimant during the revolution of 1901-1903 as he regarded to be properly chargeable to the respondent Government and for the enterprise itself, including the privileges of the concession, he allowed the sum of 150,000 francs, making in all the sum of 170,000 francs. He finds no occasion to allow any indemnity for the action of the customs authorities at Carúpano and later on for the action of the city council in prohibiting and preventing the carrying on of the tramway freight traffic, for the forced interruption by the municipal council of Carúpano of the entire traffic for a period of three months in 1896 during the installation of the aqueduct system in that city; for the defects and faults of certain portions of the streets on which was laid the tramway of the claimant through the inefficient use and management of the same by said aqueduct company while making its house connections, whereby was ruined one of the horses of the tramway system belonging to the claimant; for the forcible suspension of the passenger traffic by order of the municipal council at another time; for the arrest and imprisonment for twenty-four hours of the claimant, without warrant or any subsequent charge or trial, on the oral order only of the civil chief of the district of Bermúdez; for the delay and final neglect of the municipality of Carúpano to rebuild a bridge carried away by a freshet, upon which rightfully rested the railway of the claimant, inducing serious loss in receipts through inability to conduct the enterprise and entailing upon the claimant the expense of rebuilding the bridge; or for the losses resulting, as claimed, in the alleged compulsory sale by the claimant of his twelve houses at great sacrifice.

It was the opinion of the honorable commissioner for France that the claim of 4,010,400 francs ought to be reduced to 600,000 francs, which includes the compensation to be paid the claimant for the enterprise of the tramways, its privileges and franchises. He considers this sum to be no more than just for all the losses suffered by the claimant for which he holds the respondent Government liable. He especially urges the allowance of this sum, because the payment is to be made not in gold but in bonds of diplomatic debt at 3 per cent, which manner of payment he regards as a more favorable proposition to the respondent Government than that made by any other claimant Government, and he is therefore of the opinion that in making the award the reduced market value of these diplomatic debts should be met by an award sufficiently enhanced to meet the deficit. He is also of the opinion that the vexations, difficulties, and injuries brought upon the claimant by the officers of the nation, state, or municipality, or suffered by them to be brought upon him, without rebuke or attempt at prevention were the result in part of a prejudice on the part of the nationals against all foreigners, and especially against those of French citizenship, and also in part were a result of a studied attempt of the President of the State of Bermúdez and of certain officers of the city of Carúpano to compel an abandonment of the enterprise by the claimant to them. He does not, however, claim that there should be any punitive proposition in the award to be made, but that it should contain simply the material damage which, in his judgment, the claimant has suffered if he now relinquishes the property and privileges of the concession to the municipality of Carúpano.

The honorable commissioners having disagreed in the manner above stated, by their joint action the claim comes to the umpire for his decision and award.

He finds himself greatly indebted to both of the honorable commissioners for the care and skill with which they have presented their respective opinions, shedding much light upon the questions at issue and greatly aiding the umpire in his efforts to determine the equities of the case.

After a careful study of these respective opinions and of the facts involved the umpire finds himself compelled to hold (a) that the interference of the chief of the custom-house with the enterprise of the tramways, and especially in the part covered by his order to the claimant that he desist from all freight transportation, were acts wholly unwarranted, in direct antagonism to the clear right of the concessionary, and that this interference resulted in very serious damage to the claimant; (b) that the order of the municipal council to the same effect, made in January, 1897, was without right, very unjust, strictly against the terms of the concession, and resulted in serious loss and damage to the claimant; (c) that the suspension of the tramway service by the municipal council at the request of the aqueduct company for the installation of its pipe line was within the power of the municipal council to be followed by a sufficient indemnity to the claimant for the losses sustained by him in the interest of the aqueduct company, and that this indemnity is primarily due from the municipality to the claimant, since the aqueduct company sought the intervention of the municipality. The orders to suspend the tramway traffic came from the municipality. It was the order of the municipality which was obeyed, and it is therefore to the municipality that the claimant may properly look for his compensation. Whether the city did or did not obtain indemnity from the aqueduct company in order to meet this proper claim of Pieri Dominique & Co. is a matter not important to this inquiry, since it can not affect the claimant's right in the premises; (d) that the defects and faults of the street caused through the action of the aqueduct company in making its house connections with the main line were properly chargeable to the municipality as the party primarily liable for the injuries which might result therefrom to the lawful users of the street, it being borne in mind that the traffic of the tramways had been resumed on formal notice from the city authorities that the conditions would permit its resumption; (e) the arrest and imprisonment of the claimant, on the 8th day of October, 1896, on the oral order of the civil chief without warrant, his detention for twenty-four hours in prison, and his subsequent discharge on payment of the jail fees without intervention of a court or tribunal of any character is a serious assault upon the liberty of the individual and the sacredness of his person, is wholly unjustifiable, and is the proper subject of indemnity; (f) the staying of the traffic of the tramways by the order of the municipal council as it occurred on June 14, 1896, can only be justified as a matter of municipal right for the public good and can only be met properly by a charge upon the public to compensate the individual for his sacrifice to the public interests; (g) the allowance made by the honorable commissioner for Venezuela of 20,000 francs for the incidents of June 21, 1895, and the injuries and damages which are the approximate results or antecedents of those incidents in the judgment of the umpire is a sufficient sum to be allowed, and in the judgment of the umpire covers such damages as accrued because of the interference of the chief of customs with the tramway service; but there should be added thereto interest at the rate of 3 per cent from June 21, 1896, at which time it is certain that the respondent Government had due notice of those incidents and of the justice of this claim; (h) the sum set by the honorable commissioner of Venezuela of 150,000 francs in the judgment of the umpire is ample to cover the revolutionary incidents of 1901-1903 for which the respondent Government

may be held liable, and, in addition, for the purchase price of the tramway enterprise and the privileges of the concession; but it is equitable to relate back this purchase to the time when this property was taken by the Government for barricades and hospitals, which the umpire assumes to be January 1, 1902, and interest should be allowed on the sum of 150,000 francs from that date to the 31st day of July, 1905. the anticipated conclusion of this arbitration; (i) there can be no allowance for any losses accruing to the claimant in the sale of his houses, such losses not being the direct and approximate result of any cause for which the respondent Government has responsibility. and it is only for such results that indemnity can be awarded.

Concerning the responsibility of the national Government for the acts and neglects of the State of Bermúdez and the municipality of Carúpano, the umpire holds here, as he did in the claim of Davey, in the British-Venezuelan mixed commission of 1903, found in Ralston and Doyle's *Venezuelan Arbitrations*, page 410.

Before coming to his decision in that case the umpire gave much time and thought to this question of national responsibility, and his opinion there given is the result. Further study and reflection adds to his conviction that his position then taken was tenable. just, and necessary. He respectfully refers the honorable commissioners to the opinion above cited for an elucidation of his views on that subject. He would also cite the opinion of Paul, commissioner in the French-Venezuelan commission of 1902, in the claim of Battistini.<sup>1</sup> Id. 503, as bearing upon this question of nationality liability for State indebtedness; the opinion of Duffield, umpire in the German-Venezuelan commission of 1903, case of Beckman & Co.. Id. 598; also the opinion of Bunch, umpire in the Montijo case, Moore's Arb. 1421-1447.

It is the opinion of the umpire, however, that the decision in this case does not rest upon the ordinary postulates. It is here proposed that the claimant abandon, transfer, and make over to the municipality of Carúpano his enterprise of the tramway, his concessions and privileges in consideration of payment to be made therefor and to be included in the award. To put the municipality of Carúpano in possession of this enterprise as sole owner thereof to the entire exclusion of the claimant while the municipality is unquestionably the debtor of the claimant for its acts and neglects in connection with this enterprise would be so manifestly unjust and inequitable as not to permit a moment's favorable consideration. Whatever may be the usual relation of the nation to and with its municipal subordinate divisions, it is certain that in this case it can and will be so related to the municipality of Carúpano as to exact and require full repayment to itself for all it shall undertake and expend in behalf of that municipality in connection with this enterprise of the tramways. Whatever hesitancy, if any, there might be ordinarily in making such acts and neglects of the municipality a matter of international award is dissipated by the peculiar facts incident to this claim, as above stated.

So much of the award as corrects the wrong done the claimant by his arbitrary arrest and imprisonment stands solely upon the recognized and rightful responsibility of the nation, internationally, for the unlawful and injurious acts of its subordinate officials and is on all fours with the case of Davey first above cited.

Concerning the allegation of prejudice on the part of the nationals of the respondent Government toward foreigners, and especially the French, and also the allegation that there was a studied attempt of the President of the State of Bermúdez and of certain officers of the city of Carúpano to compel abandonment of his tramway enterprise by the claimant, it is sufficient to say that these

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<sup>1</sup> *Supra*, p. 18.

allegations are not material to the inquiry, since there is no claim for punitive or exemplary damages and since all essential facts bearing upon the question of the actual damages suffered are found without involving the consideration of these questions.

The honorable commissioner for France again urges upon the umpire the propriety and duty of increasing the sum which he otherwise would award the claimant by an amount equal to the diminished value of the diplomatic debt of 3 per cent as compared with gold, and in this opinion he gives especial prominence to the claimed inequality of the plan accepted by the high contracting parties in the protocol providing for this commission with the plan adopted by the claimant Governments and the respondent Government in the several protocols of 1903. This particular reason was not passed upon by the umpire in his opinion given in the claim of Jules Brun,<sup>1</sup> if it were, in fact, then pressed upon his consideration by the honorable commissioner for the claimant Government.

In the motion for allowance of interest on awards from their date until payment, which was made in the British-Venezuelan Commission of 1903 and which on the disagreement of the honorable commissioners came to the umpire for his decision, a careful and painstaking study was made by him of the basic principles underlying this question, and while the exact proposition now before him is not identical with that, yet the principles which govern him in his decision are in large part the same.

Here, as there, the warrant for such action must be found, if found, in the protocol which constitutes this tribunal and defines its duties, its powers, and its limitations. There, as here, the protocol determined the manner and means of payment, and over that matter gave the tribunal no jurisdiction. Here, as there, the functions of this tribunal end when it has determined the damages sustained by the claimant. The reasons stated by the umpire in that case are applicable here, and the attention of the honorable commissioners is respectfully invited to it as found in Ralston and Doyle's Venezuelan Arbitrations of 1903, page 413. It will be observed that there, as here, the alleged ground for the requested award was a claimed equity. The long delay in payment which seemed probable was urged as the reason for the allowance of interest; here by the terms of the treaty, the award draws interest, but its value in the market is below par, and hence the opinion of the honorable commissioner for France that the umpire should increase the sum awarded to meet this lessened value. It will be noted especially that the very terms of payment provided for in the protocols of 1903, and which are considered by the honorable commissioner of the claimant Government to be so much more favorable for the claimants than the plan evoked by the convention controlling this tribunal as to work injustice and inequity to the claimants before this commission by the inequality which it produces, were regarded by the British Government so onerous as to require the efficient aid of the umpire to maintain justice and equity through an allowance of interest. In the one case a certain method of assured payment without interest was devised and preferred by the high contracting parties; in the other the high contracting parties preferred a certain method of payment with interest in bonds circulating in the markets of the world. In the one case the award is not rated at par because of the necessary delay attached to its payment; in the other it is not rated at par for reasons satisfactory to the world of finance.

The inequality produced by the two methods of payment is therefore not very striking, nor is the inequity resulting therefrom very pronounced, and

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<sup>1</sup> *Supra*, p. 24.

taken together they are insufficient to move the umpire to accord with the opinion of the honorable commissioner for France, even if the umpire were competent under the terms of the protocol to make such an award, and concerning that question the review which he has just made confirms his judgment as expressed by him in the claim of Jules Brun.

In order to compensate the claimant for his material damage suffered in all of the ways herein referred to, including interest at 3 per cent where interest is proper, there should be added to 170,000 francs allowed by the honorable commissioner for Venezuela the sum of 180,000 francs, which makes in all the sum of 350,000 francs, for which amount the award will be drawn.

#### ADDENDUM

After this opinion was written, but before the award had been made, it was brought to the attention of the umpire that conditions had materially changed in Carúpano since the sitting of the honorable commission at Caracas. At the time named the revolution was still rampant in that part of the respondent Government, with the latter in possession of Carúpano, holding it under martial law, and with its troops occupying for military purposes the station of the tramways and for barricades portions of the tramway itself. The Government of Venezuela was then, in fact, in occupancy of the tramway system to the exclusion of the owner. There seemed to both commissioners no better way to dispose of the claim than, on the one hand, finally to surrender what was lost and, on the other, fully to accept what had been taken. They did not agree upon the terms, however, and the claim had to come before the umpire.

It transpired in the meanwhile that the revolution was quelled, peace was restored, and the claimant had entered into undisturbed possession of his franchise and such of his properties as he chose to make use of; had occupied the station house, regained a part of the movable property of the enterprise, and had begun again its exploitation. By the terms of the contract the tramway system was eventually to become the property of the municipality and was at all times under its civil control. Hence it had seemed to the honorable commissioner for Venezuela very unwise and, in a sense, not within its competency, for the respondent Government to interfere with either the ownership of the claimant or the present civic control and the ultimate municipal ownership of the city of Carúpano, and for these reasons he declined to accede to the proposition of abandonment on the part of the claimant and on the part of the respondent Government of acceptance and payment of his franchises and properties. The whole question was thoroughly and ably presented to the umpire at a sitting of this honorable commission, held on the 12th day of August, instant, the honorable commissioner for France believing and urging that the plan adopted at Caracas was the better and should be adhered to in the disposition of the claim. The honorable commissioner for Venezuela held and insisted that the arbitral tribunal constituted at Paris February 19, 1902, had no authority to do other than to award indemnities for damages suffered by Frenchmen in Venezuela and that it could not compel abandonment of property by its owner or acceptance of it by the respondent Government. To this position the honorable commissioner for France demurred and urged that it had authority to so award.

To-day, having carefully considered the questions involved and having reflected upon the opinions respectively held and ably declared to him by his able and learned associates, the umpire has concluded, and hence holds, that the safe, sane, and wise course for this tribunal to pursue is to pay scrupulous regard to the terms of the protocol which constituted it and to place the entire responsibility in that behalf upon the high contracting powers which arranged

and settled those terms. He is confident that the language of that compact does not permit the use of any such powers as will be involved in a compulsory award of the character proposed by the honorable commissioner for France, holding that in this respect, the claim under consideration is identical in that regard with the claim of the French Company of Venezuelan Railroads, and the reasons there given<sup>1</sup> by the umpire are here referred to for an elaboration of his opinion. He therefore decides that it is only for damages suffered in Venezuela that the claimant has recourse to this tribunal, and for those the umpire will award the sum of 300,000 francs.

NORTHFIELD, *August 14, 1905.*

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HEIRS OF MASSIANI CASE  
HEAD NOTES

- An indebtedness of the respondent Government to the late Thomas Massiani in his lifetime is a part of the patrimony which descends to his widow and children, to be distributed in accordance with the laws of Venezuela.
- The widow of Thomas Massiani was born in Venezuela, acquired French nationality by the laws of both countries by her marriage to Thomas Massiani, by the laws of France retained that nationality after his decease, but by the laws of Venezuela was restored by his death to her quality of a Venezuelan citizen.
- During their marriage and since his death she has been domiciled in Venezuela. The law of her domicile prevails in this conflict and her nationality before this tribunal is Venezuelan.
- The children were all born in Venezuela and it has always been their domicile. While by the laws of France they are Frenchmen, being the children of a Frenchman, they are by the laws of Venezuela citizens of that country. As in the case of the widow, the law of the domicile prevails, and before this tribunal they are Venezuelans.

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<sup>1</sup> EXTRACT FROM THE MINUTES OF THE SITTING OF AUGUST 28, 1903

The commission then proceeded to the examination of the Massiani claim.

Doctor Paúl rejects it, and bases his opinion upon the following considerations: The heirs of Thomas Massiani are all Venezuelans by Venezuelan law. The mixed commission of 1890 has already rejected the claim in question, and the present commission would not be able to revise a judgment of the former commission. Finally, the very documents upon which the Massiani heirs base their right to the payment of the sum which they claim does not seem sufficient to prove the existence of the debt in a decisive manner.

M. de Peretti replies that M. Massiani (Thomas) enjoyed exclusively French nationality, and that his heirs, if they are Venezuelans according to Venezuelan law are considered as Frenchmen by French law; that if the commission of 1890 has rejected the claim in question, it is because the Venezuelan Government did not give an acknowledgment to a document of which M. Philippe Massiani has been able to obtain an authentic copy only in 1903; that the present commission seems to him competent to revise a judgment of the earlier commission if a new fact has been presented, which is the case in the Massiani claim; finally, that the credit seems well established by the document delivered to M. Philippe Massiani by the Venezuelan administration.

He is, then, in favor of granting to the Massiani heirs a sum of 270,813.56 bolivars, representing the capital of the debt, and not according interest because of the negligence during long years by the claimants in the defense of their rights.

The arbitrators not being able to agree, the claim of the Massiani heirs will be submitted to the examination of the umpire.