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Lalanne and Ledour Case

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LALANNE AND LEDOUR CASE

Damages allowed because of unjustified refusal of customs officials to clear ship from Venezuelan port.

PAÚL, *Commissioner* (for the Commission):

This claim is composed of 34,376.40 bolivars demanded by G. Lalanne for damages and injuries resulting from the fact that the head of the custom-house of Ciudad Bolívar did not permit the shipment, in June, 1886, on the steamer *Dieu Merci*, of 120 head of cattle which Gen. G. Ballistini held ready to send to Guayana, as had been done in other prior shipments, in order to fulfill the contract made by Lalanne with the governor of French Guayana, for furnishing meat to the penitentiary, garrison, and other administrations of Guayana, and for 14,400 bolivars which the owner of the steamer *Dieu Merci* demands for the freight which the cargo of 120 head of cattle ought to have produced him, at 120 francs each, of which he was deprived.

From the documents presented in this claim and in that of G. Ballistini, which is joined with it, it is seen that G. Lalanne periodically sent to Ciudad Bolívar a steamship to load cattle destined for Guayana for the purpose of complying with contract with the governor of said colony; that a contract being in existence, made between Messrs. Fonseca, Navarro & Co., merchants, of Ciudad Bolívar, with the National Government, which accorded them the exclusive privilege of exporting cattle by steamships, which said firm ought to have put in operation for the navigation of the Orinoco River between Ciudad Bolívar and the West Indies; that they had consented to the exporting of cattle in steamers sent by Lalanne, charging for each shipment 8 bolivars per head; that in its turn the national custom-house in Ciudad Bolívar required, in order to give permission for shipments of cattle, that there be presented by the shipper the order or permission of Fonseca & Co. showing the payment to them of the tax imposed; that in accordance with this rule G. Ballistini had been permitted to ship cattle for Cayena in steamships, by order and for the account of Lalanne, up to the number of 767 head, from September, 1885, to March, 1886, Ballistini having paid to Fonseca, Navarro & Co. the sum of 6,136 bolivars, as is proven by the receipt of cash by Alejandro Mantilla, as attorney for Fonseca & Co.; that in the month of June, 1866, the steamer *Dieu Merci* arrived at Ciudad Bolívar to load the customary 120 head of cattle which G. Ballistini had ready for this journey upon the order and for the account of Lalanne, and that it was not possible to complete the shipment because the custom-house had refused to permit it, alleging that the order of Fonseca & Co. had not been presented to it, as was necessary; that it was impossible to obtain this order because Messrs. Fonseca & Co. refused to give it, notwithstanding that payment of the tax was offered them, as had been done before, and even Ballistini had offered to buy from Fonseca & Co. their own cattle and ship them in place of those Ballistini held ready; that these refusals of Fonseca & Co. and that of the maritime government house at Ciudad Bolívar caused the detention for several days of the steamer *Dieu Merci* in the harbor of Ciudad Bolívar, and caused it to depart from the port without loading the cattle under the protest of the captain; and, finally, it is also proven that in the months following, the voyages of the steamer and the shipments of cattle were continued for the account of Lalanne, the shipment being permitted by the Government custom-house at Ciudad Bolívar, because the hindrances placed upon traffic in cattle on the Orinoco by the house of Fonseca & Co. had, in fact, ceased.

During the period of the first events the president of the State of Guayana was Gen. Raimundo Fonseca, an active member of the firm of Fonseca, Navarro

& Co., and at the time when the opposition of said house to the shipment of cattle in Ciudad Bolívar ceased General Fonseca ceased to be president of that section, being called by Gen. Guzmán Blanco to form a part of his cabinet in September, 1886. These facts being taken into consideration in the light of an impartial and just appreciation, the conviction results that an abuse of authority was committed by the president of the State of Guayana by refusing, in his capacity as an associate of the firm of Fonseca & Co., to permit the shipment of cattle under the same conditions that his commercial firm had adopted in prior shipments, and that this abuse was arbitrarily sustained by the chief of the customs of Ciudad Bolívar, who ought to have authorized the shipment upon learning that the owners of the cattle were disposed to pay to Fonseca & Co. the same duties or taxes which in prior shipments they had received. This dual entity of first magistrate of a body politic and partner of a commercial firm putting in action the influences of his power in order to obtain pecuniary benefits at the cost of legitimate interests created under the protection of the constitutional guaranties naturally produced a disturbance in the dealings established at Ciudad Bolívar by Lalanne for the shipment of cattle, and gave rise to the present claim, which, even if excessively exaggerated, has in its favor the principle of equity. Having admitted this in the claim of Lalanne and Ledour, the former a contractor in the purchase and exportation of cattle for Cayena and the latter the owner of the steamer *Dieu Merci*, the Venezuelan Commissioner proceeds to estimate the damage suffered by both.

The death of the 29 head of cattle, which Lalanne claims took place in the journey from Demerara to Cayena, is not proven, and it is only proven that the *Dieu Merci* took on board at Cayena 75 head of cattle coming from Demerara. Nor is the difference in price between the cost of the cattle bought at Demerara and the cost of the cattle in Ciudad Bolívar destined for the shipment proved. The prospective profit of 122.50 bolivars for each head of cattle which the contractor believed he would obtain for the 120 head which ought to have been shipped from Ciudad Bolívar is exaggerated, since it is equivalent to 100 per cent on the price of the cattle in that city; besides this, damage can not be demanded except for 45 head, since 75 were unloaded in Cayena upon that voyage of the *Dieu Merci*, and upon them the contractor realized the profit which they ought to have yielded. There is likewise an exaggeration in the demand of the shipowner for 14,400 bolivars for the freight upon 120 head of cattle which he did not take on at Ciudad Bolívar, since this damage is reduced to the freight on 45 fewer cattle loaded upon said voyage, to the expenses of delay during his stay at Ciudad Bolívar, and to those of the journey and stay at Demerara.

Taking these points into consideration, the Venezuelan Commissioner allows G. Lalanne an indemnity of 4,000 bolivars, and the owner of the ship *Dieu Merci* 4,000 bolivars—in all, for the total claim, 8,000 bolivars.

The French Commissioner concurred in this opinion.

BALLISTINI CASE

Damages allowed claimant for unjustified refusal of customs officials to clear ship, whereby claimant suffered injury.

Damages allowed for wrongful imprisonment.

Claim for payment of outstanding bonds disallowed because of want of proof of ownership thereof.

Claim allowed against Federal Government for supplies furnished the State of Guayana.