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**Ballistini Case**

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& 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.

PAÚL, *Commissioner* (for the Commission):

This claim is composed of ten distinct items, which the petitioner classifies, estimating the amount of each one of them, wherefore this opinion will refer particularly to each of them, examining the origin and the proofs upon which they are based, and will indicate the opinion which the corresponding demand for indemnity may merit.

1. For hindrances opposed to the departure of the French steamer *Dieu Merci* with a cargo of cattle destined for Demerara and Cayena, and the consequent necessity of leaving this cargo on shore when the cattle were destined for the provision of the government of Cayena, the claimant demands 100,000 bolivars.

A claim on account of these same facts has been presented before this Commission by Messrs. G. Lalanne and H. Ledour, the former a contractor for the furnishing of cattle for the Government of French Guayana, and the latter the owner of the steamer *Dieu Merci*, and that claim was decided, an allowance of 8,000 bolivars being made for the damages, because the custom-house at Ciudad Bolívar did not allow the shipment of 120 head of cattle destined by Ballistini to fulfill the order of shipment for his constituent, Lalanne. The cattle appear to have been the property of Ballistini, who sold them to Lalanne at a given price. It does not appear that these cattle were lost or decreased in value as a consequence of remaining in Ciudad Bolívar, and it is proved that the voyage of the steamers and shipment of cattle continued without interruption, Ballistini himself carrying out said shipment for the account and by order of Lalanne.

The injury suffered by Ballistini, who is the owner of pasture lands on the banks of the Orinoco, was nothing but his returning these cattle to the pastures or their sale in Ciudad Bolívar at a price not so high as the transaction of Lalanne assured him. Estimating this expense or loss conservatively, the sum of 5,000 bolivars is allowed in this respect.

2. For the matter of Caliman, civil chief of Ciudad Bolívar, who (according to the record) has committed injustices in detriment to his interests, 20,000 bolivars.

From the record it appears only that the civil chief, Caliman, ordered the withdrawal from public market of Ciudad Bolívar a quantity of raw meat, which Ballistini had sent there for its sale, disobeying positive orders not to do so, because this act was contrary to a contract made with certain persons for the furnishing of meat in the market. The meat withdrawn was attached and sold at public auction by the police officer. There exists no other proof referring to the action of the civil authority against the interests of claimants, and no claim against the nation can be founded upon this procedure of municipal regulation.

3. For the claim of Pereira Alvarez, judge of the first instance at Ciudad Bolívar, who, as Ballistini says, has committed abominable injustices against his person and against his interests, for which he has not been able to obtain any reparation before the tribunals, 40,000 bolivars.

It is proven that because Ballistini had protested against the action of the civil chief, Caliman, in withdrawing from the market his raw meat, a protest which the subtreasurer of Ciudad Bolívar did not wish to record, because he considered it offensive to the authority, Judge Pereira Alvarez rendered judgement for calumny and injuries against Ballistini, and issued an order of arrest against him and a mandate to all the authorities to carry it into effect. Ballistini fled from the locality and came to the capital of the Republic seeking protection. The son of Ballistini complained to the judge, and the latter revoked the order of detention, because the offense had not been proven, that is, because there was nothing injurious or calumnious in Ballistini's protest. Ballistini sued

the judge, Pereira Alvarez, before the court for neglect in the exercise of his duties, but the court could not move because Ballistini was not able to obtain the necessary copies of documents which the judge in question ought to have ordered to be issued to him, and his solicitations in this regard before the president of the State and other local officials were futile. These facts prove the denial of justice, because the local authorities deprived Ballistini of the legal means of instituting before the competent tribunals the actions which the laws would authorize him in case he might improperly have been condemned to a criminal judgment. In this respect the Venezuelan Commissioner believes that Ballistini is entitled to an indemnity which, in relation to the offense and the injuries which the arbitrary order of detention of the judge caused him, he estimates at 25,000 bolivars.

4. This item of the claim is a demand for indemnity amounting to 75,000 bolivars for principal and interests for a certain number of coupons or bonds of the debt of the State of Guayana, of which Ballistini says he is the owner, and that by decree of President-General Fonseca, it was ordered that they should not be admitted as had been the custom in payment in the tax offices of the State unless they had been redeemed up to date. The claimant has not presented the original bonds or any part of them which he may have in his possession. The failure to present said bonds makes an appreciation regarding the legitimacy of the claim impossible because its essential foundation, which is the ownership or existence under the control of Ballistini of such certificates or bonds and the exact ascertainment of their amount, is wanting. Besides this circumstance, which by itself alone nullifies the claim, it appears from the claim of Ballistini himself that these bonds are nothing else but bonds of a public debt of the State of Guayana extinguishable from the time of their issue in 1878 by 10 per cent of the ordinary receipts of the treasury of the State; that later, in November, 1882, the President of the State suspended the circulation of said bonds, and on December 9 of said year he issued a decree ordering their redemption by means of payments to be made out of an allotment of 25 per cent of the special revenue of the State of Bolívar destined for the section of Guayana on June 7, 1884, and payment was made whereby the value of the bonds was reduced from 104,837 bolivars, the amount of the first issue, to the sum of 49,507 bolivars, which sum Ballistini says was completely in his possession; that the effects of the financial crisis that took place at that time and the reduction of 25 per cent in the revenue of the allowance and by the territorial revenues hindered the continuation of the extinguishment, and finally that the legislature of the State by a legislative act of 1888 passed a law concerning the public debt which had as an object to consolidate all the debts of the State. It is to this decree that the judgments of the court in the various grades of jurisdiction of the State of Bolívar have remitted Mr. Ballistini in the suit which he instituted against the treasury of the State for the payment of the bonds which were in his possession. In May, 1890, Ballistini, the claimant instituted a proceeding of cassation against this decision in the supreme court of Ciudad Bolívar as a court of last resort, and on the 16th of that month the court of cassation granted the appeal which, as appears from the statement of Ballistini, was allowed to lapse.

There are, therefore, final judgments which decree that Ballistini, like any other holder of the internal debt of the State of Guayana, is obliged to submit himself to the laws or decrees which govern the extinguishment of said debt.

It is a principle of public international law that the internal debt of a state, classified as a public debt, which is subject to speculations current amongst that sort of values which are acquired freely and spontaneously at very different rates of quotations which mark great fluctuations of their rise and fall, can never be the subject of international claims in order to obtain their immediate payment

in cash <sup>1</sup> just as they can not be the subject of judgments before the tribunals of the country in order that their holders may obtain the payment of their nominal value. To establish such a principle would be to put a premium upon stock jobbing, which would be often possible with this sort of public values, and would place nations at the mercy of speculators who might obtain control of all their internal debt. The certificates or bonds, in question in the matter of the claim of Ballistini, in this subdivision, are in the same conditions as the internal debt of the nation, which amounts to many millions and bears interest, and it is more than four years since payment for its extinguishment and the payment of interest has been suspended on account of the abnormal condition caused by the war. Could these mixed commissions have jurisdiction to decide claims which the foreign holders of this internal debt might present to them in order to obtain the payment of the principal and interests?

This could not be sustained even with respect to the foreign, or as it is called diplomatic debt, of 3 per cent, nor with respect to any public debt which has been put upon the speculative market and may therefore pass from hand to hand by virtue of transactions prompted daily by those who profit from the rise and fall of public securities.

This portion of the claim is declared inadmissible, because it can not be prosecuted before this Commission.

5. This portion of the claim arises out of the recovery of a private debt which Mr. Hernandez Lopez contracted in favor of Ballistini, amounting to the sum of 12,228 bolivars, and which gave rise to a suit prosecuted before the competent judge of Ciudad Bolivar, in which judgment was rendered and ordered to be executed ordering the attachment of the property of the debtor. This attachment could not be carried into effect because Hernandez disappeared from the place of execution and the property of the debtor could not be found upon which to lay it. Ballistini seeks to make the nation responsible for the insolvency of his private debtor, an unsustainable and evidently rash pretension, which only indicates in the petitioner a true monomania for claims. The amount of this portion of the claim therefore is disallowed, which is 25,000 bolivars.

6. The claim of 35,000 bolivars for a certain quantity of *sarrapia*, which was declared contraband after a formal judgment which was twice appealed and terminated in the full Federal court confirming the judgments of the first and second instances, which condemned Ballistini to lose the sacks of *sarrapia*, a contraband article, and to the payment of double duties, lacks all foundation, because there is upon this matter *res judicata*, and it ought therefore to be disallowed.

(Items, 7, 8, and 9 dismissed for want of proof.)

10. For the value of a certificate issued in favor of Domingo María Ballistini April 29, 1891, by the general internal treasurer of the State of Bolívar, recognizing the debt against the old State of Guayana, amounting to 13,780 bolivars, for supplies made to the State of Guayana and by order of the citizen president of the same State, No. 2307. This is admitted for said sum.

For interests upon this receipt and other general injuries there is allowed by the arbitrators the sum of 6,220 bolivars.

This claim was allowed for 50,000 bolivars.

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<sup>1</sup> In the Italian Commission (Boccardo case, not reported) judgment was given on internal bonds on authority of *Aspinwall case*, Moore, p. 3616.