

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Mohle Case

1903

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suffered from acts of revolutionists. It is true that in February, 1902, General Garbiras, with other leaders and 4,000 soldiers, including the Colombian battalion of the line, again invaded Venezuela, via San Antonio, simultaneously with forces from other points, but they were all defeated very soon after.

As to this claim, therefore, the liability of Venezuela must be determined by the general principles of international law, and under them the umpire is of the opinion that no liability exists.

As has been shown above, the forces which committed the injuries in this case were composed in large part of the national troops of Colombia; that the expedition was organized in Colombia; that the Government of Venezuela had no warning from Colombia of its preparation and no reason to expect it, because her relations with Colombia were then friendly and included an interchange of diplomatic representatives, that the expedition penetrated only a short distance into Venezuela coming by way of Encontrados by water, with San Cristóbal as its objective point, and that the Government took such prompt and vigorous means in opposition to it that, although General Garbiras had an army of some 4,000 men, many of which were the trained troops of the Colombian regular army, he was defeated and driven out of the country in less than a month.

Even if the question is to be answered upon the assumption that it is the duty of a government to protect foreigners absolutely from acts of revolutionists by preventive measures, and it is doubtful if the rule goes so far, Venezuela can not be held liable here, because the uprising did not begin in her territory, but in a neighboring state, which gave it immunity from any surveillance or repression, if not a fostering support.

Under these circumstances, in the opinion of the umpire, it would be contrary to justice and equity and at variance with the principles of international law to hold Venezuela liable in this case.

It is not intended by this opinion to decide that Venezuela may not be liable for acts of revolutionists in an insurrection prior to the Matos movement where that insurrection is shown to be associated with and a part of that movement.

It results, therefore, that the claim must be disallowed.

MOHLE CASE

Damages occasioned by revolutionary troops allowed because of admissions in protocol.

Doubt expressed by umpire whether he can accept statements of revolutionary authorities who are not experts or agents of the Government as to value of property taken.

Evidence as to values of like articles in another case before the Commission followed by umpire in the fixing of prices.

DUFFIELD, *Umpire*:

In this claim the Commissioners differ in opinion. The acts upon which it is based occurred during the revolution of General Matos, and the injuries complained of were done by his troops. Under the decision of the umpire in the case of Kummerow, the Government of Venezuela is liable by reason of its admission of liability in the protocol, the Matos revolution being embraced in the present civil war.

The Commissioner for Venezuela, while denying the liability of Venezuela, admits the committing of the injuries, but insists that the values of the property

are exaggerated by the claimant, and contends that if Venezuela is liable it is only for 11,923.72 bolivars, for the reason that the appraisal of values made by the revolutionist officials who took the property can in nowise bind Venezuela and is no evidence of value. But the Commissioner for Germany, while admitting that they do not conclude Venezuela, insists that they are competent evidence of value, and is of the opinion that the full amount claimed should be allowed.

The Commissioner for Venezuela lists the articles taken at what he says are current prices, and is of the opinion that if any award is made it should be on this basis.

The umpire is of the opinion that, perhaps, under the Fennerstein Champagne cases, in the Supreme Court of the United States,¹ current prices are admissible in evidence. But there is, in his opinion, much force in the objection made by the Commissioner for Germany as to their accuracy in the appraisal of such property as is here in question. Moreover, the current prices which the Commissioner for Venezuela mentioned are not verified by price lists or any other evidence.

On the other hand, the umpire is extremely doubtful whether he would be authorized to follow the appraisal made by the revolutionist officials, who are not agents of Venezuela, and not shown to be familiar with the value of any of the property, except, perhaps, the horses. In this uncertainty he deemed it entirely proper to refer to the evidence put in the claim of Van Dissel by the Commissioner for Venezuela, stating the values of property of like character with that the values of which are disputed in this case. The competency of this evidence was not questioned by the Commissioner for Germany in that case.

Upon this basis the claimant will therefore be allowed for his items of damage as follows.

The following items the values of which are undisputed:

	<i>Bolivars</i>
Fence	1,200.00
1 saddle horse	800.00
Medicine	158.00
1 horse	180.00
Medicine	74.52
Do	166.00
Do	44.00
Do	197.60
Do	194.56
	3,014.88

And the following items, the value of which is disputed, but are fixed by the umpire, as follows:

	<i>Bolivars</i>
125 head of cattle, at 63 bolivars	7,875.00
9 donkeys, at 40 bolivars	360.00
24 head small cattle, at 40 bolivars	960.00
10 horses, at 240 bolivars, 2,400 bolivars; less 3 horses returned, 720 bolivars	1,680.00
8 head of cattle, at 63 bolivars	504.00
1 cow and 1 bull	130.00
1 cow	60.00
1 head of cattle.	48.00
	11,617.00

¹ 3 Wall., 70 U.S., p. 145.

Total, 14,631.88 bolivars, with interest at the rate of 3 per cent per annum from July 15, 1903, up to and including December 31, 1903.

RICHTER CASE

Discussion of facts

DUFFIELD, *Umpire*:

The Commissioners disagree only as to the amount which should be awarded to the claimant. The claim is for injury to and taking of property of the claimant at his hacienda, Tucua, in the district of Mariño, in the State of Aragua. His original claim was for 19,262 pesos (77,048 bolivars), which sum, less 400 bolivars, viz, 76,648 bolivars, the Commissioner for Germany is of the opinion should be allowed at its full amount, with interest.

The Commissioner for Venezuela, however, is of the opinion that only 22,000 bolivars should be allowed. He bases this claim upon the following grounds: First, that the claimant claimed as lost things of which there is no proof, as, for instance, two trunks and a valise with clothes and jewels, which he values at 500 pesos; cash, 200 pesos; destruction of houses, which he values in different lots at more than 2,000 pesos. He is also of the opinion that the claimant largely exaggerates the value of the property, specifying growing crops of cane ready to cut as valued at 800 pesos per tablón, when it is not worth more than 200 pesos; also a 7-months' cane growth at 500 pesos per tablón, when it is not worth more than 150 pesos. He also thinks it a grave circumstance, indicating bad faith on the claimant's part, and an intention to make his claim as large as possible, that the claimant, after —

this Commission decided that he should make his proof anew and before the judge of the court of first instance of La Victoria, the agent of the Government of Venezuela being present, the claimant, without waiting for a note to reach that judge, named two experts to judge of his list of prices.

Taking these objections in their order, the umpire is of opinion that there is proof of the loss of two trunks and the valise with clothes and jewels, and cash, and the destruction of the houses which the claimant values at more than 2,000 pesos. The list of articles taken, which the claimant made the basis of his claim, was, by order of the judge, annexed to the moving papers. And the witness Torealba testifies of his own knowledge that among the losses of the claimant were animals kept for working and breeding purposes, beasts, furniture, personal effects, cash, houses and huts on the hacienda, and a great number of working implements.

As to the exaggeration of values, the umpire finds no specific evidence to confirm the general statement in the opinion of the Commissioner. The testimony of the experts is not contradicted by any other specific evidence, and the appraisal is approved of by the judge after a personal survey of the premises. They are accredited by their appointment by the judge, and the umpire has found nothing in the case to indicate any lack of good faith and honesty on their part.

The objection by the Commissioner for Venezuela that two of the witnesses testify from notoriety and not from personal knowledge is not supported by the proof as to all the matters testified to by them while it is warranted as to certain matters. If they were the only witnesses there would be force in the objection to the extent that their testimony is based upon notoriety or hearsay. But the witness Torealba does testify from personal knowledge and is not contradicted.