

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

---

**RECUEIL DES SENTENCES  
ARBITRALES**

**Richter Case**

1903

VOLUME X pp. 415-417



NATIONS UNIES - UNITED NATIONS  
Copyright (c) 2006

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.

The objection as to the exaggerated values is based upon the unsworn statement of the agent of Venezuela. It is not supported by the oath of any witness or corroborated by a detailed statement of particulars upon which the umpire can form any judgment except as to the value of the growing cane and the oxen. As to these a letter from a reputable commission house, dealers in and familiar with the value of these articles, is put in evidence, in which the value of a tablon (10,000 square varas) of cane, in the neighborhood of La Victoria, ready to be cut, is appraised at 800 bolivars, and a tablon of cane 7 months' old is appraised at 600 bolivars, and a pair of oxen at 400 bolivars, as against the claimant's figures on a tablon of cane ready to cut of 800 pesos (3,200 bolivars) and a tablon of cane 7 months' old, 500 pesos (2,000 bolivars). The discrepancy is so large that it is not reconcilable by mere difference of judgment. But on the one hand is the testimony of witnesses who swear they knew the property, while on the other the testimony is based on general market values. Ordinarily the first-mentioned testimony should govern, and if the witnesses had testified more in detail, and especially if they had testified as to a personal knowledge of the crops before their destruction, the umpire would have felt bound to accept their appraisal. In the absence, however, of such particularization, and considering the entire disinterestedness of the commission house in its appraisal, the umpire is convinced that there must be an error in the claimant's figures, notwithstanding their corroboration by the witnesses. For example, he claims for one tablon of "young" cane growth, one-half of which he claims was destroyed, as much as the commission house values a tablon of 7-months growth. For three other tablons of "young" cane growth, destroyed in whole or in part, he claims 500 pesos per tablon. For a tablon of 2-months growth he claims 300 pesos. In the opinion of the umpire these valuations are exaggerated and should be reduced. The umpire is of opinion that a fair value of a yoke of oxen would be 125 pesos. The umpire also allows the expenses of the additional testimony called for by the commissioners, 50 pesos, or 200 bolivars. The total cane destroyed is allowed at 6,500 pesos (26,300 bolivars).

While the testimony therefore is meager, and is especially so as to values, in the absence of any proofs to the contrary the umpire believes it his duty to accept it, save in the particulars above specified. The objection based upon the alleged lack of good faith and apparent intent of the claimant to recover an exaggerated and unjustifiable amount of damages by asking a different judge to select the experts would have had great weight with the umpire if the facts warranted it. But the umpire is unable to find any such proof in the "expediente" or in the proceedings of the Commission. First, it is inaccurate to say that the claimant had knowledge that this Commission decided that new proof must be made before the judge of the court of first instance of La Victoria. The record of the eighth session reads as follows in this respect:

And that he [the claimant] prove also, by means of a formal amplification of the proofs presented, the amount of the damages which he says he has suffered, with the intervention, if possible, of the representative of the agent of the Government of Venezuela, for which purpose the Venezuelan Commissioner will take charge of the steps necessary to be taken and will present at the next session informal letters, which he will address for the purpose to the judicial authorities in whose jurisdiction the above-mentioned properties are situated.

It appears by the records of the next sessions that such letters were not presented. The Commissioner for Germany states that in a letter dated the 27th of June last, a copy of which is attached to his opinion, he stated to the claimant that —

the Commissioner for Venezuela will address a letter to the judges having jurisdiction, so that you will not meet with difficulties in the examination of the witnesses or experts you may present.

That the claimant on receipt of this letter asked the Commissioner for Germany if he could go to Tucua to gather proof, and if the communication had yet been sent to the judge, to which the Commissioner replied that it had left, having been shown by the Commissioner for Venezuela the draft of his note to the judge. It is also stated that the claimant had twice demanded that the President of the State of Aragua should name an agent to represent the Government.

It seems to the umpire that this conduct of the claimant is entirely consistent with good faith on his part. The agent of the Government was present at the examination of the experts and made no objection to the irregularity of the appointment. He was the legal representative for Venezuela and acted for her in the premises, and therefore had authority to waive any such irregularity and by his conduct in making no objection did so waive it. Moreover, it will be borne in mind that the only irregularity was the appointment of the experts, and that the taking of the testimony was before the judge agreed to by the parties.

It is quite clear to the umpire that the understanding evidenced by the record of the eighth session was not to dispense with or throw out the testimony of the witnesses taken in 1902, but to amplify the proof with respect to values, and give the Government of Venezuela an opportunity to be present when testimony as to values was taken. This seems to have been done.

The umpire is therefore of the opinion that the claimant is not entitled to recover, under the proofs, the amount found due him by the Commissioner for Germany. It would undoubtedly have been more satisfactory if the claimant had made a more full presentation of evidence, both as to the property taken and as to its value. On the other hand, the character of the occupation of the hacienda by the troops of the Government was, at least to the claimant, a notorious event, and this may have induced him to think that comparatively little testimony was needed. It is also a fact of which the umpire can take judicial cognizance that occupation by troops of a property of this nature is always very destructive and damaging, especially to growing crops.

The claimant is therefore allowed the sum of 49,288 bolivars, with interest from the 22d of June, 1903, up to and including the 31st of December, 1903, at 3 per cent per annum.

---

#### METZGER CASE

Law of domicile rules as to class of claims for damages to decedent which will survive to his estate.

Under the law of Venezuela the heirs may recover for bodily injuries, but not for damages to personal feelings or reputation.

#### DUFFIELD, *Umpire*:

The claimant alleges that on the 28th of May, 1902, while lawfully going from his house to his office, in Carúpano, he was assaulted by an officer of the Venezuelan army because the claimant would not give up the mule he was riding. The officer attempted to take the mule by force, and upon the claimant resisting another officer struck him two severe blows on the shoulder with a saber, inflicting serious injury. His life was also threatened, and he was subjected to other indignities.

If the occurrence had not arisen out of the demand for the mule it might be held that this was a purely wanton assault by the officer, for which, as the