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RECUEIL DES SENTENCES ARBITRALES

Flothow Case

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recoverable. As the claimant presents no evidence of the amount of these injuries he can not recover on the case as made. His mistake in refusing to accept the carriage was a mistake of law and not of fact, and, in strict right, he perhaps can not demand an opportunity to show the amount of these injuries. The case, however, is a hard one, inasmuch as he has lost his carriage through the mistaken though lawful action of the police, and has undoubtedly suffered damage to his business, which, however, is not legally recoverable. Under the words of the protocol providing for the examination and decision of claims "according to principles of justice," and that "the decisions of the Commission shall be based upon absolute equity," in the opinion of the umpire it is a proper case in which to allow the claimant an opportunity to show his actual damage. If the Commissioners can not agree upon this amount without further proof the claimant will be allowed five days in which to make the same.

It results, of course, that there can be no allowance made for extrajudicial or other legal costs. In any event, the former are not recoverable under the opinion of the umpire rendered in the case of Hugo Valentiner. As to the latter, the umpire is of opinion that there is no power in the Commission to allow the costs of proving the claim. In all civil actions costs are created by statute, and only such are allowed as the statute provides for. It is true in the claim of Richter the claimant was allowed the costs of the additional testimony, but that was because the Commission itself had directed him to take it.

An entry will be made in the record in accordance with the above opinion.

FLOTHOW CASE

Meaning of protocol in the provision for extending time for submission of claims

DUFFIELD, *Umpire:*

In this case the opinion of the Commissioner for Germany is that the case should be received by the Commission and acted upon notwithstanding the fact that the time fixed by the protocol has expired, as has also the extended term fixed by the Commissioners at the seventh session, June 22, 1903. The Commissioner for Venezuela disagrees with this conclusion and is of the opinion that the extension of time made at the seventh session of the Commission, on the 22d day of June, 1903, exhausted the power of the Commissioner to make further extension, and that, moreover, the period covered by that extension having expired, the Commission has no power to create a new term.

The extension of the term at the seventh session was made by the agreement of the Commission without consultation with the umpire.

There is a decided misunderstanding by the Commissioners as to their action on the 22d of June, 1903, and even as to the accuracy of the record of that date. Fortunately it is not necessary to decide this difference. It appears upon a careful examination of the protocols that the translation into English which the Commission have been using contains a material error in the first paragraph of Article III of the additional agreement of May 7, 1903, the language of the translation being:

> The claims shall be presented to the Commissioners by the Imperial German minister at Caracas before the 1st day of July, 1903. A reasonable extension of this term may eventually be granted by the Commissioners —

while the original English duplicate, signed by Mr. Bowen and Baron von Sternberg, reads:

The claims shall be presented to the Commissioners by the imperial German minister at Caracas before the 1st day of July, 1903. A reasonable extension of this term may in proper cases be granted by the Commissioners.

If the former translation were correct, there would be much force in the argument of the Commissioner for Venezuela. The Commission, however, must accept the language of the protocol signed by the representatives of the two countries. Under its language no authority is given to the Commission to make a general extension of the term for the presentation of claims. This is the necessary and only inference from the words " in proper cases." The umpire is therefore of the opinion that the action of the Commissioners on June 22 does not affect the power of the Commission to consider on its merits the application of the claimant for permission to present his claim.

In the German text of the original protocol, signed by Baron von Sternberg and Mr. Bowen, the word " Commission " is used instead of the word " Commissioners " in the clause providing for the extension in proper cases. Basing his argument upon the English translation, the Commissioner for Venezuela has suggested that this may be a case in which the umpire, in case of disagreement of the Commissioners, has no power to decide. Even if the German original did not differ from the English, the umpire is of opinion that the word "Commissioners " as used in this article should properly be interpreted to mean the Commission. In other parts of the protocol the words " Commissioners " and " Commission " seem to have been used synonymously, and it is obvious that if the umpire had no authority to decide what is a reasonable extension in case of disagreement of the Commissioners, it would be entirely in the power of the Venezuelan Commissioner to prevent any extension that did not seem to him reasonable. Such an intention on the part of the representatives of the two countries can not, in the opinion of the umpire, be fairly presumed. Moreover, in the original protocol of February 13, 1903, to which the agreement of May 7 was supplemental, it is provided in Article IV: " in each case where the two members come to an agreement on the claim, their decision shall be final. In cases of disagreement *the claims* shall be submitted to the decision of an umpire to be nominated by the President of the United States of America." The claimant asks leave to present his claim upon the following grounds: It is based upon alleged injuries to and wrongful seizures of property on his breeding ranch, some of which occurred as late as May, 1903. This property was in charge of an agent of the owner, the latter having left Venezuela in 1901 and removed to Madrid with his family, where he still lives. It appears that the agent took the proofs which are offered in support of the claim in the latter part of June. They seem to be in proper form, although perhaps the evidence of the agent's authority may be subject to technical objections. Possibly on this account or for prudential reasons the agent deemed it necessary to send it on to his principal for approval. For some reason which does not appear they were sent to Germany and did not reach the claimant until about July 31, 1903. This occasioned the delay.

Under these circumstances the umpire is of the opinion that the case falls within the provision in the additional agreement of May 7, and is a proper one in which to grant an extension of the term fixed by the representatives of the two Governments.

While there is force in the objection of the Commissioner for Venezuela that the claimant may be presumed to have had knowledge of the protocol of February, it appears that the two Governments did not consider their convention complete as to modes of procedure and other matters provided for by the additional agreement of May 7. The earliest date, therefore, at which it would seem to have been incumbent on claimant to set about preparing his claim and

proofs would be May, 1903, and as it also appears in this case that the injuries and seizure of property continued into that month, the case does not show, in the opinion of the umpire, an unreasonable delay on the part of the claimant.

In accordance with these conclusions, the claim will be admitted for the consideration and such disposition as the proof may warrant.

BREWER, MOLLER & CO. CASE [1]

Taxes apparently legally levied and paid without protest can not be recovered

DUFFIELD. *Umpire:*

The claimants ask to be allowed the sum of 20,283.20 marks which they have paid on account of taxes assessed against them by the municipality of San Cristóbal. They introduce in evidence a resolution of the municipal council of the district, dated the 28th day of September, 1902. This resolution recites that in the exercise of their authority under article 32 of the law providing for taxation for municipal purposes they have assessed the warehouses of the first class the sum of 3,000 bolivars every three months, and directs the junta clasificadora — board of assessors — to make the proper assessment and classification. Under this municipal action the claimants paid the sum above mentioned. They now seek to recover it from the Republic of Venezuela.

The Commissioners disagree as to the liability of Venezuela.

The umpire is unable to see any ground whatever on which to sustain this claim. The uniform presumption of the regularity and validity of all acts of public officials applies to this case, and there is not the slightest evidence or attempt to prove that these taxes were illegally levied. There is a statement in the expediente that only warehouses owned by Germans fell under the operation of this law. If it were shown that this tax was specially levied upon Germans owning warehouses, because they were Germans, or that for any other reason they were unlawfully classified, the allegation might need further consideration; but it so clearly appears that the tax is a general one, and that the classification is made upon a basis of the values of property, that it excludes any such inference. Moreover, the claimants do not appear to have raised any objection to the classification, but paid the taxes voluntarily. It is a settled law that the voluntary payment of taxes purporting to be levied under a valid law waives all irregularities in the assessment. It is very doubtful if the Republic of Venezuela could under any circumstances be made liable to the amount of irregular or illegal taxes collected by one of the municipal districts. But it is not necessary to decide this, as upon the whole case as made there is an absolute want of equity in the claim, even as against the municipal district of San Cristóbal.

It results that the claim must be wholly disallowed.

CHRISTERN & CO. CASE

Beckman case affirmed (see p. 598).

In the absence of specified rate of interest only legal rate recoverable. Compound interest refused.

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[1] The cases of Adolph Noack and Steinworth & Co. were also disallowed for the reasons given in the following opinion.