

**REPORTS OF INTERNATIONAL
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**RECUEIL DES SENTENCES
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Christern and Co. Case

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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.

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

DUFFIELD, Umpire:

The claimant asks the sum of 21,256.12 bolivars. This sum is made up of 2,800 bolivars for cattle taken by the Government, 7,996.71 bolivars for war duties, so called, being an increase of 30 per cent of the previous customs duties imposed by a decree of the National Government dated the 16th of February, 1903, and 10,459.41 bolivars for a debt of the State of Zulia.

The Commissioners disagree as the liability of Venezuela for the first and third items, but agree to the disallowance of the second item.

The umpire is of the opinion that the proofs do not make out a case of vested right in the claimants under the customs law which they count upon, and that the decision of the Commissioners in respect of this item is correct.

The Commissioner does not dispute the fact or the value of the cattle taken by the Government of Venezuela, but he claims that Venezuela is discharged from liability because of a novation between the claimants and the State of Zulia. Granting this premise, the umpire is of the opinion that the Government of Venezuela is still liable for the claim. His reasons for this conclusion are stated in full in the case of Beckman.¹

The decision in that case also decides the liability of Venezuela for the loan to the State of Zulia. The Commissioner for Germany, however, allows the claimants the full amount of this item of their claim, 10,459.41 bolivars, with the usual interest. This amount includes interest at 1 per cent a month, compounded with yearly rests, and increases the original amount of the item thereby 4,589.37 bolivars. The umpire is unable to concur in this finding. He does not find any warrant or authority in the proofs for compounding interest. Neither do the proofs show that under the agreement made on the 14th of February, 1900, between the representatives of the government of Zulia and the parties who made the war loan for the purpose of adjusting the amount due, of which the claimants' share was 11,625.04 bolivars, there was any agreement for any rate of interest on the amount then agreed upon. There is also an entire absence of proof as to the rate of interest which the original loan was to bear. It is too clear to need argument that if no rate of interest is agreed upon by the parties, only the legal rate can be allowed. This rate in Venezuela is 3 per cent per annum. Instead, therefore, of allowing the sum named by the Commissioner for Germany, the item is allowed at the sum of 6,083.22 bolivars, being the original amount of loan, 11,254.04 bolivars, with interest at 3 per cent from February 14, 1900, to December 31, 1903, less the payments made thereon and interest on those payments.

For the same reasons the umpire concurs in the decision of the Commissioner for Germany as to the first item, and awards therefor the sum of 2,800 bolivars, with interest from the date of the presentation of the claim, August 3, 1903, up to and including December 31, 1903. Total amount awarded claimants, 8,917.74 bolivars.

ORINOCO ASPHALT CASE

A government has no right to close ports of the country which are in the hands of insurgents unless it can maintain the blockade by force.²

DUFFIELD, Umpire:

The Commissioners have agreed upon the allowance of the first six items

¹ See *infra*, p. 436.

² See *Topaze* case, Vol. IX of these Reports, p. 389; *De Caro* case, *infra*, p. 635; *Martini* case, *infra*, p. 644.