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**RECUEIL DES SENTENCES
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Christern and Co. (liquidators) Case

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zuela are not binding on this Commission under the protocol which requires that it disregard provisions of local legislation.

Taking up these objections in their inverse order —

First. The umpire is of the opinion that the articles of the code in question are not local legislation within the meaning of the protocol. The parties to the protocol primarily intended by these words, it is quite evident, that Venezuela should be estopped from insisting upon the general provision in her law requiring foreigners as well as citizens to present their claims against the Government to the courts of Venezuela. Incidentally, of course, like provisions of local legislation were intended to be excluded; but it can not be presumed that all the laws of Venezuela with reference to the formation of corporations or of partnerships, or of limited associations, or in respect to the rights and obligations of holders of real estate were so included. Neither can it be reasonably presumed that it was intended to estop Venezuela from invoking the provision of local legislation to which foreigners, by associating themselves with Venezuelans, and by their voluntary and solemnly executed consent, had agreed. A fortiori must this be the case under circumstances like those under consideration, where, by the agreement between the foreigners and the Venezuelan citizens, the foreigners expressly stipulate that all right of property in the effects of the association shall be vested in the Venezuelan citizen.

Second. The umpire is unable to regard the objection of the Commissioner for Venezuela as a technical one, in the sense of the protocol. Certainly under the protocol this Commission can not take jurisdiction of a claim which is not owned by a German subject, and if, as has been stated, Piñedo, García & Co. were the owners in law of the property, and their German associates have only a right to an accounting for their contribution and its profits, they are not the legal owners of the debt or of any interest therein.

It appears by the code of commerce above cited that in case of failure of the "merchant" — *comerciante* — with whom they are associated they would be required to suffer the loss of their entire contribution of capital, if that should be the proportion of the total losses, after which they would be considered creditors pro tanto their contribution. It is therefore in law entirely uncertain whether they will receive, upon an accounting, any part of the claim against the Government.

In a case where all of the parties interested are foreigners, and therefore all of them are competent to associate themselves together in such a manner as has here been done, without need of or regard to the provisions of Venezuelan legislation, quite a different question would arise. The question, however, does not arise in this case, and it is not necessary for the umpire to decide it. He therefore expresses no opinion upon it. The item will therefore be disallowed without prejudice.

The claimant will therefore be allowed the amount of items 5 and 6, agreed to by the Commissioners at 33,958 bolivars, and 53,296.67 bolivars, allowed by the umpire on account of the debt of the State of Zulia, aggregating 87,254.67 bolivars, without interest.

CHRISTERN & CO. (LIQUIDATORS) CASE

Assignees for the benefit of creditors considered purchasers for value and entitled to recover, although claim in its origin was not entirely German.

DUFFIELD, *Umpire*:

It is conceded that the claimants are the properly appointed and lawfully authorized assignees for the benefit of the creditors — *liquidadores* — of Minlos.

Witzke & Co., of Maracaibo. The latter have a claim against the State of Zulia under an agreement entered into between the representative of that State and Brewer, Moller & Co., dated January 2, 1902, adjusting the amount of the debt of the State with the various members "of the commerce" — *del comercio* — of Maracaibo, for a loan enforced by the State of Zulia on behalf of and for the benefit of the Venezuelan Government.

The validity of the claim as respects Minlos, Witzke & Co. is adjudged by the decision of the umpire in the case of Beckman & Co.,¹ No. 47, but it is claimed by the Commissioner for Venezuela that Christern & Co. can not recover in this case because one of the two partners of Minlos, Witzke & Co. was a Dane. The umpire is unable to perceive the force of this objection. By an instrument attached to the "expediente" Christern & Co., whom it is conceded are German subjects, are vested with a full and absolute title, legal and equitable, to the share of Minlos, Witzke & Co., in the fund in question. It is true Christern & Co. hold it in trust for the creditors of Minlos, Witzke & Co., and of course any surplus thereafter will go to the latter. But that does not affect the title which Christern & Co. have to the fund. It is a familiar rule of law that assignees for the benefit of creditors are bona fide purchasers for value, and that after the assignment the assignors have no title whatever to the assigned property, and Christern & Co. stand in this position. Certainly if Minlos, Witzke & Co. had sold and conveyed this claim to Christern & Co. the fact that one of the former was a Danish subject could not affect the latter's right to recover. It is true that the debt was of such a nature as to be non-negotiable in the sense of the law merchant, and that Venezuela would, as against any subsequent holder of the debt, avail herself of any defense she might have against the original holder; yet it was assignable in law and capable of having the entire legal and equitable title to it transferred and conveyed.

In the opinion of the umpire, therefore, it is clear that Christern & Co. are the legal owners of the claim and, being German subjects, are entitled to an award by this Commission for the amount thereof.

The claim is therefore allowed at the sum of 28,135.85 bolivars, which includes interest up to and including the 31st of December, 1903.

BECKMAN & CO. CASE

Central Government liable for forced loan by one of the constituent states the proceeds of which were used for the defense of the entire nation.

Where no rate of interest is specified only the legal rate is recoverable.

DUFFIELD, *Umpire*:

The claim is for 227,756.54 bolivars, composed of the following items:

	<i>Bolwars</i>	<i>Marks</i>
A. Debt of the Government of the State of Zulia	13,584.62	10,867.70
B. War duties on importations	10,772.24	8,617.79
C. Export duties	19,749.24	15,799.39
D. Loss on coffee and hides caused by prolonged storage	25,014.36	20,011.49
E. Interest on capital lying idle	50,496.08	40,396.86
F. Loss caused by the suspension of mail service	50,000.00	40,000.00
G. Losses in salaries, rent, etc.	58,140.00	46,512.00

¹ See *infra*, p. 436.