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**RECUEIL DES SENTENCES
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Beckman and Co. Case

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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.

As to the first item (A) there is no disputed question of fact. The State of Zulia confessedly owes the claimant the sum of 13,584.62 bolivars. The amount due the claimant was agreed upon and officially published in detail in the Official Gazette of the State of Zulia of the 16th of February, 1900, together with the stipulation of the Government for its liquidation in monthly payments. Since the 20th of August, 1901, these payments have been suspended, and there remains of the original debt due the claimant the sum stated above.

The Commissioner for Venezuela denies the liability of his Government, because, in his opinion, the debt is that of one of the States of the Republic of Venezuela and that the latter can not be held responsible. The expediente shows that the origin of the debt was forced loans made by the State of Zulia for the benefit of the National Government, and presumably by its direction. At all events, there is no denial that the money was expended for the benefit of the National Government, with its knowledge.

It is argued by the Commissioner for Germany that in any event the National Government is responsible for the debt of one of its States, and in support of this contention is cited the very able opinion of Mr. Robert Bunch in the *Montijo* case. (Moore on Arbitration, 1421-1447.)

In the opinion of the umpire it is not necessary in this case to decide the question. He prefers to put his opinion upon the concrete base, which is that in the efforts of Venezuela to suppress insurrection and put down rebellion she called upon the State of Zulia for assistance. In pursuance of this call the State enforced the loans in question. It now finds itself either unable or indisposed to make any more payments to the creditors on this account.

Under these circumstances, in the opinion of the umpire, it would be inequitable and unjust to the State of Zulia, as well as to the claimants, to remit the claimants to a suit against her. Morally and equitably, if not *stricto jure*, the Government of Venezuela is bound to repay the State of Zulia these moneys which were advanced for the common defense of the nation. The citizens of the State of Zulia can properly be called upon to pay their quota of the national debt, but it is manifestly unjust to assess upon them the entire amount of these forced loans, and absolve the other citizens of the Republic of Venezuela from the payment of their own proportion thereof.

The Commissioner for Germany, however, allows the claimant the full amount of this item of his claim, 13,584.62 bolivars, with the usual interest. This amount includes interest at 1 per cent per month, compounded with yearly rests, and increases the original amount of the item thereby 5,147.26 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 representative of the government of Zulia and the parties who made the war loan for the purpose of adjusting the amount due, of which the claimant's share was 15,417.36 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 12,186.54 bolivars, being the original amount of the loan, 15,417.36 bolivars, with interest from February 14, 1900, to December 31, 1903, less the payments made thereon and interest on those payments.

The umpire agrees with the Commissioners in the disallowance of Claim B,

10,772.24 bolivars, for the reasons stated in his opinion in the case of Christern & Co., No. 50.¹

Item C of the claim for 19,749.24 bolivars, in the opinion of the Commissioner for Germany, should be allowed at its full amount, but he gives no reason for that opinion. The Commissioner for Venezuela, without giving any reasons therefor, is of the opinion that this item should be disallowed. It appears from the expediente that the Government of Venezuela on the 16th of February, 1903, imposed an export duty of 2 bolivars on each 50 kilograms of coffee and 4 bolivars on each 46 kilograms of hides. It is not contended by the claimant that this duty in and of itself would have been injurious to them or was an unlawful exercise of power by the Government; but they claim that because of the closure of the river by the Government decree of the 15th of January, 1903, the duties fell upon coffee which would otherwise have been exported prior to the date of the decree. This claim, therefore, depends for its allowance upon the decision of the question of the liability of Venezuela for closing the River Zulia, and is disallowed for the reasons stated in the opinion in the case of Faber, No. 53.²

The remaining items of the claim — namely, D, E, F, and G — for injury to coffee and hides caused by the prolonged storage of the same, and interest on the capital lying idle during the closure, and loss caused by the suspension of mail service, and loss on account of salaries, rent, etc., also depend on the decision of the same question, and are disallowed.

The claim is therefore allowed at the sum of 12,186.54 bolivars, which includes interest to December 31, 1903.

FABER CASE

(By the Umpire:)

Consular certificates admissible as evidence.³

International mixed commissions not bound by strict technical rules of evidence.

¹ *Supra*, p. 423.

² See below.

³ The question as to what papers are receivable in evidence before international commissions was extensively discussed by counsel for the claimant and respondent governments before the United States and Chilean Claims Commission of 1897, the briefs being summarized as follows:

The position of counsel for the United States upon this question is:

(1) That this Commission must receive as *evidence* all written documents and statements which are presented by either Government and must consider them in arriving at its conclusions.

(2) That these documents and statements are to be given such weight as they seem to be entitled to, both intrinsically and in view of surrounding circumstances and other facts proven in the case; and

(3) That the mere fact that they are *ex parte* may possibly affect their *weight* when contradicted by other proof, but can not possibly affect their *admissibility* as legal evidence.

Reliance was placed upon Article V of the treaty, stating that—

They (the Commission) shall be bound to receive and consider all written documents or statements which may be presented to them in behalf of the respective Governments in support of or in answer to any claim.

The United States counsel conceded that the civil law upon this subject was not as strict as the common law, as might be seen in the following citations:

French Civil Code, articles 1317-1333; Code of Civil Procedure (in force in Spain, Cuba, Porto Rico, and the Philippines), articles 577, 595, 601; Mexican Code of Civil Procedure, article 289; Colombian Civil Code, articles 1758-1766; Chilean Civil Code, articles 1699-1707; Louisiana Civil Code, articles 2234 (2231) to 2251; Walton's Civil Law in Spain and Spanish America, pages 346-348.