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FRIERDICH AND COMPANY CASE [1]

The burden is upon the company to establish clearly and definitely that the respondent Government proceeded in an unlawful manner concerning the boat of said company after it arrived in the port of Güiria.

The initial wrong was all with the claimant company (a) in the engagement of an incompetent captain, with knowledge of his incompetency, (b) in the taking away of the ship's papers by a partner of the company, (c) in permitting the ship thus stripped of its papers to go out on the open sea, (d) in entering the harbor of Güiria under these circumstances.

The arrival of this ship in port under the circumstances attending it justified suspicion and examination of the real status of the schooner by the revenue officers of the port.

The schooner was not in the port of Güiria through any imperious neccessity, but voluntarily. Such compulsion as existed was through the act or neglect of a member of the company; and its unjustifiable departure from the Port of Spain, its journey across the sea, and its entrance to the harbor of Güiria were wholly attributable to the company and its agents.

In order that there may be intervention on the part of France, there must be a legal wrong on the part of Venezuelea.

If Venezuela conforms with its own laws in its own ports, and if these laws are such as are the product of civilization, then there is no error, hence no responsibility on the part of Venezuela and no right of intervention on the part of the claimant Government.

It appears that Venezuela acted in this respect through its regular officers and, until the contrary is clearly shown, the acts of these officers must be assumed to be regular and proper.

Such a presumption of regularity and propriety is a proper protection of the public and its interests.

Venezuela is also entitled to that presumption of good faith in favor of its public officers which ordinarily attends the acts of public officials.

So far as appears, the court in proceeding to condemn the schooner to pay a fine was acting within its jurisdiction and within its right, and until the contrary appears its acts will be presumed to be regular and its judgment righteous.

The laws of Venezuela in regard to such matters as are before the umpire in this case appear to be in harmony with the laws of other civilized countries.

That the Government at Caracas permitted the boat to be returned to its owners without exacting payment of the fine is not an admission on its part that its acts in reference to the schooner had been irregular and unlawful.

The question presented here is one of detention olny, and the detention involves only the question of its reasonableness in point of time. Sufficient time to know all the facts, to assemble them before the court, and for the court to act upon them was a necessary adjunct of the situation.

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[1] EXTRACT FROM THE MINUTES OF THE SITTING OF MAY 12, 1903.

An examination of the claim of the Orinoco Asphalt Company, amounting to 176,080.10 bolivars, was next taken up. Doctor Paúl rejected it absolutely as without foundation. M. de Peretti, considering the schooner belonging to the company had been illegally detained at Guiria for thirty-four days, asks therefor an indemnity of 5,000 bolivars.

Doctor Paúl does not recognize the illegality of the measure in question. The arbitrators not having been able to come to an agreement, this claim will be likewise submitted to the umpire.

OPINION OF THE VENEZUELAN COMMISSIONER

This claim, presented to the minister of foreign affairs of France by Mr. A. Sanary, who styles himself liquidator of the " Sociedad Betunes del Orinoco," is destitute of all documents proving the juridic personality of such company or the capacity of him who calls himself its liquidator as its trustee. What has been produced is a contract entered into in Paris, on the 2d of December, 1898, by which Messrs. Ernesto Nicolás Frierdich and Tácito Delort, on the one part, and Messrs. Courtant Bergerault and A. Cremer, on the other, agree upon constituting a commercial partnership on the part of Frierdich and Delort, and a silent partnership on the part of Bergerault and Cremer, the firm-name of which was to be " E. Frierdich & Co." Messrs. Frierdich and Delort only were authorized to manage and sign for the company. Besides, the fact on which the claim is based is only the detention sustained by the schooner *Love and Lulu* in the harbor of Güiria during thirty-seven days on account of a confiscation suit entered against her before the finance court for having arrived at that port without a matricula or register and other papers concerning her correct clearing, and in which suit she was condemned to pay a fine, she being released afterwards at the instance of the consul of Holland in Port of Spain, who claimed the preferential payment of debts contracted in said island, for which she was sold to the highest bidder there.

As is seen from the simple statement of these events, there exists no ground to demand an indemnity for the consequences of a suit brought in conformity with the laws on the matter, it being observed that it was Delort himself who denounced to the authorities at Güiria the want of papers of the schooner, alleging that they had been violently taken from the captain by his (Delort's) associate, Frierdich, when the vessel was leaving the island of Trinidad.

For the reasons expressed the arbitrator disallows the claim presented.

CARACAS, *May 12, 1903.*

OPINION OF THE FRENCH COMMISSIONER

The liquidator of the French Society Frierdich & Co., known also by the name of the Orinoco Asphalt Society, claims of the Venezuelan Government an indemnity of 176,030.10 bolivars, because the latter having retained illegally in the port of Guiria the schooner of this society for thirty-nine days should be responsible for the complete ruin of the concern. The information which I have gathered at Trinidad and in Venezuela about this company has convinced me that the condition in which it operated did not bring about such a serious result. At the moment when the accident happened which incited the claim it was already in insolvency. We can not argue, then, that the intervention of the Venezuelan administration, stopping the affairs of the company, obliged it to abandon its operation. If the *Love and Lulu* had not been detained at Güiria and could have been able freely to pursue her voyage, the fate of the enterprise would not have been changed. However, it seems to me that the administration of the custom-house of Guiria committed an abuse of power in retaining for more than a month, without reason, the schooner *Love and Lulu*, and I consider that the damage caused the owners of a boat of its towage by its lying idle for more than a month should be compensated by the granting of an indemnity of 5,000 bolivars. In fact, the nominal owner of the schooner, Mr. Tacite Delort, silent partner of the firm Frierdich & Co., was on board at the arrival of the boat at Güiria, and he himself implored the aid of the authorities of the port against the insubordinate crew. The absence of navigation papers was due to a case of *force majeure* (superior force) analogous to those

which the Venezuelan law anticipated; the papers in question were besides delivered as soon as possible; and finally, the rigorous measure, the forfeiture and sale of the boat, ordered by the tribunal of Güiria, were carried out upon the order coming from Caracas. I have not taken into account a letter which Mr. Frierdich addressed to me the 28th of April, 1903, to request me to withdraw the claim presented under the firm-name of Frierdich & Co., because it was not Mr. Frierdich who presented this claim, but the liquidator of the company. Mr. Frierdich, resident in Venezuela, an insolvent, it appears, was on bad terms with his former partner, to whom he was indebted for quite a large sum. This situation and also, without doubt, the fear of displeasing the authorities of a country where he has definitely established his residence, and where he has married, explains sufficiently the proceeding of Mr. Frierdich. In these conditions, this proceeding (the sending of the letter) could not be taken into consideration. The indemnity of 5,000 bolivars, which I believe equitable, would be, it is necessary to note, diminished by more than half by the fact of payments in bonds of the diplomatic debt, accepted by the French Government, to the end of permitting the Venezuelan Government to pay its debts more easily.

PARIS, *August 26, 1904.*

ADDITIONAL OPINION OF THE VENEZUELAN COMMISSIONER

As stated in my opinion preceding this additional opinion the detention of the schooner *Love and Lulu* by the authorities of the port of Güiria and the subsequent legal action thereon was due, as shown by the documents submitted, to the fact that said schooner arrived in the above-mentioned port without her register and other papers which the laws of Venezuela require from vessels coming into a Venezuelan port from foreign ports. Only in case of showing proof that the arrival of said schooner at the port under said conditions was due to any of the unforseen circumstances specified by law, could the schooner *Love and Lulu* be exempted from the penalty imposed by article 48 of the " Código de Hacienda " (Code of Fiscal Laws) of Venezuela then in force. The detention of the schooner lasted the time necessary for the investigation of the facts and the hearing of the testimony of her owner, whose defense was the allegation that the papers had been violently snatched from him in Trinidad by his partner, Mr. E. Frierdich, and that the schooner had sailed by order of the master and crew who did not obey his (the owner's) determination to discontinue the trip.

It is moreover shown by the same documents (see note of the consul for the Netherlands in Port of Spain dated March 1, 1901, to the minister of the Netherlands in London) that the schooner *Love and Lulu* returned sometime afterwards to Port of Spain, where she was embargoed and sold under the hammer by the courts of the island, for the payment of the workingmen and other creditors. It is also shown by another communication bearing the signature of the consular agent for the Netherlands, under date of May 29, 1899, to F. A. Thompson, register, that on that date, a few days later than the 17th of May of the same year, when the schooner was released by the courts of Güiria, she had been already condemned by the courts of Port of Spain, and that it was on May 29, 1899, that the public sale was to take place.

The register was not the only document lacking the schooner when she came into the port of Güiria. As shown by the note of the consul for the Netherlands, under date March 1, 1901, already quoted, Frierdich, Delort's partner, also took in Trinidad from the master of the *Love and Lulu* the permit or clearance issued by the Venezuelan consul enabling the schooner to go into Venezuelan

ports, the certificate issued by the same official showing that the ship had complied with all the requirements, and other papers.

Article 48 of the Fiscal Code (Código de Hacienda) then in force in Venezuela provides that should only the register be missing, then such measures as are provided by law shall be taken on board of the vessel, * * * and the fine of 5,000 bolivars shall not be levied and collected, nor shall the bond be demanded *when the master can prove* that the lack of the register is due to an accident which he could neither prevent nor foresee, such as *shipwreck, fire, or violence from an enemy or pirates.*[1]

In the case of the schooner *Love and Lulu*, which came under the authorities of Güiria, upon whom devolved the duty of strictly complying with the law, the master did not suffer violence from enemies or pirates, but it was Mr. Frierdich himself, the partner of the plaintiff, Tácito Delort, who took the schooner's papers, and it was the master, Luis Rodriguez, who of his own accord resolved to sail without the indispensable documents which he left behind at the port whence he sailed.

Article 194 of the same code provides that the ship's master is guilty of an offense and is liable to a fine of 10,000 bolivars and other stated penalties whenever he does not produce the other documents, if during the trial, as provided, he fails to show that the absence of such documents is due to any of the unforeseen circumstances set forth in section 2 of article 48.[2] It was not shown, nor was any endeavor whatever made to show at the trial of the schooner *Love and Lulu* that the absence of the other papers was due to unforeseen circumstances of shipwreck, fire, or under duress from enemies or pirates. On the contrary, the proofs then adduced show the party responsible for the absence of the ship's papers to be a partner of Mr. Delort.

The Venezuelan courts by virtue of their rightful and well-established jurisdiction and in conformity with the laws under which they are established were authorized and under obligation to bring an action against the schooner *Love and Lulu* to hold her and to compel the settlement of the liability incurred by her master for gross offenses (*faltas graves*) expressly defined and punished by the Venezuelan laws.

From the above statement of the facts it appears that it was through the fault of the claimant, Mr. Delort, and through the fault of the master in com-

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[1] ART. 48. Cuando el buque traiga el sobordo y sus demás papeles despachados en forma por el Cónsul de la procedencia, y sólo le falte la patente de navegación, se tomarán a su bordo las precauciones prevenidas en el artículo anterior, y además de imponerse al Capitán la multa del artículo 194, número 1°, se le exigirá una fianza de cinco mil bolívares, si el buque fuere de vela, o de diez mil si fuere de vapor, otorgada por él y por dos comerciantes abonados, a satisfacción del Administrador, la cual se hará efectiva en el caso de que el buque salga del puerto sin permiso de la Aduana, y de la autoridad política respectiva, sin perjuicio de las demás penas a que haya lugar.

No se impondrá la multa ni se exijirá la fianza cuando compruebe el Capitán que la falta de la patente provino de un accidente que no pudo prever ni evitar, como naufragio, incendio o violencia perpetrada por enemigos o piratas. En este caso se dará cuenta al Ministerio de Hacienda con todos los pormenores.

[2] ART. 194. El Capitán de un buque incurre en falta y paga multa en los casos siguientes:

1°. Cuando no presente la patente de navegación, pagará de cuatro mil a cinco mil bolívares en el caso del artículo 48; doblándose esta multa y haciéndose efectivas las demás penas a que haya lugar por la no presentación de los otros documentos, en el caso del artículo 47, si en el juicio respectivo no comprueba el Capitán que la falta proviene de alguno de los accidentes fortuitos previstos en el inciso 2° del artículo 48.

mand of the schooner *Love and Lulu*, and the fault of Mr. Delort's partner, Mr. E. Frierdich, that the schooner in question was subjected to legal proceedings before the fiscal court (tribunal de hacienda) of the port of Güiria, and to be held and condemned in conformity with the laws in the premises. It is to his own acts or negligence, to say the least, that the claimant owes, either directly or indirectly, the grievances or injury he complains of, if he ever did suffer any grievance or injury.

I beg to submit, together with this opinion, a letter duly authenticated, which was sent to Caracas to me in my capacity of commissioner, by Mr. E. Frierdich, a partner of the plaintiff, of the firm of Frierdich & Co., in liquidation, which letter shows, as does also the letter which the same Mr. Frierdich sent my learned colleague, that he has authorized no one to enter a claim against the Venezuelan Government by reason of the seizure of the schooner *Love and Lulu*, and that he does not consider that the authorities of the port of Güiria have given any cause in the present case to enter any claim whatever.

I beg to differ completely from the learned commissioner of France's opinion, that the letter in question must not be taken into consideration by reason of certain personal facts connected with the writer thereof, such as his being insolvent with his partners, and a resident of Venezuela married in the same country, and to be acting under fear of offending the authorities of the country where he resides. The contention that he is insolvent with his partners and the facts of his having his residence in Venezuela and having married a Venezuelan are not, in my opinion, of sufficient weight to destroy the testimony of a person bound no less than by the ties of business association to the claimant, who makes use of the name of the firm to enter the claim in question. As regards the charge of fear, so far no proofs have been offered to show the fact that Mr. Frierdich is susceptible to such fear nor that he is actually laboring under it.

In view of the foregoing, I come to a close supporting my opinion that the claim of the partnership Frierdich & Co., in liquidation, named " Société des Bitumes de l'Orénoque ", has no grounds whatever and that under the circumstances it should be disallowed. And I beg the honorable umpire to grant my request.

NORTHFIELD, VT., *February 1, 1905.*

ADDITIONAL OPINION OF THE FRENCH COMMISSIONER

The reading of the additional memoir of my honorable colleague has not changed my opinion on the two single points which I have thought I ought to mention in the above memoir and upon which I am not in agreement with Doctor Paúl. In the first place, it seems to me evident that the society of Frierdich & Co. being in insolvency it pertains to the liquidator, Mr. Sanary, whose powers to represent the aforesaid society are contained in the dossier.

Mr. Frierdich, insolvent debtor of his associates, proves by his proceedings that, not content with not paying his debts, he still tries to injure his creditors by preventing them from getting the benefit of an eventual indemnity. I am not called upon to consider this manner of action. I am content to refuse to Mr. Frierdich the right which he arrogates to himself of speaking in the name of a company at present in insolvency of which he is only the debtor. Consequently I think the arbitrators have to take no account of his letters.

In the second place, I consider that the custom-house of Güiria has caused, by retaining for thirty-nine days without reason the schooner *Love and Lulu*, an injury to her owners, whatever might have been the condition of the latter at that moment, a situation as to which I share, besides the opinion of my col-

league. In fact, either the custom-house of Guiria proceeded according to the Venezuelan law in retaining this vessel and then should have inflicted the penalty provided by law, and in case of nonpayment should have proceeded to sell according to law, or indeed the law did not authorize the retention of this vessel after the delivery of the papers on board, and then it ought to have delivered her immediately to Mr. Delort. But it stopped the procedure entered upon, which seems to indicate that it had no longer a legal right to prosecute, but it continued to retain the boat, which it did not sufficiently protect against depredations and which it only surrendered thirty-nine days after the seizure.

I maintain, then, that the custom-house of Güiria committed an error; that this error entailed an injury upon the partnership of Frierdich & Co. in depriving it for more than a month of the use of this schooner, and that this injury would be equitably compensated by an indemnity of 5,000 bolivars.

NORTHFIELD, *February 3, 1905.*

OPINION OF THE UMPIRE

The claimant company was organized in France and has unquestioned French nationality.

Tacite Delort and Ernesto Nicolás Frierdich are the active partners and managers of the company, and two other French gentlemen are silent partners.

The business of the company consisted of mining, refining, exporting, and marketing the products of a certain asphalt mine situated at Pedernales in Venezuela, about 70 miles from Port of Spain, Trinidad.

The company entered upon this business in 1898, and to aid in the importation of materials and men for the works and in the exportation of the asphalt to Port of Spain the company bought a schooner, *Love and Lulu*, which at the time of its purchase and thereafterwards was of Dutch nationality. It was registered in the name of Tacite Delort.

Owing to the character of the channel through which Pedernales was approached, it was necessary that the boat be of a peculiar build, which necessity was fully met by the *Love and Lulu*. Its purchase price was $2,100.

From the commencement of work at the mines to April 8, 1899, the company had exported and sold about 800 tons of asphalt.

On the date last named the *Love and Lulu* was in the harbor of Port of Spain and Mr. Delort and Mr. Frierdich were in the city of Port of Spain.

One Luis Rodriguez had been engaged as captain of the boat. This man could neither read nor write, had been previously a river pilot, did not understand the laws attending navigation, and objected to the service at the time of the engagement, because of his ignorance and of his fear that he would commit some blunder in the office. Notwithstanding the knowledge of the company of this ignorance he was made captain.

On said 8th of June, 1899, Mr. Delort learned that the schooner had received its clearance papers and was about to sail for Güiria. He desired to go with the boat when it sailed, but did not desire to go then. He undertook to detain the boat and obtained an order from the Dutch consul to the captain, directing him not to go. He was taken to the schooner and gave the captain the order of the Dutch consul; but the captain refused to recognize the authority of the consul and upon being ordered by Mr. Delort not to sail, the captain refused to recognize Mr. Delort's authority and proceeded to prepare to sail. It was about this time that Mr. Frierdich, the other manager, came to the schooner in a small boat and demanded of the captain, and received from him, all of the ship's papers. Mr. Delort attempted to prevent their delivery to Mr. Frierdich by personal intervention and the use of some violence, but the captain over-

came Mr. Delort's resistance and delivered the ship's papers to Mr. Frierdich, as above stated. Notwithstanding that he had no papers permitting him to sail and against the continuing and earnest protest of Mr. Delort, and with him on board, the captain set sail for Güiria, which port he reached some time that day.

Immediately upon the arrival of the schooner at Guiria Mr. Delort informed the harbor master of that port of the condition of affairs, and on the next morning he made protest before the vice-consul of Spain at Güiria, and at the request of Mr. Delort the testimony of the captain and of the steward was taken.

Some time after April 11 Mr. Frierdich surrendered the ship's papers to the Dutch consul at Port of Spain and they were forwarded by special messenger to Güiria, reaching there about the 14th day of April, on which day they were brought to the attention of the customs officers of that port, and there being no Dutch consul at Güiria the vice-consul of Spain, as the officer of a friendly nation, on the same day at the request of Mr. Delort visited the customs officials at Güiria and solicited of them and also of the captain of the port that the *Love and Lulu* be turned over to Mr. Delort. A formal refusal was made by these officers.

On April 17 the papers had been sent back to the Dutch consul at Port of Spain and he presented them to the Venezuelan consul of that port and formally asked the release of the *Love and Lulu* at Guiria.

Proceedings were instituted against the *Love and Lulu* before the proper tribunal at Güiria under articles 48 and 144 of the Maritime Code of Venezuela. A fine of 5,000 bolivars was duly imposed by the court and due notice was given of the sale of the schooner for the recovery of the fine.

Frierdich & Co. had no other boat than the *Love and Lulu* and not being able to obtain one at Port of Spain suited to the channel of Pedernales they could not transport supplies to the works or bring out the products of the mines, and, as a result, the asphalt works were abandoned and the workmen taken back to Port of Spain. The company had no means to pay the workmen for their labor or to answer the demands of their other creditors, and possession was taken by these creditors of such property of the company as they could find in order to secure their pay.

Pending the sale of the schooner at Güiria, the Dutch consul at Port of Spain asserted to the customs authorities at Güiria a prior and superior lien upon the schooner and demanded its return to Port of Spain to answer to this lien. It resulted that the Government of Venezuela, recognizing the validity of this claim, directed the return of the *Love and Lulu* to Port of Spain, and the schooner arrived there May 17. The fine has been in no part paid. No appeal was taken from the action of the tribunal imposing this fine, and it remains a final and unsatisfied judgment.

On the arrival of the *Love and Lulu* at Port of Spain it was seized under process issuing from the court of Port of Spain and was sold at public auction under such process. Before the sale, however, due notice was given by the Dutch consul to the proper parties in charge of the sale of the superior lien of his consulate, and he demanded payment of this amount before the purchaser could take possession of the schooner.

Later, proceedings in liquidation were instituted at Havre, France, and Mr. A. Sanary was constituted liquidator, and it is on his behalf, at his initiative, and for the benefit of the insolvent company and its creditors as such liquidator, that this claim is here presented.

Mr. Frierdich has filed with both of the honorable commissioners a protest against this claim, denying that there was any fault on the part of the authorities at Güiria at the time in question, or that any responsibility attaches to Venezuela on account of what happened in connection with this schooner.

Quite a large sum of money is claimed by the company of Venezuela on account of its alleged fault, but in the opinion of the honorable commissioner for France there is a just claim for 5,000 bolivars only. He does not ascribe the insolvency of the company to the detention of the schooner at Güiria, and he limits his award to a sum which he regards as not excessive for the abuse of power which he holds was committed by the administrators of the custom-house at Güiria and through the action of the court in detaining the schooner for the time stated, which detention he considers unreasonable.

The honorable commissioner for Venezuela sees no error in the action of the Venezuelan authorities and refuses any compensation.

The honorable commissioners having failed to agree, they join in sending the claim to the umpire for his decision. They have rendered the umpire very efficient aid in their opinions, original and supplementary, and by their courteous answers to his interrogatories.

If the company has a right to claim anything of Venezuela, it is the loss of use of the schooner by its detention a certain length of time in the port of Güiria. This right of use or the rental value of the schooner can not be very large, since the value of the schooner as determined by its selling price was only $2,100. In order that the company should have a claim upon Venezuela, the burden is upon it to establish clearly and definitely that the respondent Government has proceeded in an unlawful manner concerning said boat since it arrived in that port on the 8th of April, 1899. A detention without reason is suggested, but certainly some detention was not only reasonable but necessary. It was at least six days before its papers arrived from Port of Spain which would permit the company to justify in any way the right of the schooner to be upon the seas or in this port of Venezuela. The spirit with which this claim is pressed by the company is manifest from the fact that the claim for detention covers the entire thirty-nine days which elapsed from the time the schooner sailed from Port of Spain and the day of its return to that port. This is so manifestly wrong that it raises a suggestion of insincerity on the part of the claimant which must necessarily affect the value of the company's assertions in other particulars.

The initial wrong was all with the claimant company. It began in the reckless and ill-advised engagement of a captain entirely unfitted for his place, of which unfitness they were advised by the captain himself. It continued in the serious quarrel which had some time developed between the two managers of the company and, so far at this case is concerned, first manifested itself in the open rupture at the schooner's side at Port of Spain on April 6, when the captain, apparently through the advice and approval of one of the managers, openly defied the other, and where one of its managers was willing to see the schooner leave the port stripped of every essential paper to protect itself upon the seas, to become a floating derelict without right, opposed to the laws of all civilized nations and open to capture and condemnation without recourse or remedy. It was concluded when this same captain, ignorantly riding over the laws of every sea and the laws of every civilized port, sailed into the harbor of Güiria. The statements of Mr. Delort, made to the harbor master of the port and to the customs officials and before the consul of Spain, supported as they were in great part by the captain and whilom steward, were so improbable as to stagger belief and might well awaken just suspicions in the breast of the revenue officers of that port concerning the real status of the schooner.

Article 48 of the Fiscal Code then in force in Venezuela was:

> Should only the register be missing, then such measures as are provided in law shall be taken on board the vessel, * * * and the fine of 5,000 bolivars shall not be levied and collected, nor shall the bond be demanded when the master

can prove that the lack of the register is due to an accident which he could neither prevent nor foresee, such as shipwreck, fire, or violence from an enemy or pirates.[1]

But more than the register was lacking. The clearance issued by the consul of Venezuela at Port of Spain was lacking. There were lacking, also, the certificate by the same consul of compliance on the part of the schooner with all the requirements of the law and all other papers ordinarily belonging to a ship that is about to sail or that is sailing on the seas. The master could not prove in excuse that he was in this plight through any lack of foresight or through any accident. By the statement of both Mr. Delort and the master it was essentially true that there had been no accident of any kind, and they were not in the port of Güiria through any imperious necessity which they could not meet and overcome. They were there voluntarily so far as the master was concerned, and such necessity as attended their situation and their presence was the act of one of the managers of equal power with the other; no stranger had intervened, no trespasser had done them any evil; their unjustifiable departure upon and across the seas and their entrance into the harbor of Güiria were wholly attributable and only attributable to the company, its managers and agents. Thus far Venezuela is not involved. Does it act without law afterwards or without legal right? If it does not, then, even if it may be considered as acting harshly, which the umpire does not assert, the Republic of France has no right of intervention; for before there is right of intervention there must be a legal wrong on the part of Venezuela. If it conforms with its own laws in its own ports, and if those laws are such as are the product of civilization, then there is no error, hence no responsibility upon the state and no right of intervention on the part of the claimant Government. It appears that Venezuela acted in this respect through its regular officers and, until the contrary is clearly shown, the acts of those officers must be assumed to be regular and proper. There is a very proper presumption to this effect; and it is proper public policy and a proper protection of the public and its interests that such a presumption should attend the execution of official duties. (120 U. S. Sup. Ct., 605; 14 Johnson (N. Y.), 182; 19 Johnson (N. Y.), 345.)

The general presumption is that public officers perform their official duties, and that their official acts are regular. (American and Eng. Enc. of Law, 2d edition, Vol. 22, page 1267, citing in note 24, a long line of cases in England and the United States.)

Where some preceding act or preexisting fact is necessary to the validity of an official act, the presumption in favor of the validity of the official act is presumptive proof of such preceding act or preexisting fact. (Ib. 1269 and note 1 on same page, citing long line of supporting cases in the U.S. Sup. Ct. and in State courts.)

Similarly there is a presumption of good faith in favor of public officers. This presumption is applied to sustain the regularity of official acts in favor of individuals who rely thereon. (*Supra* and note 3, citing a line of decisions made by the United States Sup. Ct.)

A natural presumption attends them to that extent.

So far as appears, the court which proceeded to condemn the schooner to pay a fine was acting within its jurisdiction and within its right, and, until the contrary appears, its act will be presumed to be regular and its judgment righteous.

This presumption, supported by authorities above cited, applies equally to the actions and decisions of courts. It is only necessary to show that jurisdiction is clearly vested, and then the maxims or rules " Omnia præsumuntur rite esse

[1] See footnote, p. 34.

acta " and " Omnia præsumuntur legitime facta, donec probetur in contrarium " apply. (See Am. and Eng. Enc. of Law, 2d edition, Vol. 22, pages 1270-71 and the cases cited under note 4 of page 1271, both from the United States Sup. Ct. and from many of the State courts.)

The acts of the court must, in the first instance, be presumed to be regular and in conformity with settled usage, and are conclusive until reversed by a competent authority. Williams *v.* U.S., 1 Howard (U.S. Sup. Ct.) 290.

Best, " Principles of the Law of Evidence," first American from the sixth London edition, Subsection IV, under head of " Presumptions in favor of validity of acts," the entire subsection and notes.

So far as has appeared before the umpire, the laws of Venezuela in regard to these matters are in harmony with the laws of other civilized countries, and it does not yet appear before the umpire wherein the fiscal court at the port of Guiria committed error in subjecting this schooner to the fine which had been voluntarily invited by its appearance in the condition which is proven and admitted.

That the Government at Caracas yielded later to the strenuous demand of the consul of Holland at Port of Spain rather than to withstand the demand is not to the umpire an admission on the part of the respondent Government that its acts in reference to the *Love and Lulu* had been irregular and unlawful.

From the facts appearing in this case the umpire is fully satisfied that Frierdich & Co. was practically defunct on the 8th of April, 1899, and that, regardless of the incident of the *Love and Lulu*, it would have met substantially the same subsequent conditions and would have ended in as complete and hopeless failure as in fact followed. This failure was in no especial sense hastened by the incident at Güiria, and the only burden which the detention of the *Love and Lulu* at Güiria placed upon the company was the sum which it had to pay for the use of the boat that took the workmen from its asphalt mines back to Trinidad; and this is, of course, a sum of no great significance.

Whether or not the action of the customs officers at Güiria and of the fiscal court were in fact regular and necessary is a matter of but slight pecuniary importance to the claimant company, and since it was the primary and potent cause of its own misfortunes in connection with this incident and by its own voluntary misconduct brought these inquiries, vexations, and expenses upon the customs officers and the court at Guiria, it is not in position to scrutinize very closely what the officers or court of Venezuela did or did not do.

Here may be applied with a certain degree of propriety one of the most important maxims of equity, viz, " He who comes into equity must come with clean hands."

It certainly has brought pecuniary indebtedness to Venezuela in virtue of what occurred at Güiria through its own fault, which it has not yet asked the privilege to discharge.

And in this connection the claimant company may properly consider the value of another of the maxims of equity, viz, " He who seeks equity must do equity."

As the question is presented here, it does not involve the final judgment of the court condemning the ship to a payment of the fine; nor any matter of restitution of the ship, for that occurred. It involves only the question of detention, and detention involves only the question of its reasonableness in point of time consumed, for a sufficient time to know all the facts and to assemble them before the court, and for the court to act thereon was a necessary adjunct to the situation. If the conditions on both sides are regarded as producing an equilibrium, justice is done, in the opinion of the umpire; and he so holds.

This claim is dismissed for want of equity in the claimant company, and the award will be drawn accordingly.

NORTHFIELD, *July 31, 1905.*

CASE HEIRS OF JEAN MANINAT [1]

The respondent Government is held liable for injuries suffered by a Frenchman in the presence of the general in command of a division of the Venezuelan army, it appearing that the party injured was in the presence of the commanding general by his personal order and that the injury was caused by a subordinate officer without justifying reasons.

The injury being found to be reprehensible in character and the respondent Government for reasons of state declining or neglecting to punish the guilty persons, it is chargeable with the actual damages suffered by the injured person and such further sum as is held to be sufficient to make proper amends to the claimant Government for this affront to it through one of its nationals.

It being found by the umpire that the person came to his death through the injuries thus suffered, but before February 19, 1902, it is held that such only of his brothers and sisters as are of French nationality can present a claim before this commission to recover for his death.

This tribunal does not exist because of damages suffered in Venezuela, except these be damages of Frenchmen, limited in this case to the next of kin of the deceased, who are themselves Frenchmen. If none be French, then the claim falls. It is not possible to hold other than that the national quality of the claimant in fact determines the jurisdiction of the commission.

It is elementary that the burden of establishing nationality is with the claimant. It cannot be assumed or conjectured, but must be clearly proven.

Record proof is not essential if there be other that is convincing.

The marriage of a sister of the deceased to a Frenchman established her French nationality during marriage, which under French law remains after the death of her husband. There is some proof that she was born in France, none that she was born in Venezuela. Her French nationality being clearly established in her marriage, the burden shifts and rests upon Venezuela to show Venezuelan

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[1] EXTRACT FROM THE MINUTES OF THE SITTING OF MAY 19, 1905.

We then took up the examination of the claim of the heirs of Mr. Jean Maninat.

The French arbitrator, considering on one hand that Mr. Jean Maninat has died as a result of a wound which the Venezuelan officer gave him, but, on the other hand, that Mr. Pierre Maninat does not prove sufficiently his grievance against the Venezuelan authorities in the course of his legal proceedings with his creditors, accords to the heirs of Mr. Jean Maninat a sum of 500,000 bolivars for the *ensemble* of damages which they have suffered for the reparations which were due them.

The Venezuelan arbitrator is of the opinion that Mr. Jean Maninat was cured of his wound when he was attacked by tetanus, from which he died; that none of the grievances formulated by him or his heirs is established by sufficient proofs; that besides Pierre Maninat, born in Venezuela, is a Venezuelan according to Venezuelan law, and that all his four sisters, were born without doubt also in Venezuela. Two are married to foreigners, and have consequently lost their French nationality. Wherefore he rejects absolutely the claim in question.

M. de Peretti replies that according to the French law M. Pierre Maninat and his sisters, save those two who have married foreigners, have conserved their French nationality, besides the fact that Mr. Jean Maninat, born in France, enjoyed incontestably French nationality justifies in his eyes the competency of the commission.

As he maintained his opinion previously expressed, it is agreed that the claim be submitted to the Hon. Frank Plumley, Northfield, Vt.