

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Plantagen Gesellschaft Case

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national law, the umpire is inclined to the opinion that he would be compelled to sustain the right of Venezuela to the complete control of navigation of the Catatumbo and Zulia rivers. In his opinion it is not necessary to decide the case on this ground. As has been shown above, there is no contradiction of authority as to the right of Venezuela to regulate, and, if necessary to the peace, safety, or convenience of her own citizens, to prohibit altogether navigation on these rivers. It is also equally without doubt that her judgment in the premises can not be reviewed by this Commission or any other tribunal. That a case for the exercise of discretion did exist is obvious.

The other claimants who ask damages for the closing of these ports are all residents of and doing business in Maracaibo, in Venezuela. There was suggestion in the discussion of the case that there might be different rule as between a Venezuelan resident and a resident of Colombia, but in the opinion of the umpire, given a common German nationality, there is no such difference.

PLANTAGEN GESELLSCHAFT CASE

Evidential value of letters and unauthenticated receipts.¹ Valentin case affirmed.²

DUFFIELD, *Umpire*:

This claim is for 387,143.39 marks, and is founded on the alleged injuries to the haciendas of the claimants during the last civil wars. It appears that these haciendas were in the neighborhood of active military operations and the scene of considerable fighting. Part I of the claim in the amount of 369,968 marks and Part II in the amount of 7,354 marks are almost entirely made up of claims for consequential damages — loss of crops already planted, prevention of planting of other crops, inability to protect the growing crops from birds which destroyed them because of the impossibility of working and the frequent drafting of the laborers.

The Commissioners disagree as to the liability of Venezuela for these damages, and the case is governed by the decision of the umpire in the case of Hugo Valentin No. 12 (see p. 403).

The Commissioner for Germany, however, is of the opinion that there are certain "direct injuries proven, and although their value is not fixed, he leaves it to the umpire for reasons of equity to grant to the claimant an indemnification amounting in round figures to 20,000 bolivars." In the opinion of the umpire there is proof of very considerable injuries to the property of the claimant, for which the umpire would certainly have allowed him damages if he adduced any proof as to the amount of values. In the absence, however, of such proof, notwithstanding the hardship of the case, the umpire sees no legal or legitimate way of arriving at the sum of 20,000 bolivars. There is the testimony, however, of two witnesses, Oropeza and another, as to the destruction of 231,230 4-year-old coffee plants, a fair valuation of which, in the opinion of the umpire, is 20,000 bolivars, and this sum will be allowed the claimant.

Of Part III of the claim, 9,820.45 marks, the Commissioner for Venezuela allows 1,472 marks for property taken from a driver of the claimant company on the January 4, 1903, but denies the liability of Venezuela for the remainder of the part. His reasons therefor are as follows:

That the item of 5,504 marks is only proven by the letter or statement of

¹ See *supra*, p. 438, and note.

² *Supra*, p. 403.

the manager of the hacienda, and that the prices which the claimant places on the animals which he says were lost are in general double their value. The Commissioner for Germany insists that the proof is sufficient, and fixes the value of the property taken upon the basis allowed by the Commission in the claim of Steinworth & Co., No. 55, and other claims, at 3,744 marks.

While the proofs as to these items are very meager, the umpire concurs in the opinion of the Commissioner for Germany and awards the claimant on account thereof 3,744 marks.

That the items for injuries from February 7, 1902, to January 31, 1903, 2,563.90 marks, are not proven, because the receipts purporting to be therefor are not authenticated. He also criticises them because they are stamped with the seal of the Jefatura Civil of Carayaca. In view of the fact that the evidence fully establishes the occupation of the hacienda by both Government forces and revolutionists, and the taking of property therefrom, the umpire is unable to agree with the Commissioner for Venezuela and disregard these receipts as evidence, and the claim will be allowed for the sums named in the receipts, which is the amount claimed.

The entire claim, therefore, is allowed at the sum of 30,098 bolivars, which includes interest up to December 31, 1903.

THE GREAT VENEZUELAN RAILROAD CASE

An agreement between the Government and the railroad company to the effect that if the railroad will carry troops and munitions of war the Government will see that the railroad is indemnified for all damages resulting therefrom is absolutely void, as it is against public policy, and because the railroad company as a quasi public corporation is bound to carry all persons and freight, not in themselves obnoxious, which may be presented to it.

Kummerow case¹ affirmed.

Only legal rate of interest as provided by Venezuelan laws will be allowed on claims. Government of Venezuela not liable for damages caused by guerrillas.

No damages allowed for suspension of traffic over railroad during period of active operations in the field through which the railroad passed because this was justified as a military necessity.

DUFFIELD, *Umpire* :

This claim is for the aggregate sum of 931,186.50 bolivars. It is made up of four claims, each of which is again divided into items, and some of those items into parts, as hereinafter particularly stated:

Claim I is for	<i>Bolvars</i>	190,250.86
Embraced in —	<i>Bolvars</i>	
Item 1 for	142,615.00	
Item 2 for	47,635.86	
Claim II is for		40,594.77
Embraced in —		
Item 1 for	37,181.50	
Item 2 for	3,413.27	
Claim III is for		225,991.63
Embraced in —		
Item 1 for	213,199.65	
Item 2 for	12,791.98	

¹ *Supra*, p. 369.