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**RECUEIL DES SENTENCES
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The Great Venezuelan Railroad Case

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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.

Claim IV is for	790,346.60
Embraced in —	
Item 1 for	789,500.53
Item 2 for	846.07
	<hr/>
Aggregating	931,186.50

CLAIM I

Item 1 of this claim, 142,615 bolivars, is divided into two parts. The first part is for 6,215 bolivars, for damages for injuries caused by the derailment near Cagua of a special night train from Maracay to Cagua, on December 19, 1901. The second part is for 136,400 bolivars, for damages for the suspension of all traffic on the railroad from December 23, 1901, to January 9, 1902, by an order of the department of public works (ministerio de obras publicas) of December 23, 1901, published in the Official Gazette of the 26th of December, 1901, No. 2481.

Item 2, 47,635.86 bolivars, is for interest to July, 1903, at 12 per cent per annum on item 1.

CLAIM II

Item 1, 37,181.50 bolivars, is composed of parts "a" and "b." Part "a," 10,181.50 bolivars, is for damages and injuries owing to the transportation by the railroad of troops and munitions of war. Part "b," 27,000 bolivars, is for damages and injuries to the steam tramway from Guigue and to the steamer *Lake Valencia* between December 30, 1901, and October 1, 1902.

Item 2, 3,413.27 bolivars, is for interest at 12 per cent per annum to July, 1903, on item 1.

CLAIM III

Item 1, 213,199.65 bolivars, is composed of parts "a" and "b." Part "a" is for 169,767.40 bolivars for damages and injuries to the railroad owing to transportation of troops and munitions of war and for the enforced suspension and interruption of traffic from October 1 to December 1, 1902. Part "b" is for 43,432.25 bolivars for damages and injuries to the road owing to transportation of troops and for the enforced suspension and interruption of traffic to the end of 1902.

Item 2, 12,791.98 bolivars, is for interest at 12 per cent per annum to July, 1903, on item 1.

CLAIM IV

Item 1, 789,500.53 bolivars, is made up of two parts. The first part, 537,632.90 bolivars, is for fares and freight in 1899 and the balance due on the order of the board of public works (ministerio de obras publicas), dated July 12, 1900, on the Bank of Venezuela. In the statement of the claim there is no division of this part showing how much of it is fares and freights and how much balance due on the order. The second part, 251,867.63 bolivars, is interest on the above part.

Item 2, 12,791.98 bolivars, is composed of two parts. The first part, 557.45 bolivars, is for fares of the government of the Federal district, charged to the National Government under the authority of its note of October 7, 1901. The second part, 288.62 bolivars, is for interest on the said first part.

The Commissioners agree upon the allowance of claim IV at the sum of 575,056 bolivars, which includes interest to the 31st of December, 1903. (Vide acts of the sixteenth session, July 27.) Upon all of the other items they disagree.

The first opinion of the Commissioner for Venezuela was completed before

that of the Commissioner for Germany, and is referred to therein. It is not disputed that the official of the railroad company in charge at Maracay refused the request of General Bello, commandant at arms at that place, for a train to Cagua on the night of the 19th of December, 1901, at 9.30, and General Bello was only able to obtain it by force a little after 2 o'clock on the morning of the 20th. Even then —

neither the engineer nor the company rendered any assistance to the chief of the Government, who was starting out for no less a purpose than to destroy the revolution at its root and to capture its principal military chief.

Prior to this the company, on the 16th of the same month, through its managing director, sent to the minister of public works a letter in which he stated that he had received an anonymous letter — published in full in the Official Gazette of the 26th of December, 1901, No. 8421 — containing, among other things, the following:

The transportation over the railroad belonging to your company may bring many injuries upon your line and may be the cause of many misfortunes.

THE PARTIES INTERESTED

In the correspondence between the railroad and the Government at this time, which is found in the Official Gazette of the 26th and 28th of December, 1901, and January 13, 1902, the managing director of the railroad company writes that he has received an anonymous letter threatening his company with injuries in case it transported any troops or material of war for the Government, and requests the minister of public works to forward the note to the President of the Republic in order that he might order the stoppage of transportation of war material and troops over the line, or, if that was impossible, to satisfactorily guarantee the company reparation for all the injuries and losses that might come to it because of such transportation. To this note the minister of public works replied, criticising the managing director for taking so much notice of an anonymous letter and that the time of conflict, which in his imagination had begun, or which he knew from his knowledge of affairs was about to begin, should seem to him a propitious time to collect from the Government sums which former administrations owed, administrations the company had not refused to serve with transportation without guaranties, and of which the present Government had paid up to August, 1901, nearly 400,000 bolivars and had always paid the railroad its own obligations.

On the 22d of December, 1901, the managing director of the railroad declined to fill an order for the transportation of a detachment of troops. In connection with this refusal the managing director sent to the minister of public works a letter, from one Rodriguez, calling himself "chief of greater state, of division 'Caracas.'" in which he threatened damage to the railroad if they carried troops or munitions of war for the Government.

On the 23d of December the prefect of police, and subsequently the governor of the district at Caracas, stopped a train and ordered the suspension of all trains. To the complaint of the managing director for this action the minister of public works replied, stating there was no revolution at the time of the director's first letter, and commenting upon the director's knowledge of what afterwards happened, and saying that the Government finds it necessary to order that if it can not get service from the railroad the railroad shall not give it to others, and that on account of his conduct the Government considered the managing director hostile to the interests of public peace.

After considerable acrimonious correspondence, and a request by the Government to the Berlin directors of the railroad to substitute another managing

director, because the Government considered the present one to have taken a hostile attitude, even before the revolution, to which the Berlin directors did not accede, saying they did not believe the managing director was a revolutionist, and asking proof of his illegal conduct, the parties entered into an agreement on the 9th day of January, 1902. The agreement was executed by the minister of public works on the part of the Government and the managing director on the part of the railroad. In it the company "acknowledges the obligation of transporting troops and material of war for the Government," and the Government obliges itself in cases of war to indemnify the railroad for the losses which it may suffer because of such transportation, including pensions to Venezuelans, according to Venezuelan law, and to foreigners in a gross sum equal to nine years' salary, and agrees to order the opening of traffic on the railroad.

The conclusion which the Commissioner for Venezuela wishes should be deduced from these facts is not clearly stated in his opinion, but as he says, "for these reasons I disallow the entire claim I, 142,615 bolivars," it is fair to infer that he is of the opinion that this conduct on the part of the managing director absolved the Government from all liability for the derailment of the train from Maracay to Cagua and for the suspension of traffic.

The Commissioner for Germany is, however, of the opinion that there is no evidence of the charge that the railroad or its managing director were in any wise connected or in complicity with the revolutionists, and he somewhat warmly resents this imputation against the company. While he does not expressly make the claim, it is fairly inferable that he bases the right of the company to damages for the suspension of traffic upon the agreement of the Government to guarantee the company as above stated. This agreement, he says, was made through the exchange of diplomatic notes, the imperial legation reserving to the railroad the right to collect for injuries and losses owing to the suspension of traffic. The actual agreement, however, makes no reference to either diplomatic notes or to a reservation of a right to collect for injuries and losses owing to the suspension of traffic.

The umpire is unable to concur in the opinion of either of the Commissioners. In his opinion there is not sufficient proof to establish any complicity of the managing director with the revolutionists, although his peculiar if not inexplicable conduct in the transaction might naturally lead the Government to suspect it. On the other hand, the umpire is clearly of the opinion that the contract between the minister of public works and the railroad, in which the minister attempts to bind the Government for all the injuries which the railroad may suffer because of its performance of a lawful act, if not duty, in transporting troops and material of war to enable the Government to put down a rebellion, is utterly invalid — first, because it is contrary to public policy and conflicts with the highest law of any nation, the safety of its people; and, second, because it is the duty of a railroad company which exercises public functions, and it a quasi public corporation, to carry all freight and passengers not in themselves obnoxious which may be offered for transportation. Moreover, the company was bound by its express agreement to carry troops and munitions of war in the article of its concession which stipulated the rates of fares and freights to be paid. It is utterly inconsistent with the constitutional powers of a government and with the most sacred rights of its people to hold that a railroad company may, upon the mere basis of threats of persons, anonymous or not, to commit unlawful acts, decline to perform a lawful act. Revolutions are unlawful — are positively illegal; their object is to break down the *de jure* and *de facto* government and to destroy the existing system of law; their leaders and followers are by the laws of all civilized nations guilty of the

highest crime known to the law, treason, and until success, therefore, anyone who aids or abets a revolution is a violator of the law and any citizen who omits or fails to assist the government violates his duty as a citizen. And while a corporation has no political status, one created by a government with special and quasi public privileges owes the legal duty to that government to exercise its franchise in the latter's behalf and for its assistance.

For these reasons the railroad company, in the opinion of the umpire, can base no claim upon its agreement.

The liability of Venezuela, therefore, for the suspension of traffic in 1901 must depend upon general principles of law. There can be no reasonable doubt that it is the right of a government, in situations of danger or organized rebellion and revolution, to take such measures as it may deem proper to prevent the passage of persons, either for travel or business, from one point to another in the localities where there are armed and organized troops of insurrectionists, and to this end it certainly has the power and the right to suspend traffic upon any line of transportation; but this right is coupled with a corresponding duty, which is to make proper compensation to the company in cases other than those where the territory traversed by the railroad is the theater of active warlike operations between armed forces.

The Commissioner for Venezuela does not specifically claim that Venezuela had the right to suspend traffic over the railroad because the latter had lent itself to, if not associated itself with, the revolutionary movement of Matos, but he distinctly claims that the railroad had so associated itself, and that therefore, inasmuch as the railroad was carrying goods for the revolutionists, and also persons who were enabled by such facilities of travel to assist the revolutionists and do great harm to the Government, it was in the power of the latter, for which it refused to carry troops or munitions of war —

to order that if no service could be given it, as the requirements of public safety and order demanded and in accordance with its contract with the company, neither could there be any service for individuals or enemies of public peace.

Reduced to a legal proposition, his position is, that because of the unauthorized refusal of the company to exercise its functions at the demand of the Government the latter could abrogate its contract with the company pro tanto and suspend the exercise of its franchise. In effect this is to claim that the company had put itself in the position in which an alien enemy is regarded in international law, and thereby had lost, at least temporarily, the right of enjoyment of its otherwise lawful privileges.

Whether this position could be successfully maintained if the facts warranted its premises is doubtful, but in the opinion of the umpire the testimony does not make out such a case. There is some evidence tending to show support of the revolutionists by individual employees of the company, but the umpire concurs in the view of the Commissioner for Germany that so far as the company and its principal management were concerned there is not sufficient evidence against them. The testimony shows that in the few cases in which such individual action is shown such individuals were immediately and definitely discharged from the service of the company, or only reemployed when the Government withdrew its objection. He can not, however, assent to the proposition of the Commissioner for Germany that because the Government then was not constitutionally organized, but only provisionally exercising the power into which it had come by force of arms, it did not have in the premises the legal rights of a constitutional government. In the opinion of the umpire, it was a de jure as well as a de facto government. In deciding this claim, therefore, the company must be acquitted from any such charge, and the question of the liability

of Venezuela for the damages for the suspension of traffic must be determined without regard to such charge.

The same considerations lead to the conclusion also that the liability of Venezuela for injuries to and seizures of property of the railroad company by revolutionists must be determined in the same way. The claimant charges that the injuries to its property were in consequence of its transportation of troops and munitions of war for the Government. In the opinion of the umpire, however, this claim is not substantiated by the testimony. The mere fact that revolutionists destroyed the railroad at various points connected with active military operations raises no presumption that such injuries were in retaliation of or punishment for the lawful exercise of the company's powers in carrying Government troops and munitions of war. The irresistible presumption is that the revolutionists would destroy the railroad wherever and whenever they thought such destruction would place obstacles in the way of the successful military operations of the Government. The liability of Venezuela, therefore, must depend upon the general principles of international law, as modified by her admission in the protocol of liability for wrongful acts of revolutionists. Under them the umpire is of opinion that the case of the company differs in no respect from that of any private individual in like predicament, and under the former decisions of the umpire Venezuela is liable.

Coming to the consideration of the claim upon its merits, it will be more convenient to take up the items separately and in the order in which they are presented.

Part 1 of item 1 of claim I is for 6,215 bolivars for damages caused by the derailment of the train taken by General Bello from Maracay to Cagua on the night of the 19th of December. It appears from the proofs that the engineer, Sanchez, refused to recognize the authority of General Bello, because the regulations of the company did not authorize an assistant engineer to send out special trains, and because the instructions of the Government limited the authority to ask for special trains to the civil and military chiefs of the districts of La Victoria and Valencia. Further, because the railroad was not equipped for night service and stations are not occupied, and the signal service and track service were entirely suspended during these hours. In addition, the Cagua station on the day in question had notified the Maracay station that the railroad would probably be destroyed by revolutionists. It appears, however, that President Alcántara subsequently approved the request of General Bello, and in such an emergency as this appears to have been it is doubtful if the ordinary regulations of the company applied. The proofs tend to show that the rails and ties were taken up by revolutionists.

In view of all the circumstances, the umpire is of opinion that the claimant is entitled to recover upon the ground that General Bello, having taken control of the train under the circumstances, having knowledge of all the facts above stated as to the condition of the road for night service, and the notice from Maracay of a probable raid on the road, made the trip at his peril, and did not exercise the necessary amount of care that he should. It is true that there is a dispute as to the time of the trip and the rate of speed, but under the circumstances under which the trip was made the speed of the train should not have been greater than would allow the stoppage of the train in the distance which the headlight of the engine would show an obstruction or break in the road.

As the Commissioner for Venezuela makes no objection as to the amount of the item, it is therefore allowed at the amount claimed.

Part 2 of item 1 of claim I is for the suspension of all traffic on the railroad from the 23d of December, 1901, to the 8th of January, 1902, inclusive, at

8,000 bolivars per day (136,000 bolivars), and for the suspension of train 6 on January 9 from Los Teques to Caracas, 400 bolivars.

This 8,000 bolivars per day is arrived at by taking the average of the operating expenses of the road per day in the years 1897 to 1901, 4,858 bolivars, less 9 tons of coal per day, at 60 bolivars per ton, 540 bolivars, making 4,318 bolivars. Adding thereto the interest at 3 per cent per annum on the capital of the company (which is 75,000,000 bolivars, less 36,000,000 bolivars of 5 per cent bonds of the Venezuelan loan of 1896 given in exchange for the 7 per cent guaranty of the Government of Venezuela, leaving capital of 39,000,000 bolivars), 3,250 bolivars per day, plus the proportional deduction of value for wear and tear on locomotives and cars, superstructure of the line, viaducts of iron, buildings, shops, water tanks, and other constructions, 1,179 bolivars, aggregating 9,347 bolivars per day.

The claimant submits a statement of traffic receipts for the month of January, 1901, which averages 7,848 bolivars, and takes for a basis of its claim the sum of 8,000 bolivars per day instead of the above sum of 9,347 bolivars per day. It also submits a statement of operating and other expenses from 1897 to 1901, both inclusive, from which the daily operating expenses of the company appear to be 4,858 bolivars. But it does not appear that the claimant gives any credit for these expenses as against its traffic receipts.

It is evident that the basis of computation in the *expediente* by which the per diem loss of 9,347 bolivars is reached is not sustainable. It is arrived at by taking the total operating expenses of the road, less the consumption of coal, and adding thereto interest at 5 per cent on the amount of capital of the company, less the 36,000,000 bolivars in Venezuelan bonds, and again adding depreciation in value of physical property. For some reason, which is unexplained, while the total receipts of the month of January, 1901, are given, the operating expenses for that month are not given, but the average daily operating expenses for the years 1897 to 1901, inclusive, are given. A representative of the company, at the suggestion of the Commissioner for Germany, appeared before the Commission to explain the *expediente*. As a result of his examination by the umpire the Commission requested a statement of the operating expenses of January, 1901. This has been furnished and it shows a daily net profit of receipts over operating expenses of 3,463.60 bolivars. But included in the operating expenses is an item for new structures and permanent betterments of the property in the amount of 6,020.55 bolivars. Ordinarily an expenditure of this character is not considered a proper charge to operating expenses. In view, however, of the circumstances in the case, and the belief of the umpire that on account of the unsettled state of the country in January, 1902, the receipts of the road would not have equalled those of the corresponding month of 1901, the umpire accepts the figures submitted by the company as to operating expenses. Upon this basis, the correctness of which can not be questioned, the company's loss during the 17 days' suspension was 58,881.20 bolivars, to which add for the suspension of train 6, on January 9, 1901, 400 bolivars, and we have for part 2 of claim I, 59,281.20 bolivars, upon which interest is to be computed at 3 per cent per annum up to and including December 31, 1903.

Item 2 of claim I is for interest on item 1, calculated at 12 per cent per annum, compounding with half-yearly rests, amounting to 47,635.86 bolivars. The legal rate of interest in Venezuela is 3 per cent per annum. This item is disallowed.

Part *a* of item 1 of claim II, 10,181.50 bolivars, for damages and injuries owing to transportation of troops and munitions of war, is made up of various items of detention of traffic and injuries to the road, from July 22, 1902, to

September 25, 1902, of which the Commissioner for Germany is of opinion that the items specified in his opinion for 8 bolivars, 658.50 bolivars, and 95 bolivars, aggregating 751.50 bolivars, should be disallowed. An additional item on pages 2 and 3 of the statement of claim II, 250 bolivars, is for damages by guerrillas, for which the umpire is of opinion the Government of Venezuela is not liable. With these deductions part *a* amounts to 9,170 bolivars.

Part *b* of item 1 of claim II, 27,000 bolivars, is for suspension of traffic and damages and injuries to the steam tramway from Guigue and for the steamer on Lake Valencia, in October, 1901, and July, 1902. The proofs establish the facts, and as no objection to the fairness of the amounts charged is made by the Commissioner for Venezuela the item will be allowed at the sum claimed. Item 1 is therefore allowed at 36,170 bolivars, with interest to be computed as above stated.

Item 2 of claim II is for interest on item 1 calculated at 1 per cent per month with a three months' rest, and is disallowed.

The sum of 141,184.15 bolivars, being a portion of part *a* of item 1 of claim III, is claimed for indemnification for the interruption and enforced suspension of traffic between the 1st of October, 1902, and the 7th of November, 1902.

The Commissioner for Venezuela is of opinion that the entire amount of this claim should be disallowed, as the suspension was a necessary part of the military operations when the army of the revolution occupied the villages of Maracay and Cagua and the forces of the Government with the President in the field were in Victoria engaged in a campaign which ended with the battle fought at Victoria. The suspension of traffic was by order of the President, in command of the armies in the field, and his minister of war.

The following, summarized from the opinion of the Commissioner for Venezuela, is believed to be a correct statement of the situation:

During this period the revolutionists of General Matos occupied, with an army of from 12,000 to 15,000 men, the villages of Maracay, Cagua, etc., and President Castro occupied La Victoria. The plan of the Matos leaders was to move upon La Victoria from Maracay on the west and Cagua on the west and south, and also on the east from the neighborhood of Los Teques. The topography of the country is such, by reason of hills and mountains running from the north and south to the valley of the river Aragua, that the line of least resistance and of most rapid communication would be in that valley. The Great Venezuelan Railroad runs through this valley generally parallel with the river. In the attempted execution of the plan above mentioned the forces of the revolutionists approaching from the east engaged the forces of President Castro at Los Teques, while the forces of the revolutionists approaching from Maracay and Cagua engaged the President's forces in final battle at La Victoria, in which the President was completely successful. The control of operation of the railroad, therefore, would be of the most vital importance to the success of President Castro.

The umpire agrees with the Commissioner for Venezuela that the suspension of traffic over the railroad during the period of these active operations in the field was a military necessity, and that the Government was justified in directing it.

That portion of part *a* of item 1 of claim III, 28,583.25 bolivars, for damages and injuries to the railroad owing to the transportation of troops and munitions of war and the enforced suspension and interruption of traffic at various dates in the months of September, October, November, and December, 1902, is allowed by the Commissioner for Germany with the exception of 53 bolivars.

No specific objection is made by the Commissioner for Venezuela to any detail of these items, although he claims that Venezuela is not liable and

generally that the amounts are greatly exaggerated. In the absence of any proof contradicting that put in on behalf of the claimant and the lack of any showing on the part of Venezuela against these amounts, the umpire is compelled to accept the claimant's proof. For these reasons he concurs in the allowance made by the Commissioner for Germany at the sum of 28,530.25 bolivars.

Part *b* of item 1 of claim III, 43,432.25 bolivars, is for damages and injuries similar to those in part *a*, in the months of April, 1900, and April, October, November, and December, 1902, and suspension of traffic of the steam tramway to Guigue and the steamboat on Lake Valencia. The Commissioner for Germany allows this part, except the charge for April, 1900, 7,800 bolivars. In this conclusion the umpire concurs, and part *b* of item 1 of claim III is allowed at the sum of 35,632.25 bolivars.

Item 2 of claim III for 12,791.88 bolivars, is for interest on item 1 at 12 per cent per annum from the 1st of January, 1903, to the 30th of June, 1903, and is disallowed.

Claim IV, 780,500.53 bolivars, as already stated, has been allowed by the Commissioners at the sum of 575,056 bolivars, in which the umpire concurs, and it will be so awarded.

The entire claim, therefore, is decided as follows:

Item 2 of claim I, item 2 of claim II, and item 2 of claim III, being for interest on items 1 of claims I, II, and III, respectively, are disallowed.

That part of part *a*, item 1 of claim III, on account of suspension of traffic from October 1 to December 1, 1902, amounting to 141,184.15 bolivars, is also disallowed.

Parts 1 and 2 of item 1 of claim I are allowed in the sum of 65,496.20 bolivars.

Item 1 of claim II is allowed in the sum of 36,170 bolivars.

That portion of part *a* of item 1 of claim III, on account of injuries to railroad, is allowed at 28,530.25 bolivars.

Part *b* of item 1 of claim III is allowed at the sum of 35,632.25 bolivars.

Making the aggregate amount of the allowances by the umpire 165,828.70 bolivars, to which is added for interest from June 15 to December 31, 1903, on the last-named sum, 2,694.71 bolivars, aggregating 168,523.41 bolivars. To this must be added the amount of claim IV, allowed by the Commissioners at the sum of 575,056 bolivars, which, however, includes interest to December 31, 1903, making the total allowance on the entire claim, including interest to December 31, 1903, of 743,579.41 bolivars.
