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De Zeo Case (of a general nature)

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DE ZEO CASE

A claim founded upon supposed wrongful acts attributed to minor public officers should be clear and definite in its statements and proof and show unavailing appeal to superior authority to justify recovery against a State.¹

RALSTON, *Umpire*:

The honorable Commissioners for Italy and Venezuela differing in opinion, the above cause was duly referred to the umpire for decision.

The claimant, in person or through his witnesses, states that in the middle of the year 1885 he was a merchant residing in Mucuchies, Province of the Andes, and had built up a flourishing business, with large investment of capital; that there were due him credits payable generally at the end of the then present year or the beginning of the following; that his prosperity excited the envy of the local authorities, and on the return of Gen. Rosendo Medina to resume the position of president of the State, he, the claimant, became the object of furious and persistent persecutions by the authorities of Mucuchies, being finally compelled to flee, abandoning everything; that he was never able to return home, but after an absence of a year and a half he returned as near as Medina; that thereafter he brought suit in the local courts to recover debts due him, but the "expedientes" were "extracted" and his debtors were warned, under threats, not to pay him; that he did not finally bring suit because of these facts (although a superior court in 1886 adjudged that his testimonial proof was sufficient), since suit had to be brought in the locality where the acts complained of had been committed, and the same authorities were still in power and inspired with animosity against him and he could not procure an attorney.

The testimony of a number of witnesses was taken and it sustained, in a general way, the above allegations, fixing his damages from every cause, including indirect damage resulting from loss of business down to 1896, at 140,000 bolivars.

If we may presume that the complaint of the claimant embodies a just ground of recovery, it is to be noted that neither he nor his witnesses state the nature of the persecutions to which he was subjected (except the "extraction" of "expedientes," by whom taken not being stated), by whom these persecutions were inflicted (save as they are said to have been by unnamed local authorities), the threats leveled against him, causing flight, the value of the stock he lost, the value of his yearly business, the amount of outstanding credits he was compelled to sacrifice, the value of his lands and improvements, the damage experienced from their forced sale, the place where he spent his absence of a year and a half from the neighborhood, the nature of the threats against his debtors, and the amount of his injury by reason of the threats against them. The witnesses who swear to the amount of his loss (four in number) show no personal knowledge as to any details and make no statement as to them, but simply give their belief that 140,000 bolivars would be "equitable" or "just." The claimant does not state, furthermore, that he ever made any complaint to the superior officers of the Government. In the utter absence of detail it becomes impossible for the umpire to say that he was subjected to any such persecutions, the legal conditions otherwise permitting recovery, as would justify a Mixed Commission in considering the claim, or, if it did so, would enable it to determine even approximately the damage inflicted.²

¹ See Poggioli case, with note, *infra*, p. 669; and Sanchez case, *infra*, p. 754.

² See to like effect Sanchez case, *infra*, p. 754.

Again, the belief of a witness that a certain estimate of loss would be "equitable" or "just" can rarely be of value to the Commission, which needs definite statements of facts to act upon, and will then judge as to the proper conclusion, which may or may not be that of the witness. Judgments must be founded upon facts furnished by the witnesses.

The claimant excuses himself, as appears above, for not having brought suit for the damages inflicted upon him by the alleged fact that the authorities committing the wrong were still in office and inspired with animosity against him, and, as may be inferred, it would have been impossible for him to obtain justice. Again, we are not informed as to what control they had over the judiciary. The umpire is therefore unable to judge of the validity of this excuse, which, according to authorities hereinafter cited, should have been proven in the clearest possible manner.

The umpire will close by referring briefly to some authorities bearing upon the question at issue, and the tendency of which would be, from a legal standpoint, to deny in part or altogether, the responsibility of Venezuela before this tribunal, even if otherwise the case had been made out.

In the case of *Johnson v. Mexico* (3 Moore, p. 3032), before the Mexican Claims Commission of 1857, referring to a charge that the Government of Mexico had tolerated and even set on foot disorders affecting the claimant's business, it is said:

So grave a charge against the government of any country should be maintained by the most unquestionable proof. It should be alleged as a distinct fact and ground of reclamation, and proved by evidence of the clearest character.

In case of *Bensley* before the same Commission (3 Moore, p. 3018), a boy having been seized by the governor of a State, it was said:

For the damages resulting from this unauthorized act he was individually responsible to the claimant, and it does not appear that ample redress might not have been obtained by a resort to the judicial tribunals of the country. Had the courts of Mexico been closed to the claimant and justice denied him, that might have constituted a ground for a claim of indemnity against the Government of Mexico. No such case, however, is presented. No appeal was made by the claimant to the courts, and no denial of justice had been proved. Under these circumstances the board can not regard the Government of Mexico as liable to a claim for indemnity on account of the wanton or malicious trespass of the person holding the office of governor of one of the States constituting the confederacy.¹

The Cahill case (3 Moore, 3066), before the United States and Spanish Commission, may also be referred to. The claimant asked payment for damages suffered by him while conducting a drug store at Cardenas, Cuba, and the breaking up of his business. He attributed his misfortunes to the machinations of a rival druggist, who was also an official, a "subdelegate of pharmacy." Among other things he complained of various acts of the authorities touching matters such as the hanging out of a flag, threats, disrespectful remarks, etc. The arbitrators held that claimant had no title to recover and dismissed the claim.

¹ Calvo says (sec. 1263): "Dans l'intérieur des limites juridictionnelles les agents de l'autorité de toute classe sont personnellement seuls responsables dans la mesure établie par le droit public interne de chaque État. Lorsqu'ils manquent à leurs devoirs, excèdent leurs attributions, ou violent la loi, ils créent, selon les circonstances, à ceux dont ils ont lésé les droits, un recours légal par les voies administratives ou judiciaires; mais à l'égard des tiers, nationaux ou étrangers, la responsabilité du gouvernement qui les a institués, reste purement morale, et ne saurait devenir directe et effective qu'en cas de complicité ou de déni de justice manifeste."

From the foregoing it appears that the claim must be dismissed, but without prejudice to any right the claimant may have to present his claim in Venezuela courts or elsewhere against persons guilty of any legal wrong so far as he is concerned.

BOFFOLO CASE

(By the Umpire:)

A state possesses the general right of expulsion; but —
 Expulsion should only be resorted to in extreme instances and must be accomplished in the manner least injurious to the person affected.¹
 The state exercising the power must, when occasion demands, state the reason of such expulsion before an international tribunal, and, an insufficient reason or none being advanced, accepts the consequences.
 The only reasons advanced in the present case being contrary to the Venezuelan constitution, and Venezuela being a country not of despotic power, but of fixed laws, the umpire can not accept them as sufficient.

ZULOAGA, *Commissioner* (claim referred to umpire):

The right to expel foreigners is fully held by every State and is deduced from its very sovereignty. All international law writers agree upon this, and the European nations use it amply. In the case of expulsion submitted by England and Belgium to the arbitration of the French juriconsult, Desjardins, he affirms the right fully. Even Italy has not refused to recognize it in regard to Venezuela, having practiced it extensively.

Venezuela, by the constitution of 1893, established as subject to expulsion foreigners having no domicile and notoriously prejudicial to the public order.

The question as to domicile of foreigners is determined in Venezuela by the provisions of the decree of February 14, 1873, and applying these provisions to the case of Boffolo it appears that he had no domicile in Venezuela. He had not been in the country two years; neither did he have a business properly so called. It appears that he had ostensibly, as a manner of living at the time of the expulsion, a connection with Roversi, according to contract of 1899, whose character demonstrated its precariousness, and in addition a small sheet published Sundays, which seemed little more than an advertisement for Roversi.

Boffolo had no domicile in the country, and the fact of his having been notoriously prejudicial to public order is a question that the Government is fully competent to determine, since to it is confided the power to expel without appeal or revision.

From the very statements made by the claimant the evil life and character of the subject may be easily recognized. In the first place, his affirmations to the minister of foreign affairs contain many things notoriously false; in the second place, the only copy of his little periodical we have had in it an attack on the authorities of the country; and in an article he recommends to the workmen to read and patronize *El Obrero*, a periodical of strong socialistic and dangerous tendencies, and which was circulating at about this time, and which really caused considerable prejudice to capital and machinery by its propaganda. No other number of the sheet is known to us.

¹ See also Paquet case, Vol. IX of these Reports, p. 323, and Maal case, *infra*, p. 730.