

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Revesno et al. Case (of a general nature)

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chandise paid to insurgent authorities. Those suits, however, have been discontinued, that proceeding probably having been influenced by the judgment of the Supreme Court adverted to. (*U.S. v. Rice*, 4 Wheaton, 246.)

Without multiplying at length possible citations, reference is also made to a letter to like effect from Mr. Cass, Secretary of State, to Mr. Osma, dated May 22, 1858. (*Wharton's Int. Law Digest*, vol. 1, sec. 7, p. 28.)

Perhaps the latest similar instance in American international affairs is to be found discussed in *Foreign Relations for 1899*, and refers to an attempted second collection by the Government of duties at Bluefields, Nicaragua, a first payment having been made to a revolutionary government. After an extended correspondence, and pursuant to instructions from Mr. Hay, Secretary of State, the American envoy extraordinary and minister plenipotentiary, W. L. Merry, signed an agreement for settlement, providing, among other things, that —

The deposit (conditional deposit for second payment made by merchants) shall be paid by Her Britannic Majesty's consul to the authorities of the custom-house if it is decided that that Government has had the right to demand the payment claimed, or to its owners, the American merchants, if it is decided that the payment made to the revolutionists of Bluefields was legal for the reason that they pretend that the revolutionary organization of General Reyes, between February 3 and 25, 1899, was the government *de facto*. (*For. Rel.*, 1899, p. 576.)

It will be seen that the only question for consideration was the character of the government. In the pending case its *de facto* character is sufficiently established, and therefore the second payment, made, as satisfactorily appears, under circumstances of compulsion, must be returned to the claimant.

In this case an award will be signed for 1,517 bolivars, including amounts taken by the Government, for which receipts were or were not given, and the second payment of taxes above referred to, with interest, and refused for acts of revolutionists, no want of diligence on the part of the Government having been shown.

CASES OF REVESNO, BIGNOSO, STIZ, MARCHIERO, AND FANTI

Government is not to be held liable for acts of revolutionists unless negligence be clearly apparent or proven by claimant, the more so when claimants have never appealed to it for protection.

RALSTON, *Umpire*:

The above cases, all from Colonia Bolívar, came to the umpire on difference of opinion between the honorable Commissioners for Italy and Venezuela.

It is urged on behalf of Italy that the above cases come from a distance not greater than 30 miles from Caracas, that the takings were all by Matos revolutionists under command of General Rolando, and occurred during the months of May and October, 1902, and January, February, March, April, May, June, and July of 1903, happening at Custire, El Bautiamo, Chispita, and Colonia Bolívar; that by reason of their nearness to Caracas they could have been prevented by the exercise of proper diligence, and that therefore these cases are exceptions to the general rule laid down in the *Sambiaggio* case, No. 15,¹ and affirmed in the *Guastini* case, No. 225.²

A study of these cases will show that the burden of proving want of diligence

¹ See *supra*, p. 499.

² See *supra*, p. 561.

rests upon the claimants. In the "expedientes" now under consideration not a word of affirmative proof is furnished to show negligence on the part of the Government. The umpire is aware of the fact that for several months the revolutionists remained within a short distance of Caracas without being dislodged by the Government, or perhaps without a serious attempt being made to dislodge them. But he is also aware that during that time war was being actively prosecuted over large areas of the country, while the external relations of Venezuela were in a state of danger. He is unable, and if furnished with data would doubt his right, to judge as to the military or political considerations which made military activity or concentration more necessary in one portion of the country than another.

Furthermore, he knows nothing of the relative strength of the forces of General Rolando and of the Government in this neighborhood or their advantages of location. He only knows that when the tension was apparently released elsewhere the forces of Rolando were attacked and ultimately defeated.

The claimants, so far as the evidence shows, never made any appeal to the Government for protection, as it was their right to do if they desired to obtain it, and although such appeal, if made, might have had an important effect upon the question of liability.

In view of the foregoing an order dismissing said cases will be signed.

GUERRIERI CASE

Government will not be held responsible for results of legitimate acts of warfare.

RALSTON, *Umpire*:

The above case has been presented to the umpire upon difference of opinion existing between the honorable Commissioners for Italy and Venezuela.

The larger part of the claim is for damages committed by unsuccessful revolutionists, and, resting upon the principles discussed in the Sambiaggio and Guastini cases,¹ can not be given further consideration.

A further claim of 225 bolivars is made because of the fact that the Government steamers bombarded the town of Puerto Cabello, where claimant's property was situated, a shell in part destroying the walls of claimant's house. It is urged that the bombardment was without reason or purpose, and therefore the Government should be held responsible for wanton destruction of property. This principle was adopted by the Commission in the case of Eugenio Barletta, consul at Ciudad Bolívar,² and, in the opinion of the umpire, correctly adopted, it then appearing that the Government vessel had thrown 1,400 or 1,500 shells into the town without directing its attack upon the quarters of the revolutionary troops, without any supporting force to make the bombardment effective, and when the city had not broken out in insurrection, but a body of troops had defaulted in their allegiance.

Nothing like this is proven in the present case. We are simply informed that shells were thrown, one of them injuring claimant's property. Upon this statement of a single fact, a state of war existing, the umpire is not justified in assuming that the act was needless or unjustifiable. The legal presumption would be in favor of the regularity and necessity of governmental acts.

A decree of dismissal will therefore be signed.

¹ See *supra*, pp. 499 and 561.

² No written opinion. See de Lemos case, vol. IX of these Reports, p. 377.