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Guerrieri Case (of a general nature)

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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.