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De Caro Case (of a general nature)

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to illustrate, jurisdiction in a French commission because a claim, although French in origin, was now owned by Italian citizens, and to refuse jurisdiction over the same claim in the Italian Commission because, although now Italian in ownership, it was French in origin, would be to perpetrate an injustice. The umpire does not, however, find himself free. A long course of arbitral decisions has emphasized the fact that the claim must be both Italian in origin and Italian in ownership before it can be recognized by an Italian Commission.[1] (See Moore's Arbitrations, pp. 1353, 2254, 2753, 2757.)

Knowledge of this condition induced the signers of the American protocol to arrange its language to the end that certain claims, British in origin but now American in ownership, might be presented before the American Commission.[2]

In the discussion of this case it was urged upon the umpire that the presence of the " most-favored-nation " clause contained in article VIII of the protocol should be so construed as to give to Italy all the advantages which might be claimed by American citizens under the American protocol. The umpire discussed so fully in the Sambiaggio case [3] the effect of the favored-nation clause as contained in the protocol, pointing out that it was plainly designed to refer to claims thereafter to originate, that he is unable to accept the suggestion now under consideration.

The exception, therefore, of jurisdiction of this Commission over the claims of those who are now Italian citizens must be sustained, but without prejudice to the rights of any of the claimants to claim against Venezuela before any court or commission which may have suitable jurisdiction, or to take such other action as they may be advised.

DE CARO CASE

(By the Umpire:)

A paper blockade or blockade by proclamation is illegal, and a country declaring it accepts the legal consequences.

Damages refused for acts of unsuccessful revolutionists (following Sambiaggio case).[4]

Under Venezuelan law duties can not be collected on exportations of Venezuelan products.

Commission can not correct abuse of process in judicial proceedings which have been closed and in which the claimant might have directly applied to the court for relief, but did not.

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

Daniele De Caro, an Italian citizen and wealthy merchant of Barcelona, claims:

1. For interruption of his import trade by the ineffective blockade of the port of Guanta decreed by the Venezuelan Government, 47,719.30 bolivars.

2. For interruption of his export trade under identical circumstances, 13,807.03 bolivars.

3. For duties on exportations illegally collected by the authorities of the State of Barcelona, 10,595.47 bolivars.

4. For forced loans exacted of the claimant by Gen. Paolo Guzmán, of the

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[1] See extensive discussion of this subject in the opinion of Umpire Plumley in the Stevenson case, vol. IX of these Reports, p. 494.

[2] See opinion of Umpire Barge in the Orinoco Steamship Co. case, vol. IX of these Reports, p. 191.

[3] See *supra*, p. 499.

[4] *Supra*, p. 499.

" Libertadora " revolution, and Giuseppe Antonio Velutini, of the Government, 19,766.40 bolivars, plus interest on same 2,371.96 bolivars.

5. For damages arising from the seizure of 5,000 hides ready for shipment, 12,972 bolivars, including the expenses for obtaining the release of said hides.

6. For interest paid and interest lost on the amounts of 40,000 and 140,000, at 6 per cent for one year, 10,800 bolivars.

The claimant therefore considers himself entitled in all to an indemnity of 118,032.16 bolivars.

Let us examine in detail if and to what extent this claim may be received under its various heads as presented.

As a rule, damages which appear to be the direct consequences of an unlawful measure should be indemnified.

Such was, in the opinion of the writer because contrary to the principles of international law, the blockade of the port of Guanta and of other ports of the Republic decreed by the Venezuelan Government but not effective — a fact well known and which is established by a document annexed to the claim. (See the certificate of February 10, 1903, of the chief officer of that port and locality.)

The illegality and nullity of a blockade decreed but not enforced, even in the case of civil war, is a question that has often been discussed and that has been decided in previous cases in the sense here affirmed. (See Wharton's Digest of Intern. Law, par. 361; Lawrence in a note on Wheaton, Part IV, chap. 3; Moore on Arbitration, pp. 3404-3406; idem., 3790-3793.)

In the particular case of this claimant it might at first seem that there is a contradiction of fact, because while, on the one hand, he declares and proves that the blockade of the port of Guanta was not effective, he, on the other, seeks to recover because he was prevented from receiving or shipping goods during the same period. But it will be seen that the contradiction is only apparent when it is considered that the hindrance was caused by the execution of an order given to the consuls of the Republic at New York and Amsterdam not to permit the certification of bills of lading of goods for said port of Guanta, which, of course, rendered their shipment impossible and interfered with the regular stoppages of steamers formerly calling there, thus bringing business to a standstill.

There remains, however, to be determined whether the amount claimed by De Caro, because of his not having been able to import merchandise during the period from August 10, 1902, to April 12, 1903, 47,719.30 bolivars, may properly be allowed.

The claimant establishes his account on the following basis: In the first seven months of 1902 he imported goods from abroad on which he paid 87,590.71 bolivars of custom-house, maritime, and territorial duties. This assertion is proved by the list which appears on page 22 of the claim, authenticated by the declaration of the chief customs officer of the port of Guanta, dated April 30, 1903. In order to exclude any doubt that might arise as to the connection between these two documents, the honorable umpire will deign to note that the sum of 19,835.44 bolivars, indicated by the above-mentioned customs officer, is produced by the addition of 15,868.35 bolivars paid by the claimant on August 2, 1902, on goods imported per steamer *Prins Willem I*, and 25 per cent thereof collected as " territorial duty."

The claimant affirms, besides, that the customs duties represent approximately one-half the value of the goods, and that the presumptive gain of the merchant is 12 per cent gross on the amount of value of goods imported.

As to the second of these assertions, it may be considered correct, inasmuch as a gain of 12 per cent gross on imported goods is not excessive. With regard

to the first assertion, its accuracy may be determined by comparing the sum of duties collected by the custom-house at Guanta on the goods received by the claimant per steamers *Prins Frederik Hendrik*, *Prins Willem V*, and *Prins Willem III*, on February 18, March 1, and April 16, respectively, from New York and Hamburg, i.e., 16,876.86 bolivars, with the amount of the value of the goods themselves (see doc. " M," pp. 7-8, and doc. " N," both legalized), which is 32,257.04 bolivars.

On this basis the claimant, who paid in the first seven months of 1902 for goods from abroad 87,590.71 bolivars, found himself in possession of foreign products to the amount of triple the value of the sum named, or 262,762.13 bolivars.

The profits would have been, according to the calculation of claimant, 31,532.12 bolivars, or 4,504.66 bolivars per month. He affirms that the ineffective blockade lasted about eleven months, and the loss in consequence is estimated by him at 49,551.28 bolivars, from which sum must be substracted 1,831.98 bolivars profit on a small quantity of merchandise which it was possible to land in the second half of December at Guanta from the steamers *Prins Willem IV* and *Prins Willem V*, which had been compelled, from August of the same year, to deposit them (the goods) at Curaçao and Trinidad, afterwards availing themselves of the ineffectual condition of the blockade to reship them to their actual destination.

It is to be observed that these goods had been passed upon by the Venezuelan consulate in Amsterdam before the declaration of the blockade. The calculations made by the claimant seem to the writer to be susceptible of modification as to fact, but acceptable as to principle.

If, on the one hand, an indemnity is due the claimant, on the other we can not take into account the period of duration of the blockade of the allied powers, nor of other brief periods, as he has done, during which commercial traffic was impossible, either because of the notice of the raising of the blockade not having been published abroad, or because of lack of sufficient time for the sailing of steamers from Europe or North America, and the port remaining inactive.

Assuming that the duration of the ineffective Venezuelan blockade was five months, which seems correct, and deducting 1,831.98 bolivars of profit on goods received in December, 1902, it results that the indemnity under this head may be reduced to 20,691.33 bolivars.

Let us now take up the question of damages on account of stoppage of exportation.

In so far as the principle is concerned, the case is identical with the preceding, and it would be useless to indulge in a repetition of the arguments.

In order to justify his demand for an indemnity of 13,707.03 bolivars the claimant bases himself on these facts, to wit: That during the first four months of 1902 (see certificate of United States consular agent in Barcelona, of April 3, 1903) he exported goods to the value of 46,023.70 bolivars, and affirms that he realized a profit of 10 per cent, or 4,602.37 bolivars — a monthly profit of 1,150.59 bolivars. Assuming that this estimate is moderate and fair, the Italian Commissioner must observe that the claimant had full liberty to export his goods, and especially hides, in which he dealt largely, up to the day of the declaration of the blockade, that is to say, to about August 10, 1902, and that therefore his profit of 4,602.37 bolivars should be divided into about eight months instead of four, which would reduce the monthly profit to 575.74 bolivars. On this basis the sum to which he would justly be entitled under this head would not exceed 2,878.70 bolivars for the given period of five months of Venezuelan blockade.

Concerning export duties illegally collected by the governmental authorities

who were Messrs. Briceño Martin (p. 42), Pedro José Adrian (pp. 46 and 48), J. Bello Rodriguez (pp. 110 and 111), H. Calcaño (p. 112), and F. Lopez Baguero (p. 113), for the State of Barcelona, these are amply documented and their illegality is unexceptionally demonstrated by the circular of Gen. José Antonio Velutini (p. 50), Venezuelan ex-minister for the interior. The order therein contained was not made effective by the Government of the Republic, which was fully aware of the abuses complained of by the claimant, but took no steps to abate them, and therefore and therby assumed full responsibility for their existence. Under this head is claimed the sum of 10,001.05 bolivars, which admits of no reduction, and interest thereon 594.42 bolivars. This interest is calculated at 1 per cent per month, but should be stated at one-fourth or 148.60 bolivars, according to the rule governing interest in this Commission.

The forced loans were imposed by Gen. Paolo Guzmán, of the " Libertadora " revolution, in the sum of 18,779.40 bolivars, and by Generals Velutini and Bravo, of the Government, in the sum of 2,000 bolivars; but the receipt of these latter to the amount of 1,013 bolivars was accepted in payment of export duties, the reimbursement of which forms another part of this claim. Therefore setting aside, and with reservation (accepted by the Italian Commissioner), of the right to recover the amount represented by General Guzmán's receipt, and hence of forced loans imposed by the revolutionists, the claimant asks under this head an indemnity of 987 bolivars.

Let us pass now to the seizure of the 5,000 hides.

The claimant was indebted to the custom-house at Guanta for imports received August 2, 1902, in the sum of 19,835.34 bolivars (see certificate of chief customs officer, pp. 21 and 22 bis). According to the custom rules then in force he had seven days in which to pay this amount. Just at that time, however, both Guanta and Barcelona fell into the hands of the revolutionists, who imposed upon claimant the forced loan of the amount above mentioned.

After November 25, 1902, and the recapture of Guanta and Barcelona by the federal troops, the Governmental authorities insisted that claimant pay again the sum indicated for duty on imports, which he refused to do. Thereupon the judge of hacienda ordered as a guarantee of payment the seizure of the 5,000 hides in question and which were in his storehouses in Barcelona. Claimant states their value to have been in Guanta or New York 120,000 bolivars. He subsequently obtained the release of the hides by a " resolution " of the minister of hacienda (p. 105) of December 22, 1902, giving satisfactory guarantee for the payment of the sum claimed, but afterwards compromising with the Government on payment of 9,917.72 bolivars — i.e., half the sum originally claimed.

This transaction took place before the honorable umpire ordered, by his decision in the Guastini case, the refundment of duty collected by the Government after the same had already been collected by the authorities of the revolution. But the claimant does not ask the repayment to him of said duties in view of the intervening transaction (see doc. " O " and particularly the marginal note in red ink), which, however prejudicial to his interests, he will respect. The Italian Commissioner has here given this detailed statement solely to clear up the antecedents of the claim for the seizure of the hides. According to Venezuelan commercial laws actually in force, a judge may not, for the purpose of securing the payment of any given sum, confiscate goods in excess of said sum, plus the requisite judicial costs.

It is customary that the goods seized shall not exceed double the amount sought, the excess to this extent being considered sufficient to cover the costs mentioned.

In this case the judge of hacienda, to insure a payment of 19,835.44 bolivars, ordered the seizure of 5,000 hides, worth, according to estimate of the claimant, more than six times the sum claimed, and therefore three times more than he was allowed by law and custom to seize. The measure was consequently illegal in a double sense, in that the claimant was required to pay the same duties a second time, and in that the judge had largely exceeded the proper amount of the seizure.

It is true that on December 22, 1902, the hides were released, but on account of the closing of the port of Guanta they could not be exported until after the raising of the blockade, or next April, whereas had the judge kept within the legal limits in his seizure, the claimant might have been able to ship a part of his goods on the steamers *Prins Willem IV* and *Prins Willem V*, which touched at Guanta from the 17th to the 30th of December, 1902.

It will be observed that the notice of the release of the hides on the condition of furnishing a guarantee could not reach Barcelona until a considerable time after the close of the year, on account of the interruption of all telegraphic and postal communications, which explains why the guarantee was not furnished until April 20. (See doc. O.)

Now, it being well known that hides which are not shipped at the proper time lose in weight, and that they are sold by weight, it follows that they lose in value. This loss is by the claimant put at 6,992 bolivars. It is to be noted, also, that on the hides remaining unshipped an increase of duty was laid under the guise of a " war tax," which may be considered a further result of the illegal act of the judge above referred to, as was also the expense incurred in sending one of his employees, one Antonio Vestri, as ascertained by the writer, to Caracas for the purpose of obtaining an order for the release of the hides mentioned. This it required a month to accomplish; but in consequence of the then disturbed condition of the country, three months elapsed before Vestri could safely return to Barcelona. Summing up, the claimant, from these various losses in connection with the seizure of his hides, considers himself entitled to an indemnity of 12,972 bolivars; but the Italian Commissioner, while admitting the equity of the principle involved in the demand for such indemnity, holds that it should be reduced, as shown in the following considerations:

The value of the hides as stated by the claimant seems exaggerated; according to impartial and exact information this should not exceed 100,000 bolivars. The action of the judge of hacienda can not be called into question except in so far as it exceeded law and custom in going beyond the limits of two-fifths of the goods seized. The indemnity claimed under this head should be reduced to three-fifths, or 7,783.50 bolivars.

The last motive for demand of indemnity by the claimant is based on the fact that, not having been able to sell his 5,000 hides at an opportune moment, he was, in the first place, not able to meet certain obligations toward his correspondents (in proof of which see his account current, pp. 96-100), and thereby was charged for sums of accrued interest; and in the second place was prevented from profiting by the sale of the hides valued by him at 120,000 bolivars, and by another sum of 20,000 bolivars for a certain lot of hides which he affirms he was prevented from exporting on account of the blockade.

The Italian Commissioner holds the first of these demands justified, but considers the second deficient in proof. He therefore believes that under this head there should be awarded an indemnity of 2,400 bolivars.

Recapitulating, while having in view the decisions of the honorable umpire, and reserving the right of the claimant to indemnity for injuries inflicted by the revolutionists, the Italian Commissioner is of opinion that the present

claim should be allowed in the aggregate amount of 42,490.18 bolivars, with interest thereon from the date of the introduction of the claim to the Commission to the 31st of December of the year last past.

ZULOAGA, *Commissioner:*

This individual claims certain amounts for injuries which he says he suffered, because in accordance with the decree of the Government blockading the port of Guanta, which according to his statement was not effective, he could not carry on exporting and importing. The time referred to is from August 3 to November 25, during which the revolutionists occupied Guanta, and later, from February 16, 1903, to April 12, 1903, when they were also occupying it. The claimant also makes demand for the time of the blockade of the allied powers, but the Italian legation does not support this part of the claim. The time fixed, therefore, is about five months.

The damages asked are the unrealized profits in mercantile operations which he imagined or satisfied himself he could have made, in accordance with calculations based on the former course of his business. From these calculations it will at once be seen that they attempt to compare a period of tranquillity and peace with another completely disturbed, during which a revolutionary government was in force, which in accordance with the statement of the claimant himself was one of violence and arbitrariness of every kind; that from the 5th to the 10th of August, 1902, in the city of Barcelona, a disastrous and fatal struggle took place, by virtue of which almost all the inhabitants were ruined; that under these conditions it is not credible that Caro could have thought of making extensive importations, nor could he have had anything to export; that if Caro suffered because of the suspension of his business during this period of disturbances, on the other hand, the legitimate authorities having been reestablished, the subsequent importations and exportations must have been greater because of this suspension and the one thing compensated the other.

This with respect to the amount of the claim, since with respect to its juridic validity, it is my opinion that the Government of Venezuela had a right to prohibit commerce with these revolutionary ports, especially when the vessels that carried on the commerce also touched at other Venezuelan ports; that the observation to the effect that the Government, not holding actual sovereignty over these places in revolution, it could not oppose commerce with them, is not conclusive as to this claim, since, if it could treat them like the enemy's country, I do not see why the inhabitants of that territory could not have taken direct action against it because of this treatment.

I reject this portion of the claim, not only in fact but also in law.

De Caro claims 8,876 bolivars (p. 38) for duties on exportation paid for hides and pelts, according to a receipt which he presents (pp. 42, 46, 48), which could not be collected, because they were unconstitutional, and he demands, moreover, interest on these sums. It is true that the collections of these duties is unconstitutional, but the law gives a right to the citizens to go before the court and denounce as unconstitutional the decree which levies them, in order that it may not continue in force. Besides, in reality, in the course of the transaction the merchant computes the duty in his calculations and it does not fall on him, either because the article (the hides in this case) are bought cheaper from the producer, or because they are sold at a higher price. There is, therefore, no direct damage. I reject this claim.

De Caro, moreover, claims 19,766.40 bolivars for loans to the revolution and the Government. They are not recoverable, except those made to the officers of the Government amounting to 987 bolivars, besides interest from the 24th of October, the date of the presentation of the claim.

He claims 12,972 bolivars more for the expenses of an injunction proceeding which the judge of the hacienda brought against him, in a suit which he prosecuted through the government attorney, for failure to pay certain export duties, the claimant maintaining that the attachment was illegal. The affair terminated, as appears, by an agreement between the government attorney and De Caro. It is, therefore, a completed transaction, and it is not for this Commission to review the provisional decisions which the judge may have rendered in the suit. The statement of De Caro that it was not possible to lay an attachment on his hides, the value of which was much more than twice the amount claimed (which does not appear), is not true either. The judge could have issued the attachment, and he, proving the value of the goods attached, could demand that it be limited to double the value of the amount claimed. I reject the claim.

M. De Caro wishes that there be paid him interest on the sums which he owed his creditors. I reject the claim.

RALSTON, *Umpire:*

The above entitled claim was duly referred to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela.

It appears from the expediente in this case that for many years past the claimant, De Caro, a subject of Italy, has resided in Barcelona, Venezuela.

His first demand is for the sum of 47,719.30 bolivars, for injury to his business consequent upon the paper blockade of Guanta (the port of Barcelona), proclaimed in August, 1902, Guanta then being in the possession of revolutionists. The amount of this claim is, by the honorable Commissioner for Italy, for various reasons not necessary to the discussion, reduced to 20,691.33 bolivars. The claim evidentially is only supported by proof of the fact that in October, 1902, the claimant ordered from Neuss, Heslein & Co., of New York, a cargo of kerosene, rice, flour, etc., the value of which is not stated, but which the firm in question refused to forward, assigning as the reason that the consul-general of Venezuela at New York would not authenticate invoices for Guanta; the firm, however, promising that as soon as affairs should take a favorable turn and the port be opened, it would forward cargoes. In exchange for the goods above referred to, the claimant proposed to ship 6,000 hides and 150 packages of skins.

Some proof is offered for the purpose of showing the amount paid in the shape of duties upon importations made by De Caro during the seven preceding months, as well as the value of such importations, and the probable profit thereon is calculated at the rate of 12 per cent; the Commission being asked to accept the theory that but for the blockade, De Caro's importations would have been, during the months it lasted, of the same average amount, with the profits calculated as indicated.

A further branch of the claim, which is for the interruption of the claimant's export trade because of the paper blockade, and for which he asks 13,807.03 bolivars (this amount being reached by a similar course of reasoning), may be considered in this connection.

That a noneffective or paper blockade is illegal, and can not constitute the foundation of rights on the part of the government declaring it, but may create liabilities against such government, is well established; many of the authorities demonstrating this position being collected in the opinion of Plumley, umpire of the British-Venezuelan Mixed Claims Commission in the case of Compagnie Générale des Asphaltes de France.[1]

[1] See vol. IX of these Reports, p. 390, and *infra*, p. 665 and note.

Illustrations of this doctrine in principle, suggestive of the one now under consideration, will be found in the cases of the *Boyne* and the *Monmouth*, cited in Moore's Arbitrations, page 3923, and it remains only for the umpire to apply it.

The umpire can not accept the idea that the claimant is entitled to average business profits for the months of the blockade, reckoned upon possible importations and exportations and based upon the imports and exports for any preceding period, as he would be compelled to ignore the fact that during a large part of the time of the noneffective blockade there was continuous fighting in and about Guanta and Barcelona. Historically, he notes that on the night of August 9, 1902, Barcelona was taken from the Government by troops of the revolution and new civil authorities named by them; that on November 26, 1902, Barcelona was reoccupied by the Government; that on February 17, 1903, the governmental forces retired, and on February 19, 1903, the revolutionists took possession of the town, retaining such possession until after a bloody conflict, lasting from April 5 to 10, they were ejected. The above account takes no note of frequent skirmishes. To assume business profits for such a period at all analogous to those obtained during the time of business quiet would be to grossly violate the probabilities of the situation. It is not to be supposed that during a period of destitution, plundering, and destruction of all sorts De Caro would have successfully carried on any business whatsoever.

The umpire, therefore, finds it impossible to accord to the claimant any profits, even upon the goods he ordered from Neuss, Heslein & Co., and these are the only goods that the proof shows were ordered at all by De Caro from abroad during the time in question. He would find difficulty in awarding, even under favorable circumstances, speculative profits upon goods which had never been forwarded to or received by the claimant.

The situation as to the 6,000 hides and 150 packages of pelts proposed by De Caro to be exchanged for the goods in question, is somewhat different. He was entitled to sell or exchange these goods without interference and he had the opportunity of doing so. This opportunity was lost and he was not able to sell or exchange them until many months after. He is entitled to the difference, as nearly as it can be estimated, between the value of the goods in October, 1902, and their value at the time of the final sale, plus charges for taking care of them in the meanwhile. The amount of this difference and of these charges is not clearly proved in the testimony submitted, but by reference to the testimony connected with a later item of De Caro's claim it may be approximately ascertained. By calculation we find that the probable loss in value of the hides were 8,390.40 bolivars, and there was paid out by him on account of interest, which we may regard as a carrying charge, 2,400 bolivars, making a total of 10,790.40 bolivars.

Another head of plaintiff's claim relates to certain forced loans executed by the revolutionary and governmental generals. For reasons sufficiently discussed in the Sambiaggio [1] and other cases, the Government can not be held responsible for loans exacted by revolutionists, but is responsible for loans required by General Velutini, and this exaction, deducting for " vales " duly received and accepted by the Government, amounted to the net sum of 987 bolivars, for which an award must be made.

A further head of the claim is for taxes on exportations. This tax was exacted in direct violation of the provisions of the constitution of Venezuela, which in the second title " Bases de la Unión," article 6, reads as follows:

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[1] See *supra*, p. 499.

ART. 6°. Los Estados que forman la Unión Venezolana son autónomos é iguales en entidad política, y se obligan: * * *

ART. 11°. A no imponer contribuciones sobre los productos nacionales destinados á la exportación.

A full allowance must therefore be made for taxes so collected, and these amount to 8,876.17 bolivars.

An additional claim arises from the seizure of 5,000 hides (apparently the larger part of the hides whose exportation was prevented as above described), and the circumstances with relation thereto may be detailed as follows:

Claimant was indebted on August 2, 1902, to the custom-house at Guanta in the sum of 19,835.34 bolivars, and had seven days within which to pay this amount. By the 10th of the month Guanta and Barcelona both fell into the hands of the revolutionists, and the claimant was required to pay this sum to them. After the capture of Guanta and Barcelona by the Government, its authorities insisted that the claimant should again pay the sum indicated for duty on imports, which he refused to do. The judge of hacienda thereupon directed the seizure of 5,000 hides as a guarantee of its payment. These hides were said to have been of the value of 120,000 bolivars. Subsequently, upon his giving satisfactory security, the hides were released and at a later time the Government compromised with the claimant, he paying 9,917.72 bolivars, being one-half the sum originally claimed. It is now contended on behalf of the claimant that even if the action of the Government had been entirely legal, the judge should not have directed the seizure of property in excess of twice the amount of the Government's claim, and that, having directed the seizure of property, worth five or six times the amount of the claim, the Government should be held responsible for any loss attendant upon the embargo of the excess amount, and it is also contended by the claimant that he was compelled, because of the seizure of the property, to borrow money at a high rate of interest, which borrowing would not have been necessary had the judge of hacienda acted within the usual limits of his authority. Furthermore, it is said that the hides, because of the delay, became less valuable, and the Government should be charged with the difference in value consequent upon the delay.

The umpire has already sufficiently indicated in the Guastini case [1] his strong conviction that when taxes had been once collected by a de facto government, the government de jure could not enforce a second payment, and but for the compromise between the Government and De Caro, which compromise antedated his decision in the case referred to, he would have no difficulty in awarding to the claimant any sum he might have paid on this behalf, but, as is admitted by the honorable Commissioner for Italy, it is now impossible for him to reopen this matter. He feels compelled to regard the compromise as a complete and final settlement of any issue growing out of the acts to which the compromise related, whether such issue had reference to the original dispute or the proceedings taken to enforce the original claim. He can not recognize that De Caro accepted the benefit of the compromise of the original claim and at the same time reserved a right of action for steps taken to enforce it.

While the terms of the compromise entered into between De Caro and the Government do not appear at length in the record, we may believe that both parties considered that the dispute, with all the attendant consequences, was at an end when 50 per cent of the original claim was paid by De Caro.

The claim for moneys necessarily borrowed has apparently been allowed under another head, and as the hides were only detained from December 1 to December 22, 1902, it would under this heading call for little attention. Besides,

[1] Page 561.

if De Caro believed that the judge of hacienda had directed the seizure of an excessive amount of property, he had the right under the code of civil procedure of Venezuela to appeal to the court for the release of the excess, in this respect enjoying the remedy to which he would be entitled under similar circumstances in a common-law country. It does not appear that he availed himself of his rights, and it is not within the power of this umpire to grant damages to a claimant who, by a seasonable reliance upon his rights in a case in court, might have suitably protected himself. Certainly before he can appeal to an international tribunal, the suit in court having long since terminated, he should be prepared to show some actual denial of justice with relation to the subject-matter of his appeal.

A sentence will therefore be ordered in favor of De Caro in the sum of 21,788.62 bolivars, with two months' interest to December 31, 1903, at the rate of 3 per cent per annum.

MARTINI CASE

(By the Umpire):

The right of the sovereign power to submit all claims of its citizens to a mixed commission is superior to any attempt on the part of a subject or citizen to contract away such right in advance.

This Commission is, as between Venezuela and Italy, substituted for all national forums which, with or without contract, might have had jurisdiction over the subject-matter.[1]

Venezuela is responsible for attempts to enlist in her armies, in violation of her contract, Venezuelans employed by the claimant, and also for interference with foreign workmen employed by the claimant.

Venezuela is responsible for profits which claimant might have obtained had she not broken her contract where such profits are not uncertain or remote, or where it may reasonably be presumed they were within the intent and understanding of the parties when it was entered into.

Where the damage is continuous in its nature, an award may be made covering the loss up to the date of such award, although, under other circumstances, it seems damages after August 9, 1903, the last date for the presentation of claims, would not be recoverable.

A contract is to be interpreted in the light of the surrounding circumstances, and the port of Guanta being open to foreign commerce at the time the contract was signed, and such condition being a material element in the value of the contract, the government is responsible for damage incident to its subsequent closure by executive order.

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

In the memorial presented by the firm, at page 68, are enumerated the various items that the claim is composed of, and it is here proper to explain and sum them up.

(a) Thefts. Detailed at pages 72 and 73, and they amount to 9,104 bolivars. The proofs are to be found at fascicle B.

The firm call attention to the fact that it has not been possible to furnish proofs for some of these, because at the time of the taking the station master at Guanta, Marsilio Catelli had gone to Italy (December, 1902), but the more important amount of 8,334 bolivars is supported by the testimony of witnesses. It is to be noted at the outset that the firm relinquish their right to the sum of 750 bolivars because of the possibility that this sum may have formed a portion

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[1] See note attached to this opinion on p. 664.