

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Salas Case

1903

VOLUME X pp. 720-721



NATIONS UNIES - UNITED NATIONS
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just ground for complaint against the Venezuelan Government and no claim thereon arises because of the injuries received.

The claim is disallowed, and judgment may be entered accordingly.

SALAS CASE

The Government of Venezuela is responsible to aliens, commorant or resident, for injuries they receive in its territory from insurgents whom the Government could control and not otherwise. That the Government of Venezuela was negligent in a given case must be alleged and proved.¹

PLUMLEY, *Umpire*:

In this case the commissioners failed to agree and it came to the umpire for his decision.

The claimant is a Dutch subject resident at Barquisimeto. He claims an amount of 26,906 bolivars on account of damages upon his buildings and the personal property therein contained, which he sustained during the siege of Barquisimeto by the revolutionary troops under Gen. Luciano Mendoza in the month of June, 1902.

There seems to be no dispute concerning the facts, and they are substantially as follows: That the injuries and losses to the claimant occurred at the time when Barquisimeto was besieged by revolutionary forces; that during the besiegement the mercantile establishment of the claimant was occupied by these forces; the merchandise and furnishings of his store were taken and carried away by them, also a large deposit of stamps and national stamp paper, and the money in the drawer, as well as his account books, which were in the safe of said establishment, which safe was broken open; that starting from the partition wall between the house of the claimant and the one inhabited by one of the witnesses, and continuing up to the room where the office of Mr. Salas was kept, there were evident signs of walls and doors having been broken; the stands, wardrobes, and shelves of his lemonade factory were destroyed; the furniture generally broken; some excavations were made in the floor of the building, and there were places in the walls made to be used by the soldiery of the revolutionary army through which to fire their arms; all his mercantile stock and his machines for the manufacture of lemonade and gaseous waters were destroyed, and everything about the building was left in a decided ruin.

There is no claim that any injury was received to the buildings or property from the Government troops, which had been occupying the town, and which fought to maintain their possession thereof, but the proof is that all of the injury was caused by the voluntary acts of the revolutionary troops during their successful attack upon the city. As a result of this attack the Government troops were driven out of the city and the revolutionary forces were the victors and occupied the city for some time thereafter.

While the attack upon Barquisimeto was successful and the revolutionary party for the time became the dominant force in that immediate vicinity, the revolution itself was unsuccessful. There can be no question that the injuries were received from the hands of revolutionary soldiers, who for the time being and within that city were beyond the control of the Government. The Government in fact was defeated and was driven out of the city, so that in no way can it be held that they could have prevented these acts, and they can not be charged with a neglect of duty in not having done what they could not do.

¹ See Sambiaggio case, *supra*, p. 499; Aroa Mines case, vol. IX of these Reports, p. 402; Kummerow case, *supra*, p. 370; J. N. Henriquez case, *supra*, p. 713.

The case comes clearly within the rule prescribed by the umpire in the case of J. N. Henriquez ¹ (No. 1), concerning the responsibility of Venezuela for the acts of unsuccessful revolutionists:

That the Government of Venezuela is responsible to aliens, commorant or resident, for injuries they receive in its territory from insurgents or revolutionists whom the Government could control and not otherwise. That the Government of Venezuela was negligent in a given case must be alleged and proved.

The opinion of the umpire in the Henriquez case may be examined for the authorities there cited or quoted sustaining this proposition.

The claim is disallowed, and judgment may be entered accordingly.

EVERTSZ CASE

By article II of the protocol the Commission is bound to receive and consider all evidence whether taken ex parte and without notice or not.²

The Venezuelan Government held liable to indemnify claimant for property taken for the maintenance of prisoners left on claimant's estate [an island] without claimant's permission and without food.

Damages awarded for the property taken or destroyed at the price fixed by claimant. Claimant had the right to fix any price not extortionate if property was taken without his consent.

PLUMLEY, *Umpire*:

This case came to the umpire for his consideration and decision upon the disagreement of the honorable commissioners.

Before entering upon the consideration of the case proper, it seems wise to look first at the contention of the learned agent for Venezuela, who objects that the testimony presented on the part of the claimant Government can not be accepted as proof of any fact because taken in foreign parts and ex parte. While testimony prepared in the absence of the other party, without giving them an opportunity to elucidate the facts by cross-examination, would not have the evidential force which it otherwise would have, and while testimony so taken without due and reasonable notice to the opposing party of the time and place of such taking might be refused admission into courts controlled by definitive or restrictive rules and statutes covering such matters, yet here it must be both received and considered, however adduced or obtained, in virtue of the specific provision in that regard found in article II of the Netherlands-Venezuelan protocol of February 28, 1903, which protocol is the perfect law of this tribunal. It is there stated:

* * * They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim. * * *

The probative force of the testimony presented is for the tribunal to determine, but that it must be received and considered is settled in advance.

Having determined that the evidence must be considered and weighed, it is next to determine what facts are to be found therefrom. If the testimony introduced on behalf of the claimant were in any material part untrue, it concerns facts so lately within the knowledge of the respondent Government, and its opportunity for countervailing proof is apparently so perfect and immediate

¹ *Supra*, p. 713 and cases therein referred to.

² See Faber case, *supra*, p. 438 and note.