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**RECUEIL DES SENTENCES
ARBITRALES**

Arends Case

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ARENDS CASE

A government may bring to port vessel found within its territorial waters in order that a thorough investigation may be made concerning the ship, but in so doing the government is obliged to treat the master and crew with consideration and complete the investigation promptly.

PLUMLEY, *Umpire*:

Upon the disagreement of the honorable commissioners this case came to the umpire for his determination:

The salient facts succinctly stated are these: The claimant is a Dutch subject and a resident of the island of Aruba; that in March, 1897, he was the owner of the Dutch schooner *Jupiter*, Capt. Arnodus Rees. On the 15th of that month the captain, with five fishermen and a cook, left the port of Paardenbaar, of the island of Aruba, provided with a fishing permit on the high seas, in a westerly course from the island. They arrived at their destination and entered upon their purpose, but on the 19th, the Friday following, they found that the staves of one of their principal water casks had been broken and nearly all the water had leaked, and they had only two small barrels of water left. Not daring to remain longer on the high seas with so small a quantity of water, they set sail to return to the island of Aruba. After having unsuccessfully tacked during one day northwest of the island, on Saturday, the 20th of March, they sailed toward the south with the hope of finding better seas in which to navigate and the sooner reach their island. At about 11 o'clock of that night, while they were sailing toward the south, they were detained by the Venezuelan man-of-war *Mariscal de Ayacucho* in Venezuelan waters. The commander of the war vessel finding this ship in Venezuelan waters with nothing but a fishing permit for a different part of the seas determined, notwithstanding the explanation of the captain, to take the vessel in tow to La Vela de Coro, in the Republic of Venezuela, where they arrived at about 2 o'clock in the afternoon of the 22d of March. After their arrival at this port the captain was taken before the customs-house principal office at La Vela de Coro to be interrogated. Subsequently he was ordered not to leave the town and not to communicate with his vessel. It was on Wednesday following that the captain and the crew were all taken before the judge and there interrogated, after which they were given their liberty and permitted to return on board and to land their fish. On request of the captain the judge allowed him to sail out of the port on his giving surety for his ship, which he obtained. His official permit for fishing was not returned to him, although he asked for it, but he was given a document signed and sealed according to which he could sail without any objection. It appears that the water on board the *Jupiter* was all exhausted about 11 o'clock on the morning of the 22d; that the crew asked the customs guard left on board for some water, but it was not given them, and it was not until Tuesday morning — the next day — that another ship provided them with some water.

The owner of the ship claims 5,000 bolivars for the unlawful seizure and detention of his ship and of the crew and captain.

It is the opinion of the umpire that the captain was justified in taking the course he did in sailing south for better waters in which to navigate and the sooner return to the island of Aruba on account of the shortness of water, but that the misadventure of sailing into Venezuelan waters justified the commander of the man-of-war in making the investigation that he did: and on finding a ship in the waters of his country with no other reasons than those given and with only a fishing permit for another part of the sea, there was sufficient cause for him to take the ship in tow to the port where there was

competent authority under Venezuelan law to interrogate the captain and his crew, examine their papers, and determine whether the ship was innocent in the waters of that country. This view of the case is especially enhanced by the well-known conditions concerning smuggling existing between the Dutch West Indies and the country of Venezuela, and the consequent increased care and caution necessary for an efficient execution of the duties of the officials whose duties are to prevent such offensive operations against the revenues of Venezuela. But it seems to the umpire that too long a time elapsed between the arrival of the ship in the port and the hearing of its officer and men and the examination of its papers. Arrived at 2 o'clock on the afternoon of the 22d, the examination might well have been had, the vessel relieved of its necessities in the way of water, and allowed to sail that same night. It was in fact detained without any explanation for such lapse of time until the 24th.

The treatment of the crew, who were refused their petition for water by the officer left in charge of their boat, is also an element proper to be considered, and by no inaction on the part of the Venezuelan authorities should they have been allowed to remain without water for about two days. This conduct is contrary to that spirit of commerce and amity which should exist between the two nations and their respective citizens under circumstances where the one is perforce dependent upon the action of the other. While the delay attendant upon the tow of the ship *Jupiter*, nearly two days, that they might explain its presence in Venezuelan waters was a necessary hardship following the misadventure to the captain of getting within those waters, although unintentionally, it was the duty of the officers in charge of the port having those matters in hand to give their immediate attention to this matter, and any delays beyond the necessary time for the conclusion of their labors was an unlawful detention of the vessel. The damages consequent upon the detention of this vessel are necessarily small, but it is the belief of the umpire that the respondent Government is willing to recognize its responsibility for the untoward act of its officers under such circumstances and to express to the sovereign and sister State, with which it is on terms of friendship and commerce, its regret for such acts in the only way that it can now be done, which is through the action of this Commission by an award on behalf of the claimant sufficient to make full amends for the unlawful delay.

In the opinion of the umpire this sum may be expressed in the sum of \$100 in gold coin of the United States of America, or its equivalent in silver, at the current rate of exchange at the time of payment, and judgment may be entered for that amount.

MAAL CASE:

Every government has the right to exclude or expel foreigners from its territory if they are prejudicial to public order or the welfare of the state.¹

Expulsion of a foreigner is justifiable only when his presence is detrimental to the welfare of the state, and when it is resorted to it must be accomplished with due regard to the convenience and personal and property interests of the person expelled.

The Government of Venezuela must stand sponsor for the acts of its officers no matter how odious these acts may be, and in the event that it is not shown that officers committing unwarranted offenses in the exercise of their duty have been reprimanded, punished, or discharged the Government will be condemned to pay a fitting indemnity to the person injured.

¹ See *supra*, p. 528.