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**RECUEIL DES SENTENCES
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Esteves Case

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PERSONNEL OF SPANISH-VENEZUELAN COMMISSION¹

Umpire. — Luis Gutierrez-Otero, of Mexico City, Mexico.

Spanish Commissioner. — Juan Riaño, Chargé d'Affaires at Washington, D.C.

Venezuelan Commissioner. — F. N. Guzmán Alfaro.

Spanish Agent. — Aristides Tello.

Venezuelan Agent. — F. Arroyo-Parejo.

Assistant Venezuelan Agent. — José T. Arnal.

Spanish Secretary. — José Gil Delgado y Olazábal.

Venezuelan Secretary. — Luis Julio Blanco.

OPINIONS IN THE SPANISH-VENEZUELAN COMMISSION

EXTENSION OF TIME FOR SUBMISSION OF CLAIMS

Under the terms of the protocol no general extension can be allowed for the presentation of claims; but on cause shown any particular claim may be admitted for consideration and decision for ninety days after the time set for its presentation under the protocol.

GUTIERREZ-OTERO, Umpire:

The umpire, having examined and reached a decision concerning the point on which the Commissioners have disagreed, relative to the extension of time which the Legation of His Catholic Majesty in Venezuela demands for the presentation of claims of Spanish subjects to this Mixed Commission;

Has decided that a general decision, which would permit the presentation of *any* claim without exception after thirty days, and during the three months additional, to which the second clause of the protocol refers, would not be compatible with a true interpretation of the protocol in question;

Nor could the decision be made limiting its effects to claimants who reside in the State or territory of Venezuela where a difficulty or lack of communication exists, which is considered sufficient to prevent their presentation during the first thirty days, since there is no reliable information upon which to base such a finding; besides this means might not always be in accord with absolute equity, which ought to control the decisions of the Commission.

But as equity demands — and it is universally recognized as justice — that the length of time granted for the exercise of a right should be sufficient and should be properly taken advantage of by the interested parties, it is certain, that in accordance with the proper interpretation of the protocol and the motive of its execution, the Commission may receive during the three additional months mentioned in the article already cited, claims which could not have been presented during the first thirty days, provided that in the judgment of the commissioners, or of the umpire, as the case may be, it is shown that a sufficient cause for not having made prompt presentation existed;

And thus the umpire decides this question which has arisen and been submitted for his determination.

ESTEVES CASE

Spanish nationality of claimant may be shown by production of certificate from consulate of Spain showing that claimant is enrolled on register of Spanish citizens resident in Venezuela.

¹ No rules of procedure were formulated in this Commission.

GUTIERREZ-OTERO, *Umpire* :

In the record of the claim which Miguel Esteves presents, claiming to be a Spanish subject, and demanding payment for various merchandise and animals which he asserts were taken by revolutionary and government forces during the civil war which terminated in the year 1900, a preliminary question, not decided by the commissioners, has arisen because the Commissioner of Venezuela is of opinion that said claim is not admissible, inasmuch as the claimant has not presented his certificate of naturalization, and it appears in the record that he is a native of Tetuan, a city of Morocco.

The Commissioner of Spain holds that, having a certificate of Spanish nationality, as appears by the certificate in evidence coming from the Spanish Legation, and in which it is stated that Esteves is enrolled upon the register of nationality of the vice-consulate in Villa de Cura, he is entitled to claim as a Spaniard. Because of a disagreement, the question has been submitted to the decision of the umpire.

It is not denied by the Commissioner of Venezuela that, although Esteves may be a native of Morocco, he could have acquired Spanish nationality, but he limits himself to claiming the necessity of the presentation of the document, which directly and originally evidenced this change of nationality, believing, no doubt, that by this means only it could be proved that said Esteves can rightly avail himself of the provisions of the protocol of April 2 of this year, signed at Washington by the representatives of Spain and Venezuela, relative to claims which *Spanish subjects* should make against this latter Republic.

In deciding if this necessity exists, the umpire has taken into account the following considerations:

It is a principle that it is the province of the internal legislation of States to declare or concede nationality to the individuals who form them, establishing the means by which it may be acquired, preserved or lost, and the manner that said States shall consider the character of their nationals as fixed.

The Spanish law, in article 26 of the civil code, provides that Spaniards who transfer their domiciles to foreign countries are under obligation to prove in every case that they have preserved their nationality, and so declare to the Spanish diplomatic or consular agent, who shall be obliged to enroll them, as well as their wives, if they be married, and their children, if they have any, in the *register of Spanish residents*.

The Spanish law, in articles 26 and 32 of the consular regulations, also provides that it is an attribute of Spanish consuls in foreign countries *to grant letters of residence or security to their nationals*, and it charges them with the duty of making a *register of the Spanish residents in the district*.

The enrollment in this list or register puts the party inscribed in it in possession of a letter which proves his nationality, and the letters with which Spanish residents in the Republic of Venezuela are provided, granted by the legation in the exercise of its powers as consulate-general which are united in it, or by their consulates and vice-consulates in the exercise of the faculties which ordinarily belong to them, prove that the holder of one of these letters is a subject of Spain, to which the protocol of May 30, 1845, made by the above-named powers, refers.

Thus it is that the enrollment and the letter mentioned constitute proof of nationality, which can give way only to a more convincing proof to the contrary, which has not been attempted, nor made in the present case.

To these considerations strictly of a juridic nature to which said case belongs,

others of admitted equity are joined which serve to support the idea of the sufficiency of this proof, since, on the one hand, certificates of enrollment have been considered sufficient by the decisions of this Mixed Commission to prove Spanish nationality, and, on the other hand, the umpire has diligently inquired concerning the manner in which such inscriptions are made in the register of the Spanish consular offices and has learned that they are not made unless the interested parties also produce proof of their character as subjects in the Kingdom of Spain. This last is in accord with the terms of the treaty of 1845,¹ already cited, in which it was provided as an indispensable requisite for the conservation of their nationality that Spaniards who at that time desired to reacquire it, as well as those who in the future might migrate to Venezuela, should have themselves inscribed in the consular register.

Finally, it must be considered:

First. That as a general rule and in the same manner as provided for Spanish consuls those of all nations are charged with the keeping of a register of their nationals.

Second. That even though it be true that the claimant, Miguel Esteves, stated in writing, which he executed before the judicial authority of Zamora, that he was a native of Tetuan, in the same document he began by stating that he was a Spanish subject and he continued to designate himself thus in all his proceedings without giving rise to any motive to suppose, all things being equitably considered, that the faith placed in his statement concerning his original origin by birth should contradict his statement relative to the nationality which he enjoys.

For these reasons the umpire decides that the claim of Miguel Esteves is to be admitted as one of a Spanish subject, and that the record should therefore be returned to the consideration of the commissioners, that they may consider it on the merits.

PADRÓN CASE

It is an accepted principle of international law that States are not responsible to aliens resident in their territory for damages and injuries inflicted upon them by persons in revolt against the constituted authorities.²

This principle if invoked before a court of absolute equity becomes a technical objection which is expressly barred by the terms of the protocol.

The fact that this principle was expressly agreed to by both Venezuela and Spain for all future claims in a treaty of 1871 does not bind Spain and Venezuela so as to prevent them from entering into a new agreement waiving this stipulation.

In the absence of express stipulations in the protocol an arbitral court must decide according to the accepted principles of international law; but a tribunal called upon to decide on a basis of absolute equity renders judgment in accordance with the conscience of the arbitrators.

GUTIERREZ-OTERO, *Umpire*:

With respect to record No. 4, made up by the claim of the Spanish subject María García de Padrón, in whose favor payment of 1,300 bolivars is demanded, to indemnify her for the price of the rent of her house in Naiguatá occupied by the forces of the Government, and those of the revolution, from the month of September, 1899, to May, 1900; for the sum which she expended in repairing it on account of the damages which the occupants caused it; and the value of

¹ British and Foreign State Papers, Vol. 35, p. 301.

² See cases of Aroa Mines, Vol. IX of these Reports, p. 402; Kummerow, *supra* p. 370; Sambiaggio, *supra*, p. 499; J. N. Henriquez, *supra*, p. 713; Salas, *supra*, p. 720.