

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Sanchez Case

1903

VOLUME X pp. 754-756



NATIONS UNIES - UNITED NATIONS
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were ordered to be paid by a stipulated sum. This debt being of such a nature, it was by no means included among pending reclamations.

3. That this correct understanding of the agreement of June 21, 1898, is set forth in the text thereof, because it appears therein that for the renunciation on the part of Spain to the recovery and payment of another credit existing and recognized, as was that of the installments of the Spanish debt which were not recovered during eleven months, running from May, 1892, to April, 1893, an express stipulation was made, and the cancellation of the other pending reclamations until February 25 was not sufficient to include it.

With respect to the debt due Corcuera, no renunciation existed, as it was indispensable in order that it should be excluded from his property.

4. Besides, on May 18 it was already known that pending claims would be canceled, because it was thus agreed in the convention of December 20, 1897, and it was also announced in the judgment of February 25 following, rendered by the commissioners charged with the settlement of said claims, both of which documents served as premises for the agreement of June 21, which did no more than refer to such acts; and, notwithstanding this undeniable knowledge of the facts, on said 18th day of May the Government agreed, and so communicated to the Spanish legation, that it would pay the debt of Corcuera by monthly installments of 500 bolivars.

Because of all the foregoing, and the umpire also making it known that, although the claimant rendered military service to Venezuela, he did so with the permission of his Government, and therefore preserved his nationality, decides that the claim of the Spanish subject Leonardo Corcuera falls within the jurisdiction of this Commission and must be allowed for the sum of 2,201.96 bolivars, and that, therefore, the Government of the United States of Venezuela should pay a like sum to His Majesty the King of Spain for the services of this subject.

SANCHEZ CASE

Where the evidence produced in support of a claim is too vague to enable the Commission to determine the amount of the claim, said claim will be dismissed.¹

GUTIERREZ-OTERO, *Umpire*:

In record No. 74, which comprises the claim of the Spanish subject J. Manuel León Sanchez, in favor of whom an indemnity of 50,000 bolivars is demanded for material damages which he says were caused by preventing him from continuing a periodical publication, legitimately established, a disagreement has arisen between the commissioners, and the case has been submitted to the umpire for his decision.

The claimant says:

That his said periodical leaflet which was called *Movimiento Marítimo y Comercial y Noticias Universales* was established by permission of the government of the Federal District granted on the 18th of December, 1902, and produced for him a profit from the start so encouraging that he was able thereby to satisfy all his obligations and outlays of expense, and to realize a monthly return of from 1,700 to 1,800 bolivars.

That upon the 15th of February following there was verbally announced to him by agents of the police an order, first from the prefectura and afterwards from the government of the district itself, that this publication should be suspended.

¹ See also *supra* De Zeo case, p. 526.

That in vain he sought, by all the means in his power, for the revocation of the order; that he did not procure the aid of the lawyers who might defend his rights before the tribunals and help him in a claim for damages which he might wish to bring.

That in view of these circumstances, and suffering the inevitable execution of an order which was not based upon a true cause of complaint, which had been made without right, which was not even couched in legal form, he found himself obliged to realize upon all his business in Venezuela by an inopportune sale of his printing establishment, and to emigrate to another country to seek support for his family.

To the foregoing statement of facts, and to support it, León Sanchez annexed the original permission to publish his leaflet; a letter from the manager of the French cable, which certified that he had never altered any translation or notice which were received by said manager; copies of various private publications, which were made for the purpose of procuring the withdrawal of the order of suspension; copies of various periodicals in which the notice of this order was published, and the cause attributed for it, which was the inaccuracy of said translation; two letters of persons who assert that León Sanchez was the manager of two newspapers; that later he was the owner of the *Movimiento Marítimo*; that this was suspended in the manner stated; that Sanchez endeavored to procure the revocation, devoting himself to the steps before mentioned; that he did not seek redress before the tribunals, because everybody considered it useless; and that there were printed and distributed from 300 to 350 copies of each one of the editions of the *Movimiento Marítimo y Comercial y Noticias Universales*.

Such are the complaints and proofs exactly and minutely set forth.

The Venezuelan Commissioner is of the opinion that León Sanchez has no right to demand any indemnity for the suspension to which there is reference, and he cites in support of his opinion the decree issued on May 10, 1902, by which the President of the Republic suspended, among other guarantees or constitutional rights, that of free expression of thought by word of mouth or by means of the press.

The Spanish Commissioner maintained that where there is question of an enterprise legally established with previous permission of the Government of Venezuela the latter is responsible for the damages caused claimant.

The umpire does not take up this question of responsibility, because, in the supposition that it might be determined abstractly or in principle against Venezuela, it would not be possible to fix these terms concretely in order to make it effective, because the claimant has not proved even one of the facts necessary to estimate and determine any indemnity.

In order that this want of evidence might clearly appear, the undersigned made the detailed enumeration of the proofs presented, which do not relate to the value of the publication, nor to the expenses incurred, nor the income, nor even to the profits and possibilities of its being maintained, nor upon the necessity which the facts imposed on León Sanchez of selling his printing establishment and absenting himself from the Republic, nor upon the value of this establishment, nor upon the price for which it was necessary to sell it, nor in a word, upon anything that might justify the amount of property lost or injured.

Such an extreme in this respect was reached that not even when the private testimony of two persons was asked upon the fact of there having been published and distributed from 300 to 350 copies of each one of the editions of *Movimiento Marítimo* was there any proof as to how many of these editions there were, if they ceased to be published any day, and what expenses and profits they

produced, nor whether these later circumstances refer to each edition, each day, or each month of the two months which the publication approximately lasted. In no case, therefore, could the umpire enter into an equitable appreciation of the facts which are not alleged and proven, nor much less invent them, in the want of all proofs produced by the interested party.

These reasons suffice to render it unnecessary to examine and resolve other questions, and make it necessary to decide, as the umpire does decide:

That there is no reason for granting (because of the reasons alleged in this record) any indemnity in favor of the Spanish subject, J. Manuel León Sanchez.

BETANCOURT CASE

In the absence of an express mention of a liquidated and acknowledged debt due from the Government of Venezuela to a Spanish subject in a stipulation of a treaty cancelling all pending Spanish claims, such obligation will not be released.¹

For the proper interpretation of a treaty all the circumstances antecedent to its execution may be examined by the Commission.

GUTIERREZ-OTERO, *Umpire*:²

In record No. 71, which comprises the claim of the Spanish subject Federico Betancourt, in favor of whom the payment of 43,300 bolivars is demanded on account of the formation and management of an expedition of immigrants from the Canary Islands to the port of La Guaira in the year 1892, and the damages and injuries which he alleges to have suffered because of the failure of prompt payment, the commissioners have not agreed, and the case has been submitted to the decision of the umpire.

The claimant shows:

That in February, 1892, he brought into Venezuela, through the port of La Guaira, an immigration from the Canary Islands comprised of 389 persons, whom he brought over in the Spanish bark *La Fama*, in accordance with a contract which he had entered into with the government of the Republic, and that although the immigrants were carefully chosen and the inspection of them which the officers officially named for this purpose made of them resulted satisfactorily, not only at the point of sailing, but also at the place of arrival — that is to say, in the Canary Islands and in La Guaira — nevertheless, he estimated that the debt which was acknowledged for the passage should be fixed at the sum aforesaid, and not at the larger sum which the law of the subject matter fixed and that he believed that he had merited, in all justice, on account of the proper fulfillment which he made of the contract entered into by him.

He further shows that, notwithstanding the time elapsed since the debt was liquidated and fixed and the necessary steps which he has taken administratively in order that he might be paid it, it still remains unsettled, and thereby he has been caused grave injuries, on account of which he demands to be indemnified, besides having the principal debt paid him.

To determine these damages he enters into an explanation of various operations, which he could have undertaken with the value of the debt, if he had received it, and states that he is willing to consider it entirely satisfied with the result of any one of them.

¹ See Corcuera case, *supra*, p. 753.

² For a French translation see Descamps-Renault, *Recueil international des traités du XX^{ème} siècle 1903*, p. 893.