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Betancourt Case

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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.

To prove his debt he put in evidence various documents, and among them a certified copy which, by order of the minister of fomento, on the 16th of January of this year, was issued to him, and also of another certification given on September 24, 1892, by the director of statistics and immigration, certifying that in the archives of the office there existed a record, properly substantiated, in which it appears that Betancourt brought the immigration aforesaid, composed of 389 persons, as appears in the list sent to the minister by the subordinate commission of immigration of La Guaira, in accordance with the law in the premises, and therefore the Government owed said Mr. Betancourt the sum of 43,320 bolivars according to the accounting which his commission found in said record.

In order to show what is the interest which is customarily collected here in negotiations of loans, he presents two letters from the banks of Venezuela and Caracas, in which their representatives state that it is 12 per cent per annum.

When the claim was presented to the commissioners, the Venezuelan Commissioner considered that it ought to be disallowed because the diplomatic convention of June 21, 1898, made by the ministers of foreign relations and public credit of Venezuela and the ministers plenipotentiaries of Spain and this Republic canceled it, and consequently it was excluded from the examination of this Commission in accordance with Article I of the protocol of Washington.

The Spanish Commissioner was of opinion that the claimant ought to be allowed the sum which he demanded, because there was question of a contract which he entered into with the Government of Venezuela, the fulfillment of which he had been attempting, and to obtain in an administrative way without being able to accomplish its fulfillment, and that the claim of Betancourt did not form a part of those which were readjusted by said convention.

The umpire considers:

That Article I of the protocol signed at Washington on April 2 of this year places under the jurisdiction and decision of this Commission all claims of Spanish subjects which have not been settled by diplomatic agreement or by arbitration between the two Governments of Spain and Venezuela, and the first thing to be done, therefore, is to investigate with respect to the claim of Betancourt if it was included in the agreement of 1898 and was canceled thereby, as the learned Commissioner of Spain and Venezuela has contended.

That said convention of 1898 acknowledged as a precedent another convention of December, 1897, concluded at a conference, which at that date the minister of hacienda of Venezuela and the plenipotentiary of Spain had, and in the text of which it was expressed that said conference treated all claims still pending made by various Spanish subjects for injuries suffered during the war of 1892, and for other reasons; and that one person was named by the minister of hacienda and another by the legation of Spain, who examined all claims and determined the total sum which the Government of the Republic should pay therefor. They decided thereafter the terms of the payment and it was agreed providing:

That as soon as the bonds of the diplomatic debt which should be issued for the sum which might be determined should have been delivered, the legation of Spain would renounce with full authorization of its Government all other claims of Spaniards against Venezuela up to date, and also any claim that might arise from the suspension of the monthly payments during the duration of the past war.

That in the record of the conference held on June 21, 1898, which resulted in the convention of that date, successively approved by all the executive and legislative powers of Venezuela, it appears:

That an exact transcription was made of the other protocol of 1897, relative to the adjustment of claims pending by Spanish subjects by reason of the war suffered in 1892, and for other reasons, and attention being called that in said protocol it was agreed that the legation of Spain should renounce every other claim of Spanish subjects up to that date; and also every other claim that might have originated on account of the failure of payment of the eleven monthly installments during the duration of last June, 1892;

Wherefore the minister of Spain declared that at no time could there be demanded from the Government of the Republic the payment of said eleven monthly installments.

It likewise provided that the persons named to adjust all the claims and fix the amount that on account of them should be paid, accomplished their mission, and determined the sum which ought to be delivered to the Government of Venezuela for the different cancellation of all pending claims.

Finally the terms of the convention of that date, June 21, 1898, were definitely fixed, the first part of which reads as follows:

All claims of Spanish subjects up to the date of this judgment, or say February 25, 1898, shall be canceled.

That having considered the inducements which the convention of 1898 had and the definite text which has just been cited, it appears with entire clearness to the judgment of the umpire:

First. That all the claims which were canceled, were all those pending which were intrusted to the determination of the commissioners named for that purpose, and for the payment of which a specified sum was designated;

Second. That in no sense was there made or acceded to any claim which would likewise cancel debts which at that time were liquidated and acknowledged by the Government of Venezuela in favor of Spanish subjects, and which formed, therefore, a part of the public debt.

This proper understanding of the convention is corroborated by these very terms, since it being desired that there should be included also the cancellation or renunciation of another debt already liquidated and acknowledged, as was that of the eleven monthly installments, due on account of the Spanish debt, which were not paid from May, 1892, until April, 1893; with respect to this, particular and express stipulation was made, and it was not considered as included in the cancellation of the pending debts, which were the object of the transaction and the agreement to pay intrusted to the commissioners who were named for these purposes.

In a separate clause the following was agreed in said convention of 1898:

The legation of Spain declares that at no time may it demand from the Government of the Republic of Venezuela the payment of eleven monthly installments that were owed in 1892-93.

That was the only renunciation contained in the convention, and there were no other debts then existing for the determination and acknowledgment of which the Government of Venezuela might have made, and which also, therefore, belonged to the patrimony and property of the creditors.

That the debt of Federico Betancourt belongs to those of this sort, supposing that an entirely trustworthy certification, because it proceeds from the ministry which has in custody the antecedents of this negotiation, proves the true amount and acknowledgment thereof before the convention of 1898 was made; consequently it was not included in the pending claims which at that time were adjusted and canceled in said year, nor was it the subject of any negotiation which might abstract it from his property.

That from the foregoing it is deduced upon the most secure basis that said credit, now that there is an attempt to collect it because it has not been satisfied, is not in any way excluded from the jurisdiction of this Mixed Commission, and that besides, in accordance with every sentiment of justice it must be declared that it ought to be paid, even if to this end it was necessary to apply equity as far as possible.

That upon this point it must be taken into consideration that although a long time has expired since the liquidation ought to have been made, since even in September of 1892 the debt was ascertained and acknowledged, and that without it the claimant must have experienced damages on account of the refusal to pay, they can not be repaired in any of the ways which he indicates and with respect to which he renders no proof.

Nor at the rate of 12 per cent per annum upon the capital, because, even supposing that he might have maintained a suit to ascertain these damages at this rate of interest, he would not have accomplished his intention.

Equity does no more than allow him for this capital a total and complete indemnity which is almost equivalent to 5 per cent per annum as long as it has been unsatisfied, and that the umpire should fix the sum of 14,295 bolivars and 70 centimos as corresponding exclusively to a period of eleven years exactly.

For the foregoing reasons the umpire decides that the claim of the Spanish subject Federico Betancourt must be allowed for the total sum of 57,615.60 bolivars; and that, therefore, a like sum must be paid by the Government of the United States of Venezuela to His Majesty the King of Spain destined to satisfy said claim.
