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**RECUEIL DES SENTENCES
ARBITRALES**

**San Domingo Improvement Company Claims (Dominican Republic, United
States)**

14 July 1904

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**SAN DOMINGO IMPROVEMENT
COMPANY CLAIMS**

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PARTIES: Dominican Republic, United States of America.

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COMPROMIS: Protocol of 31 January 1903.

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**ARBITRATORS: Arbitral Commission: John G. Carlisle, Manuel de
J. Galvan, George Gray.**

AWARD: 14 July, 1904.

Arbitration arising out of financial difficulties in the relations between the Government of the Dominican Republic on the one hand and the *San Domingo Improvement Company* and other allied American companies on the other hand — Claim of the United States Government on behalf of the American companies — Conclusion of a protocol of arbitration according to which the Parties agreed on the withdrawal from the Republic of the American companies in consideration of a fixed indemnity for the relinquishment of the property rights and interests of these companies, and also on the constitution of an arbitral commission charged with the task of deciding the method of payment of the indemnity — Determination by the award of the time of the delivery of the properties in question, of the rate of interest, and of the amount of the monthly instalments and the security and mode of their collection.

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SYLLABUS ¹

The San Domingo Improvement Company with its allied companies (hereinafter referred to as "the Company") was incorporated in 1892 under the laws of New Jersey to assume the functions of fiscal agents of the Dominican Republic then exercised by Westendorp and Co., of Amsterdam. The status of the Company was confirmed by the Dominican Republic in March 1893 and supplemented between then and January 1901 by numerous transactions between the Company and the Republic. All manner of operations connected with bond issues on behalf of the Dominican Republic were conducted by the Company which administered the servicing of the public debt of the Republic.

In July 1899 measures of fiscal reorganization were under consideration as a result of the inadequacy of the source of revenue established for the service of the debt. At that time a number of difficulties and differences of a financial nature affected relations between the Dominican Republic and the Company. Attempts to improve matters by the negotiation in April 1900 and March 1901 of revised contractual arrangements proved unsuccessful. After inconclusive efforts to agree upon terms for the withdrawal of the Company from the Dominican Republic, during which the assistance of the United States Government was sought by the Company, agreement was reached between the Governments of the Dominican Republic and the United States by the signature of a Protocol at San Domingo on 31 January 1903.

Provision was made in the Protocol for the indemnification of the Company by the Dominican Republic for the relinquishment of all the rights, properties and interests of the Company for the round sum of \$4,500,000, and for the referral to an arbitral commission of the question of determining the terms under which such relinquishment and indemnification should be effected.

In accordance with article 1 of the Protocol, the arbitral commission consisted of three arbitrators: John G. Carlisle, named by the President of the United States; Don Manuel de J. Galvan, named by the Dominican Republic; and G. Gray, a member of the United States Circuit Court of Appeals, as third arbitrator, by nomination of the President of the Dominican Republic.

The arbitrators met in Washington in December, 1903, and rendered their award on 14 July, 1904.

¹ Jacob H. Hollander, "Debt of Santo Domingo", 1905, pp. 20-22.

PROTOCOL OF AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE DOMINICAN REPUBLIC, FOR THE SUBMISSION TO ARBITRATION OF CERTAIN QUESTIONS AS TO THE PAYMENT OF THE SUM HEREINAFTER AGREED TO BE PAID BY THE DOMINICAN GOVERNMENT TO THE GOVERNMENT OF THE UNITED STATES ON ACCOUNT OF THE CLAIMS OF THE SAN DOMINGO IMPROVEMENT COMPANY OF NEW YORK, A CORPORATION UNDER THE LAWS OF THE STATE OF NEW JERSEY AND A CITIZEN OF THE UNITED STATES AND ITS ALLIED COMPANIES, SIGNED AT SANTO DOMINGO CITY, 31 JANUARY 1903¹

WHEREAS, differences exist between the Dominican Government and the "San Domingo Improvement Company" and its allied companies; and

WHEREAS, as the result of those differences, the interests of the Improvement Company and its allied companies, viz: "The San Domingo Finance Company of New York", "The Company of The Central Dominican Railway", both being corporations created under the laws of New Jersey, and the National Bank of San Domingo, a company originally organized under a French charter, the two latter companies being owned and controlled by the San Domingo Finance Company, are seriously affected; and

WHEREAS, it is agreed, as the basis of the present settlement, that the Improvement Company and its allied Companies shall withdraw from the Dominican Republic, and that they shall be duly indemnified by the latter for the relinquishment of their rights, properties and interests.

The United States of America and the Dominican Republic through their respective representatives, W. F. Powell, Chargé d'Affaires, and Juan Fco. Sánchez, Secretary of State for Foreign Relations, have agreed upon the following articles:

I

It being hereby agreed that the Dominican Government shall pay to the Government of the United States the sum of \$4,500,000 (four millions five hundred thousand dollars), in American gold, on terms to be fixed by the arbitrators, said payment to be made and accepted as full indemnity for the relinquishment by the companies above-mentioned of all their rights, properties and interests, and in full settlement of all accounts, claims and differences between the Dominican Government and the said companies; the terms on which the indemnity thus agreed upon shall be paid shall be referred to a board of three arbitrators, one to be named by the President of the United States, one by the President of the Dominican Republic, and the third by the President of the United States and the President of the Dominican Republic jointly; but

¹ *Papers Relating to the Foreign Relations of the United States*, December 6, 1904, Washington, Government Printing Office, 1905, p. 270.

if, within sixty days after the signature of the present protocol, the third arbitrator shall not have been so named, he shall then be selected by the Dominican Government from members of the United States Supreme Court or the United States Circuit Court of Appeals, from names presented.

In case of the death, absence or incapacity of any arbitrator, or in the event of his ceasing or omitting to act, the vacancy shall be filled in the same manner as the original appointment, the period of sixty days to be calculated from the date of the happening of the vacancy.

II

The arbitrators shall meet in the city of Washington, within sixty days after the date of the appointment of the third arbitrator.

The vote of the majority shall suffice for the decision of all questions submitted to the tribunal, including the final award.

III

Within six months after the signature of this protocol, each party shall present to the other and to its agent, and also to each of the arbitrators, two printed copies of its case, accompanied with the documents and evidence on which it relies, together with the affidavits of their respective witnesses.

Within a further period of two months, either party may, in like manner, present a counter-case, with additional documents and evidence and affidavits, in reply to the case, documents and evidence of the other party.

If the other party shall, in its case or counter-case, refer to any document in its exclusive possession without annexing a copy, it shall, upon the request of the other party, furnish the latter with a copy; and either party may call upon the other through the arbitrators, to produce the originals or certified copies of any papers adduced as evidence.

IV

Within two months after the expiration of the term allowed for the filing of counter-cases, each Government may, by its agent, as well as by additional counsel, argue its cause before the arbitrators, both orally and in writing. Each side shall furnish to the other copies of any written arguments, and each party shall be at liberty to make a written reply, provided that such reply be submitted within the two months specified.

V

The Companies above mentioned shall cede and transfer to the Dominican Government, and the latter shall acquire from the Companies, the properties mentioned herein, the times, terms and conditions of the delivery of which shall be fixed by the arbitrators:

1. All the rights and interests which they may possess in the section of the Central Dominican Railway already constructed, as well as all rights and interests which they may have in the extension of the railways from Santiago to Moca, and from Moca to San Francisco de Macoris.

2. All rights and interests which they may have in the National Bank.

3. All bonds of the Republic of which they may be the holders, the amount of which shall not exceed £850,000, nominal (eight hundred and fifty thousand

sterling pounds), and shall be no less than £825,000 (eight hundred and twenty five thousand sterling pounds nominal).

It is understood that all these bonds are of the class bearing four per cent, annual interests excepting as to £24,000 (twenty four thousand sterling pounds) two and three-quarter per cent bonds, which shall be accepted at the rate of sixteen 2½% bonds for eleven 4% bonds. A list of the bonds shall accompany the case of the United States.

VI

It is agreed, as the basis of the award to be made by the arbitrators, that the sum specified in Article I hereof shall be paid in monthly instalments, the amount and manner of collection of which shall be fixed by the tribunal. The award shall bear interest from the date of its rendition at the¹

The Dominican Government having, in its recent negotiations with the American Companies, proposed to pay, on account of its indebtedness to them, a minimum sum of \$225,000 (two hundred and twenty five thousand dollars) per annum, which was to be increased on a sliding scale, it is agreed that the Dominican Government shall, pending the present arbitration, and beginning with the 1st of January 1903, pay to the Government of the United States for the use of the American Companies, the sum of \$225,000 (two hundred and twenty five thousand dollars) per annum, in equal monthly instalments, the aggregate amount so paid, at the date of the award, to be taken into account by the arbitrators.

VII

The award of the tribunal shall be rendered within a year from the date of the signature of the present protocol. It shall be in writing, and shall be final and conclusive.

VIII

Reasonable compensation to the arbitrators for their services and all expenses incident to the arbitration, including the cost of such clerical aid as may be necessary, shall be paid by the Governments in equal moieties.

DONE in quadruplicate, in English and Spanish, at San Domingo City, this 31st day of January 1903.

[SEAL]

Jno. Fco. SÁNCHEZ
Ministro de Relaciones Exteriores

[SEAL]

W. F. POWELL
Chargé d' Affaires

AGREEMENT TO THE NAMING OF ARBITRATORS

It is hereby agreed, on the part of the Dominican Government, through Juan Francisco Sánchez, Secretary of State for Foreign Relations, and the

¹ In the Award given at Washington on July 14, 1904, it was provided (Article 2) that the principal sum, and any and all balances thereof, should bear interest at the rate of 4 per cent, per annum. See *infra*, p. 37.

Chargé d'Affaires of the United States of North America, in the person of W. F. Powell, each acting for his respective Government, agree that neither of the signatory parties to this Protocol for International Arbitration, to which has been referred certain disagreements existing between the Dominican Government on the one side, and the Santo Domingo Improvement Company on the other, shall name its Arbitrator as stated in said Protocol, until after a period of ninety (90) days from the date of signing the same, in order to allow the Dominican Government to come to an agreement with the Santo Domingo Improvement Company, and the date referred to in the appointment of the third Arbitrator shall bear same as that expressed above.

To the above we agree, and with good faith to carry the same into effect, have hereunto affixed our names and attached thereto the Seals of our respective Offices.

DONE this 31st Day of January, 1903

[SEAL]

Jno. Fco. SÁNCHEZ
*Secretary of State for Foreign Relations
of the Republic of San Domingo*

[SEAL]

W. F. POWELL
Chargé d'Affaires of the United States of North America

AWARD OF THE COMMISSION OF ARBITRATION UNDER THE PROVISIONS OF THE PROTOCOL OF JANUARY 31, 1903, BETWEEN THE UNITED STATES OF AMERICA AND THE DOMINICAN REPUBLIC, FOR THE SETTLEMENT OF THE CLAIMS OF THE SAN DOMINGO IMPROVEMENT COMPANY OF NEW YORK AND ITS ALLIED COMPANIES, 14 JULY 1904¹

Arbitrage ayant pour origine des difficultés d'ordre financier survenues entre le gouvernement dominicain et la *San Domingo Improvement Company* ainsi que d'autres compagnies américaines, alliées de celle-ci — Réclamation du gouvernement des Etats-Unis d'Amérique pour le compte des compagnies américaines — Conclusion d'un protocole d'arbitrage par lequel les Parties conviennent du retrait des compagnies américaines de la République dominicaine, moyennant une indemnité déterminée pour l'abandon que ces compagnies font de leurs droits de propriété et intérêts, ainsi que de la constitution d'une commission arbitrale chargée de décider du mode de paiement de cette indemnité — Détermination par la sentence de l'époque de la remise des propriétés, de la quotité de l'intérêt, du montant des versements mensuels et des garanties et forme de la perception.

WHEREAS, by a Protocol of Agreement between the United States of America and the Dominican Republic, concluded at Santo Domingo City, January 31, 1903, it was agreed that the Dominican Government should pay to the Government of the United States the sum of four million, five hundred thousand dollars (\$4,500,000) in American gold, as full indemnity for the relinquishment by The San Domingo Improvement Company of New York, The San Domingo Finance Company of New York, The Company of the Central Dominican Railway and the National Bank of San Domingo, of all their rights, properties and interests and in full settlement of all accounts, claims and differences between the Dominican Government and the said Companies, and that the terms, on which the indemnity thus agreed upon should be paid, should be referred to a board of three arbitrators, one to be named by the President of the United States, one by the President of the Dominican Republic and the third by the President of the United States and the President of the Dominican Republic jointly, or, in case they should fail to so name him, by the President of the Dominican Republic from certain specified members of the United States Supreme Court or the United States Circuit Court of Appeals;

WHEREAS, for the purpose of carrying into effect the said Protocol, the undersigned arbitrators were appointed, viz: By the President of the United States, John G. Carlisle; by the President of the Dominican Republic, Don. Manuel de J. Galvan; and, as third arbitrator, by nomination of the President of the Dominican Republic, George Gray, one of the specified members of the United States Circuit Court of Appeals; and

¹ *Papers Relating to the Foreign Relations of the United States*, December 6, 1904, Washington, Government Printing Office, 1905, p. 274.

WHEREAS, the said arbitrators, duly organized under the said Protocol as a Board of Arbitration, have received and considered the cases and counter-cases and the arguments filed thereunder by the contracting parties through their respective agents and counsel;

The Board of Arbitration does now adjudge and award, as the terms on which the indemnity above mentioned shall be paid and the times, terms and conditions on which the aforesaid Companies shall relinquish all their rights, properties and interests, mentioned in Article V of said Protocol, and withdraw from the Dominican Republic, thus constituting a full settlement of all accounts, claims and differences between the Dominican Government and the said Companies, the following:—

Article 1. Time of Delivery of Properties

(a) Within ninety days from the making of this award, all rights and interests which the said Companies have in the National Bank of San Domingo, consisting of Six thousand three hundred and thirty-eight (6,338) shares of the capital stock thereof, shall be delivered by said Companies to the Dominican Government, on said Government giving to the Companies a release by the Bank of all claims against them.

(b) When the Dominican Government shall have paid to the United States the sum of One Million Five hundred thousand dollars (\$1,500,000), part of said principal debt, the said Companies shall deliver to the Dominican Government all the shares of the Company of the Central Dominican Railway, which shall represent, include and carry, all the rights and interests in said Railway referred to in paragraph 1 of Article V of said Protocol, and will simultaneously deliver over the full possession of said Railway, which shall be free of all debts, fixed or floating, of the said Companies, and which shall be at least in as good condition physically as it now is, less wear and tear and damage by accident or acts of God or public disturbance or the foreign enemy.

The cost of restoring the Railway from damage occurring in the meantime from any of such causes, shall be first chargeable upon the net profits of the year, and any excess of such cost shall be paid by the Dominican Government out of its Treasury in the same manner as hereinafter described in Article 4.

If such payment of One Million Five hundred thousand dollars (\$1,500,000), or any part thereof, shall be made by the Government, other than by the monthly instalments hereinafter provided, such monthly instalments shall nevertheless continue as herein provided.

(c) When the principal of said debt of Four Million Five hundred thousand dollars (\$4,500,000) shall have been reduced to Two Million Seventy-six thousand Six hundred and thirty-five dollars (\$2,076,635), then shall begin the delivery of the bonds of the Dominican Republic mentioned in paragraph 3 of Article V of the Protocol of the amount of Eight hundred and thirty thousand Six hundred and fifty-four pounds sterling (£830,654). The bonds to be delivered shall not include any of the Three hundred and fifty-one thousand Four hundred pounds sterling (£351,400) of Unified Scrip, admitted by the Companies to be the property of the Dominican Republic and heretofore tendered by the Companies to the Dominican Government, under the provisions of Article 6 of the contract of April 18, 1900; and the said Three hundred and fifty-one thousand Four hundred pounds sterling (£351,400) of Unified Scrip shall be delivered to the Dominican Government within thirty days from the date of this Award. With regard to the delivery of the amount of Eight hundred and thirty thousand Six hundred and fifty-four pounds sterling

(£830,654) of bonds, exclusive of the Three hundred and fifty-one thousand Four hundred pounds sterling (£351,400) admitted to be the property of the Dominican Republic, this is understood to constitute a guarantee on the part of the Companies that there are outstanding not more than One Million One hundred and forty-eight thousand Six hundred pounds sterling (£1,148,600) of 4 per centum obligations, including French-American Reclamation Consols (stamped and unstamped), Unified 4 per centum Scrip, and the 4 per centum bonds embraced in the Eight hundred and thirty thousand Six hundred and forty-four pounds sterling (£830,654) of bonds to be delivered under this award, and that, if any bonds of the issues of 1888, 1890, or 1893, shall hereafter be presented for conversion, the Companies will protect the Dominican Government. The delivery of the bonds by said Companies to the Dominican Government shall be in monthly installments *pro rata* to the payments of principal made to the United States, so that One thousand dollars (\$1,000) or Two hundred pounds sterling (£200) of bonds shall be delivered for each Five hundred dollars (\$500) of principal debt paid.

Article 2. Rate of Interest

The principal sum of Four Million Four hundred and eighty-one thousand Two hundred and fifty dollars (\$4,481,250) and any and all balances thereof due and payable to the United States by the Dominican Government shall bear interest from the date of this award, at the rate of four per centum per annum. All payments made shall be applied first to the interest accrued.

Article 3. Amount of Monthly Instalments

Said principal and interest shall be payable in monthly instalments of Thirty-seven thousand Five hundred dollars (\$37,500) each, during the first two years, and of Forty-one thousand Six hundred and sixty-six dollars and sixty-six cents (\$41,666.66) each, thereafter, to the Financial Agent of the United States, on the first day of each month, beginning with the month of September, 1904, and shall be made in gold coin or currency of the United States, or in such good bills of exchange as shall be acceptable to said Agent. In the former case, the cost of shipment to New York, and in the latter case the discount to maturity and charges incident to the collection of such bills of exchange, shall be added to the amount of the monthly instalment.

The net profits of the operation of said Railway, until its delivery under Article I hereof, during each year, beginning from the first day of July, 1904, as shall annually be stated by its General Manager, shall be and constitute a further credit upon said principal debt.

Article 4. Security and Mode of Collection

Security: The said debt and interest and the monthly payments thereof, as herein determined, shall be secured as follows:—

The Customs Revenues and Port Dues of the ports of entry or custom houses of Puerto Plata, Sánchez, Samaná and Montecristy, and of all other ports of entry or custom houses now existing or which may hereafter be established, on the coast or in the interior, north of eighteen degrees and forty-five minutes of North Latitude, and east of the Haitian boundary, are hereby assigned and designated as security for the payment of the debt and interest herein mentioned.

Until payment of said debt and interest, the tariff of Customs Duties and Port Dues now prevailing shall not be reduced in any case or to any person more than twenty per centum, without the consent of the United States.

The said debt and interest shall also constitute a first lien upon the Central Dominican Railway, until its delivery to the Dominican Republic as provided in this award.

Mode of Collection: The United States shall appoint a Financial Agent, who shall establish an office in the Dominican Republic.

In case of failure to receive during any month the sum then due, the said Financial Agent shall have full power and authority by himself or by his appointees, to forthwith enter into possession of the Custom House at Puerto Plata in the first instance, and to assume charge of the collection of the Customs Duties and Port Dues at that port, and, to that end, shall fix and determine those Duties and Dues and enforce their payment, possessing and exercising all the present powers of the "Interventor de Aduana" and of the "Administrador de Hacienda" and of all other officials authorized by law to participate in the collection and determination of Duties and Dues and the enforcement of their payment.

Said Financial Agent shall have power from time to time to appoint subordinate officials and employees. The Customs Duties and Port Dues shall be paid to him or to his appointees directly by the exporters and importers or other persons liable therefor in cash or in *pagarés* drawn to the order of said Financial Agent or his appointees, and such payment, and such payment alone, shall operate as a release of the goods and as a discharge of such importers and exporters and other persons from the liability for payment of such Customs Duties and Port Dues.

The Dominican Government may appoint such officials as it may deem proper for the purpose of inspecting the collection of duties.

Out of the sums collected by the Financial Agent and his appointees the said Agent shall pay in the following order:

- (a) The expenses of collection.
- (b) The Special Apartados, as follows: —

Port of Puerto Plata:

Wharf Concession;
 Freight Concession;
 Personal duties;
 Old Foreign Debt, one and one-half ($1\frac{1}{2}$) per centum of import duties;
 Colon, one-half ($\frac{1}{2}$) per centum of import and export duties.

Port of Samaná:

Wharf Concession;
 Old Foreign Debt, one and one-half ($1\frac{1}{2}$) per centum of import duties;
 Colon, one-half ($\frac{1}{2}$) per centum on import and export duties.

Port of Sánchez:

Wharf Concession;
 Samaná-Santiago railway concession, seven (7) per centum of import duties;
 Macoris branch railway concession, two (2) per centum of customs receipts;
 Old Foreign Debt, one and one-half ($1\frac{1}{2}$) per centum of import duties;
 Colon, one-half ($\frac{1}{2}$) per centum import and export duties.

Port of Montecristy:

Improvement River Yaque Concession;
 "Gobernación";
 Old Foreign Debt, one and one-half ($1\frac{1}{2}$) per centum of import duties;
 Colon, one-half ($\frac{1}{2}$) per centum of import and export duties.

- (c) The sums due under this Award.
- (d) "Deuda Flotante Interior" and "Deuda Flotante Vicini," each five (5) per centum.

The excess, if any, after said payments, shall be paid over by said Financial Agent to the Minister of Hacienda of the Dominican Government at the time recognized by the United States or to his order. And the said Financial Agent shall render monthly an account of his collections and disbursements to the said Minister of Hacienda. He shall not be obstructed in the peaceful exercise of his duties under this Award.

In case the sums collected at Puerto Plata shall at any time be insufficient for the payment of the amounts due hereunder, or in case of any other manifest necessity, or if the Dominican Government shall so request, the said Financial Agent or his appointees shall have and exercise at Sánchez, Samaná and Montecristy, and at any or all of the ports of entry or custom houses within the territorial limits above described, all the rights and powers vested in him or them by this Award in respect of the port of Puerto Plata.

This possession, power and duty shall continue until six months after all arrears hereunder shall have been paid, and further, until the Dominican Government requests the restoration of the *status quo ante*; but said Financial Agent and his appointees shall re-enter said custom houses and resume the exercise of all the powers and authority as above described, at any subsequent time when a like default in payment shall be made by the Dominican Government.

To the end that the capacity of the Dominican Republic punctually to make the payments required by this Award shall not hereafter be impaired, the Financial Agent herein mentioned shall act as Financial Adviser to the Dominican Government, in all matters affecting its ability to pay this Award.

Article 5

In the month of January in each year the Dominican Government shall make up, in accord with the Financial Agent herein mentioned, a statement showing the total fiscal revenues of the Republic for the preceding year.

Article 6

The salaries and necessary traveling and other expenses of the Financial Agent and his appointees shall be paid by the Dominican Government in monthly instalments in the same manner and with the same security as the monthly instalments of debt provided herein by Article 4.

Article 7

In addition to the monthly instalment of Thirty-seven thousand five hundred dollars (\$37,500) provided for in Article 3, there shall be paid to the Financial Agent, during the month of August, 1904, a sum sufficient to pay an equal moiety of the compensation of the arbitrators, and an equal moiety of all expenses of this arbitration, being the amount for which the Dominican Republic is liable, under Article VIII of the Protocol, which amounts shall be certified to the Dominican Government by the Department of State of the United States of America.

And in case of the failure to pay said amount, or any part thereof, during the said month of August, the Financial Agent shall have and exercise in the collection thereof, the same powers as hereinbefore conferred upon him in

case of default in the payment of the said monthly instalments on the principal and interest of said debt.

This Award is given and rendered at Washington, on this fourteenth day of July, in the year one thousand nine hundred and four.

IN WITNESS WHEREOF, we have hereunto affixed our hands and seals.

[SEAL]

Geo. GRAY

President

[SEAL]

John G. CARLISLE

[SEAL]

Manuel DE J. GALVAN
