REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Commission established under the Convention concluded between the United States of America and Colombia on 10 February 1864 for the settlement of claims arising from the Panama riot and other claims

Cases of *La Constancia*, *Good Return* and *Medea*, opinion of the Umpire, Sir Frederick Bruce, dated 14 May 1866

Commission mixte établie par la Convention conclue le 10 février 1864 entre les États-Unis d'Amérique et la Colombie pour le règlement des réclamations découlant de la révolte au Panama et autres reclamations

Affaires *La Constancia*, *Good Return* et *Medea*, opinion du Surarbitre, Sir Frederick Bruce, datée du 14 mai 1866

14 May 1866

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Affaires *La Constancia, Good Return* et *Medea*, opinion du Surarbitre, Sir Frederick Bruce, datée du 14 mai 1866**

Consequences of the neutrality of a nation for its citizens—limits of national protection and rejection of claims for want of jurisdiction by an international commission if citizens of neutral nations violated the observance of neutrality—non-binding nature of a presentation of a claim by a diplomatic agent for the agent's Government.

Consequences of a voluntary offer of the foreign nation to compensate the citizen of a neutral nation, not having been accepted on behalf of the other parties interested, both for the rights of the foreign nation and for the other parties.

Conséquences de la neutralité d'une nation pour ses citoyens—limites de la protection nationale et rejet de réclamations par une commission internationale pour défaut de compétence si les citoyens de nations neutres n'ont pas respecté la neutralité—nature non contraignante de la présentation d'une réclamation par un agent diplomatique pour le gouvernement de ce dernier.

Conséquences, pour les droits de la nation étrangère ainsi que pour les autres parties, d'une offre d'indemnisation faite volontairement par la nation étrangère en faveur du citoyen d'une nation neutre et qui n'a pas été acceptée au nom des autres parties intéressées.

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Sir Frederick Bruce delivered the following opinion:

These claims for the proceeds of captures made by American citizens commanding privateers under commissions given them by Artigas, the chief of the Banda Oriental, and of which they were violently deprived by the authorities of Venezuela, are presented under the convention as claims of American citizens against the United States of Colombia. The nationality of the parties is not disputed; but a question of great importance arises as to the jurisdiction of this commission to entertain them under the peculiar circumstances of their origin

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as "claims of American citizens" in the sense in which these words are used in the convention. Upon this preliminary point I proceed to give my opinion.

It is to be borne in mind that the commanders of these vessels did not wage war by virtue of any right they possessed as American citizens to engage in hostile operations. On the contrary the United States of America were neutral in the conflict. No commission or authority was or could have been given to them by the United States to carry on hostilities against Spain and Portugal, and as American citizens they would have been liable to a charge of piracy or robbery on the high seas if they had not been able, by producing the commission of a belligerent power, to justify the captures they had made on the high seas of vessels belonging to the countries with which that power was at war. The neutrality of a nation in a war waged between other powers renders obligatory according to the law of nations, the observance of neutrality on every citizen forming part of its body politic, however difficult it may be for its government to enforce, by municipal statutes, on the individual members of the community a conformity with the duties thus assured by it. The acts, therefore, out of which these claims arise can not be considered by an international commission in any other light, when committed by citizens of the United States as such, than as unjustifiable outrages on the persons and property of the subjects of friendly nations, and the quality of American citizenship, which it is necessary to invoke in order to bring these claims within the scope of the constitution, operates as a fatal bar to their admission.

I may observe further that as these captures were made under the flag of the Banda Oriental, and by virtue of the authority conferred on the captors by the commissions they held from that republic, the titles to the prizes vested in that republic, the ultimate disposal of the proceeds being a matter of contract between her and the officers she employed in capturing them. The insult and injury complained of were done to her flag and to her authority as a legitimate belligerent. She was responsible to the world for the proceedings of these privateers, and upon her exclusively devolved the right of protecting them in the exercise of their rights as recognized vessels of war. The Government of Venezuela could not have resisted a demand for redress, put forward by her in these cases, by alleging that the commanders of these privateers were not natives of the Banda Oriental, nor did that fact in any degree weaken *her* right to demand restitution or indemnity, or *their* right to their share in the indemnity when obtained from the government which had seized the prizes without legitimate cause. Had Clark or Danels been natives of the Banda Oriental, they would have had no other channel for redress of the acts complained of but that afforded by the government of that republic. Considering, however, the light in which privateering expeditions, organized in neutral countries, are looked upon, the recognition of the right of these par-ties to claim as American citizens would lead to what would seem a singular and startling result. An officer in arms for his native country would have no redress except through his national authority for the violation of his rights in waging war; whereas a

foreigner, taking part in a contest which did not concern him, would be able to invoke *first* the assistance of the government he served and from which he derived his authority and *secondly,* if it failed or was unable to obtain satisfaction for him, he might claim the protection and support of his own government in making good his demands, although he had been engaged in defiance of its declarations founded on the clearest obligations of international law in carrying on war against nations with whom that government was at peace.

It is sought, however, to remedy this defect as to jurisdiction by a reference to the correspondence of the chargé d'affaires of the United States at Bogota, and to the proposed agreement entered into by Mr. King for the settlement of the Danels claim. In estimating the precise weight to be given to the dispatches of the United States chargé d'affaires, it is to be recollected that the claimants are undoubtedly American citizens, and that upon the facts stated in their memorials a case of injustice and wrong is made out on their behalf. It is the habit of diplomatic agents under these circumstances, influenced by a natural feeling for their countrymen, and by equitable considerations, to bring such cases to the notice of the government liable, and to lend their aid in the settlement of them. But it is impossible to maintain that the mere presentation of a claim by a diplomatic agent binds his own government to insist upon it by all the means which on behalf of a claim recognized as valid and unobjectionable it is authorized to employ; still less can the reception of these notes by the government to which they are addressed be construed into an admission of the validity of a claim, or into a waiver of any objections to it, that may exist on the ground of jurisdiction or otherwise.

The articles of agreement entered into by Mr. King, chargé d'affaires of the United States, and Mr. Prata, secretary for foreign relations of New Granada, contain an offer on the part of New Granada to compensate Danels, an American citizen, for such proportionate part of his losses as is assumed by her in virtue of the repartition of common debt between the republics, and acknowledge her obligation to pay $50,000 to him in certain public stocks. This agreement, which was in the nature of a voluntary offer to settle a claim admitted by New Granada for the sake of peace and for the preservation of harmony and good understanding between the two countries, not having been accepted on behalf of the other parties interested, can not be held to confer upon them any new right or to debar New Granada in the present discussion of this claim from taking advantage of such objections as are suggested by the circumstances of the case to the admission of it by this commission. Had the agreement been completed and a perfect contract created, or a compromise accepted for political considerations entirely extraneous to this commission, the fulfilment of which was afterwards resisted, the commission would have been bound to examine whether the new title thus constituted in favor of Danels had been carried out, and would have been relieved from going behind it to examine into the merits of the case or into the principles on which the liability of New Granada had been sustained. But in the absence of any such

contract or compromise I am clearly of opinion that the correspondence cited and the part taken by the Government of the United States in endeavoring to effect a settlement of the claims of its citizens arising out of the unjustifiable proceedings of the Venezuelan authorities against the sovereign rights and interests of the Banda Oriental are insufficient to absolve the commission from examining whether, consistently with the principles of international law they can or not assume jurisdiction over them.

Nor does the renunciation executed by the Republic of Uruguay which is confined to the waiver of any fiscal interests she might claim, affect the rights of these parties to her support or confer upon the United States any further title as against the offending republic than she previously possessed.

In conclusion, I may state that it is a matter of great satisfaction to me in rejecting these claims for want of jurisdiction, to observe that the contrary conclusion, arrived at by my distinguished predecessor under the first commission, is expressed in terms which show that his mind was by no means free of doubt on the question; while, on the other hand, I am supported on the general question of principle by the decision of Mr. Hassaurek, delivered in the cases of the *Medea* and the *Good Return,* presented to him by the Ecuadorian commission, whose most able exposition of the principles of public law, which should guide a mixed commission in such cases, I beg to incorporate with this opinion, as expressing more in detail and in far better language than my own the grounds of my conclusion.