

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
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Mixed Commission on claims of citizens of the United States of America against Spain
established under the Agreement of 12 February 1871

**Cases of C. H. Campbell v. Spain, No. 94, and A. A. Arango v. Spain, No. 95,
decision of the Umpire, Baron Blanc, dated 9 December 1879**

Commission mixte de réclamations des citoyens des États-Unis d'Amérique à l'encontre de l'Espagne
constituée en vertu de l'Accord du 12 février 1871

**Affaires concernant C. H. Campbell c. Espagne, No 94, et A. A. Arango c. Espagne, No 95,
décision du Surarbitre, Baron Blanc, datée du 9 décembre 1879**

9 December 1879

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MIXED COMMISSION ON CLAIMS OF CITIZENS OF THE
UNITED STATES OF AMERICA AGAINST SPAIN ESTABLISHED
UNDER THE AGREEMENT OF 12 FEBRUARY 1871

COMMISSION MIXTE DE RÉCLAMATIONS DES CITOYENS DES
ÉTATS-UNIS D'AMÉRIQUE À L'ENCONTRE DE L'ESPAGNE
CONSTITUÉE EN VERTU DE L'ACCORD DU 12 FÉVRIER 1871

Cases of *C. H. Campbell v. Spain*, No. 94, and *A. A. Arango v. Spain*,
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Affaires concernant *C. H. Campbell c. Espagne*, N° 94, et *A. A.
Arango c. Espagne*, N° 95, décision du Surarbitre, Baron Blanc,
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Seizure of ship and its cargo, where the cargo, consisting of arms, ammunitions and other military supplies, was for the benefit of the insurgents and the ship was allowed, either willfully or negligently by the claimant, to fall into the hands of the insurgents.

Forfeiture of claimant's rights to protection—estoppel.

Case not to be treated as a case of the United States against Spain with an objective of pursuing suitable reparation for the offended dignity of its flag.

Saisie du navire et de son chargement, lequel, composé d'armes, munitions et autres fournitures militaires, a profité aux insurgés, le demandeur ayant, délibérément ou par négligence, permis la prise de ce navire par les insurgés.

Déchéance des droits du demandeur à la protection—estoppel.

Affaire ne devant pas être traitée comme une affaire introduite par les États-Unis à l'encontre de l'Espagne dans l'objectif d'obtenir une réparation adéquate pour l'atteinte à la dignité de son pavillon.

* Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. III, Washington, 1898, Government Printing Office, p. 2774.

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In the cases of the American citizens Charles H. Campbell and Augustin A. Arango against Spain, I may, as is claimed in behalf of the United States, assume for the purposes of the controversy submitted to me that the capture of the brig *Mary Lowell* and cargo by Spanish force on the high seas was unauthorized by international law. Yet, as the cargo, consisting of arms, ammunition, and other military supplies, was admittedly intended by its owner, Augustin A. Arango, for the benefit of the insurgents against the Spanish Government, and as the brig was allowed by Charles H. Campbell, either willfully or negligently, to fall into the hands of parties actively interested in promoting the insurrection, the claimants forfeited their right to the protection of the American flag, and are estopped from asserting any of the privileges of lawful intercourse in times of peace and any title to individual benefit of indemnity as against the acts of the Spanish authorities done in self-defense.

The claims are therefore dismissed.

Consideration by the Umpire of the motion for a rehearing made by the United States

The cases of *C. H. Campbell v. Spain* and *A. A. Arango v. Spain* again come before the American and Spanish Commission on a motion for a rehearing. Besides the fact that the motion is not presented to the umpire through the authorized channels, he considers it a matter of very serious doubt whether he possesses the power to reopen a case after his decision is made and filed. While there is great plausibility in the theory that with the filing of his decision his function ends, it certainly can not be disputed that the power, even if the umpire possesses it, should be exercised with caution, and only when evidence and reasons are offered by the moving party which were not before the umpire when he rendered his decision. The umpire has very carefully looked for, and failed to find, such evidence and reasons in the brief for a rehearing filed in the acts of the commission. It may be due to the parties, however, that he should now state his views upon the whole case more fully than he has heretofore done, in order that no misapprehension as to the real character of his decision may exist.

As matter of fact, it has been established that the arms and ammunition shipped on the *Mary Lowell* were admittedly intended for delivery, even by illegal means, to the Cuban insurgents. It has been established in regard to the *Mary Lowell* that, even it be doubtful on the proofs that her ostensible destination for Vera Cruz had been simulated from the departure from New York, she was abandoned at the Bahamas by her captain and crew, they alleging unwillingness to participate in a descent upon the Cuban coast; that she was thereupon left by her proprietor under the command of one of the members of a body of men, organized as a military company, which had come from Jacksonville with C. H. Campbell on another ship belonging to C. H. Campbell himself; that the allegation that the *Mary Lowell* was afterward placed in the custody of a British official is inconsistent with the positive declarations of the British Government; that the aforesaid company was manifestly engaged in

the initiation, at least, of an attempt to make a descent upon the Cuban coast in aid of the insurrection; and that before the capture of the *Mary Lowell* by the Spanish forces the vessel and cargo had passed into the possession and under the control of the insurgents, whatever may be the weight properly attributable to the assertion that the claimants had lost and the insurgents had acquired ownership of the property.

As matter of law, the umpire is of opinion that prior to the capture of the *Mary Lowell*, and independently of the circumstances of the capture itself, the vessel and cargo were being used by the act or through the negligence of their respective owners in an unlawful enterprise and placed outside the conditions of lawful intercourse in time of peace; that this illegality was of such a character as to carry with it forfeiture of the protection of the United States flag and as to subject the property to such eventual action as might be deemed proper by the United States and by Spain according to the mutual rights and duties of the two governments; that such abnormal situation of the owners of the ship and cargo toward Spain, and indeed toward the United States themselves, could not be covered by the alleged infraction of international law involved in the subsequent capture of the *Mary Lowell* and cargo by the Spanish forces; and that on those principles of equity which the umpire does not feel at liberty to disregard he is bound to decide that the owners of the ship and cargo are, as such, estopped in their present claim to indemnity for the consequences of their unlawful venture. It is, then, irrelevant under the circumstances of this case to state how far, if at all, the acts of the Spanish forces, done in self-defense, were unauthorized by international law and such as to create a claim on the part of the United States against Spain in behalf of the offended sovereignty of their flag. It is accordingly unnecessary for the determination of the personal rights of the claimants before this commission to ascertain the facts on which the regularity of the capture, as to the rights of the United States, depends, namely: Has the *Mary Lowell* set herself right as to the allegation of Spain that she was, at the moment of the capture, without a captain and without the necessary papers to justify her flag; that she was pursuing an unjustified course, etc.?

The umpire must be understood as applying the rule of estoppel only against the private claims of C. H. Campbell and A. A. Arango, as claimants of an indemnity for their own individual account, in which private claims the question, *Was the capture of the Mary Lowell and cargo unlawful?* is subordinate to the other question, viz, *Were the Mary Lowell and cargo engaged in a lawful enterprise?* The umpire can not be legitimately called upon to treat this as a case of the United States against Spain having for its direct object a suitable reparation for the offended dignity of their flag. In such a case the regularity of the capture would constitute the principal question to be considered, the personal situation of the owners of the property becoming subordinate; but no case of the *United States v. Spain* has been or could, in the opinion of the umpire, properly be presented to this tribunal.

The umpire therefore finds nothing to justify a reversal of his decision. While leaving entirely untouched the capture of the *Mary Lowell* in its relations to international law and in its consequences upon such rights as the United States and Spain may respectively possess in the premises, he must adhere to the dismissal of these claims, *C. H. Campbell and A. A. Arango v. Spain*, and deny the applications for a rehearing.

**Case of Pedro D. Buzzi v. Spain, No. 22, decision of the
Umpire, Count Lewenhaupt, dated 18 April 1881***

**Affaire Pedro D. Buzzi c. Espagne, N° 22, décision du
Surarbitre, Count Lewenhaupt, datée du 18 avril 1881****

Nationality under international law—right for every country to confer, by general or special legislation, the privilege of nationality upon a person born out of its own territory—no person without nationality—according to international law, a person without nationality by descent or by birth shall be considered to have the nationality of the birth place.

Recognition of naturalization—not the duty of the Commission to examine whether the requirements of the American law of naturalization have been fulfilled but just to determine whether there has been naturalization in good faith as against Spain—criterion of uninterrupted residence of five or more years.

Nationalité en vertu du droit international—droit de tout pays d'accorder, par le biais d'une législation générale ou spéciale, le privilège de la nationalité à une personne née en dehors de son territoire—aucune personne ne peut être dépourvue de nationalité—en vertu du droit international, une personne ne disposant pas de nationalité par descendance ou naissance devrait être considérée comme ayant la nationalité du lieu de naissance.

Reconnaissance de la naturalisation—il ne relève pas du devoir de la Commission d'examiner si les conditions posées par le droit américain de la naturalisation sont remplies, mais juste de déterminer s'il y a eu une naturalisation opposable de bonne foi à l'Espagne—critère de la résidence ininterrompue durant cinq ans ou plus.

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