

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

## **RECUEIL DES SENTENCES ARBITRALES**

Claims Commission established under the Convention concluded between the  
United States of America and Venezuela on 5 December 1885

**Case of Elizabeth B. Scott v. Venezuela,  
opinion of the Commissioner, Mr. Little**

Commission de réclamations constituée en vertu de la Convention conclue entre les  
États-Unis d'Amérique et le Venezuela le 5 décembre 1885

**Affaire concernant Elizabeth B. Scott c. Venezuela,  
opinion du Commissaire, M. Little**

VOLUME XXIX, pp.225-227



NATIONS UNIES - UNITED NATIONS  
Copyright (c) 2012

CLAIMS COMMISSION ESTABLISHED UNDER THE CONVENTION  
CONCLUDED BETWEEN THE UNITED STATES OF AMERICA AND  
VENEZUELA ON 5 DECEMBER 1885

COMMISSION DE RÉCLAMATION CONSTITUÉE EN VERTU DE LA  
CONVENTION CONCLUE ENTRE LES ÉTATS-UNIS D'AMÉRIQUE ET  
LE VENEZUELA LE 5 DÉCEMBRE 1885

Case of Elizabeth B. Scott *v.* Venezuela, opinion of the  
Commissioner, Mr. Little\*

Affaire concernant Elizabeth B. Scott *c.* Venezuela, opinion du  
Commissaire, M. Little\*\*

Admission of a claim—definition of claim within the meaning of the treaty—existence of a right and an obligation under the treaty—necessity to allege active or passive wrongful conduct—necessity to allege injury or damage resulting from that conduct and to request its indemnification.

Admission d'une réclamation—définition d'une réclamation au sens du traité—existence d'un droit et d'une obligation en vertu du traité—nécessité d'alléguer une conduite illicite, active ou passive—nécessité d'alléguer un préjudice ou un dommage résultant de cette conduite et d'exiger son indemnisation.

\*\*\*\*\*

The *expediente* sets forth in substance—

That in 1812 Alexander Scott, a citizen of the United States, residing in Washington, having been appointed a political agent by President Madison to proceed to Venezuela, then at war with Spain for independence, to look after the commercial and other interests of the United States in that quarter, delayed his departure from some time in March till late in May, in order to secure the

---

\* Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. IV, Washington, 1898, Government Printing Office, p. 4392.

\*\* Reproduit de John Bassett Moore (éd.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. IV, Washington, 1898, Government Printing Office, p. 4392.

aid of his country toward relieving the distress and suffering of the people of Caracas and vicinity, caused by the then recent disastrous earthquake in that part of South America; that he "obtained its consent and authority for purchasing and transporting" fifty thousand dollars' worth of provisions "to the city of Caracas for the relief and sustenance of the suffering inhabitants"; that the provisions (which arrived in June and July) were gratefully received by Venezuela "with many flattering demonstrations of respect and gratitude toward" Mr. Scott; that owing to heavy personal expenses incurred during and in consequence of this service (which continued till January, 1813), he was reduced from affluence to straitened circumstances. He died in 1839. Elizabeth B. Scott, his widow, who had accompanied him and shared the labor and privations of the undertaking, in 1855 sent her memorial, embodying these statements substantially, to the Venezuelan Government through the American legation at Caracas, asking, to use her own language, "at the hands of a high-minded and honorable country such a return of reciprocal kindness as they may think fit to bestow in view of the sacrifices made."

No sum was named either of the expenses or losses incurred or of indemnity desired. Afterwards letters from time to time were forwarded in her behalf through said legation to that government, in one of which \$25,000 were suggested as a proper sum to be paid for the services rendered. The letters, while depicting in strong colors the great benefits to Venezuela of Mr. Scott's mission, and the needs of the petitioner, claimed as a consequence from his sacrifices for that country, disclose no new material fact.

This claim was presented to the former commission by the American minister at Caracas May 14, 1868. That was the first time the United States Government or its agency took or was asked to take cognizance of it further than to forward the matter as above stated.

To "this claim" Venezuela by her counsel demurs, "upon the ground that it is based entirely on the supposed right to an exercise of gratitude by Venezuela, and does not allege any breach of contract or wrong cognizable by a tribunal of justice, this without admitting the claim of special gratitude."

As we understand it, a "claim" within the meaning of the treaty implies a *right* on the one hand and an *obligation* on the other. It has reference to some alleged wrongful conduct of the government upon which it is made. That conduct may have been active or passive; the government may have done what it ought not to have done, or refused or neglected to do what it ought to have done in respect to the subject-matter of the claim. And injury or damage must be alleged to have resulted from that conduct to the claimant under circumstances giving him the right under the treaty through his own government to demand, and imposing on the delinquent government the obligation to allow indemnity therefor.

This claim is not of that character. No wrongful conduct is or can be imputed to Venezuela in respect to its subject-matter. All she did was thankfully to receive a gift of provisions sent by the Government of the United States

to her people in distress. The claim, if otherwise good on the face of the papers, would be obnoxious to an objection for delay in presentation for reasons stated in No. 36. The demurrer will be sustained and the case dismissed.

It may be worth while to add a few facts about this case obtained from the public records. Having been commissioned in 1811 to go to Venezuela as agent for the Government of the United States, Mr. Scott started in March, 1812, and got as far as Baltimore, where he found there were no vessels going to Venezuela because of the then recent embargo. While thus detained in Baltimore, Congress passed the act of May 8, 1812, "for the relief of citizens of Venezuela," authorizing the President to purchase \$50,000 worth of provisions and "to tender the same in the name of the Government of the United States to that of Venezuela for the relief of the citizens who have suffered by the late earthquake." He was directed by President Madison to proceed to that country in one of the vessels carrying the provisions and aid in their distribution. He was paid by the United States, as its agent, for his services, including \$700 paid him while detained in Baltimore, \$4,115, and thereafter employed in its service.

**Case of Melville E. Day and David E. Garrison, as surviving  
executors of Cornelius K. Garrison v. Venezuela, decision of the  
Commissioner, Mr. Findlay\***

**Affaire concernant Melville E. Day et David E. Garrison, en tant  
qu'exécuteurs testamentaires de Cornelius K. Garrison c. Venezuela,  
décision du Commissaire, M. Findlay\*\***

Contract between citizens and a State—principle of continuity of treaties upon any succeeding government—right for a government *de facto* to contract private obligations—contract viewed as a lawful emanation of power.

State—distinction between a State and its government—existence of the State not affected by changes of governments—principle of continued responsibility of the State for wrong and injuries—duty of the State to respect its international obligations notwithstanding domestic changes.

Government *de facto*—equivalency of the legal effect for acts made by a government *de facto* or *de jure*—a government *de facto* viewed as a government submitted to by the great body of people and recognized by others States.

Arbitration clause—question of the validity of the arbitration clause for any differences or difficulties after the annulment of the contract.

---

\* Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. IV, Washington, 1898, Government Printing Office, p. 3548.

\*\* Reproduit de John Bassett Moore (éd.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. IV, Washington, 1898, Government Printing Office, p. 3548.