

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Bolívar Railway Case (on merits)

1903

VOLUME IX pp. 445-455



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natural law — which requires the observance of contracts — as if natural law had been intuitively discerned or revealed from Heaven, and no consent had been necessary at the outset. (Bouvier's *Law Dict.*, vol. 1, p. 1102.)

The rules which determine the conduct of the general body of civilized States in their dealings with one another. (Lawrence, *Int. Law*, sec. 1.)

International law consists in certain rules of conduct which modern civilized states regard as being binding on them in their relations with one another with a force comparable in nature and degree to that binding the conscientious person to obey the laws of his country. (Hall, *Int. Law*, 1.)

In what has been stated I have referred exclusively to the international obligations imposed on the United States by the general principles of international law, which are the only standards measuring our duty to the Government of Honduras. (Mr. Bayard, Sec. of State, to Mr. Hall, Feb. 6, 1886.)

International law in its practical result guides, restricts, and restrains the strong states, guards and protects the weak.

The guide, commonly safe and constant and usually to be followed, is international law. But if in the given case, not easily to be assumed, it should occur that its precepts are opposed to justice, or lead away from it, or are in disregard of it, or are inadequate or inapplicable, then the determination must be made by recourse to the underlying principles of justice and equity applied as best may be to the cause in hand. The umpire will apply the precepts of international law in all cases where such use will insure justice and equity for this reason, if for no other — that well-defined principles and precepts which have successfully endured the test of time and the crucible of experience and criticism are safe in use, and should never carelessly be departed from in order that one may step out into a way unknown to walk by a course unmarked. But these precepts are to be used as a means to the end, which end is justice.

The rule of justice, equity, and law deduced by the umpire and to be applied here is well expressed in the treaties of Germany and Italy with Colombia hereinbefore quoted. Adapted for our use, the rule will read as follows:

The Government of Venezuela will not be held liable to the British Government for injuries to property or wrongful seizures thereof, or for damages, vexations, or exactions committed upon or suffered by British subjects in Venezuela during any unsuccessful insurrection or civil war which has occurred in that country unless there be proven fault or want of due diligence on the part of the Venezuelan authorities or their agents.

The Aroa mines supplementary claim is based wholly on the seizure of their property by revolutionary troops without proof of any fault or lack of due diligence on the part of the titular and respondent Government.

Under the rule adopted this claim must be, and is hereby, disallowed, and judgment will be entered to that effect.

BOLÍVAR RAILWAY COMPANY CASE

A nation is responsible for the acts of a successful revolution from the time such revolution began.¹

PLUMLEY, *Umpire*:

When this claim came to the umpire on the disagreement of the honorable commissioners, as to parts thereof there had been agreed to and allowed by the commissioners the following amounts:

¹ See also *Supra*, p. 119.

The whole of the claim particularized in —		<i>Bolivars</i>
Appendix A		105,738.59
Appendix B		28,600.24
Appendix C		40,132.59
Appendix D		126,081.27
Appendix E		39,038.81
Appendix F		2,272.50
Appendix G		38,260.75
In the claim particularized in —		
Appendix H: Nos. 30, 31, 33, 35, 36, 44, 46, 48, 51, and 57 . .		20,036.93
Appendix K: Nos. 8, 10, 12, 13, 14, and 15		57,148.86
Appendix N:		
Nos. 1, 3, 4, 5, 7, 9, 12-33, inclusive, 36, 37, 39, 40, 41, 45, 46, 48, 49, 52, 54, 56, 65, 66, 69, 74, 76, 77, 78	<i>Bolivars</i>	277,356.58
Nos. 71, 81, 82	37,500.00	314,356.58
Total amount agreed upon by Commissioners		771,667.12

The Commissioners agreed to a disallowance of the following amounts:

In the claim particularized in —		<i>Bolivars</i>
Appendix J		577.50
Appendix L		8,837.07
Appendix N: Nos. 71, 81, and 82		16,976.88
Total amount of disallowance agreed to by Commissioners . .		26,391.45
The whole amount of claims agreed to by the Commissioners, both allowed and disallowed		798,058.57

The Commissioners disagreed as to the following amounts:

In the claim particularized in —		<i>Bolivars</i>
Appendix H		313,576.27
Appendix K		88,349.96
Appendix M (disagreement to whole of this claim) . .		2,215.87
Appendix N		786,876.44
The whole amount of claims disagreed to by the Commissioners		1,173,018.54
		1,971,077.11

The Bolívar Railway Company has credited the Government of Venezuela with the following amounts:

		<i>Bolivars</i>
Weekly payments made by the Government in 1897 and 1898		46,000.00
Further amounts paid by the Government in 1899 . . .		6,360.00
Payment for patent fuel in 1899		2,272.50
Allowance for damaged sleepers recovered from the Gov- ernment troops in Tucacas		58,659.40
Total amount of credits		113,291.90
Claim as presented to this Commission		1,857,785.21

Under Appendix H, and referring to the disputed items thereunder there are allowed by the umpire the following:

	<i>Bolivars</i>
Nos. 1, 2, and 3, referring to services performed by the railway company in the month of September, 1899, and vouched for by Gen. Ismael Manzanares	20,274.94
No. 4, covering items September 3-30, performed for the Government, and vouched for by Gen. Lopez García, who was a supporter of the titular government of Andrade	39,319.30
No. 5, use of the steamer <i>Barquisimeto</i> eighteen days	9,090.00
No. 6, for the use of cars between October 10 and 24, and vouched for by Gen. Lopez García	300.00
No. 7, for the use of the steamer <i>Barquisimeto</i> for thirty-one days	15,655.00
No. 8, account accrued under the order of Gen. Carlos Liscano, and vouched for by him between October 20 and 31	5,722.25
No. 9, an account accrued between October 16 and 31 through the order of Gen. Ismael Manzanares, and vouched for by Valentin Torres	26,586.24
No. 10, an account accrued between October 8 and 15, and vouched for by Gen. Lopez García	7,425.00
No. 11, an account accrued between October 1 and 15, under the order of Col. Manuel Vargas	2,454.66
No. 12, an account accrued between October 1 and 15, through the order of Gen. Valentin Torres, and vouched for by E. Medina	12,769.00
No. 13, an account accrued through Gen. Ismael Manzanares	22,313.16
No. 14, an account contracted by the Government through its representative in Tucacas, Lopez García, October 1-17	4,793.67

These accounts accrued during the successful revolution under General Castro, and represent services performed either on his behalf or on behalf of the titular government, and are, therefore, properly chargeable to the present Government. It is not necessary to define each, although the umpire has carefully inspected each account and vouchers covering the same periods and is satisfied that the above statement is correct. He also has the assistance of the telegram of November 4, 1903, sent by R. Gonzalez, P., to Gen. J. M. García Gomez explaining the relation of some of the generals whose names appear and concerning the items above allowed.

	<i>Bolivars</i>
No. 15 is an account contracted by General Guerra on November 3 and 4. He is known to have been in command of the army that attacked the revolting general at Puerto Cabello on November 11, and the umpire will assume that this is a proper charge against the Government	5,302.50
No. 16, for the use of the steamer <i>Barquisimeto</i> between November 1-16 inclusive	8,449.56
<p>It is a matter of history that Gen. Antonio Paredes was military governor of Puerto Cabello and its fortifications under Andrade, and continued in such office after the departure of Andrade and the dissolution of his Government. It is understood that he accepted for a brief time General Castro's authority, but that on the 7th of November he repudiated such relations and revolted, fortifying Puerto Cabello, and that an attack was made upon him on November 11-12 by sea and land. Since Paredes had no fleet and no occasion for the use of the sea, while the Government had its fleet before Puerto Cabello and was in control of the sea in front of Puerto Cabello, the assumption is very clear that the use of the steamer between points and Puerto Cabello could only be under the employment of the National Government.</p>	
No. 19, accounts contracted between November 18 and 28 by Gen. Valentin Torres, and vouched by Medina	7,183.78

	<i>Bolivars</i>
No. 20, for the use of a steam launch under the order of Ramón Fraga- chen	600.00
This allowance is animated with the same reason as was the allow- ance in No. 16. This use occurred the 14th day of November, which is included in the time covered by the use of the steamer <i>Barquisimelo</i> , and when it is not consistent with the other circumstances to assume that steam launches were being used by the nationalist revolutionaries.	
No. 22 is an account contracted by Gen. Valentín Torres, and vouched for by him, between November 1 and 15	18,346.27
No. 23, an account contracted by Gen. Juan Isava, and vouched for in another place by Fragachen	11,855.18
This allowance is under the presumption and belief that at this time he was not in the service of the nationalist revolutionaries, although he was later.	
No. 29, an account contracted by Gen. Lopez García between Decem- ber 28 and 30	4,509.16
No. 34, an account contracted by Gen. Lopez García January 19, 1900	18.80
No. 35½ (this number is the umpire's) is of date January 29 and repre- sents an account presented on that day for 20,546.25 bolivars, less amount received on account of coal, 2,272.50 bolivars	18,273.75
It is assumed that the account, both debit and credit, was satisfac- tory to the Government or it would have raised a question direct to the Commission concerning that particular item, and if the credit is correct it is right to assume that the debit is to the right party.	
No. 37, an account contracted by Gen. Lopez García and vouched for him, covering dates from February 1 to 26	1,358.80
No. 38, for damages caused the company by Gen. Lopez García on a day between February 1 and 28	363.00
No. 39, an account contracted between February 15 and 23 by General Solagnie	2,746.02
The position of General Solagnie to the Government is ascertained by reference to voucher No. 12 in Appendix K, which voucher is countersigned by Gen. P. Gonzalez, and in that voucher there are entries for the month of March, 1900, stating accounts against the Gov- ernment for the transportation in special trains of General Solagnie, his staff, and troops. The umpire therefore feels safe in placing this account, made at Solagnie's order the month preceding, among the items of Government indebtedness.	
No. 40 is another of the same character as No. 39, under the same per- son's order, covering the date from March 1 to 15	3,081.39
No. 41, an account contracted by the order of General García, covering the same time as No. 40	166.40
No. 42 covers account contracted between March 6 and 31, inclusive, through the order of F. Solorzano	290.43
No. 43 covers accounts between March 7 and 24, inclusive, through the order of F. Solorzano	180.76
The last two allowances are made on the statement before the Com- mission by the British agent that Solorzano was at this time com- mander of the garrison at Tucacas, appointed by General Castro him- self. This statement was made about a month since, has not been questioned, and the umpire feels safe in accepting it, knowing that it was made in good faith and on what was believed to be correct in- formation.	
No. 45, an account contracted between March 1 and 28 by Gen. J. M. Quesada, and vouched for by B. Lopez Fonseca	332.79
This account is thus placed because of the next account accepted by the honorable Commissioner for Venezuela wherein the charge is for an account contracted by Gen. Gonzalez Pacheco and vouched for by Lopez Fonseca. No. 46 being for a single item of April 2, so	

Bolwars

immediate to the other, there can be no mistake in regarding No. 45 as well sustained when vouched for by Fonseca.	
No. 47, an account contracted by Gen. F. Solorzano and vouched by Juan Felix Castillo	3,424.33
There is no question about the position of Castillo, and the umpire had already settled the relation of Solorzano, which is further sustained in this item by finding him associated with Castillo.	
No. 49, of date of April 30, for repairs and materials on account of injuries to the railway and the rolling stock resulting from the use by the Government troops during the war, and vouched for by Lopez Fonseca	12,498.75
No. 50 is an account contracted by Gen. J. Felix Castillo from May 2 to 31, inclusive, and vouched by him	847.21
No. 52 is an account contracted by General Castillo from May 22 to 26, inclusive	17.46
No. 53 is for materials taken from the station of El Hacha by General Aranguren	167.00
The reason for this allowance is the presumption that at this time there was no general revolutionary movement, and in fact it was practically at an end all through that portion of Venezuela. Taking this with the further fact that the Government being well advised of this charge has introduced neither evidence nor denial, the umpire is convinced that it is probably correct.	
No. 54 is for transportation in accordance with orders of the minister of war	14.70
No. 55 is for carrying freight under the order of General Castillo	21.16
No. 56 is for transportation through the order of General Castillo between June 1 and 28	167.80

The whole amount allowed by the umpire in Appendix H is . . 266,920.22

Under Appendix K, and referring to the disputed items thereunder, there are allowed by the umpire the following:

Bolwars

Nos. 1 and 2 are for trains, trolleys, and other services of the railway to the Government under the order of General Manzanares, covering the month of September 1899	12,311.81
No. 3 is an account for the use of trolleys, etc., order by Gen. Ismael Manzanares, and vouched by him, covering dates from September 5 to 30	593.50
No. 4 is an account of special trains ordered by Gen. Carlos Liscano, covering dates from October 7 to 28	6,055.82
No. 5 is an account of special trains by the order of General Manzanares, vouched by him, covering dates October 21-25	29,646.29
The accounts up to and including No. 5 cover dates on which the services were performed either for the titular government then existing or for the successful revolution, and in either case are properly chargeable to the present Government.	
No. 6 is a detailed account of trains employed under the order of General Manzanares, covering dates November 3 to 14	3,392.12
No. 11. This account was contracted for and on behalf of the troops of Gen. Jacinto Lara and is vouched by General Solagnie	16,567.76

The whole amount allowed by the umpire in Appendix K is . . 68,567.30

Under Appendix M: This is a small claim for freight, etc., carried for the Government in the State of Lara in the years 1899 and 1900, and the allowance is objected to because it does not bear evidence of having been first charged to

the Government, and there is a denial of authority on the part of the officials of a State making accounts chargeable to the National Government without especial order to that effect.

The relation of the several States to the National Government is of such intricate character, apparently so intimate that it becomes difficult to discriminate rightfully between the two, if discrimination is possible in such matters. No question is made but that the service was performed in the interest of the State of Lara, and that it was proper service. The umpire knows that the several States are constituted by the National Government and the governors are appointed by the National Government and hold their offices during its pleasure; that a certain income is set aside for the support of these State governments; and from such knowledge as a basis in this regard he is satisfied that, if this account is allowed against the National Government and on behalf of the railway company, the National Government has such a relation to the State of Lara that it may easily recoup the sum if it is not properly chargeable to it, while if disallowed as against the railway company it is wholly remediless. It appears to the umpire, therefore, that it is safe for the National Government and just and equitable to the company that the question should be resolved in favor of the railway company, and the claim is allowed at 2,215.87 bolivars.

Under Appendix N, and referring to the disputed items thereunder there are allowed by the umpire the following;

	<i>Bolivars</i>
Nos. 2, 6, 8, and 10 are for services performed on behalf of the National Government for the transportation of troops, officers, prisoners, munitions and materials of war, all apparently of a character necessary for the use of the Government, and under the order and voucher of Gen. Juan F. Castillo, civil and military chief at Tucacas	362.87
No. 11, service in October, 1900, for transportation of one official by the order of Governor Urbina at Tucacas. It bears the appearance of correctness, carries with it the character of service for which a government may properly be charged, and is vouched by one assuming authority, which is not questioned before this Commission	2.31
The whole amount allowed by the umpire in Appendix N is	365.17

The umpire is next to consider, under Appendix H, those accounts which represent services performed on behalf of troops and officers engaged in the second Hernandez revolution. Those accounts are —

	<i>Bolivars</i>
No. 17. Under order of Gen. Avelino Jiménez, November 30	1,839.03
No. 18. Under order of Col. M. Vargas, November 18-29	1,483.25
No. 21. Under order of Col. M. Vargas, November 1-15	10,212.07
No. 24. Under order of Gen. Avelino Jiménez, December 1-15	17,546.02
No. 25. Under order of Gen. E. Garmendía and vouched by A. Jiménez, December 9	38.00
No. 26. Under order of General Jiménez, December 16-28	12,936.03
No. 27. Under order of General Jiménez, December 29-31	1,455.57
No. 28. Under order of General Jiménez, December 29-31	1,083.58
No. 38. Under order of General Jiménez, January 3, 1900	32.50
The whole amount of these is	46,626.05

There are to be considered also claims of a similar character under Appendix K. These are —

	<i>Bolwars</i>
No. 7. December 2, 1899, which are asserted to be contracts through the civil and military chief of the State of Lara, vouched by E. Garmendía, amounting to	8,234.60
No. 9. A similar account of December 14, amounting to	11,548.06
The whole amount of these is	19,782.66

The umpire is convinced by the charges themselves that they are for services of the nacionalista revolution. For this he relies upon the telegram heretofore referred to and upon the internal evidences found in the vouchers themselves. The charge in No. 7 states that it is on account of the “revolution,” and that it was contracted through the orders of the civil and military chief of the State of Lara. In voucher No. 9 it is found that this is an account of the liberal nacionalista revolution and through the orders of the civil and military chief of the State of Lara in Barquisimeto. The first item of this account is December 4, 1899, and is for a special train to conduct Gen. E. Garmendía and his forces to El Hacha and return to Barquisimeto with comisionados. It will be observed that this is the same day that the same General Garmendía has vouched for the correctness of No. 7. This service in No. 9 first mentioned therein was performed by virtue of a written order attached to the voucher of date December 4, and signed by E. Garmendía, and he follows this with another order of the 10th of December, which is charged of date December 12 or 14, and in either case is for the conduct by train of troops and guns. His are the principal orders supporting this voucher, but there are orders by General Jiménez in this same month supporting this same voucher, showing that it was correctly charged to the revolution liberal nacionalista. The umpire therefore entertains no doubt that these two accounts, Nos. 7 and 9, are of the same character, both assisting to oppose the Government of which General Castro was the head.

Concerning these accounts, both in H and K, which were for services rendered by the railway company to the liberal nacionalista (or Hernandez) revolution, it is urged with ingenuity and ability by both the learned agent and the honorable Commissioner for the claimant Government that the present Government is responsible for them because they say that while the State of Lara had been of a revolutionist tendency and activity at a time previous, still at the time that General Castro came to that State with his revolutionary forces there was a condition of quiet which was disturbed by his presence and effort, and a large revolutionary force gathered to join with General Castro and fought their way to the capital, resulting in General Castro’s headship of the Government, and that the months of disturbance and war which followed in that State and section were the result of this fomentation by General Castro, and that until there was secured peace and quiet under his Government it is a part of his inheritance that he should assume responsibility for those results. They also ably contend for the importance of this and other railways in Venezuela to the nation in the development of its resources, the reliance of the nation upon these railways and the propriety and necessity of assuming a different position to this railway, especially from what might be taken toward other institutions or other classes of property. The umpire is in perfect harmony in regard to the great importance of such national highways to the internal development of the country as well as for its valued uses in case the Government needs to transport rapidly troops toward the scene of disturbance or conflict; but it is his opinion that his discretion goes no further than sound judicial discretion, and that all such arguments

are properly addressed only to the political department of government and not to its judicial department or to those who may act in the limited sphere allowed them who are occupying and fulfilling judicial functions.

It is also the opinion of the umpire that history is not in perfect accord with their position on this question. From the best sources open to the umpire he believes the truth to be that the troops which came from Lara and vicinity, equally with others, came with the supreme purpose of overthrowing the Andrade government, and necessarily expecting if success crowned their efforts that their leader, General Castro, would be the natural head of the government. There are no historic evidences of any dissatisfaction amounting to a revolutionary spirit on their part against his assumption of the headship of the government.

History discloses that Andrade abandoned Caracas on the morning of October 20, starting for La Guaira, at which place he disbanded the men who, remaining faithfully with him, had gone thus far, and he himself took ship for the Antilles; that on the day of his departure General Rodriguez, president of the government council, assumed executive power and named a ministry; then he and General Mendoza and General Castro came to terms, and General Castro entered Caracas in the evening of October 22, 1899, and assumed power on the next day as the supreme chief of the Republic and appointed his cabinet. On that day, as supreme chief, he set at liberty the political prisoners who had been placed in prison by Andrade, and among them Gen. José Manuel Hernandez, who had been leader in the nationalist revolution and was in prison on account of such leadership. It was in making up his cabinet that General Castro made General Hernandez minister of public works, which at the time he did not accept or decline. In the early morning of October 27 General Hernandez stealthily left Caracas, accompanied by Gen. Samuel Acosta with a division of soldiers, and went out through El Valle, on the La Victoria road. October 28 there was circulated in Caracas and elsewhere through the country his proclamation dated the 26th instant, calling upon the country to overthrow the government of General Castro, at the same time declining the office of minister of public works. The watchword of General Hernandez and his followers in his first revolution was the same as was assumed immediately by his followers in this second revolution, and this fact is found so well expressed and so generally understood by intelligent men that the December accounts of the Bolívar Railway Company state that they were made in the service of the liberal nationalist revolution. It is not their claim that it was the liberal restauradora revolution, which was the watchword of General Castro and his followers, referring to the alleged subversion of the constitution by President Andrade, which had given the cause and the occasion for the successful revolution led by General Castro. In the judgment of the umpire that revolution ended with the triumph of its leader and his installation as supreme chief of the Republic. It may be thought that to be a successful revolution it must defend itself against those who dispute the government it had formed, but it did successfully defend and hence establish its right of success as claimed by it when it made its triumphal march into Caracas and proclaimed its chief the head of the Republic.

If the personal responsibility of General Castro in this matter were the question for decision, it might be possible to hold him responsible for the second revolution as growing out of the revolution he had led. Such, however, is not the ground on which successful revolutions are charged, through the government, with responsibility. Responsibility comes because it is the same nation. Nations do not die when there is a change of their rulers or in their forms of government. These are but expressions of a change of national will. "The

king is dead; long live the king!" has typified this thought for ages. The nation is responsible for the debts contracted by its titular government, and that responsibility continues through all changing forms of government until the obligation is discharged. The nation is responsible for the obligations of a successful revolution from its beginning, because in theory, it represented ab initio a changing national will, crystallizing in the finally successful result. The nation did not disturb or foment a revolution in Lara for which it was responsible beyond the point where its will had been expressed and settled in the Government established through General Castro. Success demonstrates that from the beginning it was registering the national will.

This rule was laid down in *Williams v. Bruffy* (96 U.S. Sup. Ct., 176), wherein the court say, speaking of a similar condition—

such as exists where a portion of the inhabitants of a country have separated themselves from the parent state and established an independent government. The validity of its acts, both against the parent state and its citizens or subjects, depends entirely upon its ultimate success. If it fails to establish itself permanently, all such acts perish with it. If it succeed and become recognized, its acts from the commencement of its existence are upheld as those of an independent nation.

Neither was the nation responsible because General Castro, acting in his public capacity, set free from prison General Hernandez, for it was not done with a purpose to incite a revolution, but to complete and make permanent pacification between factions and to show his loyalty, present and prospective, to the friends of General Hernandez, who as opponents of the Andrade administration had joined their forces with his for its overthrow. The umpire does not find warrant in international law or in the proper application of the principles of justice and equity to the case at hand for holding the present Government of Venezuela responsible for the efforts of General Hernandez, his associates and compatriots, in their labors to destroy it. He holds that as a matter of fact and law it was a distinct and specific revolution based upon distinct and specific ideas of national government and with the avowed purpose of deposing President Castro and installing General Hernandez. It was no longer a battle for the restoration of the constitution, but was along the same lines that were established by General Hernandez and supported by his followers from the first revolution down to and inclusive of the second.

It follows, therefore, that so many of the items of Appendix H and Appendix K as were for services in behalf of this nationalist revolution are disallowed.

The umpire considers next, under Appendix N, the accounts which represent services performed on behalf of the revolution, generally known as the Matos revolution, commencing in the early winter of 1901-2 and closing in the spring or summer of 1903. These accounts are —

	<i>Bolivars</i>
No. 34. Order of E. J. Aular, December, 1901.	7,585.12
No. 35. Order of E. J. Aular, January, 1902.	9,717.86
No. 42. Order of E. J. Aular, February, 1902	15,569.77
No. 43. Order of E. J. Aular, February, 1902	65.45
No. 44. Order of E. J. Aular, February, 1902	5,033.08
No. 47. Order of General Fonseca, March, 1902	5,754.69
No. 50. Order of General Solagnie, April, 1902	30.29
No. 51. Order of General Solagnie, April, 1902	40,998.62
No. 53. Order of General Solagnie, May, 1902	79,661.78
No. 55. Order of General Solagnie, June, 1902	71,828.86
No. 57. Order of General Solagnie, July, 1902	108,259.10
No. 58. Order of Gen. F. Batalla, August, 1902	58,138.42

	<i>Bolivars</i>
No. 59. Order of Gen. F. Batalla, August, 1902	4,453.57
No. 60. Order of M. F. Bernal, August, 1902	3,831.11
No. 61. Order of M. F. Bernal, August, 1902	362.59
No. 62. Order of M. F. Bernal, October, 1902	561.16
No. 63. Order of General Solagnie, November, 1902	44,160.54
No. 64. Order of M. F. Bernal, November, 1902	1,464.39
No. 67. Order of General Solagnie, December, 1902	59,119.91
No. 68. Order of General Solagnie, January, 1903	57,514.56
No. 70. Order of General Solagnie, February, 1903.	39,177.32
No. 72. Order of General Solagnie, February, 1903.	10,981.87
No. 73. Order of General Solagnie, February, 1903.	34,273.36
No. 75. Order of General Solagnie, April, 1903	71,329.00
No. 80. For use of revolutionary army, May, 1903	37,267.69
The whole amount of these is	<u>767,140.11</u>

It is urged with ability and force by the learned agent and the honorable Commissioner for the British Government that the respondent Government should be held responsible for these accounts because during this time the railway company was denied all protection and compelled to render this service against its will for want of proper protection which diligence and good government would have provided. They claim that the character of the company's business and its property rights are such as to especially demand the utmost of protection and extreme care and attention on the part of the National Government. They further urge that its importance to the National Government should incite the furnishing of such protection, and, if not furnished, a willingness to reimburse it for its losses. The umpire is of opinion that while there is opportunity for the recognition of these cogent facts and arguments by the Government itself in its public capacity and animated by a broad national spirit, there is no power vested in this tribunal to make orders or establish awards not properly juridical in their character; that this tribunal can not take into consideration questions of national policy, but must confine itself to the determination of whether there has been an international wrong for which the respondent Government is responsible in damage, and that it performs its functions best and safest when it adheres most closely to the principles established by the law of nations. It has then only to determine whether there has been negligence in fact on the part of the respondent Government in such a way and to such an extent as to make it chargeable with the losses which this claimant company has suffered through the demands of the revolutionists.

The umpire has already passed upon this in his historical review of the events which led up to the Matos revolution and the struggle of the National Government for supremacy which followed. This historical review was part of an opinion in the supplementary claim of the Aroa mines, and he there found the fact to be adverse to the contention of the claimant Government, and he now says that in his judgment it can not be charged upon the respondent Government in its supreme struggle for existence it was negligent in its conduct toward this part of its territory. The war upon the National Government was started in the east and in the west substantially at the same time, and with a common purpose and evidently looking towards a common end. The revolutionists pushed their victorious forces toward the capital. The armies of the Government were driven back from the east and from the west as the forces of the revolution pushed their way on. Unfortunately this left in the west the State of Lara and the Bolivar Railway Company bereft of Government forces, and for quite a time the revolutionist troops were strongly entrenched in the sections

in which this railway lies. Along with the presumption which stands by the side of the respondent Government that it will care to do its duty and will do its duty in this regard stand the historic facts that it fought in these sections until defeated and remained until driven out, and it went out not because it was weak and powerless, but because it was overcome by the superior strength of the revolutionary forces. In the judgment of the umpire it did not protect because it could not protect. After the blockade and the brief time necessary for recuperation of national strength, made necessary by the conditions attending and following the blockade, that section of the country had the first attention of the respondent Government, and it threw into that territory sufficient force under capable generals to defeat and drive out the revolutionist army. Hence so much of the claim as is found in the numbers above named in Appendix N is disallowed.

SUMMARY

	<i>Bolivars</i>
Total allowance by Commissioners	771,667.12
Total allowance by umpire	335,842.69
Interest to date of award	119,896.93
Expenses (translations, official authentications, copies for Commission)	1,796.25
Total	1,229,202.99

Judgment may be entered for the sum of £ 48,681.33.

SANTA CLARA ESTATES COMPANY CASE (SUPPLEMENTARY CLAIM)

The titular government has no right to collect taxes on property which have already been paid to a revolutionary government which had gained control over the portion of the national territory wherein the property is located, and taxes so collected must be returned.

PLUMLEY, *Umpire*:

In this case the Commissioners agreed that some indemnity was due to the claimant Government from the respondent Government on account of so much of the damage as occurred to the claimant through the acts of the Government or its authorities or agents; but they did not fix that amount, leaving the appraisal of damages to the umpire, and disagreed wholly as to that part of the claim representing damages and losses to the claimant through the acts of revolutionary forces and authorities.

The facts show that the Santa Clara Estates Company carried on business in the Orinoco district of Venezuela; that from the month of May, 1902, to May, 1903, the district where this property was situated was entirely in the hands of Matos revolutionaries or the so-called revolution of liberation. This body established itself as the government of that section of the country and to a certain extent entered upon the discharge of governmental functions. The business of the company was the raising of live stock on their several estates known as "Santa Clara," "Bombal," and "Guara," all situate in the State of Sucre, in the district of Sotillo. Their losses consists in the taking of their live stock for the uses of the revolution. There is no question that the property was taken in the manner alleged and that the company sustained large losses in consequence. The contention arises through the question whether under the particular circumstances detailed in the case there is ground for ignoring the ordinary rule concerning the responsibility of the titular government for