

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

French Company of Venezuelan Railroads Case

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but for the contracts, have paid a duty to the amount claimed. Neither can he fail to consider that, except for the rescinded contracts, the respondent Government would have received no part of the 148,199.74 bolivars, and that no part of the goods in question would have been imported. It seems, therefore, equitable that the sum set as damages against the company in the suit for rescission be assimilated in and absorbed by the sums which the respondent Government directly received from the company solely because of the existence of said rescinded contracts. Hence the umpire has decided to make no such deduction and has therefore placed the award at the amount above written.

NORTHFIELD, *July 31, 1905.*

FRENCH COMPANY OF VENEZUELAN RAILROADS CASE ¹

It was one of the claims of the company that the respondent Government should be awarded to pay France 18,483,000 bolivar; (1) on the basis that it was responsible for the company's ruin; (2) that the company renounce its concession and abandon its enterprise to the respondent Government, including all its properties. The umpire failing to find the respondent Government responsible for the ruin of the company, the sum claimed cannot be allowed upon that basis.

¹ EXTRACT FROM THE MINUTES OF THE SITTING OF AUGUST 28, 1903

The examination of the claim of the French Company of Venezuelan Railroads, presented at the sitting of May 19 last and amounting to the sum of 18,483,000 bolivars, was then taken up.

The French arbitrator considering:

That the nonexecution of the obligations contracted by the Venezuelan Government with the company and the nonpayment of sums which it owed it from the fact of its engagements, and its requisitions carried on, has rendered the company unable to continue its exploitation;

That the inspection of the line, of the material, and of the buildings demonstrates clearly that the company had not recoiled before any expense to assure excellent conditions, the service of merchandise and travelers;

That the examination of the accounts establishes that the exploitation would have been remunerative in spite of the obstacles presented by the civil war and the inclemencies of the climate if the Venezuelan Government had paid over the amounts due from it and that consequently by the act of the Venezuelan Government the company has been deprived of the legitimate benefits which it had the right to hope for;

That according to the said contract the Venezuelan Government having accorded a guaranty of 7 per cent upon a kilometric value of 300,000 bolivars, has itself implicitly recognized that the value of the exploitation was 18,000,000 bolivars;

That the Venezuelan Government seems to have had the intention of annulling the contract and of according the concession to a new enterprise;

That the company's claim for indemnity for the damages suffered by its maritime service from Maracaibo to Santa Bárbara is perfectly justified;

Decides that the Venezuelan Government ought to pay to the French Company of Venezuelan Railroads the sum of 18,483,000 bolivars demanded by it, on condition that the latter renounce the concession of the enterprise and abandons to the Venezuelan Government its line, its buildings of exploitation and habitation, its stores and its terrestrial and maritime material in the condition which they are found, by means of which payment, renunciation, and abandon the two parties will be free from all their reciprocal engagements and obligations.

The Venezuelan arbitrator considering, on the contrary:

That the true reasons for the suspension of the exploitation of the line by the company are of economic order, the latter having been led to take this resolve

- To determine the other question, the power of the commission under the protocol of February 19, 1902, must be determined. He fails to find such power, but finds it limited to providing indemnities for damages suffered by Frenchmen in Venezuela. To accomplish this, its methods of procedure must not contravene the general and established principles of the law of nations, nor its awards be opposed to justice and equity. It is given no power to revoke, rescind, modify, or limit the terms of a contract to the very least degree. Such was not the purpose of its creation, it was endowed with no such powers. Were rescission or abandonment agreed upon between the claimant company and the respondent Government, then it might be competent for the commission to establish the indemnities for such rescission or abandonment.
- The contracts in issue were mutual and reciprocal, and neither party can make abandonment or rescission without the consent of the other. The United States of Venezuela does not consent. Therefore there can be no abandonment by the claimant company of its properties for which redress can be made compulsory upon Venezuela.
- The commission is utterly powerless even for good cause to decree an unaccepted or an unacceptable abandonment by either party of a mutual and reciprocal contract, or to award an act of rescission which has not, in effect, previously taken place.
- This commission can not order something to be done which would cause damage to the party obeying the order and then award damages therefor. This would be an injury received posterior to the submission and it would be damages in fact suffered by the claimant company in the United States of Venezuela and at the hands of the umpire.
- The contract between the claimant company and the respondent Government that all doubts and controversies arising from that contract should be resolved by the competent tribunals of the respondent Government can not be entirely ignored. No more serious doubt can be resolved than that involved

because of the lack of traffic due to the troubled state of the country and by the impossibility in which its bad financial position had placed it of obtaining new funds necessary to make repairs for damages caused by the inclemency of the weather to a line established under unfavorable conditions:

That the Venezuelan Government could be held responsible neither for damages caused to the material of exploitation by a voluntary abandonment nor for those suffered from the fact of the troubled condition to the country or of accidents of war;

That the arrangement entered into by the company with the Venezuelan Government on the subject of the guaranty stipulated in the contract has been entirely carried out and that the company has received the sums accruing from the sale of the bonds which have been remitted to it in execution of the said arrangement;

That the Venezuelan Government has never refused to reimburse the company for the requisitions and damages caused by them to the material, and that the impossibility in which it finds itself of making this reimbursement as the result of the penury of the treasury in the course of the civil war obliges it only to pay interest after demand;

Decides that the claim of the company is without foundation.

It recognizes only the right to an indemnity of 10,000 bolivars for damages done to their steamer *Santa Bárbara* during the time when it was requisitioned, and reserves for it the privilege of claiming from the Venezuelan Government, by presenting the necessary proofs, the sums due for the requisitions, with interest corresponding. It equally reserves the right of the Venezuelan Government to claim for the fact of the abandonment of the exploitation.

Consequently, after a short discussion, it is agreed that the claim of the French Company of Venezuelan Railroads shall be submitted to the examination of the third arbitrator.

in the question of rescission and nothing could more clearly arise out of the contract itself than such a question. A claim for damage may be regarded as ulterior to the contract especially where the damage has accrued from the operation of the parties under the contract; not so the question of rescission.

The protocol of February 19, 1902, concerning itself only in the question of damages suffered by Frenchmen in Venezuela, can in no sense be regarded as a claim on the part of France or consent on the part of Venezuela that these restrictive features of a contract are to be abandoned when it affects questions like the one here being considered. Nor does it in any way tend to give the power to rescind were no such restrictive features to be found. It being determined therefore by the umpire that he can not declare or direct rescission or abandonment, but can only settle the question of damages which had been suffered by Frenchmen in Venezuela where he finds responsibility in the respondent Government, it follows that the second basis for the claim of 18,483,000 francs fails, and the award can not be made for such sum.

Neither is the claim of the company considered sound that the contract of April 18, 1896, should be declared void in equity for want of adequate consideration, as being made against the desire of the company, and under irresistible compulsion of circumstances which were availed of by the respondent Government to drive an unconscionable and hard bargain, for the umpire finds a consideration, also an apparent desire on the part of the company to make the contract, and does not find the compulsion of circumstances which is referred to and claimed by the company. The transaction was open, the negotiations lengthy, the time for reflections ample, and the action of the company taken under circumstances which permitted entire freedom of will and of conduct.

Courts are loath to interfere where there is an executed contract, where there are lacking the elements of fraud or mistake, and where it rests in fact upon the mutual assent of parties intelligent, competent, and free to contract. It is also negatively held by the umpire, because the company appropriated the fund paid it in redemption by the Government after a great length of time and opportunity for observation, investigation, and reflection, thus placing itself in a situation where it could not restore the status quo by returning the funds.

It is also held negatively, because there is no offer to restore, and if there were offer to restore, this commission under the protocol had no power to compel its acceptance.

The claimant company was compelled by *force majeure* to desist from its exploitation in 1899. The respondent Government from the same cause was prevented from paying its indebtedness to the claimant company. This was the sole cause of the acts and neglects of the respondent Government. Its first duty was to itself. Its own preservation was paramount. It had revenues only sufficient to that end.

The respondent Government is not chargeable with the loss which came to the company through the confusion and havoc of war, or because there were none to ride and no products to be transported. This was a part of the assumed risks of the company when it entered upon its exploitation. Such possible disordered conditions of a country are all discounted in advance by one who enters it for recreation or business.

There is no question as to the liability of the respondent Government for the natural and consequential damages which resulted to the railroad properties while they were in the use and control of the titular government. There is unquestioned responsibility on the part of the respondent Government for

all the necessary and consequential injuries which resulted to the railroads and its properties when used by either the successful revolutionary or the then contending governmental forces.

OPINION OF THE VENEZUELAN COMMISSIONER

Mr. Albert Reynaud, deputy administrator of the "Compañía Francesa de Ferrocarriles Venezolanos," in a communication which he addressed to his excellency the minister of foreign affairs of France, dated the 21st of January, 1901, introduced before said department the claim which is the object of this opinion, in the following form and terms:

As we had apprehended, during the fifteen months which have just elapsed since we were compelled by the revolutionary events to suspend our exploitation, and our last resources being already exhausted, the tropical temperature and depredations of the inhabitants have almost completely destroyed our railway and our immovables; our bridges have been carried away by the waters; the rails have been broken or twisted by the falling of the trees and the intensity of vegetation; our warehouses and deposits of materials have fallen down or are seriously deteriorated; our rolling stock, deprived of any care, has rusted and rotted.

Of our three steam vessels, one was used as target by the combatants of the two parties and sunk; the second had sustained serious damage whilst at the service of the Government of Maracaibo, and we have just sold it for the twentieth part of what it had cost us; the third and at the same time the most important has remained useless since several months past, and we have not been able to repair it for lack of resources. It must be in deplorable condition, which would require large expense to put it in order.

It would at present be impossible for us to value the extent of the damage we have sustained and still more to estimate the cost of its repairs.

The Venezuelan authorities, whether or not legally constituted, have ruined us by their proceedings during these last years and especially during these last eighteen months.

From a financial point of view, they have compelled us, through threats of grievous cruelty and imprisonment of our agents, to employ only at their service the last resources of our company.

From a commercial and industrial point of view, they have placed us in the impossibility of carrying on our double exploitation of the railway and the steamers by violently taking possession of our material and our personnel.

In fact, said authorities have arbitrarily dispossessed us of our rights and of our property.

We shall not be able to prevent them from retaining what they have taken from us or deteriorated, but we consider it to be conformable to the most vulgar equity that they reimburse to us its market value.

To fix that value we could not make a more moderate and less discussable estimation than the one the Venezuelan authorities themselves have fixed in their Congress of 1891.

By the concession granted us by the Venezuelan Government the latter thought it its duty to assign to us an interest guaranty of 7 per cent on a capital of 300,000 francs per kilometer. The length of our line was 60 kilometers; the estimation of the value of our railway amounted, therefore, according to that calculation, to 18,000,000 francs. That sum Venezuela owes us for the railway.

It also owes us an indemnity for the loss or detention of our vessels. (This indemnity the company has fixed, of late, at the sum of 483,000 francs.)

We again apply, Monsieur le Ministre, to your high and powerful intervention to obtain from the Venezuelan authorities the payment of that sum, reduced to its minimum. We do not think we must insist upon the importance which that restitution has for the French holders of our shares. You know the sad situations through which our company has passed since its creation. We ask, however, that you should allow us to tell you the present moment is, in our judgment, the most opportune to act. The Government of General Castro, according to the latest news, desires, it appears, to reorganize the Venezuelan credit.

The German and American authorities have expressed and continue to express their will to cause their subjects and citizens to be paid what is owed them.

We do not doubt but that the French Government will act in the same manner.

In the foregoing statement the facts are summarized upon which the demand of indemnity against Venezuela rests, as well as the manner in which the amount of that liability with reference to the railway has been appreciated; and regarding the steamers that were at the service of the company the indemnity is based on the primitive cost of said vessels, deducting the sum of 11,100 francs which the company received for the sale of two of said steamers, the *Reliance* and the *Santa Bárbara*.

The representative of the Venezuelan Government, in his reply to the foregoing claim, denies any proving force to the documents presented by the company, as it only consists in a statement of facts which the company itself narrates without any proof of the veracity of its assertions; and said documents, on the other hand, far from being favorable to the company, offer, on the contrary, sufficient merits to support very serious charges against the said enterprise for not having complied with the obligations it contracted and for the abandonment of the railway without any reason that might justify a measure of such a significance, which latter fact renders it responsible for the losses deriving therefrom to the commerce of the regions which the Government intended to benefit by the railway concession in question.

The agent of the Venezuelan Government refers in his reply to the technical report presented by Drs. F. Arroyo-Parejo and Ocanto, which was formulated in the very field and by order of the national executive in December of last year, appreciating that said report shows clearly and scientifically that the larger part of the losses sustained by said company are due to the bad construction of the line in the first place, and then to the abandonment of it, which facts are proved by the official documents produced by the Government and excluding any responsibility on its part; that what he has said of the line must be applied to the steamers the company had at its service, for the losses claimed for that respect are due to causes imputable to the claimant, which abandoned the exploitation without a reason warrantable in law and without taking into consideration the prejudice which by so inconsiderate a step it had to cause to the other contracting party, which up to the present has reserved to itself the action which pertains to it in law to legally claim the same; that regarding the other losses which the company says it sustained on account of facts imputable to armed factions and enemies of the public order raised against the lawful authority of the Government, it is a question determined in accordance with the principles of international law that lawfully constituted Governments which have endeavored by all the means at their disposal to reestablish order and energetically to affirm their authority are not responsible for such prejudice, and in conclusion the representative of the Government of Venezuela argues that the claiming company itself is the cause of the prejudice which it says to have sustained and of those which by the abandonment of the concession it has caused to Venezuela.

The points debated in this claim having been fixed, it pertains to this tribunal to examine the facts that may appear proved and to establish the responsibilities which those facts may originate as sources of obligations reciprocally affecting the parties interested in this issue.

The Congress of the United States of Venezuela, by law of the 3d of August, 1888, gave its approval to the contract concluded in Caracas on the 25th of July, 1837, between the minister of public works and the Duke of Morny, which had for its object the construction of a railway from Mérida to the Lake of Maracaibo, canalizing the rivers Chamas and Escalante, or some other

navigable river. By article 10 of said contract and in accordance with the law on the matter, the Government of Venezuela guaranteed the 7 per cent of the capital that the contractor, his assigns, or successors should issue in bonds, shares, or obligations in representation of the capital of the company.

On the 13th of August, 1888, Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary of Venezuela in Paris, concluded with the Duke of Morny an amplification of said contract, and by article 1 of said amplification it was agreed upon that the railway from Mérida to the Lake of Maracaibo would be divided into two sections — the first, starting from the point on the Escalante River which the concessionary would determine and developing in a length of 60 kilometers in the direction of Mérida; and the second section, starting from the terminal point of the first up to the city of Mérida. By article 4 it was agreed upon that on the opening of the first section of 60 kilometers to the exploitation the guaranty provided for would be definitively acquired by that first part of the line; by article 7 it remained established that the Government of the United States of Venezuela guaranteed the 7 per cent of the capital of the company, which capital remained from that moment fixed at 300,000 bolivars per kilometer for the 60 kilometers of the first section and at 350,000 bolivars for each kilometer of the second section.

By a communication which the same Gen. Guzmán Blanco addressed on the 9th of November, 1888, to the minister of public works, this official was notified that the Duke of Morny had on the 28th of September of the same year transferred to the "Compagnie Française de Chemins de Fer Vénézuéliens" the rights which the contract of the 25th of July, 1887, vested in him.

The Congress of Venezuela approved on the 18th of June, 1891, the contract concluded by the minister of public works on the 16th of April, 1891, with Mr. Charles Weber, the representative of the "Compagnie Française de Chemins de Fer Vénézuéliens," modifying that of the 25th of July, 1887, which modification contains the three following articles:

ARTICLE 1. The concession shall remain confined to the first section of sixty kilometers, which will extend from Santa Bárbara to the high road, at a point one kilometer distant from La Vigía, where the line will terminate.

ART. 2. The payment of the guarantee shall be made at the close of each quarter of exploitation in accordance with the primitive contracts. The sum owed to the company shall be calculated at the rate of 7 per cent on the sum fixed in the contract of the 13th of August, 1888, after deducting the net profits realized by the exploitation. These profits will be the net proceeds of the receipts of any kind that the exploitation of the railway may obtain after deducting the general expense of the company and the exploitation expense.

ART. 3. The sums that shall be paid to the company by way of interest guarantee will constitute but advances which the Government of Venezuela has a right to be reimbursed, as follows: When the profits realized by the company in the exploitation of the railway will exceed the 7 per cent on the capital guaranteed, the Government will have one-half of the surplus until the entire reimbursement of its advances; when the Government shall have been reimbursed said advances, it will continue to participate in the profits to which this article refers until completing the 20 per cent thereof.

The company also obtained by said concession exemptions of duties for the importation of all its material, machines, implements, and other things necessary for the construction and exploitation of the railway, and in fee simple a zone of 500 meters of land on each side of the line of the one pertaining to the nation without any indemnification; it was, moreover, granted it that the wood necessary to the company for the construction works of the line might be freely taken in the national woods and that the company would not, at any time, be burdened with national or State taxes. There was also secured to the

company by said contract the exploitation and enjoyment of the revenue of the enterprise during ninety-nine years, at the end of which it was to become with all its appurtenances the property of the nation without any indemnification. In return the company agreed to terminate the work undertaken within a term of two years from the 13th of August, 1888, excepting that a compensation would be given, if necessary, for loss of time occasioned by main force; to transport the mail free of charge, and, for one-half of the tariff price, which would be established, *the employees on commission, the military officers on service and the troops and war ammunitions.*

The "Compagnie Française de Chemins de Fer Vénézuéliens" was constituted in Paris on the 28th of September, 1888, with a share capital of 300,000 francs, the Duke of Morny contributing thereto the railway concession to which the above contracts refer.

The construction of the railway, from the port of Santa Bárbara to the inland having been undertaken early in January, 1889, as appears from a note addressed by the president of the company, under date of the 3d of January, 1880, to Gen. Guzmán Blanco, the works went on with frequent interruptions and serious irregularities, such as the freshet of the Escalante River in January, 1890, which completely inundated all the works of the line, its warehouses, deposits of materials and offices at Santa Bárbara, compelling the company to absolutely suspend the works.

The report presented on that account by Mr. A. Lacasette, chief engineer of the railway, to the ministry of public works, found on pages 126 and 136 of the piece of records No. 1 of the papers which said minister has handed to this commission for its examination, details, in all its extent, the damage caused by the said inundation, and concludes by asking for an extension of one year to comply with the engagement contracted by the company, which extension was granted by the Government.

By the month of March, 1891, according to the report of the inspector of the railway, transmitted by the President of the State of Maracaibo, with a note addressed to the minister of public works, the locomotive arrived at the site called "Los Cañitos," distant 50 kilometers more or less from the Santa Bárbara station, the starting point.

On the 30th of September, 1891, according to a telegram addressed by the same inspector to the ministry of public works, it was communicated that the locomotives had arrived at kilometer 56, but soon after, in the month of October of the same year, according to report subscribed by the chief engineer of the line, Mr. Curau, inserted on page 66 of the piece of records No. 1 bis, a great flood produced by the swells of Cañonegro River made the water fall on the railway line on a width of more than 2 kilometers, and on account of their extreme violence the currents destroyed everything on the way and covered the distance from 49.50 to 51.60 kilometers up to a height of 50 centimeters and more. In said report it is added that the inundation also threatened the Cañonegro station, the one that was established on the highest land and on which many installations had been made. It was impossible to save a train formed by a locomotive and three platforms. This situation forced the company to suspend the exploitation beyond kilometer 48, it only remaining between Santa Bárbara and Los Cañitos.

In a telegram of the 21st of the same month the inspector announces to the minister of public works that the inundation having continued with heavier force, the Cañonegro station had disappeared, as well as the locomotive that was there, the whole space being now converted into a marsh with very powerful current.

The works of reconstruction at 50 to 53 kilometers, which were inundated,

lasted, according to the reports and returns sent by the company to the ministry of public works, until the month of August, 1892, there having arrived at the La Vigia station, on the 28th of July of the same year, a train that inaugurated the traffic between the initial station at Santa Bárbara and the terminal station at kilometer 60.

The company being unable to pay in November, 1892, the coupon of the obligations it had contracted to meet the expense of the establishment of the enterprise, asked for the benefit of the French law of the 4th of May, 1889, and obtained the appointment of a judicial liquidator. At the same time, and having had to enter into new engagements with the Tives-Lille Company and Dyle & Bacalan Works Company (Limited), it was owing said company, according to the balance of the 29th of October, 1892, the sum of 864,482.69 francs. In the impossibility to meet this debt, it asked for an agreement with its creditors, proposing the exchange of the old obligations for an equivalent number of the new ones, to which the distribution of the assets would entitle them, or, in case of the nonacceptance of that proposal, the payment of the 20 per cent of their credits in fifty annuities. Besides, it was proposed that the contractors of the construction, the only creditors of the company besides the bondholders, would be entitled to receive as many new obligations as the amount of their chirographic credit would contain, 382.25 francs. This agreement having been approved, the liabilities of the company were represented, according to the balance of the 31st of December, 1893, in the following manner:

Shares		3,000,000.00
Obligations:		
	<i>Francs</i>	
1,811 old ones	905,500	
42,757 new ones	21,378,500	
	<hr/>	22,284,000.00
Sundry debts		40,979.31
To-order accounts.		42,392.15
Guarantee owed by the Venezuelan Government from the 1st of April, 1892, to the 31st of December, 1893		2,205,000.00
Interest due up to the 31st of December, 1893 (obligations)		1,781,541.60
		<hr/>
Total		29,353,913.12

On the 1st of May, 1893, the official inauguration of the railway from Santa Bárbara to La Vigia, ordered by the Government of Venezuela, took place, and the exploitation service of the whole line, which had not undergone any interruption during the administrative year of 1893, was violently interrupted about the close of the month of April, 1894, by the earthquake which occurred in that region. The extraordinary violence of the seismic phenomenon caused the line to be injured through the fall of large trees, and the superposed works, as bridges and buildings, to be destroyed, and the traffic entirely paralyzed.

It was necessary at any price to remedy without delay this situation, for, if the railway was left in such a condition, the power of vegetation in Venezuela and the action of the tropical rains would speedily entirely destroy it and render any construction very difficult.

The available resources being insufficient, a loan is indispensable.

Consequently, we have at once convened the gentlemen commissaries for the execution of the agreement and obtained from them, as the representatives of the bondholders, the authorization to contract for an effective loan for 300,000 francs, which sum was considered by common accord as the *maximum* for the reestab-

ishment of the exploitation. According to the data furnished by the direction in Venezuela, we therefore propose to create bonds for a nominal value of 500 francs each, bearing interest at the rate of 6 per cent, which bonds shall be redeemed within the maximum term of ten years. (*Rapport du Conseil d'Administration, 1894.*)

The debt contracted by the company to make the repairs occasioned by the earthquake of 1894 did not confine itself to the sum of 300,000 francs, which had been considered as the *maximum*, but ascended to 2,000,000 francs, as appearing from the following paragraphs of the report of the administration council corresponding to the year of 1897:

We shall remind you, gentlemen, of the fact that, on account of the earthquake of 1894 and of numerous inundations which were the consequence thereof, our railway sustained from 1895 to 1897 considerable damage, and we saw ourselves compelled, in order to raise the resources necessary for those repairs, to create privileged bonds bearing interest at the rate of 6 per cent a year, free from taxes and redeemable within ten years at the latest.

The creation and issue of 4,000 of those bonds, which constitute the privileged debt of a nominal value of 2,000,000 francs, have been successively authorized by you.

The balance presented on the 31st of December, 1897, offers for that date the following situation:

<i>Liabilities</i>	<i>Francs</i>
Shares	3,000,000.00
Obligations (44,569)	22,284,500.00
6 per cent ten-year bonds (4,000)	2,000,000.00
Sundry creditors' accounts	102,403.09
Interest owed to bondholders on the 31st of December, 1896	6,235,175.00
Total	33,622,078.09

On the 18th of April, 1896, between the citizen minister of public works of the United States of Venezuela, sufficiently authorized by the President of the Republic, and with the vote of the Government council, on the one part, and Mr. Charles Weber, representative of the "Compagnie Française de Chemins de Fer Vénézuéliens," according to a power of attorney executed before the notary Dufour and his colleague, of Paris, on the 21st day of March 1898, on the other part, a contract was entered into concerning the payment and redemption of the 7 per cent guaranty, the preliminaries and definitive provisions of which are as follows:

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Contract entered into on the 18th of April, 1896, between the Government of the United States of Venezuela and Mr. Charles Weber, representative of the "Compagnie Française de Chemins de Fer Vénézuéliens," concerning the payment and redemption of the 7 per cent guaranty.

Between the citizen minister of public works of the United States of Venezuela, sufficiently authorized by the citizen President of the Republic, and with the vote of the Government council on the one part, and Mr. Charles Weber, representative of the "Compagnie Française de Chemins de Fer Vénézuéliens," hereinafter called "the company," according to a power of attorney executed before the notary Dufour and his colleague, of Paris, on the 21st of March, 1891, which, duly legalized and translated, is hereto annexed, the following contract has been concluded:

PRELIMINARIES

(a) By a contract of the 25th of July, 1887, entered into between the National Government and the Duke of Morny, and afterwards approved by the National

Congress, on the 30th July, 1888, the nation granted to him the right to build a railway from Mérida to the lake of Maracaibo, the Government guaranteeing the 7 per cent on the capital that the contractor, his assigns or successors, should emit in bonds, shares, or obligations, and which would represent the capital of the company.

(b) On the 13th of August of the same year the minister plenipotentiary of Venezuela in Europe made some reformations in the above-mentioned contract, among which the one that the total line of the railway remained divided into two sections, namely: the first, starting from a point on the Escalante River, at the discretion of the concessionary, thence to proceed in the direction of Mérida on an extent of 60 kilometers; and the second, starting from the point where the first terminates and proceeding from thence to the city of Mérida. And by this same contract of explanation and amplifications the guaranty of 7 per cent was fixed on a capital of 300,000 bolivars per kilometer of the first section and of 340,000 bolivars per kilometer of the second. This contract was approved by the Federal council on the 30th of November of the same year.

(c) By a contract of the 17th of June, 1891, reforming those of the 25th of July, 1887, and 13th of August, 1888, above cited, the company, as the cessionary of the railway from Mérida to the lake of Maracaibo, stipulated with the National Government: First, that said concession would remain confined to the first section, to which the reformation of the primitive contract refers, according to paragraph b—i.e., 60 kilometers from Santa Bárbara to a point distant 1 kilometer from El Vigia; second, that the payment of the 7 per cent guaranty would be made quarterly on the sum of 18,000,000 bolivars, fixed as the price of that section, according to the contract of the 13th of August, 1888.

	<i>Bolivars</i>
(d) The company claims from the National Government for guaranty due until the 31st of December, 1895	4,725,000.00
And, besides, for damage and other motives, the following items:	
Insufficiency of exploitation, according to returns and notes	396,921.75
Damage sustained on account of the forcible conscription of the laborers of the company	525,509.57
Requisitions according to voucher	96,320.00
Damage and prejudices through nonpayment of the 7 per cent guaranty, which occasioned an emission of 2,616 "obligations," supplementary, of 500 francs each	1,308,000.00
which forms a total of	7,051,751.32

(Seven million fifty-one thousand seven hundred and fifty-one bolivars and thirty-two centimes.)

The Government has rejected the claim of the guaranty during the time elapsed from the 1st of April, 1892 (at which date the line could have been opened to traffic, if it had not been for the forcible conscription of the laborers), to the 1st of May, 1893, the date of the official inauguration; and it has likewise rejected the claim of the sum of two million three hundred and twenty-six thousand seven hundred and fifty-one bolivars and thirty-two centimes (2,326,751.32 bolivars), to which the items of insufficiency, damage, etc., above mentioned refer.

The company, although sustaining in principle the equity of the claims it has formulated, is willing to make important concessions with a view to arriving at an arrangement, and, after long discussions regarding the accounts presented, the Government and the company, by way of a compromise, have agreed upon the following:

ART. 1. The company reduces to one million nine hundred and fifty thousand bolivars (1,950,000 bolivars) the total amount of its claims for the 7 per cent guaranty, liquidated up to the 31st of December, 1895, and for any other cause to which it may be entitled.

ART. 2. For the redemption of the obligation of the Government to continue to pay the same 7 per cent guaranty on eighteen million bolivars, guaranteed capital, for the remainder of the ninety-nine years, terms of the contracts referred

to, the company agrees to receive two million five hundred thousand bolivars (2,500,000 bolivars), articles 2, 3 and 4 of the above-mentioned contract of the 17th of June, 1891, remaining in virtue thereof without any effect.

ART. 3. The payment of the one and the other sum is made by the Government in this act delivering to the representative of the company an order on the direction of the Disconto Gesellschaft of Berlin for the sum of four million four hundred and fifty thousand bolivars in par bonds of the Venezuelan loan of 1896 with 6 per cent yearly interest and 1 per cent of redemption, which order shall be provided, besides, with the approval of the representative of the Disconto in Caracas.

ART. 4. The representative of the company declares the nation, therefore, free from all responsibility, as well on account of the 7 per cent guaranty already due as on account of the obligation to pay that same sum in future, and will repeat this declaration on the receipt he will give the direction of the Disconto Gesellschaft.

ART. 5. The company binds itself to have, within the term of six months from the date hereof, *any imperfection undergone by the railway line on account of the change of the course of the Chamas River repaired and to keep the line in working order in accordance with the obligations contracted in the contracts above referred to, subject to the penalties imposed by the laws on the matter.*

ART. 6. In all that is not contrary to the provisions of this agreement the rights and obligations acquired by the company in virtue of the preceding contracts herein referred to remain in their perfect force and vigor.

Done in duplicate to one same effect in Caracas, this eighteenth day of April, one thousand eight hundred and ninety-six.

(S gned)

C. BRUZUAL SERRA,
The Minister of Public Works

CH. WEBER,

The Representative of the "Compagnie Française de Chemins de Fer Vénézuéliens."

By article 5 of the above-inserted convention the company was bound to have, within a term of six months from the date of the compromise, any imperfections which the railway line might have undergone on account of the change of the course of the Chamas River repaired and *to keep the line in working order in accordance with the obligations contracted in the contracts referred to and subject to the penalties imposed by the laws on the matter.*

The company met the expenses of the interest service and of the redemption of the loan contracted by it to meet the expense of the repairs of the line, occasioned by the earthquake of 1894, and numerous inundations which followed in the years 1895 to 1897, with the proceeds of the negotiation of the 4,450,000 bolivars delivered by the Government of Venezuela in par bonds of the Venezuelan loan of the Disconto Gesellschaft of 1896.

The company collected the amount of the interest and redemption of the bonds of the loan, corresponding to the half years due on the 31st of December, 1896, and 30th of June, 1897, and having kept in its possession, when negotiating the bonds in 1898, the interest coupons due on the 30th of June of that year, amounting to about 79,000 francs, it received from the Disconto Gesellschaft on the 15th of January, 1899, a payment on account of 28,228.94 francs, there remaining, therefore, on the said date as a balance of interest in favor of the company a sum of about 50,000 francs.

These data appear from the two reports presented by the administration council to the ordinary general meeting in its sittings of the 30th of June, 1898, and 12th of March, 1900. From the first of them the following paragraphs are copied:

On account of the earthquake of 1894 and of numerous inundations which were the consequence thereof in 1895 to 1897, our railway having sustained considerable damage, we were compelled, in order to raise the resources necessary for their repairs, to create privileged bonds bearing interest at the rate of 6 per cent a year, free from taxes and redeemable within ten years at the latest.

The creation and issue of 4,000 of those bonds, which constitute the privileged debt of a nominal value of 2,000,000 francs, of which we have just spoken to you, was successively authorized by you.

We propose you, therefore, to give in payment of this privileged debt, to which they are already appropriated, the bonds of the Venezuelan 5 per cent loan, 1896, which we have received from the Venezuelan Government, in redemption of the interest guarantees it has promised us by our concession act, which bonds figure in the balance you have just approved as stock of the company, for a value of 3,152,000 francs.

As we told you at the beginning, we have a buyer of these bonds of our stock, which bonds are not quoted and the disposal of which is almost impossible for a sum that might enable us to redeem and reimburse the 4,000 bonds that are outstanding and to obtain besides the constitution of an administration fund of 200,000 francs. In view of the fact that the 3 per cent revenue of Venezuela is quoted in London at from 31 to 33 per cent, you will see, gentlemen, as the controllers of the compromise and as your administration council, that the company will obtain by this combination a realization under unexpected conditions of these bonds of the 5 per cent Venezuelan loan of 1896, since these realizations will take place at 70 per cent.

And from the second report, dated the 12th of March, 1900:

The funds that had remained available to the company after the reimbursement of the ten years' bonds would have constituted for it, *in normal times*, a sufficient administration fund, but the revolutionary events which almost uninterruptedly have occurred up to the present have rapidly consumed them.

These resources having been exhausted and in view of the continuation of the revolution the commissaries of the compromise, on the 16th of August, 1899, authorized the council to borrow up to the amount of 100,000 francs, the sums it would require to meet the situation, *whether there was a possibility to proceed with the exploitation or the necessity of suspending it.*

The coupons of the 5 per cent Venezuelan loan of 1896, due on the 1st of July, 1896, representing about 79,000 francs, were given as security for an advance, which amounted to 58,215.95 francs.

This advance was reduced 28,228.94 francs on the 15th of January last through the part payment made to us on that date on the coupons given as security.

In short, the debt we have in favor of our lender is this day of 29,987.01 francs.

He has in his possession a pledge of about 50,000 francs, nominal value, represented by the receivable balance of the aforesaid coupons.

From the narrative above made, from all the modifications made in the primitive contract which had for its object the construction of the railway from Mérida to San Carlos, from the different cases of main force which at different times suspended the construction works or largely destroyed them, from the agreements concluded between the contracting parties with a view to avoiding the sometimes insurmountable obstacles which nature opposed to the stability of the enterprise, and, finally, from the compromise concluded on the 18th of April, 1896, between the Government of Venezuela and the representative of the "Compagnie Française de Chemins de Fer Vénézuéliens," the following facts appear sufficiently proved:

On the 1st of July, 1898, which date it is convenient to establish for the due separation of the time to which the claim presented refers, all the engagements contracted by the Government of Venezuela with respect to the company, as the concessionary of the contract concluded with the Duke of Morny in August, 1888, and in virtue of the subsequent convention directly concluded between the Government of Venezuela and the representative of the company, had been exactly complied with. The obligations contracted by said Government by the contracts of the 13th of August, 1888, of the 18th of June, 1891, and the 18th of April, 1896, were: To give in fee simple to the contractor 500 meters

of national lands on each side of the line on the whole length thereof; to allow it to take in the national woods all the timber required by the enterprise for the construction of the works of the line; to permit the introduction, free from duties, of the machines, materials, implements, and other utensils necessary for the construction of the railway; not to impose upon the enterprise at any time any national or state contributions; to grant extensions of time for the conclusion of the work in cases of main force that might stop the works of construction, and, finally, to deliver to the company 4,450,000 bolivars in par bonds of the Venezuelan loan of the Disconto Gesellschaft, 1896, in payment of the sum of 1,950,000 bolivars, to which it reduced the total amount of all its claims for the 7 per cent guarantee, liquidated up to the 31st of December, 1895, and for *any other* cause to which it might be entitled, and, besides, for the redemption of the obligation of continuing to pay the same 7 per cent guaranty on 18,000,000 bolivars, guaranteed capital, for the rest of ninety-nine years, for which respect the company agreed to receive 2,500,000 bolivars. All the aforesaid obligations were in due time complied with, as appearing from the voluminous records relating thereto, and as is acknowledged by the company itself. The Government of Venezuela appears to be the debtor in the month of June, 1899, only of the sum of 50,000 francs for balance of interest on the bonds of the loan of 50,000,000 bolivars, which the company received, which interest corresponded to the first six months of 1898, and that debt is not one of the Venezuelan Government as a contractor with the "Compagnie Française de Chemins de Fer Vénézuéliens," nor said Government could pay it separately and directly to the company, as the latter has pretended, but it formed a part of an obligation contracted by the Republic with the Disconto Gesellschaft, of Berlin, with which the loan was contracted for and which is called by the same contract to receive the funds destined to the gradual redemption and the payment of interest.

Article 3 of the contract concluded on the 18th of April, 1896, with the representative of the French company explicitly says:

The payment of the one and the other sum is made by the Government in this act, delivering to the representative of the company an order on the direction of the Disconto Gesellschaft of Berlin for the sum of 4,450,000 bolivars, in par bonds, etc., which order shall be provided, besides, with the approval of the representative of the Disconto in Caracas.

Payment means cancellation, extinction of a debt, and, therefore, between the Government of Venezuela and the French company, as parties to the contract which had for its object the construction and exploitation of the railway from Santa Bárbara to La Vigía, any credit or claim that on account of the guaranty or for any other cause was possessed by the company against the Government remained legally extinguished in virtue of the provisions of articles 1, 2, and 3 of said agreement of the 18th of April, 1896. Any rights pertaining to the company as holder of coupons of interest, due and unpaid, of the loan of 50,000,000 bolivars of 1896 are a subject entirely strange to the juridical relations established between the Government of Venezuela and the company on account of the railway contract and completely alien to the facts connected with the compliance with the obligations derived from that contract.

As a proof of this inference, see Article VI of the Venezuelan-German protocol signed in Washington on the 13th of February, 1903, which runs as follows:

The Government of Venezuela undertakes to make a new satisfactory arrangement to settle simultaneously the 5 per cent Venezuelan loan of 1896, which is chiefly in German hands and the entire exterior debt. In this arrangement the state revenues to be employed for the service of the debt are to be determined without prejudice to the obligations already existing.

For the more precise appreciation of the grounds on which it is pretended to base the present claim, it is to the purpose to examine the steps taken by the direction of the "Compagnie Française de Chemins de Fer Vénézuéliens" near the ministry of foreign affairs of France posteriorly to the arrangement to the 18th of April, 1896, steps that moved the chief of said ministry to exercise his diplomatic action through the consul of France in Caracas based on the data furnished by the company.

In a letter addressed by the administrator of the company to the minister of foreign affairs in Paris on the 29th of November, 1898, said administrator asked for the intervention of the French Government to secure for his countrymen in the employ of the company in Venezuela the protection of their persons and property and compel the Government of Venezuela to comply with its engagements to its creditors, adding in said letter that the administration was informed by the Disconto Gesellschaft, of Berlin, that the Imperial Government would simultaneously interfere to the same purpose, and in support of his request he recalled the letters which had been addressed to the ministry dated the 2d and the 25th of June, 1898. It was in virtue of that request that the ministry of foreign affairs addressed on the 7th of December, 1898, to Mr. Quiévreux, in charge of the archives of the legation of France, the official note inserted in these records under No. 8, in which the following instructions are communicated to him:

You are not unaware that the "Compagnie Française de Chemins de Fer Vénézuéliens" was placed, in April, 1896, by the government of Caracas, under the necessity of accepting for the redemption of the guaranties that had been given in the concession of the enterprise, certain bonds proceeding from an especial loan of 50,000,000 bolivars, negotiated in Berlin. The Disconto Gesellschaft, in charge of the operation, distributed those redeemable bonds to the different European railway companies and our fellow-countrymen for all payment of a debt already due, of more than 7,000,000 francs, and for the redemption of 90 annuities of 1,260,000 francs had to content themselves with a net sum of 3,200,000 francs, represented by bonds of said loan.

The moneys proceeding from the payment of interest and from the sinking service have constituted for two years the only resources with which the French company has been able to continue its exploitation. But the deliveries have ceased this year, or, at least, the Disconto Gesellschaft has not been able up to the present to meet only one of the monthly payments of 1898.

In view of the suspension of payments of this 5 per cent loan of 1896, our countrymen declare that they find themselves under the necessity of abandoning their enterprise, which will lead to the definitive loss of the French capital which has been invested therein, and the amount of those capitals, I am assured, is not less than 33,500,000 francs.

In order to prevent this eventuality, that the company already considers as imminent, it is necessary that the Venezuelan Government determines to immediately pay a sum of 210,000 francs, including:

	<i>Francs</i>
For interest due	160,000
For bonds redeemed	50,000

If the information given me corresponds with what yourself may know concerning the financial situation of the French company, and, in case you know that, under the pressure of the legation of Germany, the ministers of Venezuela may be compelled to comply within a short delay with all or part of the obligations to the European creditors, you must procure that the rights of our fellow-countrymen are taken into equitable consideration.

For the date of the above-inserted note, the 7th of December, 1898, the French company had alienated the 4,450,000 francs in bonds of the loan of 1896 and only had an interest of about 79,000 francs in coupons due on the

1st of July, 1898; so that it induced the ministry of foreign affairs of France, by its erroneous indications, to ask from the Government of Venezuela the immediate payment of 210,000 francs as owed for redemption and interest of bonds which no longer pertained to it, affirming, however, that that redemption and that interest represented for the company a vital necessity and that without their payment it would find itself in the imperious case of abandoning its enterprise.

It thus appears from the resolution passed by the general meeting of shareholders held on the 30th of June, 1888, by which said meeting, approving the proposal of the administration council and of the committee of commissioners of the obligations, authorized said council:

1. To deliver on the 1st of July, 1898, all the bonds of the 5 per cent Venezuelan Loan of 1896 that the company had in deposit with the Disconto of Berlin, upon:

(A) The delivery of 3,619 ten-years' privileged 6 per cent bonds of the company.

(B) A cash balance of 390,500 francs.

2. To invite to the reimbursement, on the 15th of June, 1898, at 500 francs par, of the 381 privileged 6 per cent bonds, the numbers of which are indicated, and to separate, in order to meet this reimbursement, the sum of 190,500 francs from the 390,500 francs received as said in article 1.

The balance of 200,000 francs was to serve as working fund.

Besides, as already shown, the 79,000 francs, more or less, left in favor of the company for interest of the coupons due up to the date of the negotiation of the bonds of the loan remained represented in the sum of 50,000 francs, more or less, in January, 1899, for a part payment made by the Disconto of 28,228.94 francs and that nominal value of the coupons was utilized by the company in obtaining a loan and leaving them as security for the sum of 30,000 francs, more or less.

The argument that the company has adduced against the Government of Venezuela by making the existence of the company depend on the opportune payment of the redemption and interest of the bonds of the loan is inconsistent, for it is a fact that it considered convenient to its interest to negotiate those bonds when it thought it opportune so to do, availing itself of an offer of 70 per cent, which it considered highly advantageous.

Regarding the imposition which it is adduced the Government of Venezuela exercises against the company, compelling it to accept the 4,450,000 francs in bonds of the loan in payment of a debt of 7,000,000 francs already due, and for the redemption of ninety annuities of 1,260,000 francs each, while it can not truly be maintained that the compromise between the Government of Venezuela and the representative of the company took place in that manner, as it was the result of the free and spontaneous will of the two contracting parties, circumstances may certainly be pointed out, which show that the sum paid in bonds by the Government of Venezuela and which gave the company the opportunity of receiving in cash the sum of 2,508,000 francs represents, in view of the occasion on which the arrangement was made, the only possibility the company could obtain to find itself in a position to undertake and carry out the works of repairs of the line, which it indispensably required to put it in working order on account of the damage caused by the earthquake of 1894, and of the subsequent inundations until 1897.

The Government of Venezuela had contracted the obligation of guaranteeing the company the 7 per cent on the capital of the enterprise during ninety-nine years, taking as a basis for the computation of the capital the sum of 300,000 francs per kilometer on the length of 60 kilometers — i.e., 18,000,000 francs —

and also taking as a basis to fix the sum corresponding to the 7 per cent the proceeds of the enterprise in its exploitation, deducting from the income the general administration expense and the exploitation expense. The very nature of this engagement shows that the company was to constitute itself with a capital of at least 18,000,000 francs, at which the cost of the construction of the railway was estimated, and that it was to contribute, out of its own resources, all the sums indispensable for the completion of the work and the repairs indispensable for keeping it in constant exploitation. The articles of association of the company and documents thereto annexed show that the capital with which it constituted itself was only 3,000,000 francs; that it immediately created bonds to raise resources, which amounted to more than 18,000,000 francs, bearing interest at the rate of 6 per cent, and that from the year 1892 the company, being unable to pay that interest, had to ask for and obtain the appointment of a judicial liquidator, and the following year, 1893, asked for the conclusion of a concord with its creditors.

The inauguration of the railway took place in March, 1894, and in the same year, in the month of November, there occurred the earthquake that destroyed the line and caused the suspension of the exploitation, and thereupon other great inundations took place until the year 1897.

These disastrous accidents found the company in a state of insolvency, without possibility to make use of any credit, bound as it was by a concord with its creditors and without any other basis to raise funds to undertake the works of reconstruction than the guaranty promised by the Government of Venezuela that could not be rendered effective until the exploitation of the railway had been perfectly assured, in permanent conditions by the firmness and solidity of the railway line on its whole length.

The conclusion of the agreement with the company, which put an end to the guaranty, took place on the 18th April, 1896, and at that time the suspension of the traffic of the railway subsisted on account of the works of repairs which the company had to undertake after the earthquake of 1894, and that continued until 1897. Still, in the month of November, 1896, the national executive determined to defer to a request presented by Mr. J. Brun, as director of the railway, having for its object to ask for the extension of the time fixed by article 5 of the contract of the 18th of April of that same year, in order to have repaired within a term of six months the damage that the line had sustained through the change of the course of the Chamas River, and the president of the Republic was pleased to defer to that request by granting an extension of three months, from the 15th of October above referred to.

The precarious condition of the works of repairs and the continual dangers to which the line was exposed by the deviation of the Chamas River, are technically shown in the report addressed by the inspector of the line, Mr. Leonidas Vargas, in February, 1897, to the ministry of public works. From said report are taken the following paragraphs:

The principal station, Santa Bárbara, is 14 meters on the level of the sea and 5 meters on the low waters of the Escalante River, which in its freshets of 1890 ascended 3.50 meters over its level, overflowing in all its length and inundating the farms on its banks.

The terminal station at kilometer 60, "La Vigia," is 128 meters above the sea level on a high plain having a 2 per cent grade as far as kilometer 55, where the railway crosses the creek "Bobuqui," then comes the creek "La Arenosa," and on the distance to 46 kilometer there are found "Cañonegro" and "Los Cañitos."

In the year 1889, in December, the Chamas River had a large freshet by which corpulent trees were dragged along that were detained near "La Vigia," obstructing its natural bed with heaps of dirt, for which reason the current broke the

banks that sloped "El Vigia" and inundated all the woods existing between kilometers 52 and 41 of the line from Santa Bárbara to "La Vigia."

In 1890 the work of repairs began. Every one did his duty, but according as the river went on with its freshets it went on destroying all that man opposed to its caprices, always led by the unevenness of the ground, which presented a 2 per cent grade, and the waters invaded the woods and inundated a portion of the line.

Then comes the earthquake, the trepidations of which caused many a damage on the cordilleras of the Andes and adjoining plains, producing a larger unevenness in the woods lying between La Culebra and Caño del Padre, through which the railway passes, leaving rails in the form of Nos. 3 and 5, and of the letter S, curves straight and straight curves; springs of dark mud having a nauseous odor in the drains and culverts, flow 20 and 25 centimeters wide and incalculably deep, through which the invading waters of the Chamas entered, excavating the embankments of the rails and separating from the ground the sleepers that remained adhered to the rails: these were in the form of a hammock swinging when the rolling stock passed, moved by force of arms, that the mercantile intercourse might not stop.

From the year 1894 up to the present the French company has made strenuous efforts to restore the line to its normal condition. To that purpose they had built a siding from 43 to 46 kilometers, where the Chamas forms a drain consisting of two curves, through mud pits form 150 to 200 meters wide on each side. In November, when this siding was completed and tried, another freshet of the Chamas took place, stronger than the preceding ones, and inundated the line, dragging along an alluvial sediment that has stopped up the 70 meters' light of the "Los Cañitos" bridge, and the waters have spread on the banks and left the neighboring villages in a flood three and four feet deep and the rails with 20 or 40 centimeters of water over them. This I saw in my last visit to the line.

Now the company again undertakes the reconstruction, according to a document I have before me, and also undertakes to carry the Chamas to its former bed, *the only remedy which, in my judgment, can save the line of the railway, for else all the ballast that the Cordilleras of the Andes may give will not be sufficient to resist the violence of 60 meters in a minute that the Chamas possesses in the currents of the La Libertad straight line, from 43 to 46 kilometers, as it would be dragged away according as it would be put in place.*

The situation of the company regarding its repair works and the reopening of the railway traffic in February, 1897, after the expiration of the extension granted by the national Government by its resolution of the 15th October, 1896, is shown by the following letter of the director of the exploitation:

Line from San Carlos to Mérida — Direction of the Exploitation

L. R., No 329.] COMPAGNIE FRANÇAISE DE CHEMINS DE FER VÉNÉZUÉLIENS,
Santa Bárbara, February 26, 1897.

CITIZEN MINISTER OF PUBLIC WORKS:

We have the honor to inform you that communications are reestablished and that the trains and locomotives of our company are regularly and without transfer running between Santa Bárbara and El Vigia *from this date.*

BREYSSLOU.
For the Director.

During the administrative year of 1897, and the first six months of 1898, the railway company made use in its relations with the national Government of the exemptions granted it by the concession as regards the importation of materials as appearing from the records 15 and 16 of the archives of the ministry of public works. The direction of the exploitation omitted in the year 1897 to send to said ministry the statistical tables which it was its duty to periodically send to it, conformably to article 99 of the regulations on railways. The agency of the French company at Maracaibo said to the ministry of public works, in a communication dated the 17th of May, 1897, that in virtue of instructions communicated to him from Santa Bárbara del Zulia by Mr. Julio Brun, director

of the exploitation, the company in Paris had since long ago taken charge of the opportune remission of said data to the ministry.

From the tables sent to the ministry of public works, corresponding to the months from January to November, 1898, forming the records No. 17, it appears that the exploitation in said months left the company an unfavorable balance amounting to the sum of 184,418.13 francs.

During the period running from the 1st of January to the 20th of May, 1899, of direct and regular exploitation, the company could by dint of economies and in full crop realize a favorable balance of 30,000 francs, the receipts amounting to 172,593.01 francs and the expenses to 141,883.28 francs. From the 20th of May to the 12th of October, at which date the actual suspension of the exploitation took place, owing to the nonexistence of regular traffic, the receipts rapidly decreased and even ceased entirely, while the expense did not undergo any reduction. The deficit of that period amounted to about 60,000 francs, the receipts amounting to 83,153.33 francs and the expense 141,869.46 francs, and that deficit consuming the preceding favorable balance and the remainder of the resources of the company.

In the report of the administration council presented to the shareholders on the 12th of March, 1900, from which the foregoing data are taken, it is said that the Government of Venezuela was owing the company on the 31st of December, 1898, a sum of 174,097.20 francs for expense of transportations, regularly ordered by its official mandatories, and that on the 31st of December, 1899, the same Government was owing the sum of 203,529.70 francs.

The balance contained in the above-mentioned report, corresponding to the 31st of December, 1899, gives the following indication of the assets and liabilities of the company:

<i>Assets</i>	<i>Francs</i>	<i>Liabilities</i>	<i>Francs</i>
First establishment	16,352,175.70	Shares	3,000,000.00
Deposit of stores in Venezuela	84,757.98	<i>Francs</i>	
Money in safe and in banks	1,827.35	Bonds,	
<i>Francs</i>		44,569,	
Debtors:		of 500	
Sundries	81,443.34	francs	22,284,500.00
Government of		Difference	
Venezuela	203,529.70	between	
		the nomi-	
	284,973.04	nal value	
Profit and		and the	
loss	1,010,417.59	proceeds	
Interest		realized	7,649,465.50
owed			13,635,034.50
bondhol-		Sundry creditors	99,117.16
ders on		Bondholders' interest on	
31st Decem-		the 31st December, 1899	
ber, 1889 .	8,439,083.35	(article 2 of concord) .	8,439,083.35
	9,449,500.94		
Total	26,173,235.01	Total	26,173,235.01

The foregoing indication throws light enough to make the financial situation known in which the "Compagnie Française de Chemins de Fer Vénézuéliens"

found itself on the 12th of October, 1899, at which date it abandoned its exploitation for lack of resources to continue to meet the most indispensable expense, which in proper commercial terms is called state of bankruptcy.

With assets represented by investments or dead capital of 16,436,933.68 francs, 1,827.35 francs in cash, and 284,973.04 francs in credits receivable, and liabilities of 14,734,151.60 francs in bonds, and 8,439,083.36 francs in interest, subject to a concord and without any credit, the company could not but abandon, as it did, the exploitation of the enterprise for lack of resources.

Such is the situation of every merchant who, being in want of the most indispensable means to continue the movement of his business, is constrained to suspend it and call his creditors to the liquidation and distribution of their credits.

The "Compagnie Française de Chemins de Fer Vénézuéliens" did not act in this way, but, protected by a concord which favored both its interest and that of its creditors, preferred to the liquidation and distribution of its assets declaring the Government of Venezuela responsible for the bad condition of its finance, for the lack of resources to continue the traffic, for the paralyzation of this on account of revolutionary movements, of the use of its steamers, which was the origin of the only important credit contained in its assets and the cause, through default of payment, as it pretends, of the ruin of its concerns.

The charges formulated by the company against the Government of Venezuela, and as appearing from the reports of the 12th of March, 1900, and the 30th of the same month, 1901, and from its communications to the ministry of foreign affairs of France, are summarized in the paragraphs of a communication addressed to the minister of foreign affairs by the president of the administration council on the 30th of March, 1901, running as follows:

MONSIEUR LE MINISTRE: We have just been officially informed, both through Mr. Quiévreux, consul of France in Caracas, and the "Compagnie Française de Câbles Télégraphiques," that the minister of public works of Venezuela intends to have an inventory of our goods made to give the enjoyment thereof to an Italian.

We have the honor to transcribe to you, hereinafter, the communication such as it was addressed to us:

"PARIS, March 18, 1891.

"COMPAGNIE FRANÇAISE DE CHEMINS DE FER VÉNÉZUÉLIENS,
15 Avenue Martignon, Paris.

"GENTLEMEN: As a complement of our telephonic communication of Friday last, we have the honor to convey to you herein the copy of a telegram we have received from Mr. Quiévreux, chargé d'affaires de France in Caracas.

"Kindly inform the 'Compagnie Française des Chemins de Fer Vénézuéliens' that minister of public works, considering that it abandons its Santa Bárbara line, has just appointed a commission in charge of proceeding to an inventory, this with a purpose to give this line to an Italian named Salvatore Botaro.

"Kindly accept, gentlemen, the assurance of our distinguished consideration.

"COMPAGNIE DE CÂBLES TÉLÉGRAPHIQUES."
(Signed) — —.

This decision of the Venezuelan minister would constitute an actual and definitive spoliation of the rights and goods of our fellow countrymen, share and bondholders.

That ministry of Venezuela pretends to justify its decision by saying that we abandon our line. It does not even do us the honor of announcing its project to us, as it did not do us the honor of acknowledging the receipt of our claims and of the reasons that compelled us to suspend our exploitation in October, 1889.

Those reasons, Monsieur le Ministre, we have communicated to you and were numerous and important. One of them would have been sufficient to justify

our suspension. Our finance had been exhausted only to satisfy the exactions of the agents of Venezuela who did not cease to seize our steamers, trains, material, personnel, and who even in the moments of calm in the revolutionary disturbances opposed our transporting merchandise for which we were organized.

If we had been in due time reimbursed by the Venezuelan authorities the expense and disbursements of all kinds we had to make for them, we would have been able to continue, reorganize, and recommence our exploitation.

But nothing of that has happened.

We have never been honored with a proposal or even the least communication.

Now, only because we are French, because no diplomatic relations exist between Venezuela and France, and because, according to the idea spread over all the country, *everything can be done to the French without having anything to fear*, it is finally desired to rob us of what remains of our property, violating the seals with which we have provided it in the presence and with the assistance of the Venezuelan authorities and our consular agent.

The records, certainly too voluminous, that our company possesses in the ministry of foreign affairs, teem with official and unofficial evidence of the vexations suffered by our fellow countrymen, either agents or not of our French company, and even by our national flag. It would, rigorously, be sufficient for us to respectfully remind you, Monsieur le Ministre, of the fact that Mr. Brun, a French engineer, *was murdered* in May, 1898, in his post as director, in our directive house, at a window over which the French flag was floating, by a Venezuelan soldier, who obeyed the orders of the Venezuelan general, Eleazar Montiel. The flag was pulled down and dragged along in the mud, etc.

Through a prudence which we have thought would be appreciated we have avoided to revive these sad incidents.

Thenceforth, in 1898 and 1899, several of our service employees have been arrested, or threatened to be arrested, by generals and even by the brother of the late President of the Republic, Mr. Andrade, the president of the State of Zulia. Our steamers have been seized, deteriorated, and destroyed, of which a proof is offered by our steamer *San Carlos y Mérida*, which, anchored in the harbor of Maracaibo, has served as target for the marksmen of both parties and finally was sunk by their bullets.

We request you, Monsieur le Ministre, to excuse our insistence in asking for your intervention.

The question, in effect, is the interest the importance of which is considerable for our fellow countrymen, not only from the particular point of view of the millions which the bondholders of our company represent, but from the general point of view of the moral and commercial influence that France possessed in Venezuela and which it is about to lose forever.

Venezuela is a rich country. It would suffice for it to become a very prosperous country, that its interior organization should be regenerated.

Monsieur le Ministre, permit that we finally appeal to the protection of France in favor of the French interests we represent, that we renew to you the claims formulated in our letter of the 17th of January, 1901, and that we protest with all our force against the new abuse that seems to threaten us.

Kindly accept, Monsieur le Ministre, the assurance of our high consideration.

E. REYNAUD,
The President.

The integral insertion of the foregoing note will facilitate the chronological examination of the facts therein mentioned, abstaining in this examination, as becomes our duty of an impartial judge, from all appreciation that is not entirely conformable to truth, that does not appear proved in the voluminous records to which the aforesaid note refers, that is not inspired with the principle of justice and absolute equity upon which the arbitrator must base his decisions.

In this examination of the evidence presented by the very claiming party, consisting in the declarations of the employees of the company themselves, the first place pertains, by order of dates, to the accident of the killing of Mr.

Brun, a French engineer, which took place on the 15th of July, 1898, in order to ascertain whether it is true, as affirmed by the president of the company, that Mr. Brun was murdered in his post as director in his own house, at a window over which the French flag was floating, by a Venezuelan soldier, who obeyed the order of the Venezuelan general, Eleazar Montiel, and pulled down and dragged the flag along in the mud, etc.

On the 1st of May, 1898, General Eleazar Montiel, late governor of the "Colon" territory, proceeding from Maracaibo on the steamer *Progreso*, landed with troops of the Government at Santa Bárbara. The said steamer went down the river Escalante, carrying 120 conscripts and the authorities of Santa Bárbara. The following day the steamer *Santa Bárbara* arrived, bringing on board a guard of 12 soldiers of the Government. On Wednesday, the 3d of May, at midnight 150 insurgents, commanded by a General Figuera, took possession of the steamer *Santa Bárbara* after short, but severe fighting, in which 5 soldiers of the Government and the boatswain of the steamer were wounded. During the 4th, 5th, 6th, and 7th of May the revolutionaries, masters of the territory, cut the telegraph and made the steamer *Santa Bárbara* set out for Santa Cruz del Zuba, a village situated up the Escalante River, with some of their men, scattering their partisans in guerrillas along the rivers to wait for the arrival of the troops of the Government. They had taken possession of 6 empty wagons and formed a barricade on the landing pier. On Sunday, the 8th of May, at 6.30 in the morning, a lively musket firing was heard at some distance from Santa Bárbara, while the troops of the Government penetrated by the bottom of the village, and a lively musket firing broke out in the streets.

Now comes the textual part of the report of Mr. Peysselon, chief agent of the company at Santa Bárbara.

Notwithstanding that the French flag was hoisted on all the windows and angles of the building of the direction, this building was not respected. Five bullets of a precision arm were directed to the windows only, and while Mr. Brun was closing the shutters of one of them he was very seriously wounded in his right hand.

Without hesitation and without a deliberated purpose we can say that the bullet which so unfortunately wounded Mr. Brun proceeded from one of the arms of the soldiers of the Government. The guerrilla which executed this sad deed was commanded by Eleazar Montiel, which affirmation I am in a position to make, because when I went to look for a physician, almost immediately after the misfortune, the first and only known person I saw was Montiel. When I went out the second time, I found his lieutenants, Beliais and José Acosta, with him. To make the first cure of Mr. Brun, it was necessary to wait a moment for the arrival of the physicians. Mr. Brun sustained then a very painful and long operation and the doctor did not conceal from us that his state was a serious one.

Mr. Peysselon completes his statement in the following terms:

Steps were taken immediately near the generals and the legal authorities to obtain the transportation of Mr. Brun to Maracaibo on the steamer *Progreso*. These steps had no result.

At 2 o'clock in the afternoon the troops were masters of *Santa Bárbara*. On Monday morning Generals Eleazar Montiel and Zuleta set out toward Santa Cruz with 100 men to retake from the insurgents our steamer *Santa Bárbara*. Several forces took part with them in the expedition of Tuesday. Our steamer, which the revolutionaries had led going up the Escalante to beyond Santa Cruz, amidst numerous risks which that waterway, unnavigable in that part, offered, was recovered on Wednesday by the troops of the Government and brought back to Santa Bárbara, towed by barks, as the revolutionaries had taken away the bearings and cushions of the axle in order to immobilize her.

By order of the legal authorities our shop immediately made the necessary pieces and within a few days put the steamer in navigating order.

On Thursday morning at 10 o'clock our director, Mr. Brun, who was a little

better, was embarked on the *Progreso*, bound for Maracaibo, and died on board at 8.45 p.m. on account of his wound having gangrened.

Such was the information which the agent Peysselon transmitted to his company while the events above narrated took place, affirming, without hesitation and without a deliberated purpose, that the bullet which wounded Mr. Brun had been intentionally directed by one of the soldiers of the Government, under the orders of Gen. Eleazar Montiel.

Let us now see which was the declaration made by the same Mr. Peysselon before the consul of France at Maracaibo on the 19th of May, 1898, regarding the events of the 8th of May. It is as follows:

On Sunday, the 8th, the legal troops carried on the steamer *Progreso* arrived at 12.30 at the village. Under these circumstances we must foresee a battle in the streets. This foresight advised us to immediately shut all the doors and windows of our dwelling house. While I was closing a window overlooking the square, Mr. Brun was closing that of his room, which overlooked the Santo Domingo street. At the same moment the musket firing began in that street, the window was closed already, but Mr. Brun had not yet had time enough to remove his hand from the lock, when a bullet of a precision arm pierced the window through, twisted the lock in an extraordinary way, and pierced his hand through and through, throwing the chips on his breast.

Mr. and Mrs. Crinière, who inhabit the house of the direction, assisted Mr. Brun in this sad circumstance. On my part I immediately went out to the square to have a physician called, met with twenty armed men of the Government, and the only person known to me to whom I could apply was Gen. Eleazar Montiel, the chief of the force. As the doctor had not arrived, I went out for a second time and saw the same General Montiel, with Beliais and Acosta, his lieutenants, and another guerrilla of the Government. Then, when the first panic was over, Drs. P. Rosales and T. Cohen could be called and immediately came to assist our friend.

To complete my declaration, I address you a copy of the information presented by Doctor Cohen, the physician of the company, who assisted Mr. Brun until his death. I must add that since the morning we had heard the dull noise of a distant musket firing; that in view of the situation prudence advised us to hoist the French flag on all the fronts of the house, which we did at about 10 o'clock in the morning, when the public rumor announced that the *Progreso* was sailing up the river with Government troops. In spite of our three colors, you see it well, Monsieur le Consul, our house was not respected and five bullets were shot on our windows. Mr. Brun remained at Santa Bárbara *until the first occasion that presented itself for him to come down to Maracaibo*. He was embarked on Sunday at about 10 with the greatest attention, and his state did not permit us to foresee so fatal and prompt an end.

The bookkeeper of the company, M. A. Crinière, declares, before the same consul of France, at Maracaibo, in the following words:

In the morning of Sunday, the 8th of May, fearing a serious encounter of the two parties, we hoisted at about 10 o'clock on the house of the direction flags with our French colors, two on the windows of the hall overlooking the square, which were hoisted by Mr. Brun himself, helped by Miguel Labarca, and two others which were hoisted by me, a very large one in Santo Domingo street. *It was through this street that the Government forces flanked the village, and the room in which Mr. Brun was wounded while closing a window overlooked this street.* The fifth flag was placed by the same Labarca on the entrance barrier overlooking the road.

We were intranquil because we did not see or hear anything, when at half past twelve it was known that the steamer *Progreso* was at the entrance of Santa Bárbara. A great movement took place and a white flag was seen at the station, *which tranquilized us a little*, as we thought that the two parties would make terms. Unfortunately it did not happen so, and a strong volley broke out at that moment in Santo Domingo street. It was that the soldiers sent from Maracaibo arriving by

the bottom of the village *attacked the forces of Generals Figuera and Pozo in rear*. Immediately Messrs. Brun, Peysselon, and myself ran in order to protect ourselves from the bullets to close doors and windows. I had already heard behind me as the noise produced by the fall of gravel. It was a bullet that had pierced through the window of the hall, on which there were two flags and which overlooked the square; almost at the same moment I heard Mr. Brun cry, "Ah! I am wounded." We all ran to help him and saw his right hand horribly mutilated by a bullet. This happened in one instant. We furnished the first attentions that so serious a wound required and, the musket firing being over, Mr. Peysselon ran in search of a physician. I followed him in search of water and saw soldiers of the Government keeping the entrance of the house of the direction which overlooked the road and the French flag floating over their heads, which did not prevent them from preparing to fire at us, and fortunately Mr. Peysselon had presence of mind enough to cry "French company," which was sufficient to prevent that they should carry out their purpose, and then Mr. Peysselon went out.

In view of the manner in which the two presential witnesses, who were high employees of the company, relate the events of the 8th of May and the manner in which the wound of Mr. Brun took place, the affirmation of Mr. Peysselon that the bullet which caused the wound of Mr. Brun was intentionally directed against the window where the latter was, can only be considered as entirely groundless and precisely suggested by *the deliberate purpose to attribute a mischievous intention to a merely accidental act*. The declaration of the bookkeeper of the company that on hearing the musket firing in the street Messieurs Brun, Peysselon, and himself ran to close the doors and windows to protect themselves from the bullets, proves to evidence that that impulsive movement of self-preservation, the desire of protecting themselves from the manifest danger offered by the entrance of the bullets fired in all directions by the forces combating around the house, was precisely the origin of Mr. Brun's presence at the fatal point and moment to be a victim of the deplorable accident that occasioned the wound of his right hand. To style this event as *murder* of the director of the company in his post of director in his own house, at a window over which the French flag was floating, by a Venezuelan soldier, who obeyed orders of General Montiel, is to pretend to entirely disfigure the natural and frequent accidents of a deed of arms, to convert them, as it has been attempted in the present declaration, in a characterized proof of outrages suffered by French citizens, agents of the company, and even by the French flag itself.

The very circumstance that the flag was pulled down and dragged along in the mud at the moment of the wound of Mr. Brun, as is roundly affirmed by the president of the company, in his note to the minister of foreign affairs of France strongly appealing to the protection of France in favor of his fellow-countrymen and of the French interests, proves to be a mere invention destined to impress the mind of a high French officer against the Venezuelan nation.

From the documents inserted in the records it appears that General Montiel was the chief of the forces that went up the Escalante River and recovered from the revolutionaries the steamer *Santa Bárbara*, the property of the company, which he brought back to the harbor of the same name; that the day after his return he put at the disposal of the company the steamer *Progreso* to the purpose of carrying Mr. Brun to Maracaibo; that it was said chief who approached Mr. Peysselon when the latter went out from the house, charging him with sending for a physician to take care of the former; that Mr. Peysselon durst not go himself in search of the physician, but returned to the house to wait for him; that seeing that the physician had not arrived he went out again, but only to the purpose of speaking again to General Montiel, returning thereupon to the house and waiting there for the physicians after the panic of the first moment was over, and as a complement of the credit which the position and affirma-

tions of Mr. Peyselson in this matter must deserve, it suffices to reproduce the note that he himself addressed on the 12th of May, 1898, three days before the death of Mr. Brun, to Gen. Mamerto D. González, the military agent of General Gómez in the Santa Bárbara district. Said letter runs as follows:

Line from San Carlos to Mérida — Direction of the Exploitation
L. R. No. 658.] COMPAGNIE FRANÇAISE DE CHEMINS DE FER VÉNÉZUELIENS,
Santa Bárbara, May 12, 1898.

Gen. MAMERTO D. GONZÁLEZ.

MY DEAR SIR: As the agent of the company and through impediment of Mr. Brun, I thank you for the restoration of public order and for having taken the necessary steps to bring the *Santa Bárbara* steamer. We are greatly pleased to see you among us to protect our persons and interest. I am, with all consideration, your respectful servant.

(Signed) J. B. PEYSELON,
Inspector of the Exploitation.

The *Santa Bárbara* steamer having been returned to the company through the action of the force of the constituted Government, that protected the interest of the former, as expressed by the thanksgiving note above inserted, the public order having been restored by the disappearance of the insurrectional guerrillas, the company reestablished the traffic on its railway and steamer's lines in all the period of the subsequent months of 1898 and in the first months of 1899 until the 20th of May, with the result shown by the report of the administration council of the 30th of May, 1901, already referred to.

In the month of May, 1899, there arose the revolutionary movement denominated "Liberal Restaurador," conducted by General Castro, and its first field of action was the Cordillera of the Andes, the local movements affecting the region of the railway from Santa Bárbara to La Vigía. It was then that the President of the State of Zulia took possession of the steamers *Santa Bárbara* and *Reliance*, upon notification to Mr. Decleva, who acted as the director of the exploitation. This fact was communicated by cable to the direction of the company in Paris on the 12th of June, 1899, and on the 22d of the same month the agent at Maracaibo transmitted to the company the following cablegram:

President will not pay navigation salaries or opposes our dismissing our personnel. Receipts none. We can not foresee any increase of income. Steamer *Reliance* out of service. Give orders. I'll keep firm.

In a letter dated the 28th of May, the same agent, Decleva, writes to the direction the following:

In effect the movement increases. The region of the Cordillera and particularly the zone interesting us is greatly alarmed. It is said that the revolution will not propagate and is the result of merely local rivalries. If such is the case, the evil will be circumscribed in narrow limits; the country in general will suffer little, but we shall suffer the consequences — I mean to say *all the consequences of the events*. I am informed that mules coming to La Vigía with cargo have been taken by the revolutionists, that hundreds of others have taken a different direction in order to escape from the revolutionary bands. Such facts, the narrative of which spreads from village to village, are not proper to encourage transportation, as you will well judge. Many days will pass so, supposing the movement is of a short duration, before those people will have recovered confidence and send us their merchandise.

In the bill which I intend to present to the Government (I have already prepared it for the requisition of the month of March) it is my purpose to charge, besides the expense occasioned by the immobilization of our steamer, *the damage caused to our traffic; but what a small and problematic reward!*

By the correspondence of the agent, Decleva, the following facts are evidenced: That he agreed with the President of the State of Zulia that that Government would undertake to prepare and put in serving order the steamer *Reliance* and that, regarding the *Santa Bárbara*, Decleva would give the order that it might be brought to Maracaibo without delay and without waiting for any cargo; that he delivered, purely and simply, the steamer *Reliance*, the treasury of the State undertaking to pay the engineer, helmsman, fireman, wood, oil, and lamps; that he wrote an order to Captain Faria to the effect of bringing the *Santa Bárbara* steamer, availing himself of all the circumstances permitting him, without delaying the departure of the steamer, to ship the whole or part of the cargo, so as not to lose the voyage; that he was permitted to embark on board the *Santa Bárbara*, bound for San Carlos del Zulia, with the purpose of giving the necessary orders for the protection of the interests of the company, affirming, in a letter dated the 29th of May, that perhaps there was no danger for the employees on the line, and that the orders he might give from Maracaibo, under the influence of contrary information, might result in producing disorder among the personnel; that it appeared from the information received from the line that *everything was in peace and order on the 7th of June, 1899*; that La Vigia was placed under the watch of an inspector, the Venezuelan Lomonaco, commissioner of the Government, near the company, who at the same time was a colonel, commanding 15 armed men; that until the 9th of June the Government had furnished only 7 loads of wood, as far as the navigation was concerned; and regarding the *Reliance* Decleva said:

You know that I have been able to disburden myself of all the service and maintenance expense. The president complains that the small steamer costs him too much. I have smiled and changed the conversation.

The correspondence of Mr. Decleva, in a letter of the 18th of June, 1899, goes on as follows:

I have returned after a voyage without incidents. At Santa Bárbara, at La Vigia, on the line, *everything is quiet*. The line is in *good condition and the material complete*. All our engines have entered the shop, even that of the ballast works that I had set on service, and that I had to keep by order of the civil and military authority.

The traffic continues to be none. It is now more than twenty days that not one load is arrived; our engines only run on the account of the Government.

Regarding the navigation, you know that I have been able to obtain that the Government provides the fuel and the food on board.

I shall be compelled, gentlemen, to ask in July for a remittance of funds. I would not like to alarm you, but I can not give you a hope that I do not possess myself — *the hope of undertaking the transactions again.*

The revolution seems to be spreading itself and increasing every day.

Our exploitation has gone through other crises and revolutions, the political and financial consequences of which *might imperil the most important interests and even the existence of this country*, but the exploitation had never, on any occasion, been so directly and radically affected.

A letter of the 22d of June says:

In view of the daily loss that we are sustaining, *the imminent deficit of our resources* and the difficulties of a situation which complicates itself more and more and seems to be prolonging itself farther and farther, I have desired, as I informed you in a previous letter, to reduce our expense as much as possible. The dismissal of the navigation personnel from the moment the Government was not willing to take charge of it presented itself to me as a mighty and immediate measure. You know that the Government opposed this project. Not knowing what our strict right is, what our absolute right in the matter is, I have vainly endeavored to illustrate myself with the copy of the concession which I have in my possession. I have not been willing to take, on my own account only, a decision, and thus

engage you in an affair the solution of which did not appear to me to be entirely certain.

All the subsequent correspondence of the agent, Declava, with the direction of the company confines itself to the discussion with the President of the State of Zulua, on account of the elimination, which the former thought convenient, of the personnel of the steamers, to introduce economies in the expense of the company, in which discussion there interfered the consular agent of France at Maracaibo, Mr. d'Empaire, and the vice-consul at Caracas, Mr. Quiévreux, who, on that account, sent to Mr. d'Empaire the following telegram:

President of the Republic communicates me a dispatch according to which the agent of the French company *does not render the task of the Government easy in the difficult moments the latter goes through*. I request you to endeavor without delay to obtain in my name that the director of the company *cooperates as far as it may be possible in the restoration of order, thus avoiding disagreeable incidents*.

In the absence of a reply from the direction of the company in Paris to the cablegrams sent to it by its agent asking for instructions to decide as to his persisting in the position he had taken, Declava construed this silence, according to his letter of the 1st of July, 1899, as follows:

I do not know, I regret, your projects, your purposes. *You may have a secret one which you have not told me, which you have no reason to tell me, which you pursue without me, as it were, and of which the orders I receive are the consequence*.

If such is the case, I must obey your instructions at all events. But if, on the contrary, it is your intention to carry things *only to the limit that is prudent in view of the future interests of the company*, my passive obedience would prove to be a *blindness*. You do not ask for my opinion. It does not appear that you are willing to leave the decision of the situation to me. Your orders are peremptory, precise, categorical; hence my embarrassment. What has the appearance of a contradiction is only, in reality, an exceeding care in serving you, *carrying out your intentions*.

And in the letter immediately following, of the 3d of July, it is said:

I recur to what I told you yesterday. You may be pursuing a purpose unknown to me, *a purpose which only the resistance opposed here by your directors to the requisitions of the Government can prepare*.

And could I act against that purpose? No; my conscience prohibits me to do so; my duty, the devotion I owe to your interests, everything commands me to obey you.

To this discussion occasioned by salaries of the personnel of the steamers, amounting to the sum of 2,300 bolivars monthly, an end was put by the following telegram from the direction in Paris, dated the 4th of July:

No act of hostility; of the salaries pay what you can out of what you may have. It is well understood that the Government *will pay all the other expense and previously acknowledge its former and present debts*. *Here we have exhausted all the resources*.

The foregoing decision and the request to acknowledge the accounts having been communicated to the President of the State by the agent of the company, the President submitted said approval to the National Government, for such was incumbent upon it. Owing to this reply, Mr. Declava consulted the direction as to whether he could proceed to Caracas with the purpose of presenting these accounts, and was answered by cable on the 5th of the same month:

It is not possible that you should leave Maracaibo for Caracas. Mr. Simon will stop there in his next voyage.

According to a telegram from the consular agent of France at Maracaibo, dated the 13th of August, and addressed to the French consul, the Government

had reestablished traffic and intended to return the steamers of the company, but revolutionaries having reappeared at Tovar and Mérida, precisely in the line of exploitation, the French company had to wait for the result of the further operations before the restitution could take place.

In a letter dated the 23d of August of the same year, the deputy administrator of the company in Paris informs the minister of foreign affairs that the steamer *Reliance* had been returned to them, as he had already been notified, with its axle broken and the propeller lost; that the steamer *Santa Bárbara* remained in the possession of the Government of the State of Zulia; that the railway continued to be in the same condition, *without having as yet a free traffic*; that no payment had been made by the Venezuelan authorities, and that its director, Mr. Gustavo Simon, would leave on the 26th of August for Venezuela with instructions to go to Caracas.

On the 15th of September of the same year, said director, on his arrival at Caracas, asked, through the vice-consul of France, for an audience from the minister of finance, which was granted him immediately for the next day. In this audience Mr. Simon asked the National Government *for a settlement of accounts or a part payment, in order to be able to proceed on the exploitation of the enterprise*. Minister Olavarría answered that there was no money in the safe of the treasury and that he could not foresee when he could have funds, and that, therefore, he was sorry not to be able to give satisfaction or to make any promise for the future, however small the sum might be.

In the statement addressed on the 10th of October of the same year to the President of the Republic, then Gen. Ignacio Andrade, by the same director, Gustavo Simon, setting down the motives why he had determined to suspend the exploitation of the railway from Santa Bárbara to La Vigía, the following facts are made to appear:

That in September, 1899, there was a moment of peace, and some receipts were obtained, but that *the revolution reappeared on the 27th of September, and thenceforward the traffic was paralyzed and Maracaibo incommunicated with Santa Bárbara*; that meanwhile the Government did nothing to free the company from the revolutionaries and enable it to proceed on the exploitation; *that it had remained without one cent in its safe, with all the expense in force and without any income*; that in Paris the coupons of the 5 per cent Venezuelan loan of 1886 had not been paid, although due on the 1st of July, 1898; that its claims presented to the Government for damage and prejudice had not been satisfied, and that the circumstance to be most regretted was that they had not succeeded in obtaining from the Government the payment of the accounts for freight, money lent, sundry effects furnished, etc., which amounted on the 30th of September, 1899, to 200,000 bolivars, as there existed arrears from the year 1884, and that on the 3d of October the President of the State of Zulia had asked the company for the *Santa Bárbara* steamer to carry a commission to Encontrados and had not been able to pay for two piles of wood available on board and a sum of 300 bolivars on account of the traveling expense, as it had promised to do.

In virtue of the facts above narrated, the director of the company concluded his statement to the President of the Republic with the following declaration:

First. There is no possibility of realizing any revenue in the exploitation of the line, *as the revolutionaries are masters of it*, and until this date, the 1st of October, there is no hope that the Government may recover that place.

Second. The Government of Venezuela *can not pay the company* any of its debts, or even the least sum, or any sum by installments.

Third. The company *has no longer any resources, as they have all been exhausted*, and it has sent all its money from Paris to meet the expense of its line, *while there was no revenue on account of frequent revolutions*.

The company, considering that this state of things has caused it enormous pre-

judice and amage and that, if it continues to make the expense in course, it will directly go to bankruptey, *it is compelled through main force to suspend the exploitation of its line and its steamer Santa Bárbara* until an arrangement has been entered into with the National Government of the United States of Venezuela, and declares that, in the meantime, whether the railway is or not in the hands of the revolutionaries, said Government is responsible for all damage, prejudice, faults, deteriorations that may be caused to the rolling stock, the permanent way, the stores in the warehouse — in short, to all the goods representing the capital of the company.

It is well understood that the company *does not, however, abandon its rights to the concession of said railway.*

The foregoing statement was addressed in like terms to the President of the State of Zulia and to the minister of public works.

The President of the State of Zulia, in acknowledging to the consular agent of France the receipt of the foregoing statement, thought it to be his duty to tell him that whenever, owing to the necessities of war, it had been necessary to make use of the *Santa Bárbara* steamer, whether to mobilize troops or to avoid that the enemies should take possession of it, the Government had always furnished the fuel as well as the provisions and the salary of the employees and marines, when the direction had required it, and made several repairs on the steamer, which was in a very bad condition. He says in conclusion that, as soon as the reasons which compelled the Government to retain said steamer had ceased, he would notify the consular agent that it might be received by the person in charge of receiving it.

From the document appearing as subscribed and dated in Curaçao on the 22d of October, 1899, by Mr. Simon, and certified as correct by the deputy administrator, M. Reynaud, it is apparent that all the archives and printed papers of the company had been closed into boxes, with a detailed inventory, and delivered to Mr. d'Empaire; that all the personnel of the steamer had been dismissed, Captain Matos having made the inventory of the *Santa Bárbara* steamer, together with the mechanical engineer and the bookkeeper; that the company had the following advertisement published in the papers *El Fonógrafo*, *El Avisador*, and *La Compañía Francesa*.

The Compagnie Française de Chemins de Fer Vénézuéliens has the regret of informing the public and commerce that *on account of force majeure* it suspends the exploitation of its line and its steamer *Santa Bárbara*.

The lack of income during more than four years, the revolutions, and the non-payment by the Government of its debts to the company are the motives inducing the company *to ask for an arrangement with the National Government* before continuing its exploitation.

It is apparent that *from the 27th of September the railway line is in the hands of the revolutionaries and that up to this date, the 12th of October, there is no hope that the Government may recover this place.*

The director of the exploitation,

E. SIMONS

At the end of this document Mr. Simon expresses the hope that everything might be settled before the close of the month, because he had just been advised that the President of the Republic of Venezuela had resigned and left Caracas on a ship of war for an unknown destination.

In a communication addressed by the minister of foreign affairs of France to Mr. Quiévreux, vice-consul in Caracas, Mr. d'Empaire, the consular agent in Maracaibo, appears vested with the commission of watching and stating the state in which the goods of the company were.

The steamer *Santa Bárbara* was returned to the company on its return to Maracaibo after the expedition made on it by President Andrade, in which voyage it sustained a damage in one of the wheels. Mr. Glennie was appointed overseer of the seals, and Mr. Aiguillon, late chief engineer of the *Santa Bárbara*,

keeper of the maritime material. Mr. d'Empaire received from the director of the company a sufficient sum to pay for the furniture, rent, and the salaries of the agents Glennie and Aiguillon and of the one at Caracas, during six months; from the 1st of December, 1899.

In the fight that took place in the harbor of Maracaibo in the month of November, 1899, between revolutionary nationalist forces and those of the Government of General Castro, the steamer *San Carlos y Mérida*, at anchor in the harbor, sustained, on account of bullets, damages that caused it to sink, and the steamer *Santa Bárbara* also suffered deteriorations on its top part. Such appears from the testimonial investigation carried out by the consular agent of France at Maracaibo at the request of Mr. Arguillon. The witnesses Edmond Hainel, Antonio Martínez Peña, and José Vincente González declare that the steamer *San Carlos y Mérida*, at anchor opposite the stores of Rafael Morales and McGregor & Co., had wrecked in the night and day of the 1st and 2d of December, 1899, on account of the bullets received in its hull on the port and starboard sides during the fight and the fire between the forces of Gen. Cipriano Castro (Maracaibo side) and the forces of Gen. José Manuel Hernández (Los Haticos side).

The damages sustained on its sides were so numerous, that the aforesaid steamer sunk at 4 p.m. on the 2d of December, 1899.

The consular agent, Mr. d'Empaire, ordered the appointment of experts to estimate the damages sustained by the steamer *Santa Bárbara* during the time it was at the service of the State, to which purpose Messrs. Eugenio Kreutzer, a French mechanic domiciled in that town, and Manuel María Loto, a captain in the Venezuelan navy, commander of the Venezuelan steamer *Progreso*. Said experts—after having examined the steamer and its engines and considered that said vessel has been kept, from the last days of May of the preceding year until the first days of November, constantly in motion under pressure, without giving time to make any repairs on it or repaint it, which circumstance increased the value of the repairs required; that, through a constant labor the engine had suffered a great deal; that during the last voyage it made in the river Zulia, at the service of the Government, a piece of timber entirely broke one of its wheels—valued the damages at 10,000 bolivars, without being able to make an especial mention as to the state of the hold of the steamer that was submerged.

On the 20th of January, 1900, Mr. d'Empaire communicates to the direction that there was an individual that desired to know the lowest price of the little steamer *Reliance*, with a view to seeing whether he could buy it, and that he thought that the company would transact a good business, if it succeeded in selling it for any price.

On the 9th of December, 1899, Mr. Simon left Venezuela for Havre.

It is equally apparent that the company posteriorly disposed, according to its own declaration, of the two steamers, *Reliance* and *Santa Bárbara*, for the sum of 1,100 francs the former and 10,000 bolivars the latter.

On the 3d of February, 1900, the administration of the company addressed a letter to the President of the Republic, proposing to him the reorganization of the exploitation of the railway and maritime lines, upon the delivery which the Venezuelan Government was to make to him of a part payment of at least 300,000 francs in cash, calculated on the sums which he considered were owed to said lines both by the nation and the States, as follows:

(A) A sum of 300,000 francs for reimbursement of transportation expense and requisitions carried out by order of the authorities.

(B) A sum of 250,000 bolivars, at which the company valued the minimum of the indemnity which the authorities were owing to it for the material repa-

ration of the damage done to all its properties, railway, steamers, immovables, material, etc., during the last campaign.

(C) A sum of 105,000 francs monthly from the 1st of July, 1899, as indemnity for the losses that said lines had sustained from that date on account of the almost absolute suppression of the traffic and the immobilization of the means of exploitation. The total of those monthly debts that would be owed to them on the 1st of May, 1901, would amount to 1,050,000 francs.

The true motives that compelled the French company to suspend the exploitation of the railway line and of the steamer *Santa Bárbara*, as appearing explicitly declared by the director of the company, Mr. Simon, in his statement addressed to the President of the Republic, on the 12th of October, 1899, from the advertisements published in different newspapers and from all the documents of this claim, were only the lack of resources in the treasury of the company, of funds proceeding from the traffic, owing to the fact that this had ceased, on account of the revolutionary events which recommenced in September and continued in October of the same year. The company exhausted all its available resources, to the extent of being forced to eliminate the personnel of its employees.

The requisitions made by the authorities of the State of Zulia concerning the steamers and trains of the company, with a view to satisfying the necessities of the public service and restoring order constitute the exercise of a power vested in the authorities of a State with a purpose to provide for the security of lakes, rivers, and ways of communication and with a purpose also to subtract any element of struggle from the revolutionary action, thus cooperating in the restoration of order and the consolidation of peace. Those requisitions were voluntarily accepted by the company, as it was by its contract bound to accept them, and the nature of its business and its own advantage required it to do so. They could only give rise to the obligation, on the part of the Venezuelan authorities, to indemnify the company for the service rendered and the direct damage that the means of locomotion seized might sustain during that service, through motives that might be attributed to the especial nature of the same services, which obligation was determined and valued by the administration council of the company in its report rendered before the general meeting of shareholders, inserting it in the balance of the 31st of December, 1901, for a sum of 203,529.70 francs.

The government of the State of Zulia and therefore the National Government contracted the obligation of paying to the company the amount of those accounts, and this debt has never been denied by the constituted authorities. The local government of the State of Zulia could not in the days the aforesaid requisitions took place nor could the minister of finance at Caracas at the date he was visited by Mr. Simon make any part payment on account of what might be owed to the company. This impossibility is comprehensible under those circumstances, under which every resource was consumed by the imperative necessities of war, and both the National Government and the government of the State of Zulia were deprived of a large portion of the ordinary revenue on account of the same disturbance which deprived the company of the proceeds of its ordinary traffic on the line.

It is neither just nor equitable, therefore, nor is it based on any law, that the Government of Venezuela, because it could not pay in moments of penury of its revenues the sum of more than 200,000 bolivars to which the company made its credit amount, and of which it urgently needed to continue in the activity of its transactions, should be responsible for the sum of 18,000,000 bolivars, at which the company estimates the integral value of its capital and obligations (bonds).

When a debt is contracted to be paid in cash, it is a universal law that the

nonpayment thereof in due time only constitutes a delay which binds the debtor to pay interest at the rate agreed upon or at the legal rate, this when liquidated accounts or debts are the question.

The larger part of the credit that the company pretended to collect in the month of September, 1899, from the minister of finance at Caracas, requiring from him a part payment, proceeded from debts contracted by the government of the State of Zulia and approved by its legislature in previous years, but the company at no time theretofore had endeavored to obtain the payment of those accounts from the National Government, nor is it proved that the steps taken near the government of the State before the revolutionary events of June and July, 1890, were active.

The insistence shown by the company in those moments, placing the government of the State in the alternative of delivering a sum which it had not, or eliminating the personnel of its steamers; the silence kept by the direction in Paris for several days, leaving its agent at Maracaibo engaged in a discussion which grew more and more bitter with the authority, and, finally, the violent determination taken by Mr. Simon of entirely suspending traffic, dismissing all the employees of the line and placing under seal all the appurtenances thereof, precisely when a change of administration and victory of the revolutionary arms promised the prompt pacification of the country, only show the deliberate purpose of abandoning the enterprise, creating a situation entirely alienate from the conditions of the original contract, and only tending to accumulate difficulties, presenting to the Government of Venezuela, as a previous condition for the reestablishment of traffic, new and more exacting claims, as well as demands of money. It was, therefore, a perfectly voluntary act due to the purely financial causes, connected with the state of insolvency in which the company had been for some years past. That abandonment has continued since the suspension of the exploitation was determined by the direction of the company. All the damages that may have been caused by that abandonment to the material of the line, and that, it is natural, must have been very considerable, owing to the intemperance in which it has remained for four years and to the want of all care on the part of its owners, only affect the responsibility of those who adopted the measure, save the excuse they have adduced, the *force majeure* produced by the exhaustion of means and resources to continue the exploitation.

The free disposal of its property has always remained within the reach of the company, as is proved by the circumstance that the consular agent of France at Maracaibo has constantly been the custodian thereof, and that it was sealed to that purpose.

The measure projected by the National Government in March, 1901, of making an inventory of the line, of its permanent and rolling stock, and of the vessels and other appurtenances which the construction company had abandoned, as appears from the same resolution, was tried, taking into consideration the official capacity of Mr. Julio d'Empaire and his commission as custodian of the property of the company, and to that purpose the National Government intrusted said agent with the commission of attending to the formation of the inventory and reporting, with the remarks he might think pertinent, about the actual state of that property.

Mr. c'Empaire declined the commission, stating that he had been officially designed to take care of the material, tools, and archives of the company, which proved that they were not abandoned and that the company had but suspended the exploitation.

Mr. d'Empaire adds, in his reply to the Government, dated the 26th of March 1901, that whenever he has to apply to the authorities, either of the State of

Zulia or of that of Mérida, in has capacity of in charge of taking care of the interests of the company, asking for the suppression of some abuse or for support on the part of the Government, *he has always been answered and attended to, which clearly shows on the one side that the company has always preserved its rights to the line and its material, and on the other that such rights have at all times been recognized by the Government of Venezuela.*

In view of this reply, the Government thought it advisable to leave things in the same state they were, as it does not appear that it has in any sense attempted to interfere with the determinations of the company regarding the free disposal or maintenance of its goods on the railway line.

The damage those goods have sustained, according to the technical report presented to the minister of public works by Drs. Francisco Arroyo-Parejo and Eliodoro Ocanto, attorney-general and engineer, respectively, at the orders of the ministry, is due

“besides the natural causes of the exposition to intemperature and the weather, to the very especial one that the company did not carry out the drawing in accordance with the rules and principles ordered by science in enterprises of such a nature, for the line is constructed on lands the topographical configuration of which is unfit thereto,”

and said report adds that

“if it is certain that the inundations of the Chamas River have cooperated in that destruction it is also true that the company has not made such efforts or used such means as were necessary to prevent the damage.”

The report adds:

Without the help of the drains cut parallel to the road (during the construction) in order to extract therefrom the earth necessary for the embankments, which drains will always be the cause of the destruction of the line, the undermining of the ground would not have taken place, for the waters proceeding from the inundations would not stagnate on each side of the platform, but would go through culverts conveniently situated, following the natural depressions of the ground, to be lost on the plains; and to place again this line in a state of good service it is necessary *either to make the Chamas River return to its former bed* or to stop up the drains parallel to the line, raising the level of the line with good materials, and to make serious repairs to the rolling stock, which is almost tantamount to renewing it in its entirety.

For all the reasons aforesaid and in virtue of the careful examination of all the precedents of the case the Government of Venezuela can not be held responsible for the damage that the “Compagnie Française de Chemins de Fer Vénézuéliens” may have sustained, for the suspension of the exploitation of the line and the abandonment in which it has kept its property, or for the consequences that nature, the weather, and the bad construction of the works may have produced in its concerns.

Neither can this commission fix the amount owed by the Government of Venezuela to the above-mentioned company for services rendered by its railway and line of steamers, for those accounts have not been presented or been the object of any examination in this commission.

With regard to the damage done by revolutionary parties on the line from Santa Bárbara to La Vigia during the time it was occupied by said parties, neither this fact nor the responsibility of the authorities then constituted in the State of Zulia has been proved.

The only thing that has been proved is the damage sustained by the steamer *Santa Bárbara* while at the service of the government of the State of Zulia, which

damage was valued at the sum of 10,000 bolivars by the experts appointed by the consular agent of France at Maracaibo.

The prejudice caused the company by the sinking of the steamer *San Carlos y Mérida*, which, as it appears, was out of all active service since long before and which was not apt to be utilized, does not affect the responsibility of the Government of Venezuela, for it appears from the evidence produced that the sinking took place on account of the firing exchanged in a deed of arms, and is therefore recognized in international law as an accident inefficient to cause any responsibility on the part of the constituted authorities.

It is my opinion, therefore, that the company is entitled to an indemnity of 10,000 bolivars and interest thereon at the rate of 3 per cent from the 12th of October, 1899, which the Government of Venezuela will pay for deteriorations of the steamer *Santa Barbara* while at its service; that its rights must be reserved to it to obtain payment of the accounts for freight, transportation of troops, and the use of two steamers by the authorities of the State of Zulia duly formulated and proved and which, as expressed in the balance of the 31st of October, 1899, amounted on that date to the sum of 203,529.70 francs with interest thereon from the respective dates at which they had their origin; that to the Venezuelan Government the rights and claims must also be reserved which may pertain to it for the suspension of traffic, the abandonment of the exploitation and ensuing damage caused to the line through lack of maintenance, and that for all the rest the claim presented must be disallowed.

CARACAS, August 28, 1903.

NOTE BY THE VENEZUELAN COMMISSIONER

This opinion was presented at the sitting of the 28th of August, 1903, and an understanding was not arrived at with the French arbitrator, who was of the opinion that the company must be allowed the sum of 18,483,000 bolivars, to which the claim amounted, said company abandoning to the Government of Venezuela the railway with all its appurtenances and the concession. The two commissioners having failed to agree, this claim was referred to the decision of the umpire.

OPINION OF THE FRENCH COMMISSIONER

I have accorded to the French Company of Venezuelan Railroads an indemnity of 18,483,000 bolivars, considering that the Venezuelan Government is responsible for the ruin of the company, and that in equity this responsibility carries with it the rescission of the contract signed between the company and the Venezuelan State.

It seems to me beyond doubt that the Venezuelan Government has placed the company in the necessity of ceasing the exploitation of the line by depriving it of the considerable sums which it owed it from the fact of the guaranty and from the fact of the requisitions.

According to the contract the state guaranteed to the company the 7 per cent of the capital, and this guaranty was to be paid in hard cash. These provisions are repeated in the three stages which the contract in question has passed through.

But from 1888 to 1896 the State neglected to fulfill the obligations accepted at the time of the signing of this bilateral act. It did not pay a centime of the guaranty promised of which the part falling due December 31, 1895, represented already 4,725,000 bolivars. It is not surprising that the company, deprived of this sum upon which it had the right to count, then found itself in embarrassment. It had made all sacrifices; with only the resources of its credit, it had already finished the line provided in the contract and assured for three years the regular exploitation, in spite of inundations, earthquakes, and revolutions,

factors equally unforeseen and very capable of bringing trouble to the most wisely established provisions. It was natural that it should have reached the limit of its resources and appealed for the support which the State ought to have lent it a long time previous.

It is this moment that the Government of Caracas chose, taking advantage of the circumstances which itself had prepared, to impose a treaty ruinous to the company, obliged to pass under these Caudine Forks.¹ It reduced to 1,950,000 bolivars the total amount of all the claims that the company might present, as well from the point of the guaranty as from any other point, and promised 2,500,000 bolivars for the abandonment in the future of every right of guaranty. Then, instead of paying in specie these promised sums, it remitted them in bonds which, having ceased to bear interest, are to-day no longer negotiable, so that certain creditors of the company, whose borrowed money had, instead of the money of the guaranty, permitted the finishing of the construction and the pursuit of the exploitation, hold these depreciated bonds, which are only in their hands a lien without value.

The Venezuelan State has then found the means to free itself of its contractual obligations without opening its purse. Not only did it elude in this way the clauses of the contract relative to the guaranty in reducing the latter to zero, but it never paid the numerous requisitions for which at different times the company had sent it the drafts.

So the company, deprived of the millions of the guaranty and of the remuneration of the services rendered, saw itself at the same time dispossessed of its rolling stock, employed in transporting free of charge troops and military equipments, while the merchandise lay in the storehouses at the mercy of guerrillas, while its personnel was maltreated or imprisoned, its director wounded to death, its boats requisitioned or destroyed, its real estate encroached upon, its cash boxes emptied.

Is it not evident that the only cause of the arrest of the exploitation was the situation made for the company by the Government itself, which in every way in its power had rendered this exploitation impossible?

Moreover, the more time passed the greater the increase of the debts of the company and the difficulty for it to resume the exploitation of the line; in fact, the interest on the sums due is accumulating, its idle machinery damaged, the track is going down from the fact of the inclemencies of the climate and from the use which the inhabitants are making of it.

In these conditions it would not be an equitable solution to compel the company to resume the exploitation in consideration of the mere payment by the State for the ravages and requisitions. It is only by the rescission of the contract that equity can be satisfied. The Venezuelan State could not complain, since it has never executed it even after having strangely corrupted it.

In consequence of this rescission, the Venezuelan Government will become possessor of all that the company owns in Venezuela — that is to say, of the concession, of the line, of the buildings, of the rolling stock, of the maritime material, in the condition in which it is actually found. In exchange it would have to reimburse the company for the sums expended by it, which include its capital — say, 3,000,000 bolivars — and the value of the obligations and bonds emitted, with arrears of revenues due to the bearers — say 30,500,000 bolivars.

Moreover, it ought to take account of the interest of these sums and of the profits of which the company has been deprived. The indemnity would reach

¹ Caudine Forks (*Furculæ Caudinæ*), the name of an Italian village famous in Roman history on account of the disaster which there befell the Roman army during the second Samnite war, in 321 B.C.

without doubt two score millions. But for all these valuations it would be necessary to admit the affirmations of the company or to engage in interminable investigations, which would still leave many of the points in doubt.

It is the most simple means of determining the value of the concession; it does away with all investigation and all chance of error; it has, moreover, the advantage of being drawn from the contract.

The State and the company have both recognized that the concession was worth 18,000,000 bolivars for a line of 60 kilometers — the first according to it, the second accepting the payment of a guaranty of 7 per cent upon a kilomeric value of 300,000 bolivars. Taking back the concession, the State will be free, so far as the company is concerned, paying to it this sum by way of indemnity.

It is fitting to add to it the value of the maritime material, say 483,000 bolivars; the service of navigation, the object of a special article of the contract, not having entered into the line of account at the time of the establishment of the calculation of the guaranty.

It is then a sum of 18,483,000 bolivars that the Government ought to pay to the French Company of Venezuelan Railroads.

The company, through its advocate, claims, besides, the adjudication of interest at the rate of 7 per cent, which in my opinion does not harmonize with the manner in which this indemnification may be estimated. We are now dealing with a simple exchange of values without any consideration of profits or interest.

If the interest were to be estimated would it not be also necessary to take into account, for instance, the products of the exploitation of the line while it was in operation and deduct them from the amount of the indemnity?

My colleague does not share my opinion. He has declared the claim of the company to be groundless and has accorded it only the right to an indemnity of 10,000 bolivars for the damage suffered by the steamer *Santa Bárbara*, and reserved the privilege of claiming from the Venezuelan Government, by presenting the necessary justification, the sums due for requisitions, with the corresponding interest. He has reserved equally the rights of the Venezuelan Government for the fact of the abandonment of the exploitation.

Doctor Paúl has published a "dictamen" which is a regular defense of the Venezuelan State. I have not been able to follow him on this ground, the position of arbitrator not authorizing me, in my opinion, to produce arguments in favor of one of the two parties in the case. Moreover, the company has intrusted to an advocate at the court of appeal at Paris, Mr. Dacraigne, the care of replying point by point to the plea of Doctor Paúl.

It only remains for me to call the particular attention of the umpire to a few observations.

In the first place, I have taken it upon myself to get information *de visu* of the condition of the line from Santa Bárbara to El Vigia. I then went on board the French cruiser *Jouffroy* on the south of the lagoon of Maracaibo. Then I went up the river Escalante as far as Santa Bárbara. There I inspected in detail the establishment of the company, and followed the line on foot for several kilometers. I observed that the company had neglected nothing to place the service of merchandise and passengers in excellent condition. A large rolling stock was found at Santa Bárbara, where the buildings of the company include, besides the passenger station, the depot for merchandise, the director's office, vast storehouses for the materials, and large workshops supplied with machines, tools, and material for repairs of all kinds. In spite of the numerous repairs which these buildings and this material would require after five years of abandonment, they are far from having no value and from being of no use.

In the second place, it is not superfluous to recall that a claim in all points

analogous to the claim of the French Company of Venezuelan Railroads has been presented by the English company of the railroad from Puerto Cabello to Valencia to the British-Venezuelan Mixed Commission which sat last year at Caracas under the presidency of an American umpire.

This English company had likewise ceased its traffic, which it has since resumed, because of the nonpayment of a guaranty promised, and because of requisitions. It obtained, if I am well informed, an indemnity of 7,000,000 bolivars gold. It had been less tried than the French company, whose terminus at Santa Bárbara is upon a river inaccessible to warships, in a region which is entirely out of reach of action of foreign navies, while Puerto Cabello, head of the line of the English company, can be visited by European squadrons.

Finally, while the foreign claimants will receive in gold the amount of indemnities which have been allowed them, the French claimants will have to be satisfied, according to the terms of the protocol of Paris, with the payment in bonds of the diplomatic debt.

Thanks to the concession consented to by the French Government to allow the Venezuelan Government to pay its debts with greater facility, the figure of the French indemnities finds it elf in reality singularly reduced.

The bonds in question having undergone a depreciation of 60 per cent, if the umpire partakes of the opinion of the French arbitrator, it is in reality only a sum of 8,500,000 bolivars in gold which the French company would be entitled to receive and the Venezuelan Government obliged to pay.

The value of the concession or of sums disbursed by the company is far from this amount.

PARIS, September 13, 1904.

ADDITIONAL OPINION OF THE VENEZUELAN COMMISSIONER

I have most carefully examined the brief prepared by my learned colleague bearing date of September 13, 1904, explanatory of his opinion at the sitting of the commission held in Caracas, August 28, 1903. I have also read the brief and the opinion submitted by Maître Dacraigne, which is annexed thereto. But I have not been able to find in either of these documents sufficient reasons, based upon right and justice, to convince me that my opinion submitted at the session above mentioned does not adhere most strictly to the truth as established by facts, as well as to the statutory and common-law precepts which are applicable to such facts in order to find and establish the liability of the Venezuelan Government, while rejecting all that can not be held as good and sufficient grounds for liability. Under such circumstances I am satisfied that the grounds upon which my opinion was based still subsist as strong as ever, and I may say stronger than ever, as the new line of argument introduced by the French commissioner and Maître Dacraigne seems to strengthen my former opinion, as stated.

Both these gentlemen hold as a powerful reason to grant and demand the indemnification under discussion that the agreement made between the Venezuelan Government and the French Company of Venezuelan Railroads under date of April 18, 1896, by virtue of which the 7 per cent guaranty on the capital of 18,000,000 francs was redeemed and the company paid up to December 31, 1895, the amount of her claims due as per balance sheets on the same guaranty and settlement made for *any other and all causes the company may have a right to invoke, was a ruinous agreement* imposed upon the company, which found herself compelled to pass under the *Caudine Forks* of said compact. This new argument is of such character, that it is my sincere belief that no answer whatever is needed in rebuttal. Such argument offers, because of its far-fetched

application, the most telling proof of the scarcity of grounds, real solid grounds, the company has upon which to build the liability of the Venezuelan Government.

I will simply remark that when that agreement — now called *Caudine Forks* by my learned colleague — was entered into, the company, according to the statement of Maître Dacraigne, page 14 of his opinion, found herself in this position:

The *earthquake* of April (1894) left the company as unexpectedly as unfortunately *without resource of any kind*. In order to attend to urgent repairs and work and to procure funds, the company was compelled to make a first issue of 500-franc bonds, drawing an interest of 6 per cent.

On page 12 of the same opinion the following statement is found:

The company issued in this way 4,000, the largest portion of which was held by the Dyle and Bacalan and the Tives-Lille companies. It was agreed with these two companies that the payments made by the state were to be employed in preference for the payment of said bonds. It was therefore in execution of this covenant entered into by the company because of the failure of the state to keep its part of the agreement that in the month of June, 1898, the Venezuelan Railroad Company transferred to the other two companies the *Venezuelan revenues received*.

About the 30th of June, 1898, the general assembly of stockholders ratified such agreement, which was confirmed by the bondholders, *and after payment of all accounts there remained* out of this transaction at the disposal of the railroad company a balance of 200,000 francs as working capital.

If, notwithstanding the fact that the Venezuelan Government had delivered to the company 5 per cent bonds of the 1896 loan to the amount of 4,450,000 bolivars, thus enabling the company to redeem its debt, amounting to 2,000,000 francs, in stock and bonds, the largest portion of which was held by the Dyle and Bacalan and the Tives-Lille Companies, still leaving the company a working capital of 200,000 francs if, I say, notwithstanding that fact, the company was unable to meet the ruinous future events, it is plain that the failure of the company to continue repairs and to defray operating expenses would have taken place sooner.

This clearly shows that the company, in view of its critical financial position in Paris, its credit being completely exhausted, found it advantageous to its interest and to the continuation of the undertaking to accept the propositions made by the Venezuelan Government for the redemption of the guaranty and the payment of the amounts due, which the company agreed to reduce to the amount of 1,950,000 bolivars, fixing the redemption of the future guaranty at 2,500,000 bolivars.

In this agreement made by the French Company because the company found it to be acceptable and advantageous, Mr. Dacraigne finds grounds to hold "without possible discussion" that the French Company is authorized to ask the rescission of the contract and the reimbursement of all the expenses that such action entails, plus the corresponding damages and respective interest. Thus, he says, is justified the claim for the 18 millions expended and the interest as above specified.

Thus the Venezuelan Government, because of the fact that it has canceled its obligations up to the date of the convention, after having paid a heavy sum in settlement of a guaranty which could remain undue and without foundation, as the company was unable to continue operations because of the ruinous future events, must pay again and settle, besides, damages and interests because such had been paid. The Venezuelan commissioner has been unable to find in the legislation of any country, nor in the natural law, anything that may lead

to the acceptance and holding of such kind of liabilities as established either by private or international law.

The French commissioner holds that the Venezuelan Government, as stated in the opinion, would enter into possession of everything the company possesses in Venezuela, and details such possessions as "the line, the buildings, the rolling stock, the maritime property, *in such condition as they are found now,*" and fixes the amount of the indemnity such conveyance would represent at 18,483,000 bolivars.

I have also been unable to find among the documents and papers in the case reasons justifying such forcible transfer, nor any advances whatever on the part of the Venezuelan Government which might lead to the supposition that the Government is inclined to accept such transfer of the property in question in such condition as it is found now for the amount demanded by the claimant company, which the French commissioner grants. Such transactions are always controlled by the convenience of both contracting parties, are agreed upon freely and spontaneously, and can not be the object of a decision of this commission.

I think it my duty to quote, in this connection, the following statement of the French commissioner as having special significance:

The company, through its legal advocate, claims, besides the adjudication of interest at the rate of 7 per cent, which, in my opinion, does not harmonize with the manner in which this indemnification may be estimated. *We are now dealing with a simple exchange of values* without any consideration of profits or interest. If the interest were to be estimated, would it not be also necessary to take into account, for instance, the products of the exploitation of the line while it was in operation and deduct them from the amount of the indemnity?

The Paris protocol by which this tribunal has been vested with arbitration powers by special commission intrusted to the legal representatives of France and Venezuela has narrowed the scope of said commission to a single and solitary point — that of examining and deciding upon the claims for indemnification entered by French citizens for *acts which have taken place* at a certain time. Now, to grant indemnities for *acts which have not actually taken place because of the exchange of values* which were to be made by virtue of a sentence of the commission, would be to substantially alter the terms of the protocol binding the contracting parties and to render the award of the commission nugatory, as it would then involve a violation of the pact which controls the commission.

The *pact*, or, in other words, the free agreement of the parties, by which they agree to submit the examination and settlement of differences arising among them to an impartial third party, controls the whole arbitration proceedings. The *pact* previously agreed to by the contracting parties is, in fact, the essential condition for the institution of arbitration proceedings — is the starting point, the rule to be followed by the arbitrators. The nature of things and common sense thus direct. The arbitrator or arbitrators can not constitute themselves as judges of a question. The limit of the mission intrusted to them grows exclusively out of the will of the parties; having been chosen to apply the law to a question, *they themselves can not create the rule of law and apply it. The pact determines and circumscribes the object of the dispute, * * ** (Pradier-Fodéré, Droit International Public, vol. 6, section 2612.)

The pact as laid down by the French court of cassation in its judgment of January 18, 1842 (Mauny case — see Dalloz, Jurisprudence Générale, Vol. IV, Arbitrage, No. 471, note) —

is the only essential thing to be consulted to decide whether the arbitrators have passed judgment without authority of jurisdiction.

It is true that the claim of the French Company of Venezuelan railroads embodies the sum of 18,430,000 bolivars for indemnities demanded from the Venezuelan Government, and this commission is vested with full authority to determine whether the amount of the indemnities which Venezuela is to pay for such acts as may have directly caused actual damages to the company's property or for actual services such company may have rendered the Government of Venezuela, such damages and services to be fully established and affecting Venezuela's liabilities. Any and all acts partaking of either character, be it *damages* or *services rendered* which the Government of Venezuela should indemnify, falls under the action of this commission.

It was by reason of this application of the terms of the protocol, which I consider the right application, that in my opinion rendered in Caracas on August 28, 1903, I differed from my learned colleague and explained the acts which in my judgment, and in conformity with the proofs furnished by the papers in the case the Venezuelan Government might incur a liability for, concluding my opinion with the following concrete statement:

I am therefore of the opinion that the company is entitled to an indemnification of ten thousand bolivars (10,000 bolivars) and interest at the rate of 3 per cent from October 12, 1899, which the Government of Venezuela will pay for wear and tear of the steamer *Santa Bárbara* while she was in the Government's service; that the company should reserve her action to obtain payment of the bill for freight, transportation of troops, and use of two of her steamers by the authorities of the State of Zuliz, duly made out and vouched for, and that according to the balance sheet of December, 1899, amounted to that date to the sum of 203,529.70 francs, and interest from their respective dates of origin, and that the Government of Venezuela should also reserve the actions and rights that might concern it, because of the suspension of traffic, abandonment of operation, and consequently damages suffered by the line because of failure to maintain and preserve it; and that as far as the other points are concerned the claim should be rejected as groundless. (Comisión Mixta Venezolana-Francesa. Protocolo de 19 de Febrero, 1902. Dictámenes del Arbitro Venezolano. Edición Oficial, 1903, p. 206.)

During the oral proceedings had at the sitting of August 28, 1903 (*ibid.*, p. 211), the grounds for my decision were summarized as follows:

The commissioner for Venezuela considering in opposition —

That the actual reasons of the suspension of operation of the line by the company are of an economic character, as the company was compelled to take such steps because of the lack of traffic due to the state of revolt of the country and because of the impossibility in which it (the company) was placed by reason of its bad financial situation of obtaining the necessary funds to repair the damages caused by the weather to a line built under unfavorable conditions;

That the Venezuelan Government *could not be responsible either for the damages* suffered by the working materials because of voluntary abandonment *nor yet of such damages* as the company may have suffered on account of the state of revolution in the country or by an accident of war;

That the agreement entered into by the company and the Venezuelan Government, in regard to the guaranty stipulated in the contract, has been duly and fully executed and that the company has received the sums resulting from the sale of the bonds which in compliance with the terms of said agreement were delivered to the company;

That the Government of Venezuela has never refused to pay the company the value of the *requisitions* (seizures) and the *damages resulting therefrom* to the material and that the inability of the Government to make such payments because of the exhausted condition of the public funds during the civil war only makes the Government liable for the payment of unpaid interests;

The commissioner is therefore of the opinion that the claim of the company lacks proper grounds and only acknowledges to the company the right to an indemnity for 10,000 bolivars for the wear and tear suffered by the steamer *Santa Bárbara*

while she was in the Government's service and reserves to the company the right to claim from the Venezuelan Government by filing the proper and necessary vouchers the amounts due by requisitions (seizures) and the corresponding interests;

Doctor Paúl reserves for the Venezuelan Government all its rights of action against the company because of the abandonment of the operation of the line.

The French Company of Venezuelan Railroads under date September 28, 1904 — that is to say, one year after the session of August 28, 1903, when the commission closed its labors in Caracas — submitted all the documents in support of the requisitions or services rendered by the railways and the ships of the company to the Government of the State of Zulia up to September 30, 1899. I have examined with due care and attention the bills and annexed vouchers and found correct the balance due to the company by the government of Zulia, according to a communication addressed by the manager to the President of the State on the date aforesaid and found under No. 3 "Dossier Réquisitions — Jacket No. 11." According to said communication and vouchers submitted the balance due amounts to *193,135.95 bolivars*.

In a communication addressed under date of January 18, 1900, by the board of managers of the French company to his excellency the minister of foreign affairs in Paris a copy of which is found in Exhibit 3, document 5, the following statement is made:

We take the liberty to send you herewith a copy of the report of our chief manager, the engineer, Gustave Simon, relating to his mission, which said gentleman delivered to us upon his arrival in France.

Every day that passes since we were *compelled and forced* by the revolutionary events to *suspend* our operations in Venezuela, since October 12, 1899, will render more difficult and onerous the possibility of our resuming operations.

The failure to maintain a road and, above all, a railroad leads to its rapid destruction, especially in a tropical country where vegetation is powerful and of almost instantaneous growth.

* * * We estimate in 300,000 francs the minimum cash amount necessary to renew, before the end of April next, the operation and service of our business.

Now the different debts of the national Government, as well as those of the provincial governments, due to our company may be resumed as follows:

(a) The amount of 300,000 francs, in round numbers, representing *reimbursement of transportation expenses and requisitions* made by the account of the authorities.

The itemized accounts *have been furnished to the authorities* according to forms and decrees.

The largest portion of these bills have received proper official approval.

(b) The amount of 250,000 francs, our minimum estimate of the *indemnification* due by the Government of Venezuela by substantial repairs and damages caused because of its acts to *the whole of our property* during the last revolution.

(c) The amount of 1,050,000 francs which, at the rate of 105,000 francs *per month*, represents the amount of the *indemnification* which the Government of Venezuela owes us because of *suppression by its act* of our traffic during the ten months elapsed between July, 1899, and May, 1900.

We have taken as a basis for this estimate of the *indemnification* the amount of the guaranty of 1,260,000 francs which had been fixed and acknowledged to our company by the concession-contract, duly approved and ratified by the Venezuelan Congress and the President of the Republic.

Let us examine now, one by one, these charges for indemnity requested from the Government of Venezuela under date of January 18, 1900 — that is to say, three months after the abandonment or suspension of operations on the part of the board of managers, on the 12th day of October, 1899.

The first item — that is, the amount of 300,000 francs in round numbers, as reimbursement for transportation and requisitions by the authorities — exceeds in the amount of 106,864.05 bolivars the sum of the balance sheet

submitted by the same board of managers to the authorities on September 30, 1899, or twelve days before the suspension of operations and the delivery of the rolling stock, offices, implements, and other property of the company to the consular agent of France in Maracaibo, Mr. A. I. d'Empaire. The claimant has produced said bills and vouchers before the commission. In this regard, the Government of Venezuela is the debtor of the French Company of Venezuelan Railroads, as per bills and vouchers, to the amount of 193,135.95 bolivars, and interest at the rate of 3 per cent, as established by the company, from the date when it is shown such transportation and requisitions took effect in compliance with the orders of the local authorities of the State of Zulia.

The dates and respective balances are the following, as shown by the examination I have made of the bills in the record of the case:

	<i>Bolivars</i>
Balance approved by the legislature of the State of Zulia, February 27, 1894	2,994.85
Balance approved by the legislature of the State of Zulia, January 23, 1895	6,434.60
Invoice as per statement up to December 31, 1897	15,443.60
Invoice, etc., to May 30, 1898	3,886.00
Invoice, etc., to October 30, 1898	34,618.90
Invoice, etc., to March 3, 1898	6,532.00
Invoice, etc., to April 6, 1899	9,047.00
Invoice, etc., to September 30, 1899	114,679.00
Total	193,635.95

An estimate of the interest on the several balances from their respective dates until that when the company may probably come into possession of the funds by virtue of the execution of the sentence which may be finally passed, a lapse of time which I believe to be reasonably within three months, taking into consideration any inevitable delay, will show that the company in this regard is entitled to the sum of 36,060 bolivars.

Between the amount of 193,135.95 bolivars, which is established by the company's statements, and that of 203,529.70 bolivars, balance in the company's statement of December 31, 1899, as due by the Venezuelan Government at that time, as shown in the report of the board of managers to the stockholders in the company, and to which I have made reference at the conclusion of my opinion of August 28, 1903, there is a difference of 10,393.75 bolivars, to which I find no other explanation in its support than that it represents the price the company has charged the Government of Venezuela for the service of the steamer *Santa Bárbara* during the days intervening between September 30, 1899, and the end of October of the same year, when it appears the steamer was returned to the company after having taken to the island of Curaçao Doctor Andrade, the President of the State, after the so-called "Liberal-Restauradora" revolution. Such amount, even if it does not appear in a specified form, as it should do, I deem to be a fair compensation for the services rendered by the steamer *Santa Bárbara* to the local authorities during the month of October, as, according to documents in the case, the company had suspended since the 12th of the same month all operations in its railroad and steamer service, so that there were no expenses for maintenance of the service.

On the aforesaid amount, which I recognize as also due by the Government of Venezuela, interest at the rate of 3 per cent should be added from October 30, 1899, to the date of the execution of the sentence as aforesaid, so that the amount of the indemnity increases to the sum of 1,767 bolivars.

So that the principal and interests on this amount, as shown, amount to

203,529.70 bolivars as principal and 37,827 bolivars as interest, or, in all, 241,357.70 bolivars.

I do not think that the indemnification which this commission may award the company should exceed such sum for delay in payment of services rendered the authorities of the State of Zulia at different times, because such services as are represented by transportation of employees and troops, both by land and water, during the time intervening between 1893 and March, 1899, the correspondence and other papers submitted in the case show they were a portion of the active and frequent business transactions of the company carried on with the local authorities, originating debits and credits in account current. There is no written or documentary evidence showing that the company did ever press the payment of the periodical balances of the account by means of any of the measures which the law places at the disposal of the creditor to obtain or enforce the payment of what is due him. Under such conditions there was no denial of justice nor has such claim been advanced. On the contrary, from the correspondence it appears that such activity in the account current of the Government with the company during the six years mentioned was of such importance for the latter that it could well afford, as it happens at times in this kind of business transactions, to take into consideration certain circumstances which only the company was capable of appreciating, in order not to institute legal proceedings to compel such payment, but willingly to wait the payment of such sums as fell due.

It must be stated that the delay in the payment of the balances on the part of the local authorities of the State of Zulia only represents in a period of over six years the amount of 78,450.95 bolivars, out of which sum 50,197.90 bolivars belong to the six months elapsed from October, 1898, to April, 1899, preceding the revolutionary events of May of the latter year. It is also worthy of notice that the company has not shown the total movement of its account current with the government of the State of Zulia from the year 1893 up to the month of April, 1899, when the government of the State appears to be the company's debtor to the amount of 78,456.95 bolivars. The company has only submitted to this commission the balances due at certain dates, which do not furnish sufficient data to find out the amount represented by the total volume of the business transactions during the six years in question to indicate whether the government of the State of Zulia is as remiss in the payment of its obligations as represented.

The same documents and correspondence, which I have had before me, show, as has been established, that the larger portion of the total balance for freights and requisitions due by the government of the State of Zulia on September 30, 1899, arises from services rendered by the railways and the steamers of the company to the authorities of the State of Zulia for the months elapsed from May of the same year when the revolution "Libertadora" broke out in the Andes until said authorities were deprived of their power, because of the triumph of the revolutionary party. It was during these months that traffic was suspended on the railroad, because of the interrupted communications with the interior and the complete cessation of all transportation of the products, which made the normal carrying trade of the line in the ordinary course of business transactions. The managers of the line found themselves in an embarrassing position to meet the indispensable expenses for the want of the income produced by such transportation operations, and it was then that the government of the State of Zulia, finding itself under the necessity of defending the duly constituted authorities and to restore public order, made use, as the government was entitled to do and the company bound to allow by the terms of the concession-contract and the imperious military necessity, of the means

of transportation over land and water that the company had at a standstill at that moment because of the lack of mercantile traffic.

Thus the debt created by the authorities of the State of Zulia in favor of the company under such circumstances represents the sole industrial profits the company could have obtained out of its land and water transportation facilities, while the use to which said authorities placed such means of transportation afforded the only possible means to protect and save such property either from the injurious action of a protracted period of idleness or from the risk of being seized and destroyed by the revolutionary party in order to prevent that the Government they were opposing might make use of it.

I do not find that the impossibility said government was in of satisfying the pressing request for payment which the agent for the company in Maracaibo began to urge precisely at the very moment said authorities were, for the same reasons alleged by the company, in want of funds and when the Government was compelled to spend whatever revenues might be collected to defray the expensive operations of war — I do not find, I say, that such impossibility can be made a cause to justify the claim of liability which the company pretends affects the national Government and settlement of which by an indemnity amounting to millions of bolivars has been demanded. If the managing board of the French Company of Venezuelan Railroads found itself compelled to suspend operations because of the lack of funds, and neither the company nor the board of directors can be made responsible for such state of affairs, as it is due, the company avers, to a case of *force majeure*, why is the national Government of Venezuela to be made responsible because the local authorities of the State of Zulia were in the impossibility to make disbursements to the company in payment of its debts when such authorities were also under the *force majeure* of impossibility on account of the war?

In an interview had in Caracas between the manager, Mr. Simon, and the minister of finance, Mr. Olivarría, in September (16), 1899, when for the first time a direct request for a payment on account of the sum due the company by the sectional government of Zulia was made to the national Government, the aforesaid minister of finance gave as a reason for not making the payment then requested lack of funds and impossibility to promise to make such payment in the near future. At the time of this interview the national Government of Venezuela, represented by the president general Ignacio Andrade, was reduced to the capital of the Republic after the armed conflict of Tocuyito, September 12, when the Government forces were defeated by the army under the command of Gen. Cipriano Castro, the present provisional President of Venezuela. General Andrade and those who composed the Federal executive could not at that moment be in a position to satisfy other needs than those the precarious conditions of the disorganized Government exacted as of vital importance. A month after, which was spent in gathering new troops and directing military operations, to which effect new war contributions were levied and requisitions issued on the inhabitants of Caracas for horses, mules, and provisions for the army, General Andrade found himself in the impossibility of continuing the struggle and abandoned the capital, accompanied by some officers and soldiers, on October 19. From these facts, which are in perfect accord with historic truth, by the simple application of common sense free from any passion or prejudice whatever, it is concluded that there has not existed on the side either of the sectional government or of the national authorities any deliberate purpose of doing any injury to the prosperity and the business of the French Company of Venezuelan Railroads by delaying without any justifiable cause the payment of the amounts due.

The liability which by all possible law and by all principles universally

established affects the debtor who does not pay his obligations in due time is solely that of paying interest to his creditor for the time of the delay at the rate agreed upon and, in the absence of an agreement on this point, at the legal rate.

The provisions of the Venezuelan Civil Code, which in this matter agree with those of the French and Italian Civil Codes and with the civil law of all countries, establish that there exist obligations with penal clause when the debtor, to secure the fulfillment of an obligation agrees to give or to do something in case of failure or delay in the execution of such obligation, and that the penal clause is the compensation for damages growing out of the failure to fulfill the principal obligation. (Articles 1175 and 1178 of the Venezuelan Code of 1896).¹

When the government of the State of Zulia made a compact with the French Company of Venezuelan Railroads for the service of transportation of troops, ammuniton, etc., and the requisitions which created the Government's debt, no penal clause was stipulated to secure the fulfillment of the contracted obligation, nor did the Government become bound to pay damages in case of delay in the payment different from those the law in all countries grant the creditor against the *debtor of an amount of money* — i.e., interest either in conformity with the contract or with the law.

The following provisions of the Venezuelan Civil Code mentioned, which agree with the identical prescriptions in the French Civil Code, from which they were adopted, are pertinent to the case:

ART. 1191. The debtor is not under obligation to pay damages when as the consequence of *fortuitous events of force majeure he has failed* to give or to perform that which he is bound to do, or has performed that which was forbidden.

ART. 1192. Damages are generally due to the creditor for the loss sustained or the benefits which he has been deprived of, according to the provisos and exceptions hereunder.

ART. 1193. The debtor is not liable except for such damages *as have been foreseen or that could have been foreseen* the time the contract was made, when the failure to fulfill the obligation is not due to fraud or deceit (*dolo*).

ART. 1194. Even in cases where the failure to execute an obligation *may be the result of fraud or deceit* on the part of the debtor the damages for the loss suffered by the creditor or from the loss of profits of which he might have been deprived, can not extend beyond the *immediate and direct consequences* of the failure to fulfill the obligation.

ART. 1196. When in the obligations *for a certain sum of money* there exists no special agreement, *such damages as are the result of delay in the execution* are indemnified by the payment of *interest at the legal rate*, except when otherwise specified. Such damages are due from the day of delay, the creditor not being under obligation to establish any loss by proof.²

¹ ART. 1175. Hay obligaciones con cláusula penal cuando el deudor, para asegurar el cumplimiento de una obligación, se compromete á dar ó hacer alguna cosa para el caso de inexecución ó retardo en el cumplimiento de la obligación.

ART. 1178. La cláusula penal es la compensación de los daños y perjuicios causados por la inexecución de la obligación principal.

El acreedor no puede reclamar á un mismo tiempo la cosa principal y la pena, si no la hubiere estipulado por el simple retardo.

² ART. 1191. El deudor no está obligado á pagar daños ó perjuicios cuando es á consecuencia de un caso fortuito ó de fuerza mayor que ha dejado de dar ó de hacer aquello á que estaba obligado ó que ha ejecutado lo que le estaba prohibido.

ART. 1192. Los daños y perjuicios son debidos generalmente al acreedor, por la pérdida que ha sufrido y por la utilidad de que ha sido privado, salvo las modificaciones y excepciones establecidas á continuación.

ART. 1193. El deudor no queda obligado sino por los daños y perjuicios que han sido previstos ó que han podido preverse al tiempo de la celebración del contrato, cuando la falta de cumplimiento de la obligación no proviene de dolo.

These prescriptions which are based on universal rules of civil and commercial law of all civilized countries are the only ones applicable to this case. And it is based upon such rules that I have held and do still hold that the Venezuelan Government is not liable to the French Company of Venezuelan Railroads for any other damages for failure to pay the amounts due on the contracts for services rendered, except the payment of the sum of money due for such services and the corresponding interest at the legal rate. To hold otherwise would be to apply to Venezuela a penalty which has not been established by any codes of any of the nations existing under international law. I, therefore, limit the liability of the Government of Venezuela on this account to the amount above mentioned — 241,357.70 bolivars — as principal and estimated interest on the debt.

As the final complement in the discussion of this part of the indemnification claim, I am pleased to quote the high authority of the opinion of my honorable and learned colleague in the American and Venezuelan Commission, Mr. William E. Bainbridge, in the case of Ford Dix against the Venezuelan Government:

Governments like individuals are responsible only for the proximate and natural consequences of their acts. International as well as municipal law denies compensation for *remote consequences* in the absence of *evidence of deliberate intention to injure*. In my judgment the loss complained of in this item of Dix's claim is too remote to entitle him to compensation. The military authorities, under the exigencies of war, took part of his cattle, and he is justly entitled to compensation for their actual value. But there is in the record no evidence of any *duress or constraint* on the part of the military to compel him to sell his remaining cattle to third parties at an inadequate price. Neither is there any special animus shown against Mr. Dix nor any *deliberate intention* to injure him because of his nationality. If the *disturbed state of the country* impelled Mr. Dix to sacrifice his property, he thereby suffered only one of those losses due to the existence of war for which there, is unfortunately, no redress. (Venezuelan Arbitrations of 1903, Ralston's Report, p. 9.)

The same reasoning is applicable to the necessity of the company to suspend operations, which the company made dependent from *force majeure*, because of the lack of revenues during four months by reason of the revolution and the failure of the Government to pay its debts to the company and because after September 27, 1899,

the railroad line was in the hands of the insurgents, and until the day of the suspension (October 12) there were no hopes that the Government would recover the place.

See the notice of the manager announcing to the public that traffic had been suspended published in the newspapers called *El Fonógrafo*, *El Anunciador*, and *La Compañía Francesa*.

The second charge made by the board of directors of the company, resuming the claim for indemnification demanded from the Government of Venezuela, January 18, 1900, reads as follows:

(b) The amount of 250,000 francs, our minimum estimate of the *indemnification*

ART. 1194. Aunque la falta de cumplimiento de la obligación resulte de dolo del deudor los daños y perjuicios relativos á la pérdida sufrida por el acreedor y á los que son consecuencia inmediata y directa de la falta de cumplimiento de la obligación.

Art. 1196. A falta de convenio en las obligaciones que tienen por objeto una cantidad de dinero los daños y perjuicios resultantes del retardo en el cumplimiento, se satisfacen con el pago del interés legal, salvo disposiciones especiales.

due by the Government of Venezuela for *substantial repairs and damages caused because of its acts to the whole of our property during the last revolution.*

In my opinion of August 28, 1903, I granted the claimant company an indemnification of ten thousand (10,000) bolivars and interest from October 12, 1899, for damages caused the steamer *Santa Bárbara* while in the service of the government of the State of Zulia by reason of the revolutionary movement at that time. Said estimate is based on the documentary evidence produced by the company or, in other words, on the estimate of the damages suffered by the steamer, as directed to be made by the French consular agent in Maracaibo, Mr. A. J. d'Empaire, on January 2, 1903, Messrs. Eugene Creutzer, a French mechanical engineer, and Manuel María Soto, a captain in the Venezuelan merchant marine, being intrusted as experts with the appraisalment of said damages. The report of these experts to the consular agent January 2, 1900, which bears the signature of said consular agent, fixes the amount of damages at the sum of *ten thousand bolivars*. There is no other evidence on record purporting to establish the existence of damages to the railroad material of the company, while, on the contrary, from the correspondence of Mr. Decleva, acting as manager of the company, it appears — .

that peace and order reigned on the 7th of June, 1899, according to the reports received from the line.

Under date of June 18 the same manager reports to the company:

I am back after an uneventful trip. In *Santa Bárbara*, in *La Vigia*, along the line, *everything is quiet. The road is in good condition and the material complete.* All our engines have come back to the shops, *even those employed in the ballast work*, which I had pressed into service and kept *by order of the civil and military authorities.*

The only thing that the record establishes in reference to damages sustained by the maritime property of the company, besides the damages done to the steamer *Santa Bárbara*, valued at 10,000 bolivars, is the loss of the steamer *San Carlos y Mérida*, at anchor in the harbor of Maracaibo. The witnesses, Edmond Hainst, Antonio Martínez Peña, and José Vicente González declared at the inquest held by direction of the French consular agent —

that the steamer *San Carlos y Mérida* at anchor opposite the warehouse of McGregor & Co., and of Rafael Morales, had foundered during the evening of the 1st and the day of the 2d of December, 1899, because of the shots received in her hull, both on the port and starboard sides, during the engagement and shots exchanged between the forces under Gen. Cipriano Castro (on the Maracaibo side) and the forces under Gen. José Manuel Hernandez (on the Haticos side).

What is the liability affecting Venezuela for the above-mentioned events? The answer is the same Mr. Evarts, Secretary of State, gave Mr. Hoffman July 18, 1879 (Wharton's Int. Law. Dig., section 224):

As a principle of international law, the view that a foreigner domiciled in the territory of a belligerent can not expect exemption from the operations of a hostile force, is amply sustained by the precedents you cite, and many others. Great Britain admitted the doctrine as against her own subjects *residing in France* during the Franco-Prussian war; and we, too, have asserted it *successfully against similar claims* of foreigners residing in the Southern States *during the war of secession.*

I do not deem it necessary to quote numberless decisions of arbitration courts or commissions in support of the views of the eminent Secretary of State.

Taking as a basis the above-quoted principle, I have not been willing to admit liability on the part of Venezuela for the foundering of the steamer *San Carlos y Mérida*, which was not occupied by the Government forces, but was

anchored in the Maracaibo harbor, unfortunately placed between the belligerent forces during an engagement at a point where the cross fire damaged her hull to the extent that she foundered.

Under such circumstances, the indemnification I have granted for substantial damages to the company's property is limited to what has been established as affecting the responsibility of the Venezuelan Government — i.e., the damages sustained by the steamer *Santa Bárbara* while in the service of the local authorities of the State of Zulia, appraised by experts at the sum of ten thousand (10,000) bolivars. The interest on this sum at the rate of 3 per cent from the date of the return of said vessel, about the end of October, 1899, until the time before stated, represents an amount of 1,675 bolivars or a sum total for the whole item of 11,675 bolivars.

The third and last charge for indemnification contained in the report of the director of the company under discussion is as follows:

(c) The amount of 1,050,000 francs, which, at the rate of 105,000 francs per month, represents the amount of the indemnification which the Government of Venezuela owes us because of suppression *by its acts* of our traffic during the ten months elapsed between July, 1899, and May, 1900.

The above-mentioned allegation is based on the suppression of the traffic of the company, a fact which is attributed to an act of the Government of Venezuela. From all the documents submitted to this commission by the company, the only established fact is that the suspension of traffic from the month of July, 1899, to October 12, of the same year, was due to the state of revolution then existing in the Cordillera de los Andes and localities contiguous to the State of Zulia, such revolution causing interruption of the carrying trade and paralyzation of all such commercial transactions, and that such suspension of traffic from October 12 on was due to the determination taken by the manager of the operations of the company, as published in the newspapers in the State of Zulia, to such causes as were made public by Manager Simon — i.e., the lack of receipts. It is in no way established that the suspension of the railroad and steamer traffic operations since the month of July were due to the direct individual act of the Venezuelan Government, whether by government is understood the one which terminated on October 19, 1899, with the fall of Gen. Ignacio Andrade or the *de facto* government succeeding it under Gen. Cipriano Castro.

Neither the authorities of the government of General Andrade nor the revolutionary forces led by General Castro, which afterwards constituted the government, did ever perform any direct act which may render the Venezuelan Government liable for the suspension of traffic both by land and by water of the company during the months elapsed from July, 1899, to October 12, 1899, while it is fully established that the management directed the suspension of the operations of the lines, and this constitutes an act of its own volition.

Even in the event, *which is not the present case*, that the governmental authorities should have directed the traffic of the trains to stop temporarily because of the needs of war, such determination could not have made the Government of Venezuela incur a liability to indemnify the damages sustained.

There can be no reasonable doubt that it is the right of a government, in situations of danger or organized rebellion and revolution, to take such measures as it may deem proper to prevent the passage of persons, either for travel or business, from one point to another in the localities where there are armed and organized troops of insurrectionists, and to this end it certainly has the right and the power to suspend traffic upon any line of transportation; but this right is coupled with a corresponding duty, which is to make proper compensation to the company in cases other than those where the territory traversed by the railroad is the theater of active warlike operations between armed forces. (Opinion of the Hon. Henry

M. Duffield, umpire in the German-Venezuelan Claims Commission in the case of the Great Railroad of Venezuela against Venezuela, Ralston's Report, p. 636.)

That the authorities of the State of Zulia directed the suspension of traffic on the railroad line, as alleged, has not been established. But even in such case, the operations of war being active precisely within the territory over which the railroad runs, the right to suspend traffic rested with said authorities, the Government of Venezuela not having obligation on that score to indemnify.

The interruption of the ordinary course of business is an inevitable consequence of the state of war, to which both natives and foreigners must submit, and therefore the losses suffered under such circumstances do not create any liability for indemnification to the government of the territory where the war takes place. This is the same rule controlling the case of liability when the property of neutrals suffers a direct injury or is destroyed during an engagement of the belligerent forces.

No government compensates its subjects for losses or injuries suffered in the course of civil commotions * * *. (Hall, 4th edition, p. 232.)

The reason for this is obvious. If the damages suffered by natives as well as aliens in consequence of a war were to be indemnified, the sum total would be so great that whatever the war might have left standing would not be sufficient to indemnify the claimants for direct damages. Payment would have to be made with their own property, and perhaps even this would not suffice.

If governments were under obligations to accept such liabilities as the French Company of Venezuelan Railroads has pretended should be charged against the Venezuelan Government because of the war, claiming for the value of the capital invested in the operation of the Santa Bárbara and El Vígía Railroad an indemnification of 18,000,000 francs, because the state of war compelled the company to suspend operations, suppressing all its revenues, and pretending besides that Venezuela should receive in exchange both the railroad and the maritime property of the company in such a condition as it is now, why should it not be admitted also that all railroad, maritime, commercial, industrial companies, even the undertakers and funeral directors who have been compelled to suspend in Venezuela their active business transactions on account of a state of war, are entitled to transfer to the State their several business properties in exchange for an indemnity equivalent to their working capital? The claim of the French Company of Venezuelan Railroads for 18,430,000 bolivars leads to such absurdity.

The foregoing statements are, I believe, sufficient to firmly establish that the lack of grounds to base the claim for an indemnification upon, larger than the two I have acknowledged, relieves the Venezuelan Government from other liabilities to the French Company of Venezuelan Railroads than —

First. Indemnity for transportation and requisitions as established and estimated interest, 241,357.70 bolivars.

Second. Indemnity for damages to the steamer *Santa Bárbara* and interest, 11,675 bolivars.

Or a sum of two hundred and fifty-three thousand and thirty-two bolivars, rejecting the other claims, as they are not fully established. In this connection I beg to reaffirm in each and every particular my opinion of August 28, 1903.¹

Before closing this paper I desire to be allowed to make two remarks in reference to the opinion submitted by my learned colleague in support of his decision.

The first remark is that the claim my colleague quotes in his opinion of the

¹ See *supra*, pp. 288-317.

English Company of the Puerto Cabello and Valencia railroads,¹ which by the award of the umpire in the British-Venezuelan mixed commission obtained an indemnification of £231,794 7s. 11d., has no similarity whatever with the present claim, as my learned colleague avers, but, on the contrary, it essentially differs as regards the grounds upon which it rests. Such claim, as the honorable umpire knows better than we do, as he passed the final judgment upon the matter, was entered before the commission by the English Government in behalf of the Puerto Cabello and Valencia Railroad Company, demanding from the Venezuelan Government the amount of £319,381 4s. 9d. as arrears on the guaranty that the Venezuelan Government had given the English railroad company, and their interest, besides a small sum for freights. The English Government could not have submitted to an international arbitration court a claim similar to that submitted to this commission by the French Company of Venezuelan Railroads.

The second remark is that it was not Doctor Paúl who published a volume entitled "*Dictámenes del Arbitro Venezolano*" (Opinions of the Venezuelan Commissioner), among which is found that which my learned colleague, with a certain amount of fitness, perhaps, calls "a formal defense of the Venezuelan nation." It is the Venezuelan Government which made the publication, and it may be possible that such step has been taken with the purpose that the French commissioner or the counsel for the claimant companies may have an opportunity to learn as far in advance as possible the arguments therein contained, so as to be able to contradict them with convincing proofs and arguments before the umpire. I will simply say to my learned colleague that it is not our opinions which are to be submitted to the judgment of the honorable umpire. It is the mass of papers and documents around which the claimant has woven the net of its pretensions which will give no little trouble to the honorable umpire to unravel. It is the claims for indemnification against the Venezuelan Government which are to be sifted to attain the ends of justice.

I also submit herewith five exhibits translated into English, marked, respectively, with the numbers 2, 3, 4, 5, and 6, containing several reports from the railroad inspectors during different stages of the construction and operation of the road and during the suspension of traffic, as well as other communications from the company's agents, addressed to the department of promotion (ministerio de fomento) of the United States of Venezuela, relating to the facts dealt with in the present case.

NORTHFIELD, VT., *February 13, 1905.*

ADDITIONAL OPINION OF THE FRENCH COMMISSIONER

After having read the additional memoir presented by my honorable colleague, I can only maintain the position which I took at the meeting of the commission of August 28, 1903, and explained in the prior memoir.

Although Doctor Paúl speaks of my "arguments," I maintain that I have rendered my opinion according to my conscience, as my position as an "arbitrator" requires. The protocol of 1902 gives us the title of "arbitrators" and not "commissioners" or "advocates."

I have no arguments to furnish. I am satisfied to examine those of the company and its defender, Mr. Dacaigne.

I have judged them to be convincing. I have read the two memoirs presented by my honorable colleague, not to combat them, but to find reasons for changing my convictions. After having read them my conviction remains intact.

¹ *Supra*, p. 320, and vol. IX of these Reports, p. 510.

The Venezuelan Government has failed in its contractual obligations in never having paid to the company the guaranty of interest as agreed; it has imposed upon the company, which was forced to accept it, a leonine contract of which judges in equity could not recognize the existence any more than ordinary judges can accord value to a signature given under threat; it has paid the pittance which it has kindly given on this occasion in paper without value; it has used the materials of the company for its needs; it has deprived it of its ordinary resources and employees; it has not even paid the price for services demanded. Consequently it has obliged the company to suspend operations. It is, then, responsible for its ruin, and it owes it an equitable compensation. The manner which I have adopted for calculating this compensation seems to me to be the only one which meets the requirements of equity and avoids, as the spirit of the protocol desires, a new claim being held after the arbitral sentence is rendered. Besides this estimation is made in accordance with the terms of the contract, and in this mode of settlement the Venezuelan Government would find advantages, since it would acquire a concession and a line of railroad at a price inferior to the contract price estimated by itself.

My colleague considers that my decision is contrary to the protocol and that the commission could not pronounce the rescission of a contract. Such is not my opinion. What are the terms of the protocol?

The commission will unite for the purpose of examining "the claims for indemnities presented by Frenchmen." If the two arbitrators "do not agree upon the amount of indemnities to be allowed, the demands will be submitted by them to an umpire," who "will decide without appeal." The protocol says nothing else, and it would be to take from it all the efficacy which the signers wished to give it to restrain the powers of the umpire contrary to the letter and to the spirit of this diplomatic act. The protocol was intended to terminate all the differences existing between Frenchmen and the Government of Venezuela, and has placed no limitation upon the sovereign power of the arbitrators to weigh and decide and, in case of disagreement between the latter, that of the umpire. In pronouncing the rescission, besides, the commission would only cause a condition of fact to be registered, solemnly, and consecrated, the Venezuelan Government having treated the contract in question as nonexisting, since it has never executed its clauses.

Finally, I ought to remark to the honorable Mr. Plumley that Doctor Paúl has not always been of the opinion that the rescission of the contract was beyond the jurisdiction of the commission, since at the sitting of the commission of May 12, 1903, relative to the Pieri claim, he decided that this Frenchman should obtain an indemnity in exchange for the concession which he held of a contract with a municipality. The umpire can refer to the extract of the minutes of the said meeting, which he will find in the *dossier* of the Pieri claim.

As to the foundation of the claim, it is not for me to defend the company of which I am not the advocate but the judge; I can only pray the umpire to go over the *dossier* and the argument of Mr. Dacraigne.

It only remains for me to express a few ideas which are suggested to me by the additional memoir of my honorable colleague, additional memoir which, with the memoir printed in the "Dictámenes," form so well an argument in favor of the Venezuelan Government that the latter has presented no other defense.

In support of his opinions Doctor Paúl cites passages from known authorities and decisions of arbitrators whose science and impartiality I respect; he calls to his aid international law and the law of all countries. I reply that these authors, these arbitrators, and these laws agree in proclaiming that States, like individuals, are bound to keep their engagements solemnly made and to pay

their debts, and are responsible, like individuals, for damages which their faults have caused to others.

Doctor Paúl asks why the Venezuelan Government should not also reimburse their capital to all enterprises, "even funerals," which have suffered in Venezuela from operations of war. And to this question I make the same reply as he: We are agreed upon the above. It is not a question of that in the claim of the French Company of Venezuelan Railroads, which was bound to the Government by a formal contract and has rendered it service worthy of remuneration.

Doctor Paúl maintains that there is no possible comparison between this claim and that of the English Company of Railroads between Puerto Cabello and Valencia. It seems to me, however, that both cases relate to the nonpayment of a guaranty of interest. Only they did not dare, because of the easy access of English fleets to Puerto Cabello, to impose upon the English company the conditions which the French company was obliged to accept under penalty of obtaining nothing for the sums due it. A look cast upon the map of Venezuela is more instructive than all the explanations.

It is also known that France is opposed to using force against the weak to have her rights respected. Besides, the umpire knows better than anyone the claim of the English company, which I have merely heard spoken of, and he will be able, knowing the case, to decide if what has been granted the one can be refused the other because the other is less fortunate or less feared.

Doctor Paúl courteously observes to me that it is the Venezuelan Government that has had the "*Dictámenes del árbitro venezolano*" published, perhaps to permit the French arbitrator and the advocates of the parties to understand its arguments, and besides that the honorable umpire ought to pass, not upon our respective decisions, but upon the claims themselves, of which he ought to become conversant integrally.

On the first point, I reply to my honorable colleague that I have never criticized the publication of the "Dictámenes" — I have no authority at all to do so. I am content to state that this publication emphasizes the character of the arguments of the "Dictámenes" and gives to the French claimants the right of replying, as certain of them have done.

On the second point I am happy to share completely the opinion of my honorable colleague. It will be necessary to remember on this occasion that it is not the first time that we have agreed since we have already settled together, without recourse to an umpire, 72 claims out of the 80 that were submitted to us under the protocol of 1902.

NORTHFIELD, *February 14, 1905.*

OPINION OF THE UMPIRE

July 25, 1887, the minister of public works of the United States of Venezuela, duly authorized, executed a contract with the Duke of Morny, a French citizen, which contract was duly approved by the Congress of that Republic August 3, 1888. It contained provisions which are summarized by the umpire as follows:

The Government of Venezuela conceded to the party above named the right to build a railroad from Mérida to the Lake of Maracaibo; canalizing the river Chamas, the Escalante, or any other navigable river whatsoever; the exploitation and the enjoyment of the revenues of the enterprise for a term of ninety-nine years; a strip of 500 meters of land on each side of the railroad track without payment therefor to be taken from the lands of the nation; the right to avail himself of the lands belonging to individuals which might become

necessary for the construction of the railroad, stations, and the like, in conformity with the laws governing the taking of lands for public use and subject to compensation therefor; the wood and timber necessary for the construction of the works to be taken from the national forest without compensation therefor; the right to introduce into the country free of import duties the engines, material, instruments, and everything necessary for the construction of the line, subject only to proceeding in reference thereto in conformity with the provisions of article 177 of the code of finances; the right of exemption from assessments at all times by the nation and the State; a right to extension of the time allowed for the beginning and the completion of the works when delay was caused by *force majeure*, the entire extension not to exceed one year; a guaranty of 7 per cent on the capital in shares, bonds, or obligations; the right to construct such branch lines as he should deem necessary; the privilege of transferring the contract thus executed to any other person or company at his pleasure on notice to the Venezuelan Government.

The Duke of Morny obligated himself in said contract to begin the said railroad and the canalization of the river, in case it be necessary, within one year from the date of the contract and to finish the line in three years therefrom; to yield up to the Government of Venezuela at the expiration of the said ninety-nine years, without indemnity therefor, the enterprise with all its annexes and properties; to carry the mail free of charge; to transport for one-half the established rates the employees of the Government, its soldiers, troops, and elements of war; to the resolution by the competent tribunals of the Republic, in conformity with its laws, of all doubts and controversies which might arise from the contract.

August 13, 1888, certain declarations and amplifications to the foregoing were made by Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary for Venezuela, to and with the said Duke of Morny, which are summarized by the umpire as follows: The Government of Venezuela thereby and therein conceded to the other party that the railroad from Mérida to Lake Maracaibo was to be divided into two sections; the first section was to start from a point upon the river Escalante, which point the concessionary was to determine, and to be continued for a length of 60 kilometers in the direction of Mérida; the second section was to start from the terminal point of this first section and continue to the city of Mérida; an extension of the time fixed in said modification of the contract for the building of the first section equal to the delay suffered, if the delay was caused by *force majeure*; the guaranty of 7 per cent provided for in the original contract to begin when the first section was opened for exploitation; an extension of the time fixed in this modification to the original contract for the building of the second section was to be made equivalent to the delay suffered, if the delay was caused by *force majeure*; establishing the capital at an estimate of 300,000 bolivars per kilometer for the first section and at 350,000 bolivars per kilometer for the second section, the guaranty of 7 per cent to rest upon the amount of this estimate; to pay the said guaranty in three equal parts at equal periods during the year; to add to the material which was to be imported free of duty under the terms of the original contract the engines, material, and instruments necessary for the running of the railroad; and that during the period of twelve years from the date of the said modification of the original contract the Government would not establish a service of navigation to carry on traffic between the terminal point of the railroad or any points upon the Escalante and the different ports of the Lake of Maracaibo.

The concessionary was obligated therein to begin the work of building the first section of said railroad within six months from August 13, 1888, and to

complete the same within two years therefrom; to complete the construction of the second section within four years from the date named, and to introduce the material which was to come in duty free in conformity with the provisions of the law of finances provided for in such matters.

April 16, 1891, further modifications of the contract were made by the Congress of the United States of Venezuela by and with the representative of the French Company of Venezuelan Railroads, which latter had succeeded to the rights of the original concessionary, which modifications are summarized by the umpire as follows: The Republic ratified in behalf of said company the contract of August 13, 1888, and confirmed the original contracts except where they were contrary to the conditions named in that modification. The company renounced and declared null and void Article X of the contract of August 13, 1888, which gave exclusive navigation privileges on the river Escalante and the different parts of the Lake of Maracaibo. It was mutually stipulated that the concession was to be limited to the first section, which was to extend from Santa Bárbara to Camino Real, a point 1 kilometer distant from La Vigia. The guaranty of 7 per cent was to be reduced by the amount of the net benefits received by the company, these being composed of the net product of the receipts of every nature made by the exploitation of the railroad after deducting the general expenses of the company and of its management; the sums paid on account of said guaranty to be treated as advances only, to be returned as and when the benefits received by the company exceeded 7 per cent on the guaranteed capital by applying one-half of such excess in liquidation of said advances until all was reimbursed; that after said advances had been fully reimbursed the Government was to continue to share in said benefits to the extent of 20 per cent thereof. There was added to the provision in regard to the resolution of all doubts and controversies by the tribunals of the Republic the further agreement that in no case were these doubts and controversies to give place to international claims.

It will be observed that by the modification of the original contract made August 13, 1888, the capital of the company for the purpose of reckoning the guaranty was estimated at 18,000,000 francs.

Following this arrangement a French company was formed September 28, 1888, taking the name of French Company of Venezuelan Railroads, with headquarters at Paris, and its duration limited to ninety-nine years. The concessions obtained by the Duke of Morny were taken over by this company. The social fund was fixed at 300,000 francs, divided into 6,000 shares of 500 francs each; the other resources of the company necessary to the enterprise were to be raised by a loan. The laws of the company provided that from the guaranty of the Venezuelan Government of 7 per cent there should be set aside annually a sufficient sum to insure the payment of interest on the capital which was to be obtained by loans. This guaranty was reckoned to produce 126,000 francs annually on the estimated capital of 18,000,000 francs.

October 26, 1888, the company created 41,664 obligations of a nominal value of 500 francs, each representing 25 francs annual interest.

With the capital thus provided, a syndicate undertook to construct the railway, pay the interest in the meantime, and reserve finally to the company for current funds at the time the first section was ready for exploitation the sum of 300,000 francs. The building of the road was in progress from 1889 to 1892.

It is complained by the company that on April 16, 1891, the Government, by the rule of the stronger, compelled in the agreement of that date, the provisions of which have already been stated, the introduction of the clause into the original contract that there was to be deducted from the amount of the guaranty the actual net profits of the company.

September 29, 1891, the first section was nearly completed and about ready for use, when there occurred a very serious inundation, causing a considerable delay and the expenditure of a large sum of money to reconstruct the parts destroyed. It was April 1, 1892, when the company considered the work of construction completed and demanded of the Government its acceptance. But the State of Andes was then in revolt, while that of Zulia was loyal to the titular Government. A portion of the railroad was in each State. To whom should it apply? Which was its Government?

August 5, 1892, the company made publication in the local papers of the fact of the completion of the railroad and that it had begun business.

The company suffered badly from the insurrection, in requisitions from both sides, in the dispersions of its workmen, in the disappearance of its traffic, while the Government in the midst of this intestine war paid neither requisitions, damages, nor guaranties. The line was repaired from the resources of the company, but it thereby exhausted its capital, and November 1, 1892, judicial liquidation resulted. The creditors accepted the proposition made by the company to pay them pro rata and permitted it to continue its enterprise.

February 23, 1893, the engineer of the Government examined the line and declared it to be well constructed and advised that by April 1, 1893, it would be in a situation to be accepted by the Government. March 23, 1893, the decree of inauguration was published, and on May 10, 1893, the record was made of its definite acceptance by the Venezuelan Government, dated back to April 1 of that year. As a matter of fact, the line had been in operation since 1892, with receipts for that year aggregating 149,241.21 francs, for 1893 the receipts being 570,061.37 francs, and in 1894 they were 458,525.24 francs.

An earthquake in 1894 did great damage to the roadbed and to the bridges, which required large expenditures to restore. The receipts through its traffic were insufficient to meet these expenditures, and the national Government, though repeatedly urged so to do, paid neither guaranties nor indemnities nor requisitions. At the general meeting of the shareholders of the company, held June 30, 1894, its reports showed a claim against the Venezuelan Government amounting to 2,205,000 francs. In fact, the repairs which were required by the earthquake had been made only by the issue of bonds of the denomination of 500 francs, drawing interest at 6 per cent, to be reimbursed by the sums to be received from the respondent Government. On June 20, 1895, the report to the general meeting of the shareholders showed a claim against this Government of 5,820,785.47 francs. In 1894 the company issued 800 of the bonds, which have been mentioned, and in 1895 it made a further issue of 400. In the month of December of this last-named year requisitions by the national Government began again; the financial condition of the company became more strenuous. It sought diplomatic aid through its own Government, but obtained no results. December 31, 1895, it claimed of the Government of Venezuela as follows:

	<i>Bolívars</i>
For guaranty to December 31, 1895	4,725,000.00
Damage to the exploitation	396,924.75
Damage for recruiting its workmen	525,509.57
Requisitions	96,320.00
Damage resulting from the nonpayment of the guaranty for the issue of bonds	1,308,000.00
Total	7,051,754.32

The years 1892 to 1894, both inclusive, were involved more or less in the successful Crespo revolution. It was February 20, 1894, that General Crespo

became constitutional President of the Republic for a term of four years. But it was not until the year 1895 that his authority was everywhere recognized, and up to that time there were occasional revolutionary outbreaks, entailing large expense upon the Government and lessening and interrupting its sources and means of revenue.

The answer of the national Government to the repeated and urgent requests of the company for the recognition and payment of its credits was always a lack of funds, of which fact there could be no real denial. The respondent Government had not, however, agreed to the sums demanded of it by the company.

By 1896 the financial condition of the national Government had greatly improved, and in April of that year, together with Mr. Charles Weber, the duly constituted representative of the French Company of Venezuelan Railroads, it took up the claims of that company. Substantially the same figures were presented to the respondent Government as have been here produced of date December 31, 1895. The consideration and discussion of these affairs resulted in a formal convention made April 18, 1896, when was brought in first a rehearsal of the salient matters of the previous contracts and then the statement of the claim of the company against the respondent Government. This statement is succeeded by the language which follows:

(c) The Government has refused the payment of this guaranty during the time between April 1, 1892 (date upon which the line would have been opened to traffic had it not been for the forced recruiting of workmen), and June 1, 1893, date of the official inauguration; and, furthermore, it has refused the payment of the amount of 2,326,751.32 bolivars, which treats of damages not well founded.

The company, although maintaining in principle the good foundation of the claim, shows itself disposed to make important concessions in view of arriving at an agreement, and after lengthy discussions upon the accounts presented the Government and the company by way of a transaction have agreed upon that which follows:

ART. 1. The company reduces to 1,950,000 bolivars the total amount of all its claims for the guaranty of 7 per cent, liquidated until December 31, 1895, for every other cause which it would have the right to invoke.

ART. 2. For the redemption of the obligation by which the Government has to continue to pay the same guaranty of 7 per cent upon 18,000,000 bolivars guaranteed capital during ninety-nine years, the term of the above-mentioned contract, the company consents to receive 2,500,000 bolivars. Articles 2, 3, and 4 of the said contract of June 17, 1891, become by this fact without force.

ART. 3. The payment of both these amounts is to be made by the Government simultaneously with the present act and by remitting to the representative of the company an order upon the Disconto Gesellschaft of Berlin for the amount of 4,450,000 bolivars in bonds at par of the Venezuelan loan of the Disconto Gesellschaft of 1896 bearing 5 per cent interest annually with 1 per cent amortization, the same order bearing moreover the signed approval of the agent of the Disconto at Caracas.

ART. 4. The representative of the company declares in consequence the nation to be free from every responsibility, as well upon the guaranty of 7 per cent already due as for the obligation to pay this same guaranty in the future, and he will repeat this same declaration in the receipt which he will give to the direction of the Disconto Gesellschaft.

ART. 5. The company binds itself within six months from this date to repair whatever deteriorations have been sustained by the railroad from the changing of the course of the river Chamas, and to keep the line in a good condition for use, in conformity with obligations assumed in the previous contracts, and submitting itself to the penalties which the law inflict in this matter.

ART. 6. In all that which is not opposed to the stipulations of this convention

the rights and obligations resulting for the company from anterior contracts to which reference has been made retain all their force and all their vigor.

Made in duplicate at Caracas, April 18, 1896.

Two days thereafter the ministers of finance and of public works for Venezuela made the following communication:

CARACAS, April 20, 1896.

TO THE DIRECTION OF THE DISCONTO GESELLSCHAFT, *Berlin*.

GENTLEMEN: In conformity with the provisions of article 5 of the contracts of the loans passed between our Government and your direction, the citizen President of the Republic informs you that, in accordance with the contract passed between the national Government and the French Company of Venezuelan Railroads, you will have to remit to the said company the sum of 4,450,000 bolivars in bonds of Venezuelan loan of 1896 at 5 per cent annual interest, with 1 per cent amortization.

It is to be noted that in giving you the receipt for this amount the French Company of Venezuelan Railroads is obliged to make the following declarations:

"That it recognizes as annulled all its credits against the Venezuelan Government for the guaranty of 7 per cent due up to December 31, 1895, and that it renounces absolutely this guaranty during the remainder of the ninety-nine years the term of its concession; that in consequence it declares the nation freed from all responsibilities."

June 27, 1896, there was a general meeting of the shareholders of the French Company of Venezuelan Railroads, and the council of administration made its report. In that report is found the following:

At the beginning of this year, 1896, the Venezuelan Government, being desirous of making a settlement of its debts with the different railroad companies of Venezuela, negotiated with the Bank of Berlin, the Disconto Gesellschaft, for the creation of a loan, called the Venezuelan loan of 1896, bearing 5 per cent annual interest and with 1 per cent amortization, and payable within the term of thirty-six years and a half. The loan was guaranteed by custom-house receipts. The nominal amount of this loan was fixed at 50,000,000 bolivars.

Each of the German, French, English, and other railroad companies were invited by the Venezuelan Government to negotiate simultaneously the payment of what was due them and the redemption of the guaranty which had been conceded. *Each of these companies, after lively debates, accepted the conditions imposed by the Venezuelan Government, harsh as they were, under penalty of seeing themselves eliminated forever from the only combination which might terminate their credit upon this Government.*

Like the other companies, we then accepted the conditions which were imposed upon us. However, we did not authorize our mandatory at Caracas to give our acceptance until after we had taken counsel and received the authority of the controllers appointed by the shareholders.

* * * * *

Seeing the necessity of keeping the social assets up to their full value and with the authority of the controllers appointed in execution of the concordat to represent the creditors, the company has had to issue up to this date 2,500 privileged bonds of 500 francs to procure funds for repairing the line, repairs which are not yet finished.

Recently the Venezuelan Government, having shown a desire to settle with the different companies of railroads in Venezuela, our company, following the example of the German, English, and other companies, sent to Venezuela its formal representatives, and after a long negotiation it succeeded in obtaining from the Government of Venezuela the remittance for the balance of credits and for the redemption of the guaranty for the future of its concession a net sum of 3,200,000 bolivars in bonds of Venezuelan loan of 5 per cent, 1896, above mentioned.

The able patronage of the Disconto Gesellschaft of Berlin assures the actual value of this title.

However grievous such a transaction has seemed to us, we had to resign ourselves, after having been authorized by the official representatives of the share-

holders to accept it, like other railroad companies, as the only means of obtaining any indemnity whatever. * * *

We shall request of you, gentlemen, to ratify the transaction between the Venezuelan Government and your company.

After the reading of this report the shareholders passed the resolution which follows:

The special assembly, after having heard the report of the council of administration read, ratifies the transaction between the Venezuelan Government and the council of administration of the Company of Venezuelan Railroads, assuring regularly the debts of the said Government toward the said company and the redemption of the guaranty in favor of the said company by act of concession which had been attributed to it.

June 25, 1897, there was an annual meeting of the shareholders of the company, and among its proceedings is found a resolution which is here reproduced:

Second resolution. The general assembly, approving the measures taken by the council of administration following the disturbances caused by the inundations which succeeded the earthquake of 1894, authorizes it, so far as it has need, to realize in the best measures possible a complement of the loan voted in 1894, which will be represented by 1,500 privileged bonds of the nominal value of 500 francs, bearing 6 per cent annual interest and redeemable in at least ten years from January 15, 1897, raising thus from 2,500 to 4,000 the total number of these ten-year bonds.

June 30, 1898, there occurred an annual meeting of the shareholders of the company. There was a report of the management of the line for the year then past, from which it is learned that the exploitation suffered a loss of 10,401.75 francs, and that the finishing of the repairs, bridges, buildings, etc., amounted to 499,305.70 francs. There followed certain resolutions, the second of which is here quoted:

Second resolution. The general meeting of the shareholders authorizes the council of administration, first, to remit, July 1, 1898, the full amount of the bonds of the Venezuelan loan, 5 per cent, 1896, which the company possesses on deposit under its name at the Disconto Gesellschaft at Berlin, contra: (a) the remission of 3,619 ten-year privileged bonds, 6 per cent, of the company, (b) a balance in cash of 390,500 francs; second, to call on July 15, 1898, for the redemption at par of 500 francs on 381 privileged bonds, 6 per cent, of the following numbers, and to raise, to meet this payment, the sum of 190,500 francs of the 390,500 francs received as in article 1. The balance of 200,000 francs will be used as current fund. (Numbers of the bonds here given.)

June 29, 1899, there again occurred the company's annual meeting. The directors presented their report, from which is taken the following quotation:

Our railroad has given us an income of 8,966.23 francs, while our service of navigation has caused us a loss of 22,324.83 francs. There is, then, a net loss of 13,358.60 francs. We have finished the repairing of the damages which were caused by the earthquake of 1894 and by the floods which up to 1897 were the consequence. The special expenses paid for this in 1898 reached 149,191.86 francs, which were settled by means of funds at hand; the latter were reduced December 30 last to 51,344.86 francs. The somewhat unsatisfactory results are attributable almost exclusively to the consequences of the political crisis which had been going on in Venezuela for the greater part of the year. * * * Among the 256,126.14 francs of the different debits found in the balance sheet which we are going to submit to you the Venezuelan Government is set down for 174,077.20 francs.

For some months quiet seems to have been reestablished in the country. We hope that with it the commercial situation will resume normal conditions and that our exploitation will profit from it.

The first months of 1899 seemed to justify this hope.

The reimbursement of our privileged bonds has been carried on regularly and in conformity with your decision of June 30, 1898.

Earlier in this opinion the gross receipts of the railroad for 1894 were stated. The net result for that year was 72,332.15 francs. In 1895 the net receipts were 101,676.97 francs and in 1896 they were 102,319.28 francs. In 1897 the respondent Government employed the line to transport its troops and materials, but paid nothing and did not answer the claims presented by the company. As a result the year 1897 showed a loss; similarly, the year 1898.

The 4,000 bonds issued by the company, under authorization which has been quoted, were largely held by the companies Dyle & Bacalan and of Tives-Lille, and with these companies it had always been understood that the payments made by the State were to be used first of all in payment of these bonds; it was for this reason and under the authority above quoted and by reason of the general inexecution of the engagements of the State toward the company, that in the month of June, 1898, the French Company of Venezuelan Railroads turned over to these financial companies the Venezuelan loan of 1896, which was arranged through the Disconto Gesellschaft, of Berlin. And, as has been seen in the quotation last made, there was left for the current use of the railroad company a balance of 200,000 francs. In June, 1898, there was a new revolutionary movement affecting especially the States of Zulia and Andes. The general in charge of the Federal forces drafted the workmen. The director, Mr. Brun, was shot at Santa Bárbara in the midst of a conflict, and died of his wounds; there were requisitions of material, of trains for the transfer of troops, of war material, etc. The passenger and freight service was paralyzed; the claims of the railroad received no attention from the Government; there was no payment for the services and sacrifices required of and imposed upon the company, and its very existence was seriously threatened. It appealed to its own Government, it rehearsed its wrongs and grievances but it obtained no relief. Just as the exploitation began again to yield some income and the revenues of the national Government began to quicken, the successful revolution of General Castro broke out. Requisitions were again in evidence and more than ever before. Destruction was manifest on all sides; grave losses were caused to the boats; while the revolutions took from it its traffic, the Government made requisitions and neither paid anything.

This successful revolution of General Castro which began in the spring of 1899 brought serious disaster to the railroad in many ways. A letter of date October 12, 1899, to the French minister of foreign affairs by Mr. Reynaud of the administrative board vividly portrays the situation. Selections therefrom are quoted:

The political and revolutionary crisis which exists in Venezuela has not diminished in intensity since the last communication which we had the honor of addressing to you August 23 last.

Our property and all our possessions — our railroad material and our boats — have not ceased for several months to be arbitrarily seized or sequestered by the authorities, now said to be legal, now revolutionary. The future of the exploitation of our railroad and boats is grievously compromised in the source of its receipts.

The harvests are destroyed, abandoned, or lost; the workmen are pursued and tracked in the forests; the owners and merchants in flight or ruin.

Finally, our resources are exhausted.

We have been obliged, then, to suspend our exploitation.

It was two days anterior to the date of the above letter that Mr. Simon, general manager of the railroad, informed the citizen president of Zulia in writing that "because of *force majeure*" all operations of the steamers and of

the railroad from Santa Bárbara to La Vigia were suspended. In this communication the *force majeure* referred to is thus explained:

1. All the resources which the company had, whether at Paris or at Maracaibo, have been completely exhausted in paying the expenses of this railroad and its steamer *Santa Bárbara* during all of the revolutions, and then the Venezuelan Government and the insurgents used these means of transfer until little by little they became masters of them.

2. Since September 27, 1899, the revolutionists have again taken possession of the line, and consequently we can have no receipts except from our steamers and of these the Government is constantly taking possession.

3. All our efforts with the national Government at Caracas, as well as with the government of Zulia, to recover the large sums which they owed the company, have had no success, not even for the little sums of 300 and 144 bolivars, which were to be paid October 3, 1899.

4. In these conditions if the company continued the exploitation it would be obliged to go into bankruptcy.

5. *It suspends its exploitations without renouncing its rights on that account upon the concession of the railroad from Santa Bárbara to La Vigia until the special settlement takes place between the French company and the Government.*

A communication to the same effect was sent to the national Government through its minister of public works. In it Mr. Simon stated that the revolution had made it impossible for the railroad to receive any benefit during the months of June, July, and August. It was there stated that in September there was a suspension of hostilities and there were some receipts; but that the new revolution broke out September 27, since which time the traffic had ceased. The use of the steamer plying between Santa Bárbara and Maracaibo had terminated, because of the order of the customs officer forbidding its use and of the confirmation of the same by the president of the State.

The situation is there summarized by Mr. Simon as follows:

1. It is not possible for the exploitation to gain any receipts since the revolutionists are masters; and up to this day, October 10, there is not hope that the Government can retake this city.

2. The Venezuelan Government can not pay the company any of its debts nor even give it an account nor make any promises for the future.

3. The company has no longer any resources, having exhausted everything by which it may meet expenses of the line, while it has made no receipts because of the frequent revolutions.

Considering that this state of affairs has caused it prejudices and enormous damages, and that if it continued its expenses it would be led into bankruptcy, the company sees itself because of *force majeure* obliged to suspend the exploitation of its line and its steamers until a settlement may be made with the national Government of the United States of Venezuela; that the company does not abandon its right upon the concession of the said railroad from Santa Bárbara to La Vigia.

October 22, 1899, by communication of Mr. Simon to the company at Paris it is learned that the archives and records of the company had been locked up in the safes and a detailed inventory had been given the consular agent of France at Maracaibo; that the entire personnel of the boats had been paid and discharged, and the copy of the notice to the public which had been given it through the newspapers was therein remitted. It is added that —

The lack of income during more than four months, together with the revolutions and lack of payment by the Government of its obligations to the company, are the reasons which lead the company to ask for a settlement with the national Government before continuing anew the exploitation.

It appears that since the 27th of September the railway is in the hands of the insurrectionists, and that until this date, October 12, there is no hope that the Government may recover this place.

The Government of France through its foreign office directed its consular agent at Maracaibo to safeguard the interest and properties of the railroad company during its suspension of activities.

December 2, 1899, there was an armed conflict on the shores of the bay of Maracaibo between the forces of General Castro and those of General Hernandez. A steamer of the company, the *San Carlos y Mérida*, was lying at anchor in the bay and the armed forces were so situated toward one another that the steamer lay in their line of fire; as a result the damage to the hull of the steamer was so serious that it sank during the afternoon of that day. These facts concerning the steamer are taken from the report of the French consular agent at Maracaibo in a communication made by him of date December 30, 1899.

January 2, 1900, the appraisers specially appointed for the purpose of estimating the damages suffered by the *Santa Bárbara* while in the service of the national Government made their report, naming these damages at 10,000 bolivars.

January 18, 1900, the French Company of Venezuelan Railroads addressed the minister of foreign affairs of France and referred to its communication of the previous month to the same official and asserted a claim which is reproduced in the additional opinion submitted by the honorable commissioner for Venezuela to the umpire at Northfield, Vt., February 13, 1905,¹ and it need not, therefore, be repeated here.

February 3, 1900, the railroad company addressed itself to the President of the Republic of Venezuela, informing him of the grave disasters which had overtaken the company and declaring that any considerable delay in the settlement of the sums due it from the national Government might prove fatal.

January 18, 1901, the French Company of Venezuelan Railroads, having received no payment from the respondent Government and no encouragement that payment would be made, came to believe that its efforts were forever compromised, and it then presented to the French minister of foreign affairs a claim for 18,000,000 francs, the *ensemble* of the losses which the action of the respondent Government was held to have brought upon it. To this was added the service of the boats, which had been destroyed or injured, and a part of the material of the dredging machine, which had been stolen, making a total of 483,900 francs, deduction having been made of 11,100 bolivars, that sum being the price for which the *Santa Bárbara* and the launch had been sold. This claim was brought to the attention of the consul-general of Venezuela at Paris, whose response was that the new president up to that time had been able to concern himself only with matters political and martial.

It is claimed on the part of the company that in March, 1901, the respondent Government had planned to cede or let the line and its accessories to a Mr. Bolaro, and to that end had appointed a commission for making estimates. The action of the Government met with a very vigorous protest from the company, and if results were intended there were none.

In behalf of the company there is also presented by Counselor Dacraigne in his very able and valuable brief the claim that it was ruined at the hands of the respondent Government; that this ruin was practically consummated by what he is pleased to denominate the culpable removal of the guaranty. He insists that the exchange made between the company and the Government was without any equivalent and was brought about only by such pressure that it was invalid and should be declared a nullity. He also asserts that it should be declared a nullity by default of execution, since the respondent Government

¹ *Supra*, p. 324.

has not paid the arrears of the bonds which it has given the French company in exchange for its guaranty. The respondent Government, as the essential part of that exchange, was to furnish bonds bearing 5 per cent interest, the bonds having no other value than their interest-bearing qualities. The interest not being paid, the bonds were without value; hence there was, in fact, no consideration for the surrender of the guaranty by the company, and the respondent Government having thus failed to perform that which was essential in the contract for the surrender of the guaranty, the company has a right to demand the rescission of that portion of the convention of 1896. He includes in the right of rescission a claim for damages in behalf of the company, which is in the nature of a reimbursement of all the expenses which have been imposed upon it, with interest at 7 per cent. He urges that the guaranty be liquidated from May 10, 1893, up to the date of this award, less the sums paid thereon, with a charge of 7 per cent interest annually for the default. The claim for 18,000,000 francs is presented on behalf of the company in another view. The reasons given are that the respondent Government by requisitioning the material and the personnel of the company deprived it of its rights and its property. The Government had power to take it, but it is equity that the company be reimbursed for it. The damage thus consummated is estimated at the price set upon it by the Congress of Venezuela in 1891, which, it is urged, is the amount of the claim here presented.

Summarized, then, the claim of the French company, as presented by its counsel, is as follows:

1. For the loss of its line the sum of 18,000,000 francs, with interest at 7 per cent upon the capital of 15,000,000.

2. For the loss of its maritime exploitation, the sum of 483,000 francs, with interest at 7 per cent. The interest on both of these items should be reckoned from March 23, 1893.

This résumé of the facts appearing in this claim and forming the body of it is perhaps sufficient to make intelligent the opinions of the honorable commissioners, and later, the views and holdings of the umpire. He thinks that he can best make to appear the divergent paths by which the honorable commissioners approached the questions involved by quoting liberally the record of their proceedings, which is as follows:

The examination of the claim of the French Company of Venezuelan Railroads, presented at the sitting of May 19 last, and amounting to the sum of 18,483,000 bolivars, was then taken up.

The French arbitrator considering: That the nonexecution of the obligations contracted by the Venezuelan Government with the company and the nonpayment of sums which it owed, from the fact of its engagements and its requisitions carried on, have placed the company in the impossibility of continuing its exploitation; that the inspection of the line, of the material, and of the buildings demonstrates clearly that the company had not recoiled before any expense to assure in excellent condition the service of merchandise and travelers;

That the examination of accounts permits to establish that the exploitation would have been remunerative in spite of the obstacles presented by the civil war and the inclemencies of the climate if the Venezuelan Government had paid over the amounts due from it, and that consequently by the act of the Venezuelan Government the company has been deprived of the legitimate benefits which it had the right to hope for;

That according to the said contract the Venezuelan Government having accorded a guaranty of 7 per cent upon a kilomeric value of 300,000 bolivars, has itself implicitly recognized that the value of the exploitation was 18,000,000 bolivars;

That the Venezuelan Government seems to have had the intention to annul the contract and to accord the concession to a new enterprise;

That the company's claim for indemnity for the damages suffered by its maritime service from Maracaibo to Santa Bárbara is perfectly justified;

Decides that the Venezuelan Government ought to pay to the French Company of Venezuelan Railroads the sum of 18,483,000 bolivars demanded by it, on condition that the latter renounce the concession of the enterprise and abandon to the Venezuelan Government its line, its buildings of exploitation and habitation, its stores, and its terrestrial and maritime material in the condition in which they are found, by means of which payment, renunciation, and abandonment the two parties will be free from all their reciprocal engagements and obligations.

The Venezuelan arbitrator, considering on the contrary:

That the true reasons for the suspension of the exploitation of the line by the company are of economic order, the latter having been led to take this resolve because of the lack of traffic due to the troubled state of the country and by the impossibility in which its bad financial position had placed it to obtain new funds necessary to make repairs for damages caused by the inclemency of the weather to a line established under unfavorable conditions;

That the Venezuelan Government could be held responsible neither for damages caused to the material of the exploitation by a voluntary abandonment nor for those suffered from the fact of the troubled condition of the country or of accidents of war;

That the arrangement entered into by the company with the Venezuelan Government on the subject of the guaranty stipulated in the contract has been entirely carried out and that the company has received the sums accruing from the sale of the bonds which have been remitted to it in execution of the said arrangement;

That the Venezuelan Government has never refused to reimburse the company for the requisitions and damages caused by them to the material, and that the impossibility in which it finds itself of making this reimbursement as the result of the penury of the treasury in the course of the civil war obliges it only to pay interest after demand;

Decides that the claim of the company is without foundation.

It recognizes only the right to an indemnity of 10,000 bolivars for damages done to their steamer *Santa Bárbara* during the time when it was requisitioned, and reserved for it the privilege of claiming from the Venezuelan Government by presenting the necessary justifications, the sums due for the requisitions with interest corresponding. It equally reserves the right of the Venezuelan Government for the fact of the abandonment of the exploitation.

Thus disagreeing, the claim was presented to the umpire at a sitting of the honorable commission held at Northfield, Vt., February 14, 1905.

During the sitting of the honorable commission at Caracas and on August 28, 1903, the honorable commissioner for Venezuela presented an able memoir or opinion relating to this case, giving the reasons of fact and equity which prevented him from allowing any of the claim except the sum of 10,000 bolivars for the appraised injury done the steamer *Santa Bárbara* while in the service of the respondent Government. Many of the facts brought out in his opinion are not repeated in the statement of facts preceding, as reference may be had to them as thus set out in the opinion of the said honorable commissioner. The memoir has been of valued service to the umpire.

September 13, 1904, at Paris, the honorable commissioner for France wrote a memoir or opinion in regard to this claim for the consideration of the umpire, in which he reviewed the memoir or opinion of the honorable commissioner for Venezuela and wherein he gave more in detail than is set out in the records of the proceedings at Caracas, the belief which he entertained in reference to this claim and his inability to accede to the position of his honorable colleague. It has been of great value to the umpire in his study of the claim. The services of the eminent counsel of the company, Mr. Dacraigne, have been of large value in placing before the umpire in concrete form the facts of the case and their bearing upon the question in issue. Following the brief of Mr. Dacraigne is

an additional opinion by the honorable commissioner for Venezuela, in which he reviews the utterances of his honored colleague and the arguments of the company's learned counsel.

He also brings to the attention of the umpire the contents of the dossier, réquisitions, jacket No. 11, which, among other things, contains the required proofs from the company concerning its claims against the respondent Government for requisitions, transportation of troops and material, and other services rendered the respondent Government by the company after December 31, 1895, the date of the last settlement. As the honorable commissioner for Venezuela does not question, but, on the contrary, fully accepts the evidential force of the proofs thus adduced, they were not earlier brought into the statement of this case and are not here brought forward, except to name the annual balances, the total, and the conclusion and the allowance which are made by the honorable commissioner aforesaid.

The dates and respective balances are the following, as shown by the examination I have made of the bills in the record of the case:

	<i>Bolivars</i>
Balance approved by the legislature of the State of Zulia, February 27, 1894	2,994.85
Balance approved by the legislature of the State of Zulia, January 23, 1895	6,434.60
Invoice as per statement up to December 31, 1897	15,443.60
Invoice, etc., to May 30, 1898	3,886.00
Invoice, etc., to October 30, 1898	34,618.90
Invoice, etc., to March 3, 1899	6,532.00
Invoice, etc., to April 6, 1899	9,047.00
Invoice, etc., to September 30, 1899	114,679.00
Total	193,635.95

An estimate of the interest on the several balances from their respective dates until that when the company may probably come into possession of the funds by virtue of the execution of the sentence which may be finally passed, a lapse of time which I believe to be reasonably within three months, taking into consideration any inevitable delay, will show that the company in this regard is entitled to the sum of 36,000 bolivars.

Between the amount of 193,635.95 bolivars, which is established by the company's statements, and that of 203,529.70 bolivars, balance in the company's statement of December 31, 1899, as due by the Venezuelan Government at that time, as shown in the report of the board of managers to the stockholders in the company to which I have made reference at the conclusion of my opinion of August 28, 1903, there is a difference of 10,393.75 bolivars, to which I find no other explanation in its support than that it represents the price the company has charged the Government of Venezuela for the service of the steamer *Santa Bárbara* during the days intervening between September 30, 1899, and the end of October of the same year, when it appears the steamer was returned to the company after having taken to the island of Curaçao Doctor Andrade, the president of the State after the so-called liberal (*restauradora*) revolution. Such amount even if it does not appear in a specified form, as it should do, I deem to be a fair compensation for the services rendered by the steamer *Santa Bárbara* to the local authorities during the month of October, as according to documents in the case the company had suspended since the 12th of the same month all operations in its railroad and steamer service, so that there were no expenses for maintenance of the service. On the aforesaid amount, which I recognize as also due by the Government of Venezuela, interest at the rate of 3 per cent should be added from October 30, 1899, to the date of the execution of the sentence as aforesaid, so that the amount of the indemnity increases to the sum of 1,767 bolivars.

As the honorable commissioner for France, in his supplementary statement

made at Northfield, Vt., on February 14, 1905,¹ reviews this additional opinion of his colleague, Doctor Paúl, and does not suggest any error in the figures presented by him as above set out, the umpire has accepted them without carefully studying the original proofs and has adopted them as a basis upon which that feature of the case can safely rest.

The French Company of Venezuelan Railroads contends for an allowance of 18,483,000 francs, (a) on the basis that the Venezuelan Government is responsible for the ruin of the company and that in equity this responsibility carries with it the rescission of the contracts signed between the said company and the respondent Government, as stated in the first paragraph of the opinion of the honorable commissioner for France; (b) on the basis that the French Company of Venezuelan Railroads renounces the concession of the enterprise and abandons to the Venezuelan Government its line, its buildings of exploitation and habitation, its stores, and its terrestrial and maritime material in the condition in which they are found by means of which — payment on the one hand, renunciation and abandonment on the other — the two parties will perform all their reciprocal obligations and engagements, as stated in the record of the proceedings of the honorable commission at Caracas in defining the position of the honorable commissioner for France in regard to the said claim. These two statements of the claim, although differing in form, are understood by the umpire and will be treated by him as in essence one and the same.

In event of failing to impress this view upon the honorable commission the company asks for a large allowance in the way of deferred guaranties and other losses, together with an allowance of the sums approved and accepted by the honorable commissioner for Venezuela. In order to reach the consideration of these deferred guaranties, it urges upon the honorable commission the duty to declare that portion of the convention of April 18, 1896, which refers to the redemption of the guaranty to be null and void, because it was obtained in a manner so conscienceless that it can not be sustained in the forum of equity. If this view is upheld, the honorable commission is asked to pass in detail upon the elements composing this claim.

To take these several propositions in their order, it becomes necessary to consider first the claim of 18,483,000 francs, which is the sum demanded provided the umpire decides in favor of the rescission of the contract.

It would seem to the umpire that the question first occurring is one of jurisdiction — in other words, of competency. For however deeply the sympathies of the trier may be stirred in behalf of those who have bravely struggled and who have seriously lost there is an imperative duty which is primary. That duty is to determine the limits which circumscribe him and keep him within the set and required bounds.

The limits of this honorable commission are found and only found in the instrument which created it, the protocol of February 19, 1902. An arbitral tribunal is one of large and exclusive powers within its prescribed limits, but it is as impotent as a morning mist when it is outside these limits. A reference to the convention which created this commission will disclose its purpose and purview.

Article I declares:

That the first two arbitrators shall meet * * * for the purpose of examining in concert the demands for indemnity presented by Frenchmen for damages sustained in Venezuela, etc.

Article II provides that:

¹ *Supra*, pp. 333-335.

Demands for indemnities other than those which are aimed at in Article I or based upon facts anterior to the 23d of May, 1899, will be examined in concert by, etc

Article II, then, would permit this liberal reading:

The arbitral tribunal here constituted shall meet for the purpose of examining in concert the demands for indemnity presented by Frenchmen for damages sustained in Venezuela, but exclusive of those which grew out of the "insurrection events" of 1892.

The sole scope and sweep of the authority given is to provide indemnities for damages suffered by Frenchmen in Venezuela. It is not defined but it is assumed that its methods of procedure will not contravene the general and established principles of the law of nations, nor its awards be opposed to justice and equity. This much can be assumed, but to assume that it has power to revoke, rescind, modify, or limit the terms of a contract, even so much as by a hair's breadth, is impossible. It was created for no such purpose; it was endowed with no such powers. So far as a Frenchman has suffered damages in Venezuela for which Venezuela is responsible, the indemnities may be stated and the decision be final. The arbitral tribunal thus constituted may, as a means to the end provided, ascertain and declare the responsibility of Venezuela, it may pass upon its own jurisdiction within the scope of its charter, but it can not step in the least outside the path prepared for it, which is and only is the path which leads from damages to indemnities. If the French Company of Venezuelan Railroads and the respondent Government did but agree that rescission should be had, or that abandonment should be made of the concessions and the properties of the company to Venezuela, then this honorable commission might be considered competent to pass upon and establish the indemnities thus required. Otherwise there is incompetency absolute and entire. This commission is not only destitute of primary authority which is enough, but it is equally destitute of all capacity to compel the parties to carry into effect any such award were it made, which is more.

The contracts in issue were mutual and reciprocal and neither party thereto can make abandonment thereof without the consent of the other. The United States of Venezuela does not consent. Therefore the French Company of Venezuelan Railroads can not, by right, abandon its contracts or its properties.

If it be held that the respondent Government has wrought the utter ruin of the company and that this was done in a manner and by means which charge upon the nation the full measure of responsibility, then there is a case for damages only, and the sum awarded might be — it is not said would be — the sum of 18,483,000 francs, the amount claimed. But it is always and only on the basis of indemnities for damages that this honorable commission has jurisdiction, and it is utterly powerless, even for good cause, to decree an unaccepted and unacceptable abandonment by either party of a mutual and reciprocal contract, or to award an act of rescission which has not, in effect, previously taken place.

The umpire finds ample warrant for his conclusions regarding his powers in the authorities to which he makes reference, and that their pertinency may at once appear he quotes briefly:

The authority of the arbitrator * * * is derived exclusively from the submission, and every part of it, as well as the documents referred to therein, must be taken into consideration in order to determine the extent of such authority. *2 Am. and Eng. Encycl. of Law, 669 (2d ed.)*

It has been held that the arbitrator can consider only the precise question submitted to him, that he can neither modify the question nor add other controversies to it, no matter how cognate to the matter submitted. *Id., 671.*

However, it is within the arbitrator's power to award in regard to all matters which are necessarily or properly incidental to, or included within, the terms of the submission, etc. *Id.*

But he can not lawfully go beyond the terms of the submission in order to do general justice. *Id.*, 672.

For this honorable commission to order something to be done which would cause damage to the party obeying the order and then to award damages therefor would be opposed to the terms of the convention. It would be an independent act posterior to the convention, and were this to be done by the umpire it would require a payment by Venezuela to the claimant company for damages in fact suffered in the United States of America at the hands of the umpire.

A submission of all matters in difference means, as a rule, all matters in difference *down to the date* of the submission *but not after*. *Id.*, 610.

The umpire can not entirely ignore the restrictive features of the contract between the claimant company and the respondent Government, which in terms and in fact strictly required and still requires that all doubts and controversies arising from that contract should be resolved by the competent tribunals of the respondent Government. Certainly to consider and determine the question of its rescission is the most serious doubt, the most important controversy, which could grow out of or arise from the contract in question. A claim for damage may be regarded as ulterior to the contract, especially where the damage has accrued from the operation of the parties under the contract, but the question of its rescission is an entirely different proposition. The unrestricted agreement to submit to an arbitral tribunal the question of damages suffered by Frenchmen in Venezuela may properly be considered, if necessary as equivalent to a suspension of the provision in the contract, were the damages claimed to be such as arose or grew out of the contract; but the agreement to submit a question of damages arising through operations performed under a contract, in no sense suggests a purpose to arm that tribunal with plenary power to consider and settle the question involved in the rescission of a contract, and therefore does not suggest an intent on the part of the high contracting powers to ask on the one hand or to grant on the other the suspension of the restrictive features referred to, which are contained in said contract. What is here said concerning the matter of rescission applies with equal force to the matter of abandonment. It is therefore the deliberate and settled judgment of the umpire that he can not determine this claim on the basis of a declared and directed rescission or of abandonment, and can only decide the amount of the award, this to depend upon the ordinary bases of damages which have been suffered in Venezuela by the French Company of Venezuelan Railroads at the hands of those for whom the respondent Government is responsible.

By the claimant company the redemption of the guaranty as settled by the compact of April 16, 1896, is declared void in equity, (a) for want of adequate consideration and as being made against the desire of the company and under the irresistible compulsion of circumstances which were availed of by the respondent Government to drive a bargain so hard and so unconscionable that it should be set aside by this tribunal; (b) as a default of the Government in neglecting to meet its obligations of interest as they fell due upon the bonds which were given to redeem such guaranty, being a total failure to comply with and carry out the terms of that agreement which renders the agreement itself nugatory and void; and for these reasons the rescission thereof should be declared by this honorable commission.

The agreement effected to redeem this guaranty of the French Company

of Venezuelan Railroads was only a part of a general plan introduced by the United States of Venezuela in 1896, to be made applicable to all similar enterprises wherever located in that country and by whomsoever exploited. To this end it had arranged with the noted and conservative German house, the *Disconto Gesellschaft*, to float a loan of 50,000,000 bolivars, secured upon the custom-houses of the nation and bearing 5 per cent interest annually, the proceeds of said funds to be devoted to the purpose named.

It was accepted generally by the different guaranteed enterprises, the claimant company being one of the several.

Examination of the reports made by the company to the shareholders at its annual meetings for the years 1894, 1895, and 1896 shows a successive and continuing ability on the part of the claimant company to raise money by loans. June 27, 1896, was noteworthy in this regard, since at this annual meeting successful provision was made for floating a loan of 1,300,000 francs. In 1895, the year preceding the redemption of the guaranty, there was raised by loan 200,000 francs, and in the year 1897, a year and more succeeding the settlement, there was negotiated a loan of 1,500,000 francs. Hence it was not an overwhelming financial necessity which confronted the company nor an utter inability to obtain money otherwise which compelled the acceptance of the offered redemption.

The redemption of the guaranty on the terms provided did not mean, on the part of the claimant company, the relinquishment of 1,260,000 francs annually for the sum of 2,500,000 francs in hand. It was only the relinquishment of such sum, if any, as might remain when the net annual revenue was deducted from this annual guaranty.

The net revenue had been growing for the years prior to April 16, 1896. In 1894 it was 72,332.15 francs; in 1895, 101,676.97 francs. Both parties had contemplated and apparently believed that it would finally exceed the guaranty and had provided for that contingency, as will be seen by reference to the contracts which arranged to meet and eventually to cancel the guaranty which had theretofore been paid, directing that one-half of the net annual revenue in excess of 1,260,000 francs be used in payment, and also agreeing that after the said advances had been canceled fully the respondent Government should continue to enjoy 20 per cent of such excess in perpetuity. By this redemption the right of Venezuela to participate in any way in the net profits of the company was canceled. That this right was considered as of some value is evident or it never would have been placed in the contract. In fact, by its terms the annual guaranty was only in advance, an indebtedness of a peculiar character, payable only in certain contingencies and in a particular way, but still it was an indebtedness. By the agreement constituting the redemption these conditions were all changed, to the effect that the arrears then provided for and the 2,500,000 francs then paid were not debt producing, but debt reducing. They were gifts; purely and simply, so far as any duty of repayment was concerned. In another sense they were not gifts. They were the nation's estimate of the value of the railroad and the steamboats to its commerce and to its agriculture, also to the means of communication between different parts of the country. The transaction itself was open, the negotiations lengthy, the time for reflection ample. The cooperation of the directors of the company and of the representatives of the creditors was solicited and received, and all was done with due deliberation under circumstances which permitted entire freedom of will and of action. The approval just mentioned took recorded form on June 27, 1896, after a lapse of more than two months and after a full and explicit report of the action taken, with the reasons therefor fully set forth. It was referred to approvingly at the annual meeting of 1897, and on June 30, 1898, two years and two

months after the agreement of redemption was made, the bonds which had been issued in accordance with that agreement were appropriated by the deliberate action of the company to the payment of a special indebtedness. They were accepted by two of the vigilant and sagacious financial houses of France in place of the obligations of the company. There are apparent none of the features which accompany and signalize bargains which the courts undertake to set aside. The freedom of contracts is one of the bulwarks of business, and courts are loath to interfere where a contract is executed and where are lacking the elements of fraud or mistake, and where it rests upon the mutual assent of parties intelligent, competent, and free to contract.

It is elementary law that every person of sound and disposing mind and under no legal disability has the absolute right of disposing of his property in any way not expressly or impliedly forbidden by law and to any person legally capable of taking it.

Hence, where a person competent to convey has fairly and knowingly made a complete conveyance of his land to another person competent to receive it, and no fraud, accident, mistake, or undue influence was involved in the transaction, the fact that the conveyance was wholly voluntary and without consideration constitutes no ground for rescinding the conveyance and canceling the deed; and in such a case the fact that the disposition of the property was unwise, improvident, or absurd will not be considered by a court of equity. *24 Am. and Eng. Encycl. of Law, 611 (2d ed.)*.

Where the contract has been fully and voluntarily performed before relief by rescission is sought, it is only where the most forceful reasons exist for granting equitable relief that a court of equity or a court exercising equitable powers will interpose to decree the rescission of the contract, etc. Indeed it has been frequently held that nothing short of actual fraud or mistake will justify the court in granting rescission of an executed contract. *Id., 612*.

Although the consideration of simple contracts and of certain forms of real conveyances must be valuable, it is not essential that the consideration should be adequate in point of value. The law does not weigh the *quantum* of consideration, deeming it unwise to interfere with the facility of contracting and the free exercise of the judgment and will of the parties, but allows them to be the sole judges of the benefits to be derived from their bargains, provided there be no incompetency to contract and the agreement violates no rule of law. *6 Am. and Eng. Encycl. of Law, 694 (2d ed.)*.

The final appropriation and use of the redemption fund after such length of time, after such opportunity for observation, investigation, and reflection, without a murmur of dissent in the meanwhile or a request for rescission or an offer to restore the *statu quo* is too palpably a solemn acceptance to admit of doubt, while the absorption of the funds precludes return. There is also no offer to restore. If there were such offer this honorable commission has no power to compel its acceptance.

Moreover, in order to render valid the compromise of a claim, it is not essential that the matter should be really in doubt. It is sufficient if the parties consider it so far doubtful as to make it the subject of a compromise. *6 Am. and Eng. Encycl. of Law, 713 (2d ed.)*, citing *Union Bank v. Geary*, 5 Peters (U.S. Sup. Ct.), 99.

The parties to a contract may at any time rescind it, either in whole or in part, by mutual consent, and the surrender of their mutual rights is a sufficient consideration. *6 Am. and Eng. Encycl. of Law, 729 (2d ed.)*, note.

An agreement by one party to a contract, at the instance of the other party, to modify its terms, is a valuable consideration. *Id., 738*.

A prepayment of interest before it is due is a valuable consideration for an agreement to extend the time of payment. (Summarized.) *Id., 704*.

It is a valuable consideration if the promisee, having the right to refuse permission, is moved by the promise to allow a certain thing to be done. The question is not, did the promisor derive any benefit from the permission or did the promisee

suffer any detriment from giving it? but merely was it something the latter had the right to refuse.

Consideration arises from the permission, irrespective of the benefits derived from it. *Id.*, 741.

The umpire is unable to accept the contention of the claimant company that the respondent Government was the sole cause of its ruin. This is nowhere asserted, or even suggested, by its agents and managers during the progress of the events which culminated in its suspension, nor until the lapse of many months thereafter. It is entirely opposed to the expressions of Mr. Reynaud, of the administrative board of the company, in his careful and analytical statement of the claims of the company on February 3, 1900, since which time it is not claimed that there is to be found any direct injury received from the respondent Government, unless it occurs in its delay to pay its debts. The claim then put forth was (a) payment of 300,000 francs as the full amount due for expenses of transportation and requisitions on account and by order of the authorities of the nation and the States; (b) payment of the sum of 250,000 francs, estimated as the minimum amount of the indemnity due for damages which had been occasioned upon its property; (c) the sum of 105,000 francs a month on account from July 1, 1899, to indemnify the company for the loss which it had suffered since that date from the almost absolute suppression of its traffic and for the immobilization of its railroad and boats. This sum is obtained by taking the amount originally stipulated as an annual guaranty, viz, 126,000 francs, and dividing it by 12, the number of months in a year, the quotient being 105,000 francs. This communication from its authorized agent must be taken as the voice of the company speaking its honest and deliberate convictions and asserting its claims in their most broad and comprehensive sense. This statement was made when all the facts were fresh in the minds of both parties and when there were no reasons for concealment, reservation, or dissimulation. The umpire will accept it as the maximum of the claimant company's demands for those matters which had occurred at that time. He will allow so much of the 300,000 francs as he ascertains to be well founded. He will grant so much of the 250,000 francs as is determined to exist in a claim properly attributable to the respondent Government. He will allow nothing of the claim for 105,000 francs a month, as he finds no lawful responsibility in the respondent Government. It can not be charged with responsibility for the conditions which existed in 1899, prostrating business, paralyzing trade and commerce, and annihilating the products of agriculture; nor for the exhaustion and paralysis which followed; nor for its inability to pay its just debts; nor for the inability of the company to obtain money otherwise and elsewhere. All these are misfortunes incident to government, to business, and to human life. They do not beget claims for damages.

The claimant company was compelled by *force majeure* to desist from its exploitation in October, 1899; the respondent Government, from the same cause, had been prevented from paying its indebtedness to the claimant company. The umpire finds no purpose or intent on the part of the respondent Government to harm or injure the claimant company in any way or in any degree. Its acts and its neglects were caused and incited by entirely different reasons and motives. Its first duty was to itself. Its own preservation was paramount. Its revenues were properly devoted to that end. The appeal of the company for funds came to an empty treasury, or to one only adequate to the demands of the war budget. When the respondent Government used, even exclusively, the railroad and the steamboats it was not outside its contractual right nor beyond its privilege and the company's duty had there been no contract. When traffic ceased through the confusion and havoc of war, or because there were none

to ride and no products to be transported, it was a dire calamity to the country and to all its people; but it was a part of the assumed risks of the company when it entered upon its exploitation.

When revolution laid waste both country and village, or seized the railroad and its material, or placed its hands upon the boats and wrought serious injury to all, it is regrettable, deplorable, but it is not chargeable upon the respondent Government, unless the revolution was successful and unless the acts were such as to charge responsibility under the well-recognized rules of public law. These possible disordered conditions of a country are all discounted in advance by one who enters it for recreation or business. It is no reflection upon the respondent Government to say that the claimant company must have entered upon its exploitation in full view of the possibility, indeed, with the fair probability, that its enterprise would be obstructed occasionally by insurgent bands and revolutionary forces and by the incidents and conditions naturally resulting therefrom.

The honorable commissioner for Venezuela allows, as has already been shown in this opinion, 241,357.70 bolivars. This includes interest on the annual balances appearing in the claimant company's statement to the national and sectional governments, also interest for the use of the steamer *Santa Bárbara*.

The umpire sees no reference by the honorable commissioner in his additional opinion to the appraised damage done the steamer *Santa Bárbara*, which said honorable commissioner allowed in his original opinion. The umpire, by a cursory examination of the vouchers which support the claims allowed by the said commissioner, does not find that it is included therein. Hence the umpire concludes that there can be no mistake in adding that sum, with interest from October 1, 1899, which makes an amount of 11,750 francs. The sinking of the steamer *San Carlos y Mérida*, as stated by the consular agent of France, was, without doubt, an accident of war. No circumstance is suggested which takes it out of the usual rule of nonresponsibility on the part of the respondent Government, and hence it must be disallowed.

The injuries done the railroad, the buildings and the material, by use in war, must have been considerable, and since the revolution was successful, the respondent Government is properly chargeable for its use and for the injuries and damages which resulted. There is no question as to the liability of the respondent Government for the natural and consequential damages which resulted to the railroad properties while they were in the use and control of the titular Government. Hence there is unquestioned and complete responsibility on the part of the respondent Government for all the necessary, natural, and consequential injuries which resulted to the railroad and its properties when used by either the revolutionary or the governmental forces. The umpire is destitute of data upon which he can safely base his judgment as regards the just amount of that damage, but that it is considerable is unquestionable.

He will approach the subject, however, from another standpoint. It is not right that the claimant company be paid only the regular one-half rate for services performed at such times and under such circumstances. There is no clear proof just how much this service was, and any conclusion can in fact be only conjectural and at best only approximate. The umpire accepts as the best basis obtainable the last item of charge, viz, 114,679 bolivars. He assumes that this represented the usual charge to the Government at one-half rate. He considers full rate as none too much and he adds to the sum allowed by the honorable commissioner for Venezuela 114,679 francs and interest, which he reckons at 20,069 francs, making in all 134,748 francs. Where the respondent Government can be charged with no other offense than a neglect to pay its debts through inability so to do, no greater responsibility rests upon it than the

payment of interest for the delay thus caused. Such is the situation in this case, as it appears to the umpire.

The facts brought upon the record, the facts placed in this opinion, do not disclose any relation of the respondent Government to the claimant company which makes the former chargeable financially for the ruin of the latter; and the award can not, in justice and equity, be placed upon any such basis. The several sums allowed for the different causes mentioned constitute the maximum amount which can be named in the sentence. The aggregate of these sums is 387,875.70 francs, and the award will be prepared for that sum.

NORTHFIELD, *July 31, 1905.*