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Brewer, Moller and Co. (second case)

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Tonono, he issued a manifesto, taking for the standard of his armed movement the restoration of the constitution he alleged had been violated by the high powers of the nation. General Hernandez was still in prison in San Carlos fortress, but many of his followers joined in the Castro insurrection. On the day after General Castro made his triumphal entry into Caracas, he set at liberty the political prisoners whom the government of Andrade had imprisoned, and among them General Hernandez, leader of the first nationalist revolution, and appointed the latter his minister of public works. A few days thereafter Hernandez left Caracas by stealth, accompanied by the forces of Gen. Samuel Acosta, his companion in arms in the first nationalist revolution, and proclaimed a revolution against the government of General Castro. It was in this last revolution that the injuries complained of occurred. He was again defeated, and on May 27, 1900, imprisoned in the fortress of San Carlos for some time. He remained there until the 11th of December, 1902, when he was set at liberty under the proclamation above referred to and came to Caracas, to parley with General Castro. He has since then supported the Government and has been sent to represent it as minister to the United States.

The claim therefore falls within the decisions in the cases of Van Dissel & Co., No. 11, and John Roehl, No. 31, and is disallowed.

BREWER, MOLLER & CO. CASE (second case)

Beckman case (*infra*, p. 436) affirmed.

Faber case (*infra*, p. 438) affirmed.

Meaning of "local legislation" and "technical objections," as set forth in protocol.

DUFFIELD, *Umpire*:

The claim in this case is for 843,705.36 bolivars, made up of the following items:

1. War duties.
2. Acts of piracy.
3. There is no proof of item 3 and no reference to it in the expediente.
4. The debt of the State of Zulia.
- 5 and 6. Injuries to and seizures of property by Government troops and revolutionists.

Part of 7 and all of 8. Damages caused by the closing of ports on the Catatumbo and Zulia rivers.

Part of 7. Stoppage of mails in connection with the closing of the ports on the Catatumbo River.

9. Share of claimant in the claim of the Lake Maracaibo and Catatumbo River Navigation Company.

Of these items 1 and 2 were disallowed by agreement of the Commissioners; 5 and 6 allowed by agreement of the Commissioners at 33,958 bolivars.

Item 4, for the debt of the State of Zulia, is allowed by the umpire under the decision in the case of Beckman & Co., No. 47, in the sum of 53,296.67 bolivars.¹

Part of 7 and all of 8 are disallowed by the umpire under the ruling in the case of George Faber, No. 53.²

The remaining portion of item 7, for damages alleged to have been suffered by the interruption of the postal service in connection with the closing of the ports on the Catatumbo River, 75,000 marks, is, in the opinion of the Commis-

¹ See *infra*, p. 436.

² See *infra*, p. 438.

sioner for Germany, a valid claim against Venezuela and should be allowed. He is of the opinion that the stoppage of the mails is in violation of the International Postal Union treaty of Washington.

It appears from the statement of the claim that following the closure of the ports on the rivers Zulia and Catatumbo this stoppage of mails occurred. It is evident that the established postal route between Maracaibo and Cucuta was necessarily abrogated by this action of the Government of Venezuela, and it is difficult to see how a claim can be sustained before this Commission on this ground. However, it clearly appears from the "expediente" that there is no proof of any special elements or items of damage to the claimants upon which any calculation or legal estimate of the amount of damage they suffered in consequence can be made. In the absence of any such proof, therefore, the sum claimed can not be allowed.

Item 9, 98,240 bolivars is for the claimant's share, 25 per cent of the credit which the Lake Maracaibo and Catatumbo River Navigation Company have against the Government of Venezuela. It is agreed by the Commissioners that this credit amounts to 162,218.03 bolivars. But it is claimed by the Commissioner for Venezuela that claimants have no legal interest therein. In support of this contention he cites the Venezuelan Code of Commerce, page 388, articles 242-247. The first five articles describe "Associations of accounts in participation" (Asociaciones de cuentas en participación), and the rights and liabilities of persons interested therein. Article 247 exempts these associations from the formal requisites required from companies by articles 162, 163, and 168.

By article 242 the party giving participation in the profits or losses of his business on one or more operations thereof is the managing agent, and by article 244 the persons participating in the profits or losses have no right of property in the effects and property of the association, not even in that which they themselves have contributed. Their only right is to have an account of what they have contributed in the losses or profits of the operation. By article 245, in case of failure, they are placed in the column of creditors in case their contribution of capital exceeds its proportion of losses.

It is agreed by the Commissioners that there is no regularly formed association or partnership known as "Lake Maracaibo and River Catatumbo Navigation Company," but that the concern popularly so known is in reality Piñedo, García & Co., Brewer, Moller & Co., Luciano Añez & Co., and Van Dissel & Co. On the 1st of October, 1900, they formed this association by the articles of agreement marked "Exhibit 6" in the "expediente." Under them Piñedo, García & Co. are made administrators and have entire charge of the management of the business and the control and conduct of its properties, and in all respects appear to be the "merchant" — "comerciante" — described in article 246 of the code of commerce above referred to. Under these circumstances the umpire is clearly of the opinion that none of the other parties to the agreement of October 1 have, in the language of article 244, "any right of property in the effects of the association, not even in those in which they themselves have contributed."

But it is claimed by the Commissioner for Germany that under the precedents of decisions by former international tribunals co-owners of property such as the "owners of commercial funds may enforce their several interests in a claim in a diplomatic proceeding," and that the objection of the Venezuelan Commissioner that "the company can only figure as an entity," and that it is inadmissible to award their parts to each of the partners, is a technical objection, lacking support in international law; and, further, that the provisions of Vene-

zuela are not binding on this Commission under the protocol which requires that it disregard provisions of local legislation.

Taking up these objections in their inverse order —

First. The umpire is of the opinion that the articles of the code in question are not local legislation within the meaning of the protocol. The parties to the protocol primarily intended by these words, it is quite evident, that Venezuela should be estopped from insisting upon the general provision in her law requiring foreigners as well as citizens to present their claims against the Government to the courts of Venezuela. Incidentally, of course, like provisions of local legislation were intended to be excluded; but it can not be presumed that all the laws of Venezuela with reference to the formation of corporations or of partnerships, or of limited associations, or in respect to the rights and obligations of holders of real estate were so included. Neither can it be reasonably presumed that it was intended to estop Venezuela from invoking the provision of local legislation to which foreigners, by associating themselves with Venezuelans, and by their voluntary and solemnly executed consent, had agreed. A fortiori must this be the case under circumstances like those under consideration, where, by the agreement between the foreigners and the Venezuelan citizens, the foreigners expressly stipulate that all right of property in the effects of the association shall be vested in the Venezuelan citizen.

Second. The umpire is unable to regard the objection of the Commissioner for Venezuela as a technical one, in the sense of the protocol. Certainly under the protocol this Commission can not take jurisdiction of a claim which is not owned by a German subject, and if, as has been stated, Piñedo, García & Co. were the owners in law of the property, and their German associates have only a right to an accounting for their contribution and its profits, they are not the legal owners of the debt or of any interest therein.

It appears by the code of commerce above cited that in case of failure of the "merchant" — *comerciante* — with whom they are associated they would be required to suffer the loss of their entire contribution of capital, if that should be the proportion of the total losses, after which they would be considered creditors pro tanto their contribution. It is therefore in law entirely uncertain whether they will receive, upon an accounting, any part of the claim against the Government.

In a case where all of the parties interested are foreigners, and therefore all of them are competent to associate themselves together in such a manner as has here been done, without need of or regard to the provisions of Venezuelan legislation, quite a different question would arise. The question, however, does not arise in this case, and it is not necessary for the umpire to decide it. He therefore expresses no opinion upon it. The item will therefore be disallowed without prejudice.

The claimant will therefore be allowed the amount of items 5 and 6, agreed to by the Commissioners at 33,958 bolivars, and 53,296.67 bolivars, allowed by the umpire on account of the debt of the State of Zulia, aggregating 87,254.67 bolivars, without interest.

CHRISTERN & CO. (LIQUIDATORS) CASE

Assignees for the benefit of creditors considered purchasers for value and entitled to recover, although claim in its origin was not entirely German.

DUFFIELD, *Umpire*:

It is conceded that the claimants are the properly appointed and lawfully authorized assignees for the benefit of the creditors — *liquidadores* — of Minlos.