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**Boffolo Case (of a general nature)**

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From the foregoing it appears that the claim must be dismissed, but without prejudice to any right the claimant may have to present his claim in Venezuela courts or elsewhere against persons guilty of any legal wrong so far as he is concerned.

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BOFFOLO CASE

(By the Umpire:)

A state possesses the general right of expulsion; but —  
 Expulsion should only be resorted to in extreme instances and must be accomplished in the manner least injurious to the person affected.<sup>1</sup>  
 The state exercising the power must, when occasion demands, state the reason of such expulsion before an international tribunal, and, an insufficient reason or none being advanced, accepts the consequences.  
 The only reasons advanced in the present case being contrary to the Venezuelan constitution, and Venezuela being a country not of despotic power, but of fixed laws, the umpire can not accept them as sufficient.

ZULOAGA, *Commissioner* (claim referred to umpire):

The right to expel foreigners is fully held by every State and is deduced from its very sovereignty. All international law writers agree upon this, and the European nations use it amply. In the case of expulsion submitted by England and Belgium to the arbitration of the French juriconsult, Desjardins, he affirms the right fully. Even Italy has not refused to recognize it in regard to Venezuela, having practiced it extensively.

Venezuela, by the constitution of 1893, established as subject to expulsion foreigners having no domicile and notoriously prejudicial to the public order.

The question as to domicile of foreigners is determined in Venezuela by the provisions of the decree of February 14, 1873, and applying these provisions to the case of Boffolo it appears that he had no domicile in Venezuela. He had not been in the country two years; neither did he have a business properly so called. It appears that he had ostensibly, as a manner of living at the time of the expulsion, a connection with Roversi, according to contract of 1899, whose character demonstrated its precariousness, and in addition a small sheet published Sundays, which seemed little more than an advertisement for Roversi.

Boffolo had no domicile in the country, and the fact of his having been notoriously prejudicial to public order is a question that the Government is fully competent to determine, since to it is confided the power to expel without appeal or revision.

From the very statements made by the claimant the evil life and character of the subject may be easily recognized. In the first place, his affirmations to the minister of foreign affairs contain many things notoriously false; in the second place, the only copy of his little periodical we have had in it an attack on the authorities of the country; and in an article he recommends to the workmen to read and patronize *El Obrero*, a periodical of strong socialistic and dangerous tendencies, and which was circulating at about this time, and which really caused considerable prejudice to capital and machinery by its propaganda. No other number of the sheet is known to us.

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<sup>1</sup> See also Paquet case, Vol. IX of these Reports, p. 323, and Maal case, *infra*, p. 730.

The right to expel exercised against Boffolo seems to me to have been clearly within the constitution. But there arises another question: Was the constitution in vigor at the time? It was, but with certain restrictions rendered necessary by the reestablishment of public order. And the expulsion of a foreigner who was disturbing this work seems to me to be within these restrictions.

It is to be noted that if it be true that foreigners enjoy the same civil rights as the natives, this refers solely to those foreigners who are domiciled. (See art. 12 of the constitution of 1893.)

The proceedings employed in the expulsion appear to me fully justified, though the claimant has presented us with his version of the case. But supposing that what he says is true, it is in no wise different from that followed by European nations generally.

With regard to the amount claimed, this seems to me to be ridiculous; and as is seen in the record, and as has been fully established by the Commission, this man had nothing, and his mode of living was not of a good character.

AGNOLI, *Commissioner* :

The Commissioner for Italy deems it neither necessary nor useful to dwell upon the arguments used by his learned colleague of Venezuela to prove that the Republic has the right to expel from Venezuelan territory foreigners not domiciled in the country and who are prejudicial to public order. It is not desired to contest this right nor that of Venezuela to arrest and condemn an Italian, if only the arrest and condemnation be justified, and with the reservation of the right to claim and exact reparation in each case of an abuse of these rights. An equal right is accorded to Venezuela by Italy.

The question turns upon another point. Let us consider whether the act of expulsion (which is at times legal) was justified in the case of Boffolo. Doctor Zuloaga has quoted from the constitution of 1893 and the decree of February 14, 1873 (which he should not have done in view of the provisions of article II of the protocol of May 7, 1903, which imposes in a precise and peremptory manner upon the Commission the duty of deciding claims according to the principles of equity and without regard to the provisions of local legislation), and after having recalled that said constitution authorizes the expulsion of foreigners not domiciled, and informed us that a domicile is only to be acquired by a two years' residence and establishment in business, now asserts that neither of these conditions had been complied with in the case of the claimant — an assertion believed by the writer to be purely gratuitous.

As a matter of fact, the legation has produced the testimony of three well-known persons, from which it appears that Boffolo established himself in Caracas in 1898. On the other hand, it is of record that he was expelled in April, 1900. Now, unless Doctor Zuloaga prove that Boffolo arrived here subsequent to April, 1898, his statement that the claimant had not had two years' residence in the country at the time of his expulsion must be held to be unfounded, and in all cases of doubt the decision should be in favor of the claimant.

The assertion that the claimant was not actually in business appears likewise unfounded. It is shown by documents submitted to the Commission that he was the depositary of a stock of goods belonging to merchants established here, the Messrs. J. Roversi and V. Alberti, and that said goods were opened to the public under the name of Commercial Sample House, the claimant thus acting as middleman between producers or importers and consumers for the goods thus intrusted to him. If for the lack of means he was not able to do business on his own account (and it is known he was in very modest circumstances), he can not therefore be excluded from consideration as a merchant.

He was, in addition, proprietor and director of a periodical appropriately called "Il Commercio." He had taken a house under a three years' lease, and was occupying part of it as a dwelling and storeroom, besides subrenting the remainder. It is stated, and from a letter of the brother of the claimant included in the record of the case it appears, that some rooms had been occupied by improper characters, and from this unsupported circumstance the Venezuelan Commissioner has forged a weapon against the absent claimant and paints him to the Commission as a man of evil life and fame. These unfavorable aspects are not established by the evidence, but, assuming that they were, the mere fact of his having rented rooms to fast women can hardly be urged as reason for expulsion.

The claimant was not and never had been a go-between; and even if he had been, which the testimony clearly disproves, he would not have thereby become "prejudicial to public order," the condition required by the constitution to justify expulsion.

Further, the declaration of the brother of the claimant, by a principle of fundamental law, may not be taken in part, and, taken as a whole, it shows the animus of the expulsion, for by it we learn that the claimant had demanded payment of rent legitimately due him from a woman who was known to everyone as the favorite of —. Now, if the Commissioner for Venezuela desires to avail himself of the above statement, he must take it in its entirety.

The Commissioner for Italy can not, however, admit that the claimant was expelled because of his alleged immoral conduct. It is clear that the expulsion was decreed because of the denunciation of an official whose name has not and will not come to light, or, by a still more probable hypothesis, considering the dates of the 1st and 4th of April, 1900, was caused by the publication of an article in No. 49 of the periodical above mentioned, in which was a somewhat severe criticism of the action of a Caracas magistrate, with an entirely incidental allusion to the President of the Republic, and wholly free from a political or disturbing character. In either case the measure adopted was unjustifiable.

Free expression of thought, either in print or in speech, is guaranteed in Venezuela to both natives and foreigners; to Italians in particular, on account of the treaty in force. In case of calumny or abuse the guilty person may be proceeded against and condemned, but in no case imprisoned without sentence of the proper tribunal. much less expelled.

The article published by Boffolo does not certainly constitute an infringement of public or private right, and he was not placed on trial therefor. Even less could it be considered as subversive of or prejudicial to public order, justifying expulsion. The claimant had neither social prestige nor political following sufficient to give him a character dangerous to the peace of the Government. He was but an humble citizen, who concerned himself in no wise with local politics.

The writer has already called the attention of the Commissioner for Venezuela to the fact that, according to the opinion prevalent among writers of international law, governments are held to furnish to legations representing the nations to whom the expelled belong the reasons for such expulsion, which was not done by Venezuela in the case of Boffolo, though requested to do so. Had these been satisfactory and of a character to establish that the claimant had engaged in political controversy against constituted authority, the representative of the royal Government would have been satisfied, and there would to-day be one claim the less. The Government had therefore not only the legal obligation but also the duty imposed by international courtesy to declare the reasons for the sudden and violent expulsion of the claimant. If it did not do so, we are justified in believing that such reasons did not exist.

In view of all the foregoing, there seems to be ample reason for the umpire to award with entire conscientiousness to the claimant the modest indemnity of 5,000 bolivars, as requested by the Commissioner for Italy, but before concluding this statement he desires to call the attention of the umpire to another circumstance, which is that though the claim of Boffolo has been pending before the Commission two weeks, during which time the subject has been more than once called up, the Venezuelan Government has not so far produced anything justifying the damaging and arbitrary course it pursued in regard to the claimant.

The voluntary and prompt exhibition of such proofs as the Commission would consider indisputable would seem to be due from the Republic, on the hardly acceptable supposition that such existed. Should they hereafter be produced, the writer reserves the right to examine and estimate them, as, coming so late, he can hardly anticipate them.

In any case he must hold that neither the umpire nor the Commissioner for Venezuela could attach much importance to them in the event of their not resulting from documents bearing a date anterior to that of the expulsion, and that Doctor Zuloaga would regard proof collected within the last few days with the same measure of distrust with which he has received evidence submitted by Italians in support of their contentions, and with the intention of combating claims against Venezuela which the Venezuelan Government, through its plenipotentiary at Washington, Mr. Bowen, had, for some unknown reason, considered just.

RALSTON, *Umpire*:

The above case has been referred to the umpire on disagreement between the honorable Commissioners for Italy and Venezuela.

It appears that Gennaro Boffolo, an Italian subject, reached Venezuela in June, 1898, and in the spring of 1900 was a householder in Caracas and the publisher of an Italian weekly newspaper entitled "Il Commercio Italo-Venezuelano." In the issue of April 1, 1900, appeared an article somewhat critical of the local minor judiciary, and also referring, but in an unimportant manner, to the President. Another article recommended the reading of El Obrero, a socialistic paper. Three days later (April 4) the Gaceta Oficial contained a decree directing Boffolo's expulsion, in the following terms:

Considerando: Que de las averiguaciones practicadas por las autoridades respectivas del Distrito Federal, aparece formalmente que el súbdito italiano Gennaro Boffolo, es á todas luces, perjudicial á los intereses nacionales, decreta:

ART. 1º. El súbdito italiano de nombre Gennaro Boffolo será expulsado del territorio venezolano, embarcándose en el puerto de La Guaira en el término de la distancia.

ART. 2º. El ministro de relaciones interiores queda encargado de la ejecución del presente decreto.

Immediately thereafter, or perhaps simultaneously, Boffolo was, as it is said, "summarily" arrested, transported by third-class ticket to Curaçao, but, through the intervention of the royal Italian legation, allowed to return about a month later.

It is further said, but no proof is offered, that during his absence his house was invaded and plundered, and articles taken belonging to others, the value of which he was compelled to reimburse, and that the claimant was subjected to police persecution, threatened with another arrest, and finally left Venezuela.

That a general power to expel foreigners, at least for cause, exists in govern-

ments can not be doubted.<sup>1</sup> (See Hollander case in U.S. Foreign Relations for 1895, p. 775, and also see p. 801, same volume, citations to be found in sec. 206, vol. 2, Wharton's International Law Digest, and other citations hereinafter given.)

But it will be borne in mind that there may be a broad difference between the right to exercise a power and the rightful exercise of that power. Let us illustrate. In the Hollander case (cited above) the Government of Guatemala contended:

The Government was not under obligation to allow him more or less time to get out of the country, nor to accommodate him in any way. All the practices of jurisprudence, supposing them to be certain and indisputable, fall down before a law clear that comes immediately from the sovereignty of a nation.

To this Secretary Olney very forcibly replied:

The logical result of that proposition is, that whatever a state by legal formula wills to do, it may do; and that international obligations are annulled, not infringed, by legalized administrative action in contravention of those obligations.\* \* \* I construe the language used to mean that, as a rule of international law, the right of expulsion is absolute and inherent in the sovereignty of a State, and that no other State can question the exercise of this right nor the manner of exercising it. \* \* \* The modern theory and the practice of Christian nations is believed to be founded on the principle that the expulsion of a foreigner is justifiable only when his presence is detrimental to the welfare of the State, and that when expulsion is resorted to as an extreme police measure, it is to be accomplished with due regard to the convenience and the personal and property interests of the person expelled.

We may cite Rolin-Jaequemyns, who reported on the subject to the Institute of International Law in 1888 (*Revue de Droit International*, Vol. XX, p. 498), and after admitting the right of expulsion said:

\* \* \* En sa qualité d'être humain il a le droit de ne pas être l'objet de rigueurs inutiles et de ne pas être injustement lésé dans ses intérêts. En sa qualité de citoyen d'un autre État il peut réclamer contre ces rigueurs ou ces spoliations la protection de son souverain. \* \* \*

\* \* \* Il est dès lors légitime que l'État auquel appartient l'expulsé soit recevable à demander communication du motif spécial de l'expulsion, et cette communication ne peut lui être refusée.

L'acte même de l'expulsion doit d'ailleurs être restreint à son objet direct, essentiel, qui est de débarrasser le sol national d'un hôte nuisible. Le droit de souveraineté nationale n'exige ni ne permet davantage. \* \* \* Mais cette contrainte ne devra pas prendre un caractère gratuitement vexatoire.

He continues:

5° Même en l'absence de traités, l'État auquel appartient l'expulsé a le droit de demander à connaître les motifs de l'expulsion, et la communication de ces motifs ne peut lui être refusée.

In one of the latest works discussing the subject, "Protection des Nationaux Résidant à l'Étranger" (p. 450), M. Tchernoff shows himself so little friendly to the right of expulsion that he remarks:

<sup>1</sup> *Nociones de Derecho Internacional*, by Miguel Cruchaga T. (of Santiago de Chile), says (sec. 177): "Puede el Estado expulsar a los extranjeros por consideraciones de orden público; pero entendemos que este derecho no debe ejercitarse sino con mucha parsimonia y en casos muy especialísimos. El derecho en sí mismo, sin embargo, no puede negarse, puesto que el Estado también lo tiene, según el Derecho Público, con respecto a sus propios súbditos por via de grave pena."

Peu de personnes de nos jours soutiennent que le droit d'expulser les étrangers soit une attribution normale de l'État exerçant sa fonction civilisatrice.

Calvo (Dictionnaire du Droit International), title, "Expulsion," says:

But when a government expels a foreigner without cause and in a harsh, inconsiderate manner (avec des formes blessantes), the State of which the foreigner is a citizen has a right to base a claim upon this violation of international law and to demand adequate satisfaction.

See also Bluntschli, *Droit International Codifié*:

ART. 383. Chaque État est autorisé à expulser pour motifs d'ordre public les étrangers qui résident temporairement sur son territoire. S'ils y ont établi un domicile fixe, ils ont le droit à la protection des lois au même titre que les nationaux.

1. Le droit d'expulser les étrangers n'est pas un droit absolu de l'État; l'admettre serait de nouveau porter atteinte au principe de la liberté des relations internationales. L'État n'est le maître absolu ni du territoire ni des habitants du pays. L'ancienne théorie se fondant sur le principe du moyen âge que l'État est propriétaire du territoire, en avait abusivement déduit l'idée de la souveraineté illimitée de l'État. On reconnaît cependant presque partout à l'État la faculté d'expulser les étrangers par simple mesure administrative et sans que les personnes atteintes par cette mesure puissent recourir aux tribunaux.

ART. 384. Lorsqu'un gouvernement interdit sans motif l'entrée du territoire à un étranger dûment légitimé, ou l'expulse sans cause et avec des formes blessantes, l'État dont cet étranger est citoyen a le droit de réclamer contre cette violation du droit international, et de demander au besoin satisfaction.

1. L'État peut aussi être atteint dans la personne des ressortissants qu'il a mission de protéger. L'expulsion arbitraire peut amener des représentations diplomatiques; la partie lésée a toujours le droit de demander aide et protection à son consul ou de provoquer l'intervention de l'envoyé de son pays.

In the recent Ben Tillet affair between England and Belgium, the arbitrator, M. Arthur Desjardins, of France, in his sentence examined thoroughly the reasons for the expulsion of Tillet (as we shall do hereafter in this case), and also as to the treatment accorded him in connection therewith, and maintained the right of Belgium to expel under the circumstances, and, as well, justified the manner in which Tillet was treated by Belgium. (*Journal du Droit International Privé*, Vol. 26 (1899), p. 203.)

Hall says (*International Law*, p. 224):

In such cases (expulsion of individual foreigners residing in a state) the propriety of the conduct of the expelling government must be judged with reference to the circumstances of the moment.

Says Professor von Bar (*Journ. Droit Intern. Privé*, Vol. XIII, p. 6):

La conscience juridique universelle proteste contre l'usage arbitraire du droit d'expulsion. \* \* \*

Il nous paraît que l'État qui ouvre libéralement aux étrangers l'accès de son territoire ne doit pas pouvoir leur retirer à son gré le droit de séjour. (1) En ce sens Heffter, *Voelkerrecht*, sec. 62; "Aucun État ne peut écarter de son sol les ressortissants d'un autre État, dont la nationalité est dûment constatée, ni les expulser après leur avoir fait accueil, sans avoir pour le faire de bonnes raisons, qu'il est tenu de communiquer au gouvernement dont ils relèvent." \* \* \*

Dans tous les cas il est d'une nécessité indispensable d'apporter aux mesures de rigueur qui peuvent être prises contre les étrangers un double tempérament. L'un est de pure forme: L'État qui recourt à l'expulsion doit invoquer des motifs de nature à la justifier. L'autre touche au fond: L'expulsion doit être conforme aux traditions et aux principes du droit des gens. \* \* \*

Une peine insignifiante prononcée contre l'étranger à raison d'une injure, d'une contravention de police, ne suffirait pas à justifier une mesure d'exclusion. Pour

que l'infraction qu'il a commise puisse entraîner son expulsion, il faut qu'elle soit telle que, dans l'hypothèse où elle aurait été consommée sur le territoire, elle eût exposé le coupable à une perte assez longue de sa liberté, et à la privation au moins temporaire de certains droits. \* \* \*

Encore faudrait-il, de toute façon, pour que ce fait puisse donner lieu à une expulsion, qu'il soit prouvé, ou tout au moins rendu vraisemblable au plus haut degré, qu'il contient les éléments d'une violation grave et réelle de la loi, ou bien d'une tentative pour la commettre, ou encore d'un acte condamnable, appliqué à sa préparation. \* \* \*

Bluntschli pose en principe, dans son § 384, que l'expulsion arbitraire et non-motivée d'un étranger peut être le point de départ de réclamations diplomatiques de la part de l'État dont il est le national. Ce point est au-dessus de toute controverse. \* \* \*

Woolsey says (International Law, sec. 63, p. 85):

6. No state in peace can exclude the properly documented subjects of another friendly state, or send them away after they have been once admitted, without definite reasons, which must be submitted to the foreign government concerned.

In the opinion of the umpire it may be fairly deduced from the foregoing that —

1. A state possesses the general right of expulsion; but

2. Expulsion should only be resorted to in extreme instances and must be accomplished in the manner least injurious to the person affected.

Must explanation of reasons and justification of conduct be made to an arbitral tribunal when the occasion arises? The question is answered in Moore's Digest.

Orazio de Attellis, a naturalized American citizen, entered Mexico in 1833, and on June 24, 1835, the President issued an order for his expulsion on the ground that he had —

occupied himself again (he had been expelled before becoming an American citizen) in the publication of a periodical in which some productions appear which tend to ridicule the nation and to plunge it into anarchy.

What the productions were and what was their offensive feature was not disclosed. The claimant was so expelled under circumstances of especial hardship. The American Commissioners contended that the expulsion was causeless, inspired by enmity, in violation of rights secured to inhabitants of the Republic by the constitution and contrary to treaty relations.

The umpire (p. 3334) gave judgment in favor of the claimant.

In the case of *Zerman v. Mexico*, before the American and Mexican Commission of 1868, Sir Edward Thornton (p. 3348) said:

The umpire is of opinion that, strictly speaking, the President of the Republic of Mexico had the right to expel a foreigner from its territory who might be considered dangerous, and that during war or disturbances it may be necessary to exercise this right even upon bare suspicion; but in the present instance there was no war, and reasons of safety could not be put forward as a ground for the expulsion of the claimant without charges preferred against him or trial; but if the Mexican Government had grounds for such expulsion it was at least *under the obligation of proving* charges before this Commission. Its mere assertion, however, or that of the United States consul, in a dispatch to his Government, that the claimant was employed by the imperialist authorities, does not appear to the umpire to be sufficient proof that he was so employed or sufficient ground for his expulsion.

The umpire awarded the claimant \$1,000.

It appears, therefore, that the Commission may inquire into the reasons and circumstances of the expulsion.

Let us apply the principles above laid down to the case before us.

Boffolo was expelled, as the claimant Government contends (and nothing else is before the Commission), because he published a certain article supposed to reflect upon the local judiciary and referring in some purely incidental way to the President, and, as stated, recommended a socialistic paper. It is not the province of the umpire to pass upon Boffolo's taste or justice in so doing. He is, however, obliged to examine somewhat, first, as to whether in so doing he offended the laws of Venezuela, and second, whether under the laws the expulsion was permissible.

Sometime previous to the expulsion, and on the 31st day of October, 1899, the present President assumed the executive power, issuing the following proclamation:

Considerando: Que por virtud de los acontecimientos que han determinado el triunfo de la Revolución Liberal Restauradora, la situación política que ha surgido en la República es extraordinaria y de un carácter provisional;

Que mientras se llega á la reconstitución normal del país es indispensable establecer un régimen que, aunque transitorio, asegure y proteja los derechos y intereses políticos y sociales de la ciudadanía, Decreto:

ARTÍCULO 1°. Se declaran vigentes en todo el territorio de la República todos derechos, garantías, y prerrogativas que la Constitución Nacional de 1893 reconoce y otorga á los venezolanos.

ART. 2°. Se declaran igualmente en vigencia á las demás disposiciones de la expresada Constitución en cuanto ne se opongan á los fines de la Revolución Liberal Restauradora y sean compatibles con la naturaleza del Gobierno que de ella ha surgido.

ART. 3° Regirán en los Estados de la Unión y en el Distrito Federal todos los códigos y demás leyes nacionales de carácter general ó especial, y todas las leyes orgánicas que venían observándose en los diversos y distintos ramos y esferas de la administración pública.

ART. 4°. Los Presidentes Provisionales de los Estados y todos las demás autoridades de la República cumplirán y harán cumplir este Decreto en la parte que les concierna y en el radio de sus atribuciones.

ART. 5°. El Ministro de Relaciones Interiores queda encargado de la ejecución del presente decreto.

Let us see, now, what were the rights, guarantees, and prerogatives recognized and guaranteed by the constitution of 1893.

#### TÍTULO IV. — *Derechos de los Venezolanos.*

ART. 14. La Nación garantiza á los venezolanos la efectividad de los siguientes derechos:

5°. La libertad personal, y por ella: \* \* \*

\* \* \* 4°. Todos con el derecho de hacer ó ejecutar lo que no perjudique á otro.

6°. La libre expresión del pensamiento de palabra ó por medio de la prensa. En los casos de calumnia ó injuria, quedan al agraviado expeditas sus acciones para deducirlas ante los tribunales de justicia competentes, conforme á las leyes comunes; pero el inculpado no podrá ser detenido ó preso, en ningún caso, sino después de dictada por el Tribunal competente la sentencia ejecutoria que lo condene.

7°. La libertad de transitar sin pasaporte en tiempo de paz, mudar de domicilio, observando para ello las formalidades legales, y ausentarse de la República, y volver á ella llevando y trayendo sus bienes.

14°. La seguridad individual, y por ella: \* \* \*

\* \* \* 4°. Ni ser preso ó arrestado sin que preceda información sumaria de haber cometido delito que merezca pena corporal, y orden escrita del funcionario que decreta la prisión, con expresión del motivo que la cause, á menos que sea cojido *infraganti*; no pudiendo fuera de este caso ordenarse la prisión sino por autoridad judicial, ni los arrestos por la policía pasar de tres días, después de los

cuales el arrestado debe ser puesto en libertad ó entregado al juez competente.

\* \* \*

\* \* \* 10°. Ni ser privado de su libertad, por causas políticas, sin previa información sumaria, de la cual resulte comprometido en perturbaciones del orden público y sirviendo de obstáculo á su restablecimiento.

Furthermore the constitution provided (Art. 13):

Los extranjeros gozan de todos los derechos civiles de que gozan los nacionales.

In addition to the extracts above given, the excellent and enlightened constitution of 1893 provided:

ART. 23. La definición de atribuciones y facultades señala los límites del Poder Público; todo lo que extralimite esta definición constituye una usurpación de atribuciones.

One is pleased to note from the foregoing that even in time of storm and stress Venezuela recognized that those subject to her jurisdiction were entitled to enjoy freedom of speech and of the press (subject only to trial for abuse thereof before competent tribunals, pursuant to the common laws, with personal freedom until after the sentence), freedom of transit and change of domicile, freedom from arrest (unless pursuant to written warrant, save when taken in flagranti, and except in such case not to be imprisoned unless by judicial authority), not to be deprived of liberty for political reasons, save for disturbing acts, etc.

As appears from a citation already made, the powers of the officers of Government were not autocratic, but Venezuela was a country of laws, governed even in April, 1900, by officials of limited powers; for if their powers were not limited the personal guarantees of the constitution would have been inefficacious — an impossible conclusion, as they were expressly recognized by the proclamation of General Castro.

Let us therefore see what law governed the matter of expulsion, for if none existed the power to expel was wanting. Another conclusion would make Venezuela's Government despotic — not republican or democratic.

The only provisions of law covering the right of expulsion either of natives or of foreigners were in articles 77 and 78 of the constitution of 1893, and read as follows:

ART. 77. Además de las atribuciones anteriores, que son privativas del Presidente de los Estados Unidos de Venezuela, éste, con el voto consultivo del Consejo del Gobierno, ejercerá también las siguientes:

9a. \* \* \*

3°. Arrestar ó expulsar á los individuos de la nación con la cual se está en guerra y que sean contrarios á la defensa del país.

ART. 78. \* \* \*

4a. Prohibir la entrada en territorio nacional, ó expulsar de él, á los extranjeros que no tengan su domicilio en el país y que sean notoriamente perjudiciales al orden público.

According, therefore, to the constitution of Venezuela, only as the nondomiciled foreigner might be shown to be prejudicial to public order would he be expelled. Let us pass over the fact that the Boffolo decree of expulsion declared that his presence was prejudicial to "national interests" and not to the "public order," as limited by the constitution, and see if such cause has been presented to this Commission as would justify the expulsion.

It is suggested that the expulsion may have taken place because of any one of three reasons:

1. That he spoke disrespectfully of the President.
2. That he criticized a subordinate member of the judiciary.

3. That he recommended the reading of "El Obrero," a socialistic paper.

The effective answer to all of these propositions is that freedom of speech and of the press are guaranteed by the constitution of Venezuela, and an expulsion for either one would have been an infringement of the constitution of Venezuela, and this is not to be presumed the President would have done. The umpire is more disposed to believe that for public reasons satisfactory to itself the Government has chosen not to offer the basis of its action, rather preferring to submit to such judgment as to this Commission might seem meet in the case.

The further suggestion is made that Boffolo, being a foreigner, did not possess the right to criticize the Government to the same extent as Venezuelans, while the Government possessed a larger power over him. To this may be replied that the constitution of Venezuela conferred upon foreigners the same rights as were assured to natives, and for the supposed offenses not the slightest punishment could have been inflicted upon Venezuelans.

Summing up the foregoing, we may (in part repeating) say:

1. A State possesses the general right of expulsion; but,
2. Expulsion should only be resorted to in extreme instances, and must be accomplished in the manner least injurious to the person affected.
3. The country exercising the power must, when occasion demands, state the reason of such expulsion before an international tribunal, and an inefficient reason or none being advanced, accepts the consequences.

4. In the present case the only reasons suggested to the Commission would be contrary to the Venezuelan constitution, and as this is a country not of despotic power, but of fixed laws, restraining, among other things, the acts of its officials, these reasons (whatever good ones may in point of fact have existed) can not be accepted by the umpire as sufficient.

In view of the foregoing it only remains to consider the amount of damages to be awarded. The honorable representative of Italy has indicated that he would be content to accept 5,000 bolivars, and considering the harshness of expulsion as a remedy, the fact that only great provocation will, in the eyes of international law, justify its exercise, and the further fact that expulsion of foreigners so readily leads the way to the gravest international difficulties, as it may be regarded as a national affront, the amount asked seems not intrinsically unreasonable. But bearing in mind the low character of the man in question (as developed before the Commission), and that his speedy return was permitted, the umpire believes his full duty will be discharged in allowing him 2,000 bolivars, and an award of this amount will be entered.

For convenience the umpire subjoins a careful translation of the articles in *Il Commercio* herein referred to.

FOR JUSTICE

[Translation — Article taken from *Il Commercio* of April 1, 1900.]

To his Excellency the ITALIAN MINISTER.

YOUR EXCELLENCY: I do not understand the Venezuelan code of procedure, much less its application; but the fact to which this article relates is so abnormal, so outside the severest penal code, that as a journalist speaking for the bulk of his readers, I am driven to the onerous necessity of praying your excellency to interpose your authority to the end that what is now obscure may be made plain.

I refer, your excellency, to the prolonged imprisonment of my countryman, Mr. Malenchini.

It is now nearly three months that the above-named has been immersed in a foul prison for having struck Mr. Pecchio with a walking stick. Mr. Pecchio was not in the least injured by the blow, no physician was called to his aid, and he suffered no interruption whatever in the transaction of his business.

It is said there was a quarrel between the two men on account of an alleged attempt at homicide, Malenchini having been armed with a revolver. According to the logic of the accusation, whoever carries a revolver for self-defense is held to be guilty of attempted homicide. If such were to be the rule, not a few, commencing with the President himself, would be in quod.

It may be said that Malenchini was ready to use the weapon and would have done so had he not been arrested. Such is not the case. He carried it solely as a means of defense and had he intended using it he would not have availed himself of his cane, least of all in a place so crowded as the Plaza Bolivar, where the slightest disturbance would surely be followed by an arrest.

That an assault with a cane deserves punishment is conceded without question, but it should be of a proper kind, and not that imposed by the humor of an overzealous advocate who had exaggerated the facts in the case.

Malenchini was interrogated by the judge, and three weeks ago he was tried, and a sentence should have been given in three days. A sentence was finally pronounced, but what a sentence! Based on a nullity! Malenchini was condemned for injury to the person, but that there really was such the sentence alone declares, for there is not the vestige of proof. And as if this were not sufficient, the ten days of his sentence expired on Saturday, the 24th, but he still lingers in jail.

As your excellency may see, there is something strange and mysterious in the case of Malenchini. Your excellency alone has the power and authority to have this mystery unveiled. You alone can see to it that justice be not a vain word for Malenchini, who is lying in a dungeon because he is powerless and without defense.

I and my countrymen trust that this unfortunate incident, as truly dangerous to our nationality as to humanity, will soon be cleared up.

Believe me, sir, with profound respect, your most devoted,

G. BOFFOLO

P.S. — On the afternoon of Thursday, after the above was already in type, Mr. Malenchini was provisionally released on the payment of a certain sum by his father, who had arrived in aid of his son. But why provisionally? Another mystery.

#### EL OBRERO

We have before us the first number of the periodical *El Obrero*. The title clearly indicates the purpose for which our new confrère has entered the lists. Every workman should read it, and support its publication, as it is the first sheet devoted to the workingman's cause. *Il Commercio* wishes a long and prosperous life to the new venture.

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#### CASE OF MASSARDO, CARBONE & Co.

(By the Umpire:)

The Italian protocol providing only for payment of a definite sum for "claims of the first rank derived from the revolutions 1898-1900," and the sums so paid being for certain named claims, jurisdiction will be taken over others of the same period.

Case retained for proof of Italian citizenship of those claiming interest in a succession.

AGNOLI, *Commissioner* (claim referred to umpire):

The Commissioner for Venezuela contends that the above-mentioned claim should be denied, he interpreting Article III of the Washington protocol of February 13, 1903, in the sense that the Italian Government accepted the sum of 2,810,255 bolivars in complete satisfaction of all indemnities due for acts of the revolution and all other acts from 1898 to 1900, and in support of his opinion invokes, besides the provisions of the article above mentioned, the contents of a note directed by the Royal Italian legation at Caracas to the Venezuelan minister of foreign affairs of December 11, 1902, No. 532.