

September, 1886, and on the 27th of April, 1887, the Fitzgerald contract was as yet legally existing, the Republic of Venezuela could not dispose on behalf of Turnbull of what it already had disposed on behalf of another, and therefore, Turnbull obtained no right whatever of property in the concession under and by virtue of the contract confirmed by Congress on the 27th of April, 1887;

And whereas the mines of Pedernales and Imataca formed part of the still existing Fitzgerald concession, Turnbull's alleged titles to these mines are equally void;

And as all his claims are based on this void contract and these void titles, they can not be allowed.

Lastly, as to the claim of "the Orinoco Company (Limited)," that is not based on the Fitzgerald concession.

Whereas evidence shows that on the 19th of November, 1898, Carlos Hammer, with power of attorney from Benoni Lockwood, jr., in the name of and representing "the Orinoco Company (Limited)," paid to the Venezuelan Government the sum of 120,000 bolivars for rights purchased on a judicial sale on November 18, 1898, which rights, as evidence shows, the Republic could not dispose of, and out of the possession of which rights claimant was expelled by the proper authorities of that Republic;

This unduly received sum of 120,000 bolivars has to be restored to him who unduly paid it.

Wherefore the Republic of the United States of Venezuela shall have to pay to "the Orinoco Company (Limited)" the sum of 120,000 bolivars, or \$23,076.93, with interest at 3 per cent per annum from the 19th of November, 1898, to the 31st of December, 1903.

THE AMERICAN ELECTRIC AND MANUFACTURING CO. CASE

(By the Umpire:)

- A clause contained in a contract that "doubts and controversies which may arise in consequence of this contract shall be settled by the courts of the Republic in conformity with its laws" does not preclude the claimant from demanding damages from the Government for the breach by it of a collateral promise.
- The breach of a promise to do an illegal act can not be made the basis of a claim, and a promise by the Government to annul an existing contract containing the clause that "doubts and controversies that may arise in consequence of this contract shall be settled by the courts of the Republic and in conformity with its laws" is a promise to do an illegal act.

GRISANTI, *Commissioner* (claim referred to umpire; no opinion by the American Commissioner):

The American Electric and Manufacturing Company deduces a claim against the Republic of Venezuela, adducing as the grounds for it, the facts stated in its memorial, some of which denoting most importance, will presently appear in this statement.

In May, 1887, the Government of Venezuela made a contract in virtue of which they granted Aquilino Orta —

the right to establish telephonic communication within the towns and cities of the Republic and between the same; also in the country districts and country villages and between both; and further, to extend the same communication outside of Venezuela by such means as he may deem most suitable.

In July, 1883, the Government of Venezuela had signed another contract which had the same object, with the Intercontinental Telephone Company of New Jersey, represented by Mr. J. A. Derrom.

After several assignments the claimant company became an assignee of the contract signed with Orta, and at the time of fulfilling the same by establishing some telephonic lines entered into competition with the Intercontinental Telephone Company of New Jersey, in which competition the claimant company was defeated, and ended in its transferring the contract to its competitor.

This simple statement, strictly adhering to the truth, is an abridged record of the case. On what principle, then, of justice or equity can "the American Electric and Manufacturing Company" rely for its claim. From what juridical postulate or from what legal precept does liability arise for Venezuela to indemnify damages caused by the defeat in that struggle of enterprises, considering the political economy as the most efficacious means of ameliorating and rendering products cheaper and developing industrial progress?

The American Electric and Manufacturing Company pretends to found its claim on the grounds of article 8 of its contract, which is worded as follows:

The Government shall not grant similar concessions to any other person or company, nor shall it permit additions to contracts interfering with the present one, during a period of nine years, which shall be reckoned from the date on which it is signed, and may be extended for three years longer, at the option of the Government.

The foregoing article was not infringed, as the Government of Venezuela did not grant any concession that impaired or collided with the right of the claimant company.

It is also adduced as the grounds for the claim that the Government authorities of Venezuela assured the claimant company that as soon as its telephone plant should be in operation the concession of 1883 would be revoked.

Of this assertion, which is inverisimil, not the least proof has been produced; and in case such promise had been given, not being legal, it could not give rise to any right. On the other hand, the principal reason assigned for said revocation, which was the poor service of the Intercontinental Telephone Company of New Jersey, is denied by the real facts, as it defeated the claimant company in competition.

It is the opinion of the Venezuelan Commissioner that on the strength of the reason stated the claim specified, which the American Electric and Manufacturing Company deduce, should be disallowed.

BARGE, Umpire:

A difference of opinion having arisen between the Commissioners of the United States of America and the United States of Venezuela this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol and also the documents, evidence, and arguments, and likewise all the communications made by the two parties, and having impartially and carefully examined the same, has arrived at the following decision:

Whereas the claimant in this claim was the proprietor of a contract made between the Government of Venezuela and one Aquilino Orta about the establishment of telephonic communication, and claims for damages suffered by him through the fault of the Venezuelan Government in his enterprise to realize the object of this contract;

And whereas article 10 of this contract reads as follows:

Doubts and controversies that may arise in consequence of this contract shall be settled by the courts of the Republic in conformity with its laws