

AROA MINES (LIMITED) CASE — SUPPLEMENTARY CLAIM

(By the Umpire:)

Damages will not be allowed for injury to persons, or for injury to or wrongful seizure of property of resident aliens committed by the troops of unsuccessful rebels.¹

Interpretation of the meaning of the words "claim," "injury," "seizure," "justice," and "equity," as used in the protocol.

CONTENTION OF BRITISH AGENT

In supporting the claim of the Aroa mines for damages due to the action of revolutionaries, it is desirable that the position taken up by His Majesty's Government should be clearly stated and explained.

During the events which led to the signing of the protocol of February 13, 1903, and when a decision was necessary as to what demands ought to be made on the Venezuelan Government, the question of damage due to the acts of insurgents naturally became prominent. His Majesty's Government, having carefully considered the past and present circumstances of Venezuela, which are of a very exceptional kind, came to the conclusion that in dealing with claims of this nature two alternative methods were possible:

(1) That foreign claimants should not receive compensation for damage caused by revolutionaries.

(2) That if any foreign claimants received such compensation British subjects should receive the same treatment.

Great Britain enjoys by treaty the advantages of the most-favored nation, and for this as well as other reasons took the view stated above. To show that His Majesty's Government had always consistently held this view, it may be pointed out that in forwarding claims to the Venezuelan Government the British minister had, long before the blockade, always asked that they should be settled on the same principle as might be applied to other nations.

In the view of His Majesty's Government it was preferable that of the two principles stated above No. 1 should be the one adopted, failing this it was essential to secure the alternative, No. 2.

At the same time it was considered that, owing to the light in which revolutions had come to be regarded by the people of Venezuela, there would be nothing contrary to justice in acting upon the latter principle.

The only way to give effect to these views seemed to be to obtain from Venezuela an agreement wide enough to cover the second principle if it should become necessary to act upon it.

His Majesty's Government have throughout acted consistently on these lines and have made no secret of the position taken up by them on the matter.

Accordingly, upon the sitting of the Commission, His Majesty's Government brought forward only such claims as were based upon the acts of the Venezuelan Government itself, without in any way giving up the right to present those of the other category if it should prove necessary. This course was followed until revolutionary awards had been made in favor of French and German claimants.

¹ This principle was followed in the cases of A. A. Pearse, F. G. Fitt, heirs of Christian Philip, W. N. Meston, W. A. Guy, Fortunato Amar, L. L. Michenau, and Abdool Currim, which are not reported in this volume. For discussion of principle here laid down see the German - Venezuelan Commission (Kummerow Case), the Italian - Venezuelan Commission (Sambiaggio Case, Guastini Case) and the Spanish - Venezuelan Commission (Padrón Case, Mena Case), in Volume X of these *Reports*.

Since therefore, it was no longer possible to act upon the principle originally favored, it was decided to present to the Commission claims for damages due to the acts of the insurgent forces. These claims are supported upon the ground that the recovery of damages so caused is recognized by the protocol of February 13.

In order to show what the terms of the protocol were meant to include, it is necessary to refer to the circumstances under which the protocol was signed and to what had occurred previously.

His Majesty's Government having for a long time presented to the Venezuelan Government claims due not only to the acts of their own troops, but also to the acts of insurgents, without being able to obtain any redress, were at length compelled, in common with the German Government, to declare a blockade of Venezuelan ports. This blockade was not raised until after the signing, and upon the terms of the protocol of February 13.

This protocol was settled after negotiations between His Majesty's representative and Mr. Bowen as representing the Venezuelan Government. In order correctly to interpret the terms of the protocol regard should be paid to the stage of the negotiations at which the exact words ultimately used first appear, and to the connection in which they are there used.

The first step taken by the Venezuelan Government toward the raising of the blockade was a communication from Mr. Bowen through the Government of the United States to His Majesty's Government, asking that they and the German Government would refer "the settlement of claims for alleged damage to the subjects of the two nations during the civil war to arbitration."

To this a reply was sent by the two Governments, which is here quoted, December 23, 1902:

His Majesty's Government have in consultation with the German Government taken into their careful consideration the proposal communicated by the United States Government at the instance of that of Venezuela.

The proposal is as follows:

That the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration.

The scope and intention of this proposal would obviously require further explanation. Its effect would apparently be to refer to arbitration only such claims as had reference to injuries resulting from the recent insurrection. This formula would evidently include a part only of the claims put forward by the two Governments, and we are left in doubt as to the manner in which the remaining claims are to be dealt with.

Apart, however, from this some of the claims are of a kind which no government would agree to submit to arbitration. The claims for injuries to the persons and properties of British subjects owing to the confiscation of British vessels, the plundering of their contents and the maltreatment of their crews, as well as some claims for the ill usage and false imprisonment of British subjects, are of this description. The amount of these claims is apparently insignificant, but the principle at stake is of the first importance, and His Majesty's Government could not admit that there was any doubt as to the liability of the Venezuelan Government in respect of them.

His Majesty's Government desire, moreover, to draw attention to the circumstances under which arbitration is now proposed to them.

The Venezuelan Government have, during the last six months, had ample opportunities for submitting such a proposal. On the 29th of July and again on the 11th of November it was intimated to them in the clearest language that unless His Majesty's Government received satisfactory assurances from them, and unless some steps were taken to compensate the parties injured by their conduct, it would become necessary for His Majesty's Government to enforce their just demands. No attention was paid to these solemn warnings, and, in consequence of the manner in which they were disregarded, His Majesty's Government found themselves

reluctantly compelled to have recourse to the measures of coercion which are now in progress.

His Majesty's Government have, moreover, agreed already that in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of the British claims, and that they will at once pay compensation in the shipping cases and in the cases where British subjects have been falsely imprisoned or maltreated, His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission which will determine the amount to be paid and the security to be given for payment. A corresponding intimation has been made by the German Government.

This mode of procedure seemed to both Governments to provide a reasonable and adequate mode of disposing of their claims. They have, however, no objection to substitute for the special Commission a reference to arbitration with certain essential reservations. These reservations, so far as the British claims are concerned, are as follows:

1. The claims (small, as has already been pointed out, in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claim is for injury to or wrongful seizure of property, the question which the arbitrators will have to decide will only be (a) whether the injury took place and whether the seizure was wrongful, and (b) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above, we are ready to accept arbitration without any reserve. * * *

It will be seen from this that in the first place all claims are to be submitted to arbitration; that as regards claims "arising from the recent insurrection" where such claims are for injury to or wrongful seizure of property the allied Governments will only accept arbitration on the express terms "that in such cases a liability exists must be admitted in principle." Finally, in the case of other claims arbitration without any reserve is accepted.

It is clear that a meaning beyond the ordinary submission to arbitration must be given to this very pointed and special admission of liability. It admits as not open to discussion some principle which might be open to argument if nothing more than a bare submission to arbitration were found.

As it occurs in this document the meaning is plainly that —

As regards all claims arising out of the recent insurrection, whether due to their own acts or to those of insurgents, the Venezuelan Government must admit their liability. Otherwise the blockade will not be raised.¹

These particular terms were never afterwards discussed. In the protocol the Venezuelan Government admit their liability in these very words, and therefore with the same meaning.

There is nothing unreasonable in this. This treaty was made under pressure of a blockade. Under such circumstances what is more natural than to find that the blockading power has insisted upon its own standard of right?

To say that in face of the words "the Venezuelan Government admit their liability" the Venezuelan Government are only to be held liable under accepted and recognized principles of international law is to say that these words carefully and deliberately inserted in an important section of a treaty are without meaning or bearing on the effect of the treaty.

If it be suggested that "admit their liability" means that the Venezuelan Government agree not to raise as a defense that these specially mentioned

¹ See Appendix to original report, p. 1033. Not reproduced in this series.

claims are a matter for the law courts, it may be pointed out that if a claim which would otherwise be the subject of ordinary litigation be submitted to arbitration, that fact alone means that all other jurisdictions are, as regards that claim, set aside and superseded by the jurisdiction of the arbitral tribunal. Therefore, the further provision that the Venezuelan Government admit their liability would be superfluous and meaningless in the class of claims here submitted to arbitration.

This admission, then, is an acknowledgment on the part of the Venezuelan Government that they take upon themselves liability for all claims of the kind specified arising out of the insurrection, whether done by themselves or by insurgents.

Since injury to or seizure of property is necessarily wrongful in the case of insurgent forces, it is only needful to prove that they took place and arose out of the insurrection, and liability at once attaches to the Venezuelan Government, the only remaining question being one of amount.

It has already been indicated that this liability for the acts of insurgents in the case of a country so circumstanced is a doubtful point of international law, depending as it does upon the question whether the country is "well-ordered to an average extent" (Hall, p. 226). a point difficult and embarrassing to discuss. The admission of liability found here is therefore just such as would be expected under the circumstances.

It is not necessary to pursue the matter further, since, for the present purpose, it is sufficient to rely on the liability admitted in the protocol, without reference to the principles of international law. Attention is called to the point merely to show that His Majesty's Government have not acted in an arbitrary or unreasonable manner.

Upon another ground also this tribunal ought to interpret the words "admit their liability" in the sense above stated.

The treaty between Great Britain and Venezuela contains the following provision:

In whatever relates to the safety of * * * merchandise, goods, or effects, * * * as also the administration of justice, the subjects and citizens of the two contracting parties shall enjoy * * * the same liberties, privileges, and rights as the most favored nation.

All awards given by the Mixed Commissions are to be paid out of one fund. It would therefore, in view of the above treaty, be a denial of equity if the subjects of any other nation were to be paid sums of money out of this fund upon a more favorable principle than British subjects.

German and French subjects have now obtained awards for damage caused by revolutionaries, which will be so paid.

When, therefore, words have to be interpreted which admit of any possible doubt as to their meaning — though it is contended that no such doubt exists here — regard must be paid first to the treaty, and secondly to the provision of the protocol, that decisions are to be based upon absolute equity. In such a case it is the duty of this tribunal to give to the words the most favorable possible interpretation as regards British subjects if by so doing the treaty rights of British subjects will be the better maintained. Therefore, in view of the treaty, the admission of liability must be read in the sense of a stipulation that, in awarding payments out of the common fund, British subjects shall be paid on as favorable a principle as the subjects of any other nation.

That is, since subjects of other nations receive payments on the ground of the liability of the Venezuelan Government for acts of insurgents, "admit their liability" must be read as conceding to British subjects the right to be paid

on the same principle. i.e.. for damages caused by the acts of revolutionaries.

GRISANTI, *Commissioner*:

His Britannic Majesty's learned agent in his last argument confines himself almost exclusively to examining the circumstances and discussions which preceded the signing of the protocol of February 13, 1903, maintaining that the Government of Venezuela is liable for damages caused by revolutionists to British subjects.

The most suitable manner of interpreting a treaty between nations and a contract between private parties is to analyze carefully and minutely, without prejudice, the clauses of the treaty, which are the plain, true, authentic, and solemn meaning intended to be conveyed by the contracting parties, and of the reciprocal duties assumed by them by virtue of their mutual agreement. The examination of the preliminary work only entails the examination of the contentions and arguments which each of the contracting parties made and attempted to maintain, contentions and arguments which must necessarily be at variance and even contradictory, as thus only could the controversy exist. With regard to the preparatory work of legislation, Laurent says:

En apparence, les travaux préparatoires sont le commentaire authentique de la loi, puisque c'est le législateur lui-même qui nous apprend ce qu'il veut; en réalité, ces travaux nous font seulement assister à l'élaboration de la loi, ils ne sont pas l'œuvre du législateur, mais de ceux qui ont contribué à faire la loi. Le texte seul a une autorité légale. Tout ce qui a été dit pendant que la loi s'élaborait n'est pas la loi, et on ne peut s'en prévaloir pour ajouter au texte, ou pour le modifier en quoi que ce soit, car ce ne sont que des opinions individuelles de ceux qui ont concouru à faire la loi. (*Cours Élémentaire de Droit Civil*, Vol. I, p. 22.)

This same criterion must be applied to the study of preliminary conferences leading to the negotiation of a treaty, and consequently to those preceding the protocol, confining its application, naturally, to the contracting parties. Because, although it is true that the blockade and cannons of the allied powers greatly strengthened their demands, it is not true that they could enforce their absolute will. Such will had to be held in check, but unfortunately it was not curbed as much as justice demanded.

Now, confining myself to the argument of His Britannic Majesty's agent in regard to the protocol itself, I am sorry to have to say that the meaning he gives to Article III is at variance with the proper interpretations of conventions.

Said article provides that "The Government of Venezuela admit their liability in cases where the claim is for injury to, or wrongful seizure of, property," etc., which clause can only be understood in its legal sense — that is to say, that the Republic answers for injuries caused by the National Government and by such persons as represented it. For Venezuela to assume responsibility for damages caused by revolutionists contrary to the principles of unquestioned justice in the general opinion of statesmen, and in the practice of nations, it would be necessary that it should be so stipulated in the protocol expressly and in the clearest manner; and it is not so stipulated. Justice and equity do not admit of amplifying the clause of the protocol to include and sanction an obligation which is contrary to principle. In case the clause was not plain (which it is) it could not be interpreted in a sense which would burden the party bound (that is, Venezuela) as violating accepted juridic principles. These keep powerful parties within the bounds of law, whereby they support the weaker and maintain the peace of the world.

His Britannic Majesty's agent affirms that Great Britain considered it preferable to strike a medium between these two extremes: