

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:

1. That foreign claimants should not receive compensation for damages caused by revolutionists.

2. But that if any foreign claimants received such compensation British subjects should receive the same treatment.

And that, although she considered the first preferable, she adopted a general form which would embrace the second if necessary.

This argument, which is of itself inadmissible, has already been refuted. From the moment two nations enter into a treaty they must agree in the sense and meaning of the same; and it is not right for one of the parties to reserve to itself *in pectore* the privilege of enlarging its scope in performance for reasons independent of the intention of both. It must be observed that this Mixed Commission has been acting since June 1, and it was not until September that His Britannic Majesty's agent decided to present the first claim for revolutionary damages; such determination was made in view of two awards made by the umpires of the Venezuelan-French and the Venezuelan-German mixed commissions. It is therefore evident that these awards caused the British Government to set aside their primary conviction, which was wholly in accordance with justice and equity.

His Britannic Majesty's agent asserts that by virtue of Article IX of the treaty of 1835 between Venezuela and Great Britain the subjects of the high contracting parties shall, in the territory of the other nation, enjoy the same privileges, prerogatives, and rights as those of the most-favored nation. This is true, but said clause can only apply to the matters purposely designated in the article which contains this stipulation, v.g., in everything relating to loading and unloading of vessels; security of merchandise, goods, and articles; the acquisition of goods of all kinds and denominations by sale, donation, exchange, testament, or any other way whatsoever; as also to the administration of justice. The latter point being the only one which, though in a most remote way, might have any connection with the claim in discussion, means only that British subjects in Venezuela, just as Venezuelan citizens in England, have the same warranties, securities, and recourses as other aliens for the protection and maintenance of their respective rights before the courts of justice established by the local laws of each nation. Said clause is not applicable to these mixed commissions, which are of a very extraordinary nature; and if it were, other countries which have agreed with Venezuela upon the provision of the most-favored nation would already have protested against some of the clauses of the Venezuelan-British protocol. On the other hand, as these mixed commissions proceed separately and absolutely independently of one another, and as the persons who constitute them must use their own individual judgment in order to render their decisions according to their own belief and conscience, the decisions of other commissions can not be set up to serve as a guide for those which this Commission will have to make.

The argument contained in the following paragraph is no more forcible:

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.

Equity would be violated in injuring Venezuela, who is held liable to pay claims which are entirely unfounded.

In the preliminary discussion which arose in the case of Consul de Lemos, I demonstrated that publicists, such as Calvo, Fiore, Bonfils, and Seijas, in addition to the statesmen — Lord Stanley, Count Nesselrode, Lord Granville, and Lord Palmerston — are unanimously of opinion that nations are not

liable for injuries sustained by foreigners in times of war, considering such irresponsibility *absolute* when said injuries are caused by revolutionists or by Government functionaries when compelled by the fatality of circumstances, confining the obligation of repairing only willfully committed injuries by the same. I consider it unnecessary to reinsert those quotations, which, moreover, would make this statement extremely long. I might likewise cite the opinions of other publicists and statesmen, but I do not consider it necessary, as the point is not capable of being disputed on the policy and practice of nations. Governments are not obliged to compensate for injuries committed by insurgents. His Britannic Majesty's agent having so understood, has sought to fix the liability from the terms of the protocol.

By virtue of the reasons stated I ask that the supplemental claim of the Aroa Mines (Limited) be declared inequitable and unlawful.

Great Britain has always professed the principle that governments are not liable for damages caused by rebels; Venezuela has likewise upheld the same doctrine at all times, as is shown by the executive decree of February 14, 1873. (Official Compilation of Laws, vol. 5, p. 243, No. 1820, art. 6.)

It is impossible for these two nations to have revoked said principle in the protocol without having expressly and definitely so stated.

PLUMLEY, *Umpire*:

At the beginning of the umpire's opinion upon the important questions involved in this case, he desires to express his sense of obligation to the learned agents and the honorable Commissioners of both Governments for their very able and painstaking presentation of their views upon the points raised, and for their valued assistance in the matter of authorities and documents.

This case raises the question whether the Government of Venezuela shall be held responsible to indemnify the claimants for injuries and losses received at the hands of revolutionists during the last civil war.

Before entering upon an analysis of the case itself there are several matters which may well be considered.

It is insisted upon by the claimant Government and resisted by the respondent Government that the paragraph in Article III of the February protocol, in which occurs a certain admission of liability on the part of Venezuela, is, when properly interpreted and applied, an absolute and unavoidable admission of liability for all claims arising out of the recent insurrection, whether due to their own acts or to those of insurgents.

In the claim of de Lemos, upon the preliminary objection of the learned British agent, raising the question that upon the terms of the protocol of February 13, 1903, "the Venezuelan agent is not entitled to set up any matter of principle as an answer to this claim" because of the said admission of liability in said Article III of the protocol, and that there remained only an inquiry as to the facts, the umpire held in his interlocutory opinion therein (p. 421) —

that the word "injury" was chosen because of its legal adaptation and significance, and not in its colloquial sense.

That (p. 421) —

the word "injury" was taken by the signatory parties to import a legal wrong, and in accordance with its fixed and determinate use in law as involving and importing *ipso facto* an *intentional wrongdoing* on the part of those responsible therefor.

By giving to this word its meaning in law and applying it to a document of peculiar legal importance drawn and carefully considered by minds of profound scholarship and erudition in law, skilled in words accurate and apt, in sentences short, clear, and trenchant, it is certain we can do no violence to the thought. By adopt-