

**THE CLAIMS OF ORR AND LAUBENHEIMER AND THE POST-
GLOVER ELECTRIC COMPANY**

PARTIES: Nicaragua, United States of America

COMPROMIS: Protocol of 22 March 1900

ARBITRATOR: General E. P. Alexander

AWARD: 16 June 1900

PROTOCOL OF AN AGREEMENT BETWEEN THE UNITED STATES AND NICARAGUA FOR THE ARBITRATION OF THE AMOUNT OF DAMAGES TO BE AWARDED ORR AND LAUBENHEIMER AND THE POST-GLOVER ELECTRIC COMPANY, SIGNED AT WASHINGTON, MARCH 22, 1900¹

The United States of America and the Republic of Nicaragua, through their representatives, John Hay, Secretary of State of the United States of America, and Luis F. Corea, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Nicaragua, have agreed upon and signed the following protocol:

Whereas, the said Orr and Laubenhaimer, citizens of the United States of America, have claimed through the Government of the United States from the Government of Nicaragua indemnity on account of damages sustained through the alleged seizure and detention by Nicaraguan authorities of said Orr and Laubenhaimer's steam launches the *Buena Ventura* and the *Alerta*; and

Whereas, the said Post-Glover Electric Company, a citizen of the United States of America, has claimed through the Government of the United States from the Government of Nicaragua indemnity on account of the alleged seizure at Bluefields of certain goods and chattels of the Post-Glover Electric Company:

It is agreed between the two Governments:

I. That the question of the amount of the indemnity in each of said cases shall be referred to General E. P. Alexander, who is hereby appointed as Arbitrator to hear said cases and to determine the respective amounts of said indemnities.

II. The Government of the United States will lay before the arbitrator and before the Nicaraguan Government a copy of all the correspondence sent, received by and on file in the Department of State in relation to said claims.

III. The Government of the United States having declined to submit any matter in dispute herein to arbitration, except the amount of indemnity to be awarded in each of said cases, the Government of Nicaragua, as an act of deference to the United States, waives its denial of liability in said cases and agrees that said arbitrator may award such sum as he believes said Orr and Laubenhaimer and said Post-Glover Electric Company may be justly entitled to; but the award shall not exceed the amount claimed in the memorials filed in the Department of State in each case.

¹ *Papers relating to the Foreign Relations of the United States*, 1900, p. 824; William M. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States and Other Powers*, vol. I, p. 1290; H. La Fontaine, *Pasicrisie internationale*, 1902, p. 616.

IV. The said evidence is to be submitted to the Nicaraguan Government and to the arbitrator on or before the first day of May, 1900, who may, if he deems it necessary in the interests of justice, require the production of further evidence and each Government agrees to comply with said request so far as possible; but he shall not for that purpose delay his decision beyond July 1, 1900.

V. Each Government may furnish to the arbitrator an argument or brief not later than June 1, 1900, but the arbitrator need not for that purpose delay his decision.

VI. The Government of Nicaragua shall pay the indemnity fixed by the arbitrator, if any, in American gold or its equivalent in silver, at the General Treasury at Managua, as soon as the Legislative Assembly of Nicaragua shall authorize the payment; but the time thus allowed shall in no case exceed six months from the day the decision is pronounced, unless an extension of time of its payment should be granted by the Government of the United States.

VII. Reasonable compensation to the arbitrator is to be paid in equal moieties by both Governments.

VIII. Any award given by the arbitrator shall be final and conclusive. Done in duplicate at Washington this 22d day of March, 1900.

JOHN HAY
LUIS F. COREA

AWARD OF ARBITRATOR, GIVEN ON JUNE 16, 1900 ¹

By a protocol signed between the United States and Nicaragua on the 22d day of March, 1900, I have been appointed arbitrator to hear and determine the following cases:

First. Orr & Laubenheimer, citizens of the United States, through the Government of the United States, claim from the Government of Nicaragua indemnity for damages sustained through the alleged seizure and detention by Nicaraguan authorities of said Orr & Laubenheimer's steam launches the *Buena Ventura* and the *Alerta*.

Second. The Post-Glover Electric Company, a citizen of the United States, through the Government of the United States, claims from the Government of Nicaragua indemnity for the alleged seizure at Bluefields of certain goods and chattels of the said company.

Article 3 of the protocol limits the question submitted to arbitration in each of these cases to the amount of indemnity to be awarded. The exact language of this article is as follows:

The Government of the United States having declined to submit any matter in dispute herein to arbitration, except the amount of indemnity to be awarded in each of said cases, the Government of Nicaragua, as an act of deference to the United States, waives its denial of liability in said cases, and agrees that said arbitrator may award such sum as he believes said Orr & Laubenheimer and said Post-Glover Electric Company may be justly entitled to, but the award shall not exceed the amount claimed in the memorials filed in the Department of State in each case.

Having carefully considered the evidence and the arguments submitted in the two cases, I announce my conclusions as follows:

(1) AS TO THE CASE OF ORR & LAUBENHEIMER NARRATIVE

In July, 1894, the Orr & Laubenheimer Company, Limited, a corporation of the State of Louisiana, was engaged in importing bananas into Mobile from the port of Bluefields, Nicaragua, at the mouth of the Rama River. For this purpose it had under charter several steamships, one of which was called the *España*, and it also had under control in the Rama River two small steam launches or tugboats, called *Buena Ventura* and *Alerta*. They were about 42 feet long, 13 feet beam, and 11½ tons net tonnage. Their titles stood in the name of C. P. Laubenheimer in the records of the custom-house at Mobile, Ala. (where they were built), and they were also recorded as his property in the United States consular agency at Bluefields. They were under the daily orders and control of the local agents in Nicaragua of the Orr & Laubenheimer Company.

¹ *Papers relating to the Foreign Relations of the United States*, 1900, p. 826.

But it is necessary to note here the existence of what seems to have been an auxiliary company, a Nicaraguan corporation, called the Bluefields and Rama Banana Company, which had been specially incorporated in October 1892, "to proportion cargoes to all steamers which come to this market in search of fruit," and also to acquire two steamers for that object. C. P. Laubenheimer was one of the incorporators of this company, along with several other Americans and Nicaraguans.

The ordinary conduct of the banana business was as follows: The bananas were cultivated in plantations along the banks of the river and its tributaries. On the arrival of a steamer at Bluefields the two launches were dispatched up the river to notify the plantations to cut bananas and bring to the wharves or landing places for loading upon lighters. Meanwhile the steamer discharged any cargo she might have for Bluefields, and made ready to receive a cargo of about 12,000 bunches of bananas. She usually took aboard, also, a force of laborers to help load and stow. After perhaps a day thus consumed the steamer followed the launches up the river about 40 miles to the vicinity of a place called Rama, where she anchored and loaded her cargo from lighters towed to her by the launches. Three or four days usually sufficed after arrival for a vessel to discharge, ascend the river, load, descend, and depart.

There is a good deal of variation in the size of the bunches of bananas when collected in thousands from the plantations. They are strictly graded in the trade, and values decrease very rapidly with any decrease in size. For instance, it is testified that a bunch of "eight bands" averages not much more than half the value of one of "nine hands," and one of "seven hands" averages not much more than a fourth. The wholesale value of the best bunches in Mobile at this time, it is testified, was 75 cents a bunch.

Bluefields is the principal town on what is known as the Mosquito Coast, which was at one time recognized by England as an independent country, and there has remained there ever since much jealousy of Nicaraguan jurisdiction and tariffs.

Early in July, 1894, this feeling led to an insurrection. A small Nicaraguan force at Bluefields custom-house was disarmed, three were killed, and it was proposed to set up again an independent government. Nicaragua at once dispatched troops from the interior, marching overland, across the mountains, and down the headwaters of the Rama River, toward Rama and Bluefields, to suppress the insurgents, and also sent other troops by water up from Greytown. Martial law and a "state of siege" was also declared over that territory on July 5.

On July 13 the steamship *España* had arrived at Bluefields and gone up the river to Rama and was loading bananas. She had 8,000 bunches loaded, and 4,000 more—enough to complete her cargo—were cut and ready to be loaded when some Nicaraguan troops arrived under General Cabezas, who seized the launches and put them to use in handling his forces. The *España*, upon this, steamed down the river to Bluefields and out across the bar to the U.S.S. *Marblehead*, Captain O'Neil, to whom the agents complained. Captain O'Neil came aboard of the *España* and was taken back up the river, where he procured the return of the launches. The loading of the vessel was then completed, with loss of two days' delay, and she sailed for Mobile on the 16th, arriving there on July 22.

On her return voyage she sailed from Mobile on the 23d and arrived at Bluefields Sunday morning, July 29. The tugs *Buena Ventura* and *Alerta* were at once sent up the river to notify the plantations to cut bananas for a cargo. All day on the 30th the tugs were employed in picking up bananas at

isolated points and bringing them together for loading. But about 9 o'clock Monday night, General Cabezas again seized the tugs, with their crews aboard, and put them to work collecting his troops. Early next morning, with the two tugs and some lighters carrying several hundred soldiers, he descended upon Bluefields, which had been the headquarters of the insurgents. About the same time another force seems to have threatened Bluefields, approaching by water on the Greytown side, and the insurrection at once collapsed in a panic. Of this I will have more to say later and in more than one connection. At present our concern is with the tugs and the *España*.

The tugs had been under charge at Rama of C. H. Ellis, general manager for Orr & Laubenheimer, who seems to have displayed much energy and good judgment in this emergency. Another firm of banana importers, Brown & Harris, had two other tugs available, the *Milton* and the *Rey*. Ellis, next morning (the 31st), chartered these and continued to gather up his bananas to be ready for the *España*, which he expected to come up as usual for her cargo. Indeed, on Tuesday morning, July 31, she started up the river, but about halfway up she met the tugs going down with the soldiers. On the *España* were the Bluefields agents of Orr & Laubenheimer. They thought it useless to go without boats, and "wished to get back to their families," so they ordered her to turn about and return to Bluefields. Had she gone on Ellis might have loaded her that day, with the *Milton* and the *Rey*.

At the "Bluff," near Bluefields, the troops were landed and the tugs and lighters were released and turned over to the agents of Orr & Laubenheimer. But the coal on the tugs was exhausted, and they were unable to get back up the river to their work until Wednesday, August 1. Meanwhile the *España* now found it impossible to return up the river along with them, for, on account of the panic before referred to, she could procure neither laborers nor a pilot. Arrests were now being made by the troops of those who had been prominent in the insurrection, and many persons, including some Americans, ran away, and many of the native population sought protection in the vicinity of 300 British and American marines who were landed in the town. All business was paralyzed, and Ellis wrote that Goodell & Peterson, Bluefields agents of Orr & Laubenheimer, "are scared to death, and do not seem to make any effort to load ships." He even expected Goodell to run away.

It resulted that the *España* remained at Bluefields over three days, and that Ellis had to bring his bananas down to Bluefields in lighters and hands along to load them. But this was done promptly, and the vessel sailed for Mobile Friday evening, August 3. Had the tugboats not been interfered with she could scarcely have sailed before Wednesday morning.

One physical feature of the country deserves to be noted. Under the influence of a tropical sun and an enormous rainfall, it is clothed in dense forest, intersected by many hills and swamps. There is little agriculture or cleared land, except the scattered banana plantations. There are no practicable roads, but only difficult trails from one water course to another, nearly all communication being by boats upon the river. It results that in times of war the use of boats is absolutely essential to all military movements, and fear that the boats might be seized either by insurgents or troops led the auxiliary company before referred to (the Rama and Bluefields Banana Company), on July 12, by its secretary, to claim ownership of the *Buena Ventura* and the *Alerta*, and to nominally place them under the protection and custody of the governor of Siquia, the department in which Rama is situated.

PARTY IN INTEREST

This act and claim of ownership by the Rama and Bluefields Banana Company is made the basis of an argument on behalf of Nicaragua that the amount of damages awarded Orr & Laubheimer is practically reduced to nothing, because they were not the real owners of the boats. It is argued that this banana company, a Nicaraguan corporation, was the real owner, and that the liability which Nicaragua admitted in the protocol for the seizure of the tugs is only due to that company, which is not a party to this case. It is further submitted:

That the Government of Nicaragua should not be compelled to discharge that liability twice, and that it is the duty of the arbitrator to determine the identity of the proper claimant.

From all the evidence in the case there is no difficulty in determining the identity of the proper claimant, even apart from the language of the protocol, or from any question which might be raised as to where the legal title to the tugs resided. The proper claimant for the damages is the party who suffered them. It was Orr & Laubheimer who owned the bananas, and had chartered the *España* to transport them, and whose agents actually had the two tugs employed in collecting and loading them at the moment that they were seized. The question who owned the tugs is utterly irrelevant to the issue before me. Orr & Laubheimer had them in use and were damaged by their seizure. They are the proper claimants, and the only real question in the case is the amount of damages which they sustained.

There is no question of a "solatium," or of punitive damages, for the right of eminent domain and the rights incident to a state of war, and martial law, justify the use by any Government, in an emergency, of any private property found available. Full compensation, however, for all damage suffered by private parties must afterwards be made. But the obligation rests upon every party damaged to do all in his power to reduce his losses to a minimum. That is the law the world over, and on these principles I now proceed to estimate the damages due to Orr & Laubheimer.

AMOUNT OF DAMAGES

The principal item of the damages claimed consists in injury to the bananas by delay in loading. The first delay was for two days, the last was for about two and a half days. But part of the last delay, and perhaps some injury from the employment of new and untrained stevedores were incidents of the state of war and the panic among the agents, pilots, and laborers of all degrees, and can not be entirely ascribed to the seizure of the tugs. I shall therefore estimate the damages as for two days' delay in the case of each cargo.

To form some idea of the deterioration in a cargo of bananas likely to result from a delay of two days it is necessary to refer to some features of the banana trade which appear in the evidence.

This trade is made possible by the fact that the bunches of bananas can be cut when green at various stages of maturity, and will ripen afterwards, anywhere between three days and three weeks, if properly handled and kept. Thus they may not only endure voyages from any Caribbean ports to ports in the United States, even as distant as New York, but after arrival they are distributed by fast railroad trains as far north as the lakes and as

far west as Salt Lake. These facts, taken in connection with the rapid growth and great extension of the banana trade, show that in spite of the delicacy and perishable character of the fruit, there must still be a reasonable margin of safety in the business against moderate delays. In other words, and to be more exact, it seems to me a strong and reasonable presumption that a delay of two or even three days in a voyage, such as might result from very bad weather, could scarcely be expected to destroy more than 50 per cent of the value of a cargo. I feel compelled, therefore, to question such extreme estimates of the damage done to these two cargoes.

In each case the loss is arrived at by subtracting Orr & Laubenheimer's statement of net sales of the damaged cargo from the value of an ideal cargo of 12,000 bunches, in which every bunch is assumed to bring the highest market price. It is safe to say that such ideal cargoes never occur in actual trade; but we may accept the theory of one as a convenient standard of comparison in the discussion of different cases. Estimated in this manner it is claimed that the damage sustained by the first cargo by reason of its two days' delay was \$7,196.46, or about 80 per cent of its ideal value, and that the second cargo, by reason of its three days' delay, sustained damage of \$8,541.84, or about 95 per cent of its ideal value. I can not accept these figures, and in the testimony submitted to me in behalf of the plaintiffs themselves I find evidence that they are very much exaggerated, coming from two sources, entirely independent, but closely corroborating each other.

First, I find a letter from C. H. Ellis, before mentioned as the efficient general manager of Orr & Laubenheimer at Rama, to Capt. Charles O'Neil, U. S. N., written July 31, the day after the second seizure of the launches, but referring to the seizure of July 13 as follows:

No doubt you are familiar with the fact that on the last trip of this steamer we lost not less than \$2,000 on account of molestations, and I think if anyone has a claim for damages the house of Orr & Laubenheimer has, and ask you to demand of the Nicaraguan Government \$25,000 damages, this being the only resource to check these people.

I shall refer to this letter again in another connection, but here call attention particularly to the estimate made by Mr. Ellis, an expert in the business, as to the actual damage to this cargo, from a two days' delay. His estimate, \$2,000, is about 22 per cent of the value of the ideal cargo.

Next, I find a judicial determination of actual damages suffered by another cargo of bananas in a delay of three days, the circumstances being remarkably like those in the cases before us.

In a brief submitted by the counsel of Messrs. Orr & Laubenheimer, reference is made to—

the interesting case of the steamship *Nicaragua*, reported in 71 Fed. Rep., 723, and on appeal in 72 Fed. Rep., 207, where a steamship was held to pay nearly \$3,000 for the damage done by her detention at quarantine in Mobile Bay, resulting from the master humanely bringing an agitator, who had made himself disagreeable, and who seemed to be in danger in Nicaragua, contrary to the quarantine regulations of the port.

The case is indeed interesting, not only in the facts that Orr & Laubenheimer were the plaintiffs in it against the *Nicaragua*, and that it occurred on August 19, 1894, only ten days after the second voyage of the *España*, and that the "agitator" who was humanely assisted in his flight was an American citizen who helped bring on the revolution, which brought the troops,

which seized the boats, which delayed the two cargoes we are inquiring about, but also because, in all the circumstances determining the amount of damages, the case of the *Nicaragua* is peculiarly similar to that of the *España*.

The vessels were chartered at the same price, \$77 per day, and were therefore presumably about the same size. The voyages were between the same ports, the bananas from the same plantations, and handled by the same people and in the same manner. Season, weather conditions, and market values were practically identical, and the only differences to be discovered are such as should make the damage suffered on the *Nicaragua* materially exceed what we should expect on the *España* on either voyage. These points of difference are three:

First. The *Nicaragua* was detained three days, and the *España* only two days on the first and two and one-half days on the last occasion.

Second. The *Nicaragua* had her whole cargo aboard during her whole delay, while the *España* was only two-thirds loaded on the first occasion and was empty on the last. Bananas not loaded were at the wharves or on lighters, where they were in the open air and might be easily shaded, if necessary. Now, it is a recognized fact that delay injures bananas already loaded in the hold of a ship more rapidly than it does those awaiting loading in more open situations.

The brief of the counsel of Orr & Laubenheimer itself says that—

“8,000 bunches were already laden aboard at the time of the detention of the tugs, and, in that hot climate, this part of the cargo must have deteriorated with great rapidity.”

Third. During the *Nicaragua's* detention she was fumigated. This involves stopping openings and cutting off drafts and the use of smoke or fumes. It must have added to the injury to the fruit.

Clearly, then, we must conclude that the damage to the cargo of the *Nicaragua* in her three days at quarantine while fully loaded must have exceeded any possible damage to the cargo of the *España* upon either detention.

The case was contested strongly on the spot by experts upon both sides and was carried to an appeal and confirmed. It fixed the total damages at \$2,833.15. Presumably at least \$231 of this was for three days' demurrage, which would leave about \$2,600 for damage to cargo. This accords well with the Ellis estimate and with general facts shown about the trade, and I shall make it the basis of my allowance.

The claims for 80 and 95 per cent damages have had their origin in the natural annoyance and impatience felt by business men at interruptions to their business, as appears in the letter of Elles to Captain O'Neil, asking him to demand \$25,000 damages “as the only resource to check these people.”

But there is another side to the case. Nicaragua only exercised her sovereign rights under stress of the necessity of war. Individuals doing business in foreign territory have to run the risks of such occurrences. But in these cases between the State and an individual whose property has been taken for the public welfare it seems to me right that the benefit of doubt should be thrown in favor of the individual, and that his damages should be liberally estimated, lest by any error he should be oppressed.

I will not therefore apply the strict figures of the “steamship *Nicaragua*” case, or of the Ellis letter, in assessing the damages to cargo caused by the seizures complained of. These would scarcely justify awards even of \$2,000

for delays of only two days to a vessel not yet fully loaded. But I shall estimate 30 per cent of the ideal cargo as the possible loss, and shall allow Orr & Laubenhaimer \$2,700 damages for each of the two seizures.

The attorneys of Orr & Laubenhaimer ask for liberal allowances because interest is barred by the protocol. But no allowance can be made indirectly which is barred directly.

It further remains to examine the claims submitted by Orr & Laubenhaimer for various incidental damages. These I will take up in the order of the occurrence of events.

First. On July 13, when the tugs were first seized and the *España* went down to the bar and brought up Captain O'Neil, it is claimed that she paid \$130 gold for pilotage and lost two days' demurrage at \$77 per day. These claims are both allowed, amounting to \$284.

Second. Claim is made for two days' wages of the crews of the two tugs and of 30 laborers on the *España*, brought up from Bluefields to stow cargo. Each crew of a tug, it is claimed, comprised 10 men, whose united wages were \$18.50 gold per day, beside their food. The wages of the laborers are given as \$1.50 per day and their food. The value of the food, however, is neither estimated nor claimed for.

Nicaragua offers reputable and disinterested testimony that crews of only five men are necessary or customary on such small boats on the Rama River (say of 12 tons net register), and that the customary wages are paid in depreciated paper currency, and that the total expenses for food and wages of such a tug would not exceed \$5 gold per day. The same testimony gives the wages paid the stevedores, or laborers on the ship, as \$2 per day in silver, Mexican, worth 90 cents gold, and their food is estimated at 30 cents gold per day.

These wages are stated as prevailing in 1899. In view of the difference in the time and of the fluctuating values of the paper currency, and desiring to err, if at all, on the side of liberality, I shall allow for the crews of the tugs \$12.50 each per day, and for the stevedores \$1.25, or a total of \$125, instead of the \$164 claimed.

No other claims are presented in exclusive connection with this seizure of July 13, and we next take up the second seizure of July 30. Here the total delay was over two days, but I have already held that the delay of the third day was caused by the state of panic due to the suppression of an insurrection with which the greater part of the population had been in sympathy, and were consequently now in apprehension of danger. The incidental damages to be allowed must therefore be estimated for only two days.

The claims advanced by Orr & Laubenhaimer for the second detention are as follows:

First. For demurrage. This is allowed for two days at \$77 per day, \$154.

Second. For charter from Brown & Harris of the two tugs *Milton* and *Rey* (presumably with their lighters), \$700 gold is claimed.

Nicaragua protests that this amount is extravagant. It is in evidence that *Buena Ventura* and *Alerta* cost \$7,000 for the two. The *Milton* and *Rey* were, presumably, only about of equal value, and this rate would pay for the tugs in twenty days. But it may be conceived that Brown & Harris, who had a steamship, the *Rover*, loading at the time, took advantage of their opportunity to exact high figures. So in the absence of any testimony to controvert, I give the benefit of a doubt to Orr & Laubenhaimer and allow the \$700 in full.

Third. For the crews of the two tugs, at \$18.50 per crew per day, and for the 30 stevedores at \$45 per day, Orr & Laubenhaimer claim three

days' lost wages, amounting to \$246. I allow, as before explained, for two days only, and at rates of \$12.50 per day for each tug, and \$37.50 for the gang of stevedores, making a total of \$100.

Fourth. Orr & Laubenheimer claim for three days' consumption of coal at 10 tons per day while lying at Bluefields from Tuesday to Friday. During this period it is claimed that the *España* had to keep up steam "because it was uncertain when it would be needed." It is stated that, although the coal cost only \$2.50 per ton at Mobile, it might have been sold to a war vessel at Bluefields at \$6 per ton, and therefore \$180 is claimed on this account.

I must reject this claim on the ground that if the *España* did keep up steam during the three days she lay at Bluefields, it was unnecessary and was gross mismanagement. To have banked her fires would have answered all purposes and cost but a trifling sum. Anything done beyond that I can only attribute to the panic among the agents, which has been before referred to. The evidence indicates that some of them contemplated flight, and fires may have kept in view of some such emergency.

Fifth. Orr & Laubenheimer claim from Nicaragua \$650 for damages to a lighter which it was claimed was broken by overloading while in use by the troops and cost that sum for repairs.

This claim I must reject as barred by the protocol. No reference to any such damage appears in any of the original papers. The first mention of it is in an affidavit by Ellis, dated April 17, 1900. As it has no place in the "memorials filed in the Department of State" at the date of the protocol, it can not be considered here.

Sixth. Lastly, Orr and Laubenheimer claim for the hire of their tugs the sum of \$1,000.

I think it proper to allow liberally for the use of the tugs in view of the military value of their services in Nicaragua's emergency. But after separate compensation has been allowed for the wages of the crew (\$100) and for the hire at extreme rates (\$700) of two other tugs to do their work in their absence, I think an allowance of \$50 per boat per day for minor expenses, wear and tear, and profit, is ample.

I therefore allow under this head the sum of \$200.

AWARD

I therefore announce as my award that Nicaragua shall pay to Orr & Laubenheimer, as indemnity, at the time and in the manner provided in the protocol, the sum of the several amounts above allowed, being \$3,109 for the first seizure and \$3,854 for the second, a total of \$6,963.

(2) AS TO THE CASE OF THE POST-GLOVER ELECTRIC COMPANY

NARRATIVE

On June 26, 1896, one Frank Field, a citizen of the United States, executed a contract to erect an electric-light plant in the town of Bluefields, Nicaragua. It was signed in behalf of the town by Gen. J. P. Reyes, governor of the department of Zelaya, and L. A. Marx, president of the Bluefields council. The single feature of the contract necessary to be noted in this narrative is that Field agreed to erect the plant within three months under penalty of a fine and the forfeiture of a site which had been given him and of all the machinery which might have been erected on it at the time of forfeiture. The time fixed for completion of the plant was afterwards

extended to November 26, 1896. On August 20 Field appeared in Cincinnati, and there bought from the Post-Glover Electric Company electrical supplies to the amount of \$1,419.04. In payment he persuaded them, by false and fraudulent representations, to accept a draft on New Orleans, after which he seems to have disappeared and had no further part in the proceedings.

In due course the draft fell due and came back protested, and about October 14 the company sent an agent, Dr. Beck, in pursuit of the goods. Beck followed them to Bluefields, arriving there October 24. The goods were found in possession of one Rogers, acting as agent for Field, and Rogers willingly turned them over to Beck. Beck endeavored in vain to sell the goods to General Reyes. General Reyes endeavored to persuade Beck to wait until November 26, and then to step into Field's contract. Beck declined and decided to carry the goods home, and began to box and deliver them to Brown & Harris, agents of the steamer *Hiram*, billed to sail on November 12 for New Orleans. On that morning Brown & Harris applied to General Reyes for a clearance for the *Hiram*, without which she could not legally prosecute her voyage. General Reyes refused to give it unless they would agree not to transport the electrical supplies in question. The steamer *Hiram*, being loaded with bananas, could not afford to delay and contest the legality of General Reyes's action, and accordingly declined to carry Beck's goods. He had no resource but to return to the United States without them. But he did manage to conceal and carry off in his trunk a few of the small and most valuable pieces. After this, by the regular processes of Nicaraguan law, Field's contract was declared to have been violated and the goods in question forfeited. They have ever since remained in possession of the municipality of Bluefields.

By article 3 of the protocol Nicaragua admits liability to the Post-Glover Electric Company, and the only question before me is as to the amount.

AMOUNT OF DAMAGES

The claim of the Post-Glover Electric Company is made up by taking from the invoice price of the entire bill of goods sold to Field, which was \$1,419.04, the invoice price of these articles recovered by Dr. Beck, which was \$143.64. This leaves \$1,275.40, the principal of the claim. To this was added interest for twenty months, up to the time of a detailed examination into the account by the United States State Department. This interest, \$127.54, made the total claimed in the latest memorials filed in the State Department \$1,402.94.

To this claim Nicaragua offers objection, which may be briefly stated as follows:

First. That the basis of value should not be the market price of the goods in Cincinnati, as that includes a profit to the Post-Glover Company. It should rather be their useful value, in the condition in which they were found, when they came into the possession of General Reyes, at Bluefields.

Second. That Beck's carrying off certain portions of the apparatus wilfully destroyed the useful value of what remained, making it absolutely nothing. There being no value left in this wick Bluefields gets, she owes nothing for it, but is herself damaged by her failure to collect \$1,000 fine, liquidated damages from Field, due to her by the contract.

But this argument loses sight entirely of the purpose and the limited scope of this arbitration. It had its origin in General Reyes compelling a common carrier to refuse to serve an agent of the Post-Glover Company.

Its purpose is, not that Bluefields may derive some profit from this action, but that the Post-Glover Company may suffer no damage. And in its scope it is strictly limited to estimating the loss of that company. What Bluefields gets or loses is not in the case any more than what Field gets or loses.

Nothing is in order before me but evidence to show that the actual loss suffered by the electric company is less than \$1,402.94. No such evidence is offered. It is beyond doubt that the company could have sold the goods in question in open market in Cincinnati at the prices named in the invoice. Those prices, then, must measure the damage.

As no tender of settlement was ever made, interest is a permissible charge unless barred by the protocol. The protocol does not bar any amount "claimed in the memorials filed in the Department of State" before March 22, 1900, and the \$127.54 is therefore allowed.

AWARD

I therefore announce as my award that Nicaragua shall pay to the Post-Glover Electric Company as indemnity, at the time and in the manner provided in the protocol, the sum of \$1,402.94.

E. P. ALEXANDER
