

DECAUVILLE COMPANY CASE

PAÚL, *Commissioner* (for the Commission):

This claim for indemnity is made up of the following amounts:

	<i>Bolivars</i>
Balance of the debt of the Government of Venezuela to the Decauville association, due May 15, 1889	10,923.46
Installment due September 15, 1889	25,923.47
Interest at 6 per cent, in accordance with the liquidation	9,896.55
Difference on account of the value which is contained in the claim of the bonds of the diplomatic debt, estimating them at 60 per cent	31,162.32
	<hr/> 77,905.80

The document presented in support of this claim consists of a contract made between Mr. Alberto Smith, minister of public works, with the authorization of the President of the Republic, and the Vicomte Gonzague de la Baume, as representative of the Decauville du Petit Bourg Company, whereby the indebtedness which said company held against the Government of Venezuela for the sale of four iron bridges was liquidated and the amount of said indebtedness was fixed at the sum of 77,770.39 bolivars, inclusive of interest to the dates of the respective expirations of the three terms agreed on in said contract for the total payment of the debt.

It appears from a communication addressed by the citizen minister of the treasury to the minister of foreign relations, dated June 5 of the present year and numbered 284, a copy of which has been transmitted to this Commission, that the account which the representative of the Decauville Company makes of the payments made by the Government of Venezuela, upon the dates therein indicated, on account of the debt, is correct, and the balance which results as being owed on account of this debt at the date of the termination of the respective obligations, amounting to 36,848.93 bolivars, is likewise correct. Notwithstanding that the liquidation of interest made in the contract between the minister of public works and the representative of the Decauville Company was made at the rate of 6 per cent annually up to the dates established for the subsequent payments of the debt, there is no proof that it was agreed to make any agreement in the future for interest upon the sums which might remain owing at the same rate, wherefore the rate established by this Commission ought to govern in this case; that is to say, that in the cases in which there is no express agreement concerning interest there will be allowed upon liquidated debts or obligations for loans of cash at the legal rate of 3 per cent, in conformity with article 1720 of our code, which is in accord with article 1907 of the French civil code. This liquidation being carried into effect from the respective dates upon the balances which have remained owing, a result of 4,530.85 bolivars is obtained.

The contention which the claimant makes that he should be allowed 40 per cent more upon the amount of the principal debt and upon the interest because of the fact that the payment was made, in conformity with the terms of the

protocol, in bonds of the 3 per cent diplomatic debt instead of in cash, is entirely inadmissible, because the party claimant has spontaneously submitted his demand to this Commission, whose authority is limited to examining the claims presented by Frenchmen, founded upon facts prior to May 23, 1899, fixing the amount thereof in conformity with the proofs which relate to the facts upon which they are based, and in conformity with the grounds that may justify them.

The method of payment established by article III of the protocol is a fact entirely separated from the duty of judging concerning the justice or injustice of the demand.

This fact relates solely to the execution of the judgment which the arbitrators may pronounce, and this conclusion is clearly deduced from the terms of said article, which reads as follows:

Awards [those which the arbitrators or the umpire may allow] shall be paid to the French Government in bonds of the 3 per cent diplomatic debt within three months after the agreement or judgment.

The provision which article IV of the protocol contains is of the same character and provides:

That the Government of Venezuela shall ask Congress to include in the provision for expenses the sums necessary for the payment of the monthly installments in arrears of the diplomatic debt, and the holders of bonds of that debt shall, besides, participate in all the advantages which may accrue to them from the strict application of the Venezuelan laws applicable to the premises.

The definite provision of article III and that which article IV of the protocol contains relate solely to negotiations of Government with Government, which refer to the manner of paying obligations incurred, be it by contract, by former arbitral decisions, or by those which the present Commission may pronounce. It is solely for the respective Governments to determine the manner of payment by special agreement, and in no way can this be attributed to the arbitrators, who are only called upon to decide concerning the justice of the claim and to determine the amount which the Government of Venezuela has to pay, in case it has to pay, taking into consideration the facts and foundation of the claim.

It is to be observed that among the 40 claims which have been presented before this Commission up to date, embraced in article II of the protocol signed at Paris February 19, 1902, the claim concerning which this decision is given is the first to set up the extraordinary and rash contention that there be attributed to the diplomatic debt by the arbitrators a value of 40 per cent, thereby causing a notorious injury to the actual holders of said debt and to those who are authorized by the findings of this Commission to receive in payment of their debt, according to the terms of the protocol, bonds of the said diplomatic debt. Such an arbitrary proceeding would cause the continued depreciation of the value of the debt until it destroyed it completely, and the holders of it would be the first to suffer the consequences of the values established against the economic rules which govern public securities.

Therefore this portion of the claim is disallowed, and it is admitted for the principle and interest estimated until the 15th of September of the present year, or, say, three months after the date of the present award, amounting to 41,377.78 bolivars.

The French Commissioner concurred in this opinion.
