

OPINIONS IN THE AMERICAN - VENEZUELAN COMMISSION

DIX CASE ¹

BAINBRIDGE, *Commissioner* (for the Commission):

The facts upon which this claim is based are substantially as follows:

In September, 1899, at the beginning of the revolution led by General Castro against the Government of President Andrade, Ford Dix, a native-born citizen of the United States, was engaged in the cattle business in Venezuela, having leased pastures near Valencia and Miranda, upon which he alleges he had at the time mentioned about 800 head of beef, 21 milch cows, 16 yearling calves, 6 saddle horses, and 1 mule. Dix claims that he had, on July 3, previous, entered into a contract with the firm of Salmon & Woodrow, of Havana, Cuba, by which he agreed to deliver said firm between September 15 and October 7, 1899, 750 to 800 head of cattle to weigh 750 to 900 pounds each, for which said firm was to pay him \$ 50 per head.

On September 15, a battle occurred at Tocuyito, between the Government forces and the revolutionists, in which the Government army was completely routed. The revolutionary army remained in that section of the country for several months, and at various times between September 15 and December 31 1899, Dix's cattle were confiscated for the use of the army. Dix alleges that they took from him 409 beeves, 16 milch cows, 16 calves, 4 saddle horses, and 1 mule; that to avoid losing the remaining 388 head he sold them to Braschi & Sons, of Valencia, at a sacrifice, viz, \$ 19 per head Venezuelan; that by reason of the above, and to the fact that there was no communication with the seacoast, he was prevented from complying with his contract with Salmon & Woodrow, and was obliged to pay said firm \$ 1,875 damages on account of his failure to deliver the cattle as required by the terms of said contract. Dix succeeded in obtaining from the revolutionary authorities evidence of the taking of 252 head of cattle, and subsequently, upon personal request of Dix to be paid for his cattle, General Castro, after assuming the office of President, caused to be issued to Dix a Government warrant for the value of 102 head.

No documentary evidence is submitted in support of the claimant's allegation of the taking of the other 55 beeves, 16 cows, 16 calves, 3 horses, and 1 mule. The taking of 1 horse is proven by an original telegram signed by General Castro.

Mr. Dix also makes a claim for expenses which the above circumstances caused him to incur in traveling expenses, railroad fares, hotel bills, etc.

As submitted to this Commission the claim of Mr. Dix may be summarized as follows:

¹ For a French translation see: Descamps - Renault, 1903, p. 836.

| | Venezuelan |
|--|----------------|
| Loss of 354 head of beef cattle, at \$ 30 | \$ 10,620.00 |
| Loss of 388 head of beef cattle, at \$ 11, difference between price obtained by Dix and value stated in vouchers given | 4,268.00 |
| Loss of 55 head of beef cattle for which no vouchers were obtained, at \$ 30 per head | 1,650.00 |
| Other cattle and ranch animals as follows: | |
| 1 saddle horse | \$ 150.00 |
| 1 saddle horse | 100.00 |
| 1 saddle horse | 200.00 |
| 1 saddle mare | 50.00 |
| 1 saddle mule | 250.00 |
| 16 milch cows, at \$ 35 per head | 560.00 |
| 16 calves, at \$ 10 per head | 160.00 |
| | <hr/> 1,470.00 |
| Amount paid for nonfulfillment of contract with Salmon & Woodrow | 2,437.50 |
| Expenses | 1,000.00 |
| | <hr/> |
| Total | 21,445.50 |

The revolution of 1899, led by General Cipriano Castro, proved successful, and its acts, under a well-established rule of international law, are to be regarded as the acts of a *de facto* government. Its administrative and military officers were engaged in carrying out the policy of that Government under the control of its executive. The same liability attaches for encroachments upon the rights of neutrals in the case of a successful revolutionary government, as in the case of any other *de facto* government. What that liability is has been clearly stated in the case of *Shrigley v. Chile*, decided by the United States and Chilean Claims Commission of 1892, as follows:

Neutral property taken for the use or service of armies or functionaries thereunto authorized gives a right to the owner to demand compensation from the government exercising such authority.¹

In the case before us, so far as the 354 head of cattle are concerned, the taking of which by the revolutionary army is in various forms evidenced, the liability of Venezuela to compensate Mr. Dix is determined by the rule above quoted. And this liability may fairly be extended to include compensation for the other stock, either taken by the revolutionary troops or lost as the direct result of the depredations of the army in the stampeding of the herd, the destruction of fences, etc. That Dix's cattle were taken under authorization of the military officers is proved by the receipts given by Generals Lovera, Martinez, and Lima, and the Government warrant given by President Castro. Dix states that General Hernandez told him that he would exempt his cattle as far as possible, but that "he did not propose to face defeat for the want of something to eat for his troops."

The value of the cattle taken, as stated in the receipts and the Government warrant given by General Castro, is \$ 30 (Venezuelan) per head. As to the cattle for which Dix could not obtain receipts, but whose loss he established by other documentary evidence, their value is stated by Dix and other witnesses as "at not less than 120 bolivars per head in this market" (\$ 30 Venezuelan). The value of the 409 beeves taken from or lost by Dix was, therefore, \$ 12,270 (Venezuelan). To this must be added the value of the mule, saddle horses, cows, and calves, also taken from him, amounting to \$ 1,470 (Venezuelan). Thus the total value of Mr. Dix's stock, confiscated or lost, amounted to \$ 13,740 (Venezuelan).

¹ Moore's Arbitrations, 3712.

On December 18, 1899, Mr. Dix sold and delivered at Los Guayos to the firm of A. Braschi & Sons 388 beeves at \$ 19 (Venezuelan money) per head. He says: "I made a sale — that is, I sacrificed them to save something." He makes a claim against the Venezuelan Government for \$ 4,268, the difference between the sum received by him from Braschi & Sons, and the alleged actual value of the cattle (to wit, \$ 30 per head) which he sold to them.

Governments like individuals are responsible only for the proximate and natural consequences of their acts. International as well as municipal law denies compensation for remote consequences, in the absence of evidence of deliberate intention to injure. In my judgment the loss complained of in this item of Dix's claim is too remote to entitle him to compensation. The military authorities, under the exigencies of war, took part of his cattle, and he is justly entitled to compensation for their actual value. But there is in the record no evidence of any duress or constraint on the part of the military authorities to compel him to sell his remaining cattle to third parties at an inadequate price. Neither is there any special animus shown against Mr. Dix, nor any deliberate intention to injure him because of his nationality. He refers himself to the estimation in which he was held by General Castro. If the disturbed state of the country impelled Mr. Dix to sacrifice his property, he thereby suffered only one of those losses due to the existence of war for which there is, unfortunately, no redress.

Upon similar grounds the claim of Mr. Dix to be reimbursed by the Venezuelan Government for the amount alleged to have been paid by him to the Havana firm as damages for the nonfulfillment of his contract must be disallowed. Interruption of the ordinary course of business is an invariable and inevitable result of a state of war. But incidental losses incurred by individuals, whether citizens or aliens, by reason of such interruption are too remote and consequential for compensation by the Government within whose territory the war exists.

Moreover it is very probable that Mr. Dix could not have complied with his contract, even had the revolutionists left him in undisturbed possession of his cattle, for the reason that the port of Puerto Cabello was closed for several weeks. Dix says: "I realize, and realized, that had I had undisturbed possession of my cattle I could not have shipped them within the allotted time on account of the revolution." Had Mr. Dix been able to complete his contract he would have made a large profit; instead, he appears to have suffered a loss. "I would not have gone to that country," he says, "to encounter the known difficulties, not to mention the unknown, for just a reasonable profit. I went after the fancy profits which I ascertained were to be made." He must, however, be held to have been willing to accept the risks as well as the advantages of his domicile in a country in a state of civil war.

These principles also dispose of Mr. Dix's claim for expenses. It is doubtless true that he was subjected to considerable inconvenience and expense; but his rights and immunities in that regard are not different from those of other inhabitants of the country, and

no government compensates its subjects for losses or injuries suffered in the course of civil commotions. (Hall, 4th edition, p. 232.)

In view of the foregoing an allowance is made in this claim in the sum of \$ 13,740 (Venezuelan), with interest at 3 per cent per annum from January 1, 1900 to December 31, 1903, the latter being the anticipated date of the final award by this Commission. The total sum allowed is, therefore, \$ 15,388.80 (Venezuelan), equivalent to the sum of \$11,837.53 in gold coin of the United States.

NOTE. — Wherever in this opinion the words "Venezuelan dollars" are used the meaning thereof is "Venezuelan pesos" of the value of 4 bolivars each. (W. E. B.)