

GAGE CASE

BAINBRIDGE, *Commissioner* (case referred to umpire):

This claim arises out of the arrest of the claimant, Gage, and one Fred. R. Bartlett, citizens of the United States at La Guaira, on the evening of December 26, 1900.

The arrest was made by the mayor of La Guaira, who had been a fellow passenger of the parties named on the afternoon train from Caracas, on the ground that the conduct of Messrs. Gage and Bartlett during the trip had been prejudicial to good order, as tending to cause a disturbance of the peace. The testimony as to whether the arrest was warranted or not is conflicting, although it must be said the weight of the evidence is to the effect that the conduct of these men was lacking in discretion. It is not deemed necessary, however, to discuss the evidence upon this point in detail. The claim turns primarily upon the occurrences subsequent to the arrest.

The complaint sworn to by both Gage and Bartlett on December 29, 1900, states:

Arriving at the jail we were placed in a small, dirty, dingy room with eight or ten prisoners and with no accommodations of any kind. Our money and valuables were taken from us as we were registered and searched. Shortly after one of the prisoners offered us a bench and we sat down and conversed quietly together and addressed no remarks to anyone.

After having been seated for about fifteen minutes the chief of the prison guard entered the room and roughly ordered us off the bench, and taking the bench in his

hands raised it over Mr. Gage's head and threatened to kill him if he made the slightest protest, abused us, and then left the room. While we were in the prison we asked permission of the chief of the guard and his aids to communicate by telephone with the American consul in La Guaira or the American minister at Caracas. This request was absolutely refused, and we were told that the American consul had been at the jail, but why we did not see him was not explained.

They were released without any trial about half past 7 that evening, their money and valuables being returned to them. Their imprisonment lasted about two and one-half hours.

The citizen or subject of a state who goes to a foreign country is, during his stay in the latter, subject to its laws and amenable to its courts of justice for any crime or offense he may commit in contravention of the municipal laws, nor can the government to which he owes allegiance and which owes him protection properly interpose unless justice is denied him or unreasonably delayed. This principle, however, does not interfere with the right and duty of a state to protect its citizens when abroad from wrongs and injuries; from arbitrary acts of oppression or deprivation of property, as contradistinguished from penalties and punishments, incurred by the infraction of the laws of the country within whose jurisdiction the sufferers have placed themselves.

It would seem too clear for argument that the denial to a foreigner, arrested for an alleged infraction of the municipal law, of the opportunity to communicate with the representatives of his government is an arbitrary act of oppression, amounting, in itself, to a denial of justice. While amenable to the municipal law, the accused is entitled to a speedy and impartial trial, under every civilized code, and to such assistance in securing a prompt and impartial trial, or in other ways as it may be within the province of the representatives of his government to render.

The responsibility of a government for the acts of its administrative officials, injuriously affecting the rights of aliens, is beyond question.

Presumably, therefore, acts done by them [says Hall] are acts sanctioned by the state, and until such acts are disavowed, and until, if they are of sufficient importance, their authors are punished, the state may fairly be supposed to have identified itself with them.¹

The conduct of the jefe civil and the police officers at La Guaira in connection with the arrest and detention of Mr. Gage was promptly brought to the attention of the Venezuelan Government by the Government of the United States through its legation at Caracas, and such apology and reparation required as were deemed justified under the rules of international law herein stated. So far as the evidence shows, however, the acts of the civil authorities were not disavowed nor were their authors punished.

For these reasons I am of opinion that an award should be made in this claim.

PAÚL, *Commissioner* (claim referred to umpire):

I regret to disagree with the opinion of the honorable Commissioner of the United States in this case.

The evidence presented is in itself sufficient to prove that George E. Gage misdemeaned himself during his trip from this city to the port of La Guaira, and that he well deserved the punishment inflicted on him upon his arrival at La Guaira by the civil authority, who was a witness to Gage's doings.

Said punishment, which was only an arrest of two and one-half hours, is sanctioned by law, and it is within the power of civil authorities to administer

¹ Hall's International Law, 4th ed., p. 226.

such in a summary way, without previous former trial, in cases of disorderly behavior in public places, or in cases of misdemeanor against other persons. This last was the case of Gage, which happened to be witnessed by the authority. The ill treatment and incommunication with his minister or consul, of which he complains he was a victim during his arrest, only appears from the statement of the claimant, whose truthfulness in the present case is doubtful, considering that in the memorial presented by him he goes so far as to distort Dr. N. Zuloaga's declaration, who, according to Gage, said, "In case of an international claim he would side with his Government regardless of truth." The deposition of Elías de León, who was present as interpreter at the interview between Doctor Zuloaga and Gage, states the contrary, and he assures that Doctor Zuloaga said:

This matter is not worth raising an international question, but if it comes to this, I am a Venezuelan in the first place, and I will be at the side of my Government and will accomplish my duty.

There is a very substantial difference between fulfilling one's duty and being regardless of truth, a difference which the claimant does away with, with a deliberate purpose of diminishing the weight of the declaration of a person who is perfectly truthful by temperament as well as by education, and who had been the gratuitous victim of Gage's sneers and misbehavior which caused him to be arrested.

I am of opinion that the claim of George E. Gage must be disallowed.

BARGE, *Umpire*:

A difference of opinion having arisen between the Commissioners of the United States of North America and the United States of Venezuela, this case was duly referred to the Umpire.

The Umpire, having fully taken into consideration the protocol and also the documents, evidence, and arguments, and likewise all the communications made by the two parties, and having impartially and carefully examined the same, has arrived at the decision embodied in the present award.

Whereas the claimant claims for damages for false arrest and imprisonment, unlawful detention and personal indignities connected therewith; and

Whereas it appears from the declaration of the witnesses, General García, civil chief of the parish of La Guaira, Dr. N. Zuloaga, Dr. A. M. Díaz, Dr. F. Hernandez Tovar, and E. Ochoa, that the claimant, in a first-class carriage of the Caracas and La Guaira Railway, in which he traveled together with the witnesses, behaved in a way as if he were intoxicated and indulged in actions that were liable to disturb the public peace, which declarations do not seem to be sufficiently contradicted by the declaration of the conductor of the railway, who only from time to time walked through the carriages and was not, as the other witnesses were, in his constant society, nor by the declaration of the consul of the United States of North America at La Guaira, who only saw him two and one-half hours later; and

Whereas, therefore, the act of the police officer who ordered claimant to be arrested and put into jail for disturbing public order can not be said to be unlawful, the charge of false arrest and imprisonment can not be admitted.

Whereas, furthermore, the prisoner was let free after about two and a half hours of detention; and

Whereas, in case of a detention by the police in behalf of public safety of a person who in a state of intoxication has disturbed and may be feared furthermore to disturb the public peace, a detention of little more than two hours

can not be said to be excessively long, the charge of unlawful detention seems, in case of lawful arrest, not to be founded; and

Whereas the claimant further complains that his request to communicate with the American consul at La Guaira or the American minister at Caracas was refused;

Whereas, however, for this refusal there is only the statement of claimant and his former coclaimant, Mr. Bartlett, whilst out of the letter of the minister of foreign affairs of the United States of Venezuela to the minister of the United States of North America of April 2, 1901, it might be concluded that instead of a formal refusal there might have been only a delay commanded by circumstances, and whilst, on the other hand, it is proved that claimant was let free after about two hours of detainment in consequence of — or in every case posterior to — communications between the Venezuelan authorities and the North American consul at La Guaira and the North American minister at Caracas, the fact of absolute refusal seems doubtfully proved. The rule "*in dubiis pro reo*" must be here applied in favor of the authorities charged with the unjust refusal.

As to the complaint that the claimant was placed in a small, dirty, dingy, stinking room, this is met by the declaration on behalf of the Venezuelan authorities that he was conducted to the only establishment of correction in La Guaira, whereas it has to be kept in mind that this kind of establishments will almost nowhere seem comfortable for persons of claimant's social position.

As regards the further ill treatment claimant complains of.

Whereas for this likewise the only evidence is the statement of the claimant and his former co-claimant, Mr. Bartlett, but

Whereas it has to be considered that, from the nature of the facts as to the treatment of prisoners by their gaoler, it will always be difficult to find other witnesses besides the prisoners themselves; and whereas it has further to be considered that not only the Venezuelan authorities did not deny the facts, but that there is no trace of these authorities investigating the facts and thus trying to undo the charge that was brought up against them; and

Whereas this Commission has to investigate and decide the claims that are brought before it only upon such evidence and information as shall be furnished by or on behalf of the respective governments;

It seems that the sworn declaration of the claimant and Mr. Bartlett, as presented in their behalf by the United States Government, not contradicted or debilitated by any other evidence or by any intrinsic defect, can not be set aside; and

Whereas the ill-treatment by the officials for which the government is liable, and on which the claim is founded, exists in insults and in menaces that were not carried out, a sum of \$ 100 seems a just reward, which sum is hereby allowed to the claimant.
