

ROGÉ CASE

PAÚL, *Commissioner* (for the Commission):

From the documents presented following, the facts are proven:

That Dr. J. M. Aveledo, as attorney of Alfonzo Samterre and Carlos Luciani, on the 17th of October, 1888, before the court of the first instance, of the first judicial circuit of Ciudad Bolívar, instituted a suit for libel against Ernesto Rogé, superintendent of the syndicate Alto Orinoco. The judge of the first instance received testimony requested by the complainant and that of said Mr. Rogé, and, not finding any merit from the summary proceedings to follow up the suit, issued a decree on November 5 of said year discontinuing the action and declaring that it did not injure the defendant in any manner as to his reputation.

This decision having been called to the attention of the superior judge in the ordinary manner, the latter official by a decree dated January 7, 1889, revoked the decree issued by the judge of the first instance and made an order for detention against the citizen Ernesto Rogé. Dr. F. A. Hammer and Ramón Barrios Gómez having certified that Rogé was suffering from rheumatism in the præcordial region, which prevented him from remaining in the public jail as a prisoner of that city, said superior judge made an order to the judge of the first instance that he should transfer said Rogé to the hospital for men of that city.

The judgment of the superior judge having been appealed from in turn by Rogé, the record passed to the supreme court, which in a judgment dated February 13, 1889, revoked in all its parts the judgment rendered by the superior court, and confirmed the decree issued by the court of the first instance on November 5, 1888, ordering that the proper order be issued so that the defendant, Rogé, might be placed at liberty, which order was made on the same day. E. Rogé bases his claim for indemnity upon the injury, which he asserts was committed against his person, in ordering his detention and committing him to be deprived of his liberty for the space of thirty-seven days, the superior judge of Ciudad Bolívar violating by this proceeding the definite provisions of article 271 of the code of criminal procedure.

On July 4, 1892, Ernesto Rogé addressed himself to the minister of foreign relations of France, asking that his claim be pressed against the Government of Venezuela for damages and injuries which he estimated at the sum of 200,000 bolivars.

During the detention of Rogé notes were exchanged between the representative of France in Venezuela and the minister of foreign relations of the latter country, the minister of France interposing his diplomatic action in order to procedure the prompt release of Rogé and reserving in said notes all rights concerning the moral and material satisfaction that the Government of France on the one part, or Mr. Rogé on the other, might believe they were entitled to

obtain from the Government of Venezuela with reference to the attempt consummated against the liberty of a French citizen.

Proof also exists in the record, which shows that the President of the Republic and the minister of foreign relations, then in authority, addressed themselves by telegraph concerning the actions of the French minister to the president of the State of Bolívar, asking the necessary information for a correct understanding of the matter, of which demand the said representative was duly advised. There exists also a telegram dated on January 16, from Mr. Saint Chaffray, minister of the French Republic, addressed to Mr. Delort at Ciudad Bolívar, which says:

Relying upon the intentions and sentiments of equity of the Government, I do not doubt that what is necessary will be done in order to assure Mr. Rogé of the benefits of constitutional guaranties and, on this occasion, to give a new proof of its benevolent intentions towards the Alto Orinoco Company.

The superior judge of Ciudad Bolívar, in ordering the detention of E. Rogé, violated the provisions of articles 200 and 271 of the code of criminal procedure. It being expressly provided by said articles that—

In every case of discontinuance if the act in controversy has warranted the detention of the defendant, and if said detention has been effected, the person or persons released from responsibility shall immediately be placed at liberty, under bond, while the superior tribunals affirm or overrule the judgment as they are empowered to do by this code.

Rogé not having been properly imprisoned in accordance with the discontinuance of the judge of the first instance, because the committing magistrate did not find any reason to order his detention in conformity with article 137 of said code, the superior judge could not order the arrest of the accused, because he had not been put at liberty, but he ought to have limited himself to referring his judgment to the supreme court, and until it was rendered final by its confirmation it was the place of the committing magistrate or the judge of the first instance to fulfill what had been definitely adjudged, and his place to decree the detention of the accused.

The arbitrator considers this violation of the law as an unjust and illegal act perpetrated by the superior judge of Ciudad Bolívar; but at the same time he cannot help but appreciate the attitude of the judge of the first instance, who in a truly justified and honorable judgment gave every sort of guaranty and satisfaction. Likewise he considers the proceeding of the supreme court entirely in accord with the law, and the acts which the President of the Republic and his ministers of interior and foreign relations performed with all diligence in order to satisfy as far as possible the demand of the minister of France in favor of Rogé, showing without any doubt what the said representative expressed in his telegram copied above, *the good intentions and sentiments of equity of the Government, and that the necessary steps were being taken to assure Mr. Rogé of the benefit of the constitutional guaranties.*

The amount of indemnity which is demanded is under every aspect disproportionate, seeing, as it is demonstrated, that relief was sought to be given by the National Government for the illegal act in question with the least possible delay, and it was corrected by the judgment of the supreme court in the State of Bolívar.

The Venezuelan Commissioner considers that it would be a reasonable and equitable compensation for the damage suffered by Rogé on account of his detention in the hospital of Ciudad Bolívar for thirty-seven days to award him the sum of 10,000 bolívars.

The French Commissioner concurred in this opinion, agreeing to reduce the amount which, in his opinion, ought to have been allowed Rogé.
