

VOLKMAR CASE

BAINBRIDGE, *Commissioner* (for the Commission):

The claimant is a native citizen of the United States, residing in the city of Puerto Cabello, Venezuela. In the year 1892 he was the sole owner of the electric light plant of that city. On the 22nd, 23rd, and 24th of August, 1892, the forces of General Crespo, who was engaged in a revolution, ultimately successful, against the then existing government, attacked the city of Puerto Cabello, and during the engagement the power house, lines, lamps, and machinery of the claimant suffered damage amounting, as claimed, to the sum of 84,160 bolivars, for which sum, with interest, an award is asked.

The evidence presented in support of this claim is amply sufficient to prove the fact and nature of claimant's loss, but it fails to establish any liability on the part of the Government of Venezuela therefor. It is perfectly clear that the losses complained of were the result of military operations in time of flagrant

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war, and for such losses there is, unfortunately, by established rules of international law, no redress. Such losses are designated by Vattel as "misfortunes which chance deals out to the proprietors on whom they happen to fall," and he says that "no action lies against the State for misfortunes of this nature, for losses which she has occasioned, not willfully, but through necessity and by mere accident in the exertion of her rights."

As a principle of international law, the view that a foreigner domiciled in the territory of a belligerent can not expect exemption from the operations of a hostile force is amply sustained by the precedents you cite and many others. Great Britain admitted the doctrine as against her own subjects residing in France during the Franco-Prussian war, and we, too, have asserted it successfully against similar claims of foreigners residing in the Southern States during the war of secession. (Mr. Evarts, Secretary of State, to Mr. Hoffman, July 18, 1879. Wharton's Int. Law Dig., sec. 224.)

"The property of alien residents," says Mr. Frelinghuysen, Secretary of State, "like that of natives of the country, when 'in the track of war,' is subject to war's casualties." (Wharton's Int. Law Dig., vol. 2, sec. 224, p. 587.)

The rule that neutral property in belligerent territory is liable to the fortunes of war equally with that of subjects of the State applies in the case of civil as well as international war. In Cleworth's case, decided by the American and British Claims Commission of 1871, a claim was made for the value of a house destroyed in Vicksburg by shells thrown into the city by the United States forces during the bombardment. The Commissioners said: "The United States can not be held liable for any injury caused by the shells thrown in the attacks upon Vicksburg." And the same principle was applied in the case of *James Tongue v. The United States* to a claim for property destroyed by the bombardment of Fredericksburg on the 11th, 12th, and 13th days of December, 1862. (Moore Int. Arb., 3675.)

In view of the foregoing considerations the claim must be disallowed.