

PLUMLEY, *Umpire*:

Upon the disagreement of the honorable commissioners this case came to the umpire for his consideration and determination.

This claimant appears before this Commission as a late member of the extinct firm of Jacob M. Henriquez & Co., merchants at Maracaibo, and asks compensation for the sacking of a store, by Government troops, belonging to said merchants in the parish of Nueva Era, in the jurisdiction of Betijogue, in the State of Trujillo. The sacking is alleged to have occurred on the 25th of August, 1899, by forces forming a part of the army commanded by Gen. Antonio Fernandez while the said troops were in possession and occupancy of the store building of these merchants, which occurred during the time that the troops were passing through the place. The goods were ironware, kept for the purposes of wholesale, and in addition to the sacking of the store it is claimed that the troops tore down the inclosure of the yard and broke down the interior doors of the building, and that such goods as they did not take they left in ruin.

¹ See Roberts case, Vol. IX of these Reports, p. 205, and Chilean Claims Commission (1901) Report, Bacigalupi case, No. 42.

A careful examination of the proof offered does not disclose that any of this ironware was of such character as to be useful to the Government troops while en route or in garrison.

The nationality of Jacob M. Henriquez is fully established as being a Dutch subject, but no proof is offered of the nationality of the other members which comprised the firm or association prior to its extinction. Neither is there any proof offered nor any suggestion made as to the respective interests of the members constituting said firm or association, prior to its extinction, or subsequent thereto. No proof is offered and no claim, in terms, is made that the claimant is the lawful owner of all the rights of action, credits, and properties of said extinct firm or association. No proof is offered or claim made that the possession and occupancy of said store building was with the knowledge or in the presence or by command of the officers of the Government army. So far as the facts are stated it would appear more to be an unauthorized sacking and looting of the merchandise of the store than of any taking of the goods for the purposes and uses of the army by direction and through the approval of the Government officers. There is no proof that the injuries done to the building were in consequence of, or as an incident to, the occupancy of said building as a place of rendezvous under official orders, but it has more the appearance of reckless and undirected action of uncontrolled soldiery.

Both the learned agent for the respondent Government and the honorable commissioner thereof assert as lawyers, and the latter with the added responsibility of his oath as such commissioner, that this association, or partnership, or mercantile establishment, by whatever name it may be called, was in fact and law, by virtue of the Venezuelan code governing such associations and establishments, of Venezuelan origin and domicile; that it is therefore not a Dutch citizen or subject, but Venezuelan, and hence this Commission has no jurisdiction over it or any claim which it may present or which may be presented for it. This claim of the Venezuelan Government, first appearing in due course through the answer of the learned agent, being subjected to the scrutiny and inspection of the learned agent for the claimant Government, was neither answered nor denied, but instead the said learned agent for the claimant Government renounced his right to make a reply thereto. Since this jurisdictional position of the learned agent for Venezuela is neither answered nor denied by the learned agent for the claimant Government, whose duty it was to make such denial or answer if such jurisdictional position was not properly taken, it is proper that the umpire should assume that it is not susceptible of answer or denial and is to be taken as in effect admitted. It is also true that it would be impossible for the umpire, under the facts stated by the claimant in his own declaration and in his proof, to award the claimant the whole of any sum which he might adjudge proper, and if not the whole then for the same want of proof the umpire could make no sensible division of said sum. If the contention of the respondent Government is to prevail, then the umpire has no jurisdiction over the question presented. If all these legal questions were susceptible of solution favorable to the claim of Mr. Henriquez, there is still left the fact that on the proof it is impossible to say that the goods taken and the injury done to the property of the claimant was done under such circumstances as to entitle the claimant to an award. Since either one of these contentions being resolved in favor of the respondent Government would be a sufficient answer to the claim and an explicit denial of an award, it is the opinion of the umpire that this claim must be disallowed, and such may be the judgment entered.
