

GUTIERREZ-OTERO, *Umpire* :

In the record of the claim made in the name of the Spanish subject, José Lozano, demanding the payment of 15,000 bolivars as indemnity for the damages which the revolutionary forces inflicted upon him in his mercantile establishment, situated in the city of Barquisimeto, on the 1st of October, 1899, there has arisen a preliminary question concerning the admissibility of the proof produced with the claim, since, while the Commissioner of Venezuela maintains that it is inadmissible because the evidence presented was given before the vice-consul of Spain, and because, therefore, the evidence given for

him was of no value, the Spanish Commissioner is of the opinion that the declarations made before the consular agents of his nation ought to be admitted, since many times it is the only means of which Spanish subjects have been able to avail themselves to prove the facts upon which they base their claims. In an exposition of his belief said commissioner stated :

That the consuls of his country were authorized to receive the declarations of witnesses; that said faculty is in general inherent in all consuls, and that, at all events, it is to be borne in mind that this Mixed Commission is not a tribunal of justice, but that it ought to take into consideration all proofs that may be presented, giving to them the weight which they ought to have in accordance with equity, as prescribed in the protocol.

This point concerning the inadmissibility of the proof was submitted to the decision of the umpire, who, in rendering such opinion, believes that the express clause of said protocol, signed in Washington, April 2, of this year, by the representatives of Spain and Venezuela, are to be applied, in which, rules that must be observed are prescribed for this Commission, which can not assume powers which the protocol denies it. nor refrain from fulfilling the obligations which it imposes upon it.

The second article of the protocol cited, provides :

The Commissioners, or umpire, as the case may be, shall *investigate and decide* said claims upon such evidence or information only as shall be furnished by or on behalf of the respective governments. They shall be bound to *receive and consider all documents or written statements which may be presented by or on behalf of the respective governments in support of, or in answer to, any claim.*

And since the documents or statements, which tend to support the claim here considered, have been presented in writing and by the legation of Spain in the name of the Government, the Commission is bound to examine and consider them in order to take them into consideration in pronouncing the judgment which it may deem justified by the merits.

Nevertheless, the question of admissibility of the proof presented shall not prejudice its efficacy, which shall be appreciated by the commissioners or the umpire, as the case may be, as they may determine to proceed in accordance with absolute equity without regard to objections of a technical nature, or provisions of a local legislature, as prescribed as a binding rule.

Therefore the umpire decides that the proofs submitted with the claim made in the name of the Spanish subject, José Lozano, is admissible, and that the claim should be returned for the investigation of the commissioners, in order that they may decide it, examining and taking into consideration said proofs.

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