

730

NETHERLANDS-VENEZUELAN COMMISSION

MAAL CASE

PLUMLEY, *Umpire*:

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

The salient facts are that the claimant at the time of the happening of these events was a commercial traveler representing important houses in the United States of America and in Europe; that in the prosecution of his business he left Curaçao on the 9th of June, 1899, on the Red "D" Line steamship *Caracas*, bound for La Guaira and thence to the city of Caracas, there to attend to his duties as such commercial traveler. On the 10th of June he arrived at the port of La Guaira; had disembarked from the steamship *Caracas* and was about to enter the train for the city of Caracas when he was accosted by a Venezuelan citizen, who informed him that he was under arrest and that he must go with him to the port; that he was accompanied also by armed police. His trunks and baggage were opened and examined in the minutest detail. While thus under arrest he was subjected to the indignity of being stripped of all his clothing and made the subject of much mirth and laughter on the part of the bystanders; that he was later taken by order of the customs administrator to the civil chief of that city, who, after communicating by telephone with the President of the Republic, informed the claimant that he was suspected of being a conspirator against the Government of Venezuela and in the interest of revolutionists, and that he must at once reembark and leave the country of Venezuela not to return, and was conducted by this same posse to the steamship *Caracas*, where after much solicitation he was permitted to enter for his return trip to Curaçao. He claims large damages because of his arrest, the indignities which he suffered, and the delay which it brought about in his anticipated trip to Europe in the prosecution of his business enterprises, causing him the loss of much money. He denied at the time all connection with revolutionary matters incident to Venezuela and protested that he was utterly indifferent to the political conditions of this country. He makes full proof of his Holland citizenship, and the case is properly within the jurisdiction of this tribunal.

Notwithstanding the objections of the learned agent for Venezuela, the umpire has found these facts from the testimony submitted by the claimant, and for the reasons governing him in so finding, he refers to his opinion delivered before this Commission in the claim of Carel de Haseth Evertsz, No. 12.¹

There is no question in the mind of the umpire that the Government of Venezuela in a proper and lawful manner may exclude, or if need be, expel persons dangerous to the welfare of the country, and may exercise large discretionary powers in this regard. Countries differ in their methods and means by which these matters are accomplished, but the right is inherent in all sovereign powers and is one of the attributes of sovereignty, since it exercises it rightfully only in a proper defense of the country from some danger anticipated or actual.

This Government could never give up the right of excluding foreigners whose presence they might deem a source of danger to the United States. (Mr. Everett, Sec. of State, to Mr. Mann, Dec. 13, 1852.) Wharton's Int. Law Dig., vol. 2, sec. 206, p. 516.

Every society possesses the undoubted right to determine who shall compose its members, and it is exercised by all nations both in peace and war. A memorable example of the exercise of this power in time of peace was the passage of the alien law of the United States in the year 1798. (Mr. Marcy, Sec. of State, to Mr. Fay, Mar. 22, 1856.) Ibid.

¹ *Supra*, p. 721.

It may always be questionable whether a resort to this power is warranted by the circumstances, or what department of the Government is empowered to exert it; but there can be no doubt that it is possessed by all nations, and that each may decide for itself when the occasion arises demanding its exercise. (Supra, p. 517.)

This Government can not contest the right of foreign Governments to exclude, on police or other grounds, American citizens from their shores. (Mr. Frelinghuysen, Sec. of State, to Mr. Stillman, Aug. 3, 1882.) (Supra, p. 520.)

The umpire understands that by the laws, organic and civil, of Venezuela this power is lodged in the hands of the chief executive, who, acting under the methods laid down may expel one who is a menace to the Republic, if not domiciled by a two years' residence. It is historic that the date of this exclusion from Venezuela was within that period of Venezuela's national life when there were more than the ordinary hazards to the country from revolutionary actions and conspiracies, and it was undoubtedly necessary that the national Government should be on the alert to protect itself against such evils; and had the exclusion of the claimant been accomplished in a rightful manner without unnecessary indignity or hardship to him the umpire would feel constrained to disallow the claim.

The modern theory and the practice of Christian nations is believed to be founded on the principle that the expulsion of a foreigner is justified only when his presence is detrimental to the welfare of the State, and that when expulsion is resorted to as an extreme police measure it is to be accomplished with due regard to the convenience and the personal and property interests of the person expelled. (Sec. Olney in Hollander case in U. S. For. Rel. for 1895, p. 776; and also see p. 801 same volume; these citations to be found in sec. 206, vol. 2, Wharton's Int. Law Dig.)

This is his grievance, and as to this I have to say that on general principles it is within the power of the German Government to make and enforce such a decree of expulsion, nor can this Government object, *unless the exclusion be enforced with undue harshness*. (Mr. Bayard, Sec. of State, to Mr. Pendleton, July 9, 1885.) Whartons' Int. Law Dig., vol. 2, p. 525, sec. 206.

Great Britain in 11th and 12th Vict. c. 20, and by Executive order in the United States, 19 Aug., 1861, during times in both countries of peculiar stress and danger, authority was given to exclude and to remove aliens and to require passports. (See supra, p. 528.)

There was no possible occasion for the public stripping, or private stripping in fact, of the claimant. It was not for the protection of Venezuela that he was compelled to suffer this indignity to his person and to his feelings. From all the proof he came here as a gentleman and was entitled throughout his examination and deportation to be treated as a gentleman, and whether we are to consider him as a gentleman or simply as a man his right to his own person and to his own undisturbed sensibilities is one of the first rights of freedom and one of the priceless privileges of liberty. The umpire has been taught to regard the person of another as something to be held sacred, and that it could not be touched even in the lightest manner, in anger or without cause, against his consent, and if so done it is considered an assault for which damages must be given commensurate with the spirit and the character of the assault and the quality of the manhood represented in the individual thus assaulted. The umpire acquits the high authorities of the Government from any other purpose or thought than the mere exclusion of one regarded dangerous to the welfare of the Government, but the acts of their subordinates in the line of their authority, however odious their acts may be, the Government must stand sponsor for. And since there is no proof or suggestion that those in discharge of this important duty of the Government of Venezuela have been reprimanded, punished or discharged, the only way in which there can be an expression of

regret on the part of the Government and a discharge of its duty toward the subject of a sovereign and a friendly State is by making an indemnity therefor in the way of money compensation. This must be of a sufficient sum to express its appreciation of the indignity practiced upon this subject and its high desire to fully discharge such obligation.

In the opinion of the umpire the respondent Government should be held to pay the claimant Government in the interest of and on behalf of the claimant, solely because of these indignities the sum of five hundred dollars in gold coin of the United States of America, or its equivalent in silver at the current rate of exchange at the time of payment ; and judgment may be entered accordingly.
