

OPINIONS IN THE MEXICAN-VENEZUELAN COMMISSION
DEL RIO CASE

Under the protocol the Commission has no jurisdiction to decide claims of Venezuela against Mexico; but an exchange of notes of the foreign offices of the two countries giving consent that the Commission take this course, confers jurisdiction to hear such claims.

Where a sum of money loaned is procured at a premium and unpaid, the amount of this premium will be allowed as a resultant damage; but interest will only be allowed on the amount actually received by the debtor.

Where money is loaned for a specific period and it is stipulated that no interest for this period is to be charged, interest will nevertheless be allowed on the amount due after the debt falls due.

In the absence of a stipulated rate of interest, interest will be allowed at the current rate at the time of the contracting of the loan, especially where this rate has been acknowledged to be equitable by the predecessor in interest of the debtor.

The present legal rate of interest in Venezuela can not control where a debt has been contracted prior to the statute.

Where a debt is to be paid at a specified time it is not compulsory upon the creditor to make demand upon the debtor in order that the latter may be in default, and for that reason interest will be allowed upon a claim from the time the money fell due, and not merely from the day that demand was made.

A claim for damages on the part of Venezuela which can not be fixed in amount, and which is not the property of the Government of Venezuela, can not be set up as a counterclaim against the claimants who have only assumed the liability of Mexico for counterclaims of Venezuela.

A claim of an individual against a government does not become international in character until demand has been made on the government debtor.

Credit will be allowed Venezuela for a proportionate part of moneys paid by the old Republic of Colombia on account of the debt for which claim is now made.

No claim can be maintained for services rendered by ships of Colombia where it was expressly stipulated in the contract for their hire that payment should begin to be made from the date of their departure from Colombian ports for Mexico, and they never did, in fact, depart until after the time for which claim is made for their services.

SUMMARY OF CLAIM

The agent of the Government of Mexico presented a claim against Venezuela arising out of a loan of £63,000 to the old Republic of Colombia, made on April 7, 1826.

This debt was assigned by Mexico to Martinez del Rio Hermanos, and at present belongs to their successors in interest who are Mexican citizens.

The origin of the debt is set forth in an instrument executed in London April 7, 1826, before Mr. Windale, mayor of the city, by Vicente Rocafuerte and Manuel José Hurtado, the former chargé d'affaires of Mexico and the latter minister of Colombia accredited to the Court of St. James.

The essential parts of the instrument were included in the assignment of the debt in favor of Martinez del Rio Hermanos, executed by the Government of Mexico on August 16, 1856, which was placed in evidence. They are as follows:

1. B. A. Goldschmid & Co., holders of a considerable sum of money belonging to the Republic of Colombia, having failed, the payment of £63,000, destined to cover the dividend of the payment of the public debt, which was to fall due on May 1, 1826, was suspended.

2. Señor Hurtado proposed to Señor Rocafuerte that he advance to him (Hurtado) the necessary funds for the payment of the dividend which he had at his disposition with Messrs. Barkley, Herring, Richardson & Co. on account of money advanced on a loan negotiated for Mexico.

3. Señor Rocafuerte agreed to the request of Mr. Hurtado and gave orders to Messrs. Barkley, Herring, Richardson & Co. to pay, out of the money belonging to Mexico in their hands, the sum of £63,000 to meet the interest and other expenses of the Colombian loan which would fall due on May 1, 1826, on the bonds issued on April 2, 1824.

4. Señor Hurtado made solemn and formal promise on the part of the United States of Colombia to repay the said sum of £63,000 without interest within the space of eighteen months.

Upon the termination of the existence of the Republic of Colombia, which had been made up by the union of New Granada, Venezuela, and Ecuador, each one of these became a sovereign and independent state; the two former

entered into a convention concerning the division and assumption of the debts of the old Republic of Colombia at Bogotá on December 23, 1834, providing for the payment of said loan of £63,000 in the following manner:

The Republic of Venezuela was to pay 28½ per cent, the Republic of New Granada 50 per cent, and Ecuador 21½ per cent. The amounts, therefore, respectively due were, by Venezuela, £17,955; by New Granada, £31,500, and by Ecuador, £13,545.

The ratifications of the convention were exchanged at Bogotá on the 7th of February, 1838.

Although Ecuador was not a party to the convention, it accepted it afterwards in toto, the ratifications being exchanged between that Republic, Venezuela, and New Granada on the 22d of February, 1838.

Finally, the act of the Venezuelan Congress of April 8, 1840, expressly recognized the debt, referring to the convention of December 23, 1834, and making provision for the appropriation of 160,000 pesos annually from the customs receipts for the payment of the part of the interest, which, according to said convention, was acknowledged due by Venezuela on the foreign debts of 1822 and 1824, reserving the right to provide respecting the Mexican debt as soon as it should be liquidated.

As soon as the Mexican department of foreign relations learned of the action of Señor Rocafuerte in making this loan to the Colombian representative, it addressed a note to the Treasury Department, which disapproved the action of Messrs. Barkley, Herring, Richardson & Co., because of a different order given concerning the money on deposit with the house.

Although the Mexican Government did not authorize the loan nor, once it was made, approve it, it was obliged to submit to it.

Having awaited for the expiration of the eighteen months, the Government of Mexico ordered the Mexican consul in London to institute negotiations with the minister of the Republic of Colombia for its repayment. These negotiations did not secure the desired result, but the Government of Colombia offered to sell Mexico two frigates, built for the Colombian navy, on condition that £63,000 should be deducted from their price. This proposition was rejected by the Government of Mexico.

The most important step taken by Mexico to obtain the payment of the debt was made in 1855 through her minister plenipotentiary to the Republics of New Granada, Venezuela, and Ecuador. The results of this negotiation were the following:

Señor Plata, secretary of the treasury, admitted that the debt claimed was a debt of honor, and that New Granada was disposed to make a prompt settlement with Mexico concerning it.

Said secretary of the treasury stated that the principal of the debt should be fixed at £72,622.44, the sum which the £63,000 actually cost Mexico, and that said sum should bear an annual interest of 6 per cent, thus far acceding to the demand of the Mexican representative, Señor Morao, for £115,659 and *compound interest*.

The mission of Señor Morao thus terminated without his being able to obtain a settlement of the debt claimed.

On August 16, 1856, by an instrument executed before the notary, Don Ramón de la Cueva, the secretary of the treasury and public credit of Mexico, assigned to del Río Hermanos its demand against New Granada, Venezuela, and Ecuador, ceding to said assignee all the rights and actions concerning the said debt which belonged to Mexico, and the assignee undertaking to assume any debts due the old Republic of Colombia by Mexico.

The succession of the present claims to the rights of the original assignees from the Government of Mexico was clearly shown.

In view of the foregoing, the Mexican agent made claim for £20,697.40, which, in accordance with the convention of December 23, 1834, between the three Republics which formerly made up the old Republic of Colombia, had been assumed by Venezuela, demanding, further, simple interest at 6 per cent from October 7, 1827, this being the day of the expiration of the eighteen months during which time it was to bear no interest.

Interest at 6 per cent was demanded in view of the fact that this was the rate suggested by the Colombian representative to Señor Morao in 1856, as above stated; also stating that other debts negotiated by Mexico at the same time bore interest at 6 per cent.

This demand was reduced by 28½ per cent of 3,500 pesos (say \$1,938), which had been paid to the Mexican representative, Señor Torrens, in Bogotá, in March, 1829.

GAYTÁN DE AYALA, *Umpire*:¹

Arbitral award in the claim presented by the United States of Mexico against the Republic of the United States of Venezuela, arising out of the loan of £63,000 made by Mexico to the old Republic of Colombia in accordance with an agreement executed April 7, 1826, a debt which was assigned by Mexico to Messrs. Martinez del Rio Hermanos, and which actually belongs to their successors, Doña María Martinez del Rio de Castiglione, Doña Angela Martinez del Rio Tomás, Doña Julia Martinez del Rio de Gonzalez Pavón, Don Manuel Martinez del Rio, Don Pablo Martinez del Rio, Don Nicolás Martinez del Rio, Don Ventura Martinez del Rio, all Mexican citizens, and in the claims presented by the Government of the United States of Venezuela against the United States of Mexico:

1. For the unlawful collection of duties upon export products.
2. For the value of the ship and cargo of the schooner *Carmen*, a prize of the Colombian cruiser *Zulmé*.
3. For the sum of money paid by Colombia in March, 1829, to the chargé d'affaires of Mexico.
4. For the aid of naval vessels asked of Colombia by the Government of the United Mexican States during the years 1824 and 1825 to cooperate in the siege of the fortress San Juan de Ulúa.

Don Ramón Gaytán de Ayala y Brunet, envoy extraordinary and minister plenipotentiary of His Majesty the King of Spain to Venezuela, umpire of the Mixed Venezuelan-Mexican Commission, constituted in Caracas by virtue of the protocol of Washington, February 26, 1903, having been requested by the respective Commissioners of the two interested nations to render judgment upon the points of difference to which the claim of Messrs. Martinez del Rio Hermanos, and those which the Venezuelan Government has presented against Mexico, have given rise;

In view and by consequence of the disagreement existing between said commissioners at the close of their deliberations concerning this matter, and inspired by the desire to merit the confidence which the two said Republics of Venezuela and Mexico have mutually shown by submitting to his decision a matter of such importance, and subjecting himself in every way to the provision contained in Article I, paragraph 3, of said convention of Washington to decide all the claims upon a basis of absolute equity;

¹ For the Spanish text and for a French translation see Descamps-Renault, *Recueil international des traités du XX^{ème} siècle*, 1903, p. 848.

As a preliminary and indispensable explanation relative to the competency and power belonging to the Commission, states:

That in said protocol of Washington, of February 26 of the present year, it is provided that the object of the Commission is to examine and decide the claims of citizens of the United States of Mexico against Venezuela. Its attributes can not, therefore, extend beyond the limit agreed on, notwithstanding the wishes, manifested by the representatives of the two interested nations, so as to include and submit to the determination of the Commission the claims which the Government of Venezuela has presented against the Mexican Republic.

In order to overcome this difficulty arising out of the limits of the international agreement itself, the Commission has determined that it is sufficient to obtain from the Governments of the interested Republics an express declaration of their consent to the demand of the extension of the powers in question, specifying that they confer the necessary power upon the members who form the Mixed Commission already constituted, to exercise with respect to the claims of Venezuela against Mexico the same powers as those given it by the protocol at Washington with reference to the claims of Mexico against Venezuela.

Under date September 26, 1903, the President of the Commission received from the Government of Mexico a telegram couched in the following terms:

SPANISH MINISTER, *Caracas* :

Mexican Government authorizes arbitral commission to examine and decide counterclaims presented by Venezuela.

ALGARE.

The Government of Venezuela, on its part, in a note dated September 23, 1903, addressed by its minister of foreign relations, His Excellency Alejandro Urbaneja, to the Commissioner of Venezuela in the Mixed Claims Commission, gave its consent in the terms expressed in said note, which is annexed to the record of the claim.

The Commission, in the session of September 28, 1903, took cognizance of both documents, its jurisdiction being thus established to examine and decide all the questions submitted for its judgment.

These questions are the following:

1. The Government of Mexico claims from the Government of Venezuela as the original capital giving rise to and underlying the claim of Messrs. Martinez del Rio Hermanos the sum of £20,697.40.

2. It demands interest at 6 per cent per annum on the foregoing sum, counting from the 7th of October, 1827, to the 31st of December of the current year.

The Government of Venezuela demands —

1. Payment in compensation for the sum unlawfully collected for import duties on cocoa coming from Maracaibo and Guayaquil:

2. Compensation for the value of the ship and cargo of the schooner *Carmen*, a prize of the Colombian cruiser *Zulmé*, left in the port of Campeche;

3. The return of 28½ per cent of 8,500 pesos fuertes delivered by Colombia on March 18, 1828, to the chargé d'affaires of Mexico, Col. Anastasio Torrens; and

4. Payment of an indemnity for the naval aid agreed on between Mexico and Colombia for the purpose of cooperating in the capture of San Juan de Ulúa.

1. Question. To the demand of the Commissioner of Mexico asking that there be acknowledged as to the principal of the loan made to Colombia the sum of £20,697.40, the Commissioner of Venezuela answers that said Republic can not accede to it because it was only £17,955, the sum in cash received by

the representative of Colombia at the time the loan in question was negotiated. It is not just nor equitable to make the Republic liable for a greater sum than that received. And he bases his denial, furthermore, on the provisions of the contract of the loan made in London April 6, 1826, which appears in evidence.

The Commissioner of Mexico proves, by documents duly legalized, which are also to be found in the evidence of the claim, that the sum of £17,955 cost Mexico £20,697.40, because said sum was taken from funds obtained by means of a loan negotiated by the Government of Mexico with the house of Barkley, Herring, Richardson & Co., of London, and effected at a discount of 13¼ per cent; wherefore the sum in cash of £17,955 delivered to Colombia was in reality worth £20,697.40 claimed by Mexico from Colombia.

Taking into consideration the fact that the validity of the debt is recognized in principle by both interested parties, taking into consideration the foregoing observations of both Commissioners and the correctness of the facts set forth in every document having been ascertained;

Considering that, even though it be true that the sum received in cash by the representative of Colombia is set out in the contract for the loan mentioned, it is also evident that its real value, with respect to Mexico, is what the agent of that Government now demands in favor of the interested party, as is shown from the proof as to the origin of the funds out of which the loan was furnished;

Considering that because it is of the greatest importance, with respect to future decisions, to determine in a clear, precise way the nature of the various sums which constitute the debt, the sum of £17,955 is, in justice, to be considered as the original capital which was received in cash by the representative of Colombia, and to consider as a resultant damage, arising out of the transaction, the difference between this sum of £17,955 and £20,697.40 claimed by the Mexican Commissioner, which is £2,742.40.

2. *Question.* The representative of Mexico demands interest at the rate of 6 per cent per annum upon the principal of the loan, counting from October 7, 1827, until December 31 of the current year.

In support of his right to claim interest, he invokes the principle of justice, universally recognized, that the debtor is liable for the damages and injuries caused by the nonfulfillment of his obligations and "in treating of ascertained sums of money, these damages and injuries are repaired by the payment of interest." With respect to the rate at which said interest must be fixed, he maintains that it can not be other than 6 per cent per annum, and he bases this rate of interest upon the recitations contained in the contract for a loan between Mexico and Colombia, upon the laws which were at that time in force, upon similar cases between the two nations interested, and upon arrangements for the negotiation of loans made as well by Colombia as by Mexico under similar circumstances of time and place.

The Venezuelan Commissioner is of opinion that Venezuela is not bound to pay the interest claimed, because it was thus provided in the Rocafuerte-Hurtado contract, and because the exact amount of the debt is not determined, and in case the arbitral award should conform to the demand of claimant, he asks that the rate fixed may be 3 per cent per annum.

Taking into consideration these foregoing opinions of the Commissioners, and having examined the considerations to which the Commissioner of Mexico refers, and having been convinced of the correctness of his statements;

Considering, as an argument of special importance, the fact that the Republic of New Granada, in proposing at Bogotá, on June 30, 1862, the settlement of the affair of which we are treating, in so far as one of the original republics of

old Colombia was liable for the loan in question, it acknowledged interest at the rate of 6 per cent per annum to be just and equitable;

Considering that the loan negotiated by the Mexican Government, from which loan the £63,000 lent to Colombia were procured, bore interest at 6 per cent per annum, as the evidence shows;

Considering that Colombia paid interest at 6 per cent per annum upon the loan, for the payment of one of the installments of which Señor Hurtado asked and obtained from Señor Rocafuerte the loan of the £63,000;

Considering that several other loans which are shown in the evidence bore a like rate of interest;

Considering that the reason invoked by the agent of Venezuela, that the loan was stipulated to be without any interest according to the instrument establishing it, can not be considered in justice as discharging the obligation to pay interest, because it is not permissible to infer that the contracting parties desired to extend this stipulation to the failure to fulfill the agreement;

Considering that the legal rate of interest which is actually in force in Venezuela, and which the Venezuelan Commissioner likewise invokes, can not serve as a guide for fixing the rate of interest on obligations contracted in the year 1823;

Considering that the rate of interest provided for in the loan negotiated by Mexico in the house of Barkley, Herring, Richardson & Co., from which the sum received by Colombia was taken, as is shown by the Rocafuerte-Hurtado contract, was 6 per cent per annum;

Considering finally that at the time when Colombia contracted the obligation it was a principle of justice, as it is to-day, according to the legislation of the most advanced nations, that the debtor is to be considered in default by the sole fact of the nonperformance of his obligation, without the necessity of making demand after the day of the expiration of the term allowed him;

By reason of the foregoing, which is proved by the evidence, it must be decided that Venezuela is obliged to make reparation to Mexico for the damages and injuries resulting from delay in the fulfillment of its obligation, by paying interest at the rate of 6 per cent per annum, upon the original capital of the debt, counting from the 7th day of October, 1827.

CLAIMS OF THE GOVERNMENT OF VENEZUELA

I. Question. Payment in compensation for the sum unlawfully collected by New Spain, now Mexico, for import duties on cocoa coming from Caracas, Maracaibo, and Guayaquil.

The Government of Venezuela claims from the Government of Mexico the amount of certain duties unlawfully collected on the importation of cocoa coming from Caracas, Maracaibo, and Guayaquil, and the Commissioner of Mexico accredited to this Commission rejects the demand, relying in so doing upon proofs and public documents which are to be found in the record.

Considering that the agent of Venezuela, in his argument of July 11 of the present year, adopts the report of the solicitor of the public treasury, Mr. Juan Bautista Calcaño, addressed to the minister of state in the department of the treasury of Venezuela, relative to the claim of Messrs. Martinez del Rio Hermanos, and that in this report Doctor Calcaño admits that it is not possible to present this claim in proper form because it is not possible to fix the amount thereof;

Considering that the claim concerning this cocoa belongs to individuals whose nationality is unknown and whose heirs are likewise unknown;

Considering that Messrs. Martinez del Rio Hermanos are not liable except for debts against Mexico which are of an international character;

Considering that in official documents published by the department of foreign relations of Venezuela, which are to be found in the record, the Government of said Republic acknowledges that the claim concerning which there is question is not invested with the aforesaid international character;

Considering, finally, that the Government of Venezuela has not been able to produce proofs of the validity of this debt;

On account of all the foregoing the umpire decides that there is no reason for indemnity, and that Messrs. Martinez del Rio Hermanos are released from all liability in this respect.

2. Question. Compensation for the value of the ship and cargo of the schooner *Carmen*, the prize Colombian cruiser *Zulmé*, deposited in the treasury of the port of Campeche.

The proofs and documents relative to this matter having been examined, and considering that the value of the ship and cargo of the schooner *Carmen*, deposited in the treasury of the port of Campeche, is the property of individuals, because the value of prizes belongs by law to the privateer which captures them;

Considering that the existence of said owner is not known, and that neither he nor his heirs, if there be any, have claimed anything upon this particular from the Republic of Mexico;

Considering that in this case the claim is not of an international character, which is an indispensable requisite for its validity;

On account of the foregoing, the umpire decides that no indemnity is due, and that Messrs. Martinez del Rio Hermanos are released from all liability in this respect.

3. Question. The return of 8,500 pesos fuertes delivered by Colombia in March, 1829, to the chargé d'affaires of Mexico, Col. Anastacio Torrens.

It appears established by the evidence that the two interested Governments agree concerning the validity of this debt.

Considering that Venezuela only has a right to 28½ per cent of the aforesaid amount;

It is ordered, adjudged, and decreed that Messrs. Martinez del Rio Hermanos are obliged to pay to Venezuela the sum of 28½ per cent of 8,500 pesos fuertes, or, say, 2,422.50 pesos fuertes.

4. Question. Payment for the naval aid agreed on by Mexico and Colombia for the capture of San Juan de Ulúa.

The agent of Venezuela maintains (adopting, as his report of the solicitor of the treasury, Doctor Calcaño) that by virtue of Article II of the convention, made on the 19th of August, 1825, by Señor Torrens, minister plenipotentiary of Mexico, relative to the naval aid destined to cooperate in the capture of the Fortress of San Juan de Ulúa, the Government of Mexico obligated itself to pay the expenses which said aid might occasion until forty days after the surrender of said fort, or for a longer time if by common accord it were found necessary, and, relying on this obligation, he presents the account of the expenses, which is to be found in the record; and

Considering that Article II, relied on, formally establishes that the obligation to pay this expense should begin to run "from the day on which each of the auxiliary ships should leave the ports of Colombia bound for the Gulf of Mexico;

And it appearing in the proofs that none of the Colombian ships complied with this indispensable requisite;

Considering that the account presented by the Government of Venezuela concerning said naval expenses of the Colombian squadron are not accompanied by proofs in any way appreciable in justice;

Considering that it appears from the correspondence exchanged between the high officials of Colombia and Mexico, respectively, that up to the 21st

of January, 1826, these countries considered the agreement to furnish naval aid to Mexico was dissolved;

Considering, finally, that the surrender of the fort of Ulúa, which was the object for which the squadron was destined, was accomplished by Mexico without the help agreed on with Colombia;

For these reasons the umpire decides that there is no reason for indemnity, and that Messrs. Martinez del Rio Hermanos are released from all liability in this respect.

Concluding the examination of each and all of the questions submitted for his decision, and taking into account the reasons and declarations which precede, the undersigned, the umpire, decides that he must decree, and he does thereby decree, that the Government of the United States of Venezuela is obliged to indemnify the successors of Messrs. Martinez del Rio Hermanos, in payment of the claim presented in their name by the Governor of the United States of Mexico, in the sum which may result from a liquidation in the following manner:

1. For 28½ per cent which is due from Venezuela of the sum of £6,300, considered as the original capital of the loan delivered to Colombia by virtue of the Rocafuerte-Hurtado contract, dated at London, April 7, 1826, £17,955.

2. For interest on the original capital, that is to say, £17,955, from October 7, 1827, until October 2, 1903, £81,859.50.

3. For indemnity for the damages and injuries caused by the bonus of 13¼ per cent, which the above-mentioned £17,955 cost Mexico, £2,742.40.

4. Messrs. Martinez del Rio Hermanos shall credit the Government of Venezuela for 28½ per cent of the 8,500 pesos fuertes paid by the Governor of Colombia on March 6, 1829, which belongs to it, \$2,422.50, or, say, £484.50.

LIQUIDATION

Original capital	£17,955.00
Interest at 6 per cent per annum for 75 years 360 days	81,859.50
Indemnity for damages and injuries	2,742.40
Total	102,556.90
Less the sum delivered Señor Torrens	484.50
Balance	102,072.40

It follows, therefore, from the preceding liquidation that the Government of Venezuela is obligated to pay Messrs. Martinez del Rio Hermanos as a final balance for claims and counterclaims respectively presented to this Commission by the countries interested the sum of £102,072.40 in American gold, or its equivalent in silver, as provided in the last paragraph of article 1 of the protocol of Washington of February 26 of the present year.