

SANCHEZ CASE

GUTIERREZ-OTERO, *Umpire* :

In record No. 74, which comprises the claim of the Spanish subject J. Manuel León Sanchez, in favor of whom an indemnity of 50,000 bolivars is demanded for material damages which he says were caused by preventing him from continuing a periodical publication, legitimately established, a disagreement has arisen between the commissioners, and the case has been submitted to the umpire for his decision.

The claimant says:

That his said periodical leaflet which was called *Movimiento Marítimo y Comercial y Noticias Universales* was established by permission of the government of the Federal District granted on the 18th of December, 1902, and produced for him a profit from the start so encouraging that he was able thereby to satisfy all his obligations and outlays of expense, and to realize a monthly return of from 1,700 to 1,800 bolivars.

That upon the 15th of February following there was verbally announced to him by agents of the police an order, first from the prefectura and afterwards from the government of the district itself, that this publication should be suspended.

That in vain he sought, by all the means in his power, for the revocation of the order; that he did not procure the aid of the lawyers who might defend his rights before the tribunals and help him in a claim for damages which he might wish to bring.

That in view of these circumstances, and suffering the inevitable execution of an order which was not based upon a true cause of complaint, which had been made without right, which was not even couched in legal form, he found himself obliged to realize upon all his business in Venezuela by an inopportune sale of his printing establishment, and to emigrate to another country to seek support for his family.

To the foregoing statement of facts, and to support it, León Sanchez annexed the original permission to publish his leaflet; a letter from the manager of the French cable, which certified that he had never altered any translation or notice which were received by said manager; copies of various private publications, which were made for the purpose of procuring the withdrawal of the order of suspension; copies of various periodicals in which the notice of this order was published, and the cause attributed for it, which was the inaccuracy of said translation; two letters of persons who assert that León Sanchez was the manager of two newspapers; that later he was the owner of the *Movimiento Marítimo*; that this was suspended in the manner stated; that Sanchez endeavored to procure the revocation, devoting himself to the steps before mentioned; that he did not seek redress before the tribunals, because everybody considered it useless; and that there were printed and distributed from 300 to 350 copies of each one of the editions of the *Movimiento Marítimo y Comercial y Noticias Universales*.

Such are the complaints and proofs exactly and minutely set forth.

The Venezuelan Commissioner is of the opinion that León Sanchez has no right to demand any indemnity for the suspension to which there is reference, and he cites in support of his opinion the decree issued on May 10, 1902, by which the President of the Republic suspended, among other guarantees or constitutional rights, that of free expression of thought by word of mouth or by means of the press.

The Spanish Commissioner maintained that where there is question of an enterprise legally established with previous permission of the Government of Venezuela the latter is responsible for the damages caused claimant.

The umpire does not take up this question of responsibility, because, in the supposition that it might be determined abstractly or in principle against Venezuela, it would not be possible to fix these terms concretely in order to make it effective, because the claimant has not proved even one of the facts necessary to estimate and determine any indemnity.

In order that this want of evidence might clearly appear, the undersigned made the detailed enumeration of the proofs presented, which do not relate to the value of the publication, nor to the expenses incurred, nor the income, nor even to the profits and possibilities of its being maintained, nor upon the necessity which the facts imposed on León Sanchez of selling his printing establishment and absenting himself from the Republic, nor upon the value of this establishment, nor upon the price for which it was necessary to sell it, nor in a word, upon anything that might justify the amount of property lost or injured.

Such an extreme in this respect was reached that not even when the private testimony of two persons was asked upon the fact of there having been published and distributed from 300 to 350 copies of each one of the editions of *Movimiento Marítimo* was there any proof as to how many of these editions there were, if they ceased to be published any day, and what expenses and profits they

produced, nor whether these later circumstances refer to each edition, each day, or each month of the two months which the publication approximately lasted. In no case, therefore, could the umpire enter into an equitable appreciation of the facts which are not alleged and proven, nor much less invent them, in the want of all proofs produced by the interested party.

These reasons suffice to render it unnecessary to examine and resolve other questions, and make it necessary to decide, as the umpire does decide:

That there is no reason for granting (because of the reasons alleged in this record) any indemnity in favor of the Spanish subject, J. Manuel León Sanchez.
