

VALENTINER CASE

DUFFIELD, *Umpire* :

The evidence in this case satisfactorily establishes that on the 22d of December, 1901, a detachment of Government troops, under the command of Capt. Pedro Gonzalez, sent out by the jefe civil of Guarenas with orders to recruit soldiers, came to the coffee hacienda, "La Hondonada," owned by the claimant. The laborers, who were taken away by the force, were 63 Venezuelans and also some foreigners. They had all been hired under valid contract by the agent of the claimant to pick the crop of coffee on the hacienda, which was then ready to gather. The superintendent of the hacienda informed the officer in command of the patrol of these facts, and that if the men were taken away the crop would be lost, to which the officer answered that he must obey orders. It is also satisfactorily established by the evidence that it was impossible to secure new men for twenty-five days after the draft, even in Caracas, and that during this time a great part of the coffee ripened and fell and was lost, the amount so lost being more than 400 quintals, which the testimony shows was worth 45 bolivars a quintal.

The Commissioner for Germany is of the opinion that the claimant is entitled to recover the amount. He is also of the opinion that the claimant is entitled to damages for four huts burned by the revolutionists of the Matos revolution, worth 800 bolivars, and for legal expenses in the matter of preparation of his claim for presentation, 312.60 bolivars.

The Commissioner for Venezuela differs in opinion with the Commissioner for Germany, and is of the opinion that there can be no recovery against Venezuela for the loss of the coffee crop. He does not refer in his opinion to the destruction of the huts or to the question of legal expenses, but he admits that Venezuela should pay for the value of a mule which the claimant alleges he lost, and 50 pesos which the claimant asks for wood burned by the forces of the Government.

It is argued by the Commissioner for Germany, in support of the claim for loss of the coffee crop, that the recruiting officer had no authority to take from the plantation either Venezuelan or foreign laborers, and that such taking was "usurpation of the rights of the claimant," and that, inasmuch as the testimony shows clearly that claimant could not for twenty-five days replace the laborers who were so illegally drafted, the loss of the crop was a natural and proximate consequence of said illegal draft.

In opposition to this position, the Commissioner for Venezuela insists that the evidence shows the drafting of the 63 Venezuelans and only 6 foreigners, so called; that the Venezuelans were liable to draft, and that there is no evidence of the foreign citizenship of the so-called foreigners, and that there is no evidence that the so-called foreigners did not gather the coffee, meaning that there is no testimony showing how long they remained away from the plantation, and there

is some testimony that some of them returned very shortly; and, finally, that the loss of the crop is an indirect damage, and remote and consequential.

The umpire is of the opinion that under the testimony in the case the loss of the crop is not a proper element of damage. It is extremely doubtful, in his opinion, whether it would be even if all the laborers who had been engaged to gather it had been illegally taken from the plantation.

It has been held repeatedly that the loss of future crops is too remote to constitute an element of damage where the owner was prevented by the wrongful act of another from planting and harvesting them. So, too, where the seller of an agricultural machine fails to deliver it within the time stipulated, it is held that the loss of crops through the deprivation of the use of the machine is not a proper element of damage against him. Also, where the owner of a crop is deprived of an animal with which to harvest them. But it does not appear in this case whether the deprivation of an animal was by a tortfeasor or because of a breach of contract.

The same is held where the crop is lost by the loss of a servant or a slave. But it is, however, held in the latter case that where the owner of the crop can procure no other assistance he may recover compensation for the loss. (Sedgwick on Damages, Vol. I, p. 298, sec. 202, and the cases cited.) And it was held in *McDaniel v. Crabtree*, 21 Arkansas, 431, that where the defendant wrongfully seized the plaintiff's negro the profits of a crop plaintiff expected to plant and cultivate by means of the negro were too uncertain to afford ground of recovery.

On the other hand, in an action of contract, it was held in Louisiana, in which the civil law obtains, that on the failure to deliver a sugar mill the purchaser may recover compensation for the crop lost. (*Goodloe v. Rogers*, 9 Louisiana Annual, 273.)

In *Sledge v. Reid*, 73 North Carolina, 440, the defendant wrongfully seized the plaintiff's mule, which the latter intended to use to cultivate his crop. The loss of his crop was held both too uncertain and too remote for compensation. But Mr. Sedgwick says of this case (Sedgwick on Damages, vol. 1, sec. 191):

If the mule were intended to be used for the harvesting of a crop already matured, the loss would not be too uncertain.

Access can not be had to these cases cited to ascertain the condition of the crops at the time of the injury or breach of contract. But in the case here presented there are so many elements of uncertainty dependent upon conditions of weather, health, and industry of laborers preparing the crop for shipment and transportation, and ultimate realization on the crop, that the umpire is inclined to the opinion that the damage would be too remote.

However, the number of so-called foreigners drafted, at most only six, less than 10 per cent of the number of the Venezuelans drafted, will not warrant the charge against Venezuela if the draft of the Venezuelans was legitimate.

It is claimed by the Commissioner for Germany that under article 17, paragraph 5, of the constitution of Venezuela, the 63 Venezuelans were not legally liable to draft. On the other hand, the Commissioner for Venezuela insists that according to article 89, paragraph 20, subdivision 7, and paragraph 21, such draft was legitimate. To this the Commissioner for Germany agrees, provided that the previous declaration, required by subdivision 7 of paragraph 20 of article 89, had been made affecting the territory in which the plantation "La Hondonada" was situated, but he insists that such previous declaration is not proven, and that in the absence of that proof it must be presumed that the draft in question was contrary to the constitution and illegal.

The umpire can not agree with this latter contention. It being conceded

that given the prerequisite of an antecedent declaration of suspension of the constitution, embracing the locus in quo, the draft would be legal, the umpire is of the opinion that under the general presumption of law, in the absence of any testimony to the contrary, the draft must be considered lawful. *Omnia rite acta præsumentur*. This universally accepted rule of law should apply with even greater force to the acts of a government than those of private persons. Moreover, it seems at least doubtful whether the provision in subdivision 7 of paragraph 20 of article 89, read in connection with paragraph 21, is mandatory and not merely directory.

Furthermore, the evidence does not satisfactorily establish the nationality of the so-called foreigners. Certainly the testimony of the witnesses in their depositions taken under the commission, does not prove the fact, except as to Beauregard, who testifies as to his own nationality. The opinion of witnesses as to the citizenship of an individual is clearly incompetent to prove the fact. The letter attached to the "expediente," even if admissible in evidence, which is doubtful, because unsworn to and unauthenticated, and the signatures of Serrano, Mosquera, and Pereira not proven, is open to the same objection.

It results, therefore, that the proof fails to make out a case of illegal draft of any of the laborers of the claimant, except Beauregard; but as to him the proof shows he was absent from the plantation but a short time, and there is nothing in the evidence from which the amount of the value of his services, over and above his wages, can be computed. This item of the claim must be disallowed.

The item of legal costs and preparation of his claim for presentation is also disallowed.

As a general rule, costs and expenses of litigation, other than the usual and ordinary court costs, are not recoverable in an action for damages, nor are such costs even recoverable in a subsequent action.

Accordingly, it has been held that the mere fact that a party deems it necessary to resort to law to enforce or protect his rights does not, in general, give him the right to recover as damages the fees he may have paid legal counsel in the cause,¹ in the absence of a contract stipulation therefor, or provision of statute permitting. (American and English Encyclopedia of Law, 2d ed., Vol. VIII, p. 673.)

It results from these conclusions, therefore, that the claimant can only be allowed for the value of four huts burned, 800 bolivars; and wood, also burned, 50 pesos; and a mule taken by revolutionists, 160 pesos, aggregating 1,640 bolivars, with interest from the date of the presentation of the claim, July 1, 1903, to up to December 31 proximo, inclusive, at 3 per cent per annum.