

## VAN DISSEL &amp; CO. CASE

GOETSCH, *Commissioner*.

The Commissioners agree that on July 30 and 31, 1901, a detachment of troops under the orders of Gen. Juan Marquez confiscated from the claimant firm 158 mules, of which there were afterwards returned to the house 43, 9, 3, and 4 — in all 59 — so that there was a loss of 99 animals (6 saddle mules and 93 pack mules).

They disagree (a) upon the question whether Venezuela is responsible for the loss, (b) the Venezuelan Commissioner denies the responsibility of Venezuela:

First, because there is question of an invasion of Colombian troops; and, second, because there is question of an incident which ought not to be considered, "as of the last civil war," in the sense in which the decision of General Duffield gives to this phrase.

I. The political event upon which the claim is based forms an epoch in the revolution against President Castro — an epoch which the honorable umpire describes in his personal opinion relative to the historical events in Venezuela, as follows:

*In July, 1901, General Rángel Garbiras, as provisional leader of the Nationalist party during the imprisonment of General Hernandez, organized an army of about 4,000 Venezuelans and troops of the regular army of Colombia and invaded Táchira by way of Encontrados and overland to the city of San Cristóbal.*

A detachment of these troops under the orders of Juan Marquez marched to the north and committed various depredations along the route to Encontrados, and at this last-named place also. Amongst others this detachment sacked, on July 27, 1901, the mercantile establishment "El Finglado," belonging to the firm of Christern & Co., and, moreover, they confiscated the mules mentioned in the claim of Van Dissel & Co. It is clear from every point of view, according to what has been stated, that there is no question of a warlike attack on the part of Colombia, but of a revolutionary uprising of Venezuelans who had fled into Colombian territory and lived in the frontier districts. They were the "Nationalistas," partisans of General Hernandez, and authors of the movement. The generals in chief, Rángel Garbiras, Juan Marquez, and Trinidad Zuleta, are Venezuelans. It is not impossible, and it is even probable, that among the invading revolutionists there were some Colombians, which in no way modifies the fact that there was question of a revolutionary movement of Venezuelans, who perhaps in attending to their own interests and political outlook, knew how to attract some Colombians to their flag. It has not been alleged or proved that the Colombian Government had any knowledge of the invasion, and even less that it had set it on foot. This is the view taken by the Government of Venezuela, who replied to an inquiry of England (see the English Blue Book, p. 55) on the 20th of November, 1901 — that is to say, that at the root of the invasion of Garbiras there was not a state of war existing with Colombia. Venezuela would not have received quietly a warlike attack from Colombia and would have replied to its neighbor by warlike measures. In the case of Christern & Co. the Commissioner of Venezuela has taken for granted that the act was committed by Venezuelan revolutionists. Since there is question of the same time, of the same troops, and of the same generals, it can not be seen why the authors of the deed could have suddenly become Colombian troops as against Messrs. Van Dissel & Co. Besides, all the witnesses testify that they were Venezuelan revolutionists.

II. As is seen from a study of the protocol of February 13, 1903. the Government of the German Empire took exclusively upon itself the adjustment of the claims arising out of the civil war of 1898-1900, or, say, the revolution organized at the time when Castro was seeking power, and, as far as they were at that time presented, held them to be fixed (Art. II), while the other claims, especially those arising out of the last civil war, were submitted for their decision to the Mixed Commission (Art. III). The German Commissioner has not the least doubt that under the term "last civil war" the revolutionary movements organized *against* President Castro ought to be included, the consequences of which have not yet been adjusted. It is this and nothing else which was in-

tended to be expressed. Since how can it be supposed that the Government of the German Empire could only have had in mind the Matos revolution, and that there could not have entered into its scheme the demand of satisfaction for the other damages which had occurred in the intermediate interval? (That is to say, from the time that Castro assumed power up to the uprising of Matos.) It was its idea to clear the table (to liquidate), and that all the claims of German subjects not adjusted up to date should be decided by the Commission.

There is no doubt that this was the intention of the Government of Venezuela. The same reason supports the interpretation that of the revolution and revolutionists against General Castro, enumerated one by one by the honorable umpire and of the individual existence of which perchance the German Government did not have notice, were united by the German and Venezuelan Governments under the term "last civil war." If the opinion of the Venezuelan Commissioner is to be considered correct, according to which only the uprising of Matos should be considered as "the last civil war," this interpretation would in no way modify, because of its slight importance, the judgment of the German Commissioner, who would demonstrate the liability of Venezuela in the present case by a different sort of reasoning.

The first paragraph of article III says:

The German claims not mentioned in the Articles II and VI, in particular the claims resulting from the present Venezuelan civil war, \* \* \* are to be submitted to a mixed commission.

The words "in particular" show that outside of the claims of the "last civil war" ready to be submitted to the jurisdiction of the Commission all those claims remaining which have not yet been adjusted; that is to say, in a given case also the claims for the intermediate period (until the uprising of General Matos). The German Commissioner understanding until now that these claims refer to claims for the failure to fulfill agreements, or claims during the period prior to 1898, but at the same time he asserts that in case the interpretation of Dr. Zuloaga should be correct, there shall be included also claims which bear no relation to the revolution of Matos, but to the revolutions of the intermediate time (Hernandez, Garbiras, Paredes, Peraza, and Acosta).

The second paragraph of Article III refers entirely to the first paragraph. If in the second paragraph the Government of Venezuela has recognized in principle its responsibility with relation to claims for damage to or illegal confiscation of property, its admission refers to the claims of which the first paragraph of Article III speaks — that is to say, to those German claims not mentioned in Articles II and VI — therefore, *in particular* to the claims of the present civil war, to those of the *intermediate interval*, and, therefore, to the claims arising out of the invasion of Garbiras and Vargas. Therefore, in the present case also, the liability of Venezuela should be fixed, being based upon contracted obligations.

III. The German Commissioner can not estimate by his own experience the value of the animals confiscated. He must bear in mind the sworn statements of the witnesses, who are agreed that the prices mentioned are reasonable.

Besides, the firm of Van Dissel enjoys such a reputation for honesty and respectability that it is not to be supposed that they would demand false or exaggerated prices. Add to this that the mountain mules must be selected animals of great strength in order to resist the fatigue incident to an exceptionally mountainous and muddy region. Finally, it is necessary not to lose sight of the fact that the house suffered a considerable indirect damage because of the confiscation of the animals (as all the witnesses testify) and that the direct

damage will require many years to be liquidated. All this should be taken into account in valuing the mules.

The prices indicated by the Commissioner of Venezuela are not in the first place sworn to, and besides they are given by individuals who did not know the animals in question, while the sworn witnesses ought to have known the exact value of them. Lastly, the prices refer to regions which are not in the mountains of Maracaibo, the high price which is paid in the mountains for mules being well known.

The German Commissioner therefore asks that the honorable umpire shall award the claimant firm the whole of the sum claimed, amounting to 51,000 bolivars, together with interests at 3 per cent per annum from the date of the presentation of the claim to December 31, 1903.

ZULOAGA, *Commissioner* :

Van Dissel & Co. make claim for 100 mules, which they say the troops of a commander, Juan Marquez, took on the 30th and 31st days of July, 1901, in a pasture field near El Azufre, in the jurisdiction of Michelena, State of Los Andes, and that they took them to Colombia via San Faustino. This claim is based upon acts of an obscure origin, with which the Government of Venezuela charges the Government of Colombia, since it was an invasion of the territory of Venezuela by revolutionary forces which, generally speaking, were battalions of the Colombian army, as appears even from the deposition itself presented as the testimony of the witness, David García. I do not understand how, under these circumstances, liability can be attached to the Government of Venezuela.

Nor even in the case that this act against the property of Van Dissel & Co. could be considered as the work of an internal revolution would the Government of Venezuela be liable, since it is an act of revolutionists, and besides, according to the interpretation given to the protocol by the honorable president of the Commission, the admission of the liability of Venezuela for acts of revolutionists is limited to the *present war*, which can not be any other except that which had for its leader Gen. M. A. Matos, a political movement perfectly well defined and distinct from every former revolution. I therefore reject the claim upon its merits; but it is also to be observed that mules, in the poor state which those which are the subject of this claim were, are not worth more than 80 pesos, or, say, 320 bolivars, as may be learned from the statements of informed people. The value of things at current prices should naturally govern the arbitrators, and with relation to them they are not to be governed by the declaration of witnesses who are set up as experts. Moreover, in the matter of experts it is universally determined that the judge is at full liberty to accept the valuation or not, and a judge of equity has that right all the more.

DUFFIELD, *Umpire* :

The claimants in this case base their claim upon injuries to and seizures of property belonging to them at their farm, El Azufre, in the jurisdiction of Michelena, State of Los Andes, by the troops of General Garbiras in July, 1901.

The Commissioner for Germany is of the opinion that the acts complained of occurred during the present Venezuelan civil war, as described in the protocol, while the Commissioner for Venezuela insists that these words in the protocol embrace only the so-called Matos revolution, which originated in or about December, 1901.

The importance of a correct interpretation of the words " present Venezuelan civil war " is self-evident. To arrive at a proper interpretation of them it is

material and necessary to ascertain the political situation in Venezuela at and prior to the execution of the protocol. The following statement of the various revolts against the Government, which was established in October, 1899, by General Castro, is accepted as substantially correct by both Commissioners.

General Castro entered Caracas October 22, 1899; assumed power October 23, 1899, as "director y jefe de la revolución restauradora." Shortly thereafter he declared himself "supreme chief of Republic" and appointed a cabinet.

General Hernandez on October 27, 1899, secretly left Caracas, and on October 28, 1899, issued a manifesto against the Castro government. He was defeated and captured and imprisoned until December 11, 1902, when he was released and came to parley with (then) President Castro.

Gen. Antonio Paredes, military governor of Puerto Cabello, initiated a revolt in November, 1899, but on November 11 and 12, 1899, he was completely defeated, captured, and imprisoned until December 11, 1902.

December 14, 1900, Gen. Celestino Peraza issued a proclamation inciting an insurrection against the Castro government. There was no serious fighting, and he was soon defeated, captured, and imprisoned until December 11, 1902.

October 24, 1900, Gen. Pedro Julian Acosta revolted in Yrapa, and after a number of minor engagements in the States of Cumana and Margarita in February, 1901, he was captured and imprisoned and has not been released.

In July, 1901, General Garbiras, as provisional leader of the nationalist party during the imprisonment of General Hernandez, organized an army of about 4,000 Venezuelans and troops of the regular army of Colombia, and invaded Táchira by way of Encontrados and by roads to the city of San Cristóbal. A small skirmish took place at Encontrados July 28, 1901, which resulted in favor of the Government, but on the 28th and 29th he was defeated in a serious engagement at San Cristóbal, lasting from 2 p.m., July 28, until 4 p.m., July 29, between the main body of the Garbiras army and the Government troops under Gen. Celestino Castro, commander in chief of the army under appointment by General Castro.

August 8, 1901, another armed force invaded Venezuela from Colombia, via San Faustino, but was repulsed at Las Cumbres by Gen. Ruben Cardenas.

Finally, in February, 1902, Gen. Ránel Garbiras, with other leaders and a Colombian battalion of the line, again invaded Venezuela, via San Antonio simultaneously with other officers from other points, but they were all defeated with heavy losses.

During the blockade Gen. Ránel Garbiras issued a manifesto early in 1903, abandoning his pretensions and being still a refugee in Colombia.

Gen. Horacio Ducharme, nationalist leader in the east, and his brother Alejandro joined in this movement from September 30, 1901, to the beginning of November, 1901, when the eastern section of the country was pacified.

In the beginning of October, 1901, Gen. Rafael Montilla revolted in the State of Lara and occupied Coro with a considerable army, but was defeated October 25, 1901, by Gen. Rafael Gonzales Pacheco, president of the State. He took refuge in the mountains of Guaito until the revolution of Matos gained head, when he joined it and participated until the end.

At the end of October, 1901, Gen. Juan Pietri issued a revolutionary proclamation, dated at La Sierra, Carabobo, although he had not then reached that point. He was almost immediately captured, brought to Caracas, and set at liberty in the Plaza Bolívar, while the revolutionists were routed at Guigue, in the State of Carabobo. Pietri again left Caracas by stealth toward the end of December, 1901, presumably to join General Matos's army or raise his own

standard, but he was again captured December 31, 1901, and imprisoned until the blockade, when he was released.

November 21, 1901, a number of citizens of Caracas, including Gen. Ramón Guerra, minister of war and navy, who had lent their support secretly to Gen. Manuel Antonio Matos, who was then in Paris stirring up and providing means for an insurrection, of which he was to be the head, uniting the liberal elements and the nationalists, whose leader, Hernandez, was still in prison on the fortress of San Carlos.

December 19 Gen. Luciano Mendoza, whose term as provisional president of the State of Aragua was drawing to a close, and who was supposed to be about to assume the constitutional presidency of Carabobo, went to Vil de Cura gathering some 300 men whom he had gotten in readiness. He counted on various uprisings on the same day in Carabobo, Cojedes, Lara, and Coro, but Gen. J. V. Gomez pursued him with vigor and dispersed his forces at or near Cojedes, and drove him into hiding.

At the end of December, 1901, General Matos circulated a proclamation dated on board the *Libertador*, formerly the *Ban Righ*, and declared by the National Government to be a pirate vessel. The forces of Gen. Antonio Fernandez in Aragua and the rebels in Coro were defeated and destroyed; but early in January, 1902, bodies of revolutionists began to rise in the east, relying on the Matos support and that of the steamer *Libertador* with General Matos on board, which on the 7th of February, 1902, engaged and destroyed the national steamer *Crespo*.

February 14 Gen. Gregorio Riera landed at Cauca and issued a proclamation, and engaged in battle the Government troops under Gen. Ramón-Ayala. General Gomez came to his assistance and the revolutionists in Coro were annihilated.

As early as March, 1902, the eastern portion of Venezuela was in arms in support of the revolution. Gen. Domingo Monagas, in Barcelona, and Gen. Nicolás Rolando, in Maturin and Cumaná, commanded troops. They gained signal victories at La Sutela of Barcelona, March 27, San Augustin del Pilar on April 2, and Guanaguana April 22. Gen. Calixto Escalante, who conducted the military expedition in the east, was completely routed and with many officers was taken prisoner. Rolando occupied Carúpano and defeated General Gomez in a hard battle. General Matos then came to Carúpano and began his march to the center, via Maturin and Carúpano. Meantime, in Lara and Yaracuy, General Amabile Solagure had acquired strength and was enlisting support with southwestern states to the movement in connection with General Montilla in Lara and Generals Mendoza and Batalla in the west.

By this time the occupation of Ciudad Bolívar by Col. Ramón Farreras and his possession of the State of Guayana, after serious engagements at Ciudad Bolívar, San Felix, and other points, had occurred.

While the forces near La Guaira, in the valleys of the Tuy and the Guarico, had been organized in expectation of the coming army of the east in Coro, General Riera obtained decisive victories which made him master of that state, and General Ayala was a captive in Barcelona.

During these events General Castro sent General Velutini to Barcelona to check the advance of General Matos's army, but the Government forces under Gen. M. Castro were defeated by the army of the east under General Rolando. President Castro thereupon took personal command of the army, and on August 18, with a considerable army, started for San Casimiro, where he was joined by other troops, and moved rapidly to Cua, but removed to Ocumare because of the defection of the troops under Gen. P. Perez Crespo, and remained until the beginning of September, 1902. when he returned to Valencia to meet the

revolutionist forces from the west, who, by a succession of victories, had control of the states of Coro, Barquisimeto, Cojodes, Portuguesa, and Yaracuy. In spite of General Castro's efforts to prevent it, the revolutionist armies united at San Sebastian and he fell back to Victoria. The united armies of the insurgents here attacked him vigorously from October 13 to November 2, but were compelled by the strong defense to withdraw from the field, and Matos took passage for Curaçao. Many revolutionists then surrendered themselves and the Government regained its coast and interior towns.

But in January, 1903, a reorganization of the revolutionists was consummated with considerable forces in Critinuco and Barlereuto under General Ronaldo; in Guarico, General Fernandez; in Coro, Gen. Gregorio S. Riera; in Barquisimeto and Yaracuy, under Generals Peñaloza, Solaguie, and Montilla. And after the signing of the protocols with the allied powers, February 13 of the present year, the struggle began again. It was only finally quelled by the taking by General Gomez of Ciudad Bolívar in the closing days of the present month.

It is claimed by the Commissioner for Venezuela that the words "the present civil war" in the protocol must refer to the revolution of Matos (so called) only. Is this correct? It is, literally, because at the date of the execution of the protocol there was no other revolution actively and aggressively prosecuted. But may not the parties to the protocol have used these words in a broader sense to indicate all the revolutions which had broken out against the Castro government?

From this statement it appears that prior to the Matos revolution a number of separate and disconnected revolts occurred, most of them of comparatively small importance; two of them in the year 1899, two in 1900, and four, including the Garbiras insurrection, in 1901; but all of these, except the Garbiras movement, were almost immediately suppressed. Of these revolutions that of General Ducharme alone appears to have been in answer to the call of General Garbiras. Of the leaders in these separate revolts, General Hernandez, General Paredes, General Peraza, and General Acosta were captured, and except General Acosta, who is still a prisoner, were imprisoned until December 11, 1902, when they were released by the Venezuelan Government at the time of the blockade by the allied forces. General Ducharme, being hard pressed, reembarked for Trinidad in November, 1901.

The insurrection headed by Gen. Ramón Garbiras in July, 1901, was organized and set out from the neighboring Republic of Colombia, and contained many troops of the regular Colombian national army. It was believed by the Government of Venezuela, and so announced by it in a proclamation addressed to the other nations of the world, dated August 16, 1901, that there was either complicity on the part of the Government of Colombia or an entirely unjustifiable lack of effort to prevent participation in it by its regularly enlisted troops. Notwithstanding the fact that General Garbiras had invaded Táchira by way of Encontrados, and thence by road had proceeded to the city of San Cristóbal with an army of about 4,000 Venezuelans and troops of the regular army of Colombia, on the 28th and 29th of the same month he was defeated in a serious battle at San Cristóbal by the Government troops under Gen. Celestino Castro, commander in chief of the Venezuelan army, and retired to Colombia. It was in this invasion that the injuries complained of occurred.

The so-called Matos revolution was announced by the proclamation of Gen. Manuel Antonio Matos in December, 1901, dated and issued on board the steamer *Libertador*, formerly the *Ban Righ*, then cruising in Venezuelan waters. She was denounced by a decree of the Venezuelan Government dated December 30, 1901, and in February, 1902, she engaged and destroyed the

Government steamer *Crespo*. This proclamation, which was extensively circulated by General Matos, was the culmination of an agitation begun by him in Paris some months previously, looking to an extensive insurrection which he was to lead. He hoped to unite upon him as their leader the liberal elements and the followers of General Hernandez, called Nationalistas, whose chief was still a prisoner in the fortress of San Carlos. To this end he had advanced liberally of his means, which were large, and had enlisted the support of the Venezuelan minister of war and navy and a number of the citizens of Caracas. He did not profess or declare any connection with a prior insurrection, or any intention to support the cause of any former leader, but to initiate and successfully carry through a new and independent revolution.

Yielding to public opinion, and attentive to the honor which a large number of my distinguished compatriots have conferred on me, by designating me in their generosity to lead this redemptory crusade, I hasten to comply, and to bring with me the necessary elements of war to strengthen your desires, render them irresistible, and at the same time to serve as a tie of union to all Venezuelans, in order to save our beloved country from ruin. (From Venezuelan Herald of December 31, 1901.)

Through the entire period of December, 1901, until his defeat and proclamation of peace, from Curaçao, whither he had fled after his defeat in June, 1903, there is no indication whatever that the movement he was conducting had the slightest connection with any of the previous revolts. Although he naturally hoped and probably expected to bring together all the dissatisfied elements in the Republic under his banner, it was with a like hope and expectation that they would abandon their former chiefs and adopt him as their leader.

None of these former revolutions compared with the Matos movement in importance or in their chances of success. None of them were still active. All of them had been suppressed. And with the exception of the followers of Hernandez, who was himself in prison, there were no considerable numbers of organized revolutionists. All of their chiefs were imprisoned. General Garbiras only avoided imprisonment by flight into Colombia.

It appears, therefore, that at the time of the signing of the protocol there was no existing civil war with any leader or any organization save that of Matos, and that all previous revolts had been put down by August, 1901, except the comparatively insignificant movement of General Ducharme, Nationalist leader in the east, which existed from September 30 to the beginning of November, 1901, at which date the entire eastern section of the country was pacified, and two small desultory events, one by Gen. Rafael Montijo, in the State of Lara, which was quelled in a few weeks by the president of that State, and one by General Pietri, who was defeated and captured before he reached the point from which his proclamation of revolution was dated, and his followers at the same time routed at Guigüe, in the State of Carabobo.

If there were any connection shown between the Matos revolution and these prior ones, there would be much force in the argument of the Commissioner for Germany that the high contracting parties had in contemplation, by the words "present Venezuelan civil war," all the insurrections against the Castro Government, but in the light of the facts stated above it clearly appears that the Matos revolution was independent.

Taking the words in their literal sense, in which they must be interpreted unless some special reasons require otherwise, they refer to the one civil war then pending in Venezuela.

The umpire is therefore of the opinion that the admission of Venezuela in the protocol of liability for injuries to and wrongful seizures of property does not embrace the insurrection headed by General Garbiras, in which the claimant



suffered from acts of revolutionists. It is true that in February, 1902, General Garbiras, with other leaders and 4,000 soldiers, including the Colombian battalion of the line, again invaded Venezuela, via San Antonio, simultaneously with forces from other points, but they were all defeated very soon after.

As to this claim, therefore, the liability of Venezuela must be determined by the general principles of international law, and under them the umpire is of the opinion that no liability exists.

As has been shown above, the forces which committed the injuries in this case were composed in large part of the national troops of Colombia; that the expedition was organized in Colombia; that the Government of Venezuela had no warning from Colombia of its preparation and no reason to expect it, because her relations with Colombia were then friendly and included an interchange of diplomatic representatives, that the expedition penetrated only a short distance into Venezuela coming by way of Encontrados by water, with San Cristóbal as its objective point, and that the Government took such prompt and vigorous means in opposition to it that, although General Garbiras had an army of some 4,000 men, many of which were the trained troops of the Colombian regular army, he was defeated and driven out of the country in less than a month.

Even if the question is to be answered upon the assumption that it is the duty of a government to protect foreigners absolutely from acts of revolutionists by preventive measures, and it is doubtful if the rule goes so far, Venezuela can not be held liable here, because the uprising did not begin in her territory, but in a neighboring state, which gave it immunity from any surveillance or repression, if not a fostering support.

Under these circumstances, in the opinion of the umpire, it would be contrary to justice and equity and at variance with the principles of international law to hold Venezuela liable in this case.

It is not intended by this opinion to decide that Venezuela may not be liable for acts of revolutionists in an insurrection prior to the Matos movement where that insurrection is shown to be associated with and a part of that movement.

It results, therefore, that the claim must be disallowed.

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