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Company General of the Orinoco Case

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He voluntarily selected Venezuela as the country in which to make his fortune and to gain the properties for which the respondent Government is now the alleged lawful debtor to his estate. His life in that country was voluntary, free, a matter of choice. After weighing probabilities and anticipating results he remained. His children have attained full age and have also remained. The ties of race on the paternal side have been to them less strong than the ties which bound them to the country of their birth and the land of their maternal nationality. They have for their recourse the forum constituted for Venezuelans. They have all the rights, opportunities, and privileges common to their brethren of that nation. They easily could have been French had they preferred life in France to life in Venezuela. Having French paternity, and thereby having French nationality in France, they needed only to be domiciled therein to have a nationality which all the world must maintain to be French. For reasons dominant with them they have preferred to remain in Venezuela. Its laws and its courts are theirs. These they may invoke; with them they must be content.

The umpire recognizes the position of the honorable commissioner for France that the laws of Venezuela upon the question of nationality of its own inhabitants may be ignored and the laws of France be made paramount. He is also not unmindful of the reference made by the same honorable commissioner to the provisions of the protocols drawn up at Washington in 1903 in their allusion to the effect of local legislation. The definition of that particular provision in those protocols is not germane to any inquiry under the protocol of February 19, 1902, which has no such restrictive clause and which in no way and in no part suggests that each country is not entitled in every particular to equal place before the international tribunal thus constituted. The umpire has already held, in effect, in the Maninat case,[1] that to be sovereign and independent each country must be master of its internal policy and subject neither to advice nor control by any other country nor by all other countries in respect to such matters. France would not brook that Venezuela should name to her who are her citizens within her domain; she must be content to ascribe equal privilege of selection to her sister Republic, certainly while Venezuela in this regard has no peculiar or offensive laws, but rather has those which accord with the laws of nations in general.

A large number of questions naturally arising out of the facts which are grouped together in this case do not become important matters of consideration, since in the opinion of the umpire the claim does not come within the provisions of the protocol.

This claim is to be therefore entered dismissed for want of jurisdiction, but clearly and distinctly without prejudice to the rights of the claimants elsewhere, to whom is especially reserved every right which would have been theirs had this claim not been presented before this mixed commission.

NORTHFIELD. *July 31, 1905.*

COMPANY GENERAL OF THE ORINOCO CASE[2]

If there were irregularities in the procedure of the respondent government in its suit for rescission in the matter of notice to the defendant company therein, these were all cured by the subsequent appearance of its attorney in said court and by its participation in the subsequent proceedings.

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[1] *Supra*, p. 55.

[2] EXTRACT FROM THE MINUTES OF THE SESSION OF MAY 5, 1903

The examination of the claim of the General Company of the Orinoco was then entered upon.

If there were error in the manner of issuing and handing out the rogatory commissions called for by the claimant company, it was cured by the acceptance of those commissions by the attorney of the claimant company in the manner and form as issued and handed out without objection and by his proceeding to make use of them for the purposes for which they were issued. Failure to educe evidence by means of these commissions must be charged to the action or inaction of the company's attorney, and not to the high Federal Court of the government under all the circumstances detailed in this case.

If there were error in the action of the high Federal court in proceeding to final decree without serving special notice upon counsel for the defendant company therein and in proceeding to enter up such decree without notice in fact to said company or its attorney, it was cured by the neglect of the company to avail itself of its statutory remedies by petition for invalidation to the high Federal court. Failure to seek such invalidation through the proper statutory methods precludes the claimant government from asserting any denial of justice of such decree whereas if an invalidation had been sought, and it had been denied and the grounds therefor were clearly established, it might be

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Doctor Paúl read the memoir which he drew up after having gained a knowledge of the dossier. His conclusion is that the claim of the company is not well founded, and he rejects it absolutely.

M. de Peretti asks his colleague to let him take the memoir to study it before giving his opinion. Doctor Paúl agrees, and it is understood that the French arbitrator will give his opinion during the next meeting.

EXTRACT FROM THE MINUTES OF THE SESSION OF MAY 7, 1903

M. de Peretti returns to his colleague the memoir which Doctor Paúl kindly let him take at the last meeting. He declares that, after having read it with the interest which a remarkable argument demands, he persists in the opinion which he had formed in studying the dossier of the claim of the Company General of the Orinoco, namely, that there ought to be accorded to the latter an indemnity of 7,000,000 bolivars. He bases his judgment upon the fact that the Venezuelan Government has brought in its defense no document, no proof of a nature to weaken what is said by the company.

The amount claimed by the company amounted to 7,616,098.62 bolivars, of which 5,616,098.62 bolivars represent money expended and 2,000,000 bolivars benefits not realized.

The French arbitrator does not accord at all the second of these sums, and of the first he takes out 540,000 bolivars. The company claiming upon this capital an interest of 6 per cent, while the commission has decided that it would reckon interest at the rate of 3 per cent, it is to be remarked that the company having paid interest at 6 per cent to its lenders and holders of obligation, there is no reason for a reduction on the amount which it claims under this head. There remains, then, a sum of 5,076,098.62 bolivars, of which M. de Peretti demands the increase to the amount of 7,000,000 bolivars, that account may be taken, first, of the use of the interest from July 1, 1902, to the day of the award, and second, of the depreciation of bonds with which the payment of the indemnity is to be effected.

Doctor Paúl expresses to his colleague the desire that he present, as he himself has done, an exposition of arguments upon which he bases his judgment and by which, at the same time, he would reply to the arguments presented by the Venezuelan arbitrator. Doctor Paúl would be able to take these into consideration and see if it would be possible to reach an agreement.

M. de Peretti replies that he has no other arguments to give than those furnished by the company itself, whose argument he considers as sufficient, and that consequently if his colleague does not agree to the amount of 7,000,000 bolivars, which is demanded, he appeals to the umpire.

Doctor Paúl maintains his opinion, and it is agreed that this claim be submitted to the judgment of the umpire provided by the protocol.

a sufficient cause for the action of this commission on the ground of denial of justice.

Held that there was in said decree no denial of justice under the treaty of 1885 or in virtue of the rules or principles of public law.

Held that every matter and point distinctly in issue in said cause, and which was directly based upon and determined in said decree, and which was its ground and basis, is concluded by the judgment of the high Federal court in said cause; and the claimant itself, and the claimant government in its behalf, are forever estopped from asserting any right or claim based in any part upon any fact actually and directly involved in said decree.

Held that if the treaty of 1885 were applicable to this case, then there has been no denial of justice or such a delay of justice according to usage or to law, nor such exhaustion of the legal means available to the claimants, nor such a violation of treaty or the rules of the right of nations as would admit of a favorable award if the jurisdiction of the commission were thus limited.

In the suit for rescission the Company General of the Orinoco plead no counterclaims or claims in offset; hence they were not in issue, were not litigated, and therefore are not concluded by the decree.

Such claims as might have been pleaded as counterclaims or claims in offset to the suit in rescission, or which might have constituted a ground for an independent action, can be presented here as substantive grounds for an award.

The date when the suit for rescission was entered in court is the day on which the issues are considered as formed between the parties. The cause of action had then accrued. For such causes as accrued after that date the court gained no jurisdiction in virtue of the suit then pending.

The actions of the claimant company and the respondent government posterior to that date are all proper subjects of inquiry and of award.

The refusal of the respondent government to recognize or permit the properties, franchises, rights, and privileges of the Company General of the Orinoco to pass to the English company which was ready to take them, was a fatal breach of the contract and charges the respondent government with all loss and damage which accrued to the claimant company on account thereof.

The fact that there was ample justification to the respondent government for taking this position as a government does not change its relation, as the other party to a contract, with the claimant company, and as such other party it must stand in the same relation as though it were not also exercising governmental functions requiring it to prevent the claimant company from completing its contract of cession.

The claimant company had several grounds of defense to the suit for rescission; among them these:

(a) No offer to restore to the company the benefits conferred by it upon the plaintiff, it being easily susceptible of proof that it had conferred many such benefits, capable of being measured in money.

(b) The respondent government could not have sustained its position that it was without fault in the premises. The opinion gives in detail the instances falling under each of these heads.

None of these facts being brought to the attention of the high Federal court, it could only pass the decree which it finally registered.

The respondent government having prevented the completion of the contract between the Company General of the Orinoco and the British company, as heretofor stated, it became responsible for the value of the concession, since this action of the respondent government resulted in practically a total loss.

Approximate equity is all that can be attempted in a case so indefinite in many of its important facts.

When this sovereign act of the respondent government was interposed, the company was in shape to be relieved of all its indebtedness through the action of the British company. There is no inequity in holding that the value of the concession was the sum which the British company was then ready to pay. This proceeding may be considered, in a limited sense, as in the nature of a creditor's bill, the purpose of which is to recover that which is due for the benefit of the creditors.

OPINION OF THE VENEZUELAN COMMISSIONER

Under date of July 10, 1902, Messrs. Louis Roux, Felix Joseph Vial, and André Emile Belicam, liquidators of the " Compagnie Générale de l'Orénoque," addressed a memorial to the minister of foreign affairs of France, in which they state the following:

That in consequence of the sentence given by the high Federal court in 1891, without the appearing in court of the plaintiff company (par défaut), the creditors of the said company were obliged to apply to the liquidators for the vindication of their rights against the Government of Venezuela.

Following this the liquidators present a statement of their claims, as per items below:

	Francs	Francs
1. Capital of the Compagnie Générale de l'Orénoque		1,500,000.00
2. To the company called " La Monnaie "	609,030.91	
Interest at 6 per cent from 1892 to date and other expenses	655,659.45	1,264,690.36
3. To " La Banque de Consignations "	236,356.00	
Interest at 6 per cent from April 1, 1890, to date	248,753.00	485,109.00
4. To Mr. Alfred Chauvelot	345,976.00	
Interest at 6 per cent, as per account	292,102.00	638,078.00
5. To Mr. Eugene Ferminac	101,000.00	
Interest for twelve years at 6 per cent	100,340.00	201,340.00
6. To Mr. Louis Roux	30,504.00	
Interest at 6 per cent, as per account	24,071.00	54,575.00
7. To Mr. Albert de Suin	6,264.00	
Interest	5,083.00	11,347.00
8. To Mr. Theodor Delort	14,641.26	
Interest, ten years at 6 per cent	8,402.00	23,043.26
9. Liquidation bonds		157,916.00
10. Expenses of the English company	25,000.00	
Expenses of the Belgian company	100,000.00	
Interest	90,000.00	215,000.00
11. Sundry expenses and unpaid salaries of 1891		75,000.00
12. Interest on the capital of the company from 1891 at 6 per cent		990,000.00
Total		5,616,098.62

To this amount the liquidators further add the sum of 2,000,000 francs under the head of eventual profits, thus bringing up the total to 7,616,098.62 francs.

To this statement the liquidators annex nine abstracts of accounts, referring

to seven items of the claim, Nos. 7, 9, 10, and 11 being referred to as copies taken from the books of the company.

In another memorial, presented in Paris on September 12, 1901, by the same liquidators to the minister of foreign affairs, they annex two documents, one of which contains the declaration of Mr. Andres Fiat, the former attorney of the company at Caracas, who was acting as such at the time the company was sued before the high Federal court, in which Mr. Fiat affirms —

that the sentence of said court was given without having served previous legal summons to him or to the counsel of the company, which was thus really a sentence pronounced without hearing one of the parties concerned.

The liquidators further state in said memorial that of the two lawyers who acted as counsels for the company, viz., Dr. Diego B. Urbaneja and Dr. Ramón F. Feo, the first is dead, but the second of them is still alive, practicing in Caracas, and in capacity to make a declaration similar to that of Mr. Fiat's.

Together with the aforesaid two memorials and annexed documents referred to there is a letter from Mr. Theodor Delort, dated April 14, 1903, to the French minister at Caracas, in which he says:

Before my departure from Paris, the liquidaters have conferred on me the power of attorney of the Compagnie Générale de l'Orénoque, and I hold such power at the disposal of the legation. All the books, documents, and accounts of said company are in the keeping of the liquidators, who can not let them out of their possession, as the work of liquidation is yet going on, and they may be at any time summoned before the commercial tribunal of the Seine, by reason of the liability of the company in case that the result of the claim now presented against the Government of Venezuela should not be sufficient to wipe out those liabilities.

They also produce a report or memorial of 111 pages, which was deposited with the minister of foreign affairs in Paris on December 3, 1895, containing a general description of the enterprise of " La Compagnie Générale de l'Orénoque " and a compendium of the documents which constitute the action entered on behalf of the Government of Venezuela on the 28th May, 1890, by the financial representative (fiscal nacional de hacienda) against the company for the rescission of its contract and for damages. Annexed to this report the liquidators presented 128 documents, the greater part of which are private letters, memorials, and notes, very many of which are void of legal authenticity.

The Venezuelan commissioner has examined all and every one of these memorials, notes, papers, and private letters presented to him by the French commissioner, and he has also examined the process carried on before the high Federal court against the said company during the years 1890 and 1891, as well as all the documents filed in the ministry of fomento regarding the several concessions of the contracts made by the Government of Venezuela, thus: In 1885, with Mr. Miguel Tejera for the exploitation of the natural products of the territory of the Upper Orinoco and Amazonas; and in 1887, with Mr. Theodor Delort for the exploitation of tonca bean (sarrapia) in the territory comprised between the Orinoco River, Brazil, and British Guiana; all of which contracts were transferred to the Compagnie Générale de l'Orénoque. A process took place between the Government of Venezuela and the Compagnie Générale de l'Orénoque, entered upon by the financial representative of Venezuela (fiscal nacional de hacienda) on behalf of said Government, said action having begun before the high Federal court on the 19th June, 1890, and the object of same being the following: First, the rescission of the contract signed on the 17th December, 1885, between Gen. Guzmán Blanco, envoy extraordinary and minister plenipotentiary to several courts of Europe, and Mr. Miguel Tejera, for the exploitation of all the vegetable and mineral products of the

territories of the Upper Orinoco and Amazonas during a period of thirty-five years; second, the rescission of the contract signed on the 1st April, 1887, between the minister of fomento of the United States of Venezuela and Mr. Theodor Delort for the exploitation of tonca beans (sarrapia) during a period of twenty-five years on the Government lands which lie between the extreme eastern boundary of the territories of the Upper Orinoco and Amazonas and British Guiana and between the Orinoco and the Brazilian boundary line; and third, for payment by the company of the sum of 40,048.62 francs for damages owing to the nonfulfillment of said contracts and expenses and costs incurred in this process.

This suit was ended by final judgment passed by the high Federal court on the 14th of October, 1891, against the company, which was condemned to pay the sum of 40,048.62 francs as well as expenses and costs incurred in the process.

The claim which the liquidators of the Company Générale de l'Orénoque pretend to make good against the Government of Venezuela is, therefore, based on a judgment passed by the high Federal court since October, 1901, which has been affirmed and has the sanction of *chose jugée*.

The contracts between the Government of Venezuela and Messrs. Miguel Tejera and Doctor Delort, which were afterwards ceded to the Compagnie Générale de l'Orénoque, were signed under the constitution of 27th of April, 1881, and the civil code which entered into operation on the 27th of January of the same year. Article 26 of said civil code states —

that any party, even if not resident in Venezuela, can be sued in the Republic for obligations contracted for in the Republic or the fulfillment of which has to be carried on in Venezuela.[1]

Article 14 of the contract signed with Mr. Tejera for the exploitation and colonization of the territories of Upper Orinoco and Amazonas, and article 15 of the contract signed with Mr. Th. Delort for the exploitation of all the tonca beans existing on the Government's lands mentioned in said contract, both expressly stipulate —

that all doubts and controversies arising from the fulfillment of both agreements are to be decided by the tribunals of the Republic according to its laws.

In the memorial presented on the 12th of September, 1901, to the minister of foreign affairs in Paris the liquidators of the Compagnie Générale de l'Orénoque contend that, according to a document which they annex thereto, containing a declaration of their former attorney at Caracas, Mr. Andres Fiat, who was acting as such at the time of the suit, judgment was passed by the high Federal court without summons having been served either on him or on the counsel of the company, which is equivalent to a sentence pronounced without hearing one of the parties concerned. This aforesaid document is signed by Mr. Fiat in St. Cloud on the 1st of May, 1901, and is legalized by the prefect of the said city and by the minister of foreign affairs of France. Mr. Fiat therein certifies —

that, while residing in the city of Caracas in 1890 and 1891, the Compagnie Générale de l'Orénoque conferred to him the necessary power of attorney that he might represent the company at Caracas in all matters.

He also certifies —

that with reference to the suit entered by the fiscal nacional de hacienda on the

[1] Art. 26. Pueden ser demandados en Venezuela aun los no domiciliados en ella, por obligaciones contraídas en la República, ó que deben tener ejecución en Venezuela.

23d of May, 1890, before the high Federal court, against the Compagnie Générale de l'Orénoque, for rescission of the concessions of the 17th of December, 1885, and of the 1st of April, 1887, *he was never summoned nor did he ever receive an order to appear in court*, and that the counsel of the company, Messrs. Diego B. Urbaneja and Ramón F. Feo, were never summoned either.

He further certifies —

that consequently the judgment of the high Federal court was passed during his absence on the 14th of October, 1891, and that neither he nor the two aforesaid counsel of the company ever received any advice, and in this way they never knew that such sentence had been pronounced until three days after, when they saw it published in the Official Gazette of the 17th of October, 1891.

The declarations of Mr. Fiat contained in this document are inaccurate, as will now be proved. The suit was entered on the 28th of May, 1890, by the fiscal nacional de hacienda before the high Federal court, and on the 30th of the same month the president of the court issued a writ thus:

Considering that, according to the document annexed to the suit, Messrs. Andrés Fiat and Bernabé Planas appear to be the representatives of the company in Venezuela, order is hereby given for them to be summoned in order that they may declare if they are still holding the power of the company, and in order to appoint a counsel for the defendant, in case they are no longer attorneys of the company in accordance with the law.

There is legal proof in the papers of the suit that they were both summoned on the same 30th day of May, and they both appeared in court on the 2d of June and declared:

The only representative now of the Compagnie Générale de l'Orénoque is Mr. Andrés Fiat, who will duly produce his power of attorney in court on Wednesday, the 4th of June.

On the said 4th of June Mr. Fiat presented to the court his power of attorney and a translation of the same was ordered. On the 16th of June the interpreter, Mr. Veloz de Goiticoa, presented the power of attorney duly translated, and on the same date the court issued a writ ordering that the original power of attorney be returned to its owner and to summon the same in due form. On the 19th of June the fiscal nacional de hacienda altered the terms of the suit, limiting the sum demanded from the company for damages to 40,048.62 francs, as per account annexed. On the same 19th of June Mr. Fiat, as representative of the company, gave a receipt for the document containing the plaintiff's suit (libelo de demanda), which was handed to him, and said receipt was filed in court. On the same day the court issued a decree (folio 88) by which order was given to notify Mr. Fiat that the terms of the suit had been altered, and a copy of which alteration was handed to him.

Mr. Fiat was to give a receipt for this copy and he was to present in court his answer to the suit ten days after this date.

This writ was carried into execution on the same day, and Mr. Fiat gave a receipt on the 20th of June, which receipt is filed in court. On the 2d of July, which was the day appointed for answering the suit, there appeared in court the fiscal nacional de hacienda and Mr. Fiat, accompanied by his counsel, D. B. Urbaneja and R. F. Feo, and then and there all the parties agreed to defer the answering of the suit to a date fixed at eight days after the presentation of the documents to which reference is made in the suit by the plaintiff, *in order that the company should have time to examine these documents*. On the 22d of July,

Mr. Fiat, accompanied by his two counsel, Doctors Urbaneja and Feo, appeared in court and filed their answer to the suit, petitioning the court at the same time for an extraterritorial term in order to obtain evidence from France and Rome. The suit then followed its ordinary legal course, during which the parties were to produce their respective evidence, and the court reserved its right to decide on Mr. Fiat's petition regarding an extra territorial period of time. Later on the president of the court granted one hundred days to obtain the extraterritorial evidence, and Mr. Fiat having appealed from this decision, considering that the term granted was too short, the court then extended it to one hundred and thirty days. On the 5th of September Mr. Fiat was notified that the fiscal had petitioned the court that the suit be registered in Ciudad Bolívar, in order to avoid any transfer intended by the company. Mr. Fiat duly received this notice, at the foot of which he set his signature, and on the 8th of September he appeared in court, accompanied by his counsel, Doctors Urbaneja and Feo, and said —

that he did not believe that he could make any legal opposition to the Government, which is a party in this suit, for the recording of the suit with the alterations which were made to it afterwards.

On the same day order was issued by the court that a copy of the suit be sene to the judge of first instance of Ciudad Bolívar for its being recorded in thh registry office in that city, and said order was carried into effect on the same 15tt day of September.

In the course of the suit Mr. Fiat presented the court a petition dated August 7,1900, in order that such evidence might be advanced as he thought convenient to the case of the company. Among this evidence were declarations to be made by witnesses resident in Paris, Rome, Port of Spain, Río Chico, Barcelona, San Fernando de Apure, and Caracas. The president of the court issued a writ, dated August 12, admitting the presentation of such evidence, as far as the law permitted, and commissioned the several civil judges of first instance of the localities of the respective witnesses to hear their declarations, and petitioned and issued rogatory commissions to the competent judges of Paris, Rome, and Port of Spain for the same purpose. On the 11th of October of the same year Mr. Fiat appeared in court and stated —

that by virtue of the authority conferred on him by power of attorney from the company, he conferred special power to Dr. Ramón Feo and Dr. Martin F. Feo, so that both together or any one of them separately may intervene in the collecting of evidence that is to be made by the fiscal in this capital city; that he also conferred special power to Mr. Armando F. Larrouget, of Porto Rico, for the collecting of evidence on behalf of the company in that district and to intervene in the collecting of evidence by the plaintiff; that he conferred special power on Mr. Julio Philipe, of Barcelona, for all the evidence that is to be collected in that city; that he conferred special power on Dr. Brígido Natera, of Ciudad Bolívar, for the collection of the evidence in Ciudad Bolívar and the Territorio Orinoco; that he conferred special power on Mr. Casto Rodriguez, of San Fernando de Apure, for all the evidence to be collected in that city; that he conferred special power on Mr. E. R. Mason, of Port of Spain, Trinidad, for all the evidence to be collected in that city, and that he conferred special power to Mr. Andrés Lenel Gutierrez for all the evidence that is to be collected in the Territories Orinoco and Amazonas.

By order of the 11th of October, 1890, the president of the court ordered that commissions and petitions be issued to the different parties residing in the different localities where the evidence was to be collected, and that in said petitions and commissions the insertion of the powers conferred on them be made, as requested by Mr. Fiat. The said order was carried into execution on the 13th of October, as it is proved in the records by a note signed by the secretary

of the court to the effect that all the commissions and petitions issued had been handed to the defendant. All these commissions and petitions were duly returned, after having been carried into operation, and exist in the records of the court, with the exception of those addressed to the judges of Paris and Trinidad and to His Excellency Cardinal Limeoni, of Rome, which were not returned by the representative of the company, although he received them.

In page No. 56 of the document containing the evidence presented by the attorney of the company there is a note signed by the secretary of the court on the 24th of March, 1891, in which it is stated that after due computation both the ordinary and the extraordinary period of time granted for the collecting of evidence expires on that same 24th of March, 1891. On the same day the president of the court ordered that, the probatory period having expired that day, the papers and records of the suit were to be sent to the full court, which was duly effected.

On the 29th of April the fiscal stated that, this being the time for the court to study the papers and records of the suit, order be issued for the same to be effected. On the 21st of May the fiscal reiterated his petition, and on the 23d order was issued to begin the study of the papers and records on the 30th. The study of the papers and evidence commenced on the 16th of June and proceeded on the 24th of June, as the court did not meet on the 17th, 18th, 19th, 20th, 21st, 22d, and 23d. On the 1st, 4th, and 7th of August the court called suppletory judges to fill the vacancies of Dr. Chuecos Miranda and Mr. Cárlos Hernaiz, who were absent, and that of Dr. J. P. Rojas Paúl and General Velutini, who had petitioned to be excused from attending to court. On the 16th of September the suppletory judge, Dr. Cárlos Grisanti, was called, and the 19th day of the same month was appointed for the study of the process. Doctor Grisanti joined the court on the day fixed, and the study of the papers and records was commenced on the following day. The same proceeded on the 21st of September and following days until the 25th, and the 29th day of the same month was appointed to hear the reports or pleadings of the plaintiff and defendant. On this 29th day of September the fiscal nacional de hacienda appeared in court, but no representative or counsel on behalf of the defendant, the court then proceeding to sit in conference. According to notes set in the records by the secretary of the court in chronological order, it is evidenced that from September 30 to October 13 only one sitting of the court took place, on the 3d of October, during which the judges conferred on the judgment to be passed and agreed as to the same. On the 14th of October the sentence was drawn and signed by the members of the court on the same day.

From the foregoing it is clearly evidenced that the Compagnie Générale de l'Orénoque was duly summoned, through their representative in Caracas, Mr. A. Fiat, to appear in court to answer the suit entered against them before the high Federal court by the financial representative of Venezuela (Fiscal de la Nación); that Mr. Fiat did appear in court, accompanied by his counsel, Drs. D. B. Urbaneja and Ramón F. Feo; that he made such contentions as he deemed convenient on behalf of the defendant company; that he petitioned for an extraterritorial term in order to collect evidence in various foreign localities, and the same was granted to him; that he appointed special attorneys for the collection of such evidence within and without the territory of Venezuela; that the commissions and petitions issued by the court to the different judges and public officials of the various localities where the evidence was to be collected were handed to him in due time; that he forwarded to their destinations these petitions and commissions, which were all returned to the court, after a part of the evidence had been collected; that another part of the evidence was not collected, either through negligence of the company or because

it desisted voluntarily of doing so, as there is no proof in the record that this was due to any cause beyond the control of the representative of the company; that after the expiration of the extra term granted by court for the collection of evidence, on the 24th of March, 1891, the fiscal de hacienda immediately petitioned that the court proceed to the examination and study of the papers and record of the suit in order that judgment be passed, for which purpose he continually applied to court, both plaintiff and defendant being present as according to law and there being no necessity of their being newly summoned for the complementary acts of the suit required to arrive to its final stage of being sentenced.

The sentence was thus pronounced by the high Federal court, after complying rigorously with the legal prescriptions and with all the formalities of the proceedings as established by law on behalf of both parties interested for the defense of their respective rights.

In the memorial or report presented by the liquidators of the company to the minister of foreign affairs of Paris, on the 3d of December, 1895, they pretend that *on the 25th of September, 1891, the high Federal court issued an order that the contending parties be advised that the 29th September had been appointed as the date on which they (plaintiff and defendant) were to present their respective reports or pleadings,* and that neither the representative of the company nor his counsel were summoned or advised, which lack of notice was in violation of articles 109 and 162 of the Code of Civil Procedure of Venezuela, and sufficient cause to invalidate the sentence.

This is inaccurate, as there was no such decree of the court ordering that the contending parties be notified; nor is there any violation of articles 109 and 162 of the Code of Civil Procedure as alleged for the nullity of the sentence.

In the papers and record no decree of the court exists under date of 25th of September, ordering the parties to be notified, there being simply a note sent by the secretary of the court, which reads thus:

CARACAS, *25th September, 1891.*

In the sitting of this day the study and examination of the papers and record by the court was completed and the sitting of the 29th current is appointed for plaintiff and defendant to present their respective reports or pleadings.

Let the parties be notified. O. BURGOS.

As may be seen from the draft of the foregoing note and from the phrase "let the parties be notified," which may be seen, at first sight, was forcibly inserted between the last line and the signature of the secretary, the said note was a fabrication of said secretary, conforming to no legal prescription, and in no way was it an order or decree of the judges of the court, who are the only parties authorized by law to issue such orders.

Article 287 of the Code of Civil Procedure in force at that time (chapter fourth, on the study and sentences of suits) directs the following:

After the completion by the judges of the study and examination of all the papers and record of the suit they will hear the reports which the contending parties may address to the court verbally or through their representatives and counsels, and they will also read such reports as said parties may address in writing which will be filed in the record.[1]

It may be gathered from this that, once the study and examination of the papers and records has been completed, there is no need of summoning the

[1] Art. 287. Concluida esa relación se oirán los informes que de palabra dirijan las partes, sus apoderados ó patrocinantes y se leerán los que presenten por escrito, los cuales se agregarán á los autos.

parties for them to present their reports. Article 89 of the same code reads thus:

The summons to the defendant for answering the said (demand) having been served there is no need for serving any further summons for any act during the course of the litis, nor any summons which may need to be served will suspend the proceedings, unless there be a special legal prescription to the contrary.[1]

The words of this article are so conclusive that they exclude any possibility that the court might have considered it necessary, after studying and examining the papers and records, to summon the contending parties to present their reports on the process, which had not been in suspense at any time.

Article No. 109, quoted by the liquidators of the company, reads thus:

When a litis be in a state of suspense, owing to motives caused by the contending parties, it will remain in this state until any one of the interested parties petitions for its continuation. In this case the other party or his representative will be summoned, but the proceedings can not follow their course until this summons be effected.[2]

The process to which I am now referring was never in this case and far from its ever having been in suspense owing to motives caused by the contending parties, it appears from the records that on the same day that the probatory term expired the fiscal petitioned for the active continuation of the case and several orders (señalamientos) were then and there issued for the study and examination of the papers and records and in order to complete the court by the appointment of adjunct judges, all of which is evidenced by the respective notes set in the records by the secretary of the court. The other article quoted as having been violated is No. 162 of the same code, and it reads thus:

When the tribunal be so taken up with business as not to be able to commence the process on the day appointed, or on any of the following eight days or by any other cause and the process be thus delayed indefinitely, the contending parties or their representatives shall be notified of the new date appointed for commencing the same, in the manner established by article 109, but the term fixed by this article being liable to be reduced.[3]

It is evidenced from the notes set in the records that the first act of examining and studying the papers and records took place on the 16th of June; that the same followed its course on the 24th of June, before eight sittings of the court had transpired, an adjunct judge was appointed on the 1st of August to fill the vacancy caused by the absence of Dr. Chuecos Miranda; that Mr. Cárlos Hernaiz, who had been appointed as adjunct, being away from the city, Dr. J. P. Rojas Paúl was appointed to replace him on the 4th of August; that Dr. Rojas Paúl having tendered his resignation, another appointment was made on the 7th of August in the person of Gen. J. A. Velutini, who was notified of same, and that the 16th day of September had been fixed for the study of the process.

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[1] Art. 89. Hecha la citación para la litis-contestación, no habrá necesidad de practicarla de nuevo para ningún acto del juicio, ni la que se mande verificar suspenderá el procedimiento á menos que resulte lo contrario de alguna disposición especial.

[2] Art. 109. La causa, cuyo curso esté en suspenso por motivos imputables á las partes, permanecerá en el mismo estado hasta que algunos de los interesados en ella pida su continuación. En este caso se citará á la otra, ó á su apoderado sin que corra ningún término mientras no conste haberse practicado estas diligencias.

[3] Art. 162. Cuando por ocupación del tribunal ú otro motivo no principiare á verse la causa el día designado ni en ninguno de los ocho siguientes, y tenga que sufrir una demora indefinida, se avisarán las partes ó sus representantes el nuevamente señalado para principiar su vista, de la manera establecida en el artículo 109, pero pudiendo reducirse el término que éste fija.

It is to be noted that the sitting of court of the 16th of September proximo was the first sitting after the vacation of the tribunals which runs from the 15th of August to 15th of September, and that from the 7th to the 15th August no sittings transpired.

On the 16th of September the tribunal met and took cognizance of a communication from General Velutini, in which he stated that he could not accept, as he had to leave the city, and the court then appointed Dr. Cárlos Grisanti, who was duly notified, and the 19th of the same month was appointed for the examining and studying of the case, three days after Doctor Grisanti's appointment. On the appointed date Doctor Grisanti took his seat in court and the process began and followed its course on the 21st and 25th, on which last-mentioned day it terminated. It is thus evident that the process was never under indefinite delay, and that the court acted on the case at intervals of from two to three days, appointing adjuncts to fill the vacancy of some of the judges, the interested parties being in the obligation of calling on the secretary of the court in order to take knowledge of the acts of same.

In the notes contained in the memorial presented by the liquidators of the company to the minister of foreign affairs at Paris, referring to the evidence to be collected by the representative of the company regarding the process before the high Federal court, it is stated:

Mr. Fiat was taken unaware by the suit entered at court by the fiscal against the company for rescission of its concessions and had no time to ask for orders or to collect information, and as no memorial had ever been communicated to him and it was impossible to foresee that such action would be entered against the company, he had received no instructions from Paris. Mr. Fiat, being very much perplexed, presented a list containing the names of all the employees of the company to be examined by the court, but not knowing their whereabouts he set them all as residing in Paris. The petition of Mr. Fiat was inspired by the report which the administration of the company had just forwarded to the ministry of fomento. The tribunal accepted Mr. Fiat's petition, but instead of forwarding the commissions to Paris, as was done with those to Rome, by the diplomatic channel, according to international rules, they were handed directly to Mr. Fiat for transmission to Mr. Delort. Nothing could be more strange, and side by side to a proceeding which appears to be regular at first sight there are irregularities which nullify the defense, and, finally, the judgment was passed without summoning the defendant, as has been seen by the document No. 1. Mr. Delort delivered the commissions issued by the court to the board of directors of the company, who were unable to do anything with them and returned them to their counsel in Caracas, Dr. D. B. Urbaneja, and, following the advice of their counsel, the board had affidavits made by such witnesses as could be found, on the subject of the commission issued by court to the judge of first instance of Paris.

The statement that Mr. Fiat was taken unawares by the suit entered by the fiscal before the high Federal court and that he had no time to ask for order and information regarding the evidence is contradictory of the fact that Mr. Fiat was summoned on the 30th of May, 1890, to appear in court and take cognizance of the action entered against the company, and that it was only on the 7th of August, two months and eight days after he had been summoned, that he entered a petition to the tribunal for the collection of evidence. As to the action of the court in handing over to Mr. Fiat the commissions to Paris and Rome, instead of forwarding same through the diplomatic channel it is simply reckless and capricious to consider such action as an irregular omission. The Code of Civil Procedure, in article 205, on the extraordinary term for collecting evidence, says:

If one of the contending parties who has obtained permission for collecting evidence, as per the terms of the foregoing article, fails to do the necessary to obtain

same, or if it appear from the records that he made a malicious petition in order to extend the duration of the suit, he shall be fined with an amount equivalent to one-fifth of the value of the suit, which sum will be applied to pay to the other party whatever damages he may have suffered by the delay.[1]

It was the interested party who should have taken the necessary steps in order to have forwarded the commissions to the judge of the Seine through the diplomatic channel, and his having neglected to do so could have been cause of his being fined, as per the article 205 quoted, as he petitioned for the collection of evidence which required an extraterritorial term and thus lengthened the period of the suit, and he did not do the necessary to collect the evidence. It is well known that these commissions are accepted by the judges to whom they are addressed by courtesy in accordance with international use. In some international treaties these commissions have been regulated, but failing this the rule to be followed is that of reciprocity. There is no agreement on this point between Venezuela and France, and it was therefore necessary to adhere to Venezuela's legislation on the subject, to which article 559 of the Code of Civil Procedure at the time in force is pertinent. This article states:

Commissions issued by foreign tribunals for the examination of witnesses for valuations, oaths, interrogatories, and any other such acts to be effected in the Republic, will be carried into execution by virtue of a simple decree from the judge of first instance of the locality where such acts are to take place.[2]

This is in accordance with the most advanced principles of jurisprudence on the matter.

The Institute of International Law, during the Zurich session, has established the following principles and rules, which are highly favorable to the prompt expedition of justice:

Any judge may in any process address himself by rogatory commissions to any foreign judge, requesting him to carry into execution in his jurisdiction any act of instruction or any other judicial acts to which the intervention of a foreign judge may be useful or indispensable. A judge to whom a petition is addressed in order that he may issue a rogatory commission has to decide in the following points: First, of his capacity in the matter; second, on the legality of the petition; third, whether or not it is opportune in cases where the acts petitioned for can be effected by the judge under whose guidance the suit is, such as the examination of witnesses, taking of oaths of one of the parties, etc. The rogatory commission *shall be sent directly to the foreign tribunal unless the interested governments may afterwards intervene in case it be necessary*. The tribunal which receives the commission is under obligation to comply with it after having ascertained the following: First, the authenticity of the document; second, its own capacity, ratione materiæ, according to the laws of the country. (Annual of the Institute of International Law, Volume II, 1878, pp. 150 and 151.)[3]

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[1] Art. 205. Si el litigante que ha obtenido concesión para evacuar las pruebas de que habla el artículo precedente no practicare las diligencias consiguientes, ó de lo actuado apareciere que la solicitud fué maliciosa, con el objeto de alargar el pleito, se le impondrá una multa equivalente á la quinta parte del valor de lo que se litigue, y se aplicará á la parte contraria en indemización de los perjuicios sufridos con la dilación. Si ni aproximadamente fuere conocido este valor, será la multa de una cantidad que no baje de quinientos bolívares ni exceda de cinco mil, con la misma aplicación.

[2] Art. 559. Las providencias de los tribunales extranjeros concernientes al exámen de testigos, experticias, juramentos, interrogatories y otros actos de mera instrucción que hayan de practicarse en la república, se ejecutarán con el simple decreto del juez de primera instancia que tenga jurisdicción en el lugar en que hayan de verificarse tales actos.

[3] The rules proposed by the Institute of International Law at Zurich in 1877, were as follows:

There was, consequently, nothing irregular in the proceedings of the court in addressing directly the judge of the first instance of the Seine and in handing the commissions to the interested party for its compliance. If the Compagnie Générale de l'Orénoque did not in due time see that its representatives in Paris, Rome, and Port of Spain attended to the execution of the commissions and allowed them to keep the documents in their possession for an indefinite period, it is an act for the consequences of which the company is solely and exclusively responsible. To pretend that the other party in the litis shall bear any responsibility on the matter is entirely contrary to common sense and to equity.

As has been shown, besides the absolute lack of legal basis of the charges preferred by the liquidators of the Compagnie Générale de l'Orénoque against the proceedings of the court and the judgment passed by that high tribunal on the 14th of October, 1891, there is the remarkable circumstance that neither the company nor its legal representatives denounced the sentence as null and void within the period and in the form established in Part XVII of the Code of Civil Procedure then in force. Article 538 of said code says:

Suits may be invalidated by the following causes: First, when one of the contending parties has not had a hearing in the suit whose invalidation is intended

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1. L'étranger sera admis à ester en justice aux mêmes conditions que le régnicole.

2. Les formes ordinatoires de l'instruction et de la procédure seront régies par la loi du lieu où le procès est instruit. Seront considérées comme telles, les prescriptions relatives aux formes de l'assignation (sauf de qui est proposé ci-dessous, 2me al.) aux délais de comparution, à la nature et à la forme de la procuration *ad litem*, au mode de recueillir les preuves à la rédaction et au prononcé du jugement, à la passation en force de chose jugée, aux délais et aux formalités de l'appel et autres voies de recours, à la péremption de l'instance.

Toutefois, et par exception à la règle qui précède, on pourra statuer dans les traités que les assignations et autres exploits seront signifiés aux personnes établies à l'étranger dans les formes prescrites par les lois du lieu de destination de l'exploit. Si, d'après les lois de ce pays, la signification doit être faite par l'intermédiaire de juge, le tribunal appelé à connaître du procès requerra l'intervention du tribunal étranger par la voie d'une commission rogatoire.

3. L'admissibilité des moyens de preuve (preuve littérale, testimoniale, serment, livres de commerce, etc.) et leur force probante seront déterminées par la loi du lieu où s'est passé le fait ou l'acte qu'il s'agit de prouver.

La même règle sera appliquée à la capacité des témoins, sauf les exceptions que les États contractants jugeraient convenable de sanctionner dans les traités.

4. Le juge saisi d'un procès pourra s'adresser par commission rogatoire à un juge étranger, pour le prier de faire dans son ressort soit un acte d'instruction, soit d'autres actes judiciaires pour lesquels l'intervention du juge étranger serait indispensable ou utile.

5. Le juge à qui l'on demande de délivrer une Commission rogatoire décide: (a) de sa propre compétence; (b) de la légalité de la requête; (c) de son opportunité lorsqu'il s'agit d'un acte qui légalement peut aussi se faire devant le juge de procès, p. ex. d'entendre des témoins, de faire prêter serment à l'une des parties, etc.

6. La commission rogatoire sera adressée directement au tribunal étranger, sauf intervention ultérieure des gouvernements intéressés, s'il y a lieu.

7. Le tribunal à qui la commission est adressée sera obligé d'y satisfaire après s'être assuré: 1° de l'authenticité du document, 2° de sa propre compétence *ratione materiæ* d'après les lois du pays où il siège.

8. En cas d'incompétence matérielle, le tribunal requis transmettra la commission rogatoire au tribunal compétent, après en avoir informé le requérant.

9. Le tribunal qui procède à un acte judiciaire en vertu d'une commission rogatoire applique les lois de son pays en ce qui concerne les formes du procès, y compris les formes des preuves et du serment. (Annuaire de l'Institut de Droit International, Tom. ii, p. 150; Revue de Droit International, etc. Vol. ix. p. 308.)

or by the want of summons in cases where such summons is necessary for the continuation or for the decision of the suit and whenever this fault has not been remedied by the party alleging the same.[1]

Article 549 says:

The claim of invalidation by any of the parties shall not interfere with the execution of the sentence.[2]

Article 550 says:

The claim of invalidation can not be made six months after the party has had knowledge of the suit in which he has not obtained a hearing or of the sentence or order issued in the suit when it was in suspense.[3]

And article 551 runs thus:

When an invalidation is pronounced, the trial shall commence again from the beginning in case there may have been a lack of hearing of the claiming party, and from the moment that a lack of summons took place in case this lack of summons be the cause of the invalidation.[4]

In the memorial presented by the liquidators of the company to the minister of foreign affairs of France on the 3d of December, 1895, they state, on page 69, the following:

Nothing exists, therefore, which may give light on the sentence pronounced by the high Federal court on the 14th of October, 1891, which was published on the 17th, three days after, in the Official Gazette, No. 5385. It was by this publication that the counsel, Drs. D. B. Urbaneja and Ramón F. Feo, came to know of it. When Mr. Delort arrived at Caracas on the 26th of October, the whole matter had been completed. Mr. Delort hastened to Doctors Urbaneja and Feo for advice, and these counsel told him that there was nothing to do but to apply to the French Government, which had authority to intervene and to present a claim through the diplomatic channel by virtue of article 5 of the diplomatic convention of 1885.

It was therefore the opinion of the counsel of the company that according to the law on this matter no claim of invalidation of the sentence could be entered in court, although the term of six months granted by law for this purpose was still running. Mr. Delort, as well as the other representatives of the company, submitted to this opinion of the counsel, and in no time did they take action to enter a claim of invalidation, thus affirming the sentence pronounced by the court.

According to the liquidators, when referring to Mr. Delort the counsel advised the company to make use of the diplomatic channel by virtue of article 5

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[1] Art. 538. Son causas para la invalidación de los juicios:
1a. La falta de audiencia en el juicio cuya invalidación se pretende, ó la falta de citación cuando ésta sea necesaria para continuarlo ó decidirlo, si no ha sido cubierta la falta por la parte que la alega.

[2] Art. 549. El reclamo de invalidación no impide la ejecución de la sentencia.

[3] Art. 550. Tampoco puede intentarse trascurridos seis meses desde que se descubrió la falsedad del documento, ó se tuvo prueba de la retención ó del hecho de la parte contraria, ó desde el día en que se pronunció la sentencia en caso de pronunciamiento sobre cosa no demandada ú omisión respecto de lo demandado, ó desde que llegó á noticia del reclamante el juicio en que no fué oído, ó la sentencia ó auto que se dictó en el juicio que estaba paralizado, ó desde que se tuvo conocimiento de la sentencia anterior que está en colisión con la pronunciada.

[4] Art. 551. Declarada la invalidación, el juicio se repone al estado de demanda cuando ha habido falta de audiencia del reclamante, y el estado en que se cometió la falta de citación, cuando es ésta la fundamento de la invalidación. En el caso de colisión de sentencias, quedará con su fuerza la primera. En los demás casos, se repondrá al estado de sentencia.

of the diplomatic convention of 1885, not taking into account that article 5 of said convention runs thus:

> The representatives of the high contracting parties shall not intervene in claims or grievances of private parties referring to matters pertaining to the civil or penal administration of justice, according to the local laws unless, in case of denial of justice or of judicial delays contrary to use and to law, or in case of the noncompliance with an affirmed sentence, and, finally, in case there be an evident violation of a treaty or of the rules of international law in spite of the exhaustion of the legal remedies.

The invalidation of the judgment passed by the high Federal court was a matter pertaining to the jurisdiction of the civil justice of Venezuela, according to its legislation. The company did not exhaust all the legal means which the laws of the country offered for the invalidation of the sentence, acting on the advice of her counsel, in whose opinion it was useless to do anything in the matter. Although the company did not exhaust these legal means and although the sentence was not in violation of any treaty nor of any rule of international law, article 5 of the convention of November 26, 1885, was invoked four years after, thus pretending to insure the possibility of intervention by the diplomatic representatives of France.

From the documents presented by the liquidators of the company it appears that from the 14th of October, 1891, on which day the sentence was pronounced by the high Federal court, until the day when the French commissioner handed over to the Venezuelan commissioner copies of the memorial presented by the said liquidators to the minister of foreign affairs of France on the 3d of December, 1895, together with annexed papers, the diplomatic representatives of France in Venezuela never intervened in favor of any claim whatever presented by the liquidators of the Compagnie Générale de l'Orénoque. It is to be observed, on the other hand, that in a dispatch addressed by said liquidators on the 12th of September, 1901, to his excellency the minister of foreign affairs of France, they say —

> that they have been informed from Caracas that Mr. Quiévreux, the vice-consul of France in that city, who is in charge of all the business of the French legation, is possessed of no document whatever concerning the claim of the Compagnie Générale de l'Orénoque, for which reason he has been unable to attend to it, and they therefore request his excellency kindly to transmit to Caracas, if necessary, all the papers referring to their claim.

It is therefore perfectly evident that the diplomatic representatives of France have abstained from all intervention tending to the invalidation of the aforesaid sentence during a long period of years, and especially so during the term of four years that elapsed from the day on which the sentence was pronounced to that on which political relations were suspended between France and Venezuela in 1895.

What action did the liquidators or the representatives of the company ever take during all the years following that of the sentence to make good their assumption that the judgment passed was a notorious injustice or a denial of justice?

The liquidators' memorial of December, 1895, to the minister of foreign affairs of France states the facts of the case in a precise manner and defines the attitude assumed by the company during several years in consequence of the sentence that rescinded her concessions and condemned her to the payment of a sum of money and the costs of the suit. Under the title of "Applications made by the Company to the Government of Venezuela," the aforesaid memorial contains the following narrative:

From the year 1891, or nearly four years back, all applications made to the Venezuelan Government, in order to obtain a *friendly compromise*, that is to say, to obtain an indemnity, have been of no avail. In 1892 there was a revolution in Venezuela and the Government declined to transact any business on the plea of the political situation. In 1893 General Crespo came into power, and during his first year of provisional government all applications made by the company were deferred until the establishment of a constitutional government. General Crespo was elected as constitutional president for a term of four years on the 20th of February, 1894. In the month of May of that same year Mr. Delort, who was going to the Pacific coast, called at Caracas to present his salutations to General Crespo and to General Velutini. This last named was at the time very powerful, and Mr. Delort explained to him the desirability of arriving to a friendly understanding and to come to terms as to the indemnity which the Compagnie Générale de l'Orénoque pretended. General Velutini expressed to Mr. Delort his willingness to assist him in this direction, and suggested that Mr. Delort procure from France the necessary power of attorney which would give him sufficient authority for dealing with this matter. On the 25th of October, 1894, Mr. Delort returned to Caracas, where full power of attorney had been sent to him, but General Velutini was then in a very different frame of mind and Mr. Delort was unable to secure the slightest cooperation from him. Mr. Delort then decided to apply directly to General Crespo, who at the time was in his country seat at Maracaibo. General Crespo assured Mr. Delort, that *if the company had really any rights, justice would be done to it.* At this juncture Mr. Delort presented to Dr. P. E. Rojas, the then minister of foreign affairs, a report briefly stating all the facts and the rights claimed by the company. Doctor Rojas promised to examine said document carefully, for which purpose he asked for a time of two months. As Mr. Delort could not await in Caracas, he informed the minister that he would come back to Caracas in February or March, 1895. He did return to Venezuela on the 24th of May, and heard at La Guayra when he landed of the rupture of diplomatic relations between France and Venezuela, which had just taken place. A translation of this document presented by Mr. Delort to the minister of foreign affairs of Venezuela in November, 1894, has been deposited at the ministry of foreign affairs in Paris. That document was drafted without possessing full knowledge of all the records of the trial that took place before the high Federal court against the Compagnie Générale de l'Orénoque, and certain details are therefore wanting in said document (which are contained in this memorial), although the conclusions of said petition remain in their full force.

From the foregoing quotation it will be seen that the action taken by the representatives of the Compagnie Générale de l'Orénoque in liquidation in the four years subsequent to the sentence, during which time the diplomatic relations between France and Venezuela were on a friendly footing, was simply of a friendly and private nature with private and influential individuals and officials for the purpose of obtaining a friendly compromise of pecuniary advantage to the company, no diplomatic action whatever having taken place during that time. The record presented to Dr. P. E. Rojas, minister of foreign affairs, was not effected in an official manner, and no allusion whatever is made which may convey the idea that it was presented by the representative of France in Venezuela, who was the properly qualified party to communicate on this matter with the minister of foreign affairs. The document in question does not exist in the archives of the ministry of foreign affairs, and it is to be presumed that a document annexed to the record presented to this commission, marked "No. 106," containing 37 pages written in Spanish without any signature, dated 12th of November, 1894, which is said to have been addressed to the minister of foreign affairs, is the very same report presented by Mr. Delort to Doctor Rojas, who may have returned it to the former.

This document, which is not even signed by the person who presented it, is simply a narrative of facts which took place from the time of the concessions from which the Compagnie Générale de l'Orénoque originated and of comments

on the diplomatic incident between Venezuela and Colombia caused by the publication made in Paris by the Compagnie Générale de l'Orénoque of a report and geographical chart which comprised a zone of land which was sub litis between Venezuela and Colombia, on the real ownership of which judgement was pending from the Spanish Government according to the treaty of arbitration juris of the 14th of September, 1881. This document of report contains the following among other statements:

In short, an association was formed by a group of well-known honorable French citizens who placed reliance on the good faith of Venezuela, whose word was solemnly pledged by a contract drawn according to its laws for carrying into execution an arduous enterprise, which was chiefly to be to the honor and benefit of the country. Some very important work was done, as well as the very difficult task of establishing steam navigation between Ciudad Bolívar and Brazil. But the Venezuelan Government, which had pledged their signature either by error or by omission, realizing then by the urgent claims of Colombia, as well as by the arbitration sentence pronounced by Spain, that they had had no right to grant concessions on territory which they did not possess, found no other way for withdrawing from an awkward position than to rescind their contract with the company, taking no heed of the serious damages caused by such an action to the other party in the contract. It is therefore but just and equitable as well as honorable for the Republic that this group of foreigners who brought their capital to this country in good faith under a contract should receive an indemnity for damages they have sustained.

Further in the report it is stated:

There can be no doubt as to the responsibility inherited by this Government from the former administration, *owing to the want of loyalty shown at the time the contract was drawn where the Colombian claim was kept in concealment* and allowing the company to proceed with its work to invest its capital and to make colossal efforts in order to comply with its obligations, and owing to the proceedings of the Government even before the malicious and baseless suit for rescission of the contract was entered and had been sentenced by the high Federal court proceedings, which were contrary to law, to universal justice, to all sound principles, and to the very interest of the country, and by the force of which the company was ruined and all the elements of progress and civilization which were to benefit and improve those territories were misapplied and frittered away.

The violent language used in this report and the offenses therein addressed to the Government of the Republic explain why it was that the same was returned to its author and why no traces were left of its passage through the hand of the minister of foreign affairs.

To refute the assertions contained in said report with reference to the boundary question with Colombia, it will be sufficient to quote in extenso the reply of Mr. Delort on the 23d of September, 1888, to the minister of fomento, when the former was asked by the latter to explain the cause of the publication made by the company in Paris of a report and a map *in which a certain territory which had been submitted to the decision of an arbitrator appointed by Venezuela and Colombia appeared as having been granted to the Compagnie Générale de l'Orénoque by the Government of Venezuela.*

The dispatch of the minister of fomento to which Mr. Delort replied is as follows:

No. 452.] DEPARTMENT OF TERRITORIAL WEALTH.

Caracas, 18 September, 1888.

To Mr. DELORT,

Concessionary for the Exploitation of the Territories Upper Orinoco and Amazonas

Under date of 15th instant the minister of foreign affairs has officially transmitted the following to this ministry:

" CARACAS, *15th September, 1888.*

" SIR: The envoy extraordinary of Colombia has entered a claim against the publication of a geographical chart and a report by the Compagnie Générale de l'Orénoque of the Upper Orinoco and Amazonas, containing a description of the boundaries of their concessions in which are comprised, as granted to said company, vast territories which are *sub lite* between Colombia and Venezuela. Consequently and with a view to examine said report and chart, I trust that you will remit them to me, if you are possessed with them, or that you will kindly request the representative of the company to furnish you with same, as well as with his own report on the subject, should these documents not exist in your office. I transmit this communication to you in order that you remit to me the information required.

" (Signed) CORONADO."

Mr. Delort's reply is as follows:

" CARACAS, *20th September, 1888.*

" TO MINISTER OF FOMENTO.

" MONSIEUR LE MINISTRE: I have had the honor to receive your dispatch dated the 18th instant, to which I now reply. When the company of the Upper Orinoco was formed a report was drafted in Paris for distribution only among the shareholders. In said report *the concessions transferred to the company by Mr. Tejera* were inserted as well as an abstract of the articles of association and divers information on the natural products to be exploited as per the terms of the contract. To that report a map was annexed in order that the shareholders should know the location of the territories granted to the company *for exploitation*. That map is a copy of the one annexed to the statistical bulletin published in several languages by the Government of Venezuela. This report does not deal with the boundaries between Colombia and Venezuela *nor with a vast expanse of territory granted to the company, but only with the natural products of the extensive region of the Upper Orinoco and Amazonas. The company knows that the boundaries between Colombia and Venezuela are sub litis, submitted to the arbitration of the Spanish Government. The company therefore lays no claim on this* point; and as she holds her *concession from the Government of Venezuela, she is well aware that she has to conform to the final boundary fixed* to the Republic. Up to the present time the company has *extended her exploitation only to localities under the jurisdiction of Venezuelan* authorities and her agencies, stores and others are situated at Atines, Maipures, San Fernando, San Cárlos, and the Brazilian boundary, and our steamboats are plying only on the Orinoco, the Casiquaire, and the Guainia. I regret not to be able to send you the report referred to, but two copies of same must have been forwarded to you by the agent of the company in this city and should be in your possession. I trust, Monsieur le Ministre, that the explanation which I have the honor to submit to you will be satisfactory, and I trust as well *that you will appreciate our good faith on this matter.*

" With the highest consideration, I remain, Monsieur le Ministre.

" (Signed.) TH. DELORT."

If the wording of this communication is compared with that of the report addressed by the very same representative of the company in 1894 to the minister of foreign affairs of Venezuela and with that of the memorial addressed in 1895 by the liquidators of the company to the minister of foreign affairs of France, when reference is made in both documents to the boundary question with Colombia, the acts of the representatives of the company may be appreciated in their true meaning and value; but in spite of all, the plain and steadfast avowal made by the representative of the company remains unaltered, viz. —

that the company knows that the boundaries between Colombia and Venezuela are *sub lite* submitted to the arbitration of the King of Spain, and that the company, therefore, lays no claim on this heading and is well aware that she has to conform to the boundaries which may be definitely fixed.

Nor could the company be ignorant of this, as she had been finally constituted on the 12th of March of that same year and she had been formed according to the articles of association published in Paris *with the property of the concession belonging to Mr. Tejera, a Venezuelan citizen*, who had acquired it from Gen. Guzmán Blanco, an interest on 40 per cent of the profits having been adjudged to Mr. Tejera, according to articles 6 and 9 of said articles of association. Could it be likely that Mr. Tejera, a Venezuelan engineer and ex-minister of public works, during one of the terms of power of Gen. Guzmán Blanco, from whom he had obtained the said concession, would not be well aware of all the details referring to the boundary question with Colombia which had been submitted since 1881 by Gen. Guzmán Blanco to the *arbitrio juris* of the King of Spain?

The author of the report addressed to the minister of foreign affairs of Venezuela on the 12th of November, 1894, asserts, on page 25 —

> that the Government of Dr. Andueza Palacio blundered in like manner to his predecessors, *that nothing had been communicated to the company with the intention of keeping from her all knowledge of the claim of Colombia,* and that it was evident that the Venezuelan Government knew they were wrong on this point toward the company and toward Colombia.

But it was necessary to give some reply to Colombia, whose protests and claims were daily growing more pressing, and a means was devised for withdrawing from the embarrassing position caused by the contract of 1885.

These assertions were repeated later on in December, 1895, in the memorial presented in Paris by the liquidators of the company to the minister of foreign affairs of France and were complemented with the following statements:

> Equity and justice, as well as the honor of Venezuela, impose on the government of Caracas the obligation to pay an indemnity to those parties who in good faith have invested their capital in the Compagnie Générale de l'Orénoque and who have been deceived from beginning to end.

The grave nature of these charges proferred against the Government of Venezuela, in order to base on them the right to a pecuniary indemnity in favor of certain parties pretending to have been the victims of deceit from beginning to end, imposes on the Venezuelan commissioner the task of throwing full light on the truth of this matter as to what refers to the claim of Colombia, which the company alleges was kept in concealment by the governments preceding that of Dr. Andueza Palacio.

It is altogether inaccurate that the governments preceding that of Dr. Andueza Palacio *had communicated nothing to the Orinoco Company with the purpose of keeping from her knowledge the claim of Colombia.*

Shortly after the formation in Paris of the syndicate which was to be the basis for the constitution of a limited company in favor of which the concession of Mr. Tejera was to be transferred, a report of fifteen pages was published in the city of Paris *on the concessions of the Compagnie Générale de l'Orénoque under formation*, and annexed to it was an abstract of the articles of association of said company, together with a map *comprising the navigable waterways within the territory granted.* This report on the territory granted was drawn, as stated, by Mr. Delort in his reply to the minister of fomento of Venezuela, under date of 25th of September, 1888, solely for the use of the shareholders of the company which they had the intention of forming, and the geographical chart was annexed to it with the purpose that said shareholders should know where the territory granted to the company was located.

In a dispatch dated in Bogotá on the 28th of October, 1887, the minister of Colombia called the attention of the minister of foreign affairs of Venezuela —

to a report published in Paris by a French company on the subject of certain concessions which were said to have been granted by the Government of Venezuela on the territories of the upper Orinoco and Amazonas belonging to the Republic of Venezuela and to a chart annexed to that report, in which the western boundaries of said territories were fixed in such a manner as to comprise within them the large zone which was sub litis between Venezuela and Colombia, the real ownership of which was yet to be decided by the sentence of the Spanish Government according to the terms of the treaty of arbitration juris of the 14th of December, 1881.

This dispatch ends as follows:

It is clear that neither of the two Governments can grant any valid concession on these lands, and it is likewise evident that the error of the Compagnie Générale de l'Orénoque is due to their having made reference to geographical or statistical data previous to the treaty of 1881 aforesaid, by virtue of which that zone is not only made debatable, but is to be defined by a special arbitration in exclusive manner.

The importance of these observations from the minister of Colombia could not escape our then minister of foreign affairs, Dr. Diego Bautista Urbaneja, who had been counsel to the company from the very beginning, as evidenced from the payments made to him by the mint of Caracas on the 28th of February, 1888, 28th of April, and 30th of May, and at the end of each successive month for professional services, (account of the Company " La Monnaie " with the Compagnie Générale de l'Orénoque, voucher 3), and consequently a dispatch, dated the 25th of November, 1887, was addressed to the minister of fomento requesting the necessary information and report aforesaid for replying to the minister of Colombia. The minister of fomento replied to the minister of foreign affairs that the aforesaid report had never been sent to his department. (Secretary's record of the ministry of fomento referring to the contract Guzmán-Tejera, transmitted to the high federal court to be annexed to the record of the suit against the Compagnie Générale de l'Orénoque.)

Mr. Delort, who was director in Venezuela of the works started by the syndicate and the only representative of the company with whom the Government of Venezuela had had any dealing up to the present, was in Paris at the time these events were taking place. When he returned to Caracas in December, 1887 (memorial of the 3d of December, 1895, p. 24), where he remained a few days, he proceeded to Ciudad Bolívar, there to attend to the work of organization.

Since February, 1888, Doctor Urbaneja was receiving from the " Société de la Monnaie " (the mint) the payment of fees for professional services rendered to the Compagnie Générale de l'Orénoque during the administration of General López, and it is therefore not likely that from that period of transition to the coming into power of Dr. Rojas Paúl, which took place in July of same year, Mr. Delort would be ignorant of the claim of Colombia, his own counsel being the identical person who had received the dispatch on the subject from the foreign office of Colombia. As soon as Dr. Rojas Paúl had been installed in power his minister of foreign affairs received on the 9th of August, 1888, a confidential memorandum from the minister of Colombia in Caracas, in which he was reminded of the dispatch of the 28th of October, 1887, for replying to which Doctor Urbaneja, when minister of foreign affairs in November, 1887, had solicited from the minister of fomento the map and report referred to in said dispatch, which map and report the said minister of fomento had been unable to remit because they did not exist in his department. For replying to the confidential memorandum of the 9th of August, 1888, the minister of foreign affairs addressed another dispatch, under date of the 15th of September, 1888, to the minister of fomento, requesting once more the remittance of the

said report and map in case these had already reached his department, and, if not, requesting that he would ask the representative of the company for said documents and a report on this subject. (Dispatch previously inserted.) This was transmitted by the minister of fomento to Mr. Delort under date of the 18th of September, 1888, to which he replied in the terms of his communication of the 20th of the same month, which has already been reproduced in extenso. This exchange of dispatches was taking place at the beginning of the administration of Dr. Rojas Paúl, one year and a half before Dr. Andueza Palacio came into power in March, 1890, and in spite of this the representative of the Compagnie Générale de l'Orénoque and the liquidators of the same have not hesitated to assure to a high official of the French Republic, its minister of foreign affairs, in the memorial before mentioned —

that the Government of Dr. Andueza Palacio blundered in like manner as his predecessors, that nothing had been communicated to the Compagnie Générale de l'Orénoque, not wishing to bring to her knowledge the claim of Colombia.

A claim which is based on this sort of argument is judged and sentenced by itself.

Apart from the inconsistency and lack of truth of the assumption of the company that the Venezuelan Governments kept in concealment the claim of Colombia with reference to publications made by the syndicate of the company of the Orinoco what took place between the Venezuelan and the Colombian foreign offices did not in any way alter the essence of the contract between the Government of Venezuela and Mr. Miguel Tejera, which was simply for the exploitation of the natural products of the territories of Upper Orinoco and Amazonas, and which neither meant to convey the alienation of any lands nor fixed any boundaries.

This concession comprised an extension of territory several times larger than the zone of land coterminous, on the western part of the Republic, with Colombia, submitted to the award of the King of Spain. The extension of those territories comprised very nearly 25,000,000 hectares, thickly wooded from the rapids of Maipures to the Brazilian boundary toward the south and to the Republic of Colombia toward the east. The justice and the accuracy of this appreciation are acknowledged by the very Compagnie Générale de l'Orénoque in the reply of her representative to the minister of fomento, in which they say:

The company lays no claim whatever with reference to the boundary question with Colombia, as she is well aware that she has to conform to the limits which may ultimately be fixed to the Republic of Venezuela.

The good faith with which Venezuela held in her possession, as belonging to her, a certain zone of lands which was afterwards awarded by the arbitrator to Colombia precludes all responsibility from the Government in the concession in question, which was never intended to convey any definite alienation, but simply the exploitation of natural products in those localities where Venezuelan settlements existed under the jurisdiction of Venezuelan authorities.

This declaration, which is altogether in accordance with the principles of international law, is concretely embodied in the award of the arbitrator on the boundary question with Colombia in the following words:

Whereas, according to the agreement signed by the parties the award is to fix the limits or boundaries, which in the year 1810 existed between the then general captaincy of Venezuela, to-day the United States of Venezuela, and the viceroyalty of Santa Fé, to-day the Republic of Colombia;

Whereas the law functions assigned to the arbitrator by the treaty of Caracas of the 14th of September, 1881, were enlarged by the declaration of Paris of the 15th of February, 1886, so that the boundary line should be fixed in the best man-

ner, as nearly as possible, according to the existing documents, whenever these documents throw not sufficient light on a given point;

Considering that, for the better understanding, section 6 (Orinoco and Río Negro line) can be divided into two parts, viz, from the Meta to Maipures, and from Maipures to the bowlder called Cocuy;

Considering that the starting point and the legal base for determining the boundary line in part second of the 6th section is the real cédula (royal decree) of the 5th of May, 1768, on the real meaning of which there is a disparity of opinion between the two high contracting parties;

Considering that the terms of the aforesaid real cédula are not as clear and precise as necessary in this class of documents so as to base exclusively on same a decision juris;

Considering therefore that the arbitrator is confronted with the case foreseen by the declaration of Paris before mentioned;

Considering *that the United States of Venezuela possess in good faith territories to the west of the Orinoco*, the Casiquiare and the Rio Negro, which rivers form the boundaries assigned on that side to the province of Guayana, by the said real cédula of 1768;

Considering that in *said territories there exist very important Venezuelan settlements which have been fostered in the bona fide belief that they were located within the dominions of the United States of Venezuela*, and lastly,

Considering that the rivers Atabapo and Rio Negro form a natural, clear, and precise frontier, with the only interruption of a few kilometers from Yavita to Pimichín thus to keep clear of the respective boundaries of these two villages;

I have to come to declare that the boundary line debated between the Republic of Colombia and the United States of Venezuela is now defined in the following manner: * * *

Section 6, Part I. From the mouth of the river Meta in the Orinoco down the stream of this last to the rapids of Maipures, *but always having consideration to the fact that the village of Atures from the time of its foundation has made use of a road which is on the left bank of the Orinoco for the purpose of turning the rapids from the said village of Atures* to the harbor or port situated to the south of Maipures, opposite to the hill called Macuriana, toward the north of the mouth of river Vichada; *the aforesaid incumbrance or right of way is here expressly assigned in favor of Venezuela, the same incumbrance to cease twenty-five years after the publication of this award* or as soon as a road be made in Venezuelan territory which may render unnecessary the traffic along the Colombian road, the two interested parties having the right to regulate by common consent the use of this incumbrance. (From the Official Gazette of Madrid, 7th of March, 1891.)

As may be seen from the preceding award, the arbitrator expressly acknowledged that Venezuela had possessed in good faith a portion of the territory adjudged to Colombia, and in consequence he established in favor of Venezuela the use of way between Atures and Maipures along the left bank of the Orinoco for a period of twenty-five years, to be counted from the publication of the award. This decision would have given full security of the Compagnie Générale de l'Orénoque, had it at the time carried out her obligation to construct a railway line which was to divert the hindrance of the rapids of Atures and Maipures and to facilitate the steam navigation of the Orinoco.

Having demonstrated that the charges preferred against the Venezuelan Governments and their proceedings toward the Compagnie Générale de l'Orénoque with reference to the Colombian boundary question are devoid of all bases, and having also demonstrated that the judgment passed by the high Federal court in the suit entered for rescission of the contracts granted to said company for the exploitation of the natural products of the territories of Upper Orinoco and Amazonas and for the exploitation of the tonca beans (sarrapia) on the territories conterminous with Brazil and British Guiana, was a sentence pronounced by that tribunal after having complied with all the legal prescriptions of the code of procedure then in force, and in every way in accordance

with the fundamental laws then in force in Venezuela, the Venezuelan commissioner considers that said sentence is valid and affirmed, and that it has been acknowledged and accepted by the Compagnie Générale de l'Orénoque, since this company did not in due time, according to the law, make us of her right to appeal in order to invalidate same.

After due examination of the fundamental part of this sentence, and after analyzing all the evidence produced by the contending parties, it is evident that the verdict of the high Federal court, in administering justice on behalf of the Republic and by authority of the law, was entirely adjusted to the prescriptions of the civil code on rescission of contracts, the Compagnie Générale de l'Orénoque not having complied with any of the obligations under Nos. 1, 2, 3, 4, 5, 6, 7, and 9 of article 2 of the contract of the 17th of December, 1885, nor with any of the stipulations 3d, 4th, and 5th of the contract of the 1st of April, 1887, and as a consequence of which rescission the tribunal condemned the Compagnie Générale de l'Orénoque to pay to the Venezuelan Government the sum of 40,048.62 francs for damages, besides the costs of the suit.

Two days after the financial representative of the Government (fiscal nacional de hacienda) entered before the high Federal court the suit against the Compagnie Générale de l'Orénoque a general meeting of shareholders of said company was taking place in Paris, on the 30th of May, 1890, in which a resolution was passed for the purpose of converting the Compagnie Générale de l'Orénoque into an English company, under the name of "Orinoco Exploration and Trading Company," which meeting likewise resolved *to dissolve and wind up the company and appointed liquidators.* In the memorial presented by the liquidators of the company on the 5th of December, 1895, reference is made to the aforesaid dissolution, after the following statements:

> The board of directors had many debtors and they hesitated therefore to collect the harvest of 1890, but yielding to the representations of their agents they furnished the necessary funds in agreement with a Liverpool firm who sent out their special agent, Mr. Staedelli.
>
> The position of the company in Paris *was very painful, as its credit had been totally exhausted. All efforts made in France proved to be of no avail,* while in England confidence was not lost and it was possible to go on there with the business. The board of directors therefore willingly considered a proposition from England for the constitution of a company in London, to which all the assets, contracts, material, works, etc., of the Compagnie Générale de l'Orénoque would be transferred.

No mention is made in this memorial of the liabilities of the company, although it may be inferred from their own statements that they must have been considerable, *as the credit of the company was exhausted in Paris and all efforts in France seemed of no avail.*

In the accounts annexed to the petition presented by the liquidators of the company on the 10th of July, 1902, to the minister of foreign affairs of France, which fixes their claim against the Venezuelan Government in the sum of 7,616,098.62 francs, will be found the following items referring to the liabilities of the company on the 30th of May, 1890:

		Francs
1	To the shareholders	1,500,000.00
2	To the Société de la Monnaie	722,851.56
3.	La Banque de Consignations	236,356.00
4.	Mr. Alfred Chauvelot	191,176.00
5.	Mr. Eugene Ferminac	63,000.00
6.	Mr. Louis Roux	13,059.55
7.	Mr. Theodor Delort	14,641.26
	Total	2,741,084.37

In this amount interest on the different credit balances is not included. The company had, therefore, on the 30th of May, 1890, debits amounting in total to almost as much as the capital of the company, equal to 1,500,000 francs.

Out of this capital, 600,000 francs had been allotted to Mr. Chauvelot, in 1,200 shares (fully paid) of 500 francs each, which were deducted from the 3,000 shares which formed the capital of the company.

Mr. Bricard, who had been appointed auditor in the first general meeting of the 9th of March, 1888, presented a report dated in Paris the 10th of March 1888, in which he emits his opinion in reference to the valuation given to the contributions brought to the company by Messrs. Miguel Tejera, Chauvelot, and Th. Delort.

The contribution of Messrs. Tejera and Delort consisted in the concessions granted by the Government of Venezuela for the exploitation of the natural productions of the Territories of the Upper Orinoco and Amazonas, and for the exclusive purchase and sale of all the tonca beans (sarrapia) of the territory between the Orinoco, Brazil, and British Guiana. In consideration of these contributions Messrs. Tejera and Delort had an interest of 40 per cent and 20 per cent, respectively, on the dividends to be distributed.

The contribution of Mr. Alfred Chauvelot consisted in the following:

First. The plant belonging to him, and principally the steam launches and boats of other kind, the rolling stock, etc., in short, all the goods bought by him for the intended exploitation.

Second. All the works already completed, such as houses, stores, offices, shops, etc., erected on the different agencies, and the actual organization of the exploitation, which included the contracts and agreements with the various agents and employees.

Third. The assets and liabilities of the company, including all goods on deposit or in transit, as well as the ingress and egress necessary for the purchase or sale of goods, or effects, etc., for the upkeep of the personnel.

Fourth. The agreement signed with several commercial agents for the purchase and sale of goods in Europe and America.

The opinion of the auditor with reference to the contribution of Mr. Chauvelot, in consideration of which he was allotted 1,200 shares of 500 francs each, is expressed in the following words:

> A sum of 300,000 francs without any interest and without any guaranty was placed at the disposal of the explorers, and in consideration of this loan and of the penalties and privations suffered by Mr. Chauvelot and his friends (who had derived from this enterprise no benefit whatever, either direct or indirect, and who relinquished in favor of the company any benefits accruing from the sale of products exported up to date) 1,200 shares were allotted to him. I must add that the expenses incurred up to date far exceed the said sum of 300,000 francs, but said expenses are already incurred and they are represented by the plant and the work performed. These expenses had to be made and they will be beneficial to the company, who would have been obliged to incur the same after she had been constituted. It is therefore only right that the company liquidate these supplementary expenses at her own risk and peril and take them over.

The amount of these expenses, which were represented by plant and work performed, is said far to exceed the sum of 300,000 francs loaned by Mr. Chauvelot, but the exact figure is not given. From the examination of the accounts presented by the Société de la Monnaie it appears that on the 10th of March, 1888, when the auditor presented his report, the syndicate of the Haut Orénoque was raising the sum of 491,846 francs, not counting interest from the 1st of January of same year; that on that date the account was commenced with a debit balance of 499,523.69 francs; that the account of the Banque des

Consignations commenced on the 1st of January, 1890, with a debit balance of 285,900.70 francs and was increased with interest to the 31st of March, 1890, amounting to 3.849.59 francs, and with 31.75 francs, Mr. Brumeaux's fees for a summons, and with 13 francs for dispatches to London and to New York.

The foregoing shows that when the Compagnie Générale de l'Orénoque was constituted with a capital of 1,500,000 francs, a sum of 600,000 francs in fully paid up shares was allotted to Mr. Chauvelot in consideration of his loan of 300,000 francs, which was represented in plant, steam launches, and preliminary work for establishing the navigation of the Orinoco, which really constituted the working capital of the company; that this working capital had really cost a sum in excess of the 300,000 francs loaned by Mr. Chauvelot and that the company undertook to liquidate the same and to take it over at her own risk and peril; that according to the abstract of account of the Société de la Monnaie, the syndicate was owing to that society the sum of 491,486 francs, which was partially paid off during the course of that year with bills of exchange and cash, and that said account was thus reduced on the 31st of December, 1888, to the sum of 284,673.29 francs, inclusive of interest amounting to 28,427.85 francs. The sum of 900,000 francs paid in by the shareholders, besides the 600,000 francs allotted to Mr. Chauvelot, were absorbed by the liquidation of the debts of the syndicate and by the requirements of the trading of the society in buying and selling goods, exporting products, employees, and general expenses; and no evidence exists to show that any part of that sum of money had been invested as contracted by the company in the construction of two railway lines, in the sending out of a scientific commission for the study of the natural products and minerals existing in the territories, nor in the introduction of immigrants, or the building of chapels and schools in every village that the company was bound to found, nor in the construction of barracks, nor the introduction of Catholic missionaries, nor in the hospitals and drug shops for the attendance of natives and immigrants, nor in colonizing the tonca bean territories, nor in establishing navigation in the principal affluents of the Orinoco.

This sum of 900,000 francs, paid into the treasury of the company, as well as the sum of 1,241,000 francs, which she was owing to several parties two years after starting her operations, after having exhausted her credit and being unable to proceed, appear to have been all spent without any other apparent result than the exportation during the same lapse of time of 73,992.20 kilograms of rubber and 44,569.70 kilograms of tonca beans, according to the official figures mentioned in page 68 of the memorial of the liquidators.

The explanation of the result of the commercial operations of the company is furnished by the very figures taken from her books and reproduced in the memorial so often quoted. (See p. 66.) This demonstration or abstract is headed thus:

General account of expenses of the Compagnie Générale de l'Orénoque, from the original syndicate, September, 1886, to the 14th of October 1891 (on which day judgment was passed by the high Federal court), after deducting the moneys received for sale of products by the company.

Items referring to expenses:

Expenses of first establishment, viz:	*Francs*
Expenses of syndicate	290,995.88
Ciudad Bolívar:	
Expenses of *administration, agencies, employees, navigation expenses, traveling expenses,* etc.	487,263.09
Furniture and naval stores, shop and transport stores, sawmill, utensils, etc.	425,040.66

	Francs
Atures and Maipures:	
Work on boats and transportation of same over the rapids, mounting, remounting, repairing and maintaining same, railroad for the carrying over of the boats. Surveys of both banks of the river for the construction of a final line, roads, bridges, rafts, buildings, etc.	629,080.37
Punta Brava:	
Expenses of agency and of installation, harbor, road, and other work	117,708.01
San Fernando and San Cárlos:	
Expenses of agency and installation, buildings, watch posts, etc.	360,521.80
Cattle ranch on the Vichada	62,708.08
Paris:	
General expenses of administration, board of directors, employees, traveling expenses, etc.	118,628.19
Stamps and registration	6,821.80
Total	2,498,767.88

Considering the amounts of these items and all that is revealed by them, and taking into account the capital with which the company was founded and the colossal magnitude of the enterprise it entered upon unaware of the difficulties of same, as has been repeatedly acknowledged by her principal directors, it must be admitted that what happened was only natural and inevitable, viz: That the company exhausted its credit; that it was unable to proceed with its operations or to comply with its engagements and to pay its debts; that the general meeting of shareholders of the 30th of May, 1890, resolved to dissolve and wind up the company before they had any knowledge of the action suit entered by the representative of the Government of Venezuela, and, lastly, its attempts, twice baffled, to convert itself, first, into an English company with the name of " The Orinoco Exploration and Trading Company," and later on into a Belgian limited company under the name of " Compagnie Internationale des Caoutchoucs." both attempts having been made with the object *of obtaining an increase of cash capital to pay off debts and proceed with the business.*

The declarations of several parties who had held important posts in the employ of the company can be made good as further evidence of the real situation of the company in May, 1890, which, being in want of funds and having totally exhausted its credit in Paris, was unable to comply with its engagement toward the Government of Venezuela and to continue the exploitation of the concessions transferred to it by Messrs. Tejera and Delort, by reason of which the general meeting of shareholders resolved on the dissolution and winding up of same. These declarations are: First, the declaration made before the judge of first instance of San Fernando de Apure by Mr. Enrique Ligeron, submanager of the company in the Upper Orinoco, which declaration is a part of the evidence procured and presented by the representative of the company before the high Federal court in the action entered by the fiscal de la hacienda pública (financial representative of the Government); and, second, the report presented by the liquidators of the company to the meeting of shareholders held in Paris on the 27th of December, 1890, as well as the minutes of said general meeting.

Mr. Enrique Ligeron's declaration of the 13th of November, 1890, before the said judge is as follows:

I was submanager of the company in San Fernando de Atabapo more than four years, hence when I went to that place the steam launches which the company had taken there for navigating the river above the rapids had been carried above these rapids. *These steam launches had been transported on rails provisionally laid,* and

when I arrived there *no railway line existed and the rails had been scattered in different parts.* In the present condition of the river above the rapids *no steamboat can navigate on those waters, as the obstacles offered by the rapids are insurmountable.* The more convenient way of covering that space *would be the construction of railway lines over ground, which offers no great difficulties,* the most difficult part of which being *the construction of bridges on the affluents of the Orinoco, which run across these lands.* It is evident to me that the company made all efforts in order to comply with the engagements of its concessions, *but in my opinion it could not do more than what it performed, owing to the insufficiency of its capital for carrying out the different enterprises of its contract.*

The abstract of the minutes of the general meeting of shareholders of the 29th of December, 1890, contains the following:

The meeting having been regularly constituted, the liquidators read the following report: "In our meeting of the 23d of June last you were acquainted with the agreement signed with the Gold Trust and Investment Company for converting the Compagnie Générale de l'Orénoque into an English company called 'Orinoco Exploration and Trading Company.' This agreement having been approved by the general meeting, *the dissolution and winding up of the company was* resolved and I had the honor to be appointed liquidator."

The agreement with the Gold Trust having been definitely sanctioned by the shareholders, the new company was formed and registered in England; but political differences having in the meantime arisen between England and Venezuela, this last power has absolutely refused to acknowledge the new company and to transfer to same the rights and concessions of the French company. It was but very late that I was made acquainted with the causes which were opposed to the formation of the English company, and this delay was the cause of my losing very valuable time; but the moment I knew of these causes I took steps conducive to a result *which might save our company.* I have *appealed for assistance* to the former directors of the company who are now negotiating with the Government of Venezuela and have looked *toward another solution of the problem, which is the only means of insuring the future of the company, viz, the reconstruction of the present company with an increase of fresh capital in cash.* These gentlemen will now submit their views to you and will bring to your knowledge the result of their negotiations.

The chairman then said that owing to the facts which had just been mentioned by the liquidator the board of directors had sent to Caracas Mr. Berthier, who had been a former agent of the company, with the following mission: *to obtain from the Government the revision of the old concessions, which evidently contained clauses which were embarrassing to the Government* as well as to the company. Mr. Berthier was, besides, to make sure that the Government would make no difficulties *for the transfer to a new company* (provided this be not an English company) *of all the rights and concessions accruing from the new contract.* The double purpose of Mr. Berthier's mission has been obtained, the terms of the new contract proposed have been accepted, and one of its clauses will allow the transfer to a new company. The new company will be French-Belgian, formed *with the assistance of a powerful Belgian group.*

The chairman then read the draft of the Articles of Association of the French-Belgian Company in formation.

The Compagnie Générale de l'Orénoque having ceased to exist in May, 1890, by virtue of the dissolution voted by the shareholders, the administrators had no longer power to transact any business, and the authority of the liquidators was reduced to the collection of moneys owing to the company, to wipe off former debts and liabilities, and to conclude whatever operations were pending at the time of the dissolution. The liquidators had also to appear in court in whatever actions existed against the company, as the limited company called "Compagnie Générale de l'Orénoque" had ceased to exist by virtue of her dissolution, and there had likewise ceased to exist, from the moment that the liquidators had been appointed, all the powers and authority of the board of directors, as well as all the powers that might have been conferred by said directors.

From the minute examination of all the papers and documents referring to

this matter, made by the Venezuelan commissioner it is evident that at no time whatever was the knowledge of the dissolution and liquidation of the Compagnie Générale de l'Orénoque conveyed to the high Federal court, and that the liquidators never took any steps for the purpose of being represented in the action, neither at the time when the suit entered by the representative of the Government of Venezuela was to be answered (on the 22d July, 1890), nor on the 7th of August, 1890, when Mr. Fiat entered his petition for the collection of evidence, nor in any other circumstance whatever during the whole course of the process. It is likewise evident from said examination that the dissolution of the company was never officially communicated to the Government of Venezuela, and it is natural to infer that the cause of this omission was to keep this fact from the knowledge of the Venezuelan authorities, a fact which in itself was sufficient for the complete success of the action entered by the representative of Venezuela in the high court for the rescission of the contracts upon which the company was formed, since the dissolution and liquidation of the company frustrated the object to be obtained by the working of the concessions granted and made it materially impossible for the concessionaries to comply with their obligations, which was the legal basis of the suit.

It is equally evident from the avowals of the liquidators, in their memorial to the minister of foreign affairs of France, and Mr. Alfred de Berthier's correspondence annexed to same, that Mr. Fiat, who had been representing the company before the court up to the 11th of October, 1890, *had sent his resignation to Paris*, and that Mr. Bernabé Planas was then appointed as attorney, but this gentleman having declined the appointment, it was decided, on the advise of Mr. Delort, to send out a special agent. Mr. Berthier was appointed for this mission, as he was acquainted with all the details of the matter. Mr. Berthier, who was at the time in Martinique, was notified to proceed to Caracas, where he arrived on the 25th of October, 1890. (Page 47 of the memorial.) Mr. Berthier remained in Caracas from the end of October, 1890, to the month of July, 1901, and the action taken by him *tended solely to the obtaining of an extra judicial understanding with the fiscal de hacienda* (the representative of the Government) *in the suit pending before the high Federal court* —

in order to put a stop to the process and the relinquishment on the part of the Government to demand an indemnity, and the company, on the other hand, to renounce to its concession, in place of which another would be granted which would be immediately transferred to the new company.

Mr. Berthier, in a letter dated the 16th of December, transmits to Count de Ker Daniel, the liquidator of the company, the following:

I am not yet sure of this result, which has not so far been agreed to, but it is useless to deceive ourselves on it, as after all it does not amount to much. *What we would really gain is the cessation of the action entered against us.* All else is a chimera (leurre). I do not, however, believe that I can obtain anything better, *and I consider it lucky if we obtain this.*

According to the scheme proposed to the Government of Venezuela for a new contract —

the company was to relinquish her former concessions and the Government was to desist from the action entered before the high court, each party to pay their own costs, and the Government was to grant to the company for a period of twenty-five years the exclusive right for steam navigation on the waterways of the Federal Territories Upper Orinoco and Amazonas, and on the rivers Caura and Cuchivero, during which period the Government would not grant a similar concession to any other party or company.

The steamers of the company were to navigate under the Venezuelan flag. (Annexed document No. 92.)

It is to be observed that this scheme commences in this way:

The Compagnie Générale de l'Orénoque, represented by her legal attorney, as per annexed power, which will be certified.

No mention whatever is made that the company was in liquidation, and all along this document she is simply called the "Compagnie Générale de l'Orénoque."

Article 10 of this scheme is worded thus:

This contract can be transferred to any other party or company with the previous consent of the Federal Government, without which formality the transfer can not be effected; however, as an exception this contract can be transferred in part or in whole to the Belgian company called "Compagnie Internationale des Caoutchoucs et Produits Naturels au Bassin de l'Orénoque."

According to article 3 of said scheme the company had the right to construct within the territories mentioned the railway and telegraph lines which it might think convenient.

Mr. Berthier went on with his extra judicial negotiations until May, 1891. On the 17th of the same month this gentleman (as confirmed by his letter of 28th of May to the liquidators) transmitted to the said liquidators the following cablegram:

Contract accepted on best terms, navigation included; no special commission. I await instructions to proceed. Don't you wait longer, as time is very limited. If you can not remit one hundred thousand, send by cable whatever you can with authority to draw on you for the balance.

He again telegraphed on the 22d of May as follows:

On receipt of my letter of the 7th of May (which has not been presented), reply by cable. The tenth word of my telegram should have been "pullcinetto" (£600,000). Give your approval to contract, which comprises the free navigation. I have sent you a copy. I will not weary of pressing you, as there is no time to be lost.

Again, a third cablegram of the 25th of May reads thus:

As you have not telegraphed to me, the negotiation has collapsed. It is useless to proceed, there being no probability of doing any business for some time. I am unable to do anything for the present. I will leave on the 6th June. I can not remain here any longer. Congress dissolves shortly.

Mr. Berthier's letter continues in this way:

I have received your last telegram one day after I had transmitted to you mine of the 25th. This is equivalent to telling you that *said telegram arrived too late*. I therefore confirm the contents of said telegram, but I shall, however, await for the arrival of Doctor Morisse, as per your advice.

I considered, by the contents of the letters you have written to me, that you were in a position to reply immediately on receipt of my first telegram. The deciphering you made of same was nearly correct, and it should have given you to understand the danger incurred by waiting. In truth I was careful to tell you that the Government maintained the nullity of the former contract to be replaced by a new one. You ought to have known, in consequence, that this entirely new decision required a certain time and that by means of the railroad we evaded the trouble of having to wait for Congress. I am still going to make a last attempt *in order to prevent that the new company be annulled in consequence of the nonfulfillment of the contracts by the old company*. There will be an extraordinary session of Congress

which lasts for some weeks. I will try to obtain a solution of the process, whichever it may be. * * * If I fail in my last attempt, there will be no other way but to lodge a claim against the Government. It follows, of course, that a counteraction (cross demand) may be entered. Two facts have now taken place on the Orinoco which will give us considerable power later on. The first is that the steamer *Meta* was put out of service without any cause by order of the governor of the territory, an action which constitutes an outrage against private property. The second is an armed aggression against the steamer *El Libertad*, which was nearly captured. All this may serve as a basis *for demanding a large indemnity*, but when would such a cause come to an issue? Before I leave I will settle this matter *so as to give to my successor the starting point for a claim.* It would likewise be the official verification of those deeds which may be considered as worthy of a savage country. Resuming what precedes I am going to try to obtain a solution *which will countenance the existence (la raison d'être) of the new company.* In case I fail, I shall make preparations for obtaining the required matter (elements) for the process which we must necessarily enter into. I will associate with Maiz, by private agreement, for obtaining the concession on the rapids and sell out the same. *In this way we shall keep our hands on the business.* I will conclude by saying *that I rely on the sincerity of the promises made to me* and that the political situation has been the only cause of our failure. It is probable that a satisfactory result may be obtained, provided you can wait and spend some money at the proper moment: but as I can see no issue for the present, and I must necessarily return to France, I request you to relieve me from this post.

In page 49 of the memorial addressed to the minister of foreign affairs of France the liquidators express themselves as follows:

When Mr. Berthier saw that he could obtain nothing, he looked to a solution of the matter by means of contract for a railroad on the right bank; but we did not understand his cablegram, and this solution, on the other hand, was not acceptable. In short, Mr. Berthier had proved very expensive and had achieved no sort of success. But what was more grave than all this is that, on his advice, the Belgian company called " Compagnie Internationale des Caoutchoucs et Produits Naturels du Bassin de l'Orénoque " had been constituted at Brussels in May in order to transfer to the same the new contract (article 10 of the final scheme). What was now to become of that company?

The immediate consequence of Mr. Berthier's return to Paris was that the liquidators left the company without any attorney to represent it in the suit before the high Federal court, there being no document in existence to prove that the liquidators took the necessary steps for their representation at Caracas after Mr. Berthier had left.

From the examination of all the documents presented it appears likewise that the company had no official representative in the territories of upper Orinoco and Amazonas and that it limited its action there to entrusting to four employees (two in San Fernando and two in San Cárlos) the collection of moneys owing to it and to keep an employee at Atures and another one at Maipures.

More or less than three years after the company had been put into liquidation and owing to the abandonment or desertion in which the company had left all its goods and chattels, which consisted of personal property, some goods, effects, and a few buildings made of earth, timber, and iron roofing, and which were scattered in different places on the banks of the Orinoco, the governor of the territory Upper Orinoco issued a decree laying an embargo on all these goods and chattels (under date of 8th of March, 1893), giving notice to the national executive of this decree and remitting the inventory of said goods to the representative of the company at Caracas for his knowledge and purposes.

The allegation set forth that the governor of the Upper Orinoco had no authority to carry into execution the sentence of the high Federal court without

an order to the effect from said court does not imply that this governor had no authority to decree the inventory of the goods and chattels of the Compagnie Générale de l'Orénoque in liquidation, which were entirely abandoned and were suffering considerable damage, owing to the special condition of same and to the wide expanse of territory over which they were scattered.

From the evidence of document No. 2 of the records in the archives of the high Federal court and from the memorial addressed on the 3d of November, 1895, by the liquidators of the company to the minister of foreign affairs of France, it is proved that the acts of the governor of the aforesaid territory were limited to the following: To the appointment of the persons that were to make the inventory at Maipures and San Fernando de Atabapo, for which purpose the chief civil official was commissioned, as well as for acting as receiver, there being no legal representative of the company to deal with; to issue instructions to the same official, under date of 8th of May of same year, for the preservation of the real and personal property, for the caretaking of the machinery, hulks, tools, and other effects, and for the tending and care of the cattle and stock; to issue a decree appointing citizens Julián Franklin, Julián Rivero, Sergio Lira, and Pablo Sanchez to take charge of all the stock and cattle that were under the care of Braulio Valiente.

It is therein stated that the firm of Messrs. Dalton & Co. had presented a petition or memorial requesting the payment of expenses and salaries which they had incurred on behalf of the Orinoco company. Messrs. Dalton & Co. say in said memorial:

> During our commercial relations with the company of the upper Orinoco and Amazons we have, during more than one year, paid all expenses of the caretaking and preservation of the property of the company, including expenses caused by Mr. Marcelo Chiarelli. Without our intervention and without the interest which we took in the matter *the property aforesaid would have been completely ruined, as it had been notoriously left in abandonment*, owing to the difficulties which the company experienced latterly.

Messrs. Dalton concluded by requesting the payment of 4,000 francs, as per account, which they annex.

Pages 8 and 10 of the aforesaid document No. 2 contains the inventory of the property of the company at Perico, consisting of 1 house roofed with iron, several tools and pieces of furniture, 6 mules, 1 horse (all in bad condition), and 1 donkey; page 11 contains the receipt of Braulio Valiente for the cattle of the company at Santa Catalina, which consisted of 23 cows, 26 calves, 1 horse, 1 mule, and 1 donkey. Page the 12th contains a declaration from the same Valiente, in which he states the following: That besides these animals he had delivered the following during the revolution: To Santiago Hidalgo 20 head, to Mr. Horacio Luzard 3 oxen, and to Mr. Pedro Quiñones 2 head, making a total of 25 head in all; that he has in his possession 3 head belonging to Mr. Julián Rivero, 3 cows and 2 calves belonging to Mr. Sergio Lira, 12 head belonging to Mr. Juan Figarella and 1 more head belonging to Mr. Boulissière; that 7 bullocks have died and 1 has gone astray; that 2 bullocks were slaughtered by Gen. Venancio Pulgar, jr., and 2 by General Anselmo, governor of the Upper Orinoco; that Mr. Juan Figarella sold 5 cows at $25 each, 5 bullocks at $30 each, 1 lean bullock for $25, 1 calf for $8, and 1 bullock to Mr. Boulissière for $41; that the cattle belonging to Julián Rivero and Sergio Lira were delivered to them by order of Mr. Chiarelli, liquidator of the company.

Page 13 contains another declaration of the same Valiente to the effect that the house of Messrs. Dalton & Co. was owing him salaries as caretaker of the cattle of the company to the amount of $333.75, $30 for a hut and corral built

by him, and $31 for payment to laborers, making in all a total of $396.75.

Page 16 contains the declaration of the French citizen G. Aubey, as follows:

Question. From whom did you receive the property of the company in San Fernando de Atabapo in order to become their agent in that place? Reply. The agent of the company in that place was the French citizen Mr. Eduardo Marie, but he had been obliged to leave on important business and he had commissioned to put me in charge the Belgian subject, Eugenio Halveich, from whom I received all the property under inventory, Mr. Ramón Orosco being present and signing the same as witness.

Question. To whom does the house called " Casa Amarilla " belong? Reply. The house belongs to me conditionally. I will explain this to you. The liquidator of the company, called Mr. Roux, who resided in Paris, wrote to me in August, 1891, to say " that I was to consider all the *bonos* (promissory notes) which I held from the company as hard cash." I then took the house in guarantee with the intention of turning over the same to the company in case she might need it, and provided I was paid the sum of 6,002 francs, which the company was owing me.

Question. What goods are there now in the Casa Amarilla? Reply. There are some pieces of furniture and some goods.

Pages 18, 19, and 20 contain the declaration of Juan Figarella, a French citizen in the employ of Mr. Chiarelli, who had been intrusted with the liquidation of the property of the company by Mr. Edmundo Knots. This declaration is in every way indentical to that of Braulio Valiente with reference to the cattle.

Pages 21, 22, 23, and 24 contain the inventory of the goods in the Casa Amarilla, which was an erection in pretty good condition, built of earth with a thatch roof. These goods consisted of woven stuffs, haberdashery, and ironmongery, and the inventory of same was made in the presence of G. Aubey. Pedro Nicco, R. Orosco, and Nieves Arrabache.

Page 26 contains the declaration of Horacio Luzard, similar to that of Braulio Valiente, in what refers to the number of cattle.

Page 29 contains a receipt from Luis A. Ortega in favor of Gen. Juan Anselmo, governor of the Territory, for the amount of $131.43 on account of work as caretaker of the property of the company.

Page 30 contains a receipt from Braulio Valiente for $108.63 in favor of same governor for salaries as caretaker of the cattle of the company.

Page 31 contains a petition addressed to the judge by the aforesaid governor, requesting the payment of expenses incurred in taking the inventory of the property of the company, as per vouchers of Luis A. Ortega and Braulio Valiente for the sum of 959.24 bolivars and requesting that orders be issued for the sale of part of the property to cover said expenses. Then follows the record of the sale of the goods of the Casa Amarilla, as per inventory of 12th of April last, effected in public auction on the 22d of May, at which sale bids were made by the Vinciquina for 360 bolivars, by Nieves Arrabache for 400 bolivars, by Ramón Orosco for 800 bolivars, and by Juan Anselmo for 900 bolivars; and no higher bid being obtainable the goods were allotted to Gen. Juan Anselmo.

It is, therefore, inaccurate, as asserted in the aforesaid memorial, that the governor, Juan Anselmo, had declared, on his own authority; that he had a right to an indemnity in consideration of his labors, nor that *all the property of the Compagnie Générale de l'Orénoque* was sold and adjudged to Gov. Juan Anselmo for the sum of 900 bolivars.

In appreciating the true and real situation in which the property of the Compagnie Générale de l'Orénoque had been left after and by virtue of the dissolution of the company, and in consequence of the abandon in which the said property appears to have remained for years exposed to the inclemency of the weather in localities the natural conditions of which cause very serious

damage to buildings, goods, utensils, tools, steamboats, and others, it is the conviction of the Venezuelan arbitrator that all this property did not represent at the end of the period elapsed a value sufficient to cover the sum of 40,048.62 francs, which the company had been condemned to pay for damages by the sentence of the high Federal court, and the further sum which the company was likewise to pay to the Government for costs of the suit, which have not as yet been liquidated.

By virtue of this and of the reasons set forth in this opinion the Venezuelan arbitrator considers that the claim lodged by the liquidators of the company against the Government of Venezuela for the amount of 7,616,098.62 francs is totally devoid of basis and disallows it absolutely.

NORTHFIELD, *February 9, 1905.*

NOTE BY THE VENEZUELAN COMMISSIONER

The foregoing is a faithful translation of my opinion rendered at Caracas in session of the Venezuelan-French Commission of May 5, 1903, as it appears from the report called "Comisión Mixta Venezolana-Francesa, protocolo de 19 de Febrero de 1902. Dictámenes del Arbitro Venezolano."

OPINION OF THE FRENCH COMMISSIONER

The Company General of the Orinoco claims on the date of July 10, 1902, a sum of 7,616,090.62 bolivars, which is made up as follows:

One million five hundred thousand bolivars for its capital, 1,701,680.17 bolivars for the debts contracted in view of the service of the concession, 2,414,410.45 bolivars for interest at 6 per cent on these two sums for twelve years, and finally 2,000,000 bolivars for the eventual profits which it has lost. After having examined the dossier and studied the memoir presented by Doctor Paúl, I have judged that the Venezuelan Government ought to pay to the company an indemnity of 7,000,000 bolivars. In failing in the obligations which it had assumed, in deceiving the company by its dissimulation which changed the substance of its agreements, and in interfering with the management of the concession by its vexations and abuses of power the Venezuelan State has brought about the ruin of the company. Its responsibility is then involved, in my opinion, to the amount of sums disbursed by the company. These sums including the capital, the debts, and obligations contracted for the service, and the interest, amount to a total of 5,616,098.62 bolivars.

To arrive at this amount the company has reckoned the interest at the rate of 6 per cent. While this rate may be moderate considering the nature of the enterprise and the value of money in Venezuela, a rate of 3 per cent must be allowed in the calculation of interest to be granted to the capital. In fact my colleague and myself have agreed that interest given by the commission should be calculated at a rate of 3 per cent, this rate being fixed by the Venezuelan code as a legal rate the contract being silent, and being accepted for the already existing French diplomatic debt.

There is then reason to diminish the sum claimed by the difference obtained in reckoning interest at 3 per cent instead of 6 per cent, or 540,000 bolivars. This decrease, on the other hand, ought only to relate to the interest on the capital; in fact the company being obliged to pay an interest of 6 per cent to its lenders and holders of obligations it would be unjust to make a reduction on the sum claimed under this head and which enters entirely into the disbursements of the company.

I have not thought at all that I ought to accord to the company the indemnity of 2,000,000 bolivars which it claims for the eventual profits which it has lost. It has not been in business long enough to arrive at a time of profit, and no

one can know if it would ever have reached a point greater than the normal interest on the capital invested, the interest of which I take into account in the reckoning of the indemnity. That remains very doubtful if we consider the burdensome obligations which the company allowed to be imposed upon it in the contract. It would not be equitable that it owed to the situation of claimant the advantage of taking from Venezuela benefits upon which it could not have counted truly, considering the conditions of its management, if the latter had been developed without interference. It is, then, a sum of 5,078,098.62 bolivars that in equity the Venezuelan Government ought to pay to the company for losses suffered. But I have had to take account on the one hand of the use of the interest since July 1, 1902, the day on which the calculation prepared by the company stopped; and, on the other hand, of the depreciation of the bonds of the diplomatic debt. Twenty-seven months have already passed since the first of July, 1902, and this lapse of time increases the amount claimed by the company more than 800,000 bolivars, which will continue to accrue until the day of the final award. Up to to-day this will be a sum of at least 6,000,000 bolivars, which ought to be paid to the company for reimbursement of its expenses.

Finally, the indemnity, according to the terms of the protocol, having to be paid in bonds of the diplomatic debt, and not in gold, in virtue of the concession consented to by the French Government in favor of the Venezuelan Government, to allow it to pay its debts with greater facility, and the depreciation of these bonds being at the present moment about 60 per cent, I have judged it equitable to increase this indemnity of 6,000,000 bolivars by 1,000,000 bolivars, which thus reaches the sum of 7,000,000 bolivars in bonds of diplomatic debt. These 7,000,000 bolivars represent merely 2,800,000 bolivars in gold. This is the sum which the company ought to receive and the Venezuelan Government pay if the umpire should share the opinion of the French arbitrator. This sum represents only a little more than half of the disbursements of the company.

The Venezuelan arbitrator, playing the part of a lawyer rather than that of an impartial arbitrator in the brief submitted to me, undertakes to dispute the arguments of the company, and to demonstrate that the Venezuelan Government, far from having anything to be censured for, was, to the contrary, in a position to bring suit against the company for not having fulfilled its obligations. The minutes of the session of the commission of May 7, 1903, mentions that —

> Doctor Paúl expresses to his colleague the desire that he present, as he himself has done, an exposition of arguments upon which he bases his judgment and by which, at the same time, he would reply to the arguments presented by the Venezuelan arbitrator. Doctor Paúl would be able to take these into consideration and to see if it would be possible to reach an agreement.

I have refused to follow my colleague into this field, believing that in my capacity of an arbitrator I am not called upon to present any arguments in favor of or against one of the two parties, but only to examine their statements and decide in favor of the one or the other. One of the lawyers of the Paris bar, Maître Poincaré, has undertaken to defend the company in the field of law, answering Doctor Paúl's arguments.

The reading of the brief prepared by Mr. Poincaré has but strengthened me in the opinion which I had formed after having studied the dossier and the plea of my colleague.

Doctor Paúl was so convinced that he was taking the part of the lawyer rather than that of an arbitrator, that he made the statement to me at the session, as shown by the minutes, that he would take my arguments into consideration if

I was willing to submit them and "see if it would be possible to reach an agreement."

Has not my colleague confessed by these words that an agreement is possible and that consequently the company has a right to an indemnity? I do not see, in fact, how we would have been able to arrive at an agreement unless he recognized the principle of an indemnity, contrary to his decision to reject the claim entirely. I am still persuaded that my colleague would have changed his absolute opinion if I had consented to diminish in notable proportions the indemnity which I have fixed. But conscientiously I have not been able to decide to do it. It is not my intention to censure Doctor Paúl, because his patriotism may have led him to become a lawyer representing his country instead of the man who was called upon to pass judgment. I am contented to make mention of it, and to the contrary I seize this occasion with pleasure to render homage to the courtesy and the breadth of mind he has shown in the course of the numerous sittings of the commission during which we have examined nearly four hundred claims, of which I understand that the exposé and the discussion must have been grievous many times to his Venezuelan sentiments.

But Doctor Paúl would not have been the only one among his authorized compatriots who would have consented to recognize the responsibility of his Government in this affair and consequently to admit that an indemnity is due to the company. In 1897 the President of the United States of Venezuela sent to Paris a semiofficial plenipotentiary, General Pietri, to endeavor to renew the diplomatic relations interrupted between the two countries since the departure in 1895 of the Marquis de Monclar, French minister, because of an incident which to reopen here is unnecessary. Mr. Pietri opened negotiations with the Quai d'Orsay, and such negotiations resulted in the signing of a protocol by virtue whereof normal relations between France and Venezuela were to be reestablished, provided such diplomatic act was ratified by the Congress of Venezuela. Annexed to said protocol there was a convention concluded on June 24, 1897, between the plenipotentiary of Venezuela and the liquidators of the Company General of the Orinoco, the text of said convention being attached to the papers (*dossier*) in the claim. It was stipulated by the convention that said company by way of a compromise agreed to relinquish any further claims upon payment by the Venezuelan Government of an indemnity of 3,600,000 bolivars.

The Venezuelan Congress did not ratify said protocol, the convention remaining, therefore, null and void. However, it may be inferred from such fruitless endeavors to come to an agreement that there has been a Venezuelan plenipotentiary, who eight years ago recognized the right on the part of the Company General of the Orinoco to a considerable indemnity.

The Venezuelan Congress having met in secret session to examine the protocol signed by Messrs. Hanotaux and Pietri, I have been unable to learn the reasons of its rejection by said assembly. It is possible that the convention subscribed to by the company may have had something to do with such rejection. But, even admitting that the existence of said convention had been the only cause of the refusal of Congress to ratify the protocol, said convention does not lose by that fact its character as a document of great value, for all those who know by experience that the facility with which the Venezuelan administration despoil foreigners of rights acquired by mutual consent is only equalled by the difficulty which the Government and public opinion in Venezuela experience in admitting for injured strangers the legitimacy of equitable compensation.

PARIS, *September 2, 1904.*

ADDITIONAL OPINION OF THE VENEZUELAN COMMISSIONER

I have read the brief lately prepared by the commissioner for France explanatory of his opinion rendered at the sittings held by the commission in Caracas on May 5 and 7, 1903, averring that the Government of Venezuela ought to indemnify the General Company of the Orinoco to the amount of 7,000,000 bolivars in 3 per cent bonds of the diplomatic debt.

The gallant expressions used by the French commissioner in speaking of my position on the mixed commission where I have had the most signal honor of sharing the arduous task with so distinguished and learned a colleague, I appreciate as a compensation for the mortifications which M. de Peretti justly believes my patriotic sentiments have suffered while examining the 332 claims submitted to our investigation and decision, representing in the aggregate the enormous sum of 80,000,000 bolivars, a sum which is about equivalent to the capital actually represented by the French colony in Venezuela.

Moved by a critical spirit, my learned colleague makes the following statements:

> The Venezuelan commissioner, playing the part of a lawyer rather than that of an impartial arbitrator, in the brief submitted to me undertakes to dispute the arguments of the company. * * *
>
> I have refused to follow my colleague into this field, believing that in my capacity of an arbitrator I am not called upon to present any arguments in favor of or against one of the two parties, but only to examine their statements and to decide in favor of the one or the other. * * *
>
> Doctor Paúl was so convinced that he was taking the part of the lawyer rather than that of an arbitrator, that he made the statement to me at the session, as shown by the minutes, that he would take my arguments into consideration, if I was willing to submit them and see if it would be possible to reach an agreement. * * *
>
> It is not my intention to censure Doctor Paúl, because his patriotism may have led him to become a lawyer representing his country instead of the man who was called upon to pass judgment. * * *

M. de Peretti de la Rocca, called upon to pass judgment on the claims of his countrymen, believes himself to be authorized under the Paris protocol to pass judgment upon the manner in which I have performed my work on the commission. I do not think that the protocol gives his authority so wide a scope, but I believe that I am obliged to state that his opinions as to the method I have deemed best to follow in the discharge of my duties and functions as an arbitrator, are entirely foreign to the impersonal character which discussions between arbitrators must have when a difference of opinion divides them while investigating and deciding upon a case.

The work I have helped to perform as the commissioner (arbitrator) for Venezuela on the two French-Venezuelan Commissions, in connection with the severe judge of my country, is well demonstrated by the facts that out of 332 French claims submitted to our decision, amounting to the sum of 77,477,409.47 bolivars, 306 were definitively settled or decided by mutual agreement. reducing the sum claimed from 34,127,226.10 bolivars to 3,950,731.14 bolivars, or about one-ninth part of the sum claimed; 16 claims were submitted, because of disagreement, to the final decision of the umpire, Mr. Filtz. who awarded the sum of 153,369.38 bolivars, and the other 8 claims, representing the sum of 42,988,047.50 bolivars, are subject to the investigation of the honorable umpire, Mr. Frank Plumley, in this city of Northfield.

If through the bandage covering the eyes of justice, as she is always represented, the French commissioner has been able to discover that in the claims of his countrymen, as submitted to our joint examination, the amount had been

inflated in the proportion of 9 to 1, what could the Venezuelan commissioner not have discovered, animated, as it is justly surmised, by his patriotic sentiments, which had been submitted to the hardship, as my colleague justly remarks of —

> discussion [which] must have been grievous many times to his Venezuelan sentiments

from those 332 claims which offer, as shown, the plainest evidence that it has been pretended that Venezuela should pay for indemnity for damages an amount tenfold greater than the value of the actual damages sustained? If, because in order to succeed in preventing that such gross injustice be done by the mixed commissions to which I have been a party, my colleague considers that I have played the part of a lawyer in defense of my country, instead of that of an impartial judge, then I have done my duty, and I do not think I deserve on that score the censure of those who have no reason to desire that I should not have defended my country.

As regards the method adopted by the French commissioner of not supporting his decisions and opinions by arguments in order to distinguish his system of defense from mine, I have nothing to say. It is enough for me to be satisfied that I have fulfilled my duties to the utmost, and that I have in my opinions endeavored to follow the standard set by eminent jurists who have discharged these same duties of arbitrators and who did not think that they were to pass their sentences as imperial ukases, but that such sentences were to be based upon the exposition of the principles involved and upon a line of argument growing out of the examination of such principles, laws, and precedents. Such arguments have come to be a source of light to those who, like myself, desirous of learning how not to err, have gone thither to dispel shadows of darkness in their intellectual labors. Among other authorities, see the six large volumes of Moore's International Arbitrations; the volume containing the enlightened opinions of the commissioners in the United States and Venezuelan Claims Commissions, 1889-1890, and Ralston's Report, Venezuelan Arbitrations of 1903.

I must express at this point surprise to see how my colleague has construed the statements I made to him at the sitting of May 7, 1903, that I would —

> take these [arguments] into consideration and see if it would be possible to reach an agreement.

To deduce from such statement, inspired only by my desire to become acquainted with the arguments of my colleague, to see — if I was convinced by them — whether we could reach an agreement or find out whether it was established that the General Company of the Orinoco was entitled to an indemnification, is equivalent to deriving from the question put by one person to another, "What reasons have you to demand from me the payment of that bill?" that such question establishes the fact that the debt has been acknowledged.

That my learned colleague should appeal to such a line of circumlocutory arguments in support of his opinion in favor of the General Company of the Orinoco plainly shows that in the store of arguments used by the company, and which my learned colleague produces as his own, there are not many weighty enough to bring conviction to the honorable umpire's mind of the sound foundation of the claim.

The French commissioner reaffirms his determination in the brief under discussion, when he avers that he abstains from following me into the field of argument,

believing that in his capacity as an arbitrator he is not called upon to present arguments in favor or against one of the two parties, but only to examine their statements and to decide in favor of the one or the other.

My learned colleague adds:

One of the lawyers of the Paris bar, Maître Poincaré, has undertaken to defend the company in the field of law, answering Doctor Paúl's arguments. The perusal of the brief *(plaidoirie)* prepared by M. Poincaré has but strengthened me in the opinion which I had formed after having studied the dossier and the plea of my colleague.

Consequently, M. de Peretti, in his brief, limits himself to explaining his reasons for granting the company any indemnification for eventual profits; for reducing the rate of interest claimed to 3 per cent until July 1, 1902, when the estimate made by the company ends; and for granting besides a supplementary indemnification for interest from that date until the day of the final decision, fixed at 1,000,000 bolivars, and another million because of the depreciation of the bonds of the diplomatic debt, making a total of 7,000,000 bolivars.

I deny, as it is my bounden duty to do, most emphatically, the unfounded conjecture my learned colleague has made in his brief, when he states that I would not be the only one among my enlightened countrymen who would have consented to acknowledge my country's liability in this case, and consequently admitted that an indemnification is due the company. It is also indispensable, since the honorable French commissioner is willing to use it in support of his opinion, that I should take into consideration the incident of the Pietri-Hanotaux protocol and the draft of an agreement signed in Paris by M. Juan Pietri, which M. de Peretti has submitted as a part of his brief.

The incident in question, as it appears in the opinion of my learned colleague is as follows: [1]

In 1897 the President of the United States of Venezuela sent to Paris a semiofficial plenipotentiary, General Pietri, to endeavor to renew the diplomatic relations interrupted between the two countries since the departure, in 1895, of the Marquis de Monclar, French minister, because of an incident which to reopen here is unnecessary. Mr. Pietri opened negotiations with the Quai d'Orsay and such negotiations resulted in the signing of a protocol by virtue whereof normal relations between France and Venezuela were to be reestablished, provided such diplomatic act was ratified by the Congress of Venezuela.

Annexed to said protocol there was a convention concluded on June 24, 1897, between the plenipotentiary of Venezuela and the liquidators of the General Company of the Orinoco, the text of said convention being attached to the papers *(dossier)* in the claim. It was stipulated by the convention that said company by way of a compromise agree to relinquish any further claims upon payment by the Venezuelan Government of an indemnity of 3,600,000 bolivars.

The Venezuelan Congress did not ratify said protocol, the convention remaining therefore null and void. However, it may be inferred from such fruitless endeavors to come to an agreement *that there has been a Venezuelan plenipotentiary who eight years ago recognized the right to a considerable indemnity on* the part of the General Company of the Orinoco.

The Venezuelan Congress having met in secret session to examine the protocol signed by Messrs. Hanotaux and Pietri, I have been unable to learn the reasons of its rejection by said assembly. It is possible that the convention subscribed to by the company may have had something to do with such rejection. But, even admitting that the existence of said convention had been the only cause of the refusal of Congress to ratify the protocol, said convention does not lose by that fact its character as a document of great value. * * * .

So much for the history of the incident of the Pietri-Hanotaux protocol. The other portion of the document, replaced by the dots, with which my colleague

[1] *Supra*, p. 219.

ends the paragraph, I shall not reproduce in this answer. They belong to that class of arguments called " *ab homine*," so generally used in French parliamentary oratory, but which are misplaced in abstract and severe debates before a court like this one. Whatever be the opinion the French commissioner may have formed of the administration and public opinion in Venezuela, will surely not have the slightest weight in the mind of the honorable umpire when he shall render his decision in the case. P. M. de Peretti is in the right when he states that the convention concluded between Mr. Pietri and the liquidators of the General Company of the Orinoco acknowledging to the latter, by way of a compromise, 3,600,000 bolivars, had something to do with the refusal of the Congress of Venezuela to ratify the Pietri-Hanotaux protocol, the object of which was the renewal of diplomatic relations between the two countries. It not only had something to do with the refusal, but was the sole cause thereof. Even if Venezuela had solicited the renewal of the relations, for which Mr. Pietri had received instructions, Congress was compelled to refuse to ratify the protocol tending to such renewal, because the convention annexed as a condition to the end in view represented for Venezuela a sacrifice of such magnitude and so unjustified, that Congress preferred to continue depriving the country of friendly relations with France to subjecting it to a censurable negotiation. General Pietri lacked the necessary authority and instructions to negotiate with the General Company of the Orinoco, and even the officious negotiations which were intrusted to him in France for the renewal of diplomatic relations were *ad referendum*, because, such relations being interrupted, he could not have been invested with the character of minister plenipotentiary to the Quai d'Orsay.

If from the officious capacity of Mr. Pietri to treat with the Quai d'Orsay of the renewal of the diplomatic relations between Venezuela and France and from the character, as minister plenipotentiary, which was vested in Mr. Pietri by the administration of 1897 to represent Venezuela in other States of Europe, the French commissioner draws a favorable conclusion when he says:

> It may be inferred from such fruitless endeavors to come to an agreement, that there has been a Venezuelan plenipotentiary, who eight years ago, recognized the right on the part of the General Company of the Orinoco to a considerable indemnity.

what may I not deduce, as the Venezuelan commissioner, against the justice of such indemnification, following the same style of argument, upon considering that it has not been a Venezuelan plenipotentiary, but the National Congress, consisting of eighty plenipotentiaries representing the will of three millions of inhabitants, who disapproved the convention signed by Mr. Pietri, because they believed it to be unlawful?

M. de Peretti states in his brief that the perusal of the pleadings (*plaidoirie*) of Maître Poincaré, counsel for the company, who discusses my arguments, has come to confirm him in his opinion. I have read the brief of the eminent member of the French bar and lawyer of the court of appeals, and since his opinion has been sought for by the claimant company to impugn my opinion, I must examine it and reply to its allegations.

The first part of the brief and opinion of Maître Poincaré, called " Exposition of Facts," contains a relation based upon the documents and notes produced by the claimant company, making a better presentation of the same papers, statements, and letters found in the case (*dossier*) of the company. Of such exposition of facts the honorable umpire can only take into consideration for his decision such facts upon which both parties have agreed or the accuracy of which has been duly established, based on trustworthy documents showing the facts to be true.

The second part of the brief under consideration is called " Discussion " and is divided by Maître Poincaré into several chapters and sections dealing with the different grounds upon which the company has based its claim for indemnification, classified as follows:

First. Legal and decisive efficacy of the judgment rendered by the high Federal court against which the company opposes denial of justice, based upon the following facts: Irregularities in the summons, irregularities in the letters rogatory, irregularity in the pleadings (*plaidoiries*).

Second. Good grounds for the claim for indemnification, based upon substantial error vitiating the consent, failure to execute its obligations on the part of Venezuela, and fulfillment of its obligations on the part of the company.

Third. Conclusions: The amounts of the claims have been duly established by means of documentary evidence. The existing diplomatic debt is now worth from 40 to 42 per cent. That which is to be created for the indemnifications resulting from the protocol of 1902 shall be worth even less.

For the sake of brevity, in this additional opinion I shall examine only such points of the opinion of Maître Poincaré as are indispensable to strengthen the arguments in my first opinion and shall also point out whatever may be conducive to a clearer exposition of the juridical doctrine or international principles invoked, as well as to the first estimation of the facts.

The question advanced as the fundamental grounds for this case is in the first place whether the sentence of the Venezuelan Federal court, declaring the rescission of the contracts under which the General Company of the Orinoco operated and condemning said company to the payment of a certain sum and judicial costs, is a final or decisive sentence having the force of the *res judicata* and therefore binding and subjecting the company to all its consequences.

The General Company of the Orinoco, four years after such sentence has been passed, invoked the action of the French Government in order to enter a protest against said judgment, claiming, as Mr. Poincaré states —

> that it has been the victim of an actual denial of justice, because, in the first place, all remedies against administrative and governmental action being withheld from it, mainly by reason of the decree of August 8, 1890, issued under pressure by Colombia, and the arbitrary seizure of 1893, and in the second place because of the violations of both public and private law executed not only during the proceedings but also outside of any judicial action.

The company produces no proof whatever to show that all legal remedies against administrative and governmental action have been withheld from it. The decree of August 8, 1890, as evidenced by its own terms, was issued in behalf of the large interests of the inhabitants of the region where the tonca bean is gathered and because the company had suspended the purchase of the bean for want of resources, and the Government could not permit the destruction of the interests and means of subsistence of that territory already threatened with abandonment on the part of the company and an absolute business stagnation. In regard to the seizure of 1893, subsequent to the judgment, the copies subjoined to the present additional opinion in support of the arguments of my first opinion will shed sufficient light to bring conviction to the mind that the property the company had abandoned on the banks of the Orinoco River because the company had gone into liquidation and was unable to even take care of and try to preserve said property has not sufficed, because of its state of deterioration and ruin to pay for the debts contracted in the locality, let alone those for which the company was liable to the nation by virtue of the sentence of the Federal court.

Against the argument I have put forth in my opinion that, according to the Venezuelan Code of Procedure, the General Company of the Orinoco had

six months after date of sentence within which to demand that it be invalidated, if the company had or believed itself to have sufficient grounds to ask for such reversal, Mr. Poincaré advances the argument that the sentence of the court was in itself indisputably a sovereign decision, not open to any remedy or appeal whatever before a higher court. It is true that such decision was not subject to appeal before a higher court, because the high Federal court is the highest judicial tribunal; but such decision was open to the remedy of invalidation before the same court, according to Case I, article 538 of the Code of Civil Procedure then in force, or, in other words, the failure to issue such summons when they are necessary to continue the case, if the failure has not been remedied by the party invoking the same. Article 539, quoted in his opinion, clearly stipulates that —

such case shall be tried in the same manner as the case upon which the sentence whose invalidation is sought was tried *before the court which has decided the case in the last resort (instance)*.[1]

M. Poincaré adds:

There was nothing to be gained therefore in asking the invalidation, as this could not be granted except for a special cause, and the most important grounds of complaint could not contribute to justify such a step.

One of these grounds, as will be hereafter shown, was failure to notify the company's attorney to make his pleadings. The learned and expert counsel for France has already stated that such failure, which is a most important ground for complaint against the judgment, as believed by the claimant party, does not constitute one of the special causes to demand the invalidation of the sentence, according to the provisions of article 538 of the Code of Civil Procedure.[2] Notwithstanding that such notification is unnecessary and not required by the Venezuelan law of procedure, the company uses it as the basis upon which rests its main argument to claim that the sentence of the Federal court was issued against it without previous hearing of its defense and that consequently the sentence is invalid.

The first cause of invalidation invoked by Maître Poincaré in his brief as vitiating the form or proceedings is the irregularity of the summons to answer the complaint. The counsel for the defense of the company's rights bases his contention to that effect on the testimony of Mr. Fiat, a former employee of the company, who affirms that when the State's attorney for the treasury (*fiscal nacional de hacienda*) entered his action before the high Federal court for the rescission of certain contracts and the payment of an indemnification he received no summons or order requiring him to appear.

It is true that in the records of the high court — the brief avers —

mention is made of the letter of the secretary of that jurisdiction, dated on May 30, 1890, addressed to Messrs. Fiat and Planas, informing them that the company had been sued before the high court.

But Messrs. Fiat and Planas have always declared that they had not received such letter and Mr. Fiat has added that it was only while reading a Caracas newspaper that he became aware that the company had been summoned to appear before the Federal court. It was then that he, of his own accord and without any previous summons, went to the secretary's office.

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[1] Art. 539. Este juicio se promoverá del mismo modo que la demanda sobre que recayó la sentencia cuya invalidación se pide, ante el tribunal que la dictó en última instancia.

[2] For text of Art. 538 see *supra*, p. 198, note.

It can not be doubted, that if a regular summons had been issued to Mr. Fiat or Mr. Planas or if any notice by letter had been given to them of the action entered by the " fiscal," a receipt should have been demanded, as was done in the case of all subsequent summonses. It is thus shown that the proceedings were irregularly commenced.

What appears from the minutes in the case which may offer reasonable grounds for the deductions of the attorney presenting the brief under consideration?

At the end of the complaint entered by the fiscal the following resolution appears:

PRESIDENCY OF THE HIGH FEDERAL COURT,
Caracas, May 30, 1890.

[27 and 32. Entered.]

Summon the General Company of the Orinoco, defendant, whose domicile is outside of the Republic, and serve a copy of the foregoing complaint, to appear before this court at the sitting of the tenth working day after summoned to answer the action, which, in the name of the national Government, the State's attorney for the treasury *(fiscal nacional de hacienda)* has entered. And whereas it appears from the documents produced that Messrs. Andrés Fiat and Bernabé Planas have held powers of attorney from said company, let them be notified, that they may state whether they still exercise such duties, and if not, a counsel for the defense *(defensor de ausentes)* shall be appointed as requested.

(Signed) CÁRLOS URRUTIA.
MANUEL RENDÓN SARMIENTO.

On the same day and date the summonses were issued to Messrs. Fiat and Planas to appear at the first sitting of the court after being summoned for the purpose aforesaid, the summonses being delivered to the bailiff of this high court.

(Signed) RENDÓN SARMIENTO,
Secretary.

At the session of this day, June 2 (two days after the summonses were issued), there appeared Messrs. Andrés Fiat and Bernabé Planas and stated that Mr. Andrés Fiat is now the representative of the General Company of the Orinoco and offers to produce the power of attorney at the session of next Wednesday, the fourth day of the present month.

Subscribed to —

(Signed) CÁRLOS URRUTIA.
ANDRÉS FIAT.
B. PLANAS.
RENDÓN SARMIENTO, *Secretary.*

These are followed by others referring to the filing of the power of attorney in the French language; appointment of an interpreter to translate the same; his acceptance and oath; the translation of the power of attorney, and the order of the presidency of the high Federal court directing that the original power of attorney be returned to Mr. Fiat, and that he be duly summoned to appear as the attorney for the company.

Then follows an entry of the secretary, whereby it appears that a certified copy of the complaint was made and delivered to the bailiff to execute the summonses issued to the defendants.

As a part of the record, the following entry appears:

I have received the complaint in the action entered by the national Government against the General Company of the Orinoco, of which I am the representative. Caracas, June 19, 1890. (Signed) Andrés Fiat. (Minutes of the proceedings had before the high Federal court, a certified copy of which I submit to the honorable umpire, in Spanish and English, consisting of 6 exhibits, numbered 1, 2, and 3, respectively.)

The testimony furnished by the minutes of the proceedings shows that due regularity in conformity with the legal precepts was observed in summoning Mr. A. Fiat as the representative of the General Company of the Orinoco, and also establishes the fact that there is no truth in the declaration of Mr. Fiat, serving as a basis to the company's counsel to aver that the proceedings were irregularly commenced. In regard to the statement which, it is affirmed, Mr. Bernabé Planas made to the same effect, it is not found among the numerous documents submitted by the company, so that no other conclusion can be drawn except that the writer of the brief was induced to affirm a most serious fact affecting an old friend of the company, which is contrary to actual events.

The line of argument contained in the rest of this chapter of the brief dealing with the delay in summoning Mr. Fiat and answering the complaint because of the preliminary proceedings of giving notice, the filing and translating of the power of attorney, and the amendment of a part of the case by fixing the amount of the indemnification asked for is so inadequate to arrive at the conclusion that Mr. Fiat found himself deprived of all means of defense, and that such condition of inability permeated the whole proceedings, that I do not deem it my duty to undertake its discussion, such assertions clearly revealing the fact that Maître Poincaré is not familiar with the method of procedure in contentious cases before our Venezuelan courts, and that his learning and talents can not bridge over his deficient knowledge in the matter of our adjective legislation. All the proceedings of the high court from the origin of the case in all matters pertaining to the summons of Mr. Fiat, the representative of the company, are strictly in accordance with the provisions of the Code of Civil Procedure in force at the time, as the honorable umpire may see by an examination of the legal provisions referred to in conjunction with the proceedings in the case, a copy of which I subjoin hereto.

The next section of the brief in question deals with the irregularity of the letters rogatory issued by the president of the high Federal court to the civil judge of the first instance of the city of Paris and to his eminence the Cardinal, chief of the propaganda in Rome, which letters rogatory were delivered to the representative of the company, Mr. Fiat, personally to obtain the extra-territorial evidence he had requested, consisting of affidavits of witnesses residing in Paris, and a statement of facts requested from his eminence the Cardinal.

Maître Poincaré maintains that diplomatic channels should have been used to forward to their respective destinations the letters rogatory, and, as the Government of Caracas knows what is the regular way to be followed to obtain the desired ends, both such Government and the high Federal court are to blame if the interrogatories were not made in Paris and Rome; that such conduct could not have been prompted but by the desire to prevent that the requested evidence be obtained, and so it follows that the General Company of the Orinoco was deprived of its most essential means of defense, and that the taking of the evidence for which the high court had fixed a time — which was insufficient — was then incomplete of necessity.

The counsel defending such theory adduces in its support the principles laid down by the Institute of International Law in its session at Zurich in 1877, which I have already had the opportunity to quote in my former opinion, to wit:

As the opinion of the Institute was that letters rogatory should be sent *directly* to the foreign court by the court issuing the same.[1]

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[1] *Supra*, p. 196.

The learned counsel also quotes the opinion of Mr. Cárlos Calvo, who makes the following statement in his Treatise on International Law, Volume II, section 889: [1]

From the principle of the independence of nations it follows that the foreign court is not obliged to accept letters rogatory, but usage among nations has introduced the rule that foreign courts accept such request and proceed to take the necessary steps in the matter, except in such cases where such acts may impair the sovereignty of the country or the rights of its citizens. This is why letters rogatory, as a general rule *are not sent to the courts directly* but through diplomatic channels, so that the Government may examine the same before directing their execution, in order to become satisfied that they do not contain anything contrary to the laws of the State. In case letters rogatory should be sent *directly from abroad* to a court they must be forwarded immediately to the minister of justice.

M. Poincaré adds:

And let us remark that Mr. Calvo's opinion is later than that of the Institute of International Law, because Mr. Calvo in section 894 makes reference to that authority erroneously quoted by Venezuela.

The learned counsel also invokes the opinion of Dalloz, Répertoire Général, Instruction Civile, No. 83, as follows:

Our courts are frequently called upon by foreign courts. An order of the minister of justice *(Garde des Sceaux)* contains the following rules to be observed in similar cases: Courts must not comply with any letters rogatory in civil matters coming from abroad unless *they are transmitted to them* through the ministry of justice, who in turn receives them from the minister of foreign affairs with the translation, as the case may be, after examination. * * * Letters rogatory in civil matter must be executed by the court without necessary intervention of the parties concerned. Notwithstanding this such parties are *free to intervene and in order to foster the proceedings* may ask the clerk to issue letters rogatory. *Beyond such cases of spontaneous intervention of the parties or one of them* the letters rogatory are executed upon request of the proper judicial authorities. The acts performed in the execution of the letters rogatory are sent by the court to the minister of justice with a certified memorandum of the costs, and the documents are forthwith *transmitted* to the minister of foreign affairs.[2]

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[1] Il résulte du principe de l'indépendance des nations que le juge étranger n'est pas obligé d'accepter la commission rogatoire; mais l'usage des nations a introduit la règle que les juges étrangers acceptent cette mission et procèdent aux actes d'instruction qu'elle a pour objet, excepté dans le cas où ces actes porteraient atteinte aux droits de souveraineté du pays ou aux droits des nationaux. C'est pourquoi les commissions rogatoires, en général, ne se transmettent pas aux tribunaux ou aux magistrats étrangers directement, mais par la voie diplomatique, de manière que le gouvernement puisse les examiner avant d'en autoriser l'exécution pour s'assurer qu'elles ne contiennent rien de contraire aux lois de l'État. Dans le cas où une commission rogatoire serait transmise directement de l'étranger à un magistrat, celui-ci doit l'envoyer immédiatement au ministre de la justice. (Calvo, Le Droit International Théorique et Pratique, 5è édition, sec. 889.)

[2] Nos tribunaux sont souvent délégués par les juges étrangers; une instruction de M. le garde des sceaux contient les règles à suivre en pareil cas. Elle est ainsi conçue:

Les magistrats ne doivent déférer aux commissions rogatoires, en matière civile qui viennent de l'étranger, qu'autant qu'elles leur sont transmises par le ministre de justice, qui les reçoit du ministre des affaires étrangères, avec la traduction, s'il y a lieu, après examen. * * * Les commissions rogatoires en matière civile ou pour des faits qui pourraient donner lieu à une action civile, doivent être exécutées par les magistrats sans intervention nécessaire des parties intéressées. Toutefois, les parties sont libres d'intervenir, et alors, pour motiver leurs diligences, elles peuvent demander au greffier une expédition de la commission rogatoire. Hors le cas de l'intervention

M. Poincaré concludes —

Thus the parties are not called upon to *transmit* the request. They have only power of intervention during the execution of the letters rogatory.

The authorities quoted, far from destroying what I have maintained in my opinion in support of the doctrine established by the Institute of International Law in its meeting in Zurich, comes to confirm my argument in all its conclusions.

There are two orders of facts of an entirely different character which Maître Poincaré confounds to the extreme of pointing out a difference between the Institute of International Law and Mr. Calvo, which does not really exist in this matter.

One of these points is the act of a court addressing to a foreign court a petition praying it to perform within its jurisdiction certain acts or proceedings, and to this end the letters rogatory are addressed *directly from one court to the other*. The other point is that of the *transmittal* of said letters rogatory addressed by a court to another, which, according to the Institute of International Law, *may be made through* diplomatic channels, and according to Calvo *must be always made* through such channels and not otherwise.

Calvo, in section 889, already quoted, further says: [1]

The request for such cooperation is made by a special letter whereby the court or judge concerned asks the cooperation of a foreign court or judge or *prays* such court or judge to perform within the proper jurisdiction certain acts or proceedings that the petitioner is unable to perform.

To solicit or pray for the cooperation of such foreign judge it is necessary to *address him* directly in writing a letter rogatory as done by the high court to the judge of the Seine in the following form quoted by Maître Poincaré.

United States of Venezuela: In their name the president of the high Federal court to the citizen civil judge of the first instance of the city of Paris.

And at the end of the petition —

Now, therefore, I pray the citizen judge of the first instance of the city of Paris to be pleased to have the present petition (letters rogatory) executed, pledging reciprocity in similar cases from the courts of the Republic.

To this M. Poincaré says that "it is nothing but a mere courtesy." Exactly; such courtesy is what is expected to be used.

The petition or letters rogatory which a court or judge addresses to another being prepared, for which it is necessary that the party concerned should go to the office of the secretary (clerk) of the court and furnish the same with the necessary stamped paper upon which to extend the writ in reference to the evidence required, the corresponding revenue stamps, fees for copies and translation when such is necessary; then such acts should be performed as are necessary for the *transmission* of the letters rogatory addressed to the foreign

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spontanée des parties ou de l'une d'elles, les commissions rogatoires sont exécutoires à la requête du ministère public. Les actes qui constatent l'exécution d'une commission rogatoire sont envoyés par le parquet au ministère de la justice, avec un état de frais visé; les pièces sont ensuite transmises au ministère des affaires étrangères.

[1] La demande de cette coopération se fait au moyen d'une lettre spéciale par laquelle le tribunal ou le magistrat qui se trouve dans ces circonstances sollicite le concours d'un tribunal ou d'un magistrat étranger, ou le prie d'accomplir dans l'étendue de son ressort quelque acte de procédure ou d'instruction qu'il ne peut faire lui-même. (Calvo, Le Droit International Théorique et Pratique, 5e édition, sec. 889.)

court or judge through the diplomatic channels. All these acts should be performed by the interested party, who receives the papers in order to foster their *transmittal* by applying to the department of foreign affairs.

On what principle of international law or on what authority, ancient or modern, could the theory be founded that it behooves the judge in the case or the contrary party — as in the case in point, the Government of Venezuela — to perform officiously acts which only the interested party is able to attend to with due diligence, defraying the necessary expenses and fostering their execution? And so, Mr. Fiat, the attorney for the company, assisted in its defense by two of the most distinguished lawyers of Caracas, Drs. Diego Bautista Urbaneja and Ramón F. Feo, who received the petitions or letters rogatory addressed to Paris and Rome, does not incur any liability because he did not employ in the transmittal of such papers the diplomatic channels, nor did he use the good offices of the department of foreign affairs in Caracas, nor did even apply to such office, and the Government of Venezuela, the contrary party, is to be made liable for such a negligence, since it can not be supposed it was ignorance or the deliberate purpose of not giving the letters rogatory the proper course so as to claim later on that the proceedings were vitiated.

According to M. Poincaré's theory, the Government of Venezuela and the high Federal court, the contrary party and the judge in the case, should perform in regard to Mr. Fiat, the attorney for the company, the duties of counselors at law, and taking him by the hand, to go with him to the Venezuelan foreign office, legations, or consulates, which were to attest to the respective signatures and then to the post-office where the papers were to be stamped, certified, and mailed, notwithstanding the clearly manifested purpose of Mr. Fiat when he personally received the letters rogatory of not trusting to others such steps for the transmission of the documents.

Our Code of Civil Procedure contains an article, reproduced in all such codes, which has been in force in the Republic, to this effect: [1]

> In civil matters the judge can not take action against a party except at the request of the other party, unless authorized by law to proceed otherwise.

Another analogous article provides that — [2]

> The court shall maintain the parties in the enjoyment of such rights and titles as are common to both without preference or inequality, as well as in the enjoyment of such rights and titles as are privative to each party, respectively, according to the provisions of law or the different conditions represented in the action. But the court shall not allow such parties nor allow herself to *exceed the authority of their respective rights or jurisdiction in any case whatever.* (Arts. 14 and 27, Code of Civil Procedure, 1897.)

It was not facultative of the high Federal court to perform of its own accord acts tending to the *transmittal* of the letters rogatory, but in this case, as well as in all proceedings in the action, the court had to act by request of one of the parties, as the law does not authorize it to act on its own authority. To act otherwise would be to exceed its authority, an act punishable by our laws.

Mr. Fiat has not even pretended to maintain the fact that he endeavored to obtain from the court the transmission of the letters rogatory through diplomatic

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[1] Art. 14. En materia civil el Juez no puede proceder sino á instancia de parte, salvo el caso en que la ley lo autorice para obrar de oficio.

[2] Art. 27. Los tribunales mantendrán á las partes en los derechos, facultades y goces que son comunes á ellas, sin preferencia ni desigualdades, y en los privativos de cada una de ellas, respectivamente, según los acuerde la ley á la diversa condición que tengan en el juicio. Pero no podrán permitir ni permitirse ellos extralimitaciones de ningún género.

channels, but, on the contrary, he has confessed that he requested and obtained said letters and sent them directly to Paris to Mr. Delort, without he or his legal advisers — who could not have been ignorant of such means of procedure — ever thinking that diplomatic channels should be employed. The consequences of such omission, if it had any consequences on the legal action, must be suffered solely by the General Company of the Orinoco and in no way by the opposite party or the Government of Venezuela.

The brief of the company's counsel now deals with the third cause or grounds for invalidation of the sentence — i.e., irregularity in the pleadings (*plaidoiries*). M. Poincaré stops to discuss the fact that the representative of the company was not summoned, nor were his counsel to enter their pleadings, and the only party present at the time set for such pleadings, according to the records of the case, was the State's attorney (*fiscal nacional de hacienda*). I have, in my first brief, most carefully examined the matter and have established, by quoting the respective articles of the Code of Civil Procedure, and the chronological examination of the minutes of the case, that the action was never suspended for motives which were imputable to the parties and that consequently, in conformity with the provisions of law, the high Federal court directed that the pleadings should be entered without the necessity of issuing summons to the parties or their representatives. Had the court acted or decreed otherwise it would have been contrary to a provision specifically set forth by the same code, to this effect:

> After summons have been issued to answer the complaint there is no need of further summons for any other incident of the proceedings *nor the summons issued shall suspend the proceedings*, unless specially provided for to the contrary.[1]

Such action on the part of the court would have been contrary to the provisions of article 394 of the same code, reading thus: [2]

> Upon the conclusion of the reading of the papers in the case (*expediente*), the oral statements of the parties or their attorneys or representatives shall be made or read, if in writing, as the case may be, and added to the record.

This article does not direct that the parties be summoned, and no such provision is made, because the parties to the action are constructively present during the hearing from the day they are summoned to answer the complaint without further summons, except in such cases as are specially provided for by the law.

The high Federal court is not authorized to alter or modify the method laid down by our laws of procedure, but, on the contrary, must adhere strictly to its provisions. Any act whatever in violation of such provisions is null and void. It was based upon such consideration, and in view of the original record of the case existing in the archives of the high Federal court that I stated in my former opinion that, in view of the fact that the sentence " that the parties be notified " was not duly authorized by the president of the court by means of a legal writ, order, or decree under his signature, but was only a statement under the signature of the clerk of the court (*secretario*) who in conformity with the laws governing our method of procedure has no other powers beyond the act

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[1] Art. 146. Hecha la citación para la litis-contestación, no habrá necesidad de practicarla de nuevo para ningún otro acto del juicio, ni la que se mande verificar suspenderá el procedimiento, á menos que resulte lo contrario de alguna disposición especial de la ley.

[2] Art. 394. Concluída la relación se oirán los informes verbales de las partes, de sus abogados ó apoderados, y se leerán los que presentaren por escrito, los cuales se agregarán á los autos.

of attesting or certifying to any judicial acts, decrees, orders, or judgments of the justices of the court, which should always be made in writing and under their hand, I was convinced that the Federal court had not ordered such notification to be made.

Maître Poincaré profits by this remark, which I, in my capacity of an arbitrator was entitled to make, to affirm that the Venezuelan Government —

found itself obliged to make the unfortunate admission that the sentence " that the parties be notified " has been the exclusive act of the clerk (secretario) and that the court was not a party to the order.

It was not the Government of Venezuela that made the statement in question, but the commissioner for Venezuela, in view of the legal provisions governing the case and of the minutes in the record. My opinion was based upon the fundamental fact that the law does not provide that the parties be summoned when the hearing has not been suspended because of acts of commission or omission for which the parties are answerable. My opinion points out the way to demonstrate that the high Federal court did not infringe any provisions of law, as might be apparent from the sentence in reference, which is due to an error of the clerk, having no validity whatever.

Mr. Poincaré states in his brief that the Venezuelan lawyers, Drs. Diego B. Urbaneja and Ramón F. Feo, agree in their statement that the General Company of the Orinoco not having been summoned to appear on the day set for the pleadings, articles 109 and 162 of the Code of Civil Procedure (1880)[1] had been violated. I have not found among the documents and papers produced by the company any written opinion prepared or signed by said jurists to which credit might be given.

The company has pretended in several documents that said lawyers had rendered a favorable opinion on this and other important matters, but such opinions duly signed and verified have not been produced. The fact is worthy of consideration that Dr. Ramón F. Feo being still in Caracas, and it being an easy matter for the company to obtain a statement from him during the sittings of the commission in that city and his testimony on the facts relating to the action before the high Federal court, such steps have not been taken. It can not, therefore, be accepted that the authority and learning of such lawyers be invoked when no proofs are offered that they are or have been of the opinion ascribed to them in this matter.

The writer of the brief states that the sentence passed was not notified either to the representative of the company, Mr. Fiat, *who remained in Caracas for over a year after the sentence was passed*, or to the lawyers of the company, who lived in that city, nor even to the liquidators. This requisite of notification is not prescribed by our law of procedure, except in criminal cases. In civil actions, as it has been shown, the parties are deemed to be present at the trial from the time they are first summoned to answer the complaint and must be aware either personally or through their attorneys of all the stages of the proceedings. It should be noticed that at the date of the sentence, October 14, 1891, Mr. Fiat, although still residing in Caracas, was not the representative of the General Company of the Orinoco, in liquidation, as he had resigned since October 11, 1890; that the company appointed Mr. Bernabé Planas its representative, and that, this gentleman having refused to accept such commission, the company then decided to send Mr. Berthier, who arrived at Caracas about the end of October, 1890, leaving some time in July, 1891. Messrs. Urbaneja and Feo do not appear as being representatives of the company during

[1] See *supra* p. 194, note.

the proceedings before the high Federal court, but simply the counsel for Mr. Fiat at the beginning of the action. (See complaint to the minister for foreign affairs in France by the liquidators of the company, folio 47, and the minutes of the proceedings.)

As regards the notice to the liquidators residing in Paris, the Federal court must have been ignorant of the fact that such liquidators existed, as it does not appear that the court was informed that the company had gone into liquidation, notwithstanding the fact that such steps were taken on May 30, 1890, two days after the filing of the complaint before the high court. The company kept the Venezuelan authorities and especially the high Federal court ignorant of the fact that it had gone into liquidation — a grave omission which sufficiently explains the abandonment of its representation during the proceedings, the want of unity and cohesion in the acts for the defense, the difficulties had with the letters rogatory, and the non-appearance of the new attorney, Mr. Berthier, at the hearing, as he was then exclusively engaged in effecting an extra-judicial compromise which would put an end to the legal action and insure a new contract to the company in liquidation.

In the second chapter of the brief under consideration, under the head of "Bien fondé de la demande," the author directs all his efforts in support of the following claims:

First. That the agreements entered into by the Government of Venezuela and the company are vitiated from their origin, because of dissimulations which have substantially altered the convention and which permitted the Venezuelan Government to impose upon the consent of the General Company of the Orinoco.

Second. That in the execution of the contract the Government has not kept the contracted obligations.

By way of introduction, the author of the brief lays down the following premises:

> It is upon the basis of equity that the arbitration commission must pass sentence.
>
> It has been admitted that such should be the rule controlling matters pending between Venezuela and other States, and the protocol relating to those of the United States has established in this connection a rule applicable in this instance by assimilation: "The commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation."

It is not possible to admit the principle of assimilation advanced by Maître Poincaré in regard to the claims submitted to the decision of the umpire, according to the terms of the Paris protocol of February 19, 1902. The terms of such agreement and those of the Washington protocol of 1903 have no similarity whatever; on the contrary, the contracting parties were very careful to declare in the final paragraph of article 2 of the Paris protocol controlling the present commission, *that the procedure* adopted for the examination and settlement of the claims referred to in articles 1 and 2, were not instituted but as an exception, and *did not invalidate the convention of 1885;* and that by article 5 of this convention the high contracting parties agreed that: —

leurs représentants diplomatiques n'interviendront point au sujet des réclamations ou plaintes des particuliers concernant les affaires qui sont du ressort de la justice civile ou pénale, d'après les lois locales, *à moins qu'il ne s'agisse de dénis de justice* ou de retards en justice, contraires à l'usage ou à la loi, de l'inexécution d'un jugement définitif, ou enfin, des cas où, malgré l'épuisement des moyens légaux, il y a violation évidente des traités ou des règles du droit des gens.[1]

[1] Their diplomatic agents shall not interfere in the claims or complaints of private

If the declaration that the procedure adopted to submit to the examination of a mixed commission the claims of French citizens as an exceptional method, *which was not to invalidate the convention of 1885*, means anything, then it is as plain as daylight that this commission is bound to respect the sentences or decisions passed by the Venezuelan courts in accordance with local legislation in such matters as come under the jurisdiction of the civil or penal laws, *and only in such cases in which there is a denial of justice or delay in the administration of justice, contrary to usage or law*, or failure to execute a final judgment, or, in fine, in such cases where, notwithstanding the fact that all legal means have been exhausted, there should exist an evident violation of the treaties or rules of the law of nations, that this commission may approve of diplomatic interference and so fix the liability of the Government of Venezuela, if any.

In the claim entered by the General Company of the Orinoco there has been submitted to this commission a matter which comes under the jurisdiction of the Venezuelan civil courts, as the rescission of the contracts obtained by the General Company of the Orinoco for the exploitation of all mineral and vegetable products of the alto (upper) Orinoco and the Amazonas for a term of thirty-five years and that of the tonca bean for a term of twenty-five years upon the vacant lands lying between the eastern boundaries of the Federal territories Alto Orinoco and Amazonas, and between the Orinoco and the boundaries of Venezuela and Brazil, because it is thus established by the constitution, the laws of the Republic, and the fourteenth clause of the contract of December 17, 1885, reproduced in that of April 1, 1887, reading as follows:

> Any doubts or controversies that may arise in the execution of the contract shall be decided by the proper courts in the Republic in conformity with the laws thereof.

The sentence passed by the high court, as coming under its civil jurisdiction, in conformity with local legislation and in compliance with the solemn agreement entered into by the contracting parties, which is the supreme law controlling bilateral contracts, can not give rise to diplomatic intervention nor impose upon the Venezuelan Government any liability growing out of said sentence, *unless it is established beyond doubt that there has existed a denial of justice or delays in the administration of justice, contrary to usage or a law*, or that a final judgment has not been executed, or that there exists an evident violation of the treaties or rules of the law of nations. In order to enter the action the only plea that it has been possible to advance is that of *denial of justice*, as regards the form of proceedings and the substance of the action.

In regard to the first contention, i.e. — irregularity in the form of the proceedings, it has been sufficiently shown that the grounds advanced by the claimant company are wholly without foundation. In reference to the second contention, i.e. — the decision on the substance of the action for rescission of the contracts entered by the fiscal de hacienda before the high Federal court, it suffices to transcribe the very same terms employed by the author of the brief to come to the conclusion that the high Federal court in adjudging the rescission of the contracts did so by virtue of legal provisions governing such conventions as contain reciprocal obligations, in view of and upon investigation of the proofs produced by the claimant in case the defendant fails to show proof in

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parties relating to such matters as come under the jurisdiction of the civil or penal laws, according to local legislation, *unless in cases of denial of* justice or delay in the administration of justice contrary to usage or law, or failure to execute a final judgment, or, in fine, in such cases where, notwithstanding the fact that all legal means have been exhausted, there is an evident violation of the treaties or of the rules of the law of nations.

support of the exception taken at the hearing of the case. Maître Poincaré says, page 78 of his brief:

Elle (la Compagnie Générale de l'Orénoque) n'a pu prouver qu'elle avait rempli ses obligations, sauf cas de force majeure, elle n'a pu montrer que c'était le Gouvernement qui avait manqué à ses devoirs; elle n'a pu présenter les très nombreuses et très intéressantes attestations écrites qu'à défaut d'enquête régulièrement ouverte en France, elle avait réunies, qu'elle était prête à fournir, que nous résumerons ou citerons plus loin et qui ont été totalement ignorées de la Haute Cour.[1]

Whose fault was it and whose the liability for the consequences if the General Company of the Orinoco did not know how or did not wish to defend its case and prove its exceptions when it had at its disposal all the legal means offered by the Venezuelan codes, so that such *proofs and testimony* would not be *wholly ignored?* If she had Mr. Fiat as her representative and Drs. Diego B. Urbaneja and Ramón F. Feo as her legal counsel, why did she not make use of her means of defense? If the representative or the counsel did find any difficulty, any obstacle having the color of denial of justice or of delay in its administration, why is it that they did not enter such complaint before the same court or did not file a protest showing such irregular method of procedure? Is it possible that at the end of four years after the sentence was passed such experienced lawyers should find omission in the proceedings and denials of justice which they did not detect during the hearing of the case?

On the other hand, the Government of Venezuela established with sundry proofs, not objected to, the truth of its statements, and the high court of justice, by means of personal inspection of the territory which is the object of the controversy, investigates and weighs such proofs which are found sufficient to adjudge by virtue of its legal authority has not fulfilled the obligations created by the contracts; and in conformity with article 1110 of the civil code, which deals with the resolutory conditions of contracts, and articles 1256 and 1163, does declare that there are great grounds for an action; that the contracts of May 24, 1886, and May 31, 1887, made between the national Government, on the one part, and Miguel Tejera and Th. Delort on the other, of which the company was the assignee, should be dissolved, and condemns said company to pay the national Government the sum of 40,048.62 bolivars for damages to the State, because of the company's failure to execute the aforesaid contracts, besides the costs of the action. Such judgment, rendered by the highest court of the Republic and for fourteen years having had the weight of *res judicata*, can not be reviewed, except to the grave detriment of the sovereignty of the nation, by any court of arbitration unless such judgment contains an essential denial of justice fully established. The honorable umpire has at his disposal abundant material to arrive at a conclusion in regard to such denial of justice. The honorable umpire well knows what such phrase means when dealing with a sentence rendered by a court having full powers to pass final judgment on a matter submitted by positive law and by the will of the parties to investigation and decision. The honorable umpire is well aware that neither sophisms nor farfetching arguments nor yet more or less specious pretexts can annul the action of the *res judicata* and brand those who by fundamental laws have been

[1] It (the General Company of the Orinoco) has been unable to prove that it had fulfilled its obligations except in case of *force majeure*. It has not been able to show that it was the Government which failed to do its duty. It could not produce the immense amount of most interesting written evidence which in the absence of depositions regularly made in France it had gathered and was ready to furnish, and which we will quote later or epitomize further, evidence which was totally *ignored* by the high court.

intrusted with the highest offices and powers to administer justice to have been guilty of denial of justice.

There are proofs — there are documents and memoranda — to show that the company, at the time of the filing of the suit for resolution of the contract, was in a state of bankruptcy; that it was powerless to continue the attempts at development and steam navigation undertaken four years before; the own confession of the company to the effect that it had engaged in a venture without knowing either its extent or its difficulties; the balance sheet presented at the meeting of the shareholders on May 30, 1890, showing liabilities three times as large as the assets; the necessity to go into liquidation, which in all languages means a complete paralysation of business operations; the company's schemes of becoming first an English, then a Belgian association, in search of new capital, the loan of which it was impossible to obtain in France; the sending to Caracas of Mr. Berthier, eager to obtain a new contract releasing the company in liquidation of the former contractual obligations, freeing the company of the suit then pending before the high Federal court and saving it from the wreck; there are, in fine, the last letters of Agent Berthier, in which, after losing all hope of making a new contract with the Government of Venezuela, he prepares the ground for a *large claim*, giving out as its main foundation, not denials of justice, which was an afterthought, but two facts which had just taken place on the Orinoco River and which in time *would give them considerable grounds*. The first was that the governor of the territory placed out of commission the steamer *Meta* by the dismounting of certain valves to prevent their capture by the revolutionists; and the second event was an armed attack against the small steamer, *which was on the point of being captured*. All this will be examined by the honorable umpire, who is to decide whether the sentence of the high Federal court of Venezuela ordering the resolution of the contracts and condemning the company to the payment of an indemnity, very small, however, to the Government of Venezuela, has no value, as claimed by the liquidators of the company, because it involves a denial of justice.

In connection with said sentence it only remains for me to analyse the facts which constitute the first of the causes of the good grounds for the indemnity claim before mentioned, which the author of the brief bases upon the dissimulations which altered the substance of the contract and permitted the Government of Venezuela to obtain the consent of the General Company of the Orinoco.

Maître Poincaré devotes this section to the boundary question between Venezuela and Colombia, which the King of Spain decided, as umpire, by the award published in the Gaceta de Madrid, March 17, 1891. This event has come to be the main stronghold of the General Company of the Orinoco, which has gone so far as to charge Venezuela with fraud in the contracts made with Miguel Tejera and Th. Delort, which were subsequently conveyed by them to the company. In my former brief I dealt with these singular pretensions, and I believe I have fully confuted all the assumptions and charges that Mr. Delort in the first place, and then the liquidators of the company, and finally Maître Poincaré, have pretended and still pretend to maintain against the different administrations of Venezuela, from Guzmán Blanco to Andueza Palacio alleging that the company was kept in ignorance of the question with Colombia involving a portion of the vast expanse of territory subject to the concession.

From the extensive discussion of the subject by Maître Poincaré I will note the following points:

The Venezuelan Government says now

(It is not the Venezuelan Government that says it, but the commissioner for

Venezuela in his opinion, page 31 — Opinion of the Venezuelan commissioner and supported by indisputable proof) —

the good faith in which Venezuela was possessing a certain belt of her territory, which was afterwards adjudicated by the umpire to the Republic of Colombia, relieves its Government of all responsibility in the concession under discussion, the object of which never was a definitive conveyance but the development of natural products in places where Venezuelan interests had already been created and the authorities of the country discharged their respective duties.

The following is from Maître Poincaré:

Entendons-nous. Il est possible que vis-à-vis de la Colombie le Vénézuéla ait été possesseur de bonne foi, en ce sens qu'il espérait obtenir gain de cause devant l'arbitre. Nous croyons volontiers que c'est là la raison du silence gardé par M. le Docteur Urbaneja, par M. Tejera et par le Général Guzmán Blanco.[1]

It is not only before Colombia that Venezuela has been a *bona fide* possessor, nor that it has been such because she expected to gain the point before the umpire. This last circumstance we do not find adopted in any positive legislation nor by any commentator on civil law as a determining condition of the possessor in good faith against the opposing party.

Let us see the award of the King of Spain as the *arbiter juris:*

Whereas the United States of Venezuela are the possessors in good faith of territories lying west of the Orinoco, Casiquiare, and the Rio Negro rivers, forming the boundaries on this side as assigned by the aforesaid " real cédula " of 1768 to the *province of Guiana,* and whereas there *exist in said lands numerous Venezuelan properties developed in the loyal belief that they lie in the domain of the United States of Venezuela,* * * * it is expressly assigned to Venezuela the *right of way* over the aforesaid road, it being understood that such easement shall cease twenty-five years after the publication of this award.

How does civil law define the *bona fide* possession? The possessor in good faith is he who possesses as an owner by virtue of a just title — that is to say, a title capable of conveying ownership even if the title is vitiated, provided such vitiation is unknown to the possessor. As a complement to such definition, civil law has established the following principles, which are a part of the substantive legislation of both France and Venezuela, to wit:

Good faith is always presumed and whoever alleges bad faith must prove that such exists.

It suffices that good faith existed at the time of the acquisition.

The *de facto* possession, when it is continued, uninterrupted, peaceful, public, unequivocal, and with the purpose to hold the thing as one's own, is also established by both civil and natural laws as a title of possession capable of conveyance, thirty years being sufficient between private individuals even in cases where there is no title. If Venezuela, who possessed in good faith the territories west of the Orinoco, Casiquiare, and Río Negro, and *there developed numerous properties in the loyal belief that they lie within its domain,* as formally alleged by the award of the King of Spain, at least since the date of the " real cédula " of May 5, 1768, establishing as the boundaries of the province of Guiana the rivers Orinoco, Casiquiare, and Río Negro, could not gain the point, notwith-

[1] Let us come to an understanding. It may be possible, that as far as Colombia is concerned, Venezuela has been a *bona fide* possessor in the sense, that Venezuela expected to gain her point before the umpire. We are willing to believe that such is the reason of the silence of Doctor Urbaneja, Mr. Tejera, and General Guzmán Blanco.

standing the fact of interrupted possession in good faith for over one hundred years of the disputed territories Venezuela has at least remained in the enjoyment *coram gentibus et nationibus* by the just award of the umpire the title of *bona fide* possessor of said territory, because she had established therein valuable properties and developed them in the loyal belief that she exercised over them immanent sovereignty.

After the preceding demonstration of facts, based upon indisputable documents, what is the weight of the following conclusion of Maître Poincaré?

Venezuela could not guarantee the company the peaceful possession of a territory under dispute. Thus she granted a thing which was tainted with a concealed vice, since it was doubtful whether it belonged to Venezuela, and she knew it.

By all these reasons *which belong both to the realm of natural as well as positive law*, Venezuela is liable to the General Company of the Orinoco. The latter must obtain the annulment of the *contract of concession* because of substantial errors and vice in the consent, and therefore is entitled to an indemnity for all the damages caused by such nullity.

Let us compare this conclusion with the statement made by Mr. Th. Delort, the company's representative, on September 20, 1888, in a letter addressed to the minister of fomento of Venezuela, who had asked him certain explanations, transcribing the following communication of the department of foreign relations of Venezuela:

SIR: The envoy extraordinary of the Republic of Colombia has lodged a complaint against the publication of a geographical chart and a report of the company of the upper Orinoco and Amazonas in which, while describing the *boundaries* of such possessions, *a vast expanse of the territory in dispute between the two countries* has been included as having been granted. In consequence thereof and in view of the necessity of examining the chart and report in reference, I beg to request that you send them to this office, if you have them in your department, and if not, I beg that you request from the representative of the company a report on whatever has been done in this matter, as well as the chart and report in question.

(Signed) YSTÚRIZ.

The statement of Mr. Delort in answer to said note and in reference to the *concealed vice* and *error in the consent* to which M. Poincaré refers, is as follows:

The company *is not ignorant* of the fact that the frontier between Venezuela and Colombia is in dispute, and submitted to the decision of the Government of Spain. *In consequence the company has no claim whatever to make in this respect and as the concession originated from the Venezuelan Government it (the company) is well aware that it must abide by the definitive boundaries* that may be fixed for this Republic. Up to the present the company has not extended its operations but to such points as are occupied by Venezuelan authorities; and the offices, warehouses, and dependencies are in Atures, Maipures, San Fernando, San Cárlos, and the Brazilian frontier and the steamers have *only navigated* on the Orinoco, Casiquiare, and Guainia.

(Signed) TH. DELORT.

Verba volant, scripta manent.

Maître Poincaré claims that that evidently important portion of the letter, as he states, was not *spontaneously* introduced in Mr. Delort's answer. So we have now that it is not the alleged *ignorance* in which the company was kept of the existence of the question between Colombia and Venezuela, as Mr. Delort declares that the company *was not ignorant* of such fact; it is not the *concealed vice* in the substance of the contract, since Mr. Delort himself states that the company has *no claims to make in this regard*, and finally, it is not *error in the consent*, because Mr. Delort avers that the company is well aware that it must accept the frontier which shall be definitively awarded to the Republic. The lack of spontaneity of such statements can not rob them of their intrinsic value.

Is it perchance spontaneously that the man caught in the very act of putting his hand into some one else's trunk — as in the case of the company, which in the map and report offered to the stockholders, when about to form the company, shows as her own definitive grant of land defining its boundaries a territory disputed by Venezuela and Colombia — confesses, when compelled to apologize, that appearances may be against him, but that he simply wanted to find out whether the trunk was empty? Whether spontaneous or not, the statements of M. Delort, in reference to his knowledge of the arbitration proceedings the ignorance of which was alleged and in regard to the fact that they had to abide by the consequences of the award and had *no claim* on this score, are decisive and cut short the handy boundary question between Venezuela and Colombia, on which the General Company of the Orinoco finds the grounds to pretend a large indemnity from the Venezuelan Government.

As a final statement on this point and not to leave unanswered a question of law to which M. Poincaré refers in his brief, that of the indemnification the vendor owes the vendee, the concessions being comparable from the standpoint of the obligations of the assignor to the sale of incorporeal rights, I will only say, admitting the common principle that the assignor is liable to the assignee, in assignments for a consideration for any indemnification growing out of concealed defects or faults in the thing assigned and for the peaceful possession of the thing sold or conveyed, which is a principle established in the Venezuelan Civil Code, that in the concessions made by the Government of Venezuela to Messrs. Miguel Tejera and Th. Delort, there are no concealed defects or vitiations, because, as such grants only dealt with the exploitation of mines and development of the natural products which lay within a certain belt of land, such operations have not offered nor could they offer any concealed defects or vice for which the grantor is responsible. And as regards the peaceful possession of the grant made with reference to the boundary question with Colombia, the grants do not fix any particular boundaries, but simply mention the territories of Upper (*Alto*) Orinoco and Amazonas in the first contract and the vacant lands lying between the eastern boundaries of the Federal territories Alto Orinoco, and Amazonas, and British Guiana, and between the Orinoco and the limits of Venezuela and Brazil.

The good faith declared in favor of Venezuela by the umpire, who decided the boundary dispute, in regard to that portion of the territory Venezuela was occupying with *animus domini* and the award fixing the boundary between both countries, establish as regards the extent of territory the development of which was the subject of the contracts, the condition *juris* between Venezuela and the grantees in the matter of the boundaries of the territories granted to be developed, which are only designated by their known names, without specifying their extent or their precise boundaries in the contracts under review.

On the other hand, the question of indemnification lies between the grantor or assignor and the grantee or assignee, and in the development contracts under discussion the assignors to the General Company of the Orinoco were Messrs. Miguel Tejera (a Venezuelan) and Th. Delort, who in turn had obtained such contracts from the Venezuelan Government. All questions relating to the concealed defects of the thing which was the subject of the contract or the lack of title of the vendor or assignor which may invalidate it grow out of the contract itself and at the very moment when such contract was made.

The Government of Venezuela never discussed with the General Company of the Orinoco the question of the development of the territories of Alto Orinoco and Amazonas. The stipulations to that effect in the respective contracts were agreed upon by the Venezuelan Government and Messrs. Tejera and Delort, and it is from said stipulations that the question dealing with the responsibility

of the contracting parties may originate. The General Company of the Orinoco could only claim from Messrs. Tejera and Delort, the assignors who made the transfer in favor of the syndicate, for a 40 and 20 per cent, respectively, of the amounts that might be paid out as dividends.

It is also worthy of notice that notwithstanding the knowledge the General Company of the Orinoco had of the boundary question before September 28, 1888, as evidenced by the above-mentioned letter from the company's representative, Mr. Delort, the company did not enter before the high Federal court in the proceedings had two years later for the rescission of the contracts any exceptions whatever growing out of the boundary question, nor advanced any claim against the grantors or assignors for a guarantee or liability. The case ended with the final judgment awarding the rescission of the contracts on October 14, 1891 — that is, seven months after the award of the King of Spain — and such declaration of rescission for failure of the assignee company to carry out the contracted obligations destroys or invalidates any importance the liability question may claim as affecting the Government of Venezuela.

Section II, Chapter II, of Maître Poincaré's brief deals with the failure on the part of Venezuela to execute her contractual obligations, a question which was examined in the action before the high Federal court of Venezuela, as it was one of the exceptions filed by Mr. Fiat, the company's representative, who answered the action for rescission. The company could establish nothing in favor of its claims, as shown by the minutes of the proceedings, and, quite to the contrary, the sentence passed adjudged that it appeared from the proceedings that the Government of Venezuela had fulfilled on its side all the obligations devolving upon the Government by virtue of the contracts in reference. The charges the counsel for the company accumulates in his brief against the Venezuelan Government are in their large majority foreign to the obligations entered upon by the Government as regards the grantees or concessionaries to allow them to carry out the development of the natural products and the mines lying within the territories in the contract mentioned by their names. Such exploitation and development operations were carried on by the assignee company, as far as their limited resources would allow, as shown by the documents submitted, and, if such operations were not favorable to the ends of the company, it was not the fault of the Venezuelan Government, but of the company, which accepted the execution of the obligations and agreements contained in the contracts, which absorbed, nobody knows how, considerable sums for administration and installation expenses and expensive and inefficient attempts to establish navigation on the upper Orinoco. The colossal scheme, as confessed in several documents by the representatives of the company, was undertaken without knowledge of its immense difficulties nor of the territory and river network which were to be the object of the improvements to be made in compensation for the development of the natural products and the monopoly of steam navigation on the river Orinoco and some of its affluents. The representatives of the company have tried to cast the blame for such want of knowledge and for the castles in the air built by the promoters of the company, Messrs. Miguel Tejera and Guzmán Blanco, because they did not show them in due time all the difficulties to be met later on in the execution of the contracted obligations. Such charges, however, do not affect in the least the responsibility of the Venezuelan Government, which had no dealings with the General Company of the Orinoco, nor was bound to make for the company the previous survey necessary to find out exactly which were the obligations contracted, or whether it was possible or not with the limited capital the company had to undertake and carry to a successful issue the vast plan of improvements which represented for the company, as compensation, the right

to develop the natural products, and to enjoy the monopoly of steam navigation through the network of the Orinoco rivers, when such was established in conformity with the contract. To such considerations we must add the fact that Mr. Miguel Tejera and M. Th. Delort were the promoters of the syndicate of the General Company of the Orinoco, setting aside for themselves 40 and 20 per cent, respectively, on the profits of the company as a compensation for their concessions.

Let us see how Maître Poincaré describes the combination:

> The beneficiary in the contract of December 17, 1885, Mr. Miguel Tejera, had close relations with General Guzmán Blanco. He had been connected with the general in several important business transactions, principally in the Carenero and the coinage deals, and without wishing to offend the memory of these gentlemen (both having died), it might be added that he (Tejera) passed as the figurehead (*prête-nom*) of General Guzmán Blanco.
>
> He could not under circumstances take personal charge of the Alto Orinoco scheme, so he immediately formed the means, if not to convey it to another grantee, at least to trust it, keeping to himself certain advantages in the hands of a French syndicate.
>
> It was thus that the syndicate of the Alto Orinoco was established in Paris in September, 1886.

Such candid confession plainly reveals the origin of the General Company of the Orinoco. It was the outcome of tacit understanding between the two grantors of the contract of December 17, 1885, wherein the grantee was the figurehead of the grantor, according to the statement of the representative and counsel for the company. Such crooked contract concealing material frauds, according to the representative and counsel already mentioned, was accepted by a financial organization, abandoning to the beneficiary 40 per cent of the profits. It is not necessary to be a financier to affirm that such organization was doomed to death from its inception, and that under the conditions of the deal and the contract the child of the combination, the General Company of the Orinoco, created one year and a half afterwards, or on March 10, 1888, could not possibly live. Legitimate business transactions can not prosper, unless in that pure atmosphere of credit and trust, which is only found in the road labor and capital follow, leading to wise management and legitimate though moderate gain. If Messrs. Tejera and Delort had appropriated to themselves, according to the statutes of the syndicate, 60 per cent of the profits, simply because they had transferred to the syndicate two written contracts without any positive value, could it be expected that French capitalists, who are as conservative as clever, would contribute to make up the business capital indispensable to the development of the scheme within its proper proportions? Undoubtedly it could not be so, and that is why the company, which could scarcely get together a capital of 1,500,000 francs, when it was established in March, 1888, had liabilities exceeding 800,000 francs, made up of a debt to the coinage association of 491,486 francs and another debt due M. Chauvelot, a member of the syndicate, of 300,000 francs, and for which 600,000 francs in unassessable stock were delivered to him. Under such circumstances the capital on hand to continue the colossal scheme was reduced when the company began operations to the amount of 400,000 francs. Two years later the company failed with liabilities amounting to 2,741,084.27 francs, *its credit being totally exhausted* (see report of liquidation), so that it was forcibly driven to go into liquidation on May 30, 1890. Such, and no other, could be the end of the company when the beginning was tainted.

I beg to submit to the honorable umpire with this additional opinion and an annexed portion of it an affidavit duly attested containing the deposition made

in Paris on June 6, 1903, by M. Joseph Hippolyte Andrau-Maural, a former representative and attorney in Venezuela for the General Company of the Orinoco, in liquidation from the latter part of 1890 until April, 1893.

Such affidavit contains, in confirmation of all the foregoing, the circumstances and the facts that have led the General Company of the Orinoco to its complete disorganization and the impossibility to continue to exist; and as a résumé of the causes which produced such results, the following may be transcribed:

> The scheme was neither well investigated nor seriously prepared, and was put into execution in the worst possible manner. The scheme fell fatally under the weight of universal reprobation, a bad financial position from the start, through reprehensible dealings and detestable management.

This affidavit is accompanied by several letters addressed to M. Andrau-Maural by M. Roux, liquidator of the company, and M. Delort, its general representative in Venezuela, relating to the liquidation operations of the pending transactions in the Orinoco region, and instructions to open with the Government of Venezuela negotiations for an indemnification. M. Delort, in his letter of November 25, 1891, states (that is, one month after the sentence of the high court had been passed adjudging the rescission of the contracts and condemning the company to the payment of a certain amount) in part, as follows:

> Third. The sentence of the high court has condemned the company to the payment of the sum of 40,048.62 bolivars, *which constitutes a new credit to be met by the liquidation.*
>
> Will the Government collect such sum? In such case it is necessary to answer immediately that the liquidation belongs in the first place to *the creditors recognized before the sentence was passed*, and thereupon to claim from the Government the amounts due to the company by the Departments of War and Navy. (See Planas's letters in the documents delivered to the legation and Richard's letters on the requisitions (seizures) of the *Libertad*, a small steamer, December, 1888, and January, 1889. A first seizure of the *Libertad* took place in November, 1888, to carry troops from Ciudad Bolívar to Guayana Vieja.)
>
> It is more than probable that, if the Government does not make a claim before the diplomatic reclamation is entered, it will do all that is possible to enter such claim afterwards. It is, then, an advantage *not to execute any liquidation operations* until the moment the claim is filed *so as not to put the Government on its guard*, as it may then pretend, because of its *credit* either to follow or else *to inspect* the liquidation operations.

Then follows a description of the assets of the liquidation in Venezuela, consisting, as stated, of the following:

1. Floating property.
2. Property in the warehouses.
3. All kinds of merchandise in stock.
4. Real property.
5. Furniture, writing materials, etc.
6. Animals, carts, wagons, etc.
7. The cattle ranch.
8. Bills for collection.

The same letter, further on, states:

> It is very difficult, almost impossible, to issue *a priori* instructions; it is necessary to follow the events and to know how to get the best out of them. It suffices to establish on the one hand the basis of the compromise, in case such may be agreed upon, and on the other hand the direction matters should take, in case the Venezuelan Government should be obstinate and not accept a friendly settlement.
>
> I. In case of compromise:
>
> In our position before the French legation we can not undertake to do anything without its consent from the moment the diplomatic claim has been entered.

(Such claim was never directly entered. It is now that it has been entered before the mixed commission, but not by the French Government directly.)

The letter of instructions further says:

It seems to me clear that the Government will do nothing and will hear nothing before such claim has been presented, that is, delivered.

Only in that case the Government would perhaps like to enter into a compromise. In that case, with whom shall the Government enter negotiations?

With the French legation it would be difficult (for the Government) to enter into a *scheme of underhand negotiations (tripotages) and clandestine commissions which are the basis of all transactions and the reason of all dealings.* This is why direct negotiations with the legation may very probably fail. But the men in power are too shrewd to make a mistake and they will probably try to negotiate directly or indirectly by any means with the representative of the company. In this case you must keep the legation, which will certainly not interfere, informed of all the negotiations.

To give the honorable umpire an idea of the methods employed to get a heavy indemnity, the foregoing paragraphs are quite sufficient.

As a further complement to this brief, I beg to submit another affidavit of the same gentleman, M. Andrau-Maural, stating which was the property the General Company of the Orinoco in liquidation was possessed of in the Orinoco region in 1891, when said Andrau-Maural was appointed as its representative. After that date two years elapsed in the condition expressed in the testimony bearing number 3, to which I have referred in this writing, as abandoned, left in the open, and exposed to the destructive action of the climate and the elements in such remote country. I conscientiously took into consideration the deterioration and natural loss suffered by the property and for whatever the Government of Venezuela might be responsible on account of the established seizure of a small portion of the property. I found the positive value of such to be sufficiently compensated with the sum of 40,448.62 bolivars, which the company in liquidation should have paid for damages according to the sentence of the high Federal court, besides costs of the action which the company was also condemned to pay.

For the reasons stated in my former brief and for the reasons I now state I maintain my opinion that the claim entered against the Government of Venezuela is totally unfounded and must be rejected.

NORTHFIELD, VT., *February 9, 1905.*

ADDITIONAL OPINION OF THE FRENCH COMMISSIONER

After having read the additional memoir of my honorable colleague I can only maintain the conclusions of the prior memoir. Faithful to the rule of conduct which I have traced for myself to remain within the field of impartiality which is suitable to an " arbitrator " (for that is the title which the protocol gives me) I shall not follow Doctor Paúl in the discussion which he engages with M. Poincaré, advocate of the plaintiff party. Besides, this would be useless, the umpire having in hand the two briefs, and being able as well as myself to form an opinion after having read them. I shall content myself then with presenting to the Hon. Mr. Plumley a few observations which are suggested to me by this additional memoir upon some points, foreign, however, in their very foundation, to the matter, but upon the subject of which I differ absolutely from the opinion of my honorable colleague. In the first place it is a question of the manner in which we have understood, my colleague and myself, the rôle of " arbitrators " which has been intrusted to us by our respective Governments. I have not at all wished to censure Doctor Paúl about the manner in

which he has understood his duties; he had, according to the protocol, the entire freedom to understand them as he has done. I have only wished to state to the umpire that I was not placed upon the same ground. I have insisted upon remaining an " arbitrator " and not to become the advocate of one of the parties; I have pronounced myself conscientiously with all impartiality, without being afraid to reject the pretensions which I found without foundation or exaggerated. It is because I have fixed for myself this line of conduct that I have not been able to give to my honorable colleague as he requests of me the " arguments " on which I base my ideas. An arbitral award, like an ordinary judgment, ought not and can not rest itself upon " arguments. " The arbitrator, like the judge, ought only to give the reasons which have convinced him and led to his decision, but in this particular case I have stated the reasons for my decision since I have said: [1]

> In failing in the obligations which it had assumed, in deceiving the company by its dissimulation which changed the substance of its agreements, and in interfering with the management of the concession by its vexations and abuses of power, the Venezuelan State has brought about the ruin of the company.

I did not think I had the power to say more. I have thought that in explaining thus my position I gave to my decisions an authority which they would not have had if I had supported as an advocate, the cause of the claimants as my colleague has sustained that of the Venezuelan Government. I have not bettered the arguments of the claimants; I have contented myself with weighing them. When I have accorded indemnities it is because I have considered these arguments acceptable. I have not furnished personal " arguments." I add that nothing prevented the Venezuelan Government, defendant, from imitating the claimants, plaintiffs; it could, in order to relieve its arbitrator from being at the same time its advocate, positions difficult to unite, have appointed special advocates in each case to produce documents and to call upon witnesses. It does not belong to me to seek for the reasons why it has not done so.

In the second place I maintain, in spite of the explanations given by my honorable colleague, that the phrase of the minutes " to see if it might be possible to arrive at an agreement " can not have any other sense than that which I have given it in my memoir. To refuse this would be the same as to declare that it has no sense, that which I can not admit. To arrive at an agreement after we have given opinions so diametrically opposite, it would be necessary that each of us grant concessions. On my side I would have to lessen the amount of the indemnity; on his side, Doctor Paúl would have to consent to accord one. In pronouncing this phrase, which he himself had inscribed in the minutes, my colleague then considered himself the possibility of according an indemnity to the company; there is no getting around it.

In the third place, I agree that Mr. Pietri, Venezuelan plenipotentiary had, like other plenipotentiaries, only powers " ad referendum." This does not avoid the fact that Mr. Pietri was a Venezuelan vested with high official character, and that, despite his well-known patriotism, despite the high functions with which his Government had honored him, despite his knowing the judgments of the high court condemning the company, Mr. Pietri recognized the right of the company to receive eight years ago an indemnity of 3,600,000 bolivars in gold. That is all I wish to establish.

The argument that my honorable colleague gathers from the refusal of Congress to ratify the diplomatic act signed by Mr. Pietri has in my opinion

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[1] *Supra*, p. 217.

no value. In fact, it is true, that, if instead of having been accorded by sentences of arbitral tribunals, the indemnities fixed by the umpires in the mixed commission had been the result of diplomatic agreements submitted to the ultimate ratification of Congress, the latter would have rejected them all as it rejected the Pietri-Hanotaux protocol; it is just because the claims of foreigners force Venezuela to such a plea in bar that it has been necessary to have recourse to arbitration, and in truth I do not think that one can demand of the elected representatives of a country who have to reckon with the legitimate susceptibility of national self-love that they condemn their own country with the impartiality and indifference which foreign umpires alone can show.

Then my honorable colleague maintains that it is the large amount of the indemnity accorded by the Pietri-Hanotaux protocol that prevented Congress from ratifying this act. I admit that willingly, but I ought to remark without insisting that there can be other reasons of which we are ignorant since the sitting of Congress in the course of which this protocol was examined was a secret session and no journal, so far as I know, has been published.

In the fourth place I ought to remark in the additional memoir of my honorable colleague, an interpretation of the protocol of February 19, 1902, entirely unexpected. Doctor Paúl maintains that the protocol of Paris and the protocols of Washington are not alike; that the first does not give the arbitral commission the same powers as the second. I find to the contrary that from the point of view of the extent of powers the protocol of Paris being less precise is by that very reason broader than the protocols of Washington.

As the protocol signed at Paris, February 19, 1902, the protocol signed at Washington, February 27, 1903, has suspended the application of the French-Venezuelan convention of 1885 which, during all the time that the effect of these two protocols remain in force, is a dead letter. Both to an equal degree have been exceptions to common law represented by this convention, which has regained its force only when the operations are ended of an exceptional order provided by the protocols. Only while the protocol of Paris announced this evident truth, the protocol of Washington considered it as so evident that it did not think it necessary to speak of it. To uphold the contrary would be to maintain that the protocol of Washington abrogated forever the convention of 1885, that which would not be the business of the Venezuelan Government, would not displease the French inhabiting Venezuela, who consider that this convention of 1885 deprives them of the effective protection of their legation.

This sentence

> it is understood that this procedure * * * is instituted only as an exceptional act and does not invalidate the convention of November 26, 1886,

signifies that as soon as the protocol of 1902, which, having created a procedure of exceptional arbitration, shall have brought forth all its effects, the convention of 1885 will remain the only convention in force between the two high contracting parties. To give any other sense to this phrase and to make it say that the said convention is opposed to the protocol while the latter is in application is to put the protocol in opposition to itself and to take from it every kind of significance. Then, like the commission appointed by the protocol of Washington, like the arbitral tribunal which rendered its award on the Fabiani affair at Berne, and based it upon denials of justice imputable to the Venezuelan tribunals of all grades, this commission has full powers to examine all the judgments rendered by all the Venezuelan tribunals, and to accord indemnities if it finds that there have been denials of justice. To adopt any other interpretation, as my honorable colleague has done, refusing to this commission the power to review a judgment of the high Federal court, would be to take away

from the protocol of Paris its efficiency, which protocol has for a purpose to correct failures of Venezuelan justice. There can not be the shadow of a doubt of this, and in the course of our labors at Caracas my colleague admitted it himself when he consented to accord an indemnity to the claimant Mr. Rogé, who had been unduly condemned by a Venezuelan tribunal.

In the last place I am obliged to give my idea of one of the dossiers which my honorable colleague has joined to his additional memoir. This dossier represented by papers forwarded by Mr. Andrau Moral was handed to me to-day, February 10, for the first time. I have the right to ask myself what are the reasons which have led this former representative of the company thus to betray the company which he formerly served. Has Mr. Andrau Moral been guided only by the love of truth and the search for justice? Does not his treason result, rather, from positive advantages upon the nature of which I can not insist? Or, indeed, is it the manifestation of a hostility which might have for its foundation the refusal of the company to pay certain sums to the interested party, or the manner in which the latter may have thanked him for his services? Of these three reasons, which is the one which has induced Mr. Andrau Moral to take such a step for the purpose of injuring the company? I have not the means of information sufficient to be well informed. So I can only ask the umpire to kindly wait, before taking into consideration the statements of Mr. Andrau Moral, giving no value whatever to his insinuations, the arrival of information which I have demanded from Paris by telegraph upon the integrity of this person thus appearing at the last moment and upon the conditions under which he left the service of the company. On the nature of this information will depend the credit which is suitable to attach to his statements. As for the letters of Mr. Delort joined in the original to the factum of Mr. Andrau Moral we can see only the manifestation of the desire of the company to settle this claim by a compromise which Mr. Delort with his experience of men and things in Venezuela thought only possible after a diplomatic action should have been engaged in. Besides, the letter of Mr. Delort, referred to by my colleague, if anyone wishes to read it from first to last and not to consider it as an extract, is not intended in truth to edify one with regard to the habits of the " men in power " in Venezuela, but it is in no way of a nature to spread doubts upon the right of the company to receive the indemnity which I persist in considering as due it.

NORTHFIELD, *February 10, 1905.*

EXHIBIT TO THE FOREGOING OPINION

Reverting to the " P. S." joined to my memoir sent to the umpire to explain my opinion on the claim of the Company General of the Orinoco, I have the honor to remit to the Hon. Mr. Plumley the following telegram, which I received this day from Mr. Delort. I translate it from the telegraphic style to facilitate the reading.

PARIS, *February 13, 1905.*

I became acquainted with Mr. Andrau Moral at Caracas in 1880. He asked me for employment. The minister of France, Mr. de Tallenay, gave me, as information, that he had been obliged to leave the French army for misdemeanor. He then came to seek his fortune at the mines of Callao, married at Ciudad Bolívar, entered the company of the Orinoco in 1891, being chosen by the agent of the company at Ciudad Bolívar without the director of the company at Paris being informed, to take command of the boat *Libertad*, which he lost the same year in a strange manner. I found him at Caracas in October, 1891, and his relations represented him as the representative of the liquidation during a very short time. He demanded money continually and was a very active agent for the claim against the Venezuelan Government. We do not then understand his protest. In 1893 he received the order of the liquidators to transmit his power and documents to Mr. Maninat, a new representative. He left the company, taking away impor-

tant pieces from the dossier and was sent from Venezuela in 1893 by President Crespo for an act of indelicacy notoriously well known. He came to Paris to ask me for a loan and forgot to pay me. I have not seen him since and the liquidators remain without news from him. His protest without right, value, or reason is an infamous and inexcusable act. Wait the dossier which we are forwarding you and which will furnish proofs. Please send copy of the protestation.

(Signed) DELORT.

When the dossier mentioned reaches me, I will present it as a second annex to my memoir after having shown it to my honorable colleague.

E. DE PERETTI DE LA ROCCA.

NORTHFIELD, *February 13, 1905.*

The French arbitrator has the honor to remit to the umpire a dossier of twelve exhibits which has just been sent to him by the Company General of the Orinoco in view of destroying the effect which may have been produced by the protestation of Mr. Andrau Moral remitted by the Venezuelan arbitrator. It will be enough for Mr. Plumley to read the letter of Mr. Andrau Moral of the date of June 19, 1893, and to compare it with his letter of 1904 to take account of the authority which the declarations of this person may have that the company seems justified in accusing him of having written his protestation for money. In fact the 19th of June, 1893, Mr. Andrau Moral wrote to the liquidators of the company:

"I put myself at your disposal for the steps to be taken to obtain from the Government the support which is necessary for the liquidation to bring to a head the legitimate claims against Venezuela."

As for the letter of Mr. Delort of November 25, 1891, which my colleague tries to use as a weapon against the company, I will remark to Mr. Plumley that the company itself produces a copy of it in the support of this claim. I maintain that there has not been any line of this letter from which one can raise an argument against the legitimacy of the claim in question.

NORTHFIELD, *March 1, 1905.* E. DE PERETTI DE LA ROCCA.

NOTE WITH REGARD TO M. ANDRAU MORAL FOR M. DE PERETTI DE LA ROCCA

On his arrival in Caracas, October 25, 1891, he, M. Delort, was received by M. Andrau Moral, and great was his surprise for he believed him to be on the Orinoco on board the *Libertad,* which he commanded. He was ignorant in fact of the loss of this steamer of which he had not yet received the news on his departure from France. M. Andrau Moral was not unknown to M. Delort of whom he had asked, in 1880, to be appointed on the mission which the Messrs. Perière had sent to Venezuela to study the resources of this country and the business enterprises which might succeed there.

M. Delort had been placed at the head of this mission. In the programme of the investigation were included the four mines of Callao and M. Andrau Moral had come from Callao, where he had been employed, to Caracas to offer his services, but the information gained with regard to him by the Marquis de Tallenay, chargé d'affaires of France in Venezuela, prevented the acceptance of these offers. M. de Tallenay informed M. Delort that M. Andrau Moral had been obliged to leave the French army for misdemeanor. In 1883 M. Delort ran across M. Andrau Moral at Panama, where he was in the employ of the Inter-Oceanic Canal, and since that time he had not seen him. After the failure of the enterprise of the canal, M. Andrau Moral had come back to Ciudad Bolívar, where he had married a Venezuelan girl in 1879. He obtained, in 1891, from the agent of the Company General of the Orinoco in liquidation, M. Boulissière, the command of the steamer *Libertad.* M. Boulissière did not inform the people at Paris of this nomination, so that the liquidators found it out only through the report of the said agent relative to an attack on this steamer in April, 1891, by the armed bands of Valentini Perez.

After the loss of the *Libertad* in August M. Andrau Moral had come back to Caracas. He explained to M. Delort that going up the Orinoco August 6, at 5.15 in the morning at about 8 miles from Buenavista, the *Libertad* had encountered a squall from the east so violent that the steamer had capsized in a moment and

was wrecked by the explosion of the boiler a moment later. It was a great loss to the company, the steamer having cost a hundred thousand francs. At any other time M. Delort would have wished to make an investigation with regard to the responsibility of M. Andrau Moral in the loss of the said steamer of which he was the captain; but he was so preoccupied with the situation that the judgment of the high court, rendered October 14, 1891, was going to cause to the liquidation of the company that he laid aside this investigation for the time. He had taken counsel of the advocates of the company as to the measures to be taken and as the latter saw no other action possible than a claim through diplomatic means, it was necessary to prepare this by evidence for the chargé d'affaires of France at Caracas, M. de Lacvivier. M. Andrau Moral was at that time on excellent terms with the said chargé d'affaires. He offered M. Delort to aid him in his work which he was rushing as much as possible in order to return to Paris where his presence was necessary. It was necessary to be acquainted with Venezuela and Caracas to understand the position in which M. Delort was placed. The president, Dr. Andueza Palacio, whom he knew very well and for whom he had even had the opportunity to render a service some years before when he was in a precarious position, refused to receive him, and the ministers followed his example. The representative of the liquidation, M. Fiat, who had become an employee of the Government, had handed in his resignation and wished to withdraw through fear of compromising himself. For M. Delort personally, it was all right, but it was not necessary that he should speak of the Orinoco. No merchant would have accepted the representation of the company through fear of the Government. In such circumstances M. Delort was well pleased at finding in M. Andrau Moral a person who did not fear to compromise himself in openly supporting the company, and as M. Delort did not wish to remain at Caracas more than one month he had with the said Andrau Moral the advantage of the man already acquainted with the affair and being able to prosecute it effectively with the French legation where he was very well regarded. M. Delort then thought no more about an investigation with regard to the loss of the *Libertad*. He considered the faults of youth as peccadillos to be forgotten, and he prepared M. Andrau Moral to continue in the business of which he had laid the foundation.

Moreover, M. de Lacvivier encouraged M. Delort in this respect. On going away the latter left to M. Andrau Moral the instructions of which a copy is here attached, but not wishing, however, to invest him with powers of attorney without the approbation of the liquidator, M. Roux, he remitted in blank the said powers to the legation of France, awaiting the decision of the liquidator.

M. Andrau Moral was known to Doctor Urbaneja, legal counsel of the company, whose advice he was to follow. M. Delort went back to France and arrived in Paris the 15th of December. He had to explain first the situation of the company in Venezuela and the liquidator wished to call a meeting of the stockholders to explain it to them. M. Delort had brought to M. Roux a letter from M. Andrau Moral, dated November 15, offering him his services, a copy of the reply of M. Roux dated the 24th of December, 1891, being annexed. M. Andrau Moral wrote again to the liquidator offering once more his services, dated the 17th of November.

January 5 M. Roux telegraphed to M. Andrau Moral that he agreed to give him the powers of attorney. M. Andrau Moral wrote to M. Delort the 5th of January a letter to be forwarded to the liquidator, in which he declared that he would demand payment of a regular salary and otherwise he spoke of accepting other offers which were made him. M. Roux replied to him by a first letter of the 25th of January and then by a second letter. As a result of this correspondence M. Andrau Moral had represented the liquidation provisionally from the date of the departure of M. Delort the 15th of November, to January 5, 1892, and officially from January 5, 1892, to February 25, 1892, on which date he received the letter informing him that M. Maninat had been selected and that he was to turn over his powers to him.

But M. Maninat to whom they had written at the same time to represent the company, did not put himself forward in this affair, at this time, made no reply, and took no steps with M. Andrau Moral who continued to represent the company *voluntarily*, but he had really nothing to do. Affairs remained thus during the

whole year of 1892, which was exceedingly troublesome in Venezuela because of the civil war, the fall of Doctor Palacio, and the final victory of General Crespo. M. Maninat had come to France toward the close of 1892 and they had prevailed upon him to accept the power of attorney of the company. A letter was written to him, of which a copy is added. M. Maninat on his arrival at Caracas went to the legation to demand the dossier of the documents relative to the claims of the Company General of the Orinoco in liquidation. He was then informed that M. Andrau Moral had taken possession of some important exhibits and had gone away without returning them, and of this act M. Maninat informed those at Paris. M. Delort demanded these documents of M. Andrau Moral, who replied that he had left them with his cousin Mathew Valery, at La Guaira. M. Delort then communicated with this said Valery who pretended to have sent them back again to M. Andrau Moral and sent a letter herewith attached, a copy of which was transmitted to M. Andrau Moral who declared that the agent of the post in question had remitted nothing to him.

Finally M. Andrau Moral has restored nothing. M. Andrau Moral was without personal resources and he expected to receive regularly from the liquidator a monthly allowance which would permit him to live. He complained much because the liquidator, M. Roux, had not wished to assist him. But at this time the liquidation had some heavy expenses to meet in regulating other affairs more important than a salary to M. Andrau Moral. On the other hand, the dossier of the company ought first of all to have been examined at the ministry of foreign affairs. There was really nothing to be done at Caracas, as M. Andrau Moral himself knew. They did not see under these conditions the necessity of paying him, and the offer which M. Roux had made him, placing to his credit some settlements to be made later, was a gratuitous kindness. Nevertheless he drew several checks upon M. Roux and M. Delort, together 2,500 francs, drafts which were paid. That could not continue and M. Delort urged him while waiting to take some employment. M. Andrau Moral had been able to win the good will of M. de Monclar, so that he got him the appointment of consular agent of France at La Guaira, to which he added the consular agency of Colombia in this same port. So in this manner he found the means of existence. Unfortunately he had many political friendships and in this time of troubles, of expulsions and of flight she aided in the flight of certain compromised men. M. de Monclar did not pardon him for this fault and had him replaced. He then went to ask M. Orsi de Monbello to take him into his business in order to help him to get a living. M. Orsi de Monbello was in high favor of General Crespo, who placed him in charge of certain works, for which he was paid in advance to a certain amount, which is not common in Venezuela. M. Andrau Moral, who was notorious at Caracas, got rid of part of these advances for him, and General Crespo learning about it sent him out of Venezuela, causing him to embark officially at La Guaira. M. Andrau Moral came to Paris. This was in April, 1893. M. Delort welcomed him kindly and aided him so far as he could in his plans, which he continued to pursue. M. Roux also welcomed him and remitted to him what he could. But the question of money always being the main thing, M. Andrau Moral drew upon M. Roux from Ajaccio, where he had gone. M. Roux refused to accept and then received a letter of regular blackmail.

But M. Andrau Moral changed his mind, and June 18, 1893, he wrote to the liquidators, again offering them his services, but this time for proceedings to be made at the ministry of foreign affairs, where he pretended to have influence powerful enough to act and to bring to a successful end the legitimate claims of the liquidations in Venezuela. And it is after such a letter that M. Andrau Moral protests against the claims of the Company General of the Orinoco.

The liquidators of the company heard nothing further from M. Andrau Moral after this letter of June 18, 1893, and M. Delort has had no news from him since 1896. How, under these conditions, could M. Andrau Moral make a protest and to what end? It can not be for the remainder of the credit which he may have upon the liquidation, for it is to that alone that he ought to have addressed himself. He has no cause of complaint against the liquidation nor against M. Delort; however the protestation which he has made has for an end to injure the liquidation and

M. Delort; but, then, what object was he pursuing? M. Andrau Moral is not a man to act without interest, and for him interest is money.

That is why his action aside from its lack of right, value, and reason is contemptible and can only place in confusion those who search to use it, making in a way a common cause with him.

TH. DELORT.

PARIS, *February 17, 1905.*

OPINION OF THE UMPIRE

The liquidators of the Company General of the Orinoco, a French company, presented their claim through the Government of France before this honorable commission at its sitting in Caracas in 1903, claiming indemnity in the sum of 7,616,098.62 francs of date July 10, 1902.

The claim having received the careful consideration of the honorable commissioners, they found themselves in serious disagreement, the honorable commissioner for France deeming it just that there be awarded the liquidators the sum of 7,000,000 francs, while the honorable commissioner for Venezuela refused them any sum. The claim was therefore reserved for the consideration of the umpire, to whom it was presented at the sitting of the commission at Northfield on the 13th day of February last.

Nothing is in controversy but the merits of the claim.

It arises out of two concessions granted by the respondent Government. The earlier was to Miguel Tejera, a Venezuelan, through Gen. Guzmán Blanco, plenipotentiary of the Republic of Venezuela, at Paris, France, on the 17th day of December, 1885, and was approved by the Congress of the conceding Government May 21, 1886, made executory May 24, and published in the Official Gazette of June 5 of the same year. The other was from the respondent Government to Theodore Delort, made at Caracas April 1, 1887. It was approved by the Federal council, later by the national Congress, May 26, 1887, became executory May 31, and was promulgated June 13 of the same year.

The concession to Miguel Tejera was contained in fifteen articles and comprised certain valuable privileges to and certain compensatory requirements of him in substance as next hereinafter stated. To the concessionary was granted the exclusive right to exploit all the mineral and vegetable productions of the territories of Upper Orinoco and Amazonas; to construct railroads, telegraph lines, and canals, such as he might think suitable for the development of the territories and the expansion of the enterprise, giving notice always to the national Government of the time when such works were to be commenced and submitting to the Government the plans thereof; the free importation of all material, implements, and instruments necessary for the construction and maintenance of the railroads and their equipments and the boats and their equipments; a rebate of 10 per cent from the regular customs duties on all other imports by the concessionary; the ownership in fee of all lands occupied by the concessionary for farms, pasturage, or industrial purposes; 6 hectares of land in fee to the concessionary for each immigrant introduced into the said territories as provided for in said concession, the same in all cases to be taken out of Government lands; immunity to the enterprise from any and every impost or contribution to or for Governmental support; right of navigation of the lower Orinoco and of exit or entry for his boats by the canal Macareo; that during the term of the concession the Federal Government was not to treat with any other person or company for the exploitation of mineral or vegetable products, steam navigation, and railroads, these being declared to be the basis of the contract; the privilege of assigning the concession in whole or in part to any other person, persons, or company, limited only to giving notice

of such transfer and assignment to the Government of the Republic; the concession to continue for thirty-five years from the date of its ratification; at the expiration of this time all railroads of more than 10 kilometers constructed by the enterprise, all lines acquired by the enterprise, and all mines exploited by it were to continue to be its property until the end of ninety-nine years from the date of ratification.

The obligations imposed upon the concessionary by the terms of the contract were in substance these:

To construct narrow-gauge railroads around the rapids of the Atures and the Maipures in the Orinoco, the construction to be commenced within eight months, counting from the date on which the ratification of this contract should be communicated to the concessionary; to establish steam navigation on the upper Orinoco, the Casiquiare, and the Rio Negro, the first boat to be in those waters within six months, counting from the date when the construction of the railroad should be begun; to introduce at his own expense into the said Territories an annual number of immigrants not less than 500; to erect a building for a school and a chapel in each of the new villages which should be founded at his expense; to construct at his expense two barracks suitable to accommodate 200 men each, one of which should be near the frontier of Colombia and the other in the neighborhood of the Brazilian frontier, both at points which should be selected by the Federal Government and for whose approbation the plans were to be submitted; to introduce into the said Territories at least three Catholic missionaries each year during a period of ten years; to support at his expense, at the most suitable places, hospitals and pharmacies for the assistance of the natives and immigrants who might fall sick in the work of the enterprise; to pay to the national Government during the existence of this contract the sum of 40 bolivars for each 46 kilograms of india rubber which should be exported to a foreign country; to send a scientific commission to explore the two Territories and to communicate to the Government the result of its labors; to maintain at his expense a body of police for the protection of his works, the chief to be appointed by the Federal Government; to proceed to the exploitation of the vegetable materials in such manner that the natural plantations existing might be preserved in good condition; to be responsible for the trees which might be destroyed in the exploitation of the india rubber and that he improve and benefit these natural plantations; to yield up to the Government all the property of the enterprise, which was to become the property of the nation, at the expiration of the general term of thirty-five years, excepting the properties named heretofore, which, under the privileges of the concession, were to belong to the company; to permit that all differences and controversies, which the carrying out of the concession might cause, should be resolved by the tribunals of the Republic conformably to its laws.

The enterprise contemplated by the Government of the Republic and by the concession was indeed colossal.

The two territories included in the concession had an area, as stated by Mr. Tejera, of 600,000 square kilometers. It was understood to contain vast and fertile plains, forests covered with wood, rare and rich; extensive mines of gold and silver; other metals and precious stones, and for immediate exportation and profit great quantities of india rubber, sarrapia, and oil of copaiba. The Orinoco, 2,000 miles long, received within these Territories its largest tributaries, and with these, above the Maipures rapids, had thousands of miles of navigable waters, extending west, east, and south, and beyond the boundaries of Venezuela. It was a land little known by the world at large, but it bore the charm of great attributed wealth of vegetable and mineral products, the exclusive exploitation of which passed to the concessionary by the terms of the contract.

From the map of Venezuela, as then constituted, the Orinoco and its eastern confluents were all within the domain of Venezuela, while important sections of the western affluents lay likewise within the Republic and under its control. The concessionary saw in these facts far-reaching opportunities for exclusive navigation over many waters and through immense regions, and there came to him visions, not fanciful, of giant fortunes. There was, however, little genuine knowledge of these Territories; they were largely unexplored and in detail unknown. It afterwards appeared that the population had been decreasing for some time through different causes, and many villages once fairly populous were reduced to very few inhabitants. The rapids, which it was the plan of this concession to avoid by means of railroads, had been the sufficient cause both of the ignorance of the outside world concerning lands lying beyond them and of a paucity of inhabitants, of enterprise, and of improvements therein.

The conditions peculiar to a tropical country had added to the usual factors making early explorations and investigations dependent exclusively upon waterways. The rapids had cut off approach from the north to the upper Orinoco, as well as descent therefrom. The Casiquiare joined together the Amazon and the Orinoco, and by this means the sea could be reached with freight carrying traffic from these Territories, and it was the only way by which the Territories had been open to navigation. It was only foresight and patriotism which suggested the plan proposed in the concession to unite these separated sections of Venezuela by means of steamboats and railways on and by the Orinoco.

While the enterprise promised much to its promoters financially, it bade fair to be of untold value to the Republic of Venezuela.

A French syndicate was formed September 1, 1886, to take over this concession, which was merged in the Company General of the Orinoco. This company was organized at Paris, France, March 28, 1887, with a capital of 1,500,000 francs, composed of 3,000 shares of 500 francs each. This company became the legal assignee of the concession of December 17, 1885.

April 1, 1887, at Caracas, the Government of Venezuela entered into a contract with Theodore Delort, a French citizen, for the exclusive exploitation of sarrapia for a term of twenty-five years within the Government lands which are included between the eastern boundaries of the Federal Territories of Upper Orinoco and Amazonas and British Guiana and between the Orinoco and the Venezuelan-Brazilian frontier.

In addition to the provision concerning sarrapia there was granted by the Government the right to construct railroads and telegraph lines wherever deemed necessary for the development of its works and to establish rates of transportation subject to the approval of the Government; to become the proprietor in fee of the lands occupied by these establishments; to receive in fee one hectare of land for each immigrant introduced; to import free of duty all materials, machinery, and tools necessary for the exploitation of sarrapia and for the construction of steamers, houses, railroads, and telegraph lines; the right to cut in the national forests the wood and timber to be used in all such constructions; to have all these privileges exclusively during the term of the concession; to have the unlimited right to assignment or transfer of said contract by simply advising the Government thereof.

In return for these privileges there were certain compensatory obligations resting upon the concessionary in said contract, such as that Mr. Delort was to organize a company with sufficient capital to carry on the exploitation named; also imposing these duties — to pay the National Government in specie 50 bolivars for each kilogram of sarrapia which should be exported; to introduce at the expense of the concessionary immigrants to colonize the

Territories in which the exploitation of sarrapia was to take place; to establish hospitals and pharmacies sufficient for the immigrants and workmen who might fall sick; to introduce Catholic missionaries to catechise the natives of the Territories where the exploitation was to take place; to establish steam navigation on the principal branches of the Orinoco where it was possible within the Territories included in the contract; to carry on the exploitation of sarrapia in such a manner as to keep in good condition the existing plantations; to transmit gratuitously postal correspondence.

This contract was also taken over by the Company General of the Orinoco, and it became the lawful assignee thereof.

Of both these assignments to the Company General of the Orinoco the respondent Government had due and sufficient notice and advices.

Prior to the organization of the Company General of the Orinoco the syndicate heretofore referred to did much toward preparing the way for performing the duties and gaining the privileges of the concession; but immediately following the organization of the company the enterprise was pressed faithfully and with measurable success. Unexpected difficulties and obstacles were met and overcome so far as the conditions would permit. Steamboats were placed on the lower Orinoco for navigation between Ciudad Bolívar and the Atures; between the rapids of the Atures and the Maipures and above the upper falls for the service of the upper Orinoco. By May 2, 1887, regular communication had been established between Atures and Ciudad Bolívar, the trip down taking five days and the trip up about ten. By the latter part of 1887 the boats on the upper Orinoco were plying between San Fernando de Atabapo and Maipures with reasonable regularity, accomplishing the service in about twelve days from San Fernando to Ciudad Bolívar, where before it had taken three months. The distance from Ciudad Bolívar to Atures is about 900 kilometers, and from Atures to Maipures is about 60 kilometers, and from Maipures to San Fernando de Atabapo is about 400 kilometers.

The discovery of two rapids between the Atures and the Maipures, not named in the contract and apparently not known, practically negatived the idea of a successful scheme consisting solely of two narrow-gage railroads of about 10 miles each, one passing by the lower and the other by the upper rapids with carriage by boats between these two points, as was contemplated by both parties to the concession. It was essential to a wise issue that there be one railroad only of sufficient length to include both rapids, built at such distances from the river as the topography of the adjacent territory required. This would necessitate the crossing of wide and deep rivers, affluents of the Orinoco, and would entail expensive bridges and viaducts.

Such railway would cover a distance of 60 kilometers. One feature of the Orinoco not understood by either party to the concession, as it would seem, was the mighty flow of waters in a certain part of the season, reaching forty feet in height above low-water mark and inundating the country for leagues, especially on its western side, with a corresponding paucity of the waters during the opposing season. The successful navigation of the Orinoco was seriously impaired by these facts in the matter of accessible ports and towns of stable and organized character and by the lack in parts of a sufficient depth of water at its lowest ebb for the passage of such boats as the general condition of navigation in the upper Orinoco seemed to demand. It also prevented the railroads, which by the terms of the concession were to be built around the upper and lower rapids, from being located near the banks of the river as they existed in the ordinary flow.

A temporary railway was constructed around the lower rapids on the right and around the upper rapids on the left of the Orinoco in order to lift the

steamers overland and to points where they could be again placed upon the river for purposes of navigation between the rapids and above. By this means steam navigation was established on the upper Orinoco.

These railways were built and used for no other purpose. They could not be permanently maintained at these places because the annual floods would lay them deep beneath the waters.

Instead, pending the building of a satisfactory railroad line, cart roads were built around each of the rapids; carts, mules, and other draft animals were secured and maintained, and in this way and by these means and by the aid of an adequate ferry upon the Cataniapo, and by a raft upon the Tuparo, the products from the Territories were carried by the rapids and taken up by the steamers in the lower Orinoco, and similarly transportation was effected from the lower to the upper Orinoco. It was not transportation by railroads around the rapids, but it linked together steam navigation on the Orinoco and opened up the Territories of the Upper Orinoco and Amazonas and this outer world by way of northern Venezuela.

Important steps in the construction of the railroads were taken and while in fair progress the work was interrupted and prevented by serious inundations covering quite a period of time.

During the years 1887-'8 the company entered upon the construction of a railroad from the mouth of the Cano Meta to the Rio Ventuario above the great rapids, uniting the Caura with the upper Orinoco. The progress of this work was interrupted when twelve leagues had been completed by the impressment of the workmen, under order of the Government of Caura, to be used as troops in the defense of the Government against the revolution. The work thus interrupted was never completed.

Contrary to the early expectations of the projectors of the enterprise, it was impossible to obtain the requisite labor in the country where the work was to be performed, and it became necessary to obtain workmen from Ciudad Bolívar and even from Trinidad.

In the Upper Orinoco a census of all the workmen, including men, women, and children, did not exceed one thousand.

Stations and depots were duly established by the company at Punta Brava, at the mouth of the Caura, at the ports of Perico, Salvajito, Atures, Maipures, Vichada, San Fernando de Atabapo, San Cárlos, and at the Brazilian frontier; storehouses, workshops, and supplies were at the stations Atures and Maipures; there were pharmacies at all the stations centralized at Puerto Perico; there was a chapel and home for the priest at San Fernando de Atabapo. The company also established herding and agriculture at La Vichada.

The flora of the territories was carefully studied and reported upon by Doctor Gaillard, a distinguished expert, the result of his investigations being printed in two volumes and presented to the Venezuelan Government. Explorations were made on the rivers Vichada, Guaviare, Inirida, Ventuario, Atabapo, Guainia, and the Casiquiare.

When the steamers were all placed as used in the enterprise of the company, there were the *Libertad*, *Caroni*, *Caura*, and the *Maipire* for navigation between Ciudad Bolívar and the lower rapids; the *Meta* and *Maipures* between the rapids; the *Atures*, *Naroa*, *Eva*, and *San Fernando* for the traffic of the upper Orinoco, of which steamers the first two made occasional trips to the Brazilian frontier and on the river Atabapo as far as Javita when the condition of water permitted. By means of the boats between the rapids the journey, which formerly occupied three or four days, was accomplished by them in six hours.

The company made careful reports of its proceedings annually, in 1888, 1889, and 1890, and these reports were furnished to the Venezuelan ministers

of public works and of fomento, so that they were fully advised of the doings of the enterprise.

Agencies were established by the company at San Fernando de Atabapo, San Cárlos, and at the Brazilian frontier.

During the earlier stages of the enterprise it depended for information, to a large degree, upon its assignor, Mr. Tejera, who, in addition to a familiarity with the general characteristics of the country, gained in his department of minister of public works of the Republic of Venezuela, had paid official visits to the parts involved in this concession. Much of his information must have been obtained at second hand, after all, for it was seriously inexact and proved so misleading as to be very expensive to the company.

Experience gave the enterprise to know that in the upper part of the Orinoco its banks and the banks of the Casiquiare and of the Atabapo were completely inundated during the seasons of high water, which extended over a period of four or five months and attained a very serious maximum every ten or twelve years. As a result they are uninhabitable, except at certain elevated points, and the distance between these points is sometimes as great as 200 kilometers. The company found the native population very much scattered and established at places in the interior both above and beyond the reach of the annual floods. It was also learned that there was no agriculture and no live stock; that even to sustain life in these regions was difficult and many died of hunger.

The annual production of rubber in these Territories at the beginning of the exploitation of the Orinoco did not exceed 40 tons. There were also 50 to 60 quintals of copaiba oil and a few tons of piassava, although in the interior there were great opportunities for obtaining much larger products of all these, the development of which was a part of the plan and the hope of the company.

Except at Atures with three families and Maipures with one family there was no village upon the banks of the Orinoco from Cariben to San Fernando de Atabapo.

In February, 1889, application was made by the manager of the enterprise to the minister of fomento for lands which had been visited and selected on which to place the immigrants who were expected in a few months. It was explained in this communication that any earlier bringing of immigrants had been impossible, since the company's means of transportation had been inadequate to supply their needs, as everything on which they were to subsist at first must be brought into the country. The lands selected and applied for were situated opposite San Fernando de Atabapo. No reply was received to this application.

In the early part of the year 1889, 370 head of live stock were obtained in Buena Vista and were sent across the savannas to the Vichada, where, as has been previously stated, an *hato* had been established.

The necessity of building one railroad of 60 kilometers to go round the four rapids was fully developed to the national Government by the manager of the enterprise as early as February 4, 1889. A statement of the probable expense was given at the same time and the proposition was made to the Government that a 7 per cent guarantee be made to secure its construction. The estimated cost was 60,000 francs to each kilometer. No reply was made by the national authorities.

For the two years of 1888 and 1889 the company had a regular monthly service from Ciudad Bolívar to San Fernando de Atabapo, and without accident carried every paying passenger who offered himself for transportation. In 1888 General Silva, governor of the Territories Upper Orinoco and Amazonas, with his general secretary and a large staff, went from Ciudad Bolívar to San Fernando de Atabapo to take up his office under the national Govern-

ment in the boats of the company, taking with him also his troops, thirty soldiers, his baggage, and his provisions; similarly General Silva descended the Orinoco in 1889, and General Cabellero, receiving his appointment as governor to succeed General Silva, went from Ciudad Bolívar to the capital of these Territories in the boats of the company; later he came down on leave in these boats and again went back to his post in the same way, the company receiving no compensation for all the service above stated.

It was the universal custom of the company to receive as passengers without pay all employees of the Government. It carried the mail free from Ciudad Bolívar to San Fernando de Atabapo, and by means of its agencies performed the service of the budget of these Territories without commission or compensation.

September 15, 1888, the steamer *Libertad* was requisitioned by lawful authorities to transport troops, material, and provisions to the fort of Guyana Vieja in defense of the national Government. Reimbursement was demanded of these authorities by the company, but was refused. The fuel for the steamers and even the board of the crew during the trip was furnished without recompense by the company.

In December, 1888, the lawful authorities again requisitioned the steamer *Libertad*, which during the whole of that month made trips loaded with troops between Caicare and Rio Caura. To the request of the company for an indemnity there was a refusal. It was at this time that the workmen upon the railroad running out from Caura, an incident previously mentioned, as well as the agricultural laborers of the company, were impressed by the Government to march against the revolutionists. None of the workmen ever returned to the service of the enterprise.

October 31, 1888, the pro tempore governor of Upper Orinoco and Amazonas Territories issued a decree annulling all of the accounts of the Indians with the company wherein they were debtors. This was done in the especial interest of Valentin Perez and other like contractors.

Governor d'Aubeterre carried with him to San Fernando de Atabapo, his capital city, a considerable stock of different kinds of merchandise for the purpose of traffic in india rubber, which traffic he entered upon openly, in so far opposing the rights of the company in exploitation of this product.

In December, 1889, the same governor caused a petition to be signed against the company by persons of little standing, in this way attacking the company instead of assuring the execution of its contract.

At the same time a similar petition was passed among the merchants of Ciudad Bolívar. The claimants assert that it was done at the instigation of the minister of the interior.

Early in the year 1890, Governor d'Aubeterre made a long journey into the interior of the Territories in order to gather up the largest quantity possible of india rubber which had been harvested by means of advances made to the harvesters by the company.

May 17, 1890, a ministerial decree authorized the proprietors of sarrapia and other natural products to export them freely, paying the same duty as the company.

The historical order is here interrupted to name a very important matter, which may well be under consideration as having explanatory value in connection with the events of 1888 to 1891, both inclusive.

The Venezuelan-Colombian boundary question, which for a long time had been a matter of diplomatic controversy between these two countries, by a treaty executed by them September 14, 1881, was submitted to the arbitration of his Majesty the King of Spain. Gen. Guzmán Blanco was then President of

the Republic of Venezuela and executed on its behalf the treaty aforesaid. On February 15, 1885, at Paris, for and on behalf of his Government he signed a declaration extending the time within which the award could be made.

October 28, 1887, the minister for foreign affairs for Colombia wrote from Bogotá to the minister of foreign affairs for Venezuela asking for explanations concerning the prospectus with map accompanying which had been published in the interests of the concession. The nature of his communication can best be gained from the letter itself, which is here reproduced:

BOGOTÁ, *October 28, 1887.*

MR. MINISTER: A French society known as the "Company General of the Upper Orinoco" has published a memoir or description upon the concessions which, it says, the Government of your excellency has granted to it of certain rights within the Territories Upper Orinoco and Amazonas of the Republic of Venezuela.

Annexed to the memoir concerned is a geographical map in which the boundaries of the said territories on the western side are marked in such a manner that they include the large tract of land which in this part is in litigation between Colombia and Venezuela, and of which in virtue of the treaty of arbitration (arbitramiento juris) of December 14, 1881, the true ownership is to be settled by the sentence of the Government of Spain.

I have the honor to call the attention of your excellency to this point, being convinced that the Government of Venezuela, in accord with the Republic of Colombia, will recognize that the error of the Company of the Upper Orinoco can not be passed over in silence, considering that it affects a solemn agreement between the two nations, in which is ceded in an absolute manner to a third party the right as arbitrator to define the boundary which separates Colombia and Venezuela.

It is evident that neither of our Governments can make any valid concession upon the said land; it is equally evident also that the error of the Company General of the Upper Orinoco can have no other cause than that of agreeing with geographical or statistical data anterior to the above-mentioned treaty of 1881, which places this zone of territory in a condition not only litigious, but about to be settled in an exclusive manner by an arbitrator already appointed.

I have the gratification to profit from this circumstance to renew to your excellency the expression of my most distinguished consideration.

(Signed) F. ANGULO.

TO HIS EXCELLENCY THE MINISTER OF FOREIGN AFFAIRS
OF THE UNITED STATES OF VENEZUELA.

It does not come to the knowledge of the umpire that any reply was made by the Government of Venezuela to this note from Colombia; neither is there anything to indicate that the attention of the Company General of the Orinoco was immediately called to the questions raised by the note.

The first official attention given to its contents, so far as is known to the umpire, is found in the action of the minister of foreign affairs for Venezuela in addressing a communication to the minister of fomento, in substance following:

CARACAS, *November 25, 1887.*

The minister of foreign relations of the Republic of Colombia has brought to the knowledge of this department that the French company known as the "Company General of the Orinoco" has published a memoir with a map annexed in which is included in the limits of the territory conceded to the said society the territory in litigation between the two countries.

To be able to reply to the said note of the Colombian minister it is necessary to have before us the said memoir, which I pray you to send me by right of devolution if it is found in the department under your charge.

I am, etc., DIEGO B. URBANEJA.

To this there was a reply on the next day, as follows:

SIR: As it has never been remitted to this department I find it impossible for me to remit to the ministry over which you preside so worthily the memoir of the Company General of the Upper Orinoco, of which your communication of the 25th of the present month treats.

This seems to be the end of progress in this line until about August, 1888, when the minister of Colombia renews his inquiries, as appears from the communication of the minister of fomento, as follows:

CARACAS, *August 10, 1888.*

In order to examine and resolve a claim of the Republic of Colombia I have need to have before my eyes a copy of the contract passed with the Company General of the Upper Orinoco and Amazonas.

That is why I pray you to give me information of the concessions and privileges made to the said company.

I am, etc., A. YSTÚRIZ.

To this there is a reply on the day succeeding in these terms:

CARACAS, *August 11, 1888.*

SIR: In reply to your letter of the 10th of the present month, No. 293, I have the honor to send you the Official Gazette of February 26, 1886, No. 3,698, in which is published the contract with the Company General of the Orinoco.

I am, etc., FOMBONA PALACIO.

There follow successive communications between these officials of the Government relative to this affair which, perhaps, are better quoted in full than placed in abstract. They are therefore subjoined:

CARACAS, *August 13, 1888.*

SIR: Besides the contract of the Company of the Upper Orinoco and Amazonas constituted in virtue of the concession made to Mr. Tejera, which you have kindly remitted to me in the corresponding number of the Official Gazette, I should be very grateful to you to send me a general report upon the proceedings of this company to the department under your worthy charge, as also every communication which this company may have made upon our maps, notices, or memoirs relative to the privilege which the said contract gives it.

YSTÚRIZ.

CARACAS, *August 21, 1888.*

SIR: In reply to your note of the 13th instant, No. 297, I have the honor to inform you that the company which has been exploiting the Territories Upper Orinoco and Amazonas since the date of its contract, December 17, 1885, has asked of this department exemptions from import duties at different dates upon the objects destined for its works; that it announced November 14, 1887, that the steamers *Atures* and *Eva* had passed above the rapids of Maipures, and that the latter steamer arrived at San Fernando de Atabapo the 30th of August, 1887, and as to that which concerns the memoir published by this company relative to the said territories I remit it to you inclosed with its map annexed.

I am, etc., GIL.

CARACAS, *September 15, 1888.*

SIR: The envoy extraordinary of the Republic of Colombia has made a claim against the publication of a geographical map and of a memoir of the Company of the Upper Orinoco and Amazonas, in which in describing the limits of its concession it has included as having been ceded vast extents of land in litigation between the two countries.

Consequently, considering the necessity of examining the said map and memoir, I hope that you will kindly send them to this ministry if they exist in your department, and if not I pray you to ask the representative of the company mentioned for information as to what has been done in this regard and also the map and memoir concerned.

YSTÚRIZ.

On the 18th of September, 1888, the minister of fomento advises the minister for foreign relations by note in part as follows:

I am addressing myself this very day to Mr. Th. Delort, contractor of the Territories Upper Orinoco and Amazonas, asking him for information as to the contents of your said communication, and as soon as I shall receive them it will be very agreeable to me to send it to the ministry over which you preside so worthily.

I am, etc.,
CORONALDO.

The letter addressed to Th. Delort, the manager of the company, by the minister of fomento is here quoted:

SIR: In an official note of the 15th of this month the ministry of foreign relations says to this department that which follows. (Here is a reproduction of the letter of the 15th.)

I communicate to you this note in order that you may give me information on the subject of which it treats.

CORONALDO.

The reply of Mr. Delort was made two days later and is of the tenor following:

CARACAS, *September 20, 1888.*

THE MINISTER OF FOMENTO: I have just had the honor of receiving your note of the 18th instant, to which I reply as follows:

In forming the Company of the Upper Orinoco there was made at Paris a memoir for the shareholders only in which was reproduced the contract which M. Miguel Tejera had transferred to the company, and furthermore an extract from the statutes and different information on the natural products which according to the contract were to be exploited. This memoir was accompanied by a map in order that the shareholders might know where the territories conceded for their exploitation were situated. This map was copied from that which accompanies the statistics which the national Government has published in different languages.

The memoir does not treat of the frontiers between Colombia and Venezuela nor, moreover, of the vast extent of territories conceded to the company; it treats only of natural products of the vast region which forms the Territories Upper Orinoco and Amazonas.

The company is not ignorant that the boundaries between Venezuela and Colombia are found in litigation and submitted to the arbitration of the Government of Spain. Consequently it has no pretension on this subject, and holding the concession from Venezuela it knows very well that it ought to conform itself to the frontiers which shall be definitely fixed by this Republic.

Up to the present the company has extended its exploitation only upon the points occupied by the Venezuelan authorities. Its agencies, its shops, and dependencies are situated at Atures, Maipures, San Fernando, San Cárlos, and the frontier of Brazil, and its steamers have navigated only upon the Orinoco, Casiquiare, and the Guainia. I regret not being able to send you the memoir in question, but two copies ought to exist in your ministry, sent by the agent of the company in this city.

I hope that the explanations which I have the honor of sending you will satisfy you, so that you can render justice to our right conduct in such circumstances.

With sentiments, etc., DELORT.

In this connection the umpire decides to accept as the truth the statement of Mr. Delort and his associates, which is found as a part of the testimony in this case, that the 18th day of September, 1888, was the first day on which either he or the company knew that the Venezuelan-Colombian boundary line was then in process of settlement by arbitration. Not only are they entitled to belief since no one disputes them further than Mr. Delort's own statement of the 20th instant, but many of the previous acts of Mr. Delort and of the company

were entirely inconsistent with such knowledge. It is easier, therefore, to reconcile his words with the fact of ignorance than his acts with the fact of knowledge.

The Government of Venezuela remitted to the Government of Colombia the letter of Mr. Delort above quoted.

Colombia, however, was not satisfied, and January 24, 1890, it again returned to the subject. The position of Colombia upon this matter was unambiguous, indeed positive, and there is no question in the mind of the umpire that the situation had become very embarrassing and troublesome to the Government of Venezuela.

In the judgment of the umpire it was not ignorance nor forgetfulness on the part of General Blanco or Mr. Tejera which kept them silent concerning the boundary question, in their intercourse, not infrequent, with the company and its officers and manager. The umpire believes that they both regarded the matter as unimportant in its probable effect upon the enterprise of the concession, for the reason that both considered a decision in any considerable degree unfavorable to Venezuela as practically impossible. This explanation, most favorable to them, and at the same time most probably the truth, is the one accepted by the umpire.

May 28, 1890, the national attorney of the exchequer of the United States of Venezuela, by direction of the president of the Republic, through the minister of fomento, entered in the high Federal court of the Republic a suit against the Company General of the Orinoco for the rescission of the contracts of concession which this company had taken over respectively from Miguel Tejera and Theodore Delort. The petition or declaration alleges in substance and in general terms that the Government on its part had fulfilled the stipulations agreed to in both of the said concessions; and in like general terms that the company, on its part, had not fulfilled its obligations; first, as to the contract of December 17, 1885, in Nos. 1, 2, 3, 4, 5, 6, 7, and 9, of Article II, and all of Articles V and X; second, as to Nos. 2, 3, 4, 5, and 6 of Articles III of the contract of April 1, 1887. The petition specifically alleges that —

> the Government has not received any notice that the cessionary company has begun its works, and it is a fact that no railway line has been offered to the public, nor any steam launch nor steamship line.

It is also alleged specifically in said petition that the cessionary company exported through the custom-house in Ciudad Bolívar during the years 1887, 1888, and 1889, india rubber weighing 73,292.20 kilograms, and had paid accordingly to the Government the sum of 63,740 bolivars at the rate of 40 bolivars for each 46 kilograms, as provided in the contract of concession of December 17, 1885, and that the quantity of sarrapia exported by the said company through the same custom-house and in the same years was 44,569.76 kilograms, for which there was paid to the Government the sum of 84,445.74 bolivars at the rate of 56 bolivars for 46 kilograms, as agreed in the contract of April 1, 1887, making in all the sum of 148,186.74 bolivars. It is also alleged in the petition that a contract is not deemed fulfilled by the obligee save when it has been so fulfilled in all the stipulations which it contains and that specially in this case in which they are so linked between themselves that failing one the whole or object of the contract does not exist, and hence the conclusion drawn by the said Government that said convention has not been fulfilled. That the inexecution of these contracts on the part of the cessionary company has caused the Government very grave damages and, therefore, it is obliged to ask before the high Federal court its solution.

The especial damages named in the petition are the losses which the Govern-

ment had suffered from the duties remitted under the contract upon articles imported by the company, as well as the loss of duties on the india rubber and sarrapia exported. The domicile of the company is alleged to be in Paris and that it is without a legal representative in Venezuela. The Government asks for procedure in accordance with Article XXVIII of its civil code; alleging further that the company may be sued under such circumstances as exist in this case by virtue of the provisions made in both contracts in reference thereto and in virtue also of Article XXVI of the civil code, which applies to suits where the contracts are to be executed in Venezuela. The petitioner also asks that the formalities be observed provided for in such cases in Article XCIII, XCIV, and XCV of the Code of Civil Procedure.

Reliance is had in the petition on Articles MCX, MCLXIII, and MCLXXII of the civil code as justifying fully the procedure on the part of the Government for the annulment and rescission of said contracts and for the recovery of the losses and damages suffered by it from their nonexecution by the cessionary company.

The suit was duly entered in the high Federal court on May 28, 1890, and on the 30th day of the same month the president of the said court issued a writ stating therein that —

> Considering that according to the documents annexed to the suit Messrs. Andrés Fiat and Bernabé Planas appear to be the representatives of the company in Venezuela, order is hereby given for them to be summoned in order that they may declare if they are still holding the power of the company, and in order to appoint a counsel for the defendant in case they are no longer attorneys of the company, in accordance with the law.

The proceedings show that both of these gentlemen were duly summoned on that same day and that on June 2 following they appeared in court and declared that Mr. Andrés Fiat was then the only representative of the company in Caracas and that he would appear in court on the 4th day of that month and produce his power of attorney. This was done and a translation of the same was ordered, and on the 16th day of June this was completed and accepted by the court and a summons ordered upon Mr. Fiat.

On the 19th day of June the claim for damages was reduced by the attorney of the Government from 600,000 bolivars to 40,048. 62 bolivars, and on the same day Mr. Fiat received and receipted for the copy of the petition. On the same day the court issued a decree by which an order was made to notify Mr. Fiat of the amendment to the petition above stated and to give him a copy of the amendment. Mr. Fiat was also directed in the order to receipt for this copy and to present in court his answer to the petition after ten days from June 19. This order was duly served on Mr. Fiat on the day of its issue and he gave his receipt to that effect on June 20. July 2, the day appointed for the answer Mr. Fiat appeared, accompanied by his counsel, D. B. Urbaneja and R. F. Feo, and as well appeared the fiscal nacional de hacienda. It was then and there agreed to defer the answering of the suit to a date fixed at eight days after the presentation of the documents to which reference is made in the suit by the plaintiff, in order that the company should have time to examine these documents. On July 22 Mr. Fiat with his counsel, above named, appeared in court and filed his answer to the suit; at the same time he preferred his petition for an extraterritorial term in order to obtain evidence from France and Rome. The suit progressed in ordinary course, during which the parties were to produce their respective evidence, the court reserving its right to decide on the petition of Mr. Fiat in regard to an extraterritorial period of time. Later on the president of the court granted one hundred days to obtain this extraterritorial evidence, and Mr. Fiat having appealed from this decision on the grounds

that the term granted was too short, the court then extended it to one hundred and thirty days.

September 5, Mr. Fiat was notified that the fiscal had petitioned the court that the suit might be registered in Ciudad Bolívar, in order to avoid any transfer intended by the company. That he received this notice is established, because at the foot of it is set his signature, and on September 8 he appeared in court, accompanied by his said counsel, and declared that he had no opposition to make to the recording of the suit, with the alterations which were made to it afterward. The court issued an order on the same day that a copy of the suit be sent to the judge of the first instance of Ciudad Bolívar, that it might be recorded in the registry office in that city, and said order was carried into effect on the same day.

August 7, 1890, Mr. Fiat presented the court with a petition asking that evidence might be promoted as he thought convenient to the case of the company. As a part of this evidence were declarations to be made by witnesses resident in Paris, Rome, Port of Spain, Rio Chico, Barcelona, San Fernando de Apure, and Caracas.

The president of the court issued a writ, dated August 12, admitting the promotion of such evidence as far as the law permitted, and commissioned several civil judges of first instance of the residences of the respective witnesses to hear their declarations; he also issued rogatory commissions petitioning the competent judges of Paris, Rome, and Port of Spain for the same purpose. October 11 of the same year, Mr. Fiat appeared in court and stated that by virtue of the authority conferred on him, by his power of attorney from the company, he conferred a special power on Dr. Ramón Feo and Dr. Martín F. Feo, so that both together, or either one of them separately, might intervene in the collecting of evidence that had to be made by the fiscal in the city of Caracas, and also stating that he conferred special power on persons resident at Porto Rico, Barcelona, Ciudad Bolívar, San Fernando de Apure, Port of Spain, and for the territories of Orinoco and Amazonas, for the collecting of evidence on behalf of the company in their respective districts, and to intervene in the collecting of evidence by the plaintiff in the same districts. October 11, 1890, the president of the court ordered that commissions and petitions be issued to the different parties named by Mr. Fiat as aforesaid, and that said petitions and commissions contain the powers conferred on them as requested by Mr. Fiat. The said order was carried into execution October 13, and the said commissions and petitions being issued were handed to the defendant.

All these commissions and petitions were duly returned after having been carried into operation, with the exception of those addressed to the judges of Paris and Trinidad and to His Excellency Cardinal Simeoni of Rome, which were not returned by the representative of the company, although they were given him.

March 24, 1891, marked the expiration of the time given for the collecting of testimony, and on that date the president of the court ordered that the papers and records of the suit be sent to the full court, which was duly effected.

April 29, the fiscal moved the court to begin the study of the papers and records of the suit and that an order be issued for that purpose. On May 21, 1891, the fiscal renewed his motion, and on May 23, an order was issued to begin the study of the papers and records on the 30th of that month. This study begun in fact on June 16, and proceeded on June 24, the court not being in session on the 17th to 23d inclusive.

On the 1st, 4th, and 7th of August suppletory judges were called to fill the vacancies existing. Two of those selected were excused on their own petition. On September 16, the full court was made by the suppletory judge, Dr. Cárlos

F. Grisanti, and the 19th was appointed for the study of the process. The study was begun as ordered, and proceeded on the 21st of September and following days until the 25th. The 29th of September was appointed to hear the reports or proceedings of the plaintiff and defendant. The records of the 25th of September show this note by the secretary:

CARACAS, *September 25, 1891*

In the sitting of this day the study and examination of the papers and records by the court was completed, and the sitting of the 29th current is appointed for plaintiff and defendant to present their respective reports or pleadings. Let the parties be notified.

O. BURGOS.

There was no decree of the court ordering the parties to be invited, as appears of record.

September 29, the fiscal nacional de hacienda appeared in court, but no representative or counsel on behalf of the defendant. The court proceeded to sit in conference.

From September 30 to October 13, only one sitting of the court took place, which was on the 3d of October, on which day the judges conferred on the sentence to be passed and agreed as to the same. October 14 the sentence was drawn and signed by the members of the court.

As appears from the history already given, the suit for rescission was begun in 1890, May 28; summons to the defendant was issued May 30; and on June 2 Mr. Fiat appeared in the high Federal court and avowed and acknowledged himself the legal representative in Caracas of the Company General of the Orinoco. On the next day, the minister of foreign relations at Caracas, wrote the minister plenipotentiary of the Republic of Colombia to the United States of Venezuela as follows:

THE MINISTER OF FOREIGN RELATIONS,

CARACAS, *June 3, 1890*

MR. MINISTER: Relative to the confidential memorandum of August 9, 1888, and to the note of your excellency of January 24, concerning a memoir published by the Company General of the Orinoco, I have the honor to communicate to your excellency that the Government has resolved to demand of the said company the rescission of the original contract.

Please accept, etc.,

M. A. SALUZZO

The most excellent Dr. J. F. INSIGNARIES,
Envoy Extraordinary and Minister Plenipotentiary of the Republic of Colombia.

The Colombian minister did not accept the proposed action of the Government of Venezuela as an earnest of sufficient protection to the interests of his Government, as is made evident by his reply, which follows:

LEGATION OF COLOMBIA AT VENEZUELA,

CARACAS, *June 6, 1890.*

MR. MINISTER: I have the honor to reply to the note of your excellency of the 3d of the present month, in which your excellency deigns to communicate to me relative to the confidential memorandum of August 9, 1888, and to my note of January 24 last, which refers to memoir published by the Company General of the Orinoco, that the Government of your excellency has resolved to demand the rescission of the contract made with the said company. I shall transmit the said note to my Government, but I ought to manifest to your excellency, as I am doing very respectfully by means of the present, that the fact which it communicates can not modify in any way the state of the claim in which in a matter so grave was initiated before the Government of your excellency by that of Colombia in a note of October 28, 1887, to which there has yet to-day been no reply. In fact,

as your excellency will clearly understand, in spite of the demand of rescission proposed and while waiting for it to be decided favorably the Company General of the Upper Orinoco will continue to enjoy the contract in virtue of which the Government has made concessions in the territories of the Upper Orinoco and Amazonas, a concession which the said company extends through error or unjustly to the lands which on this side are in litigation between Colombia and Venezuela as it appears with all clearness in the geographical map annexed to the memoir of the relation which has set in motion the claim of my Government without formal rectification on the part of the Government of Venezuela.

Favorable as the sentence may be to the Government of Venezuela there will still exist powerful reasons of equity and justice with which the Government of Colombia has solicited the said rectification because this act is notoriously in violation of the treaty of arbitration of September 14, 1881, by which the two nations submitted their differences with regard to the frontiers to the decision of the Government of Spain. Consequently it is my duty to insist, as I am doing, with the greatest respect, before the Government of your excellency for the said claim of my Government, reproducing to this effect the contents of the note of October 28, 1887, mentioned, which was the origin of my memorandum of August 9, 1888, and of my note of January 24 of the present year.

I profit, with pleasure, from this occasion, etc.

(Signed) J. E. INSIGNARIES.

To Doctor SOLUZZO,
Minister of Foreign Relations of the United States of Venezuela.

Eleven days prior to the date of the suit for rescission the minister of the interior at Caracas issued a statement authorizing the proprietors of sarrapia and other natural products in the Federal Territories Upper Orinoco and Amazonas to export them freely on paying the same duties as the company. During the same month the agent of the company at San Fernando de Atabapo and the engineer of the Naroa were threatened with death and were forced to take refuge at the home of a habitant. Frightened by the conditions surrounding them, they declared they could no longer remain on the upper river and asked to be relieved.

The 4th of June Governor d'Aubeterre left his capital, descended the river, and arrived at Ciudad Bolívar June 27. The day of his departure from his capital he sent a long telegram to the Government at Caracas, stating that the company did not have funds wherewith to pay for the india rubber which was gathered and demanded that authority be given to those who possessed this product to export it directly either by way of Ciudad Bolívar or through the custom-house at San Cárlos. The custom-house of San Cárlos had been closed by the Government since 1886 and had never been opened for the use of the company, thus compelling it to use the Orinoco exclusively for the shipment of the products obtained by it.

On the departure of Mr. d'Aubeterre from San Fernando de Atabapo Mr. Henry Page became governor pro tempore. June 16, 1890, upon his own authority, he issued a decree which annulled the contract of December 17, 1885, and he sent Valentin Perez and Sinforiano Orosco to Caracas with this decree to obtain for it the approval of the Government. He based his action upon the anticipated damages which the agents of the company might cause the inhabitants and that through them the public order might be endangered. At this time there were three agents of the company in Upper Orinoco. They were Messrs. Calvaras and Nary at San Fernando de Atabapo and Mr. Oudart at San Cárlos.

The Government decided not to approve of the decree of June 16, issued by pro tempore Governor Page, and on August 8, 1890, there was issued the following:

The PRESIDENT OF THE REPUBLIC:

Whereas the decree rendered by the governor *ad interim* of the Federal Territories, Upper Orinoco and Amazonas, of June 16 last, in which he declares the caducity of the contract passed by the Federal executive with Mr. Miguel Tejera for the exploitation of all the mineral and vegetable productions of this Territory and of which (contract) the Company General of the Orinoco is the cessionary; and whereas, also, the demand which the inhabitants of the same Territory addressed to the said official, in which they set forth the prejudices, for their own interests and for the maintenance of the public order in these large and rich regions, caused by the acts of the agents of the company cessionary, conjointly with the acts of adhesion of the municipal councils of San Fernando de Atabapo and of that of La Urbana, to the manifestations made by the population; and

Considering:

1. That the Federal executive can not give his approbation to the said decree of the governor of the Upper Orinoco and Amazonas, inasmuch as this official by such an act has excercised a function which is attributed by the constitution and the laws to the Federal power;

2. That the Federal executive has already submitted to the high Federal court, through the agency of the fiscal national de hacienda the rescission, not only of the contract passed with Mr. Miguel Tejera, but also of that passed with Mr. Delort for the exploitation of the sarrapia (feve tonka), basing his action upon the fact that the company cessionary has not accomplished on its part the obligations to which it is bound by these contracts of establishing steam navigation upon the Upper Orinoco, of constructing railroads, of introducing immigrants to found colonies; of building churches, hospitals, barracks for the police; of establishing the postal service, and of founding missions;

3. That by the "documentación aducida" (allegations furnished by the documents) it is demonstrated that the acts of the agents of the Company General of the Orinoco, aside from the grave prejudices which they are causing to the inhabitants of the Territories Upper Orinoco and Amazonas in their legitimate interests, are going so far as to threaten the public security which the executive is bound to protect with the vote of the Federal council;

Be it decreed:

ARTICLE 1. The decree of June 16 of the current year rendered by the governor *ad interim* of the Federal Territories Upper Orinoco and Amazonas is disapproved, becomes null, and will produce no effect.

ART. 2. The Federal executive will dictate through the agency of the ministers of the interior, of hacienda, and of fomento, in all the extension necessary, the provisions tending to satisfy the just demands made by the inhabitants of the Upper Orinoco and Amazonas, while waiting for the high Federal court to decide whatever is just in the demand brought before it.

Given, signed by my hand, marked with the great national seal, and countersigned by the ministers of the interior, of hacienda, and of fomento, in the Federal palace at Caracas, August 8, 1890.

R. ANDUEZA PALACIO.

Countersigned: S. CASANAS.
VINCENT CORONADO,
Minister of Hacienda.
FRANCISCO BALAELO,
Minister of Fomento.

On the next day the minister of interior issued the administrative order, No. 1011, as follows:

[Administrative order, No. 1011.]

CARACAS, *9th of August, 1890.* (27 and 32.)

CITIZEN GOVERNOR OF THE FEDERAL TERRITORY AMAZONAS: Accompanying I send to you a copy of No. 5016 of the Official Gazette, containing a decree issued by the President of the Republic with date of yesterday, in which he annulled that which the Government pronounced on the 17th of last June, relative to declaring

the defunct condition of the contract celebrated by the national executive with the Señor Miguel Tejera, of which the cessionary is the General Company of the Orinoco, remaining consequently null and without any value or effect, and in which it was decided (or determined) that until the high Federal court may decide what may be justice the national executive will dictate, through means of this ministry and those of hacienda and fomento, to all necessary length, the arrangements (orders) necessary for satisfying the just exigencies manifested by the inhabitants of that Territory.

Consequently you will please not to give any permission to the agents of the expressed company to continue exploiting the products of that territory and give large franchises in order that the inhabitants can without hindrances undertake the work of exploitation upon the products referred to.

God and federation.

S. CASANAS

It will be observed that the provision in the decree of August 8, that the national executive would act through the ministries therein named took effect in the last paragraph of the above order.

On the 29th of August the minister of the interior sent a telegram of advice to the governor of the Federal Territories Upper Orinoco and Amazonas through Mr. Valentin Perez of the following tenor:

CARACAS, *29th August, 1890*

Señor VALENTIN PEREZ:

The governor ought to enforce the decree suspending the prerogatives of the Alto Orinoco and Amazonas.

It can not continue exploiting the natural products of the Territories nor collect reward upon those which it expected to obtain by its proper work.

S. CASANAS

By a letter of later date he again brought the attention of the citizens of those territories to the situation, as existing under the decrees of August 8 and 9, by means of a letter, which is as follows:

CARACAS, *September 10, 1890*

Señor SONFORIANO OROSCO:

By resolution of the ministry of hacienda, dated May 27, 1890, it is ordered that the owners of sarrapia and other natural products which the company exports, to which you refer in a telegram of day before yesterday, can export them freely, paying the same duties as said company, and by the decree of the 8th of August it prohibits to the company the absolute (unconditional) exportations and exploitations which it had of those products, all which orders were transmitted to the custom-house opportunely by the ministers of hacienda and of fomento in order for their fulfillment. You and the rest are interested in this matter on account of the last urgent orders.

God and federation.

S. CASANAS

Having followed the process of the high Federal court from the inception of the suit for rescission, May 28, 1890, to the sentence of the high Federal court, given October 14, 1901, having traced the progress of the administrative department in its relation to the company to September, 1890, it is well to examine into the condition and history of the Company General of the Upper Orinoco during the same time.

May 30, 1890, the same day on which Mr. Fiat was summoned to appear before the high Federal court to answer to the suit of the national Government for rescission of both concessions, the Company General of the Orinoco met in a shareholders' general meeting at Paris, in which meeting a resolution was passed for the purpose of converting the company into an English company with the name of Orinoco Exportation and Trading Company, which meeting

likewise determined to dissolve and wind up the Company General of the Orinoco and appoint a liquidator.

It is said in behalf of the company by the liquidator in a memorial of date December 5, 1895, that —

the board of directors had many debtors and they hesitated therefore to collect the harvest of 1890, but yielding to the representations of their agents they furnished the necessary funds in agreement with a Liverpool firm, who sent out their special agent, Mr. Staedelli.

The position of the company in Paris was very painful, as its credit had been totally exhausted. All efforts made in France seemed to be of no avail, while in England confidence was not lost and it was possible to go on there with the business. The board of directors therefore willingly considered a proposition from England for the constitution of a company in London to which all the assets, contracts, material, works, etc., of the Company General of the Orinoco would be transferred.

It is ascertained that the liabilities of the company, as stated by it, were on May 30, 1890, as follows:

	Francs
To the shareholders	1,500,000.00
To the Society (La Monnaie)	722,851.56
La Banque de Consignations	236,356.00
Mr. Alfred Chauvelot	191,176.00
Mr. Eugene Ferminhac	63,000.00
Mr. Louis Roux	13,059.55
Mr. Th. Delort	14,641.26
Total	2,741,084.37

It is an agreed fact that the company had no knowledge or intimation of the pending suit in Caracas at the time of this meeting of May 30, 1890, and that its proceedings on that day were without any relation thereto and not in any way influenced thereby. June 23, 1890, at a general meeting of the shareholders of the Company General of the Orinoco at Paris, a liquidator was appointed, and in the third resolution of the shareholders his powers were defined as follows:

Confers upon the liquidator its full powers to the effect of realizing the social assets by way of fusion or union in another French or foreign society, existing or to be created, to receive whether in specie or obligations or stock, free or not free, to have recourse to actions and deliberations which shall have for their object the formation and constitution of a new society to sell the stock or obligations received until the concurrence of the sums necessary for the payment of the liabilities and to turn over the surplus in conformity with the statutes. Also to take all the measures possible for the continuation of the business until the realization of the assets, to exercise in this regard all the powers conferred upon the council of administration by article 22 of the statutes.

Further, to negotiate and conclude all contracts, whether for the purchase and sale of the merchandise and other objects or for the exploitation of all or part of the social capital by lease or otherwise, by forfeit or by means of fines or parts of the benefits; to borrow all sums necessary for meeting the engagements of the society; to confer all guaranties upon the lenders — in a word, to do all which circumstances require in the interest of the society, the powers above mentioned not being limited.

The general meeting of the shareholders of the company was held December 27, 1890. From the liquidator's report made to this meeting it was learned that the approval given by the shareholders at their meeting of June 23 to an arrangement that would merge the Company General of the Orinoco in a new English company, as is previously stated herein, was so far completed on June 7, 1890, that an agreement had been signed by the company with the " Gold

Trust and Investment Company" providing for such transfer. Following the approval of the shareholders, as above stated, the new company, the Orinoco Exploration and Trading Company, was formed and registered in England. Owing, however, to the political relations then existing between England and Venezuela over the boundary line between the latter country and British Guiana, involving, among other questions, claims on the part of England in connection with the outlets of the Orinoco, the Government of Venezuela, from reasons of state, as it is understood —

absolutely refused to acknowledge this new company and to transfer to the same the rights and concessions of the French company.

This quotation is taken from the report of the liquidator at the shareholders' meeting of December 27, 1890.

He goes on to say in his report:

It was but very late that I was made acquainted with the causes which were opposed to the formation of the English company, and this delay was the cause of my losing very valuable time; but the moment I knew of these causes I took steps conducive to a result which might save our company.

I have appealed for assistance to the former directors of the company who are now negotiating with the Government of Venezuela, and have looked toward another solution of the problem, which is the only means of assuring the future of the company, viz, the reconstruction of the present company with an increase of fresh capital in cash.

Following the report of the liquidator the chairman of the meeting announced —

That owing to the facts which had just been mentioned by the liquidator the board of directors had sent to Caracas Mr. Berthier, who had been a former agent of the company, with the following mission:

To obtain from the Government the revision of the old concessions, which evidently contained clauses which were embarrassing to the Government, as well as to the company. Mr. Berthier was, besides, to make sure that the Government would make no difficulties for the transfer to a new company (provided this be not an English company) of all the rights and concessions accruing from the new contract. The double purpose of Mr. Berthier's mission has been obtained; the terms of the new contract proposed have been accepted, and one of its clauses will allow the transfer to a new company. The new company will be French-Belgian, formed with the assistance of a powerful Belgian group.

The chairman then read the draft of the articles of concession of the French-Belgian company information.

At some time succeeding October 11, 1890, on which day he appeared in the high Federal court as the attorney of the company, Mr. Andrés Fiat resigned his position as such attorney, and Mr. Bernabé Planas was appointed, but he declined the appointment.

On the advice of Mr. Delort it was then determined, as above stated, to send Mr. Berthier to Caracas as a special agent of the company, he being well acquainted with all details of the matter. He arrived in Caracas October 25, 1890, and remained until July, 1891.

His mission, as disclosed by the statement of the chairman above quoted, was to be confined to negotiations with the Government looking to a discontinuance of its suit without costs to the defendant, a relinquishment on the part of the company of the concessions it held, the Government to grant to the company for a period of twenty-five years the exclusive right of steam navigation on the waterways of the Federal Territories Upper Orinoco and Amazonas and in the rivers Caura and Cuchiroro, during which period the Government

would not grant a similar concession to any other person or company. This arrangement was put into writing; and in article 10 of this agreement there is found the following:

> This contract can be transferred to any other party or company with the previous assent of the Federal Government, without which formality that transfer can not be effected. However, as an exception, this contract can be transferred in part or in whole to the Belgian company called Compagnie Internationale des Caoutchoucs et Produits Naturels au Bassin de l'Orénoque.

In another part of the agreement the company was accorded the right to construct within the Territories mentioned such railways and telegraph lines as it might think convenient or valuable.

Through misadventures this agreement was not effected.

In the meantime, anticipating success in the above-mentioned negotiations, the Belgian company had been constituted to take over the new contract. In the end there was no new contract and the Belgian company did not become effective. The departure of Mr. Berthier for Paris July, 1891, left no attorney to represent the company before the high Federal court, and it does not appear that another was appointed.

March 17, 1891, His Majesty the King of Spain published his award settling the boundary dispute between the Republics of Venezuela and Colombia. It was unfavorable to the first-named country and sustained the contention of the latter. It gave to Colombia more than one-half of the area of the Federal Territories Upper Orinoco and Amazonas as claimed by Venezuela up to the date of the royal award. It made the Orinoco south of its junction with the Meta, the Casiquiare, and the Rio Negro the line between the two countries, giving both of them equal rights therein. It removed from the control of Venezuela the Rio Guaviare, Vichada, Inrida, Atabapo, and Guainia. Of these the last four were wholly and the first was largely in the territory of Venezuela, as claimed by that Government in her contention before the royal arbitrator and as it appears from its official maps. Similarly the maps current in the United States of America prior to 1891 allotted this territory to Venezuela. Under the rectified boundary these rivers are wholly within Colombian territory.

On the territory thus removed from the dominion of Venezuela the company had established on the left bank of the Vichada an *hato*, where had been installed 300 cows, 12 bulls, mules, and donkeys, and had there prepared lands for cultivation; on the left bank of the Guaviare it had begun the cultivation of sugar cane, had built a sugar house and a still; on the left bank of the latter river and also of the Orinoco had been begun improvements of the cacao. Of these enterprises the Government of Venezuela had received due and seasonable notice. The company considered a valuable part of its concession to be the marble deposits on the Inrida, the minerals in the region of the Guaviare, and above all the great savannas west of the Meta, regarded as very valuable for cattle raising.

It is now time to bring forward the decree of rescission pronounced by the high Federal court. The amendment, previously named, which was made by the fiscal nacional de hacienda of June 19 was to the effect that examination of the documents relating to the articles imported by the Company General of the Orinoco disclosed that the unpaid duties on these articles by reason of the company's exemption amounted to 40,048.62 bolivars, which sum is demanded in damages as a substitute for 600,000 bolivars, which appeared in the original petition.

The answer which was made by Andrés Fiat to the suit in question on July 22, 1890, is in substance and effect summarized in that portion of the decree which is herein quoted, and therefore need not be set forth here.

Upon the issues formed and upon the testimony adduced before the high Federal court it proceeded in due course to the consideration and determination of the cause and to the pronouncing of its sentence.

The decree of the high Federal court is a carefully considered and carefully written document of many pages, but that which is essential to the questions here involved can be easily abbreviated. After having brought into the decree the essential facts connected with the process and proceedings anterior to the settling of its decision the court says:

6. That it appears from the documents that the Government has fulfilled on its part all the obligations which the contracts already mentioned imposed upon it.

And considering that from the documents result the proof of the failure of accomplishment by the Company General of the Orinoco of the obligations, 1, 2, 3, 4, 5, 6, 7, and 9 of the first contract, and also that it has not carried out the stipulations 3, 4 and 5 of the second contract, the Government having brought to an end the perfect execution of the said contract; that the representative of the said company has alleged, in reply to the demand of the present process, that " the facts on which they pretend to base themselves are not certain, or are inexact, and those which really can be established prove that the company has fulfilled with extraordinary effort and diligence and with enormous expenses up to the point where there have appeared insurmountable difficulties, which constitute *force majeure*, or acts of authorities dependent upon the Government itself and contrary to the stipulations of the contract."

That these exceptions offered by the company do not appear to be proven by the documents of the present process, and that finally the lack of accomplishment on the part of the company of the two contracts referred to is an evident fact being given that in the present case are applicable the provisions of article 1149 of the civil code, in virtue of which the omission in the accomplishment of any one of the requirements of a contract is equivalent to its absolute inexecution when there is no agreement to the contrary, and it has not been alleged nor proven that any compact of this nature exists; that article 1110 of the civil code establishes that " the resultory condition is always implicit in bilateral contracts in the case where one of the two contracting parties does not accomplish its obligation;" that as for the resolution, it has the effect which article 1256 of the same code provides; that article 1163 of the said code imposes the payment of damages and prejudices to the debtor who does not execute his obligation, damages, and prejudices which in the present case amount to 40,048.62 bolivars, according to the liquidation produced by the demander, a sum to which the claim of the treasury on this subject is limited. For such reasons the high Federal court, administering justice in the name of the Republic and by authority of the law, declares to allow the claim presented in the present process by the fiscal nacional de hacienda against the Company General of the Orinoco, and consequently is declared the resolution of the contracts of May 24, 1886, and May 31, 1887, passed by the National Government with Messrs. Tejera and Delort, respectively, of which the company named is cessionary.

The Company General of the Orinoco is sentenced to pay to the National Government the sum of 40,048.62 bolivars for damages and prejudices caused to the nation from the non-accomplishment on the part of the company of the contracts named, together with the expenses of this process.

There was no appearance on the part of the company on September 29, 1891, at which time the National Government was properly represented and was heard in oral pleading before the court. No notice was served or summons made upon the counsel who had appeared in the case for Mr. Fiat. Indeed, since he was attorney of the company, and they were his counsel only, their relation to the company and to the case since he had resigned, their right to appear and to be heard, or the duty of the Government to have them cited in, had such a duty rested upon the Government at that stage of the cause, is in none of these respects very clear to the umpire. There was no attorney of the

company then resident in Venezuela, and there had been none since July previous, but whether this fact was known to the Government or to the court does not appear. The evidence of two witnesses adduced by the company is referred to by the court in its decree as having been considered by it in coming to its final judgment. Aside from this evidence the court was not assisted by the company in anyway after the court began its consideration of the facts, the law, and the equity of the cause, nor were the interests of the company in anyway subserved or protected at this time by the presence in court of attorney or counsel. In a very few days the company had knowledge of the action of the court; but it did not then or ever take any steps to be heard on any question or motion proper to have been taken on its part under the law of the Republic or the procedure of the court. Neither does it appear from the attitude of the company toward the suit for quite a period prior to October 14, 1890, and for years thereafter that it desired to be heard in the high Federal court on the matter of the final decree. The tenor of the proceedings of the company after it passed into liquidation is clearly that it depended, not on a successful defense to the suit, but solely upon negotiations with the Government for its existence and prosperity. No other version can be given to the acts, declarations, and apparent animus of its moving and managing spirits and agents.

At the time this decree was passed the Company General of the Orinoco had actually brought into Venezuela and expended in and about its enterprise the sum of 2,373,317.89 francs, after deducting from the total expenses the sums actually received for products exported under its concessions.

Certain conditions of the Company General of the Orinoco and certain administrative acts in relation to it will now be considered.

It was in March, 1888, that the company took possession of the lands granted by Mr. Vernet and formed on the Vichada the hato which bore the name of Santa Catalina. It was here that the cattle obtained at Buena Vista were placed, the chief purpose of this hato being to prepare for the necessities of the immigrants, since there was not in all the region of the Maipures so much as one single animal of the cow kind.

The minister of fomento was advised of the establishment of the hato, and later a concession of lands was demanded of him to be located on the Vichada for similar purposes. To this demand there was no reply by the Government.

The action of the governors of the Territories Upper Orinoco and Amazonas, and of persons representatives of the Federal Government in that locality, was such concerning the exploitation and exportation of the natural products of those Territories, which were exclusively the property of the company, that it resulted in depriving the company of any benefits of its concessions for the year 1890 and thereafterwards, notwithstanding adequate provisions had been made by the company with a Liverpool firm to furnish the requisite funds to complete the payment for those products and the agent of the firm had been sent out to Venezuela for that purpose, and in spite of the fact that much of the india rubber had been harvested by means of advances which the company had made aforetime.

Mr. Valentin Perez, the trusted representative and agent of the Government at San Fernando de Atabapo in the summer and early autumn of 1890, returned to his home in La Urbana late in that year or early in 1891, organized an armed force and began an expedition up the river. April 28, 1891, he attacked the steamer *Libertad*, at the mouth of the river Meta, with firearms. The steamer escaped without loss of life to its crew, although the marks of many bullets were found upon the boat. The doings of Perez came to the knowledge of the governor at San Fernando de Atabapo, who, fearing an attack, took

away the valves from the boiler of the *Meta* and removed different parts of the engine, rendering her useless should she fall into the hands of Perez, but it had a similar effect upon her usefulness and value to the company.

The governor also took by main force the arms and munitions which the company had a lawful right to keep at its agencies and which were necessary for its protection in that part of the country. Perez took possession, consecutively, of Atures, Maipures, and San Fernando de Atabapo, and seized everything of value which lay in his way; and, from his home at La Urbana to the capital of the Territories he burned all the wood sheds of the company, some seventeen in number, including the fuel contained therein. About this time Mr. Calvaras, agent of the company at San Fernando de Atabapo, attempting to escape to Ciudad Bolívar, died at Maipures of fatigue and privation. Mr. Mary, another agent, descended the river to Ciudad Bolívar. Mr. Oudart tried to escape from San Cárlos, but he was attached and robbed. He gathered together a few men and attacked the troops of Perez by night, seized about one-fourth of his india rubber, threw it into boats, and went to Brazil. This practically ended the exploitation of these Territories by the Company General of the Orinoco.

Perez captured the governor and detained him as a prisoner. To reestablish order in the Territories the Government sent troops from Ciudad Bolívar to San Fernando de Atabapo. To accomplish this, it requisitioned the *Libertad* to carry its soldiers to Atures. Above the rapids the Government used the steamers of the enterprise to take the soldiers to the capital of the Territories. At Maipures the troops were fed with meat from the cattle of the company. For the service of the *Libertad* the company received 2,000 bolivars, but for the rest nothing.

The years 1892 and 1893 witnessed the successful revolution of Gen. Joaquin Crespo. As a consequence, public and private business and the processes of the courts and the administration of the Government were seriously interrupted and obstructed. It was not until February 20, 1894, that General Crespo was named constitutional President.

The matters of the Company General had suffered seriously through this revolutionary crisis. No execution had been issued for the damages and costs awarded the Government in its suit of rescission against the company. March 8, 1893, the new governor of the Federal Territories, Gen. Juan Anselmo, issued a decree of sequestration against the property of the company in the Territory of Upper Orinoco, to make effective the judgment of October 14, 1891, by recovering the amount thereof; and to that end he asserted the lien of the Government upon both the movable and the immovable property of the company, whether in its possession or in the hands of those who had appropriated it to their own use, appointed a depositary, and allowed thirty days during which time all persons who had anything belonging to the Company General of the Orinoco were to bring it to the depositary or to pay him the value of the same. After this delay of thirty days judicial proceedings were to be taken conformable to the laws against delinquents.

This decree was disaffirmed by the, high Federal court because no such power was vouchsafed the governor by the decree which created and organized the Territory. The court held that this could issue solely through the judiciary department, citing articles 298, 299, 300, 301, 302, 303, 304, 305, and 306 of the Code of Civil Procedure. It goes on to say:

> That which the governor ought to have done was to bring to the knowledge of the judges of the locality of the circumspection of his command, in which were the interests of the company, the complaints of the interested parties, in order that according to the reasons alleged their acquired rights might be guaranteed, etc.

It resulted that all of the Company's property which at that time could be assembled in that Territory was sold at a nominal figure.

July 10, 1902, the liquidators of the Company General of the Orinoco addressed a memorial to the minister of foreign affairs of France in which they stated their case as follows:

That in consequence of the sentence given by the high Federal court October 14, 1891, without the appearing in court of the plaintiff company the creditors of the said company were obliged to apply to the liquidators for the vindication of their rights against the Government of Venezuela.

This was followed by a statement of their claim in detail.

In 1894, shortly after General Crespo became the constitutional President of the Republic, Mr. Theodore Delort came to Caracas in the interest of the liquidators in an effort to adjust the matters of difference then existing. While at Caracas he addressed a communication, in the nature of a résumé, to the minister of foreign affairs of Venezuela. Among other things of value is found this:

The honor and standing of the members who form this enterprise, our credit being understood and our proceedings correct, are the reasons which compel me to act to-day in the present claim, not to regain our capital lost, if it is understood that the Venezuelan Government wishes to render us justice, but to take into consideration the said credits and that we may be able to fulfill our engagements honorably.

Earlier in the communication Mr. Delort had stated the indebtedness of the company.

The purpose of the company to obtain means whereby to cancel its indebtedness is ascribed to it by the honorable commissioner for Venezuela in his opinion in this case, where he says:

And lastly, their attempts, twice baffled, to convert first into an English company with the name of "The Orinoco Exploration and Trading Company," and later into a Belgian limited company, under the name of "Compagnie International des Caoutchoucs," both attempts having been made with the object of obtaining an increase of cash capital to pay off debts and proceed with the business.

The liquidators of the company presented a further memorial of their difficulties to the minister of foreign affairs for France, December 5, 1895.

For quite a portion of the time elapsing between October 14, 1891, and the treaty of February 19, 1902, the two Governments had not been in friendly diplomatic relation. This fact is named as an explanation of delays which have occurred in the presentation and pursuit of this claim diplomatically.

In the preceding attempt to present the salient facts of this case much time has been taken and many words have been used, and yet much which tends to throw light upon it has been omitted in order to condense and shorten the statement. It is hoped that the bases upon which a decision must rest are sufficiently apparent. The umpire must acknowledge his indebtedness to the company for the valued aid of its counsel Mr. Poincaré, and to the honorable commissioners for their efficient services both in the matters of fact and in the justice and equity to be evolved therefrom in arriving at a right award.

The claimant Government asserts its right of recovery because of denials of justice through a long series of administrative and governmental measures, notably the decrees of August 8 and 9, 1890, and the sequestration of 1893; also finds cause therefor in the unpunished wrongs perpetrated by Valentin Perez and in the abuses of the powers of the governors, notably Mr. d'Aubeterre, and the decree of annulment by pro tempore Governor Page; likewise in the decree of the minister of hacienda in April, 1890, and in successive acts of the

minister of the interior in the same year; and, further, in a multitude of acts, of manœuvers, of outrages; also in the refusal of the respondent Government to permit assignments of the concessions of the company and its properties to the English company formed and registered, and to recognize and allow said English company to take up and carry on the contracts of December 17, 1885, and of April 1, 1887, together with its unjust silence respecting the Colombian-Venezuelan arbitration and its acquiescence in the large expenditures made by the company in the extension and development of its enterprise after the knowledge of the Government that there had been no compliance in fact with the provisions concerning the railroads around the rapids of Atures and the rapids of Maipures, and to the general attitude of the Government and its administration toward the company after the year 1888, whereby it permitted, if it did not incite, attacks, open and covert, upon the concessions of the company.

It also claims denials of justice through violations of public and private right, committed not only in the course of the process (suit of 1890), but outside of every judicial instance. Concerning the suit for rescission, it is alleged to be a nullity, because (a) that Mr. Fiat, the attorney of the company in Caracas, received no citation or order to appear at the time of the presentation by the fiscal nacional de hacienda before the high Federal court of the demand for rescission of the contracts and payment of an indemnity; (b) the rogatory commissions issued in said cause on the motion of the defendant for the investigation in Europe were irregular in the issue and transmission and ineffective through the fault of the court or the Government; (c) the failure of the court or the Government to forewarn Mr. Fiat or the advocates of the defendant of the day set for the oral pleadings in the cause, and the resultant nonparticipation of the defendant in such hearing; (d) the sentence of the court October 14, 1891, was rendered in the absence of Mr. Fiat and the advocates of the defendant and without citation upon them or either of them to be present and without their knowledge, in fact, that the sentence was to be pronounced, and without other knowledge than its publication in the Official Gazette of October 17, three days after the decree was promulgated. This procedure was said to be in violation of Title 5, Venezuelan Code of Civil Procedure with regard to citation.

The claimant company also asserts its right for indemnity arising from requisitions of and injuries to its property by the authorities of the respondent Government and for other acts contrary to the law of nations. The honorable commissioner for Venezuela, a lawyer of high standing in the courts of his country, skillful in his profession, and of high honor, whose opinion in such a matter is entitled to great weight, finds no irregularities in the preliminary process of the high Federal court. The umpire fails to observe any.

However, if the umpire regarded the point as possessing value, he would more carefully study the question. In his opinion the appearance of Mr. Fiat as disclosed cures all irregularity of notice or entire lack of official notification, had either existed. This proposition is elementary, and requires no authority to sustain it. It effectually removes the first objection of the claimant to the proceedings of the high Federal court.

The second objection refers to the issuing of the rogatory commissions from the court direct to the attorney of the company instead of transmitting them through diplomatic channels at its instance and through its personal procurement. This is regarded as fatal error by the eminent counsel of the claimant company. Much ingenuity, ability, and learning are displayed in an effort to charge the failure in the execution of some of these commissions upon this act of the court and thereby to find cause to invalidate its final decree. Without entering the domain of this discussion it suffices to say that the attorney of the

company accepted these commissions from the hand of the court's officer without objection and proceeded to make use of them in his own way. It was he, and not the court, who sent them abroad through other than diplomatic channels. He had always the right and the opportunity to obtain the aid and the intervention of the friendly diplomatic powers of France. He had, moreover, the unused privilege of preferring to the high Federal court a petition for the reissuing of those commissions and their transmission through such channels as he might then request or suggest. There were many months in which he should have learned the necessity of such procedure, if it existed, and in which he might have appeared before the court for such purpose. So far as appears of record, every request he made in court was granted, and any failure to educe evidence through the rogatory commissions must be charged to the action or inaction of the company's attorney, and not to the high Federal court or the respondent Government. Such is the judgment of the umpire upon the second point of objection to the judicial process in question.

Objections " c " and " d " will be considered together.

The first point to be recalled is that the recognized and accredited attorney of the company before the high Federal court was Andrés Fiat. His power of attorney had been presented to the inspection of the court, it had been translated, examined, adjudged to be ample and correct, and in virtue thereof he was accorded a representative character for said company in said court. He had resigned. His resignation had been accepted by the company. Another had been appointed, and had declined to serve. It does not appear that Mr. Berthier was constituted an attorney with letters as such. If he were, he failed to qualify before the court. Until his resignation Mr. Fiat was the attorney of the company. Doctors Urbaneja and Feo were his counsel, so designated and named by him in court and so recognized and received. It is also true that so far as the umpire knows at this time there was no duly constituted attorney of the company in Venezuela. This was the situation September 25, 1891, the day on which selection was made by the court of the time on which the final audience was to take place and the parties were to be heard orally and in writing by their respective advocates. The situation was the same September 29, and it had not changed October 14. Was the high Federal court charged with any duty of notice to the company under these circumstances, provided such notice was required by the laws of the country and the rules of the court, if there had been an attorney of the company known to the court within reach of its process? The honorable commissioner for Venezuela holds that articles 109 and 162 of the Code of Procedure do not apply to such a case as is here presented. Article 109 refers to a cause in suspension; article 162, to a case of indefinite delay. In his opinion he gives a historical review of the case from its inception to the decree, and from this review he reaches the conclusion that —

> the sentence was thus pronounced by the high Federal court after complying rigorously with the legal prescriptions, and with all the formalities of the proceedings as established by law on behalf of both parties interested for the defense of their respective rights.

He holds that the case had never been in suspense; that the day on which the time had expired for producing proofs the representative of the Government moved for active continuation of the case and the court acceded to his motion.

Similarly, the honorable commissioner finds no indefinite delay such as is designated in and covered by article 162.

Doctors Urbaneja and Feo, also learned in the law, gave an opinion sustaining the contention of the claimants. It is not necessary for the umpire

to decide between these conflicting opinions, since the company had opportunity to test the worth of its contentions by a petition to the high Federal court to invalidate its decision under and by virtue of case I, article 538, of the Code of Civil Procedure then in force in Venezuela. If the points now urged before the umpire were of the character to come under that article, the duty of the court was clear and its action certain. Practically it must come under the terms of that article or else it had not the vitality now claimed for it.

For six months an opportunity existed wherein this question could be considered, the proofs marshaled, and the petition made. If there had been such grave fault on the part of the high Federal court as in the opinion of the company's eminent counsel would amount to a denial of justice, why was not an effort made, based upon these grounds, to secure an invalidation of the decree? If this had been done and there had resulted a refusal on the part of the court to reopen the case, then the duty of the umpire to carefully consider the law and the facts relating to this objection would be paramount. There is not a single act of the high Federal court in connection with the suit in question which suggests in the slightest degree any other than a scrupulous regard for the rights of the defendants therein. With this judgment formed from his study of the procedure in this case the umpire would be peculiarly constituted if he should hold that this distinguished body would necessarily depart from its well-ordered course when there was presented before it a just cause for reconsideration.

In the suit to rescind the contracts of December 17, 1885, and of April 1, 1887, it is therefore adjudged that the decree of the high Federal court of October 14, 1891, is not now open to attack by the defendant therein through the intervention of the claimant Government, and it is not a denial of justice under the treaty of 1885, or in virtue of the rules and principles of public law.

It follows, therefore, that every matter and point distinctly in issue in said cause, and which was directly passed upon and determined in said decree, and which was its ground and basis, is concluded by said judgment, and the claimants themselves and the claimant Government in their behalf are forever estopped from asserting any right or claim based in any part upon any fact actually and directly involved in said decree.

The general principle announced in numerous cases is that a right, question, or fact *distinctly put in issue and directly determined* by a court of competent jurisdiction, as a ground of recovery, can not be disputed, etc.,

Southern Pacific R. Co. *v.* U.S., 168 Sup. Ct. Rep., 1. (S.C., L. C. P. Co., 42, 377, with extensive annotations.)

Also, see 9 Encycl. Pl. and Pr., 625, and the notes.

Is this holding by the umpire conclusive of this claim? The answer is affected by the decision which he will make upon the proposition, that no award can be predicated upon any other ground than a denial of justice; which proposition is based upon the ground that the treaty of 1885 is determinative of the issues which may be decided by this honorable commission. If the treaty of 1885 is applicable to this case, then his position in reference to the decree of October 14, 1891, decides adversely this claim.

If the treaty of 1885 was before the umpire he would interpret its provisions as did the honorable President of the Swiss Republic in the Fabiani award. Being so interpreted, it would be impossible to award damages here. There has been no denial of justice, nor such a delay of justice according to usage or to law, nor such exhaustion of the legal means available to the claimants, nor such a violation of treaty or the rules of the right of nations as would admit of a favorable award, if the jurisdiction of this honorable commission is thus limited.

Such, however, is not the interpretation placed by the umpire upon the convention of February 19, 1902. Article 2 of that protocol provides that —

> Demands for indemnities other than those which are aimed at in article 1, but based upon facts anterior to the 23d of May, 1899, will be examined in concert by the minister of foreign affairs of Venezuela and by the French minister at Caracas, etc.

All of the cases which came before this honorable commission at Caracas in 1903, including the eight reserved for the consideration of the umpire, were under the above provisions of article 2, which concludes with the clause:

> It is intended that this procedure, like that which is adopted for the claims of 1892, is instituted as an exception only and does not invalidate the covenant of November 26, 1885.

The provisions of the treaty of 1885 were not interposed in the case of Jules Brun, heirs of Maninat, Frierdich & Co., heirs of Massiani, Pieri & Co., or Antoine Fabiani. It was apparently not interposed in Caracas against any of the cases heard by the honorable commissioners and reported in Ralston and Doyle's Venezuelan Arbitrations of 1903.

None of the six cases above referred to and now before the umpire for his decision rest upon denials of justice. All have been submitted upon the claim, implied or stated, that the treaty of 1885 did not apply. The Fabiani claim was based entirely upon this proposition. To these positions of the claimants there has been no dissent on the part of the respondent Government. The umpire has been permitted to proceed upon this theory and has made his judgment and awards in accordance with what he understood to be the admitted construction of the convention of 1902; and it is not until he reaches the case now in hand that this question is raised, if it is now distinctly raised, by the respondent Government. He is inclined to the view that it is practically in assert to the assumption of the eminent counsel for the claimants that such might be the construction of this treaty that the respondent Government takes the position it has seemed to take in this case and contends for the paramount authority of the treaty of 1885.

Were the umpire unaided by the interpretation which in practice has been placed upon the protocol of 1902, he would have no serious difficulty in construing it adversely to the contention of the respondent Government. In effect, if not in express terms, the treaty of 1885, by the convention of 1902, is left in force generally; but for the purposes of claims to be considered under article 2 of the last-mentioned convention the treaty of 1885 has wholly superseded and practically abrogated it so long as the protocol of 1902 remains effective. Such must be the meaning of that provision in article 1 of the protocol of 1902, which relates to —

> examining in concert the demands for indemnity presented by Frenchmen for damages sustained in Venezuela, etc.

Concerning this there might exist a doubt, but not when there is considered the provisions heretofore quoted, that the procedure instituted by the protocol of 1902 is —

> as an exception only and does not invalidate the covenant of November 26, 1885.

The umpire holds, therefore, that by the terms of the convention of February 19, 1902, he can award such sum in damages in any and all of the cases submitted to him as, in his judgment, properly clarified and steadied by the ethical precepts of international law, equity and good conscience demand, in no respect limited or controlled by the treaty of 1885.

It is a consequence of this holding that if there were aught of wrong toward the Company General of the Orinoco done or permitted by the respondent Government through officials or persons for whose acts the Federal Government is responsible which were not concluded in and determined by the decree of October 14, 1891, then over such this honorable commission has jurisdiction and for such there may be an award in damages if justice and equity so permit and so require.

In the opinion of the umpire there are many matters anterior to May 28, 1890, which might seriously affect the rights of the contending parties which were not at all involved in the decree of the high Federal court. The restrictive quality of estoppel by judgments is well understood. It is not broader than the rule stated by the umpire in this case. It is only the particular matter in controversy which is decided. It is the exact issue as formed which is determined. There must be identity of cause, the same questions in issue, the same subject-matter. (9 Encycl. Pl. and Pr., 622-623; id., 624, 625; Story's Eq. Pleadings, par. 791; 24 Encycl. of Law, 2d ed., 775; 5 Encycl. Pl. and Pr., 780.)

What was affirmed in the case in question by the plaintiff therein? (1) That on the part of the plaintiff Government it had fulfilled the stipulations agreed to in both contracts. (2) That certain articles and parts of articles of both contracts as set out in the declaration had not been fulfilled on the part of the defendant.

What was the pleading of the company? (1) That it had performed. (2) When it had not performed it had been prevented by main force or by the acts and neglects of the Government or by the acts and neglects of the authorities for whom the Government was responsible, these acts and neglects referring to the matters of the contract. Such were the issues. These were determined: That the Government had fulfilled on its part all the obligations which the two said contracts imposed upon it; that the defendant had not fulfilled the obligations contained in Nos. 1, 2, 3, 4, 5, 6, 7, and 9 of the contract of December 17, 1885, nor the stipulations 3, 4, and 5 of the contract of April 1, 1887; that it was not prevented from fulfilling these obligations by insurmountable difficulties constituting *force majeure* nor was it so prevented by the acts of authorities dependent upon the Government itself and contrary to the stipulations of the contract. This reference to the acts of authorities dependent upon the Government in the answer of the defendant in excuse for its failure to fulfill certain of its obligations is understood solely to refer to matters springing from the contracts and referring to the Government as the other party thereto. Such also in the opinion of the umpire is the force, extent, and value of the decree upon that point. However, from the attitude which this claim has assumed in the mind of the umpire it is not necessary that he make critical analysis of the decree or of the elements of fact anterior to May 28, 1890, which may or may not be included therein and concluded thereby.

The answer of the defendant company in the suit for rescission was in defense only. It presented and suggested no counterclaims or claims in set-off. These were reserved. They were not plead, not in issue, were not litigated, and therefore can not be concluded by the decree.

The language, therefore, which is so often used, that a judgment estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented, is strictly accurate, when applied to the demand or claim in controversy. Such demand, or claim, having passed into judgment, can not again be brought into litigation between the parties in proceedings at law, upon any ground whatever.

But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to

those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action; not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action. (Cromwell *v.* Sac County, 4 Otto (U.S. Sup. Ct.), 351-371; (S. C., L. C. P. Co., 24, 195-204, and note.))

The law in respect to estoppel by judgment is well settled, and the only difficulty lies in the application of the law to the facts. The particular matter in controversy in the adverse suit was the triangular piece of ground, which is not the matter of dispute in this action. The judgment in that case therefore is not conclusive in this as to matters which might have been decided, but *only as to matters which were in fact decided.* (Last Chance Mining Co. *v.* Tyler Mining Co. 157 U.S. Sup. Ct., 683-685; (S. C., L. C. P. Co., 39, 862); 9 Encycl. Pl. and Pr., 629-630; 24 Encycl. of Law, 2d ed., 775.)

Not having been pleaded and passed upon in the suit for rescission, all claims or demands which by the claimant company on May 28, 1890, might have been plead as counterclaims or claims in set-off to the suit for rescission in its prayer for damages, or which might have constituted at that time ground for an independent action, are proper to be presented and considered in this honorable commission as substantive ground for an award. (24 Encycl. of Law, 2d ed., 775; id., 791.)

It is certain that a claim in offset would not be concluded by a judgment when it was neither placed, considered, nor deducted in making up the judgment. (Sup. Ct. of Vt., found in 52 Vt., 121.)

For the same reasons as have already been given, the decision of October 14, 1891, settled nothing after May 28, 1890, the day on which the suit to rescind was entered in the high Federal court by the fiscal nacional de hacienda. The issues were formed as of that date. The cause of action had then accrued. It then existed or the court had no jurisdiction. For such causes as accrued after that date the court gained no jurisdiction in virtue of the suit then pending. The actions of the claimant company and of the respondent Government posterior to that date are all proper subjects of inquiry and of award.

The cause of action does not accrue until the existence of such a state of things as will enable a person having the proper relations to the property or persons concerned to bring an action; * * * (1 Bouv. Law Dict., 295.)

Causes of action must exist at time of commencement of suit. (1 Encycl. Pl. and Pr., 209).

Hence a judgment against a defendant is not conclusive as to set-off or counterclaim which he might have pleaded to the action. In the absence of statute a defendant having a cross-demand against the plaintiff may, at his election, either use it in the pending suits as a set-off, or reserve it to be used as the basis of an independent action. His failure, therefore, to plead it does not preclude him from bringing a subsequent action upon it. (24 Encycl. of Law, 785.)

Notwithstanding the clear right of this honorable commission to weigh, pass upon, and merge in the award any and all rightful claims for damages inhering in the claimant company for wrongs suffered through those for whom the respondent Government is responsible and which occurred prior to May 28, 1890, it does not become necessary to take this position in order to obtain equity in this claim, and for that reason only none such will be considered for that purpose.

There is no disagreement that in the spring and summer of 1890 arrangements had been perfected by the liquidator of the company and approved by its shareholders whereby an English company regularly organized and registered

was to take over the properties and franchises, rights, and privileges of the Company General of the Orinoco, assume and pay its indebtedness, and furnish a pecuniary basis for the continuation of its enterprise. It is agreed that this compact and these results failed to be consummated solely through the absolute refusal of the respondent Government to permit it. There were unquestionably grave reasons of state which animated and inspired this action of the respondent Government and which in its judgment required and compelled it to take this course; but it was as fatal to the interests of the claimant company as though differently inspired. The contention which had been very threatening and serious between the United States of Venezuela and Great Britain over the right of the latter to an equal control with the former Government of certain mouths of the Orinoco — a right claimed largely through alleged occupancy by the British citizens of the country contiguous thereto — was a cogent reason why the former Government should seriously object to any relations with a British company through a contract which by its very terms gave exclusive rights in certain portions of that river and peculiar privileges over its whole extent. That to Venezuela it seemed impossible to permit such a condition to exist is evident from its acts. That it was wholly justified in this assumption is the opinion of the umpire. As a party to the contract, however, it was bound by its terms, and one of its provisions specifically permitted, without restriction or supervision, just such an assignment as was proposed.

The right to assign was the sole value of the contract to the original concessionary. It was exercised again in the contract passed from the syndicate to the company. These assignments were recognized by the respondent Government. The interpretation was thus and then made by the parties thereto and especially by the Government of Venezuela that the assignment named in the contract was not restrictive in its operation to the first concessionary. Without such an interpretation by the parties thereto it would seem to the umpire to be the only correct inference to be drawn from the language used when the purposes and conditions are considered.

This is beyond all fair question. As the Government of Venezuela, whose duty of self-preservation rose superior to any question of contract, it had the power to abrogate the contract in whole or in part. It exercised that power and canceled the provision of unrestricted assignment. It considered the peril superior to the obligation and substituted therefor the duty of compensation. Had there been no other troublesome question of State entangled with the contracts of the Company General of the Orinoco it is quite possible that this governmental surgery would not have taken the life of the claimant company. Such entanglements, however, existed.

One is found in the controversies between Venezuela and Colombia over the terms of those contracts, the territory involved, and the claims of the company in connection therewith. A careful student of the situation quickly discerns the delicate position occupied in that matter by the respondent Government. It is not difficult to understand the supreme confidence of Gen. Guzmán Blanco and of Venezuela in general, concerning the favorable final outcome of the arbitration then resting in the hands of His Majesty the King of Spain. This belief was so intense, so complete, that it is evident that the dispute over the boundary and the pending arbitration were not disturbing factors in the plans of Venezuelans or of their Government. This easy and perfect confidence begot a carelessness of conduct in reference to the territories involved, readily understood but none the less, even more, disturbing to the other party litigant. The position of Colombia was undeniably correct. Venezuela could not question it. The serene confidence of Gen. Guzmán Blanco and his compatriots had unintentionally betrayed the Republic into a seeming serious affront to

Colombia. The contracts were susceptible of no other interpretation than that through them there was an assumption in Venezuela of exclusive control over the upper Orinoco and its important confluents entering it from the west and over large areas of territory to the west of the Orinoco. Equally, there was an assumption that this control was to exist indefinitely. Notwithstanding the pending litigation over the boundary, the Company General of Orinoco was permitted to enter into unquestioned and absolute possession of these litigated areas. From the view point of nations the respondent Government had been led into grave error. This error it must repair. It could only repair by receding. It could only recede by compromise with the company or by annulment. Every day that the contract was continued it was more or less a menace to the peaceful relations then existing between those two countries. That which had been held as a valued enterprise, a boon to Venezuela, for the reasons stated had become a source of serious national danger. The changed position of the respondent Government toward the claimant company, a change not at all obscure or doubtful, is thus easily and, as the umpire believes, correctly explained. No other than a paramount reason, in the belief of the State, can explain the ministerial decree of May 17, 1890; the suit for rescission of May 29, 1890; the gubernatorial decree of June 16, 1890; the administrative decree of August 9, disaffirming the action of the governor only because it was a usurpation of power, but displacing it with the ministerial decree of August 9, 1890; the successive and progressive acts of the ministers and the governors of similar tenor and effect together substantially annihilating the enterprise. No ordinary cause would have suggested or permitted this destruction of an internal improvement possessing such potentialities for the future of Venezuela, against the ordinary policy of the country, which had been to foster and encourage such enterprises.

The umpire does not question that there was an intimate relation between these administrative and official acts and the attitude of Colombia toward the respondent Government in regard to these contracts. The prompt report made by the minister for foreign affairs to the minister plenipotentiary of Colombia at Caracas has deep significance when it is noticed that it answered a communication of that same Colombian minister of date January 24, 1890; which answer had been apparently withheld until something of a positive and decisive character could be given. Five days after the suit was entered in court, three days after the company had been summoned, the day after Mr. Fiat appeared, this notification to Colombia was made. A suit for rescission did not satisfy Colombia. Its interests were still, in its judgment, imperiled and would remain thus imperiled so long as the company had power or opportunity to extend its exploitation over the debatable ground. Colombia by its reply of June 6 indicates this very precisely and emphatically to the respondent Government. Following this correspondence there were the gubernatorial and administrative decrees of June 16, August 8 and 9, the telegrams of the minister for the interior of August 29, and his letter of September 10. Other facts might be easily adduced which are of some evidential value, all tending toward the same end. Enough has been said, however, to suggest the ground upon which the umpire bases his judgment that the strait of Venezuela in regard to the Colombian incident was a potent cause for the position assumed by the respondent Government toward the Company General of the Orinoco in 1889, 1890, and 1891. It was a question of governmental policy, and that Venezuela decided upon this plan of action must be attributed to its solicitude for peace with a sister Republic.

Running as a not unimportant thread in this warp of discomfort and resulting discontent of the respondent Government was the attitude of antagonism

toward the company assumed by the business men of the Orinoco from Ciudad Bolívar through the Territories of Upper Orinoco and Amazonas. The monopoly in the natural products granted in its concessions interfered with their personal enterprises. These privileges were in compensation for the very important obligations resting upon the company, which when fulfilled were to be of incalculable value to the country, but this did not prevent the sense of wrong and the feeling of revolt on the part of these people. That this feeling was general and deep on their part is readily discerned. The governors and officials there resident were naturally sympathetic. The President and his cabinet observed and were disturbed by these manifestations of anger and dissatisfaction, which became very apparent. The situation in this regard was grave. The Perez campaign was perhaps the most violent and destructive, but it illustrates the situation. These contracts then became a source of constant annoyance to the administration at Caracas and of menace to the internal security and welfare of the State. It is quite probable that the natural hostility of the business men of that section of the country was increased and made bitter and rancorous through the method and manner of some of the agents of the company. Where concession and conciliation might have been most valuable emollients, they were not always in evidence, but instead there was no doubt at times superciliousness and arrogance.

Such is the purport of the evidence before the umpire. It is too like a possible fact to be discredited. It is not strange with all the cumulative reasons therefor that the Republic of Venezuela became very weary over the situation which its contracts had created or permitted, or that it sighed for relief therefrom at whatever cost.

The sum to be awarded the claimant Government in behalf of the liquidators must be made commensurate to the damages caused by the act of the respondent Government in denying efficacy to the contract of assignment from the Company General of the Orinoco to the English company. A careful study of the events connected with this Governmental act, and of those which followed, reveals nothing which in any degree lightens the responsibility or in any part changes the relation which the respondent Government assumed toward the Company General of the Orinoco and its creditors when it exercised this sovereign right. The successive struggles of the company for existence which followed this act have been collated in this opinion; they need not here be referred to in detail. Suffice it to say that its ruin was not its fault. It fought bravely to exist either in its own or in some other corporate entity, to continue in its contracts as they then were in some modified form. It sought these ends persistently and patiently, but without avail. Eventually there came the revolutionary upheaval of 1892-93, the unsettled conditions which followed, then, at the hands of the executive and judicial powers of the Territory — Upper Orinoco — the finale.

These efforts of the company for resuscitation and the expense involved were necessary, but they can not be charged against the respondent Government. They are not a proximate result of the primary act for which it is held responsible in damages. The Venezuelan Government might make a new contract but it was not bound to do so. It might recede from its suit for rescission, but it had a right to refuse to do so. These were matters of negotiation, and that they resulted unfavorably to the wishes of the company is unfortunate, but it does not add to the pecuniary responsibility of the respondent Government. The acts of administrative authorities in 1890 heretofore referred to only quickened the process of dissolution. There was in it all no demonstrated financial loss to the liquidators on the basis upon which this award is to rest. It was not the liquidators but the Liverpool firm, which was to reap the pecuniary

benefit of the concession for 1890. To the suggestion that there was undue and unnecessary loss of the property because of the acts done or permitted by the respondent Government from 1890 to 1893, both inclusive, there is this answer that the award practically covers that investment so far as the liquidators are concerned, and it is impossible from the data at hand to arrive at any just conclusions concerning the pecuniary loss, if it were proper or necessary to consider it at all. To the possible suggestion that the arrangement with the English company might have proved illusory, when the suit for rescission had become known to this latter company, there is the answer that there was then ample grounds for the successful defense of that suit, had defense been the desired policy of the company. A full defense lies in the fact that there was in this suit for rescission no offer to restore to the company the benefits conferred by it upon the plaintiff when coupled with the uncontroverted fact that the company had conferred many and repeated benefits upon the plaintiff Government, which were capable of being measured in money, and for which there had been no compensation. Notably among these benefits is the one stated in the suit itself, where it refers to the amount paid by the company to the Government under its contracts for the exploitation and exportation of india rubber and sarrapia. (*24 Encycl. of Law, 621.*)

Many other equally pertinent easily discerned facts in the historical data are brought into this case, in the opinion of the umpire. It is not necessary to do more than to refer to them in this general way. Again, it was easily susceptible of proof that the respondent Government could not sustain its contention that it was without fault in the premises, and this is an essential fact which must always precede and accompany a suit for rescission and without which there must always be judgment for the defendant.

In the Encycl. of Pl. and Pr., vol. 18, page 752, there is laid down this general proposition:

> The right to rescind belongs only to the party who is himself without default. Thus, if one having sufficient ground therefor wishes to avoid a contract, but has done some act which hinders performance by the other, or has failed in any way to perform his own part of the stipulations, his right is thereby lost to him.

What were these defaults of the respondent Government? There was the Colombian incident bristling with points along this line; there was the decree of the minister of hacienda of May 17, 1890; there were the unrecompensed requisitions of 1888 and 1889; the decree not disaffirmed, not annulled, of Governor Larrazabal, October 31, 1888, an indisputable attack upon the terms of the contract; the absorption of the workmen of the company at Caura for the national defense, which, while proper, if necessary as an act of sovereignty, was none the less an attack upon the terms of the contract, when the Government is viewed in its proper position as the other party thereto; its neglect to allot or designate lands for immigrants as and when requested; its neglect to allot or designate lands for agricultural purposes as and when requested; the traffic in india rubber entered into by Governor d'Aubeterre in direct contravention of the exclusive privileges inherent in the company under this contract, and other incidents not so important, which, taken together, add force and value, yet need not here be brought forward.

The umpire is convinced that with these facts proven before it the high Federal court would have rendered a judgment for the defendant. Certainly a courageous company, conversant with these facts, would not have regarded the retention of the contracts as a very debatable proposition, and for that reason alone would not have regarded them as of insignificant value. This point is adverted to only that there may be negatived any proposition that on knowledge of the suit for rescission the British company might have refused

to go on with its contract on the terms agreed upon. This position of the umpire does not at all reflect upon the action of the high Federal court, which proceeded to pass its decree upon the facts which were before it and upon a cause whose defense had been abandoned because its manager believed that in negotiations there existed the better recourse.

What were the damages suffered by the claimant company because of the injury it received through the action of the respondent Government in reference to the contract with the British company? These damages were substantially the value of the concession at that time. There are minor matters which if definitely known in character, amount, and value might be considered, reckoned with, and deducted from this sum, but they are left too vague to be of evidential value, and hence they are omitted from consideration. Approximate equity is all that can be required and all that can be gained from a case so indefinite in many of its important facts. Substantially the property of the company was dispersed and disposed of to its entire loss, though its inability was not through any inherent weakness of its own, but resulted from the conditions which environed it. In 1890 it was in a situation to be relieved of its indebtedness through aid of the British company. The sovereign act of the respondent Government prevented this. There is no inequity if that Government be asked to take up the load just as it was when this act of sovereignty was interposed. The value of the concession may certainly be regarded as equivalent to the sum which the British company was about to pay for it. That sum was the amount of its indebtedness at that time, which was stated at 1,636,078.17 francs, to which may be added 25,000 francs, the sum representing the expense attending the contract with the British company, which was thwarted by the intervention of the respondent Government. This makes the sum of 1,661,078.17 francs. To this interest for fifteen years will be added 747,485.18 francs, which is the approximate length of time during which this sum has been in default, making a sum total of 2,408,563.35 francs, for which sum the award will be drawn.

These figures were gathered from a statement made by the liquidators, L. Roux, F. Vial, and A. Boulissière to the minister of foreign affairs at Paris, July 10, 1902. They comprise all of the principal sums there named, but exclusive of the interest reckoned, except the charge for the liquidation bonds, the expenses of the Belgian society, and the different expenses, salaries of employees unpaid since 1891. The latter item falls outside of the indebtedness in 1890, and the umpire understands the same to be true of the liquidation bonds, which were for that reason excluded. The reason for excluding the expenses of the Belgian society have already been stated in the opinion. This conclusion has the approval of Manager Delort, who said to the Government at Caracas, November, 1894, that it was only the indebtedness of the company which he asked to have canceled in order that the honor of the company and of its shareholders might be sustained. Then, again, this claim may properly be regarded in a limited sense as of the nature of a creditor's bill, the purpose of which is to recover that which is due for the benefit of the creditors that it may be distributed pro rata among them, but the controlling reason is the one stated in the first instance, that it appears to be the value of the property destroyed by the act of the Government.

The umpire has considered the propriety and importance of deducting from the sum allowed the damages assessed against the company in a suit for rescission. But he can not disregard the fact that the respondent Government in its suit for rescission admitted the receipt of 148,199.74 bolivars as its share of the products exported in accordance with the rescinded contracts and recovered its damages solely on the ground that the goods imported free would,

but for the contracts, have paid a duty to the amount claimed. Neither can he fail to consider that, except for the rescinded contracts, the respondent Government would have received no part of the 148,199.74 bolivars, and that no part of the goods in question would have been imported. It seems, therefore, equitable that the sum set as damages against the company in the suit for rescission be assimilated in and absorbed by the sums which the respondent Government directly received from the company solely because of the existence of said rescinded contracts. Hence the umpire has decided to make no such deduction and has therefore placed the award at the amount above written.

NORTHFIELD, *July 31, 1905.*

FRENCH COMPANY OF VENEZUELAN RAILROADS CASE [1]

It was one of the claims of the company that the respondent Government should be awarded to pay France 18,483.000 bolivar; (1) on the basis that it was responsible for the company's ruin; (2) that the company renounce its concession and abandon its enterprise to the respondent Government, including all its properties. The umpire failing to find the respondent Government responsible for the ruin of the company, the sum claimed cannot be allowed upon that basis.

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[1] EXTRACT FROM THE MINUTES OF THE SITTING OF AUGUST 28, 1903

The examination of the claim of the French Company of Venezuelan Railroads, presented at the sitting of May 19 last and amounting to the sum of 18,483,000 bolivars, was then taken up.

The French arbitrator considering:

That the nonexecution of the obligations contracted by the Venezuelan Government with the company and the nonpayment of sums which it owed it from the fact of its engagements, and its requisitions carried on, has rendered the company unable to continue its exploitation;

That the inspection of the line, of the material, and of the buildings demonstrates clearly that the company had not recoiled before any expense to assure excellent conditions, the service of merchandise and travelers;

That the examination of the accounts establishes that the exploitation would have been remunerative in spite of the obstacles presented by the civil war and the inclemencies of the climate if the Venezuelan Government had paid over the amounts due from it and that consequently by the act of the Venezuelan Government the company has been deprived of the legitimate benefits which it had the right to hope for;

That according to the said contract the Venezuelan Government having accorded a guaranty of 7 per cent upon a kilometric value of 300,000 bolivars, has itself implicitly recognized that the value of the exploitation was 18,000,000 bolivars;

That the Venezuelan Government seems to have had the intention of annulling the contract and of according the concession to a new enterprise;

That the company's claim for indemnity for the damages suffered by its maritime service from Maracaibo to Santa Bárbara is perfectly justified;

Decides that the Venezuelan Government ought to pay to the French Company of Venezuelan Railroads the sum of 18,483,000 bolivars demanded by it, on condition that the latter renounce the concession of the enterprise and abandons to the Venezuelan Government its line, its buildings of exploitation and habitation, its stores and its terrestrial and maritime material in the condition which they are found, by means of which payment, renunciation, and abandon the two parties will be free from all their reciprocal engagements and obligations.

The Venezuelan arbitrator considering, on the contrary:

That the true reasons for the suspension of the exploitation of the line by the company are of economic order, the latter having been led to take this resolve