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THE LATEST DECISION AT THE HAGUE.

Some legal decisions are of importance because of the amounts, others because of the principles involved. Though the amount involved in the case of the *"Allied Powers" v. the "Peace Powers,"* recently decided by the international tribunal at the Hague, was small, the principle involved in the decision thereof is one of vital importance. In fact it would be difficult to select a legal question the decision of which would affect more closely the peace, the happiness and the progress of mankind.

The facts in the case are briefly these: Venezuela was indebted to several nations, and owing to internal revolutions she had not the money to pay these debts as they came due. Germany, England and Italy grew impatient and formed a coalition for the purpose of resorting to force in order to collect what they claimed was due them. Their combined navies proved superior to that of Venezuela, and after blockading certain of her ports and bombarding others, their superior force induced the helpless Republic to sign a protocol providing for the payment of their claims out of her customs receipts. At this point the United States intervened diplomatically and secured an agreement upon the part of all the creditors of Venezuela to submit their claims to arbitration and to refer to the international court at the Hague the question as to whether or not the Allied Powers should have a preference over the others in the payment of their claims. And it may not be

out of place to stop long enough at this point to say that this triumph is among the most brilliant in American diplomacy. It increased the influence of the Hague tribunal and gave it an opportunity to establish a precedent which would be of such usefulness to the nations of the earth as to make them debtors unto it for all coming time. That it did not avail itself of this opportunity was no fault of the United States.

It is evident from the above facts that the parties in interest before the Arbitration Boards at Caracas for the purpose of determining the amount of the claims were the several creditor nations on the one hand and Venezuela on the other; but at the Hague the parties were those nations which had resorted to force against Venezuela and those which had not. To Venezuela it made no financial difference whether the Allied Powers secured a preference in the time of payment or whether they did not, as 30 per cent of the custom receipts of two of her principal ports are to be applied to the payment of the debts in question until the same are extinguished.

As the judges in the Court at the Hague do not hold office permanently as do the judges of most courts, it became necessary to select for this case three from the list of those already nominated by the various nations. The selection was made by the Czar of Russia. He chose M. de Martens, Count Muravieff and Henri Lammasch, the first two being Russians and the third an Austrian. Count Muravieff was made chairman, and it was he who delivered the opinion of the Court.

The issue in the case before the Court was clearly this: Is a resort to force such a meritorious thing that it gives to the nation or nations resorting to it *early* a preferred standing in a Court created for the purpose of maintaining international peace and justice? The Allied Powers maintained the affirmative, and the others, to wit: Holland, Belgium, Norway and Sweden, Denmark, Spain, Mexico, Venezuela, France and the United States maintained the negative of this issue. Never before has a lawsuit included so many important nations as parties litigant.

It is difficult to see how a court established for the purpose of furthering the peace of the world could decide this issue in the affirmative and thus put a premium upon violence. But such was the decision of the court. A glance at the make-up of the committee of judges will help us somewhat in understanding the decision handed down by them. It is impossible for men, even when sitting as international arbitrators, to divest themselves of inherited ideas and methods of thinking. The national ideas afloat in the atmosphere will soak in and become an indissoluble part of a man's mental equipment. It is therefore natural that both the Russians and the Austrian should bring to the bench full-grown convictions as to the efficacy of force as a factor in the government of mankind and not equally enlarged conceptions as to the rights of weaker nations.

Undoubtedly the judges had the right to decide in accordance with their own convictions as to the law and equities in the case. But it is unfortunate that they could not have reached a different conclusion. Therefore, it seems to us that it would have been better in the present instance to have selected judges from countries where the "mailed fist" is not quite so much an object of worship as it is in Russia and Austria. As the rules of the court render ineligible judges from those countries which are parties to the controversy, the number of countries from which judges could have been chosen was very much narrowed in this case, yet it would still have been possible to choose them from such countries as Switzerland, Greece or Portugal, *i.e.,* from countries which would have the least incentive to render a decision which would exalt brute force over peaceful methods as a means for settling international controversies.

The most encouraging thing in connection with the decision is the almost universal disgust with which it has been received; a disgust which is not an outgrowth of a sense of loss due to the postponement of the time at which certain claims shall be paid, for the amounts are so small that the financial loss is felt to be insiderable, but arises rather from the fact that a peace court should have placed its seal of approval upon the methods of the swashbuckler, and discourage in so far as it had the power to discourage a reliance upon the peaceful methods of diplomacy. Another encouraging feature is that, having agreed to submit the matter for arbitration, there is no disposition not to abide by the award, notwithstanding the almost universal disapproval of its terms. This acquiescence rests upon the general conviction that, even though a tribunal of justice may at time make mistakes, it is upon the whole preferable to the tribunal of arms.

Apologists for the decision attempt to justify it upon the ground of an analogy between the preferences given in courts of law to judgment creditors over ordinary creditors and the preference given in this case to the Allied Powers over the Peace Powers. At first blush this analogy seems sound. But let us examine it a little more closely. Whatever preference a judgment creditor has over his fellow-creditors he has secured not by forcibly seizing his debtor by the throat or by seizing or destroying or threatening to seize or destroy his property and thus compelling him to sign an agreement under duress, but rather by virtue of the fact that he has submitted his claim for judicial adjudication and has in advance of his fellow-creditors established the fact that he has a valid claim. Had the Allied Powers secured an award from an arbitration tribunal, while the other creditor nations were doing nothing, they could then with reason claim a preference in the payment of the amounts due them. They would then stand in a position analogous to that of judgment creditors. The giving of a preference as a reward for such a course of conduct would not be saying to the nations of the earth: If thy neighbor owe thee anything lose no time in proceeding against him

with shot and shell lest some other nation anticipate thee and cause the payment of thy claim to be postponed until he shall have first been satisfied. In other words, it would not be promulgating the dangerous doctrine of shoot first and arbitrate afterwards.

If we were to admit that technically the law would permit of the decision rendered in the present case, we should still be forced to insist that the equitable rights of the parties demanded a different decision. The Court evidently took the view that it was a court of law only and not a court of equity as well. This is most unfortunate and will be especially so if it is followed as a precedent for future decisions. For, if this is not to be a court of equity as well as of common law jurisdiction, what provision is left for equity jurisdiction in the field of international justice? If there is in municipal law need for a "correction of that wherein the law by reason of its universality is inadequate," there is certainly an equal if not greater need for it in international law. Had the equities of the case been considered, the Court would not have held that the protocol of February 15th executed under duress was a sufficient basis upon which to rest a decision, and particularly as one of the conditions upon which the case was submitted to the Court was that said protocol should not be considered binding. That such is the fact appears from an impartial study of the negotiations.

Viewing the case as a whole, this much is certain: That if adherence to the rules of international law necessitated the decision rendered in this case, then there is an imperative need of a conference of the nations to amend the law upon this point. For it is inconsistent and irrational to hold, as civilized nations do, that peace is a thing to be fostered and at the same time enforce a rule in a peace court which encourages a resort to war.

Edwin Maxey.