

**REPORTS OF INTERNATIONAL  
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**RECUEIL DES SENTENCES  
ARBITRALES**

**Daniel Case**

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## DANIEL CASE

Prescription unless pleaded by the debtor will not be taken into consideration by the Commission.

PAÚL, *Commissioner* (for the Commission):

The claimants, in their capacity of French citizens, and sole and legitimate children of P. Claudius Piton and Augustina Piton, née Lemoine, as appears from the public documents which have been presented before this Commission, demand from the Government of Venezuela the payment of the sum of 489,468.64 bolivars for capital and interest accrued since the date of their claim, arising out of the acknowledgment made by the minister of interior and justice on January 7, 1868, and by a resolution of the same date marked No. 5, in favor of Messrs. A. Lemoine & Co., for the following amounts: For the balance due on a credit of \$50,000, to which they have a right by the contract of July 20, 1856, made with the honorable municipal council of La Guaira, and approved by the government of the former Province of Caracas on August 28 of the same year, said contract having as an object the furnishing of drinkable water to the city of La Guaira by means of an iron pipe, the construction of various public fountains, the building of a reservoir for the storage of the waters, and the repairing of the aqueduct in various places, \$38,411.16.

For interest accrued upon this balance at the rate of 6 per cent per annum from June 1, 1860, until December 31, 1867 . . . . .	\$16,751.50
For damages and injuries which A. Lemoine & Co. claim for the breach of the contract (it being remembered that this amount is much less than what the profit of 1 per cent per month would have been which was indicated as simple interest in the original contract) . . . . .	7,500.00
	62,662.66

It was moreover resolved that this sum of \$62,662.66 should be paid by the administration of the revenues of the department of Vargas by the receipts from the public market of said city of La Guaira, and by the tariff for pure water which should be collected at that place, the payments having to be made monthly and the account to bear interest at said rate of 6 per cent per annum only upon the balance of \$38,411.16, since in no case could interest be paid upon interest.

As appears from the documents registered at La Guaira on January 28, 1868, under No. 4, protocol 8, the collector of revenues of the municipal council of the department of Vargas, Mr. G. Quevedo, by virtue of the special authorization of said body, by said instrument, put Messrs. A. Lemoine & Co. into possession of the receipts of the market and of pure water which might be collected by the administration of municipal revenues of the department of Vargas, its product to be delivered monthly, without any other reduction except what might be caused by its collection.

It appears from the documents presented that the administrative council of the department of Vargas carried on with A. Lemoine & Co. an open account in fulfillment of the resolution of the ministry of the interior and justice, under the division of districts until November 1, 1871, when the change of application of the funds destined for the extinction of the capital acknowledged to be due A. Lemoine & Co. and the interest on said capital at one-half per cent per month. From this last account it appears that upon the above date, November 1, 1871, the municipal council of the department of Vargas owed A. Lemoine & Co. the following:

For capital . . . . .	\$31,944.04
Interest . . . . .	25,234.62
Damages and injuries acknowledged . . . . .	7,500.00
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	64,678.66

An account has been presented bearing date April 17, 1882, showing an amount due of \$84,643.66 as the balance of the capital and interest in favor of A. Lemoine & Co. and a note addressed by the president of the municipal council of the district of Vargas, dated June 1, 1883, No. 188, to Mr. Daniel Dibble, in order that he might transmit it to the heirs of A. Lemoine, deceased, wherein he announced to them that said municipal council at its session of June 7, 1883, had resolved with reference to the claim presented by said heirs upon March 31 of said year, to approve the opinion of representative Manuel F. Sojo couched in the following terms:

That it being a matter of the greatest importance, and his many duties not permitting him to examine it, he returned it, indicating that he thought it would be well to have the advice of a lawyer.

The president of the council in said communication also announced that the body had postponed until another session the choice of the lawyer to be consulted.

Under letters D and E two plain copies of the two communications, the first addressed in July, 1895, by Carlos Piton in his own right, and Santiago Carias as the representative of Amelia and Isabel Piton to the municipal council of the department of Vargas, in which they requested that order be given that a liquidation might be made showing the indebtedness of said council to the heirs of Augusto Lemoine on account of the iron pipe line at La Guaira, in accordance with the contract in the premises which appeared in evidence in said record, and they demanded that a certified copy be issued to them of such liquidation.

The second communication, dated at Caracas in September, 1896, is written by the same petitioners and was addressed to the president of the State of Miranda, of which State the city of La Guaira then formed a part, asking said official that he examine the documents which the demand mentioned and that he might signify that he considered it just, and that he might fix upon a fortnightly payment for the gradual extinguishment of the debt. It is not proved that these two demands have reached their destination, and that consequently any determination with respect to them was reached.

From the facts stated, it appears that an agreement duly recorded existed by which the National Government through its official, the minister of the interior and justice, acknowledged an indebtedness in favor of Messrs. A. Lemoine & Co. of \$66,682.66, as capital, interest, and damages, and injuries in January, 1868, ordering the gradual extinction of this debt by means of the receipts of the rents of the market and pure water of the city of La Guaira; that this agreement was performed for the space of three years and ten months, Messrs. A. Lemoine & Co. receiving from the municipal rents of the district of Vargas various sums from said rents, which extinguished in part the balance owed upon the capital, and that portion owed for interest increased, whereby, by November 1, 1871, the general balance of the running account in favor of A. Lemoine & Co. amounted to \$64,678.66; that from this last date it does not appear that there has ever been any action taken by the owner of the debt directly, nor by their legitimate successors in interest, before the competent tribunals or officials of the country, demanding the fulfillment of the agreement made with the municipal corporation of La Guaira. It is not possible to leave out of consideration this notable circumstance which as a consequence has caused the default in payment

of a debt, recognized by a public instrument, for the extinguishment of which the party debtor had set aside certain receipts of the municipal revenues, thus constituting a pledge which in law establishes a legal right in favor of the creditor.

It is a notorious fact that the district of Vargas has since the year 1871 passed through a series of political and economic changes which have radically altered its organization and greatly decreased for various reasons the receipts of the municipal revenues.

The liability which might attach to the National Government to-day for a debt which was originally contracted by the municipal council of the district of Vargas, of the former province of Caracas, and which debt should be paid by these very municipal revenues which said corporation administered, can not be founded legally except in the ultimate territorial distribution sanctioned by the constitution of 1901 whereby the States obligated themselves to cede to the nation, among other cities, that of La Guaira.

Upon the date of this session the debt due the successors in interest of A. Lemoine had for a great many years remained without action, without their having been presented before this Commission any sufficient reason or motive to show that that situation was not owing to the neglect of the creditor and his legitimate successors in interest. The reason upon which all legislations base the right of the debtor to invoke prescription as a means of extinguishing an obligation is the abandonment in which the creditor has for a number of years left the exercise of his right, the legal presumption of payment arising therefrom. Prescription has not been invoked before this Commission in the present case by the Government of Venezuela, wherefore it can not of its own motion take it into consideration, in conformity with the principles which govern, but there is no right for the allowance of interest upon the amount of the debt; and taking moreover into consideration that the amount shown to be due by the liquidation of November 1, 1871, includes an item of \$7,500 for damages, and at the same time another amount for interest up to that date upon the capital at 6 per cent, which amounts to the sum of \$25,234.62; and that in all equity this double indemnity should not be allowed for interest and for damages, there should be deducted from the total amount of said liquidation the sum of \$7,500, and the balance in favor of the successors in interest of A. Lemoine should be allowed, say the sum of 228,714.64 bolivars, without interest.

(This opinion was concurred in by the French arbitrator.)

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#### HEIRS OF JULES BRUN CASE <sup>1</sup>

- A state of war, a battle, or a skirmish excuses only those casualties which are unavoidable.
- A city not in revolt, but temporarily occupied by insurgent forces, is entitled to receive from the Government the *utmost care and protection* not inconsistent with the retaking of the town from the insurgent forces, and is subject only to the *inevitable* contingencies attending such an undertaking.

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<sup>1</sup> EXTRACT FROM THE MINUTES OF THE SITTING OF MAY 27, 1903.

Proceeded to examination of claim presented in the name of the heirs of Mr. Brun (Jules), late superintendent of the French Company of Venezuelan Railroads.

Doctor Paul observes that this claim is not presented by a representative of Mr. Brun and in his opinion this fact would suffice for its not being taken into