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Massardo, Carbone and Co. Case (of a general nature)

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It is said there was a quarrel between the two men on account of an alleged attempt at homicide, Malenchini having been armed with a revolver. According to the logic of the accusation, whoever carries a revolver for self-defense is held to be guilty of attempted homicide. If such were to be the rule, not a few, commencing with the President himself, would be in quod.

It may be said that Malenchini was ready to use the weapon and would have done so had he not been arrested. Such is not the case. He carried it solely as a means of defense and had he intended using it he would not have availed himself of his cane, least of all in a place so crowded as the Plaza Bolivar, where the slightest disturbance would surely be followed by an arrest.

That an assault with a cane deserves punishment is conceded without question, but it should be of a proper kind, and not that imposed by the humor of an overzealous advocate who had exaggerated the facts in the case.

Malenchini was interrogated by the judge, and three weeks ago he was tried, and a sentence should have been given in three days. A sentence was finally pronounced, but what a sentence! Based on a nullity! Malenchini was condemned for injury to the person, but that there really was such the sentence alone declares, for there is not the vestige of proof. And as if this were not sufficient, the ten days of his sentence expired on Saturday, the 24th, but he still lingers in jail.

As your excellency may see, there is something strange and mysterious in the case of Malenchini. Your excellency alone has the power and authority to have this mystery unveiled. You alone can see to it that justice be not a vain word for Malenchini, who is lying in a dungeon because he is powerless and without defense.

I and my countrymen trust that this unfortunate incident, as truly dangerous to our nationality as to humanity, will soon be cleared up.

Believe me, sir, with profound respect, your most devoted,

G. BOFFOLO

P.S. — On the afternoon of Thursday, after the above was already in type, Mr. Malenchini was provisionally released on the payment of a certain sum by his father, who had arrived in aid of his son. But why provisionally? Another mystery.

EL OBRERO

We have before us the first number of the periodical *El Obrero*. The title clearly indicates the purpose for which our new confrère has entered the lists. Every workman should read it, and support its publication, as it is the first sheet devoted to the workingman's cause. *Il Commercio* wishes a long and prosperous life to the new venture.

CASE OF MASSARDO, CARBONE & Co.

(By the Umpire:)

The Italian protocol providing only for payment of a definite sum for "claims of the first rank derived from the revolutions 1898-1900," and the sums so paid being for certain named claims, jurisdiction will be taken over others of the same period.

Case retained for proof of Italian citizenship of those claiming interest in a succession.

AGNOLI, *Commissioner* (claim referred to umpire):

The Commissioner for Venezuela contends that the above-mentioned claim should be denied, he interpreting Article III of the Washington protocol of February 13, 1903, in the sense that the Italian Government accepted the sum of 2,810,255 bolivars in complete satisfaction of all indemnities due for acts of the revolution and all other acts from 1898 to 1900, and in support of his opinion invokes, besides the provisions of the article above mentioned, the contents of a note directed by the Royal Italian legation at Caracas to the Venezuelan minister of foreign affairs of December 11, 1902, No. 532.

As regards the protocol, it is to be observed that various arguments may be drawn therefrom to refute the interpretation of the Venezuelan Commissioner. As a matter of fact, Article III speaks of claims of the first rank, arising from the revolution 1898-1900. Now, one rank of claims can not logically be qualified as of the first rank if it is not in correlation with another rank or with other ranks of claims. If it had not been intended to implicitly recognize the existence of other demands for indemnity relative to the period 1898-1900, as coming under the Mixed Commission, it would not be possible to read in Article III the words "of the first rank," which establish a clear distinction between claims already examined and settled in the Royal Italian legation in the sum of 2,810,255 bolivars, and another class of claims not submitted, not adjudicated, and not presented to the Venezuelan Government by the legation itself. If the interpretation of Doctor Zuloaga were correct, the article in question would speak in general terms of Italian claims arising from the revolutions of 1898-1900, and would not make any discrimination whatever.

The same distinction appears in Article III in the establishment of the principle that the claims already adjudicated by the legation shall not be reviewed by the Mixed Commission. This exception is, in fact, not formulated for *all* the claims of the period 1898-1900, but only for those of the first rank.

Article IV, in clear and explicit language, offers another argument in support of this said claimant. It states that "all other Italian claims *without exception*," outside of those considered by Article VIII of the protocol "shall be decided by the Commission."

Why, on the occasion in which the plenipotentiaries made an exception relative to the bearers of titles of the foreign debt of Venezuela, did they not also make an exception relative to the claims of the period of 1898-1900 not comprised in the sum of 2,810,255 bolivars, but stated instead that *all* the others outside of those already settled would be examined and settled? The reason is clear. It is because it was never thought to make the exception now presented by the Venezuelan Commissioner.

But is it admissible that the Italian Government should have wished to bar the way in support of a claim as just as the one in question against which, neither in equity nor from any technical point of view whatsoever, is it possible to raise an objection?

Besides, the Venezuelan Government has never yet pretended that there shall not be settled other claims of the period of 1898-1900 than those of the first rank.

In support of this my assertion I cite the case of Oliva Bisagno, to whom the Government itself has but lately offered the sum of 250,000 bolivars as an indemnity for damages suffered by her *in the period 1898-1900*.

It would seem to me that the Venezuelan Commissioner should insist on placing a more restrictive construction on the protocol than has been given by the Venezuelan Government.

But let us come to note 532 of the legation, the scope of which was a peremptory demand for the payment of 2,810,255 bolivars, amount of Italian claims of the period 1898-1900, *examined and found valid by the legation*. Nothing whatever is said of the claims of that period not yet examined by the legation and judged valid, for which diplomatic action remained open and undecided.

Further, the Italian minister says in said note that the Italian Government makes an express reservation of all claims which were or might be presented by Italian subjects subsequently to the period mentioned, as well for damages arising from the civil war commenced in 1901 as for any others against the Venezuelan Government, and requests that the Government of Venezuela be pleased to declare itself disposed to apply to the settlement of such claims such

provisions as shall eliminate ulterior discussions, accepting the decisions of a mixed commission.

Aside from the fact that every exception contained in said note should be held as having been incidental and not direct, and that the protocol of February 13, 1903, has established principles which, even if they were (as they are *not*) contrary to those enunciated in the note mentioned, should serve as the only and absolute rule of the Mixed Commission, it is well to observe that the Italian minister declared in the above-mentioned document that the Italian Government made express exception not alone of the claims arising from acts posterior to the period of 1898-1900, but of all claims presented subsequent to said period, making special mention of those occasioned by the war initiated in 1901, and of those based on whatsoever other title of credit or action against the Government of the Republic.

There is no indication of a restriction as to time relative to this second rank of claims, which includes all those not already settled, and this is the reason why the Italian minister did not deem it necessary to make a specific exception for the claims of 1898-1900 not already liquidated by the legation, and not therefore comprised in those of the first rank. Let it be thoroughly understood that between want of an express exception of any given category of claims and the abandonment of the right to support them there is an absolute and fundamental difference. A relinquishment can never be presumed, but must be tacitly enunciated.

Taking these principles in accordance with the clauses of the protocol, the Commissioner for Italy is of opinion that the claim presented by Mrs. Ernesta Raffo, widow Massardo, through the receiver of the firm of Massardo, Carbone & Co., should be accepted, and an award made to the claimants of the full sum of 18,212 bolivars, plus the interest.

ZULOAGA, *Commissioner* :

This claim is of March, 1898, and, by virtue of article III of the Washington protocol, claims arising during the period from 1898 to 1900 from acts of the revolution of said period were paid the Italian Government out of the sum of 2,810,255 bolivars. No claims for damages within said period can therefore, in my opinion, be presented. The Italian Government decided for itself as to the class of claims coming within this period and paid those accepted by it in the manner stated.

This interpretation of the protocol seems to be amply confirmed by the note of the Italian minister of December 11, 1902, published in the volume of *Asuntos Internacionales*, page 102,¹ in which it is stated that the

Royal Government has expressly excepted the claims which were or might be submitted by Italian subjects subsequent to said period, as well for damages arising from the civil war of 1901 as for whatever other title of credit or action against the Government of the Republic.

This latter class doubtless has no reference to damages.

Articles II and III of the German protocol likewise exclude claims for this period. Resting on the above reasons, I reject the claim of Massardo, Carbone & Co.

RALSTON, *Umpire* :

The foregoing case has been presented to the umpire, the honorable Commissioner for Italy in his opinion favoring an award for the full amount, and the

¹ See the original Report, Appendix, p. 995.

honorable Commissioner for Venezuela opposing on the ground that the claim originated in the month of March, 1898, and grew out of the revolution commencing in that year, while all claims for the wars of 1898-1900 were settled by the acceptance, by Italy, of the sum of 2,810,255 bolivars. He further insists that the note of the minister for Italy of December 11, 1902 (*Asuntos Internacionales*, p. 102 ¹), made no express reserve covering a case for damages occurring during the period mentioned.

Returning to the protocol, we find that the amount above named was given for "Italian claims of the first rank derived from the revolutions 1898-1900." By reference to the above-mentioned book, page 96, it will be found that this sum was allowed for 123 individual claims which had been appraised by the Italian legation.

The question presented, therefore, is whether, assuming that no express reserve of other claims arising out of the wars of 1898-1900 was made by the Italian legation, such claims should now be recognized.

The protocol does not in terms exclude any class of Italian claims from consideration. The amount paid by Venezuela to Italy for claims was not to extinguish, generally, claims arising from the wars in question, but only to settle claims which had been previously enumerated.

The umpire can not imagine that when the protocol was signed there was any intention on the part of Italy to abandon without consideration and without apparent reason other claims of equal equity not theretofore presented. Had the sum paid been designed to extinguish all claims, the situation would have been different.

It is true that the reserves made by the Italian minister may have been vague; but the protocol subsequently passing on the whole matter, and no claims except those of the first rank being reserved from the consideration of this Commission, the umpire believes it to be the duty of the Commission to take jurisdiction over and grant judgment in all other cases originating at least before the date of the protocol where the evidence and the rules of international law justify such action. The umpire reserves consideration of the possible effect upon claims of an earlier date of any prior settlements and treaties not brought to his notice and therefore not now discussed.

The foregoing, however, does not completely dispose of the case. The claim is made in the name of Ernesta Raffo, widow of Massardo. The property taken appears to have belonged to the firm of Massardo, Carbone & Co., whose liquidator is Luigi Carbone, a member of the firm. It does not appear how many members of the firm there were, or what were the interests of each. Neither does it appear that the widow is the sole heir of Massardo, the former apparent member of the firm. If it is designed to claim the interest of the widow alone, her inheritance from the husband should appear and also the proportionate size of his interest in the firm. If it is designed to claim for the entire partnership, the names of all should be given, together with the appropriate proofs of citizenship, for only Italian subjects may have any interest in any claim passed on by this Commission.²

The umpire will not now, therefore, finally pass upon this claim, but will retain it until September 1, 1903, that the lacking elements of proof may be supplied or addition of parties may be made.

(The lacking proof being furnished, award for claimants was subsequently given.)

¹ *Idem*, Appendix, p. 995.

² See *Corvaia case*, *infra*, p. 609.