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Brignone Case (of a general nature)

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BRIGNONE CASE

(By the Umpire:)

In the event of conflict of laws creating double citizenship, that of respondent nation must control.

In case of conflict of laws as to distribution of estate, the law of domicile of decedent, especially because of certain laws of Venezuela, must control the more, as otherwise laws of Italy would be given extraterritorial effect.[1]

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

In the case of claim No. 60, presented in the name of the estate of Sebastiano Brignone, and after hearing the exceptions in the case taken by his honorable colleague of Venezuela, the Commissioner for Italy sustains the three following points:

1. Primarily, that the claim should be accepted in its integrity, without regard to the nationality of the heirs of the deceased.

2. Secondarily, that the widow and children of Brignone being Italians, the amount of the claim should be awarded to them.

3. By a parity of reasoning, that the estate should certainly be liquidated according to the law of *de cujus*, and that therefore there should be awarded to the Italian relatives of the deceased residing in the Kingdom and claiming, with the widow, a share of the estate, two-thirds of the sum claimed, in conformity with the provisions of the Italian civil code in such case.

With regard to the first point, the claim is sustained by the royal Italian legation in its entirety, because the claim under consideration is essentially Italian.

To determine the nationality of a claim and the competency of the Commission there should be taken into account only the nationality of the claimant at the time of his suffering the damages, and not of the nationality of the persons in whose favor may redound the sum awarded.

By these principles were guided:

First. The French-American Mixed Commission under the convention of 1880. (See Moore, Int. Arb., pp. 2398-2400.)

Second. The court of arbitration of Geneva in the case of the *Alabama*, and the Alabama Claims Commission, organized under the act of June 23, 1874, for the adjudication of the Geneva award. (See Moore, Int. Arb., pp. 2360-2379.)

The judge who delivered the opinion based on the argument said, among other things:

> It was a great principle for which our Government had contended from its origin — a principle identified with the freedom of the seas, viz, that the flag protected the ship and every person and thing thereon not contraband. * * *
> Therefore * * * we decide that foreigners entitled to the protection of our flag in the premises, whether naturalized or not, have a right to share in the distribution of this fund. (Moore's Arbitrations, p. 2351.)

A fortiori, it should be admitted that claims originally owned at the time of the damage by Italians, ought to be entitled to indemnity. Moore, in the case of the *Texan Star*,[2] gives an even more conclusive example.

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[1] The differences between the doctrines of France, Italy, and Belgium on the one hand and England, the United States, and Germany on the other relative to determination of status, family relations, and successions are extensively discussed by M. Henri Jacques, in 18 Revue de Droit International (1886), p. 563, entitled "La Loi du Domicile et la Loi de la Nationalité en Droit International Privé."

[2] Moore, p. 2360.

Third. We have, besides, among other more notable precedents, the arbitration of the Delagoa Bay Railway (Moore, 1865, et seq.), in which was sustained the right of an American citizen to be indemnified, even though his name did not directly appear in the company, which was English or Portuguese at the time of the presentation of the claim, and who was at the time merely a shareholder in a stock company. The acceptance of contrary principles would lead to most unjust consequences. In fact, let us suppose that Brignone had at his death left creditors in lieu of heirs, would it be equitable to reject the claim because some or all the creditors were not Italians? What, in fact, are heirs, if not creditors of the *universitas juris* formed of the sum of the property of the estate?

But if the equity of the principle advanced by my learned colleague be admitted, no Italian claim may be admitted without conclusive evidence that the Italian claimant is not indebted to Venezuelans, and has not ceded the sum which may be awarded him to creditors of a different nationality, and particularly Venezuelans. It has not yet occurred to anyone to demand such proof.

Let it be noted that such a cession may have been obtained forcibly by anyone, but more particularly by a merchant, as, for example, in the case of failure. But granting a voluntary cession, our principle — that of the original nationality of the claimant — should prevail, because we should not impede the freedom of anyone to dispose of his patrimony. How, then, can we sustain a contrary rule when cession occurs through the least voluntary of all acts — death?

The Mixed Commission is a tribunal sui generis, before which the Venezuelan Government is summoned. Before an ordinary tribunal might it perhaps be admitted that the local government, except against a foreign creditor, is not compelled to pay a portion of its proven indebtedness, because the sum claimed belongs, in part, to a Venezuelan? Surely not. Why, then, should such an exception be admitted by the Mixed Commission? Why endeavor, by a legal quibble, to evade the fulfillment of a moral and juridical obligation, and why resort to such an expedient before a tribunal of equity which not only can but must, according to the terms of the protocol by which it is governed, reject all technical objections?

It seems to me that the objection raised by my Venezuelan colleague does not agree with any concept of equity. As a matter of fact, he has taken no exception to the morality or foundation of the Brignone credit, and it is inconceivable that he should attempt to exonerate the Venezuelan Government from the payment of an amount which he impliedly recognizes as due by said Government. What is, therefore, the practical scope of Doctor Zuloaga's objection? Is it not true that the right to claim from the Venezuelan Government a part of the amount of the claim subsists in the widow Brignone, whatever her nationality?

She must run the same risks as the other heirs of the estate, for her interests therein are bound up with theirs and depend upon the same title. By the fact of her having presented to the Italian legation the documents in connection with her claim, and through said agency submitted it to the Mixed Commission she acknowledges the competency of this tribunal and at the same time expresses her choice for the Italian nationality, should any doubt exist on that point. It will be noted that I attach considerable weight to this option, given the circumstance of a conflict between the two laws; but of this we will speak later.

Now, I ask, let us suppose that the sum claimed as indemnity was originally owed to a Venezuelan, and that his heirs were Italian; as a matter of fact, the legation would not support such a claim; but admitting that it presented it to

the Commission, how would it be received by the Venezuelan Commissioner? He would most certainly reject it, objecting, with reason, that the claim was not originally Italian, and would, I am sure, advance still other sound reasons, as, for instance, that the cession by Venezuelans of their interests in a claim against the Republic to Italians, in order that these latter might make them the object of a claim before the Commission, could not be tolerated.

But why, on the other hand, given but not conceded that the widow Brignone is wholly Venezuelan, not apply *a contrariis*, the same rule? Why say, when the injured party is a Venezuelan and those to whom indemnity should be paid are foreigners, that indemnity can not be awarded because the claim is originally Venezuelan and therefore not to be considered, and when the injured party is Italian and the actual claimants Venezuelans the claim should likewise be rejected, because in this case the original nationality of the claim need not be taken into account? Where is the logic of such reasoning, and where the equity of such a principle? Two weights and two measures cannot be admitted.

I will admit that when the cession of an interest forming the basis of a claim takes place, either in bad faith or without just cause, and with the manifest or concealed design of procuring the readiest means for obtaining indemnity, the Commission should not sanction such proceedings; but in the case of the widow Brignone, even though she were a Venezuelan, bad faith is absolutely excluded, and the presentation of the claim as a whole before the Commission is a natural condition of things, not created expressly for secondary ends.

Let us examine the question briefly from a purely juridical point of view. I have observed above that the estate is a *universitas juris*; now, for the same reason the charges against the same, as well as the debts of the deceased, should on principle be charged against all the heirs of the estate; so, also, when it is a question of recovering from the credits of the deceased and of his estate action should be brought in the name and interest of all.

It can not be admitted that a contrary rule should be followed when it is a question of fulfilling an obligation or enforcing a right, when the heirs find themselves, as in the Brignone case, in community, since the object of the successionary rights of each of them is the estate taken in its entirety.

The heir in his quality of successor has the personal representation of the *de cujus*, and by virtue of these principles the claim in question (whatever be the nationality of the heirs) should be examined and judged by the Commission as an Italian interest, and as such is covered by the provisions of the protocols without any restrictions whatsoever, either expressed or implied, having been stipulated in regard thereto.

With reference to the second point: There is no doubt that the widow Brignone was born a Venezuelan; neither is there doubt that by her marriage with an Italian she became Italian. (Art. 19 of the Venezuelan Civil Code, and art. 9 of the Italian Civil Code). The Italian Civil Code declares that the foreign woman who marries an Italian citizen acquires his nationality and retains it even in her widowhood, while according to the Venezuelan Code she is so only during the life of her husband; therefore, on the death of Brignone his widow found herself Italian by the Italian law, and Venezuelan by the Venezuelan law.

If in regard to this circumstance Italian tribunals should be called upon to decide there can be no doubt they would declare the widow Brignone to be an Italian, while the local tribunals would just as surely consider her a Venezuelan. Now, what should the decision of the Commission be on this point, given, but not conceded, that it has power to judge and determine the nationality of a claimant in whom the Royal Government, according to its laws and through its legation, has recognized as an Italian?

There is no doubt in my mind that the Commission should consider the widow Brignone as an Italian, and this for the following reasons:

1. The exception urged by the Commissioner for Venezuela rests on " provisions of local legislation," and should therefore a priori be rejected in obedience to Article II of the protocol of May 7, 1903.

2. The coexistence of two nationalities in the same individual not being theoretically admitted in international law, and (as I have more fully set forth in the claim of Giordana) the nationality of origin being in every way the one that should prevail, the widow Brignone should be considered an Italian. In fact, although the lady was born a Venezuelan, she by the terms of both laws became exclusively Italian on her marriage, and her nationality as a widow can not be other than the one she was peacefully enjoying on the date of her husband's decease, when without ceasing to be Italian she found herself invested with an additional nationality. The fact that this latter nationality is the same she had before her marriage does not affect the case, since the question arises at the moment of Brignone's death — that is to say, when to the Italian citizenship of the widow another was added.

3. Admitting that the juridically abnormal fact of the existence of two nationalities in the widow Brignone should be recognized, an international tribunal, such as this Commission, in whose decisions the circumstance of its sitting in Caracas can have no weight, since it might equally have been called to sit in Rome or Washington, or any other city, can not but take into account that the widow by the fact of having herself presented the claim to the royal legation in favor of the heirs of the deceased shows her preference for the Italian nationality, and unhesitatingly chooses it instead of the Venezuelan.

The Commission, therefore, evidently should not impose on her a nationality she does not desire, and should respect her liberty of choice.

4. But admitting that in her case the Italian citizenship does not exclude the Venezuelan, no one surely would dare to affirm that the latter may on the contrary exclude the former. The claimant would at least be as much one as the other. Now, she is entitled to the full exercise of her rights as an Italian, and among these is that of claiming before this Commission, and by this means obtaining, the share to which she is entitled of the Brignone estate as one of the heirs out of any indemnity which may be awarded them either present or absent.

Article IV of the protocol of February 13 is clear and precise. It speaks of Italian claims without exception. To now except claims of persons to whom, though admitted to the enjoyment of another nationality, that of Italy may not be desired, is an infraction of the protocol itself, and is a restriction of its stipulated terms, which should have been done in Washington by the Venezuelan plenipotentiary, but which can now not be done, according to the dictates of common sense and the maxim laid down by Vattel (sec. 264, Bk. 2):

> Si celui qui pouvait et devait s'expliquer nettement et pleinement ne l'a pas fait, tant pis pour lui. Il ne peut être reçu à apporter subséquemment *des restrictions* qu'il n'a pas exprimées.

I ask for no amplification of the protocol, and I hold to its letter " all Italian claims without exception," but I reject all exceptions and restrictions sought to be made in Caracas and which were not made in Washington.

With regard to the third point: If under a most extreme hypothesis, none of the arguments hitherto employed by me have succeeded in convincing the honorable umpire of the justice of my contention, I maintain that the Brignone estate should be liquidated according to the provisions of the Italian law, which says that when, as in the present case, referring to estates ab intestato,

the surviving wife or husband joins with the ascending heirs of the deceased, to these latter belong two-thirds of the estate and the remaining third to the survivor aforesaid. (Art. 754 of the Italian Civil Code.) As the father of Sebastiano Brignone is living, as proved by documents submitted by the royal legation, he is entitled to two-thirds of the sum awarded as indemnity by the Commission.

It is a prevailing rule, and the Commission will surely not adopt another, that estates should be liquidated according to the personal law of the deceased, in the correctness of which rule my Venezuelan colleague appears to agree, and thus spares me the necessity for a long dissertation. It suffices for me to quote Article VIII of the preliminary title of the Italian Civil Code, which reads:

> The legitimate and testamentary successions, however, whether as to the order of succession or as to the measure of the rights of succession and the intrinsic validity of the provisions, are regulated by the national laws of the person whose estate is in question, whatever be the nature of the property or in whatever country it may be situated.

In thus inscribing and proclaiming in the Italian Civil Code so lofty and liberal a principle of international law its compilers foresaw that it would redound greatly to their credit, and Italian legislation has warmly welcomed it in every case, whatever the nature of the testamentary property, and it seems to acquire additional force whenever this latter is personal, from the maxim, " *Mobilia sequuntur personam.*"

Fiore, in paragraphs 103 et seq., Volume I, Diritto Internazionale Privato, illustrates and justifies this principle, and in paragraph 109 sums up in these words his learned argument:

> Among all the systems, the one which best responds to rational law is the one adopted by the Italian legislator and found in Article VIII (already cited in the present memorial) of the general provisions of the Civil Code.

Pasquale Stanislao Mancini in this connection says that the " ragione successoria " being naught else than the combination of the principle of property with that of the family should be governed by the law of the person, and I qualify the principle *tot hæreditates quot territoria* as scientifically erroneous, and conducive to complications, incoherencies, onerous charges, and injurious to the heirs.

My honorable Venezuelan colleague in one of the recent sessions of the Commission said, that if there were conceded to the heirs of Brignone residing in Italy two-thirds of the indemnity awarded, the widow might consider herself as injured in her interests, because the local law gives her a larger share of the property of her deceased husband than is granted by the Italian law.

It seems to me the widow, by the fact of her having submitted her claim through the Italian legation, which means that she accepts the Italian law, has impliedly renounced every right she might have under the Venezuelan law in the matter of the partition of the estate.

It would be far too convenient to invoke the Italian law in the prosecution of the claim, and then the Venezuelan in the award of the indemnity.

In any case, whatever may be the difficulty or responsibility of the Commission, it will be avoided by awarding indemnity " to the heirs " of Sebastiano Brignone, as was done in the case of Massardo, Carbone & Co.

It will be the business of the heirs to divide among themselves, by mutual agreement or according to law, the amount awarded them.

I come now to the conclusion, and ask, first, that the honorable umpire award to the heirs of Sebastiano Brignone an indemnity of 81,137 bolivars,

with interest from November 1, 1892, to December 31 of the current year; and second, that he allow the ascendant heirs of Brignone two-thirds of said amount, or 54,091.34 bolivars, with interest thereon calculated as above.

No opinion by the Venezuelan Commissioner.

RALSTON, *Umpire:*

This case comes to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela.

The claimants acquired their rights before this Commission through Sebastiano Brignone, an Italian citizen domiciled for many years in Venezuela as a merchant. The claim originated because of supplies furnished by Brignone, Delfino & Co. to the Venezuelan Government in 1892, and is for 81,137 bolivars, with interest from October 8, 1892.

The original beneficiary was married in Venezuela to a Venezuelan woman, September 5, 1891, and died in Caracas in September, 1898. His widow, who is one of the claimants, has always lived in Venezuela, and the question arises whether she may be treated as an Italian subject, and as such entitled to one-third of the estate. Of course, if she be Venezuelan she has no standing before the Commission. It is said that a conflict of laws as to her citizenship exists as between Italy and Venezuela.

The Civil Code of Italy provides as follows:

ART. 9. La donna straniera che si marita a un cittadino acquista la cittadinanza, e la conserva anche vedova.

ART. 14. La donna cittadina che si marita a un straniero diviene straniera, semprechè col fatto del matrimonio acquisti la cittadinanza del marito.

Rimanendo vedova, ricupera la cittadinanza se risieda nel regno o vi rientri, e dichiara in ambidue i casi davante l'ufficiale dello stato civile di volervi fissare il suo domicilio.

Upon the same points the Civil Code of Venezuela provides as follows:

ART. 18. La extranjera que se casare con un venezolano adquirirá los derechos civiles propios de los venezolanos, y los conservará mientras permanezca casada.

ART. 19. La venezolana que se casare con un extranjero se reputará como extranjera respecto de los derechos propios de los venezolanos, siempre que por hecho del matrimonio adquiera la nacionalidad del marido y mientras permanezca casada.

In the opinion of the umpire there is not a true conflict of laws, if we read the foregoing extracts with a due regard to their spirit.

Each country, speaking for its own nationals, declares that the native-born woman, marrying a foreigner and becoming a widow, having resided all the time at home, reassumes her original condition.

To permit so much of the Italian code as declares that the foreign woman marrying an Italian becomes Italian, to override the Venezuelan code, would therefore be against the spirit of the other section of the Italian code above referred to. It is therefore proper to say that in a true sense their is no conflict of laws.

But if it still be considered that a conflict exists, how should it be determined? Upon this point text writers and courts assist us.

Says Bluntschli (sec. 374):

Certaines personnes ou familles peuvent exceptionnellement être ressortissants de deux États différents, ou même d'un plus grand nombre d'États.

En cas de conflit la préférence sera accordée à l'État dans lequel la personne ou la famille en question ont leur domicile; leurs droits dans les États où elles ne résident pas seront considérés comme suspendus.

In a note to the section he adds:

Contrairement à mes opinions antérieures, je pense aujourd'hui qu'en cas de collision on doit, en faveur de la liberté d'émigration, accorder la préférence à la nationalité de fait, c'est-à-dire, à celle qui s'unit au domicile.

Phillimore, volume 4, chapter 17, section 368, discussing the doctrine determining personal status, says:

An overwhelming majority of authorities pronounce that the law which governs the status is the law of the domicile,

referring to Rocco, Fœlix, and Savigny.

Let us now turn to the courts:

In the cases of de Hammer and others against Venezuela (3 Moore, p. 2456), there arose exactly the question before us. The claimants were Venezuelan born, but married to American citizens, and claimed American citizenship by virtue of the law of the United States of 1855, which declared a citizen —

every woman capable of naturalization married or who might marry thenceforward a citizen of the United States.

Commissioner Andrade decided against the claimant, and the American Commissioners, while not always following his reasoning, reached the same conclusion. Said Commissioner Findlay:

The question in the case is whether this law can have an extraterritorial operation and effect against the will and policy of another country in which the persons in whose behalf it is invoked are and have always been domiciled since their birth; and in my opinion there can be but one answer to that question. Whatever rights the United States had in its power to bestow will unquestionably pass under the law establishing the status of citizenship in favor of non-resident aliens, including the right to take property by descent and succession, and the right to prosecute any claim against the United States; but more than this can not be done without interfering with the rights of other States and involving them and itself in conflicting claims of the most absurd character.

In the case of Jane L. Brand, before the British and American Claims Commission (3 Moore, p. 2488), it was held that the doctrine that the national character of a married woman was in all cases determined by that of her husband had always prevailed in Great Britain, as elsewhere, where *the domicile* of the wife and widow had continued to be that of the husband's nationality.

It is true, however, that the majority of the Commission in the cases of Calderwood and others (3 Moore, p. 2486), against the strong dissent of Commissioner Fraser, held that a widow of American birth, always remaining in the United States, did not regain her American citizenship, but in view of all the foregoing decisions and authorities this view may be rejected.

The reason for the decision above given, reestablishing citizenship of a woman always resident, upon the death of her foreign husband, in so far as the question of conflict of laws is concerned, is excellently stated in the case of Alexander before the British and American Claims Commission (3 Moore, p. 2529), in which a decision was presented by the American Commissioner which met the approval of the umpire, Count Corti. According to English law the claimant was an English subject, and by American he was an American citizen. Said the opinion:

The practice of nations in such cases is believed to be for their sovereign to leave the person who has embarrassed himself by assuming a double allegiance to the protection which he may find provided for him by the municipal laws of that other sovereign to whom he thus also owes allegiance. To treat his grievances against that other sovereign as subjects of international concern would be to claim a jurisdiction paramount to that of the other nation of which he is also a subject. Complications would inevitably result, for no Government would recognize the

right of another to interfere thus in behalf of one whom it regarded as a subject of its own. It has certainly not been the practice of the British Government to interfere in such cases, and it is not easy to believe that either Government meant to provide for them by this treaty.

The conclusion to be reached from the foregoing is that the claimant, Madame Brignone, is a citizen of Venezuela, and is without standing before this Commission.

But a second question arises. There are relatives of the original claimant of the ascending line. What part of the succession may these relatives claim?

The civil code of Italy provides:

ART. 754. Se non vi sono figli legittimi, ma ascendenti o figli naturali, o fratelli o sorelle, o loro discendenti è devoluta in proprietà al coniuge superstite la terza parte del'eredità.

The civil code of Venezuela provides:

ART. 719. * * * Si existen cónyuge y ascendientes legítimos, y faltan hijos naturales, la herencia se divide en dos partes iguales, una que corresponde al cónyuge, y otra á los ascendientes legítimos.

If, therefore, the Italian code is to rule, the ascending heirs will receive from this Commission two-thirds, and if the law of Venezuela governs, they will receive one-half.

The Italian civil code provides:

ART. 7. I beni mobili sono soggetti alla legge della nazione del proprietario, salvo le contrarie disposizioni della legge del paese nel quale si trovano.

I beni immobili sono soggetti alla legge del luogo dove sono situati.

ART. 8. Le successioni legittime e testamentarie, però, sia quanto al' ordine di succedere, sia circa la misura dei diritti successorii, e la intrinsica validità delle disposizioni, sono regolate dalla legge nazionale della persona della cui eredità si tratta, di qualunque natura siano i beni, ed in qualunque paese si trovino.

The Venezuelan civil code contains nothing similar to section 7 of the Italian civil code, but provides as follows:

ART. 8. Los bienes muebles é inmuebles situados in Venezuela, aunque estén poseidos por extranjeros, se regirán por las leyes Venezolanas.

Shall this Commission be controlled by the law of nationality of the decedent, as Italy requires, or by the law of domicile, as indicated by the Venezuelan law? It will be borne in mind that Brignone died at his place of domicile, Caracas.

The differences of principle existing upon the question of succession to the estate of a deceased person are summed up in section 848 of Calvo's work as follows:

SEC. 848. Sur la question des lois généralement applicables aux successions testamentaires et aux successions *ab intestat*, la jurisprudence admet une triple division:

1. La jurisprudence qui soumet *l'universitas juris* (les biens mobiliers et les biens immobiliers) de la succession à la loi du dernier domicile du défunt. Cette jurisprudence est d'accord avec l'opinion de Savigny et les décisions des tribunaux supérieurs de l'Allemagne. Elle est aussi conforme à l'unité de constitution du patrimoine.

2. La jurisprudence, directement contraire, qui soumet les biens à la loi de l'endroit où ils se trouvent, laquelle admet en conséquence la possibilité de l'application de lois différentes aux différentes portions des biens, et ne pose aucun principe relativement aux dettes et aux créances dont il est loisible dans chaque cas de disposer pratiquement aux mieux des intérêts en cause. Cette jurisprudence est basée sur la loi féodale de la souveraineté territoriale.

3. La jurisprudence intermédiaire, qui soumet les personnes et les meubles à la loi du domicile du défunt et les biens à la loi de l'endroit où ils sont situés, *lex situs*. C'est la jurisprudence en vigueur en France (art. 3, du Code Civil), en Angleterre et aux Etats-Unis.

Si la succession ne comprend que des biens meubles, alors on applique le principe que les biens meubles suivent la personne et son domicile; c'est la loi du domicile qui gouverne la succession mobilière.

In the opinion of the umpire, the true rule, at least as to personal property, is indicated by Savigny, who says (Droit Romain, sec. 377, vol. 8):

La succession *ab intestat* se règle d'après la loi en vigueur au dernier domicile du testateur à l'époque où s'ouvre la succession. Cela s'applique notamment à l'ordre d'après lequel la loi appelle à succéder les héritiers *ab intestat*.

This principle is, it would seem, recognized by the Italian civil code, which declares:

ART. 923. La successione si apre al momento della morte, nel luogo del'ultimo domicilio del defunto.

The Venezuelan civil code similarly declares:

ART. 894. La sucesión se abre en el momento de la muerte y en el lugar del último domicilio del defunto.

The umpire feels, therefore, obliged to follow the principle recognized by both laws as to succession, despite the conflict above indicated, the Italian law in apparent conflict being regarded as applying under the present circumstances only to estates opened in Italy. Any other view would, in the umpire's opinion, give to the Italian law an extra-territorial effect overruling the law of the domicile where the goods were situate and the decedent was domiciled. The adoption of such contrary principle would in his opinion infringe the territorial supremacy of a state.

But it is urged that no attention should be paid to the local laws of Venezuela because of the provision of the protocol of May 7, 1903, as follows:

The decisions of the Commission shall be based upon absolute equity, without regard to objections of a technical nature or of the provisions of local legislation.

This unusual provision is to receive a rational and not a strained interpretation, and in the umpire's opinion amounts simply to saying that any local legislation which operates against equity shall be rejected. An extended interpretation rejecting any and all local legislation would at once defeat the very purposes of the Commission, as may well be illustrated by the present case. Mrs. Brignone was married in Venezuela under Venezuelan laws. Deny efficacy to these laws, and no marriage existed, for marriage is, in civilized nations, regulated by law. Her deceased husband acquired a complete interest in partnership assets from his associate (the partnership itself being created in accordance with the provisions of local law) by virtue of laws providing for such transfers. Proofs in this or in other cases have been taken before judges created by local laws and in the manner they provide. Reject local laws indiscriminately and the whole fabric of sworn testimony built up in more than 300 cases presented or to be presented to the Commission absolutely fails.

The only possible question, therefore, left to consider is, whether the provision of Venezuelan law giving the widow one-half of the estate of her deceased husband (there being no children) is contrary to equity. In view of the number of States in the United States as well as elsewhere in which precisely the same rule prevails, it is impossible for the umpire to say that the provision is opposed to equity or could be conceived as shocking to the moral sense of mankind.

A word should be added relative to the suggestion of the honorable Commissioner for Italy that the claim should be allowed without reference to the present citizenship of the claimant, and to enforce this position he cites Moore, pages 2398-2400, and 2360-2379, and 1865.

The first reference (Camy's case) simply sustains the validity of the assignment of an international claim, but the claim being against the United States, and the assignment having been made by a Frenchman to an American citizen, the demurrer of the United States was sustained and the claim rejected. The case is, therefore, if at all in point, opposed to the contention of the honorable Commissioner.

The second reference (*Texan Star* case) shows that a court acting equitably will in proper circumstances recognize the title and citizenship of the actual owner rather than those of the titular owner, whose title simply served temporary purposes.

The third citation (Delagoa Bay case) sustains the real interests of an American citizen who was required by Portuguese law to create a Portuguese corporation to exploit his concessions, and is not therefore in point.

In the view of the umpire, the " Italian claims," of which this Commission has jurisdiction must have been Italian when they arose as well as when presented.[1] Without discussing this point at length, he confines himself to referring to 2 Moore, page 1353, as well as to cases hereinbefore cited.

No dispute as to fact existing, a judgment will be signed in favor of the Italian heirs of Brignone, for one-half of the amount of the claim, with interest, but without prejudice as to the right of the widow to pursue her remedies elsewhere.

GENTINI CASE

(By the Umpire:)

Local laws of prescription can not be invoked to defeat an international claim.
Nevertheless, the principle of prescription will be recognized internationally, and equity will forbid the recognition of stale and secret claims.
A claim first presented thirty years after its supposed inception, the existence of which was never before revealed, may be rejected.[2]

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

At the session of the Italian-Venezuelan Mixed Commission of the 29th of August the honorable Commissioner for Venezuela, Doctor Zuloaga, intimated that he would not agree to a demand for indemnity from the Italian citizen Odoardo Gentini, because the facts upon which said claim is based occurred more than thirty years ago, from which it appears that my illustrious colleague of Venezuela intends to invoke the principle of prescription.

This conclusion must, it seems to me, be based on motives of equity, or upon rules of international law, or, finally, on the provisions of local legislation.

In each of these three cases the exception taken must be rejected.

With regard to the first point, I observe that a tribunal of equity can not invoke prescription in order to evade obligations established by authentic documents.

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[1] See Corvaia case, *infra*, p. 609.

[2] See Spader case, Vol. IX of these Reports, p. 223; and for limitations on rules laid down in the Gentini case see Giacopini case, *infra*, p. 594, and Tagliaferro case, *infra*, p. 592.