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Petrocelli Case (of a general nature)

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1871, and died in 1890 at the age of 56 years. He had married in 1872. His children were all born here, and, so far as appears, have never claimed Italian citizenship till now, or lived in Italy. It is scarcely to be supposed that they have any intention of living upon Italian soil. To declare them to be Venezuelans is not to deny them anything that they have ever felt in any essential way they possessed, and an option to choose Italian citizenship is scarcely to be inferred from the fact that their mother has seen fit in their names to file a claim before this Commission.

Another consideration may be added. Michele Miliani, the father, deliberately established his domicile and married in Venezuela, choosing that his children should there and under her laws first see the light of day. While he had not power to select the land of his own birth, he could control that of his children. In so far as a father may be considered as selecting the citizenship of his children he did so, and under all the circumstances of the case it seems proper they should abide the consequences of his actions.

The foregoing considerations make it unnecessary to discuss the question of prescription.

The umpire has not discussed the suggestion that the claim, largely at least, was Italian in origin and should be considered, even if not now Italian, because involving an infraction of international duty on the part of Venezuela toward Italy which would survive even change of citizenship on the part of the individual claimant. It is sufficient to observe that all the considerations for or against a claim which appeal to the diplomatic branch of a government have not necessarily a place before an international commission. For instance, unless specially charged, an international commission would scarcely measure in money an insult to the flag, while diplomatists might well do so. On the other hand, commissions have and exercise jurisdiction over contract claims, while the diplomatic branch of government, although usually reserving the right, rarely presses matters of this nature. While it remains true that an offense to a citizen is an offense to the nation, nevertheless the claimant before an international tribunal is ordinarily the nation on behalf of its citizen. Rarely ever the nation can be said to have a right which survives when its citizen no longer belongs to it. Italy, save when her own pecuniary rights are affected, recovers nothing for her own benefit before a tribunal such as this, however much her own dignity may have been affected by the treatment of her subjects.

A decree may therefore be entered dismissing the claim, but without prejudice to such rights as the claimants may have elsewhere.

PETROCELLI CASE

The Government is liable for loss from having so taken possession of property as to especially expose it to destruction, but not for damages incident to ordinary warlike operations.

RALSTON, *Umpire*:

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

While the claim is for 45,000 bolivars, embracing a large number of items, very few circumstances are so established by proof as to be worthy of consideration, and these only will be discussed.

It appears that the Government troops in the month of May, 1902, entrenched themselves in front of the claimant's dwelling house at a street corner in Ciudad Bolívar, and that as a result a battle raged around that house for five days.

it being made the object of attack and being greatly damaged. It further appears that the same troops broke open the doors, smashed wardrobes, and helped themselves to property, but no satisfactory evidence is furnished as to the value of property so taken or injured. It seems fair to believe that the house was used in connection with the entrenchments. In addition, it is said that during the battle of last July five bombs were thrown, apparently by the Government troops or vessels, which entered this house and another, causing considerable damage. An expert valuation of the amount necessary to restore the dwelling house fixes it at 1,850 bolivars, and to repair a storehouse, belonging to the claimant and located elsewhere, at 100 bolivars.

The damages to the storehouse are rejected, as incident to the operations of war. The damages to the dwelling rest upon another principle. When the Government troops entrenched themselves in front of claimant's habitation and took possession they made it the object of the enemy's attack. They condemned it specially to public use. Claims for damages to it were taken out of the field of the incidental results of war, the Government having invited its destruction. The claimant's property was exposed to a special danger, in which the property of the rest of the community did not share. The Government's responsibility for its safe return was complete. The principle upon which such responsibility rests is above indicated, and is more at large set forth in 4 Moore, page 3718, *Putegnat's Heirs*, decided by the American-Mexican Commission formed under the treaty of 1868, which decision was recently followed in the case of the American Electric and Manufacturing Company *v.* Venezuela,¹ the opinion being presented by Doctor Paúl, in the American-Venezuelan Commission now sitting in Caracas.

Part of the damages caused to the dwelling house were from shells thrown by the Government during the battle of July, and, as incident to the usual operations of war, no recovery from them can be had.

An expert examination shows that the dwelling house can be repaired for 1,850 bolivars. Only so much of this amount can be paid as may be considered the result of the special use made of it by the Government. The evidence does not distinguish, and perhaps could not be expected to distinguish, clearly the damages caused by the two classes of acts — those involving and those refusing responsibility. The umpire, however, believes himself justified in holding responsibility to the extent of one-half of the amount claimed for damages to the dwelling house, or 925 bolivars.

TAGLIAFERRO CASE

Responsible officers of the Government having had full knowledge of the claim from the beginning, the reclamation, although 31 years old, is receivable. Where the reason for the application of the principle of prescription ceases, as in this case, prescription can not be invoked to defeat the claim.² Illegal refusal of amparo by superior judge and procurador-general will sustain claim for denial of justice.

RALSTON, *Umpire*.

The above-entitled cause is referred to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela.

The claimant, an Italian subject, was, in 1872, a merchant of Tariba, doing

¹ See Vol. IX of these Reports, p. 145.

² See *Gentini case*, *supra*, p. 551, and *Giacopini case*, *infra*, p. 594.