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RECUEIL DES SENTENCES ARBITRALES

Tagliaferro Case (of a general nature)

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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

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

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

a considerable business. On January 28 of that year, the general in chief of operations in the States of Mérida and Táchira issued an order of the collection of enforced exactions against a number of citizens of Táchira, requiring, among things, the collection from the claimant, by name, of 12 " morocotas," a morocota being the equivalent of an American 20-dollar gold piece, the order stating that those who should not make the payment " will be conducted to the prison, subject to the disposition of Gen. Manuel Pelayo."

Pursuant to the foregoing, the claimant was, on February 1, required to pay the money, but refused, electing to accept imprisonment. Immediately upon being imprisoned his petition for " amparo " or protection was presented to the superior judge, who, contending that the military power was superior to the civil, refused to grant amparo.

Immediately thereafter, and on February 5, the claimant addressed a petition to the procurador-general of the nation for the State of Táchira, setting up the foregoing facts, and praying that he might be set at liberty, and that the order depriving him of the same might be revoked. The procurador returned claimant's petition to him on February 6, authorizing him to apply again if he saw fit, producing documents showing that he was an Italian subject, without which requisite, he said, nothing could be done.

The duration of claimant's stay in prison is not fixed in the expediente, but, as on March 11 he prepared his proofs, we may presume that it did not exceed forty days at the outside. It does not appear that he paid the exaction.

The first question presented is one of prescription, more than thirty-one years having elapsed between the infliction of the injury and the presentation of the claim. In the Gentini case, No. 280,[1] the umpire sufficiently indicated the reasons why prescription could properly be invoked in international claims. It may be said that none of the reasons then adduced can be given effect in the pending case. Here the acts complained of were committed pursuant to the orders of the highest military authority of the State. The injured party at once appealed to the judicial authority, which denied relief, and then to the immediate representative of the nation, who, upon a subterfuge, refused his assistance. The responsible constituted authorities knew at all times of the wrongdoing, and if the complaint were baseless — an impossible conclusion under the evidence — judicial, military, and prison records must exist to demonstrate the fact. When the reason for the rule of prescription ceases, the rule ceases, and such is the case now.

It is true that the claimant has not presented his claim to the Government at Caracas, but his unavailing efforts to get relief at home may well have discouraged him. As having some incidental bearing we are told that complaints made by Italians of acts of the character here indicated came to the General Government about the time of the occurrence of the injuries, and strict orders for the cessation of the causes for them were very promptly and properly given, a representative of the Government being sent to the neighborhood to secure correction of abuses.

The offenses complained of now are double in nature, consisting of unjust imprisonment and denial of justice. The only cause for imprisonment was the nonpayment of an illegal exaction. Clearly this affords ground for recovery. That there was a denial of justice is likewise evident. Military authority could not justly override civil authority, as the superior judge seemed to admit, and it was immaterial whether the claimant were Venezuelan or Italian, although the procurador refused relief because of a supposed lack of proof of Italian citizenship.

[1] See *supra*, p. 551.

The forced loan violated many provisions of the constitution, among them, that property should only be subjected to contributions decreed by the legislative authority, in conformity with the constitution; that no Venezuelan could be taken or arrested for debts not proceeding from fraud or wrongdoing; that all shall be judged by the same laws and subject to like duties, service, and contributions. Strangers enjoy, under the constitution, all the rights of Venezuelans.

In refusing the relief prayed for, the officers of the judicial department were guilty of a gross denial of justice, failing, as they did, to follow the excellent laws prescribed by Venezuela. In so doing they unfortunately subjected the Government to liability.

The claimant fixes no amount for his demand, but the royal Italian legation asks 5,000 bolivars. In view of the gravity of the case this amount seems reasonable, and will be accorded without interest.

GIACOPINI CASE

Venezuelan authorities having been notified of the taking of proof thirty-two years ago and having assisted therein, the principle of prescription held not to apply, although no express demand was made.
Allowance made for imprisonment of claimant.[1]

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[1] Measure of damages for unlawful imprisonment is largely discussed in the Topaze case (supra, p. 329), and many of the authorities to be found in Moore are abstracted in that case on page 330. In addition in Moore and elsewhere may be enumerated the following:

Moore, pages 1646-1653, case of Charles Weile, before the Peruvian Claims Commission, for imprisonment for an uncertain time, payment was allowed of $32,407.

Moore, page 1655, case of George Hill, before the same Commission, for being fired upon and made a prisoner for three days, without food or medical attendance, claimant was awarded 6,000 Peruvian soles, or $5,555.

Moore, page 3240, case of Baldwin, before the Mexican Commission of 1839, for 84 days of imprisonment, claimant was awarded $20,000.

Moore, page 3247, case of Barnes, before the Mexican Commission of 1868, for sixty days' detention, claimant was awarded $5,100.

Moore, page 3248, case of Rice, before the same Commission, for three days' imprisonment, claimant was awarded $4,000.

Moore, page 3251, case of Jonan, before the same Commission, for imprisonment during long periods in 1853 and 1854, claimant was awarded $35,000 Mexican gold.

Moore, page 3252, case of Moliere, before the Spanish Commission, for sixteen days' imprisonment, claimant was awarded $3,000.

Moore, page 3253, case of Jones, before the same Commission, for thirty-one days' imprisonment, claimant was awarded $5,000.

Moore, page 3277, case of Casanova, before the same Commission, for twenty days' imprisonment, other elements entering into the affair, claimant was awarded $6,000.

Moore, page 3282, case of Rahming, before the British Commission, claimant was imprisoned about eight months, and was awarded the sum of $38,500.

Moore, page 3283, case of Stovin, before the same Commission, for five weeks' imprisonment, claimant was awarded $8,300.

Moore, page 3285, case of Shaver, before the same Commission, for two months and twenty-one days' imprisonment, claimant was awarded $30,204.

Moore, page 3288, case of Ashton, before the same Commission, for three months and four days' imprisonment, claimant was allowed $6,000.

Moore, page 1807, case of Van Bokkelen *v.* Haiti (Foreign Relations U.S., 1888, p. 1007), plaintiff was allowed $60,000 for an imprisonment of fourteen months and twenty-two days.