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Giacopini Case (of a general nature)

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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

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.

RALSTON, *Umpire*:

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

In 1871 Domenico and Giuseppe Giacopini, Italian subjects, were merchants, doing an extensive business at Valera. In November of that year their partnership store was entered by Venezuelan troops, by order of General Pulgar, commanding the right wing, and there was forcibly taken from it property of the value indicated: Coffee, 14,400 fuertes; potatoes, 250 fuertes; cacao, 40 fuertes; fennel, 112 fuertes; general merchandise, 2,000 fuertes; personal and household effects, 500 fuertes; figs, 640 fuertes. In addition, mules were taken to the value of 2,400 fuertes and oxen worth 100 fuertes. About the same time Domenico Giacopini was arrested on an unfounded charge of complicity in political disturbances, and transported by the army, in chains, under dangerous conditions, to Maracaibo, where, contrary to the Venezuelan constitution, he was thrown into prison in association with criminals, and again, contrary to the same instrument, loaded with fetters. After some weeks he was released from prison upon payment of a forced exaction to General Pulgar of 400 fuertes and the execution of a bond requiring his presence in Maracaibo to meet any charge brought against him. None such was ever brought, and after seventy-five days of absence from his business, part in actual and part in virtual captivity, he was restored to his home in Valera. Giuseppe Giacopini also spent some time in prison, but its term is not fixed, and this element of damage is not considered for reasons hereinafter given.

Against the claim it is first urged that prescription should lie, about thirty-two years having elapsed since its origin. In the Gentini case, No. 280,¹ in this Commission, the umpire referred to the fact that under certain circumstances prescription would not be recognized as a defense, mentioning specifically that of bonds "as to which a public register had been kept," and furthermore stated that the presentation of a claim to competent authority within proper time would interrupt the running of the time of prescription, adding that there were other qualifications "which might be imagined" without entering into an attempt to enumerate them.

Examination of the expediente in the present case shows that the tribunal before which the proofs were made (in November, 1872), directed notice to the fiscal of the nation before their taking; that he was present and vigorously cross-examined the witnesses; that he asked and was accorded by the judge a copy of the evidence. The Government knowing in this manner of the existence of the claim had ample opportunity to prepare its defense.

As was stated in the Gentini case:²

The principle of prescription finds its foundation in the highest equity — the avoidance of possible injustice to the defendant.

In the present case, full notice having been given to the defendant, no danger of injustice exists, and the rule of prescription fails.³

In addition, as bearing upon the question of its good faith (though not to be considered as of conclusive legal value), the claim was made known to the royal Italian legation in 1872. At a later period one of the claimants (with a letter from a high Venezuelan authority recognizing the justice of his demand) came to Caracas to press for relief, but died here before anything could be accomplished.

¹ See *supra*, p. 551.

² *Supra*, p. 551.

³ See also the Tagliaferro case, *supra*, p. 592.

In the Gentini case the claimant never made his supposed grievances known to anyone in authority in any manner for thirty-two years.

We are brought next to the consideration of an objection to a part of the claim. As before stated, one of the original complainants, Giuseppe Giacopini, is dead. His widow has remarried with a Venezuelan citizen. Giuseppe Giacopini's children were born in Venezuela. By the laws of this country the foreign woman who marries a Venezuelan becomes Venezuelan. Under the decision in the Miliani case, No. 223,¹ the children of a foreigner who are born in Venezuela are Venezuelans. In so far, therefore, as the claim belongs to Venezuelans, it is not considered and must be dismissed without prejudice.

The value of mules, coffee, potatoes, cocoa, fennel, merchandise, household articles, figs, and oxen taken from the firm was 20,442 fuertes, or 102,210 bolivars. Four hundred fuertes, or 2,000 bolivars, were paid (apparently in the end by the firm) to General Pulgar, to secure the release of Domenico Giacopini. One-half of this amount may be awarded to Domenico Giacopini. For the time he was in constraint, either in prison or in Maracaibo, the average sum of 50 fuertes per day, or a total of 3,750 fuertes, will be awarded without interest.

The total award to Domenico Giacopini will therefore be 52,105 bolivars, upon which interest may be calculated since December 1, 1872, approximately the date of the taking of proof, and 3,750 fuertes without interest. No award is made of the sufferings of Giuseppe Giacopini nor for money expended by him personally, as only his heirs could possibly be entitled to an interest therein, and they are excluded from this judgment for the reasons hereinbefore set forth.

BOTTARO CASE

Letter received to explain statement of facts.²

RALSTON, *Umpire*:

The umpire has carefully considered the expediente in this case, as well as the opinions of the honorable Commissioners for Italy and Venezuela; this case reaching him because of their differences of opinion.

It is contended on behalf of Venezuela that the case is badly proven; two of the witnesses testifying, not from their knowledge of the facts, but from their public notoriety, and the third witness giving no reason to support the testimony furnished by him. Furthermore, it does not appear in evidence whether the troops taking the property, for the seizure of which recovery is sought, belonged to the Government or revolutionary forces.

On the other hand, it is contended that the proof is sufficient, and it is pointed out that a letter from the claimant has been filed, showing that of the eleven chiefs whose action was complained of, four were chiefs of the Government.

In some respects the proof in this case affects the umpire favorably. For instance, the property taken has been enumerated specifically and the values of each class given; the values so furnished being in every case apparently reasonable. It is true that two witnesses attest the facts from public notoriety, but the third witness speaks with sufficient definiteness, and apparently of his own knowledge.

¹ See *supra*, p. 584.

² As showing extent to which informal proof may be received, see Lasry case, Vol. IX of these Reports, p. 147, Faber case, *supra*, p. 438 and note and *infra*, p. 747.