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Bottardo Case (of a general nature)

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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 Giacomini, is dead. His widow has remarried with a Venezuelan citizen. Giuseppe Giacomini'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 Giacomini. One-half of this amount may be awarded to Domenico Giacomini. 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 Giacomini 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 Giacomini 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.

The proof is not as complete as it should be, in that it fails to show the number of cattle, burros, or horses taken by each particular leader, either of the Government or of the revolution. We are only favored with the aggregate number. The letter of the claimant designating which chiefs were of the Government or of the revolution, undertakes to attribute to the governmental chiefs the taking of more than four-fifths of the property lost by him. As but four of the eleven chiefs were of this side, the umpire is disposed to think that while his statement may be true, it is not probable, and no details are furnished which would tend to establish its probability. In view of this fact, and bearing in mind the proportion existing between the two contending forces, he is disposed to think that approximate justice will be rendered by charging the Government with the taking of property to the extent of 6,000 bolivars, upon which amount interest may be calculated to the 31st day of December, A.D. 1903.

The umpire accepts as evidence, though, naturally, of the lightest character, the letter written by the claimant; it being his duty under the protocols to receive and carefully examine everything presented to him.

DI CARO CASE

In estimating damages for unlawful killing, age and station in life, deprivation of comforts and companionship, and shock to surviving members of the family may be taken into consideration among other elements.

An award will not be made in favor of Italian subjects who have served in revolutionary forces.

Claim for money said to have been taken rejected because of deficient proof.

RALSTON, *Umpire* :

The claim of Beatrice Di Caro, widow of Giovanni Cammarano, has been submitted to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela, upon the question of the amount of damages.

The admitted facts seem to be that on May 4, 1902, two government soldiers went to the store or "pulperia" of Giovanni Cammarano in Duaca, when he was absent, and, after demanding various articles with which they were supplied, attempted to assault the claimant, Beatrice Di Caro and her daughter-in-law. The two sons of Giovanni Cammarano struggled with the soldiers and one son, getting possession of the gun of a soldier, shot and killed him. The remaining soldier escaped. The sons thereupon fled.

A detachment of soldiers in charge of an officer shortly after went to the house and, finding Giovanni Cammarano, who had meanwhile returned, demanded the whereabouts of his sons. This he was unable or unwilling to give. They seized him and, conducting him about a square and a half, cut him with a machete and shot and killed him in the street. Thereafter the soldiers sacked the store and again, on January 27, 1903, the store having been somewhat replenished, it was plundered by the government forces.

The claimant fixes the value of property taken at 16,468 bolivars and of cash money at 13,554, or at another place at 14,072 bolivars.

The sons of the claimant, shortly after the occurrences first mentioned (and possibly before), joined the revolutionary army, but there is no sufficient reason to believe that claimant's deceased husband took any part in the domestic difficulties of Venezuela.

The first question presenting itself is as to the damages to be awarded claimant for the unwarranted killing of her husband. The honorable Italian