

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

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**RECUEIL DES SENTENCES  
ARBITRALES**

**Corvaia Case (of a general nature)**

1903

VOLUME X pp. 609-635



NATIONS UNIES - UNITED NATIONS  
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It is not to be inferred, however, that Venezuela has the right, either directly or indirectly, to break the concession, or that no recovery therefor should be allowed against it. A nation, like an individual, is bound by its contract, and although it may possess the power to break it, is obliged to pay the damages resultant upon its action. In the present case, what was the value of the contract? This value is not determined by prospective profits, for the reasons above indicated. In this case, and referring only to the particular facts involved in it, we may concede that the value of the contract is the amount expended to obtain it (plus a reasonable allowance for the time lost by the claimant in connection therewith), and while the proof upon these points is not as clear as might be asked, we may accept as the amount recoverable the figures given in the profit and loss account of Oliva, as expended in his first voyage to Venezuela in the cemetery matter, to wit, \$675.54, or 3,512.81 bolivars. For his time, evidently covering several months, the sum of 5,000 bolivars may be allowed.

There is also to be allowed in favor of the claimant the expenditures of his second voyage, amounting to \$357.03, or 1,856.56 bolivars.

The umpire is asked to allow the loss to which it is said Oliva was subjected, because of being compelled to dispose of his stock of goods in Habana at a reduced price, to enable him to go to Caracas and enter upon the cemetery concession. So many elements enter into a matter of this sort that the umpire can not accede to this suggestion. The goods may have been sold at a reduced price, because of a falling market, because of their age, or for other reasons he is incapable of appreciating, all the surroundings not being presented to him. He would not be justified in charging this loss, therefore, against Venezuela, even were it otherwise proper, with relation to which he expresses no opinion.

An award will therefore be signed for the amount of 50,369.37 bolivars, with interest on 10,369.37 bolivars from October 28, 1903, to and including December 31, 1903.

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#### CORVAIA CASE

(By the Umpire:)

This Commission only has jurisdiction over "Italian claims," meaning thereby claims which were Italian in origin and Italian when the Commission was formed.

In the present case the original claimant, born a subject of the Two Sicilies, lost his citizenship, according to the code of that country, by accepting diplomatic employment from Venezuela, and never regained it, and the claim of his heirs must, therefore, be rejected.

Venezuela knowing that when Corvaia entered her diplomatic services he abandoned Sicilian citizenship, Italy is now estopped from claiming him as a subject.

*Semble* that a man (and consequently his heirs as well) who accepts, without permission of his government and against her laws, such public and confidential employment from another nation is estopped from claiming his prior condition to the prejudice of the country whose interests he has adopted.

Sambiaggio case<sup>1</sup> affirmed in its interpretation of "most-favored-nation" clause.

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

Contrary to the position taken by his learned colleague of Venezuela, the Commissioner for Italy holds that Baron Fortunato Corvaia did not, by the

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<sup>1</sup> *Supra*, p. 499.

fact of his having accepted charges and missions from Venezuela (in the absence of evidence of his having previously obtained the consent of his own Government) lose his Italian citizenship, and, true to the principle he has always maintained that the original nationality of a claim should be considered as the absolute rule and guide in determining its admission before this tribunal, invokes from the umpire a decision which will recognize all the heirs of Corvaia as entitled to share in the liquidation of the estate in just and due proportion, and without distinction based on their actual citizenship.

But should the umpire consider the Baron Corvaia as having lost his primitive nationality, the Commissioner for Italy begs to insist that the deceased had not thereby acquired citizenship in Venezuela, and could not have contracted any bond of allegiance to this Republic.

It is therefore his opinion that this claim should, even under the least favorable hypothesis, be considered foreign with respect to Venezuela, and that consequently the umpire should, without prejudice to the rights of such of the heirs whom he intends considering as invested with Venezuelan or other nationality, in consonance with the principles he has himself proclaimed, award a due share of the indemnity claimed to such of the heirs of Corvaia as are to-day enjoying Italian citizenship.

As regards the nationality of Baron Fortunato Corvaia, the Italian Commissioner again calls the attention of the umpire to the arguments addressed to him in the Giordana claim, No. 116, which was allowed as a claim for salary due for services rendered as engineer for the Venezuelan Government. It is indeed true that the services performed by Baron Corvaia in the United States and at Paris were vastly more important than those of Giordana, but when it is considered that they were rendered in a time of absolute peace between this Republic and other nations, particularly the Kingdom of the Two Sicilies, it must be admitted that the deceased was never in a position to defend foreign rights and interests in conflict with those of his country, and that he did not resort to extremes which, according to rule, are considered necessary, when services rendered a foreign government, without the consent of the home government, involve a loss of nationality.

For the rest, it appears from documents submitted to the Commission that the Corvaia family, out of favor with the Bourbon Government on account of its liberal sentiments, had been driven from the Kingdom of Naples. Could Baron Fortunato Corvaia, who had followed his father Joseph in exile, turn to the clemency of his sovereign with a request for a permission which would most certainly have been denied him? We have among the papers of the claim a copy of the petition with which the deceased, finding himself, in January, 1854, passing with his family through Naples, and receiving from the police a new order of expulsion, had had recourse to his King for a revocation of that odious measure, which was denied him. To assume, therefore, that Baron Corvaia, son of a political refugee, and himself driven from the Kingdom of the Two Sicilies and considered as an outlaw, should, shortly after his expulsion and during the most rigorous period of Bourbon tyranny solicit from his Government the above-mentioned authority, or make him fall under the incubus of failing to obtain it, seems contrary to all rules of justice and equity.

Corvaia never solicited any permission, for it would have inevitably exposed him to a refusal which would have placed him in the attitude of disobedience to his King, whose faithful subject he still considered himself, as is abundantly proved by his above-mentioned petition of January, 1854, in which he styled himself a "good citizen." The umpire should particularly note this expression "good citizen" occurring in the petition written by Corvaia himself and addressed to his King.

The Italian Commissioner holds that any tribunal called upon to decide whether the deceased baron had, under the circumstances, lost his nationality through this omission, the consequences of which it is sought to exaggerate in order to cause a rejection of the entire claim, would give a negative answer. In this sense particularly would tribunals of Italy decide it, who are truly competent in this respect, if we consider that that provision of law, *which had never been applied*, according to the solemn declaration in the Italian Senate of the minister of pardons and justice himself, Emanuel Gianturco, was subsequently abolished by the act of January 31, 1901, it having been recognized that the acceptance of foreign service lacks in general those conditions which warrant the assumption of an intention on the part of a citizen to renounce his original citizenship.

In every case the law which abolishes a provision having a penal character is retroactive, and Corvaia, against whom the loss of citizenship had never been pronounced by the magistrate, should be given the benefit thereof, and through him to his heirs and descendants. The Commissioner for Italy observes besides that the services of Corvaia in behalf of Venezuela had not the true and proper character of an employment, but were missions. The Venezuelan minister of foreign affairs, Giacinto Gutierrez, in a letter to the minister of hacienda, of March 18, 1856, declared having appointed him to a mission to France as envoy extraordinary and minister plenipotentiary. Corvaia, in Washington as in Paris, acted as confidential agent; that is to say, in a capacity in which we must recognize the essence of a mission or extraordinary charge, and not an employment.

If afterwards other titles were conferred upon him, as those of envoy extraordinary and minister plenipotentiary in France, when he was in Paris endeavoring to foster emigration, which was in fact the principal object for which the Republic had sent him, it was only because under such title he could more readily place himself *en rapport* with the Imperial Government and be officially recognized by the French minister of foreign affairs.

Whenever the Italian code speaks of employments, it is in the sense as understood in the Kingdom, those into which one enters as a career at modest compensation with a view to future advancement into more important undertakings. The mission assumed by Corvaia carried with it no assurance for the future, not even so much as a retired pension, and did not constitute an "employment" according to our law.

It never occurred to Baron Corvaia that his operations in Europe and North America in behalf of Venezuela could involve a forfeiture of his original nationality or set up a legal bond of a permanent character between himself and the country for whom he was acting. He lent his services in deference to the President of the Republic, Joseph Thadeus Monagas, whose intimate friend he was, and as a personal favor, as well as to render himself useful to the land to which he had come in his youth, where he had raised a family, and increased his private fortune.

No sooner had his functions of minister from Venezuela to Paris ceased, they having been terminated by the retirement of Monagas from the Presidency, than Baron Corvaia accepted the post of minister from Ecuador to the same capital. As he had no intention of changing nationality by the acceptance of missions under Venezuela, so also he could have had no thought of endangering it by undertaking similar functions for the Government of Ecuador.

These operations imposed upon him living expenses far in excess of the moderate salary granted him by the Venezuelan Government, and which, as proved by documents in the claim, was never fully paid.

The court of cassation of Belgium, by its decree of June 25, 1857, about the

time Corvaia was acting as Venezuelan minister in Paris, laid down the following maxim:

\* \* \* la naturalisation est acquise. Tant qu'elle ne l'est pas il n'y a point de changement de nationalité.

Besides that of Cogordan, the umpire will doubtless remember the opinion of the eminent Italian jurist, Fiore, cited by the writer in his memorial in the Giordana case; that opinion is the synthesis of the rulings in Italy whenever there was application of article 20 of the Sicilian code, afterwards replaced by the eleventh article of the Italian code now in force, and that prevail in principle. Says Fiore:

Even if it were established that according to the internal law one should find himself bereft of one nationality without having acquired another, as we must, in accordance with international law, always eliminate the condition of a lack of determined nationality, so we should hold, as more in consonance with just principles, that such person is in the meantime a citizen of the country in which he was born (until he becomes a citizen of another) during the period intervening between the loss of one citizenship and the acquisition of another. (Fiore, *Droit International Privé* (Antoine), sec. 345.)

The same author observes:

The loss of original citizenship should not be held as an accomplished juridical fact until it is proven that a new one has been acquired. (Ibid., sec. 344.)

We will see in proceeding that Baron Fortunato Corvaia never acquired Venezuelan nationality.

In the work recently published entitled "La República Argentina y el Caso de Venezuela, por el Doctor Luis M. Drago, ex-Minister de Relaciones Exteriores," there is quoted in Spanish an article which appeared in "The Nineteenth Century and After," of April, 1903, from the pen of Mr. John Macdonnel, member of the supreme court of Great Britain, of the Institute of International Law, etc. At page 168 of said article in the aforementioned publication we read that the Ecuadorian Congress passed a law which contained (art. 5) the following provision:

Foreigners who may have filled positions or commissions which subjected them to the laws and authorities of Ecuador can make no claim for payment or indemnity through a diplomatic channel.

And Mr. Macdonnel observes:

It is almost needless to say that the diplomatic corps at Quito protested against this legislation. The United States Secretary of State denounced it as *subversive of all the principles of international law*.

In this affirmation of the Secretary of State aforesaid is found the proof that in the councils of the North American Government there prevails the principle advanced here by the Italian Commissioner, to wit, that the acceptance of missions and charges abroad, and particularly in South American countries, where there has been and is frequent recourse to foreign collaboration, does not involve a loss of nationality, since it is considered that there persists in the individual accepting such posts a right to claim, *per via diplomatica*, against the government which availed itself of his services, and that therefore his nationality persists as before.

The contrary theory is justly styled "subversive."

The honorable Commissioner for Venezuela has manifested his intention of sustaining also the following points: (1) That Fortunato Corvaia forfeited

his Italian citizenship because he left his country with no intention of returning, and (2) because he violated his neutrality.

To these exceptions the writer objects that Corvaia left his country by reason of the proscription of his family from the Kingdom of the Two Sicilies, and therefore by no spontaneous act creating any juridical situation whatsoever; that he established himself in Venezuela at the age of 18, and when, by reason of his minority, he could not, either by implication or directly, decide his nationality; that the intention of returning to the mother country must be assumed as persisting in the bosom of an exiled family; that when in 1854 Corvaia not only manifested the intention of repatriating, but desired to settle with his wife and family in Naples, he was expelled by the Bourbon police, against which measure he unavailingly protested; that, finally, it is freely admitted that he who emigrates for the purposes of trade and commerce, as had been the case with the deceased, can not without further evidence be viewed as having the intention of definitely abandoning his original domicile, particularly as in the present case Corvaia had not on arriving in Venezuela any settled purpose of establishing himself therein. He came to these shores seeking health. Only the force of circumstances decided his residence here, though with frequent and long absences.

The intention not to return should exist at the time of expatriation. The non-return may be brought about by a multiplicity of causes quite independent of the will of the emigrant, and has of itself no legal value.

The Italian Commissioner observes further that it does not appear that Corvaia ever participated in the political affairs of the Republic in such a way as to constitute an infraction of neutrality, since his operations were always in behalf of the constituted government, from which alone he accepted offices. If the following of such a course toward the legal government of the country which then sheltered him were held to imply a violation of the duties of neutrality, then must the foreigner be compelled to refuse any assistance to the authorities of his abiding place and manifest both insensibility and ingratitude in not preoccupying himself with interests not identical with his own.

Fortunato Corvaia favored Venezuela to the extent of his abilities, and now, when many of his credits toward the Government remain unpaid, there is hurled against him the charge of having violated his neutrality -- a charge which from every legal and moral point of view should be rejected as unsustainable. Never did Corvaia participate in the political struggles of the country or associate with the revolutionists. He always remained a foreigner, and though he loved this country well enough he never consented to become Venezuelan, and Doctor Zuloaga can not produce a single act of his during his long sojourn here from which may be deduced his intention to become a citizen, and much less that he had done so.

Fortunato Corvaia was the last scion of a family that had suffered for its country. His father lived exiled from his native land; his ancestors had filled public offices in the Kingdom of Naples. For centuries the Corvaias had figured among the aristocracy of Sicily. Such a man will not readily abandon his nationality, to which he must of necessity be profoundly attached, and in him such an act can not be presumed in the face of a complete want of precise and explicit renunciation or the formal act of naturalization. Besides, the Corvaias have always considered themselves Italians, and were recognized as such, not only by the representatives in Caracas and elsewhere of the Royal Government, but by the authorities of the Republic. In proof of this there is submitted an authentic extract from the register of the notarial acts of the Royal Italian legation in this capital, from which it appears that in 1877 Enrico Corvaia caused to be legalized the diploma of the Equestrian Order of

Venezuela of Bolívar, conferred upon him for services rendered to the Republic, and in the legalization referred to the royal chargé d'affaires of that period, the Chevalier Massone, styled Corvaia a royal subject.

There is likewise submitted an authentic extract of the general power of attorney conferred on the Baron Fortunato Corvaia the 30th of October, 1877, by his son of the same name, for the transaction of divers affairs in Italy. In this document, the original of which is to be found in the same register of notarial acts, the royal Italian chargé d'affaires thus declares: "Appeared before the legation the *royal subject* Corvaia Fortunato, of Fortunato, *native of Caracas*," etc.

Fortunato Corvaia, *native of Caracas*, was styled an *Italian* citizen by the royal legation in 1877, and since he was a native of Venezuela, the quality of Italian citizen could not have been attributed to him, save and except as he *was the son of the Italian Baron Fortunato Corvaia*.

The royal legation recognized Baron Corvaia, ex-minister of Venezuela to Paris, as an Italian citizen, and the proof of this is evident and undeniable.

It is well known that Venezuelans can not, under their laws, assume titles of nobility. Now, the deceased had not relinquished his, nor did any of his male descendants. (See certificate of birth of Giuseppe Isacco Enrico Corvaia, the certificate of decease of Lucio Corvaia, the power of attorney of Teresa Campbell, of Fortunato, and Ricardo Corvaia to the Signora Luisa, widow De Lara, and the copy of the dispatch of the Italian minister of foreign affairs, all contained in fascicle No. 2.) We might conclude from all this that never did the deceased or his descendants contemplate being local subjects. But there is more. In the same fascicle the honorable umpire will find a document emanating from the prefect of the department of Bravo, in the state of Guarico, Venezuela, under date of June 2, 1880, in which Enrico Corvaia is styled an Italian citizen.

The Signora Luisa Corvaia, widow of the Venezuelan general, Eladio Lara, was not pensioned by the Venezuelan Government, as she should have been, because she was a foreigner. It would therefore seem that the Corvaias have been considered Italians, even by the authorities of the Republic, evidently because it was notorious that their father was originally Italian, and so remained to the day of his death.

The writer believes he has convinced the honorable umpire of the equity and substantial foundation of his argument. But in the event that the umpire should decide that Baron Corvaia had ceased to be Italian, he would not for that have become Venezuelan. It is not deemed necessary to enter into a long discussion in support of this proposition. The conditions by which Venezuelan nationality is acquired are tacitly indicated in the fundamental laws and codes of the Republic. The members of the Corvaia family never complied with the formalities necessary to that end. We may add that it does even appear, and until proof to the contrary is submitted by the Commissioner for Venezuela, it may be absolutely denied, that he ever took the oath of allegiance or any other toward this Government, and from this we may deduce his firm intention of remaining true to the nationality of his origin. A bond of allegiance between him and this Republic could not arise, because neither in the Venezuelan nor in the Italian legislature is such a juridical condition foreseen and contemplated. By the law of either country, one is a citizen or one is not. The very word "allegiance" can not be exactly translated into either Spanish or Italian.

Besides, allegiance seems to be due solely to the sovereign, and the loyalty of the subject is to his king, his natural protector — a thing almost inconceivable in a country governed according to republican principles; but even were it

admitted that there were such a bond between an individual born in a monarchy and a country under republican rule, there would still be required the formal and essential oath of allegiance, which we know, and as will more clearly appear further on, he never took.

Ernest Lehr (*Elements of English Civil Law*, par. 38), referring to this, says:

To within quite a recent period England was a country of perpetual allegiance. Whoever was born on British soil was a British subject, and could not cease to be such without the consent of the prince.

Calvo (*Dictionary of Public and Private International Law*, p. 35), speaking of the word "allegiance," says:

It is the name which is given in England to the obedience which every subject owes to his prince and his country. Any individual born a subject of the British Crown can never, by a mere act of his will, dissolve this obligation and break the bond of allegiance which unites him to the sovereign of Great Britain.

This doctrine of allegiance is thus summed up by Blackstone and Stephen:

Natural allegiance is such as is due from all men born within the king's dominions immediately upon their birth. \* \* \* An Englishman who removes to France, or to China, owes the same allegiance to the king of England there as at home, and twenty years hence as well as now. For it is a principal of universal law, that the natural-born subject of one prince can not by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former, for this natural allegiance was intrinsic and primitive, and antecedent to the others, and can not be divested without the concurrent act of that prince to whom it was first due.

These definitions and opinions confirm the principle that the bond of allegiance can not be conceived except as due a sovereign, and obviously that of the country of birth, not to be contracted toward another prince, and in every case with a solemn oath of fidelity.

Instead of this, we see Corvaia, in 1854, when he had already filled the post of confidential agent of Venezuela in the United States, and on the eve of accepting a mission to France, making an open act of submission and devotion to his legitimate king. Let it be noted, besides, that the first law, in the order of time, according to which employees of Venezuela were obliged to take an oath — not carried into effect, as we know from the *Giordana* case<sup>1</sup> — was promulgated May 29, 1865, that is, at a time considerably after Corvaia had accepted the mission referred to, which completely excludes the idea of his having taken any oath whatever.

The Italian Commissioner must therefore insist upon his position that the Corvaia claim can not in any case be held to be an originally Venezuelan claim. He believes it to be Italian, since the deceased baron must have had a nationality, if we assume with Folleville (*Studies of Private International Law*, p. 285) that the legal status of a person without a nationality is "a more singular and unjustifiable anomaly than would be a duality of fatherlands;" but in any conceivable hypothesis, he maintains that this claim must constitute for Venezuela an essentially foreign claim.

The honorable Doctor Zuloaga has declared to the writer that other exceptions will be submitted, and will sustain the forfeiture of the right of the Corvaia heirs to claim before this international tribunal, either because the damages upon which their claim is based were suffered by the deceased in a period long since passed, or because he does not appear among the Italians indemnified under

<sup>1</sup> Not reported.



the provisions of the protocol of La Ville-Jiménez, of October 7, 1868, or because the heirs did not have recourse to the royal Italian legation in 1894, when, under Count Roberto Magliano de Villar S. Marco as minister to Caracas, it drew up an agreement in regard to claims with the Government of the Republic. In rebuttal, the Italian Commissioner recalls, in the first place, his arguments in the Gentini case, with reference in general to the subject of prescription in international relations, and observes, in addition, that all the credits of the Corvaia heirs are of such character that the Venezuelan Government can not have ignored their existence, and that therefore, in conformity with the principles admitted by the honorable umpire in the claims of Giacopini<sup>1</sup> and Tagliaferro,<sup>2</sup> prescription could not in anywise operate against them. It appears, besides, from various documents found in the papers of the Corvaia claim, that neither the deceased baron nor his heirs ever had the least intention of abandoning the rights which to-day, under more propitious conditions as to time and tribunal, they propose to defend, which intention has, on the contrary, been repeatedly manifested by them.

The protocol of La Ville-Jiménez was subscribed for the purpose of effecting an amicable settlement of all Italian claims up to that time presented to the royal Italian legation. It contains no declaration on the part of the chargé d'affaires indicating the abandonment or exclusion of any claim not comprised among those contemplated in this international act. The words "with the addition of this sum the total amount of all the claims is 1,154,686 pesos," and "the Italian claims," on the meaning and scope of which the honorable Commissioner for Venezuela bases his argumentation, would be superfluous unless accepted as referring to the claims presented, known, or liquidated at the time the above-mentioned protocol was stipulated.

To give an unlimited interpretation to those words would be equivalent to prejudicing legitimate interests, and certainly the chargé d'affaires would never have assumed the responsibility of shutting out claims of which for obvious reasons he could have had no knowledge, without special authority from his Government, which he surely never had. If the Venezuelan Government had intended that every anterior claim should be liquidated by the above protocol, it would undoubtedly have insisted upon an explicit clause or declaration therein to that effect — something it did not do then or during the preliminary discussions.

As a matter of fact, in the report of this protocol furnished by the legation to the minister of foreign affairs at Rome, an authentic extract of which is herewith inclosed, mention is made of "the claims of royal subjects which had been recognized and admitted by the Venezuelan Government." There is no mention of all claims, and it is permitted to be implicitly but clearly understood that there existed other claims for which diplomatic action remained reserved.

In the partial settlement of claims obtained by Count Magliano in 1894 only those were examined which arose from damages and requisitions of the revolution resulting in the elevation of General Crespo to the presidency. This is established by the tabular statement of claims for indemnity of that period submitted in the original to the examination of the honorable umpire, written by Minister Magliano himself, special attention being invited to page 4 of the statement marked "B" in red, in the column of remarks, in which may be read, opposite the entry of claim of Stefano Giajer del fù Giovanni, these words:

This not being a case of damages occasioned by the civil war, but by an alleged

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<sup>1</sup> *Supra*, p. 594.

<sup>2</sup> *Supra*, p. 592.

abuse, the royal legation has decided that it can not be accepted, and the claimant should appeal for redress to competent authority, in conformity with existing law.

Therefore if the Corvaia heirs did not present their claim to the legation at that time, it was undoubtedly because it would not have been received thereby. For the rest, has not the Mixed Commission liquidated claims arising out of the war of 1892, notwithstanding the rule laid down by Count Magliano?

Claim No. 199, of Giuseppe A. Menda, accepted by the Venezuelan Commissioner himself, was for requisitions made in 1892, and others of the same nature have likewise been accepted.

Did not the Commission, notwithstanding the opposition of the Venezuelan Commissioner, settle claims of the period of 1898-1900, though not included in the ultimatum of 1902, and in the sum of 2,810,255 bolivars obtained by the protocol of Washington of February 13?

It were well to recall the claim of Massardo, Carbone & Co., which entailed a long discussion and a decision of the honorable umpire sustaining the contentions of the Italian Commissioner.

Have we not awarded indemnity in claims for damages arising in the period 1871-72, in spite of the rulings of Magliano and Riva?

The above-mentioned protocol of Washington makes no such restrictions, and admits all Italian claims without distinction to the examination of the Commission, excepting only those already liquidated and those of holders of bonds of the foreign debt.

To demonstrate how unjust and contrary to law and equity is the theory opposed to that advanced by the Italian Commissioner one example will suffice.

Recently the Italian citizen, Biagio Lamberti, presented himself before the royal legation and exhibited absolute and undeniable proof that in 1899 he supplied military musical instruments to the Venezuelan Government to the value of 1,430.55 bolivars. Lamberti, who holds an order from the war office in his favor for the sum named, signed by Gen. Diego Bautista Ferrer, on the minister of hacienda, has not, in spite of repeated efforts, been able to obtain payment. The said Lamberti, who resides in Caracas, did not want to have recourse to this Commission, and only now comes to seek the aid of the royal representative to obtain his due, delayed until now with no apparent motive. Can it be said that because Lamberti very patiently refrained from formulating a claim before the Commission, he has forfeited the right to invoke the assistance of the legation, and that it must refuse to protect him?

The Washington protocols do not peremptorily declare that claimants shall either submit their claims or forfeit them. They have simply provided for the installation of tribunals in equity, before which claims may be judged, and opened a way by which claimants may obtain speedy justice; but if any among them have not desired to avail themselves of these means, or thought it inopportune to do so, they have surely not on that account renounced any of the means of redress to which they are entitled by common law.

The conclusion to which the Italian Commissioner arrives is that while the protocols furnish a mode of liquidating claims for indemnity, in the absence of a clear and explicit declaration to the contrary, they were never intended to exclude future diplomatic action, or preclude the possibility of claimants whose cases have not been considered of having recourse to the authority of their country. Now, this clear and explicit declaration the protocol of 1868 does not contain.

The reasons why Baron Corvaia did not press his claim in that year are unknown to us, but to argue from that one fact that he no longer considered

himself an Italian, while all else proves the contrary, or that he, and therefore his heirs, should have lost the right to claim, is unjust.

This abstention may be explained, rather by the affectionate regard he had for this country, or the important personal relations which always induced him to hope, even to the day of his death, that he would be able to bring about an amicable settlement of his numerous credits against the Government, or by his frequent and prolonged absences in Europe. At that time his credits did not really constitute a claim, because the measures he and those interested with him had instituted for a direct reimbursement were still pending, and besides, while other royal subjects were presenting claims, he had still so much faith in the strength of his relations with the Government that in that same year (1868) and subsequently, he continued to advance it money.

Let it be noted further that prior to 1868 Italy had never had a settlement of claims with Venezuela; that the kingdom of the Two Sicilies had never had a diplomatic representative in Venezuela, and that that of the King had only existed since 1864, with frequent interruptions; to say nothing of the fact that while other nations had secured settlements through mixed commissions, Italy had never had a commission until after the blockade, so that, generally speaking, there had been no opportunity for Italian citizens to have recourse to the justice of international tribunals.

If Baron Corvaia had formally pressed his claim through diplomatic channels he would have been charged with ingratitude. Having shown himself moderate, courteous, and forbearing he is rewarded in having heirs told that because their ancestor had made no claim (which is not strictly true) they had forfeited their right to do so.

This is a style of argumentation and judgment that does not appear to be inspired by those principles of absolute equity which should constitute a guide for the Mixed Commission.

This being premised, it is pertinent to examine, from the point of view of citizenship, the status of each of the Corvaia heirs, as much in the warranted supposition that the honorable umpire will admit that the deceased never abandoned his nationality of origin as in the scarcely probable hypothesis that this quality will be denied him, while admitting him to be no Venezuelan, it being out of the question to consider him a citizen of this Republic.

Maria Teresa Corvaia, first-born child of the deceased baron, married an Italian, Signor Pasquale Miccio, living, and is therefore certainly Italian.

Margherita, fourth daughter of the deceased baron, married to Baron Carlo Bottini, an Italian citizen, and therefore she, too, is an Italian.

Giuseppe Isacco Enrico, sixth son, was born in Naples. If his father is held to be Italian there can be no doubt as to the nationality of the son. If his father is held to have lost his original citizenship, Enrico should nevertheless be considered as Italian, as he was born in Italy after his father had lost his citizenship, and all the more so in that his father had not acquired another nationality. A careful study of article 5 et seq. of the Italian civil code will result in an absolute conviction that Enrico Corvaia is not and can not be other than an Italian.

He has, in any case, a true and undoubted legal status as an Italian citizen, recognized, as has heretofore been said, as well by Venezuelan authority as by the royal Italian legation. His name is inscribed in the proper register of the legation itself, to which he exhibited, not many months since, a certificate of the census of Paris, where he customarily resides, in which he declares himself Italian, and a passport of August, 1903, from the royal embassy in that city, in which he is likewise styled an Italian. What nationality would the honorable Commissioner for Venezuela ascribe to Enrico Corvaia?

Irene, deceased, born in Caracas, married Gen. François Ernest Le Plus, became French by said marriage, and left heirs who are all of French nationality.

Fortunato, third son, and Ricardo, fifth son, are Italians, according to the law of Italy, because they are the sons of a citizen. The first, it has been seen, was so considered by the royal legation up to 1877. For the honorable umpire will no doubt take into account the certificate of identity drawn up at the royal Italian embassy at Paris, from which it appears that both are recognized as royal subjects, contained in book No. 2 of the claim, as well as the circumstance that they have not since many years lived in Venezuela and had never established a domicile therein.

Lucio, eighth son of the deceased baron, was an Italian, because he was born in Paris of an Italian father. He died, leaving two children, Fortunato and María Louisa, both born at Barquisimeto, Venezuela, and a widow, also born in the Republic, now married to a Venezuelan. The two children are Italians by the laws of Italy — article 4 of the civil code. It is not denied that they were born and reside in Venezuelan territory and the former decisions of the umpire are not lost sight of, but we reserve our opinion on that point.

The Signora Luisa Carmela Corvaia, who presents the claim, widow of the Venezuelan general Eladio Lara, was born in Paris. There can be no doubt as to her Italian nationality, if the same nationality be accorded her father.

Besides, according to article 14 of the Italian civil code, the native woman who marries a foreigner becomes a foreigner, since always by the fact of matrimony she acquires the nationality of her husband.

Article 18 of the Venezuelan civil code provides that the foreign woman who marries a Venezuelan acquires all the civil rights of a Venezuelan and retains them during her husband's lifetime.

Article 17 of the same code provides that foreigners shall enjoy the same civil rights as Venezuelans.

The Signora Luisa Corvaia De Lara has not, therefore, by the fact of her marriage with a Venezuelan, acquired in fact Venezuelan citizenship, but only the *civil rights* proper to Venezuelans — those rights which are generally enjoyed by foreigners in Venezuela. She has not on that account lost her Italian nationality.

Even if by an interpretation too sweeping, and to our mind unwarranted, it were desired to make these rights — the civil rights referred to in article 18 of the Venezuelan civil code — equivalent to nationality, which seems absolutely contrary to Article VIII of the Venezuelan constitution, which does not number among Venezuelans the foreign women married to local subjects, this quality would have been lost to her by the fact of her widowhood, and would therefore *ipse jure* have resumed her former nationality, either on the principle that one can not be without citizenship, or by a logical and pacific application of article 14 of the Italian civil code, and this notwithstanding that she, having lived in Italy after the death of her husband, as shown by documents in No. 2 of the claim, had not made the requisite declaration before the proper official (not considered necessary for the reasons above set forth) of her intention of living there.

If it is not admitted that Baron Corvaia preserved his Italian citizenship, it will be somewhat difficult to establish the nationality of his daughter. It might be contended that being born in Paris she must be French.

Teresa Campbell, widow Corvaia, was born of English parents in Caracas, and married Baron Fortunato Corvaia in 1846, being now a widow, as shown by certificate above mentioned as having been recorded at the royal embassy in Paris, and having resided in Europe since the death of her husband. If the latter be considered as Italian she must likewise be so considered, since according

to principles admitted by the umpire, and given her prolonged residence abroad, article 19 of the local civil code could hardly be applied to her case, whereas she might very properly invoke article 9 of the Italian civil code which provides:

The foreign woman who marries a citizen acquires citizenship and retains it even as a widow.

If, then, the deceased husband is regarded as having lost his Italian nationality, it will be for the umpire to decide whether or not his widow, under the circumstances, may appear as a claimant before this Commission.

Summing up, then, under the most favorable hypothesis, if the Italian origin of the claim of the deceased baron be admitted, all his heirs should be admitted to share in the indemnity here claimed. If this view is not to prevail, but it be recognized, as we confidently believe, that Baron Corvaia never lost his Italian citizenship, according to precedent decisions of the umpire, then only the heirs of Lucio, the only ones born and living in Venezuela, and the heirs of General Le Plus, who are French, would be excluded from participating in the award.

Under the most unfavorable hypothesis (we will not even suppose that the baron will be considered as being Venezuelan) in which the deceased will be judged to have lost his Italian citizenship, there would always remain, as undeniably Italian, Giuseppe Isacco Enrico Corvaia, María Teresa Corvaia Miccio, and Margherita Corvaia Bottini. These three descendants could not in any case be shut out from participating as Italian subjects in the liquidation of a claim which was foreign from its very origin.

The Italian Commissioner expects from the umpire a decision founded on the highest rules of justice and equity; and in calling attention, with regret, to the steps taken by the interested parties, with no practical results, for a direct settlement with the Government, he urges that in rejecting the claims of such of the heirs as may not be deemed recognizable before this Commission, it be without prejudice to their interests before any other tribunal, as, for instance, before the local courts, and in the case of the heirs of General Le Plus, and possibly of the Signora Luisa Carmela, widow Lara, through the intermediary of the French legation in Caracas.

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*Extract from the register of the notarial acts of the royal Italian legation at Caracas for the year 1877.*

Legalization of the signature of Dr. Andueza Palacio on the diploma of the Order of Bolivar, with which was invested the royal subject Enrico Corvaia for services rendered to this Republic.

Caracas. \* \* \*  
[L. s.]

CAV. P. MASSONE

N. B. — The royal chargé d'affaires omitted the date in the foregoing certificate, but this, in the register of notarial acts, uninterruptedly kept from December 12, 1864, to January 21, 1889, is found between an act made June 2, 1877, and another made the 26th of the same month. It therefore is certain that the legalization referred to was made in the period elapsing between the first and second dates above named.

The royal chargé d'affaires.

C. ALIOTTI

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*Extract from the register of the notarial acts of the royal Italian legation at Caracas for the year 1877.*

This day, 30th October, 1877, at Caracas, in the office of the royal Italian legation, before us, Cavaliere Pasquale Massone, chargé d'affaires of His Majesty the King of Italy, in this residence, etc., appeared the royal subject Corvaia, Fortunato, of Fortunato, a native of Caracas, freeholder, who declares as follows, etc.:

(Here follows the full power of attorney to his father, Fortunato Corvaia.)

A true copy:

The royal chargé d'affaires.

C. ALIOTTI

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*Extract from the register of correspondence of the royal Italian legation at Caracas with the Italian minister of foreign affairs.*

CARACAS, January 30, 1869

MR. MINISTER: As a supplement to the report No. 47 of this series, dated October 20, by which there was sent to your excellency a copy of the protocol of the claims of royal subjects which have been acknowledged and admitted by the Venezuelan Government, I have the honor to inclose herewith an analysis of the claims themselves, to the end that your excellency may know the nature of them, and what were the rules determining the awards made to these claimants, etc.

G. GALLI,  
In Charge of the Legation

A true copy:

The royal chargé d'affaires.

C. ALIOTTI

ZULOAGA, *Commissioner*:

The heirs of Mr. Fortunato Corvaia claim the sum of 16,438,661.23 bolivars, which they say the Government of Venezuela owes them for various negotiations which their predecessor in interest Corvaia had with the Government, and for interest accruing upon the sums owed. The claims are until now generally unsubstantiated, or they have informal proofs; but the preliminary question of the nationality of Corvaia arises, and even the question of the nationality of the claimants themselves, and these are the questions which are now submitted to the honorable umpire.

Mr. Fortunato Corvaia, as appears from the biography presented by the claimants, came to Venezuela in the year 1838, immigrating with the intention of establishing himself in the gold mining regions of Guayana. He did not come to Guayana, but remained in Puerto Cabello, where he was for three or four years, and afterwards removed to Caracas, where he established himself as a printer and engaged in other business. In the year 1846 he married, in Caracas, Miss Teresa Campbell, a Venezuelan, and on the 24th of January, 1848 (which is a celebrated day in the political history of Venezuela, because of the *coup d'état*, which upon that day the chief of the Government performed), the biography to which we refer says that Corvaia was in Congress, performing the duties of political and literary reporter; that there he discovered the plot against the life of General Monagas, and that, exposing his own life, he went out to give notice of it to the wife of the President of the Republic. (This really has never been known in Venezuela, or was there any such plot.) In the same year, 1848, Gen. Hosea Antonio Páez, representative of the so-called conservative party, and who already had been twice President of the Republic, took up arms against Monagas by virtue of the events of the 24th of January, and Corvaia left for the United States of America to seek armament and ships of war for General Monagas, leader of the liberal party.

In the following year, 1849, the Government named Corvaia in order that he might confidentially negotiate with the minister of the United States of America, with the object of strengthening relations with the American nation. In June, 1850, it appointed him confidential agent to said Republic. In January, 1851, the minister of foreign relations of Venezuela addressed himself to the Secretary of State of the United States to tell him —

that the President of the Republic, after receiving notice that Páez and his partisans were attempting to form an exploitation in the United States, in order to renew their attempts against the institutions and the legitimate government of this country, has seen fit to send there a diplomatic agent, who, observing the conduct of the Venezuelans expatriated because of their political crimes, might give opportune notice of this monstrosity of their plans, and prevent their being put into effect; that with these objects and that of promoting the friendly relations which exist between both countries, has accredited Mr. Corvaia in the character of chargé d'affaires to the United States.

A little later Mr. Corvaia goes to Europe with various missions, and among others a mission to the Holy See. In March, 1855, the Government appointed Corvaia confidential agent to various courts of Europe, with the object of promoting immigration, and in March, 1856, he was appointed envoy extraordinary and minister plenipotentiary of Venezuela to several courts of Europe, the consuls in said countries, in conformity with the law of 1824, being, therefore, under his supervision, and he was minister until June 1, 1858, when he ceased to hold this office because of the revolution which had triumphed in March of that year.

In the year 1860 Corvaia goes to Venezuela and is put in jail. At that time Gen. Hosea Antonio Páez was dictator; he ruled the conservative party, and the imprisonment of Corvaia was only the political imprisonment of the constant servant of Monagas against the conservative party. In 1863 the liberal party again triumphed, and Corvaia again goes to Venezuela and enters anew into favor, and negotiates with the Government. If he had not returned since 1858, it was as he himself says, in a note of December, 1866, which is found in Record I, "by reason of said revolution," because of the fear of persecution by his political opponents. In this same record (I) a statement of Corvaia of his services as minister appears. He enumerates them thus:

I believe that I can assert without fear of contradiction that my assiduous efforts and labor have brought advantageous results. Among these the recognition of the nation by the Russian and Ottoman empires, by the \* \* \* of the Two Sicilies and Portugal, especially in the capitals and important cities of Europe; \* \* \* I negotiated treaties of friendship, commerce, and navigation with Prussia and the other states of the "Zollverein;" I concluded another with Sardinia, \* \* \* the present Government of your excellency (1863), ratified the second of these treaties, and have signed with *Italy*, which is the same one as has just been published as a law of the Republic, in which there were established two principles of the greatest importance for this country: 1. That which designated the only sort of damages and injuries for which both parties would be liable in case of revolution; that is to say, those caused by the legitimate authorities, excluding, therefore, those arising from any other sources. 2. That which makes arbitration obligatory as to the disputes which arise between the two countries. On the other hand, I succeeded in obtaining a very advantageous adjustment of the claims of the French Government on account of the efforts of the law of suspension, and almost paid what was owed by this Government. I did the same thing with the English Government in the matter of the claim of Fitzgerald, and in all these negotiations I have only borne in mind the good name of the nation. \* \* \* Finally, upon giving up my diplomatic functions on account of the events of 1858, I was honored by Ecuador. \* \* \*

Corvaia from the time of his return to Venezuela remained in the country,

and died in 1886 in the village of Maiquetia, situated on the coast very near La Guaira.

This is the life of Corvaia, as appears from the proofs presented by the claimants. From it, it appears in a clear manner that Corvaia constantly intervened in the political affairs of Venezuela; that he was a high official of state from 1848 to 1858; that in 1848 he sought arms for Monagas, and later was a secret agent of the liberal party to watch the acts of Páez, leader of the conservative party; that in all the liberal administrations he enjoyed very special favors, and carried on lucrative negotiations with the Government; that during the administration of the conservative party he was persecuted as a political enemy, and that in order to avoid this he remained abroad during this period. That these facts established it follows: 1. That the heirs of Corvaia can not claim before this Commission, because it is a national recognition, and under the principles of national law diplomatic protection is not accorded to individuals who mix in the political affairs of another nation. 2. That Corvaia, born in the Two Sicilies in 1820, has lost his nationality, since in the Two Sicilies the Napoleonic law, with very few modifications, was in force, and among the articles referring to the loss of nationality there were articles 17 and 18 of the Napoleon code, which provides his loss of nationality by the fact of absenting himself in another country without the intention of returning, and also by accepting public employment from a foreign government. As is seen, these two circumstances apply to Corvaia, the first because it is evident that a man who as he did came to Venezuela in his youth and without resources, married there, made his fortune there (almost entirely by political negotiations), who there raised his family, who was there honored by distinctions, and there died, had considered Venezuela his true country, without the intention of returning to his native land, to which nothing called him.

Because of the code of Napoleon, which in the premises is in accord with the Italian code, and provides for the loss of nationality by one accepting public employment from a foreign government, there is no stronger case in which to apply it than in that of Corvaia, who was for the space of ten years the confidential agent, chargé d'affaires, and minister plenipotentiary of Venezuela; who had been received in this capacity in the country which it is now attempted to claim as his fatherland, and had obtained from the Governments of the Two Sicilies and of Sardinia political advantages of paramount importance.

The question as to the loss of nationality was discussed in this Commission in the case of Giordana<sup>1</sup> but he was an assistant engineer in the service of the minister of public works, and the honorable umpire of this Commission was of opinion, bearing in mind the humble character of the employment, that it might be considered that he had not lost his nationality; but he said that he reserved his opinion with respect to a case in which the employment was of more importance. After the office of the President of the Republic, I do not see what authority can be higher or more important than that which Corvaia for many years exercised, as representative of the Republic in the United States and the courts of Europe, entering into agreements, and having the consuls subordinate to him.

The theory of the loss of nationality by the acceptance of employment does not admit of any exception, according to the commentators on the code of Napoleon, and it is applied rigidly. The excuses which may have been made can not influence a matter now of fifty years ago. In this question of the loss of sovereignty I do not see how discussion is possible. The law of the Two

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<sup>1</sup> Not reported.



Sicilies is definite in declaring that Corvaia was not a Sicilian, and it is not to be supposed that a state claims from another state for the benefit of anyone whom its own laws declare is not a citizen. This is a matter of strict right and as to which the Commission ought to strictly apply the law of the case. The citation of authorities which the honorable Italian Commissioner makes are therefore out of place, since they refer to personal opinions and assumptions, more or less founded for the solution of the conflict of nationalities. Besides, some of the citations of my honorable colleague might be considered as opposed to his opinion, and I might cite paragraphs of Fiore which are. Based, therefore, on the three reasons mentioned, that Corvaia had taken part in the affairs of the country, had lost his nationality by establishing himself in Venezuela without the purpose of returning to the Two Sicilies, and because he accepted public positions in Venezuela, he claims the Corvaia claim is inadmissible. With respect to Corvaia, moreover, there is a very serious circumstance, and it is that he, when the Two Sicilies were annexed to Italy, was not a Sicilian, nor was he domiciled in the Two Sicilies, an indispensable requisite in order that the annexation might affect his nationality. The Hon. Mr. Agnoli, Commissioner for Italy, has insinuated that although Corvaia had lost his nationality (had never been a subject of the King of Italy), this does not hinder his heirs from claiming internationally. This would be an absurdity in law. No one can transmit to another more than what he has, and if Corvaia could not have claimed the protection of a foreign nation against the Government of Venezuela, it is not possible that his heirs should have that right. I am not aware that the Hon. Mr. Ralston would give a contrary opinion, as my honorable colleague asserts. It is to be observed that Corvaia never thought of asking protection from the Government of Italy for any claim. The fragment of a *copy* of a letter which is presented in order to show that Corvaia believed he had the right to a claim has reference to a French claim.

Since Corvaia was not an Italian, this is sufficient to exclude the claim, and it is useless to enter into a study as to the nationality of the actual claimants. Nevertheless, these are not Italians.

Teresa Campbell, widow of Corvaia, is a Venezuelan, born in Caracas in 1831, and if by the fact of her marriage she may have changed her nationality, as a widow, she recovered her original citizenship. The case would already have been decided in that of the widow Brignone,<sup>1</sup> but in the present case it is my opinion that the wife of Corvaia never has been an Italian.

Irene Corvaia, deceased, married Gen. Francis Le Plus, and was born in Caracas; she was, therefore, never an Italian, and her heirs are French.

Fortunato Corvaia was born in Caracas in 1849. He lived in Venezuela for many years, and to-day resides in Paris. He is, therefore, an Italian.

Ricardo Corvaia was born in Caracas in 1851, lived in Venezuela for many years, and to-day resides in Paris. He is therefore a Venezuelan. It is to be noted that the fact of residence in France does not even give the character of residence to those who live there.

Henrique Corvaia was born in Naples in 1853. He has always lived in Venezuela, and he has a wife and children here, and at the time of his birth, it appears that Corvaia was acting in the capacity of confidential agent of Venezuela. At the time of the birth of Henrique Corvaia his father had lost his nationality, and he could not, therefore, be claimed by Italy as a national. (See art. 11, Italian code.) It is to be borne in mind that these claimants who call themselves Italians have never shown by any direct or legal proof that they

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<sup>1</sup> *Supra*, p. 542.

desire to be Italians, and it does not appear that they have rendered military services in Italy.

Luisa Corvaia, widow of Lara, was born in Paris in the year 1857, her father being minister plenipotentiary of Venezuela. She was born in the legation; she is the widow of a Venezuelan general, and has always lived in Venezuela. She is therefore a Venezuelan. Italy can not claim her as an Italian. Margarita was born in Caracas, married in 1879 Carlos Bottini, a Frenchman. Her husband was naturalized an Italian in 1888, and if this naturalization had any influence, in no case could it give her the right to appear as an Italian claimant, because of an act long preceding the naturalization. Moreover, Margarita Corvaia, French, because of the nationality of her husband, did not acquire Italian nationality by his naturalization, since, according to the French rule, naturalization is personal. (Fiore, *Droit International Privé*, p. 379.)

Teresa Corvaia was born in Caracas in 1847; married Pasquale Miccio, an Italian; legally separated from her husband in 1873, and resides in London. If she preserved the Italian nationality by virtue of the citizenship of her husband, in reality very weak ties bind her to her country.

An order of expulsion from the Two Sicilies has been made use of as proof that Corvaia retained his nationality. I do not see why. This order might also have been made against a stranger or a man like Corvaia who could not rely upon the nationality of the Two Sicilies. Nothing in these documents leads us to suppose that Corvaia had thought that he preserved his nationality. Besides, we do not know the antecedents of this matter. The fact that Corvaia or his family were not friends of Bourbons and therefore had to ask permission to hold a public office in Venezuela, since it would have been denied it, is an argument adduced which is turned against the claimants, since it leads us to believe that Corvaia was appointed against the desire of the Government of the Two Sicilies.

For the reasons set forth, I am of opinion that, without entering into the merits of the case, the claim of the heirs of Corvaia should be rejected.

On this occasion only the nationality as a previous question has been considered. Every other question, including that of prescription, I shall consider upon their merits.

In order to answer the last paragraph of his honorable colleague the undersigned has to say that, from information which he has obtained in various public offices, it appears that at no time have the heirs of Corvaia taken any sort of action, or made any sort of claim, and that the first notice which has reached the Government of Venezuela of the existence of the claim came to it when it was made known that it would be presented to this Commission.

AGNOLI, *Commissioner* (additional opinion):

The Italian Commissioner takes cognizance of the abandonment on the part of the Commissioner for Venezuela of the prejudicial exceptions previously formulated by him relative to the forfeiture of the right of the Corvaia heirs to defend their interests before this Mixed Commission, these exceptions being based on the circumstance that neither the deceased Baron Fortunato, in 1868, at the time of the stipulation of the protocol of De la Ville-Jiménez, nor the heirs themselves subsequently, prosecuted their claim against the Government of the Republic through the intermediation of the royal Italian legation.

Therefore the undersigned holds it as useless now to submit to the umpire a list of the claims for indemnity which had occupied the attention of the Italian

minister, Count Magliano, and mentioned in my memorial of the 12th instant, on page 19.<sup>1</sup>

The objections raised by the Commissioner for Venezuela in this Commission can therefore affect but one point — that of nationality. The Italian Commissioner presents, as complementary to the arguments used by him in sustentation of his opinion concerning the acceptability of the present claim, and in reply, to the objections of the Venezuelan Commissioner, the following observations:

1. It is not established that Baron Corvaia ever went to Naples as minister for Venezuela, that he presented his credentials, or that, finally, his appointment as a diplomatic representative of this Republic to the Bourbon court exceeded the limits of a simple designation not followed by an effective accomplishment of plenipotentiary duties.

There is, on the contrary, a strong presumption that Corvaia never did actually perform them officially, given his status as a Neapolitan subject, descendant of political exiles, and himself expelled from the Kingdom of the Two Sicilies.

There is in fact a proposed treaty with the Two Sicilies, but this document is simply a project — it bears neither date nor signature, does not give the names of the negotiators, and is not in the writing of the deceased baron. It need not even have been submitted to the Commission, and from it one proof alone can be drawn — that of the utter sincerity of the claimants.

2. The letter addressed under date of June 26, 1885, by Baron Fortunato Corvaia to the minister of the King of Naples at Paris, Marquis Antonini, concerns a simple exchange of publications. At that time the baron was not minister, and was not considered as a member of the diplomatic corps; as a matter of fact, the reply of Marquis Antonini is addressed to Signor F. Corvaia, without official qualification whatsoever.

3. Concerning the acknowledgment of the Republic of Venezuela on the part of the Neapolitan Government, the credit for which was claimed by Corvaia in a document, the importance and authenticity of which will be hereafter referred to in this paper, it is to be understood as resulting from his private negotiations, and nowhere does it appear that it was brought about officially. We do not even know at what time this transaction took place.

4. The document contained in book I, a letter of the deceased to the President of the Republic, dated January 14, 1863, in which he requested payment of some of his credits, is not in the handwriting of the deceased, but is a copy, and it is not known whether the original was ever sent. In it the deceased relates his services to the Venezuelan Government, and with all due respect to his memory be it said, appears to indulge in momentary exaggeration. As a matter of fact there has never been, so far as can be learned from a research of the old Italian treaties, a treaty between the Kingdom of Sardinia and the Republic of Venezuela, and Corvaia had never been a subject of the King of Sardinia, and his relations with that Government, whatever they may have been, could have had no influence on the nationality of the deceased.

As regards the treaty between Italy and Venezuela of June, 1861, it may be admitted that the deceased baron had privately collaborated in its preparation. I say, "it may be admitted," because there is nothing definite with regard thereto. It can not be denied, though, that this international agreement was stipulated nearly three years after he ceased his functions as minister plenipotentiary for Venezuela; that it was signed in Madrid, where it does not appear that he was present officially or otherwise; that the representatives of the two countries were Mr. Fermín Toro for Venezuela, and Baron Romualdo Tesco

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<sup>1</sup> *Supra*, p. 616.

for Italy, both being ministers plenipotentiary at the court of the Queen of Spain. The name Corvaia does not appear therein.

5. The right, so far as regards the Italian heirs, of a person who had, for instance, lost this nationality without acquiring that of Venezuela, to claim before this Commission is certainly not absurd, since the claim would, in such case, be of foreign origin. The umpire has already so decided.

The undersigned holds that the foreign holders of claims against Venezuela, coming to them by inheritance and not purchased with a view to prosecuting them, have a right in law and in equity to have recourse to diplomatic aid in the prosecution of their claim even though it had originally been the property of a local subject, and that therefore this Commission would be competent to pass upon such cases.

This principle has been recognized as just in prior Mixed Commissions as well as by the council of the contentious diplomat in session at Rome.

6. The letter written by Corvaia to his daughter Luisa, dated February 18, 1885, expresses the hope that the diplomatic convention then concluded between France and Venezuela would facilitate the settlement of his claim. I can not see that it would be possible to deduce from the copy of this document that has been shown us anything but the intention on the part of the deceased to avail himself of diplomatic means in securing a recognition of his rights. It is out of the question to argue that it was his intention at the opportune moment to appeal to any legation other than the Italian, since he was not born French, neither had he acquired that nationality.

7. The honorable Commissioner for Venezuela affirms that Corvaia was not a Neapolitan subject at the time of the annexation of the southern provinces to the rest of Italy, and calling attention to the fact that he was not then living in the Kingdom of the Two Sicilies, concludes that the deceased could not have acquired Italian citizenship.

In regard to this it is worthy of note that the question as to whether or not Baron Corvaia was a Neapolitan citizen in 1860 is precisely the point at issue, and that therefore the assertion of the honorable Commissioner would seem to imply a begging of the issue; now with regard to the effect, so far as the citizenship of Neapolitan emigrants is concerned, of the annexation of the Kingdom of Naples to the other Italian provinces, taken from the Monarchy of Savoy, it is well to remember that there was no cession of a part of the territory of said State, but an incorporation of the whole Kingdom of the Two Sicilies with that of Italy; the Bourbon dynasty was deposed, and the Neapolitan State, as a political autonomy, ceased to exist.

It is not possible to admit that all the Neapolitans who, in 1860, were residing abroad should either have been at once deprived of all citizenship or preserved their original one, to form a nationality without government or territory. It must therefore be evident that they became without distinction Italian citizens.

8. The honorable Venezuelan Commissioner thinks the Baroness Margherita Bottini should be considered as without right to claim before this Commission, in that having become French by her marriage she must have remained so, notwithstanding the fact that her husband has for the last sixteen years been a naturalized Italian citizen. The Commissioner for Venezuela has here raised a very nice question, one that might have considerable value and importance were we called to decide French-Venezuelan claims instead of Italian-Venezuelan. Such a question can not come before this arbitral tribunal.

The French code in nowise provides for such a case; but the undersigned recognizes that French jurisprudence has adopted the maxim that a change of nationality on the part of the husband does not affect the status of the wife.

The Italian Civil Code, however, provides (last paragraph of art. 10) that —

the wife and minor children of the foreigner who acquires citizenship become citizens, provided they, too, have fixed their residence in the Kingdom, and by the same article the option of citizenship is granted to the children, but not to the wife.

Now, the Bottinis have for many years resided in Italy, and it is notorious that the Baron Carlo Bottini exercises important functions in Italian railway administration.

There is no real issue between the French and the Italian law on the point under discussion, because so far as regards the former it is in the last analysis a question of interpretation, and the latter has a provision clearly and distinctly conferring citizenship on the wife of the naturalized foreigner. But even if there were a conflict, given the fact of the continued residence of the Bottinis in Italy, the honorable umpire, in conformity with principles by him laid down in other cases and with the general principles of law, should recognize the wife as having Italian citizenship to the exclusion of any other. The fact that this lady has acquired (or reassumed, because the writer holds she was born Italian) Italian citizenship, at a time subsequent to the events upon which this claim is based, does not appear to be a motive for debarring her from the right to prosecute her interests before this Commission against the Republic of Venezuela. It suffices that the claim be Italian at the time it is presented to the Commission, and it would be out of reason to insist upon its never having had another nationality. The Bottinis did not assume Italian citizenship in view of the present Corvaia claim.

Concluding, the Italian Commissioner deems it opportune to remark to the honorable umpire that, in expressing the opinion that the fundamental exceptions with regard to the nationality of the deceased Corvaia and of several of his heirs at present exclusively submitted to his judgment should be set aside, he reserves his opinion concerning the admissibility of the specific proofs so far adopted by the claimants as to the eight points on which is based their demand for indemnity in the sum of 16,438,661 bolivars. These proofs will be taken up one at a time at the proper moment and discussed with moderation and according to equity, as well in regard to their intrinsic merit as in the calculation of the interest on the amount claimed, which must be reduced in accordance with prior decisions of the umpire and with precedents established by this Commission in analogous cases.

RALSTON, *Umpire*:

The above-styled reclamation is referred to the umpire upon differences of opinion between the honorable Commissioners for Italy and Venezuela as to certain preliminary questions, among others, that of the citizenship of Fortunato Corvaia; the honorable Italian Commissioner contending that he was a citizen of Italy within the meaning of the protocol between the two countries, and as such entitled to present the reclamation had an opportunity offered during his lifetime, and the honorable Commissioner for Venezuela denying such citizenship. It will not be necessary to discuss at the present time the remaining questions.

The references contained in the protocols, in so far as this Commission is concerned, to the character of the claims submitted to it are as follows:

Referring to the protocol of February 13, 1903, the preamble speaks of "Italian claims." Article I refers to "claims \* \* \* preferred \* \* \* on behalf of Italian subjects." Article III mentions twice "Italian claims." Article IV speaks of "Italian claims."

The preamble of the protocol of May 7, 1903, refers to "Italian claims against the Government of Venezuela," but gives no other specific characterization.

The only question which will now be considered by the umpire is as to whether the claim submitted was Italian as far as its original owner was concerned, waiving consideration for the moment of the further question, whether a claim before the Commission must be both Italian in origin and Italian at the time of presentation.

Many documents are presented to the umpire bearing upon the life history of Fortunato Corvaia, and from their examination one learns that he was born at Calascivetta, Sicily, in 1820, being the son of Giuseppe José Corvaia. At the age of 18 years, being in infirm health, he voyaged to Venezuela, leaving his mother in Paris; his father, who had been expelled from Sicily as a revolutionist, living from time to time in Malta, London, Paris, Brussels, and elsewhere. Corvaia arrived at Puerto Cabello, intending to go to the gold mines of Guayana, but, being urged to commence business at the point of debarkation, he did so. Some time afterwards he started a printing office on a considerable scale, thereafter translating into Spanish and publishing many of the works of the more noted French authors. In 1846, he married a girl of 14 years, by the name of Teresa Campbell, a child of English parents, who had come to Venezuela at the time of the war of independence. He interested himself in the public and social affairs of Caracas, forming a musical society, which finally constructed the Caracas theater. In January, 1848, he was occupied in the National Congress as a reporter for his politico-literary publications, and it is said had the good fortune to discover a plot against the life of General Monagas. The same year he went to the United States and brought back a complete supply of munitions of war and one or two vessels, fully armed and equipped, arriving at a fortunate time for the Government, which thereafter successfully opposed the then revolution.

Corvaia's fortune went on increasing, his business relations with the Government in 1850 demonstrating this fact. In 1850 and 1851 he represented the Government as its confidential agent in the United States, and in the latter year again brought to Venezuelan waters two completely armed vessels of war. A little later, pursuant to his initiative, there was established the cemetery of foreigners in Caracas. In 1854, he, with some friends, established a packet boat communication between La Guaira and Puerto Cabello; and between 1855 and 1858 instituted the banking establishment known as the "Compañía de Accionistas." With friends, he secured the concession for and installed the electric telegraph throughout the Republic.

After seventeen years of absence from Italy he embarked with his family for Naples, where his mother then lived, with the desire, as it is said, of residing at her side. He was, however, in Naples, we are told, subjected to an insufferable system of espionage, the royal police finally stopping a ball given in his family house to celebrate his return, alleging that such reunions became gatherings of conspirators. He then spent some time visiting various cities of Sicily, presenting his wife to his relatives, who desired him to again inhabit his father's house. The petitioner in this case tells us, however, that notwithstanding the insistence of his Italian relatives, it was not possible for him, with his activity of character, to remain tranquilly in the old peninsula, above all, when he knew that his father was prohibited from entering the kingdom of the Two Sicilies, and he therefore installed himself in Paris.

We have already learned that in 1850 and 1851, Corvaia represented the Government of Venezuela in the United States. It further appears that in 1853, 1854, 1855, and 1856 he was charged by the Government of Venezuela with arranging, in the best manner possible, questions pending between the Governments of England and Venezuela relating to its public debts, loans made since the year 1840, etc.

In the spring of 1856 he was appointed diplomatic agent to Europe, charged particularly with the duty of fostering immigration to Venezuela, and at his suggestion, in the early part of 1857, he was named envoy extraordinary and minister plenipotentiary of Venezuela to various of the courts of Europe, and he continued in this employment certainly as late as the year 1859. In the year last named he presented his letters of recall, but about the same time was charged with the duty of representing Ecuador "*ad honorem*" in Paris as well as other European capitals, some months later receiving a more formal appointment. He appears to have remained in Paris at least the most of the time until about the 1st of July, 1862, when he returned to Venezuela. It is said that in 1864 and 1865 he aided the Government in connection with the making of a loan. Meeting, however, with losses, he opened a house for the sale of letters of exchange. Later he subscribed to a local loan, and on repeated occasions, as we are again informed, he aided the Government by advancements of money. In 1876 and 1877 he went back to Italy to be present at the death of his mother in Naples; his father having died in the year 1860. At that time Corvaia's mother left to the city of Castrogiovanni an income of 6,000 bolivars annually to aid its poor students. He died in August, 1886, at Maiquetia, Venezuela.

In view of the foregoing history, was Corvaia so far an Italian citizen that he personally, during his lifetime, could have successfully maintained before an international commission, controlled, as this must be by the protocols mentioned, a claim for advancements made to or damages suffered from the Government of Venezuela?

Corvaia was a Sicilian by birth, the land of his nativity — the Kingdom of the Two Sicilies — not having been merged into the Italian union until at least October 21, 1860, when the Two Sicilies joined Sardinia, the first Parliament of united Italy assembling in February, 1861. The determination of his nationality must largely, if not altogether, depend upon the code of the Two Sicilies, and invoking one printed in 1842 and at the disposal of the umpire, he finds that in treating of the deprivation of civil rights by the loss of the conditions of citizenship, it (sec. 1, art. 20), provides:

The condition as a national is lost —

1. By naturalization acquired in a foreign country.
2. By the acceptance, not authorized by the Government, of a public employment conferred by a foreign government.
3. Finally, by establishing himself in a foreign country with the intention of never returning.

Entering into commercial business can never be considered as done without the intention of returning.<sup>1</sup>

As a matter of historical interest, although perhaps not of great importance in the determination of this question, there is added in a footnote the Italian code on the same subject, as it existed down to about three years ago.<sup>2</sup>

<sup>1</sup> La qualità di nazionale si perde:

1. Per la naturalizzazione acquistata in paese straniero.
2. Per l'accettazione non autorizzata dal Governo di pubblici impieghi conferiti da un Governo straniero.
3. Finalmente qualunque stabilimento eretto in paese straniero con animo di non più ritornare.

Gli stabilimenti di commercio non potranno giammai considerarsi come formati senza animo di ritornare.

<sup>2</sup> ART. XI. The right of citizenship shall be lost —

1. By him who renounces it by means of a declaration made before the custodian of a civil register, followed by the change of his residence to a foreign country.
2. By him who may have taken up the citizenship of a foreign country.

It appears from the statement of fact above given that Corvaia was in Venezuela diplomatic service as early as 1850, when he was sent to the United States; that in 1853, 1854, and 1855 he occupied confidential and intimate relations with the Government in the adjustment of its financial obligations to foreign powers; that while he doubtless went to Italy in 1855, it was with no settled intention of remaining there, as is manifest from the statement that his activities could find no proper outlet in the old peninsula; that in 1856 he re-entered the Venezuelan public service as the direct and immediate representative and mouthpiece of the Government, under credentials which in terms accredited him to the French Emperor, who, as we further learn, was to give "entire credit to the words of the envoy, whether spoken or written, as the organ of the Government of Venezuela," and so far did he consider himself and his fortune bound up with Venezuela that we find among his papers the draft of a proposed treaty of commerce between Venezuela and the Two Sicilies, which draft, it seems fair to presume, was prepared by himself as the representative of a nation other than that of his nativity. We note in June, 1862, an exchange of letters between Corvaia and the Italian ambassador in Paris concerning a loan which he desired Italy to guarantee for Venezuela on the security of Venezuelan custom-houses. It is true that the letters to and from Corvaia with relation to the latter affair do not recite any representative capacity, but the inference is very strong that at the period named he did represent the Venezuelan Government.

It seems therefore absolutely clear that he lost his Sicilian citizenship long before the union of the Two Sicilies with Sardinia, provided the conduct recited came within the denunciation of the law as constituting acceptance of "public employments" (*publici impieghi*) conferred by a foreign country.

Upon this point we may refer briefly to the opinions of text writers.

Alauzet in "De la Qualité de Français et de la Naturalization," section 35, indicates that by French law acceptance of any public function, administrative or judicial, involves loss of citizenship. (It is to be borne in mind that the corresponding language of the French code is "*Fonctions publiques.*")

Folleville, in his work entitled "La Naturalization," sections 449 and 450, takes the position that a Frenchman can not accept diplomatic functions without losing citizenship, but would permit him to accept a position as consul, as such a position is not a "*fonction diplomatique*" for "*ils ne représentent point le pouvoir exécutif du pays étranger; \* \* \* ils sont en un mot de simple mandataires dans l'intérêt du commerce.*"

Folleville, in section 453, says that in the case of a French physician put by a foreign government at the head of a hospital, the controversy is sharp as to whether he is furnished with a public character, receiving government pay.

One of the final criteria, as given by Folleville, section 454, to be used to arrive at a proper conclusion, is stated as follows:

Le juge doit rechercher de quelle nature, politique ou non, est le lien de subordination qui rattache un Français à un gouvernement étranger.

Contuzzi in "Il Codice Civile nel Rapporti Diritto Internazionale," on page 61, note, says:

3. By him who, without authorization of the Government, may have accepted employment or entered into the military service of a foreign power. The wife and minor children of those who have lost their citizenship shall become foreigners, except in the case of having continued to reside in the Kingdom.

They shall be able, nevertheless, to recover their citizenship in the case and by means of the forms indicated in Article XIV with respect to the wife, and Article VI with respect to the children.



An Italian who, without the permission of the Government, accepts employment of a foreign government or enters into the military service of a foreign power, loses his Italian citizenship (Civil Code, Art. XI, No. 3), but if contemporaneously he does not acquire the citizenship of a foreign state from the government of which he has accepted the employment, or under which he may have entered into the military service, he finds himself without a country.<sup>1</sup>

It seems, therefore, perfectly clear by the French code, by the Italian code as it existed up to three years ago (a change having been made recently), and by the code of Sicily as it existed up to the time of the unification of Italy, that the man who accepted public employment of a diplomatic character lost his ancient citizenship, unless by some affirmative act he thereafter regained it.

As has further appeared from the Sicilian code, the national who has departed without intent to return (save in a certain case in no respect resembling the present) loses his citizenship.

Meanwhile, it is worthy of note that very eminent authorities have reached substantially the conclusions embodied in the Sicilian Civil Code, above referred to, and this without the aid of statutes. In 1873 the President referred certain questions on the subject of citizenship to the Hon. George H. Williams, Attorney-General, whose reply is found in 14 Opinions Attorneys-General, page 295. To the question, "Can an election of expatriation be shown or presumed by an acquisition of domicile in another country with an avowed purpose not to return?" the Attorney-General responded:

Residence in a foreign country and an intent not to return are essential elements of expatriation, but to show complete expatriation as the law now stands it is necessary to show something more than these. Attorney-General Black says (9 Opin., 359) that expatriation includes not only emigration out of one's native country, but naturalization in the country adopted as a future residence.

My opinion, however, is that, in addition to domicile and intent to remain, such expressions or acts as amount to a renunciation of United States citizenship and a willingness to submit to or adopt the obligations of the country in which the person resides, such as accepting public employment, engaging in military services, etc., may be treated by this Government as expatriation without actual naturalization. Naturalization is without doubt the highest but not the only evidence of expatriation.

In the answer to another question touching the intent to return, the Attorney-General said:

When a person avows his purpose to change his residence and acts accordingly, his declarations upon the subject are generally received as satisfactory evidence of his intent, but in the absence of such evidence, the sale of his property and the settling up of his business before emigration or removal of his family, if he has one, arrangements for a continuing place of abode, acquisition of property after removal, the formation of durable business relations, and the lapse of a long period under such circumstances are among the leading considerations from which the intent to make a permanent change of domicile is inferred.

<sup>1</sup> Un italiano, che, senza permesso del Governo, accetta un impiego di un Governo estero od entra al servizio militare di potenza estera, perde la cittadinanza italiana (Cod. Civ., capov. n. 3); ma, si contemporaneamente egli non acquista la cittadinanza dello Stato estero dal cui Governo abbia accettato un impiego, o presso il quale sia entrato a prestare servizio militare, egli trovasi senza patria. La moglie e i figlie minori di un italiano che ha perduto la cittadinanza, perdono anch'essi la cittadinanza italiana alla condizione che non continuino a mantenere la loro residenza nel Regno (Cod. Civ., art. 11, capov., n. 3° alinea); ma, se per questa circostanza non acquistano di pieno diritto la cittadinanza novella del rispettivo marito e padre, essi si trovano già senza patria.

Referring further to the question of abandonment of citizenship by permanent residence abroad, we learn from Moore's Arbitrations (p. 2565) that by the decision of the Spanish-American Commission of 1871 a citizen of the United States who, being of lawful age, leaves the United States and establishes himself in a foreign country without any definite intention to return to the United States is to be considered as having expatriated himself. (For other references similar in character see Van Dyne on Citizenship, pp. 275-278.) The references to American authorities are the stronger since no laws of the United States provide expressly for expatriation.

It will be noted that nearly all of the criteria held to evidence abandonment of original citizenship existed in the Corvaia case. Save when absent in the United States or Europe on official business for Venezuela, or for a period of two or three years for Ecuador, Corvaia appears to have passed forty-eight years of his life in Venezuela, and his last twenty-four years seem to have been uninterruptedly spent in Venezuela, except for a very brief stay in Italy occasioned by his mother's death.<sup>1</sup> The umpire, under the testimony before him, is unable to refer this long residence in Venezuela to any sufficient considerations of ill health or poverty, and he can not ignore the fact that, despite the protests of his family, Corvaia declined the less active life of the Italian peninsula for Venezuela and her service thirty-one years before he died, then passing perhaps only a month or two under the Italian sun.

A further point should not be omitted. We may believe Venezuela knew, as she might well have known, that when Corvaia entered her diplomatic service he abandoned all right to call himself a Sicilian. The Government might properly have hesitated or refused to receive into one of its most important employments a man who would be recognized by his original government as still attached to its interests.

Italy is, therefore, now estopped to claim Corvaia as her citizen, standing in this respect as did the Two Sicilies, and may not say that her laws are made to be broken and have no binding force when assumed interests dictate their disregard.

Another consideration: The umpire is disposed to believe that the man who accepts, without the express permission of his own government and against the positive inhibitions of her laws, public and confidential employment from another nation is himself estopped from reverting to his prior condition to the prejudice of the country whose interests he has adopted.

The umpire does not ignore the conclusion reached in the Giordana case, which recognized as still an Italian a poor man who had spent but a few years in Venezuela, and who had for a year or so occupied an extremely minor position, not connected with the administration of the laws of Venezuela or being in any way representative. The umpire in that case was disposed to go as far as was permitted to him, and perhaps too far, considering the fuller examination of authorities now possible, to sustain the equitable claim of this man, who in a political sense was not more important to the government than a day laborer, virtually following the suggestion of Folleville, section 454, above cited, that —

*Le juge doit rechercher de quelle nature, politique ou non, est le lien de subordination qui rattache un Français à un gouvernement étranger,*

and he found no political bond of subordination.

<sup>1</sup> The expediente is not very complete as to the relative portions of his later years he spent in Venezuela and abroad. (Note by umpire.)

Did Corvaia ever regain the Sicilian citizenship lost by him by virtue of his public employment in Venezuela? The Sicilian law provided that:

The national who has lost his status as a citizen can always regain it by entering into the Kingdom, with the approval of the Government, and declaring that he has returned to establish himself there, and by renouncing whatever position may be contrary to the law of the Kingdom.<sup>1</sup>

The Italian code is quite similar in character and provides as follows:

ART. XIII. The citizen who may have lost his right by any one of the causes set forth in Article XI may recover them:

1. By his return to Italy, with the special permission of the Government.
2. By renouncing the citizenship or civil or military employment which he may have accepted in a foreign country.
3. By the declaration made before the custodian of the civil register to fix his domicile within the Kingdom, provided always that he carry out this intention within the term of one year.<sup>2</sup>

Contuzzi treats these three provisions of the Italian code as cumulative, as they plainly are under the Sicilian code, and there is nothing before this Commission to show either:

(a) That Corvaia returned to Italy with the special permission of the Government.

(b) That he renounced the foreign citizenship. (He held foreign office, both before and after his visit to Italy in 1858, and his renunciation does not appear to have been of the voluntary character apparently contemplated by the section.)

(c) That he declared before the custodian of the civil register that he was about to take up his residence or that he did in reality establish his domicile in the Kingdom within one year.

We have therefore the case of a man who had definitely lost and who never regained his citizenship.

The umpire can not believe, therefore, that Fortunato Corvaia during his lifetime could have presented this reclamation as an Italian subject.

A second exception presented by the honorable Commissioner for Venezuela relates to the citizenship of some of the heirs of Corvaia, who are said to be Italians, and it is contended that as the claim is not Italian in origin the Commission does not possess jurisdiction over it, even admitting that some of the heirs are now Italian.

On the other hand, it is earnestly insisted that the language of the protocols, referring as it does to "Italian" claims and claims of "Italian subjects," is sufficiently broad to confer the needed jurisdiction upon the Commission.

If the proposition now presented were one of first impression the umpire would approach its study with a strong disposition to recognize the jurisdiction of the Commission over claims which had by regular course of inheritance now become vested in Italian citizens, for he would recognize that to refuse,

<sup>1</sup> Il nazionale che abbia perduto la qualità di nazionale potrà sempre ricuperarla rientrando nel regno coll'approvazione del Governo, e dichiarando di volervisi stabilire e di rinunziare a qualunque distinzione contraria alla legge del regno.

<sup>2</sup> ART. XIII. Il cittadino che ha perduto la cittadinanza per alcuno dei motivi espressi nell' articolo II, la ricupera purchè:

1. Rientri nel regno con permissione speciale del governo;
2. Rinunzi alla cittadinanza straniera all' impiego od al servizio militare accettati in paese estero;

3. Dichiarati davanti l'uffiziale dello stato civile di fissare e fissi realmente entro l'anno il suo domicilio nel regno.

to illustrate, jurisdiction in a French commission because a claim, although French in origin, was now owned by Italian citizens, and to refuse jurisdiction over the same claim in the Italian Commission because, although now Italian in ownership, it was French in origin, would be to perpetrate an injustice. The umpire does not, however, find himself free. A long course of arbitral decisions has emphasized the fact that the claim must be both Italian in origin and Italian in ownership before it can be recognized by an Italian Commission.<sup>1</sup> (See Moore's Arbitrations, pp. 1353, 2254, 2753, 2757.)

Knowledge of this condition induced the signers of the American protocol to arrange its language to the end that certain claims, British in origin but now American in ownership, might be presented before the American Commission.<sup>2</sup>

In the discussion of this case it was urged upon the umpire that the presence of the "most-favored-nation" clause contained in article VIII of the protocol should be so construed as to give to Italy all the advantages which might be claimed by American citizens under the American protocol. The umpire discussed so fully in the Sambiaggio case<sup>3</sup> the effect of the favored-nation clause as contained in the protocol, pointing out that it was plainly designed to refer to claims thereafter to originate, that he is unable to accept the suggestion now under consideration.

The exception, therefore, of jurisdiction of this Commission over the claims of those who are now Italian citizens must be sustained, but without prejudice to the rights of any of the claimants to claim against Venezuela before any court or commission which may have suitable jurisdiction, or to take such other action as they may be advised.

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DE CARO CASE

(By the Umpire:)

A paper blockade or blockade by proclamation is illegal, and a country declaring it accepts the legal consequences.

Damages refused for acts of unsuccessful revolutionists (following Sambiaggio case).<sup>4</sup> Under Venezuelan law duties can not be collected on exportations of Venezuelan products.

Commission can not correct abuse of process in judicial proceedings which have been closed and in which the claimant might have directly applied to the court for relief, but did not.

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

Daniele De Caro, an Italian citizen and wealthy merchant of Barcelona, claims:

1. For interruption of his import trade by the ineffective blockade of the port of Guanta decreed by the Venezuelan Government, 47,719.30 bolivars.

2. For interruption of his export trade under identical circumstances, 13,807.03 bolivars.

3. For duties on exportations illegally collected by the authorities of the State of Barcelona, 10,595.47 bolivars.

4. For forced loans exacted of the claimant by Gen. Paolo Guzmán, of the

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<sup>1</sup> See extensive discussion of this subject in the opinion of Umpire Plumley in the Stevenson case, vol. IX of these Reports, p. 494.

<sup>2</sup> See opinion of Umpire Barge in the Orinoco Steamship Co. case, vol. IX of these Reports, p. 191.

<sup>3</sup> See *supra*, p. 499.

<sup>4</sup> *Supra*, p. 499.