

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

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

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without prejudice to the claimant to demand payment from the Government in any forum having jurisdiction for services rendered after September 1, 1903.

# POGGIOLI CASE

(By the Umpire:)

The widow and children of an aggrieved Italian, who were all born in Venezuela and have always lived in that country, can not claim as Italian subjects before this Commission (affirming Brignone and Miliani cases).<sup>1</sup>

Venezuela is responsible for damages inflicted upon the property of a foreigner where she has allowed serious offenses to be committed against him personally and the offenders, although known, to go unpunished, and where the authorities, in conjunction with such offenders and with others, have depredated his property and driven off his employees, and no relief been afforded, although frequent complaints were made.<sup>2</sup>

A general claim for loss of credit is too indefinite and uncertain to be taken into consideration.

<sup>1</sup> Pp. 542 and 584.

<sup>2</sup> In addition to the authorities upon this point cited in the decision, attention is called to the Ruden case (Moore, 1653-1655).

It was shown that on January 14, 1868, the inhabitants of Motupe invaded the claimant's plantation of Errepon and burned the buildings and fences; that on February 14, 1868, Ruden appealed to the executive power and demanded an indemnity, at the same time charging guilty omission on the part of the authorities: that the executive power two weeks later asked the prefect of the department for a report, and that the prefect ordered the subprefect to make one; and that the latter, on May 22, 1868, reported that Errepon had been burned, but that he could not then go to the plantation and ascertain the value of the property burned, as the roads were bad. No further steps were taken by the authorities till, three months afterwards, the prefect, urged on by Ruden, directed the subprefect to make another report; but in reply to this order the first report, which was deficient and passionate, was merely repeated. In July, 1868, the executive power, without having come to any decision, sent the papers to one of the government attorneys. A third petition of Ruden met the same fate, having been held without action for fourteen months. The facts were not investigated, nor were the guilty parties prosecuted. An order was indeed given for an investigation, but it was avoided. The judicial authorities, when appealed to for an investigation of Ruden's claim, refused to entertain it, on the ground that an executive order had forbidden the trial of suits against the treasury. And while justice was thus denied, it was charged that the local authorities were concerned in the attack on the plantation. A report of the consular body, drawn up at the place, declared that the burning of estates, both native and foreign, at the time and place in question, was committed by armed forces under the command of officers. On all these grounds the umpire held Peru hable for the burning.

The case of Johnson (Moore, 1656-1657) was similar to the Poggioli case in many respects, it being borne in mind that the laws of Venezuela only recognize responsibility for the acts of officials working in a public capacity. In the case now referred to the claimant's

property was destroyed, and he was personally and permanently injured by armed bands, headed by the governors of adjacent towns, instigated by the superior authorities of the province, who were dependent upon and immediately represented the supreme government. The supreme government issued a decree to the effect that the injuries should be redressed, but nothing substantial was done, nor were any of the malefactors punished. The Peruvian Commissioner had contended that it is necessary that Johnson should have had recourse to the courts and have been denied justice. But it was known that the judges of the province of Lambayeque were menaced and controlled by the mob, and, if not in sympathy with them, in a panic; and that it would have been useless to appeal to them. Mr. Elmore (the umpire) declared, however, that there had been an actual denial of justice. By the circular of the minister of justice of Peru of September 13, 1853, the judges were forbidden to receive expedientes affecting the law of December 25, 1851, closing the consolidation of the public debt. By that circular the courts were closed against the sufferers at Lambayeque. Mr. Elmore cited two cases of the actual denial of petitions of persons injured in Lambayeque on the ground of the circular referred to. One of these was the case of Ruden & Co., who applied April 2, 1868, to the judge of Lambayeque and were denied a remedy on that ground. The claimants were thus without hope. If they applied to the courts they were told they had no remedy. If they applied to the commission they were told that they must apply to the courts. Mr. Elmore therefore awarded the claimant the sum of 11,480 Peruvian silver soles.

No allowance will be made for the closure of a port, whatever reasons may have induced it, when no contract relations between the government and the claimant are in question.<sup>1</sup>

Allowances will be made for loss and destruction of crops consequent upon violence and depredations inflicted by agents of the government, together with unpunished malefactors.

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

The claim which Silvio Poggioli, for himself and the heirs of his deceased brother, has submitted to this Commission, excels in accuracy and efficiency of proof. The writer supports it warmly, and by way of preamble will cite the opinion of Fiore (*Treatise on Public International Law*, Vol. I, sec. 651), on which he bases his own, regarding the responsibility of the Venezuelan Government toward the claimants. Here are the words of the eminent jurist:

Let us suppose that, having examined the circumstances, it is found that the public officials who by their own act injured the interests of foreigners while operating with a common intent in such a manner as to justify the assumption that they were under the orders of higher authority; or let us imagine that a government has neglected to take timely steps to avert certain acts, or that it has directly or indirectly approved the doings of its officers. In these and all similar instances justice and equity require that the state be held diplomatically responsible therefor, and be obliged to repair the damage.

Before entering into a detailed examination of the claim the Italian Commissioner deems it proper to observe that, in accordance with the views expressed by him in former claims, he holds in this, that the widow, no more than the children of the deceased Poggioli, can be excluded from a share in whatever indemnity may be awarded. To the juridical reasons which he has in this

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The fundamental principles affecting the responsibility of the respondent are discussed by Commissioner Little, of the American-Venezuelan Commission of 1890, who held in the de Hammer case (Moore, 2968) that —

Venezuela's responsibility and liability in the matter are to be determined and measured by her conduct in ascertaining and bringing to justice the guilty parties. If she did all that could be reasonably required in that behalf, she is to be held blameless; otherwise not. Without entering upon a discussion of the investigation instituted and conducted by her, it seems there was fault in not causing the leaders, at least, of this lawless band to be arrested. It was notorious who they were. It does not seem that any attempt was made before any local authority to bring them or any of the band to justice.

In the same case Commissioner Findlay held (Moore, 2969) that —

a state, however, is liable for wrongs inflicted upon the citizens of another state in any case where the offender is permitted to go at large without being called to account or punished for his offense or some honest endeavor made for his arrest and punishment. (Opinions of American-Venezuelan Commission of 1890, p. 486.)

The rule laid down by Bluntschli in *Le Droit International Codifié* (sec. 380) seems in point:

L'état a le droit et le devoir de protéger ses ressortissants à l'étranger par tous les moyens autorisés par le droit international. \* \* \*

(b) Lorsque les mauvais traitements ou dommages subis par un de ses ressortissants ne sont pas directement le fait de l'état étranger, mais que celui-ci n'a rien fait pour s'y opposer.

We may add as follows:

The responsibility of the state results from its neglect or inability to control the conduct of its subjects, or its neglect or inability to punish the offenses and crimes which they commit. (Halleck, *International Law*, Ch. XI, sec. 6, citing Vattel, *Droit des Gens*, liv. 2, ch. 6, secs. 71, 72; Phillimore, *International Law*, Vol. 1, sec. 218; Rutherford's *Institutes*, b. 2, ch. 9, sec. 12; De Felice, *Droit de la Nat.*, tome 2, sec. 15; Burlamaqui, *Droit de la Nat. et des Gens*, tome 4, pt. 3, ch. 2.

<sup>1</sup> Compare Martini case, *supra*, p. 644.

regard expressed on previous occasions he desires to add arguments based on equity.

Americo Poggioli was, presumably, murdered by one of the men who, as will appear in the sequel, had attempted the life of his brother Silvio, and who were arbitrarily liberated by Gen. Diego Bautista Ferrer. However this may have been, he was the victim of an act committed on Venezuelan soil, and the perpetrators remained unpunished. Under these circumstances the writer finds another reason why the heirs of the victim should not be denied the right to apply to this tribunal for redress. Should the foregoing contention not find acceptance with the honorable umpire, it will certainly not escape his diligent examination of the case that Silvio Poggioli was, before as well as after the death of his brother, the sole manager and responsible agent of the commercial affairs of both. From the contract drawn up between them in March, 1892, it appears, further, that the assets of the firm were, on December 31 of the preceding year, 2,803,524 bolivars, and the liabilities 1,234,729 bolivars, including 72,000 bolivars due Manuela Rosales; that therefore the net balance amounted to 1,568,795 bolivars; that the personal share of Silvio was 501,703 bolivars, the common share 1,067,092 bolivars, and that consequently the total amount of Silvio's interest, 1,035,249 bolivars, constitutes 65.99 per cent of the whole, and even under the most unfavorable estimate he would be entitled to a proportionate share of the indemnity on the basis of this calculation.

Should the honorable Commissioner for Venezuela raise a question of principle and deny the right of the Poggiolis to appeal to this Commission, on the ground that they were not included among the Italian claimants for indemnity for the war of 1892, whose claims were subsequently quieted by the representations of the royal minister, Count Roberto Magliano, to the Venezuelan Government, the undersigned would hasten to reply that in his opinion such an exception should not be sustained, for the reasons set forth in his memorial anent the claim of Constantino Murzi.<sup>1</sup>

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<sup>1</sup> No opinion was filed by Doctor Zuloaga in this case, and it never reached the umpire. Mr. Agnoli's opinion is as follows:

The honorable Commissioner for Venezuela rejects the above claim on a question of principle — that is, he holds that the claimant has forfeited every right to demand indemnity before this Commission, because his claims go back to and have their origin in the civil war of 1892, after which the Italian Government had settled with the Government of Venezuela on account of other claims arising from the same war.

The Italian Commissioner, without reiterating the reasons given by him on former occasions why, in general, the opinion of his honorable colleague should not be accepted as establishing the forfeiture of the right of Italian citizens to urge their claims before this arbitral tribunal for damages occurring prior to wars of the last five years, observes that this special objection, as regards the claims of 1892, is singularly inconsistent, since various claims of that period, and particularly that of Giuseppe Menda, No. 199, and that of Giuseppe Lasala, No. 6, have been discussed and favorably received.

Doctor Zuloaga's objection seems to be based on the fact that Count Magliano, formerly Italian minister in Caracas, in his private note of August 30, 1894, addressed to the Venezuelan minister of hacienda, referred to a "final settlement of all claims arising out of the revolution of 1892."

The phrase employed in the aforementioned note has led the Commissioner for Venezuela to the conclusion that that settlement of indemnities was general and comprehensive.

Against this conclusion the Italian Commissioner, proceeding from the consideration that the word "surjidas" may not be applied to other claims than those the demand for settlement of which was pending before the Italian diplomatic representation, believes it opportune to call attention to the fact that the last phrase of the letter of the Venezuelan Government, to which the above-mentioned note of Count Magliano was an answer, proves beyond question that reference was made to some, not all, of the claims arising from Crespo's revolution, since by it there was asked the exoneration of Venezuela from every ulterior responsibility toward the Italian Government and toward claimants "for all such claims for indemnity as were by that agreement forever extinguished."

There remained, however, undetermined the rights of those whose claims had not been examined.

In any case this exoneration of Venezuela from all responsibility the Italian Government is not willing to accord, even with regard to the claims then settled, in the name and on account of which it refused, as appears in the letter of Minister Pirrone of December 14, 1894, to make any declaration whatsoever "inasmuch as"

With these premises laid down, he will now proceed to a detailed study of the circumstances and motives of the present claim.

The Poggiolis asked for indemnity for five kinds of damages, to wit:

1. Requisitions of animals and merchandise and destruction of crops and property.

2. Arbitrary closure of the port of Buena Vista.

3. Personal insults, threats, and imprisonments.

4. Forcible separation from their property, and consequent abandonment of their business from daily annoyances; total lack of protection and safety, with resulting economic loss.

5. Judicial and other expenses connected with the preparation of their claim.

A separate examination of these five heads is now in order for the purpose of establishing the amount of indemnity due thereunder.

(a) Requisition of 95 mules, at 520 bolivars each, equal 49,400 bolivars.

It is well known that the price of cattle in the State of Andes is somewhat higher than it is in Caracas. At all events, the witnesses have asserted that the sum mentioned was the value of these mules, and it is well to note that the witnesses summoned by Poggioli to prove the damages suffered by him have been selected from among the best known and most respected persons in that State. Among those whose names appear in the "guistificativo" No. 2, which refers to this requisition and other damages, are Gen. Ramón Rueda, who was governor of Trujillo; Dr. José Antonio Hernandez, a noted physician who is favorably known in Caracas; Col. Juan de la Paz Peña, and Col. Carlo Hernandez, wealthy and esteemed merchants and landowners; Adolfo M. Sanchez, ex-public register and now district judge of Escuque; Luis F. Carrasquero, repeatedly jefe civil and president of the municipal council of said district; Jesús Contreras, highly esteemed merchant and proprietor of the neighborhood, and other respectable persons.

The testimony of such witnesses should be accepted without the slightest hesitation or reserve.

It is true that in the contract with Mr. Ribero (Document I) a part of the mules had been valued at 400 per head in 1890, but the increase in price is easily accounted for when it is understood that the animals were taken at a time when both the Government and the "Legalista" revolution (which culminated in the advent of General Crespo to the Presidency of the Republic) were greatly in need of draft and pack animals, as well as cattle, for their respective armies.

For these reasons it is just that the amount claimed for the mules should be allowed, and for similar reasons the estimate of 200 bolivars per head of cattle should not be deemed exorbitant, although the cattle contracted for by Ribero was in part valued at 150 bolivars per head, the total under this item being 20,000 bolivars.

The sacking of the store at San José de Palmira is proved by the testimony set forth in fascicle 2, both as regards the fact itself and the quantity of the goods

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says the letter, "to the understood agreement there had been given the character of a decision by reasons of equity adopted by the junta of public credit within the sphere of its competency."

This note of Pirrone, as well as the others concerning the negotiations in question, is special in its nature and proves once more the official and limited character of those acts by which neither one party nor the other assumes a more extended obligation than that which constitutes the explicit object of the stipulated agreement.

Among the claims then examined that of Constantino Murzi did not appear, nor did those of Menda and Lasala, above referred to, and others now pending, and the first-named, as well as any other dating from that period, would be wrongfully excluded by this Commission on the exception so tardily raised by the Commissioner for Venezuela.

On questions of fact in this claim it does not seem probable that disagreement may arise between the Commissioners. They are nevertheless respectfully submitted to the decision of the honorable umpire.

taken. The importance of that business house is shown by documents contained in fascicle II — that is, by the contracts with Mr. Barone, administrator of the same, and by the relative accounts and invoices. It is consequently equitable to concede an indemnity of 32,000 bolivars for this item.

The requisition of merchandise made upon the highway between Arapuez and Monte Carmelo is established by the declarations of Martinez and Nieto. The testimony of Martinez includes in general all the facts referred to in that document. The other is apparently restricted as to quantity, but taken as a whole the testimony is to the effect that all the merchandise en route was levied upon, and Silvio Poggioli declares most positively and is willing to swear that none of those goods ever reached him. Therefore, while giving due respect to any appraisalment the honorable umpire may see fit to make of this loss the Italian Commissioner holds that an indemnity of 4,800 bolivars should be allowed therefor.

The damages caused by the Government's agents in burnings at the port of Buena Vista, and by the destruction of five bridges on the road leading to said port, are estimated at 24,000 bolivars (see fascicle 2), which should be granted without prejudice to the indemnity for other damages following as the immediate and necessary consequence of said destruction and of the arbitrary closing of the port, which will be referred to further on.

We should now consider a series of damages suffered by the Poggiolis at the hands of four individuals, namely, Rudecindo Hernandez, Carlos Solarte, Rafael M. Trejo, and Faustino Suarez, who wounded Silvio Poggioli. While these persons were on trial they were arbitrarily liberated by Gen. D. B. Ferrer. The records in the case were spirited away. Notwithstanding the accusations of the claimants and orders received from the central Government at Caracas, which, however, took no steps to insure their execution, as will be more fully explained in the course of this paper, the authorities of Monte Carmelo, and generally those of the State, not only allowed them to remain undisturbed, but actually used them as instruments in persecuting the Poggiolis. The negligence and malice of the authorities toward these latter, as clearly shown by all the documents exhibited to us, had one of its clearest manifestations in the passive attitude toward and encouragement of these four malefactors, and constitutes one phase in the system of persecutions which has led to the ruin of the Poggiolis.

Wherefore the Italian Commissioner insists that there was an implied responsibility on the part of the Government in these events, even if only a part of them were executed by its agents, because all were by them at least suggested or tolerated.

Let us proceed to the specification of these damages:

1. Burning of house and stores at St. Rafael (fascicle 19, question 2), valued at 4,000 bolivars.
2. Renewed destruction by fire of the same buildings (fascicle 19, question 3), valued at 4,875 bolivars.
3. Burning of 10 hectares of sugar cane ready for the mill (it would scarcely have burned green; fascicle 19, question 4). The sum of 1,600 bolivars claimed for this loss represents the cost of planting and cultivating the cane, which would have produced for ten years or more with ordinary attention.
4. Loss of sugar from the cane for the first year, 1893 (fascicle 19, question 3), 12,000 bolivars.
5. Loss, by destruction, of coffee and banana plantations on the St. Emigdio property (fascicle 19, question 6), which occasioned a damage estimated at 12,800 bolivars.

6. Destruction of a coffee-cleaning mill on the same property (fascicle 19, question 6), 500 bolivars.

7. Destruction of 5,000 banana trees on the Miraflores property (fascicle 19, question 7), 800 bolivars.

8. Burning of a house, by a Government official, on the Pescado property (fascicle 19, question 8), 1,000 bolivars.

9. Destruction, by Government officials, of two coffee-cleaning mills on same property (fascicle 19, question 9), 7,200 bolivars.

10. Killing and maiming of animals on San Emigdio place (fascicle 19, question 10), 1,728 bolivars.

The total of clearly established damages, which have been moderately appraised by Messrs. Poggioli, therefore amounts to 176,703 bolivars, and this loss, occasioned either by the direct acts of the authorities or by the connivance or apathy of the same, should be indemnified.

Let us now consider the damages coming under item 2, referred to in the beginning of this opinion, i.e., the unwarranted closure of the port of Buena Vista, a measure easily understood and accounted for by the animosity displayed against the brothers Poggioli, as seen in documents contained in fascicle 35.

The authorities attempted to attenuate the arbitrariness of this measure by declaring the port closed through reasons of public order and to prevent the revolutionists from procuring arms and munitions of war. But that this was a mere pretext is demonstrated by the fact that at the same time the port of La Dificultad, 1,200 meters away, was permitted to remain open, though just as liable to be used for contraband purposes as the other.

At No. 13 of fascicle 2 it is shown that during the first year of the closure the damages resulting therefrom to the brothers amounted to 24,000 bolivars, that port serving not only their purposes, but being used likewise by a number of importers and exporters of Monte Carmelo and surrounding neighborhood, for the exchange of produce with Maracaibo, by paying the appropriate duties. It is true that some three months after the closure the port was reopened, but this reparation was too tardy to be of avail so far as the Poggioli interests were concerned, either because the port buildings and bridges leading thereto had been destroyed, or because the Poggiolis could not, menaced and persecuted as they had been, return and restore these things to working order with neither money nor credit. And inasmuch as their enforced absence from Monte Carmelo lasted three years, it seems to the Italian Commissioner that the indemnity under this head should be at the rate of 24,000 bolivars per year, or 72,000 bolivars.

We come now to the third class of damages. From all the papers in the case it appears that General Ferrer instituted against the claimants an absurd suit for alleged introduction of arms for the revolutionists. Before the beginning of the suit they were thrown into prison, having been taken from Monte Carmelo to Valera, where they remained from April 29 to June 9, 1892, just at the time when coffee was to be gathered. Both brothers were subsequently again imprisoned, Silvio for fifteen days from September 26 of the same year and Americo for five days in January, 1893.

All these details, as well as the declaration of the superior court of Trujillo establishing the innocence of the brothers, appear from the documents of the claim. In fascicle 15 the court of first instance, referring to the imprisonment and trial of the claimants, acknowledges as "fully demonstrated the injustice and political passion of the usurpers of the public powers (and these could have been none others than the magistrates and agents of the legal Government) against the said Italian subjects, the Poggioli brothers."

The persecutions of the claimants were so varied and numerous and so long

continued that we can not but regard them as proving the existence of a plot well organized and of long standing, prosecuted with a most diabolical malignity and with the connivance of the Government, which thus failed in its principal duties.

The undersigned therefore concludes that the indemnity of 100,000 bolivars asked on account of illegal and arbitrary imprisonments, threats, etc., given the position of the claimants and the importance of their commercial affairs, can not be considered excessive.

The fourth class of losses is the most consequential; from it has come, as an immediate and direct consequence, the utter ruin of the claimants.

The proofs of daily prosecutions suffered by them either from public officials or with their connivance, appear clearly and indisputably from the papers in the case.

In 1891 Silvio was seriously wounded by Rudecindo Hernandez, in complicity with Carlos Solarte, Rafael María Trejo, and Faustino Suares, and remains a cripple for life.

The perpetrators were put on trial, and when it appeared they would be convicted they were arbitrarily discharged by General Ferrer, while the records of the case were caused to disappear. Afterwards they went about Monte Carmelo for years, terrorizing the inhabitants or inciting them against the Poggiolis, burning and destroying the property of the latter, while the authorities remained impassive, notwithstanding the denunciations of the dependents of the claimants, and the orders from the minister of the interior, Felice Azevedo, at Caracas, dated July 27, 1893, to punish the malefactors, and institute a trial for the disappearance of the records. This order remained a dead letter, and the central Government took no further heed of the matter. In fact, the proceedings were never reversed, and the four criminals are living at liberty in the neighborhood of Mérida.

In 1899 Americo was barbarously murdered, and among the suspects of this crime figures Carlos Solarte.

In 1892 the claimants were subjected to an odious trial, from which they were freed only in 1893, after having been harshly arrested and thrown into prison for a long time; 95 mules, used by them in their business, were requisitioned, as were likewise 100 steers; they were robbed of merchandise at San José de Palmira and on the road to Arapuey from Monte Carmelo; their houses, etc., at the port of Buena Vista, another essential element of their business, were destroyed by fire. The bridges leading to the port were ruined, and the port closed, though afterwards reopened when it had become impossible for the Poggiolis to use it.

Twice were the stores at St. Rafael burned, and plantations of cane in the same locality ravaged, as were plantations of coffee and bananas at San Emigdio and Miraflores. The coffee-cleaning mills at San Emigdio, Santa María, and Pezcado, and at the latter place another house, shared the same fate, with accompanying inundation.

The authorities either perpetrated these abuses or tolerated them, and even incited not only the banditti, but also the employees of the firm to commit outrages of all sorts on the property, and to refuse the payment of dues and rents, creating a system of most unjust war and persecutions and a situation profoundly immoral and subversive of order, as reported by the minister of the interior, Dr. Gen. José Ramón Nuñez at the session of Congress of March 28, 1895.

In 1892 Silvio Poggioli is again arrested, and Americo twice, in 1893 and 1894.

In 1894 they are again brought to trial, but the reason assigned was so absurd



and unjust that General Fernandez ordered the suspension of the trial, thereby committing an act contrary to law but according to justice.

The Poggoli brothers, threatened, deprived of every safeguard for themselves and families, for their property, were thus obliged to abandon the seat of their business, while their dependents, seeing them thus driven and persecuted, became emboldened to refuse obedience and payment of their just dues and considered as common property all things belonging to the masters, since they had reason to believe these latter would never return to claim. The few dependents who had remained faithful were in their turn persecuted by the Government for no other reason.

In fascicle 16 the honorable umpire will find, among other things, the sworn statement of Gen. G. B. Araujo, a man whose integrity is recognized throughout Venezuela, from which statement it appears that the object of General Ferrer, the author or instigator of the persecutions showered upon the Poggolis, was the possession of their property. It is clear that to carry out this scheme he had to resort to all kinds of iniquitous measures, some of which it is impossible to specifically prove.

The credit for which the claimants had labored and upon which they had counted was and still remains utterly lost.

In January, 1894, Americo attempts to return to Monte Carmelo, in order to resume the management of his affairs, but is arrested. Silvio betakes himself to Palmira the same year, but being again threatened, gathers together a few faithful dependents and tries to flee from an ambushade in which he is fired upon and his life attempted, and this with the connivance of the authorities.

By a letter of February 4, 1894, the president of the State of Los Andes (see fascicle 18) acknowledges that the Messrs. Poggoli, by reason of the persecutions to which they are exposed, are unable to establish themselves in the parish of Monte Carmelo, and in a letter of February 13, 1894, Gen. Antonio María Rincón, chief of the district of Escuque, states to the jefe civil of Monte Carmelo that when Americo Poggoli returned on two occasions to said locality to look after the interests of the firm and ascertain what measures had been taken against the four bandits above named, he was arrested, and testifies that the denunciations of Poggoli were well founded.

Finally, by letter of November 5, 1894, that appears in fascicle 21, Gen. Luis F. Carrasquero, jefe civil at that time of the district of Escuque, acknowledges and testifies to the long series of vexations and persecutions suffered by the claimants, and offers them the necessary guaranties to enable them to return to their homes. The same officer, by letter of the following day, informs the jefe civil of Monte Carmelo that the Poggolis will return to the direction of their business through guaranties finally obtained from the president of the state, and gives orders that there be no repetition of the occurrence which took place in October of that same year, to wit, the requisitioning of a train of eight mules by an armed guard of the Government.

Fascicle 36 contains the proof furnished by the Venezuelan minister of the interior that up to the end of 1895, though for years the "Legalista" revolution had been triumphant, there was no security in the state for persons or property, and for this condition of affairs the Government was and is responsible.

This fully accounts for the Poggolis being compelled to leave their several properties, their interests, and their business up to the end of the year 1894. At that time their persecutions finally ceased, after having lasted since 1891, and having been most severe in 1892, 1893, and 1894.

What has been the direct and necessary consequence of all this, if not the entire ruin of the family?

The Poggoli brothers had, as appears from the partnership contract of

March 4, 1892, at that time a liability of 1,162,729 bolivars, exclusive of the 72,000 bolivars which they owed to Manuela Rosales de Poggioli, wife of Silvio (see fascicle 7). It is shown at fascicle 2 that they were paying an interest of between 12 and 15 per cent per year—that is, about 157,000 bolivars each year.

During the three years of the abandonment of their factories they lost, in the first, 6,000 quintals of coffee, and in the other two 4,000 quintals each, and these latter do not represent more than half the average production of their haciendas in Monte Carmelo. This is an extremely moderate estimate, since the actual loss exceeds half the average yield per year, the price of which then was 72 bolivars per quintal, as shown in fascicles 2, 28, and 32. The total actual loss is stated at 1,008,000 bolivars.

The burning of the port of Buena Vista and the compulsory removal of the Poggiolis was injurious to them from another point of view, in that it prevented the opportune shipment of various quantities of coffee stored in Monte Carmelo, in San José de Palmira, and in San Cristóbal de Piñango, and the merchandise was spoiled in consequence. The loss under this item is estimated at 78,400 bolivars.

The plantations having suffered an almost total abandonment for four years (since neither the Poggiolis nor anyone else, whether native or foreigner would have dared to care for them, as by so doing they would have incurred persecution from the authorities of Monte Carmelo), became, from fruitful fields, a wilderness of noxious weeds, and it seems just that such an injury should be compensated. For this item the sum of 100,000 bolivars is claimed.

The greatest of all their disasters, however, was the inevitable loss of their credit as the direct consequence of the above-named facts. In their character of industrious, intelligent, and wealthy inhabitants, they enjoyed, before the beginning of the persecutions mentioned, a credit of considerable proportions, but subsequent to these they were unable to meet their liabilities, either principal or interest, from 1892 to 1894. Those who had reposed in them a well-merited faith now seeing them become the objects of daily attacks, hindered in different ways from exercising their industries and enjoying the fruits of their labors and fearing that this odious condition would be prolonged indefinitely, and result finally in the loss of every opportunity to recover their capital, closed their coffers to the claimants, and within only three months of the time when they were enabled to resume operations, compelled them to give up everything, their property passing into the hands of an administration which controls it to this day for the benefit of the creditors.

Had the Poggiolis on the contrary been permitted to work their property during those three years when coffee was selling in Monte Carmelo at 72 bolivars per quintal, they would have been able to meet their liabilities, instead of which they have to-day only a property encumbered by the same debts which burdened it in 1892, and by interest at 5 per cent which it has not been possible to pay, because coffee has fallen as low as 20 bolivars per quintal at Monte Carmelo, while the cost of production is 15 bolivars per quintal.

It is not urged that the ruin of the claimants is due to this fall in the price of coffee. They would have borne this without great difficulty had it not been that their property was mortgaged to the extent of 1,200,000 bolivars, undiminished at the beginning of 1895, and increased by the interest due on an additional sum of 150,000 for the years 1892, 1893 and 1894, solely because during said three years they could not harvest their coffee, which was then bringing remunerative prices, as already mentioned.

The Poggiolis are not as yet bankrupt because the contract for the management of their property was made for ten years from 1895 when the coffee was

still fairly remunerative, but at the close of this contract, unless the indemnity awarded them by the umpire is such as to enable them to meet their obligations, they will be utterly ruined.

These exemplary settlers, who, by their energy, opened a large territory to cultivation, established a port, canalized a stream, erected mills, populated a semi-deserted region, are, by the hostility of the Government and its agents, to whom patriotism, common sense, and justice should have suggested the opposite course, driven to the verge of beggary.

The Government is clearly responsible for their financial disaster, brought about by the loss of credit (that most cherished possession of the merchant), the fatal consequences of which have been summed up in the foregoing, and for which they claim an indemnity of 1,000,000 bolivars. This sum does not appear excessive when it is considered that it includes the stipend of 144,000 bolivars for the managers of the Poggioli estate for a period of ten years, and which they were compelled to pay on account of the persecutions inflicted upon them by the agents of the Government.

The liabilities of the claimants, which would have been discharged in 1892, 1893, and 1894, had they been permitted in that period of prosperity to manage their property unmolestedly, amounted, as has been said, to nearly 1,200,000 francs in 1895. With the direct damages suffered by them should be included the interest on the above to date; but the claimants intend to reduce their demand under this item to interest at 5 per cent on 969,015, as appears in the contract of May 7, 1895 (see fascicle 27), the other creditors having accepted partial settlements. It is certain that this accumulated interest, which constitutes one of the causes of the impending ruin of the Poggiolis, would never have been incurred had they been allowed to enjoy the freedom and personal guaranties in the management of their affairs to which they were entitled. Said interest, calculated at 5 per cent as per the contract of 1895, and including all of 1894, would amount to 436,056 bolivars, and this special indemnity is considered due them as well as the others, and for similar reasons.

The last category of damages suffered by the Poggiolis relates to the expenses of the two political trials to which they were subjected and for the preparation and prosecution of their claim, comprising the cost of Silvio Poggioli's residence in Caracas on two occasions for a considerable period; one from 1893 to 1894, and another at a later period, and also the costs of contract with creditors; in all, estimated at 52,313 bolivars, which is deemed within reason.

The claim of the Poggiolis is equitable from every point of view, and even in the determination of the responsibility of the Government in the events of which they were the sufferers, they have followed rules of moderation and reason. In fact, they make no claim for the wounding of the one and the assassination of the other, notwithstanding these may be considered as the first and last links in the chain of violences and persecutions mentioned in this paper. The responsibility for other maltreatments appears sufficiently established. It needs but to examine the odious animosity displayed by General Ferrer in his dealings with the unfortunate Poggiolis, in which he took the initiative and set the sad example of the vexations suffered by them.

The honorable umpire should consider the autograph letter of that officer in fascicle 37, in which he orders the destruction of 2,000 coffee trees belonging to one Felice Terán, solely because he had refused the General a loan, rendered impossible by reason of serious illness. See also a letter by him addressed to the jefe civil y militar of Monte Carmelo, of April 28, 1892, in which he orders the capture of the Poggiolis, and the seizure of all their mules and cattle without regard to any jurisdiction or respect for any law but that of his own will, justifying his odious procedure by referring to the refusal of the Poggiolis in the

exercise of their right as foreigners to furnish 40 mules on an arbitrary requisition of that officer, as a proof that they were themselves revolutionists and enemies of the Government. In that letter reference is made to verbal instructions mysteriously transmitted to General Briceño. What these instructions were, subsequent events adequately demonstrate.

General Ferrer was at that time invested by the Government with supreme authority in the State of Los Andes, in Barquisimeto and Zulia. If this was the conduct of one who should have been the best guarantee of the rights and liberty of the inhabitants what could logically be expected of the subordinate authorities?

It appears, besides, from documents in fascicle 35, that Generals Vázquez and Briceño, who were filling important positions in the State of Los Andes at the time of Ferrer's administration, were likewise enemies of the Poggioli brothers.

Is it admissible that he who is intrusted with the delicate and important duties of a public functionary should suffer his actions to be controlled by his sympathies or animosities?

This sufficiently explains how the persecutions and arbitrary treatment which precipitated the claimants from the height of their commercial prosperity to the condition of actual ruin lasted so long and took so many divers forms.

The "giustificativo" and counterproof submitted by the Government to this Commission on March 12, 1904, can not overcome the full and complete documentation submitted by the claimants. As a matter of fact, it was prepared in the absence of Silvio Poggioli and on the basis of declarations of persons notoriously inimical to the claimant family. The facts therein alleged are effectively contradicted by the memorial presented to the royal Italian legation by the claimant on the 22d of April, 1904.

The honorable Venezuelan Commissioner alleges that many of the damages suffered by them were the outcome of private feuds engendered by their conduct toward certain of their creditors, whose property they had seized in satisfaction of debts under harsh foreclosures, and in support of this opinion he cites the case of Rudecindo Hernandez, who wounded Silvio Poggioli and who lost five haciendas by the latter seizing them in satisfaction for a few loads of coffee.

Upon an examination of the circumstances attending this affair it appears that Hernandez, in 1885, was indebted to the Poggiolis for 154 loads of coffee to the value of 15,800 bolivars, plus 11,367.78 bolivars in money. They awaited in vain for the settlement of the account to October, 1890, and on the 23d of that month an agreement was drawn up by mutual accord and recorded the 1st of December of the same year, by which 23,280 bolivars was acknowledged as due the Poggiolis, who granted the debtor delays in the payment of said amount in coffee and money.

The first payment fell due in February, 1891, with the condition that if payment was not then made the creditors would be authorized to seize the property held as security therefor. Hernandez did not meet his obligation in February, and on the 28th of May he fired upon and wounded Silvio Poggioli at night, in the plaza of Monte Carmelo, perhaps as a means of avoiding the fulfillment of the clauses of his contract. After this, Poggioli had no further hope of securing payment of the debt, and could not in reason be expected to show friendliness or regard toward Hernandez. In October of that year he obtained judgment from competent authority, and by a decree which explains and justifies the attitude then taken by the claimant secured possession of the property of the debtor.

Whatever of odiousness there was in this transaction can not certainly be

attributed to Poggioli, who used his right only after daily proof of forbearance and after a delay of years in its exercise. It will be noted further that at this time Hernandez was in jail for the wounding of Poggioli, and but for the arbitrary intervention of Ferrer would probably have remained there some years, leaving in abandonment the property held as security for the payment of his debts.

In conclusion, the Italian Commissioner asks that the present claim be recognized in the total sum of 3,023,472 bolivars, which, unless the undersigned has erred in his calculations, is the amount asked by the claimants, of which sum, Silvio Poggioli's share is 1,955,033 bolivars, or 65.99 per cent of the whole, while the share of the heirs of Americo Poggioli is 1,028,439 bolivars. Should the honorable umpire not recognize the latter as entitled to claim before this Commission, it is asked that his decision against them be without prejudice to their rights in the manner employed by him in former cases.

*ZULOAGA, Commissioner :*

Silvio and Americo Poggioli, Italians, domiciled in Monte Carmelo, Escuque District, State of Los Andes, were associated under the firm name of Poggioli Hermanos from 1885 to 1895, and dealt in coffee and cultivated it, whereby they constantly acquired new properties. Poggioli Hermanos were very much disliked in the neighborhood, so much so that on May 28, 1891, an attempt was made to kill Silvio, who was wounded by a shot fired from ambush. The deed was charged against Rudecindo Hernandez, Rafael Trejo, Carlos Solarte, and Faustino Sanches (the first of those named had sold a plantation to the Poggiolis). Process was instituted against these persons, but they escaped from the jail of Trujillo during a revolution; no action was taken and the suit was dropped. In 1892 a terrific civil war broke out in Venezuela, and the State of Los Andes, together with the government there, supported it. The Government at Caracas sent Gen. D. B. Ferrer against the government of Los Andes. When he arrived there the Poggiolis were denounced to him as revolutionists and the possessors of firearms, and Ferrer having demanded of them a certain number of animals and cattle for the army they refused to deliver them. Ferrer took the animals and cattle and put the Poggiolis in prison, ordering that they be tried, as appears from the order of April 28, addressed to the civil and military chief of Monte Carmelo, which reads as follows:

The refusal of the Poggiolis to deliver over the 40 mules which I have demanded of them, and other reasons which you will verify with General Briceño in a judicial manner, gives rise to the presumption that they are revolutionists and enemies of the National Government, and to this end, and in order to prove them such, you shall follow the verbal instructions which I have given Briceño, who will bear the original of what I communicate.

The Poggiolis were released by Ferrer himself, but later, on June 6 of the same year, the judge of the first instance ordered that they be taken prisoners in order that the suit pending against them might proceed; and they were imprisoned on September 26 of said year, and sent to Valera, but later set at liberty. The Caracas Government, in whose service Ferrer was, having been defeated and the revolution having triumphed in Los Andes, the tribunal constituted thereby, on February 7, 1893, dismissed the suit against the Poggiolis, declaring that in said action could be discerned the political passion of the partisans of the Government which Ferrer served. This judgment was confirmed by the court.

The Poggiolis having returned to their home, they were again antagonized by their numerous private enemies. Private individuals burned down small properties of the Poggiolis, they cut down some plantations of bananas (5,000

trees), they killed a saddle horse and 3 head of cattle, and at the time when Silvio was going to take charge of certain plantations, certain unknown persons discharged firearms on him from ambush. Some witnesses state that public opinion attributed it to persons who were delinquent with respect to payment of mortgages on certain coffee plantations which did not belong to the Poggiolis. In a letter from Poggioli to Ferrer it is said that Garceliano Usma and Santos Rivero had taken possession of the real estate of which in due form they had transferred title to him.

In the year 1891 the affairs of the Poggiolis prospered, but they had made free use of credit and owed more than 1,000,000 bolivars, and they paid thereon an interest of from 1 to 1½ per cent monthly. The Poggiolis from 1892 had found themselves in commercial difficulties, and this state grew worse until in 1895 they were forced to deliver their property to their creditors. The Poggiolis ascribe this situation solely to the persecutions suffered. They say that in 1892 during the days they were imprisoned in May and June they lost three-fourths of their crops which they could not harvest; that they lost as estimated 4,500 quintals of coffee in the Escuque District in Trujillo and 750 loads in the Miranda District, in Mérida; that they suffered other losses because coastwise trade was forbidden in the port of Buena Vista, on Lake Maracaibo, etc. It appears, however, that the loss of the coffee crop, if there was any, did not fall alone on the Poggiolis, since L. F. Carrasquero says, in answer to the eighth interrogatory (record 2, p. 9), that the crop was lost *not only by the Poggiolis but by all the farmers of that district*. The coffee crops (in so far as they were not gathered, but according to the evidence submitted at that time — the time of the imprisonment — they were already harvested), were lost, no doubt because not only the government of the State which was in the revolution but also the general in campaign from Caracas recruited soldiers, and men who were not in the army, fled and hid themselves, workmen therefore being scarce. The imprisonment of the Poggiolis could not materially influence the harvest of the coffee. The plantations, no doubt, had their foremen or overseers and they could carry it out.

The Poggiolis, in their complaint to the minister of Italy, charge a large portion of these persecutions to the parish authorities who were their personal enemies, "who owned real estate and commercial houses in the district where the Poggiolis were residing and to whom their absence was very advantageous." Witnesses testify that the authorities of the town provoked uprisings against the Poggiolis, in order that they should not deal with the latter and should sell to Cheuco Brothers, Terán & Moreno, etc. The Poggiolis appear to have complained to the higher authorities and the latter took steps, in October, 1894, against these acts counteracting the measures of the local authorities. The civil chief of the district, L. F. Carrasquero, gave orders to the local authorities and in a letter of November 5, 1894, said to the Poggiolis: "Considering the great number of unjust damages, injuries, and persecutions that had already occurred, principally because of an avaricious spirit of mercantile rivalry, taking advantage of the political advantages in order the better to injure their interests, etc.," it was pleasing to him to offer, in the name of the president of the State, the amplest protection. Said Carrasquero, as appears from the evidence, was a great friend of the Poggiolis and is still their attorney in many matters. Some years later (the date does not appear precisely) Americo Poggioli was assassinated by an unknown person, and Silvio charges his death to his long-standing private enemies.

The cause of these deep hatreds toward the Poggiolis and of the *private* violences which followed upon them, is easily discerned in the documents submitted in support of the case. The Poggiolis had rapidly become rich, and

had obtained a large part of the coffee plantations in the neighborhood where they had located themselves, notwithstanding that they labored under a heavy indebtedness, for which they paid dearly, since they paid interest at from 1 to 1½ per cent per month. Under these circumstances it is not natural that they should prosper greatly in their farming business, which does not in itself make large returns; but the Poggiolis were very overbearing and oppressive to the small farmers of the locality, an ignorant and candid people, with whom they entered into extremely advantageous contracts, which allowed them to acquire these properties at an extremely low price.

The contract for sale with the right of repurchase is very common in Venezuela for the purpose of borrowing money as a loan, with security, and although the purchaser may retain possession of the property, if after the term of repurchase has elapsed the vendor does not repurchase it, this being regarded as usurious is rarely done. Therefore the buyer gives repeated extensions to the vendor or debtor. The Poggiolis did not act thus, and conforming with the original clause of limitation of time for repurchase, they imposed new and additional obligations upon the debtor. In the titles accompanied by the claim for destruction, incendiarism and destruction, it is seen in that passed by Rudecindo Hernandez that the latter was paying to the Poggiolis 25 loads of coffee in annual installments, of which the first 25 loads of coffee had to be delivered in February, 1891. Because this first 25 loads of coffee were not delivered the Poggiolis took possession of the property called "San Rafael," planted with sugar cane, together with the sugar mill, buildings, improvements, and pastures; of the coffee property "San Emigdio," of the ranch "Miraflones," planted with bananas; of another plantation of coffee and small fruits, the house and mill; and of another coffee plantation, a dwelling house, and plowed field.

The Poggiolis obtained all this from Rudecindo Hernandez under enforced execution because he had not paid them 25 loads of coffee. Hernandez believed himself wrongfully dispossessed.

Likewise the deeds of sale with the privilege of repurchase are found from Rafael Rivera to his ranch "Santa María" planted in coffee and small fruit with a water-power mill for the treatment of coffee, a tile oven, etc. The price of the conditional sale was 5,506 bolivars to be paid in March, 1888, and thirteen and one-half loads of coffee; and in the same month of other years following the same amount (neither the price nor the quality of coffee to be delivered are fixed). The Poggiolis took possession of the estate in 1887 for default in payment of *part* of the first installment — about 400 bolivars. There is also in evidence the deed by virtue of which Francisco Antonio Gonzales sold the Poggiolis with the privilege of repurchase his plantation of coffee and bananas, dwelling house, grinding mill for coffee, etc., for 7,840 bolivars. This amount Gonzales was to return to them by delivering 20 loads of coffee each year. The contract was executed in 1891. In 1892 Gonzales did not pay the first installment and the Poggiolis took the ranch. These were the sort of negotiations which the Poggiolis were carrying on in Monte Carmelo, as appears from the few deeds which have been produced. These plantations were, as is said, cut down or burned by unknown parties. It is not difficult to imagine the motives.

The facts which give rise to the Poggioli claim are as follows: First. Wrongful imprisonment by Ferrer in 1892, and subsequently the process which he instituted against them. Second. Indirect damages caused by this imprisonment, such as the loss of crops and loss of credit. Third. Direct damages for the confiscation by General Ferrer of 95 mules and 100 head of cattle and the confiscation of merchandise in the village of Palmira. Fourth. Indirect damages because of the closing of the coastwise port of Buena Vista by order of the civil and military chief of the State of Trujillo, whereby they believe they

suffered in their credit. Fifth. Damages for local antagonism after 1892 until 1895.

First. The imprisonment which Ferrer ordered is justified by the denunciation which the Poggiolis themselves declare their enemies made to said general, of being enemies of the government of Caracas, a denunciation which was corroborated by the refusal to deliver him mules. Ferrer immediately compelled the proper trial to be instituted, and the subsequent imprisonment of the Poggiolis by virtue of the decree of the judge until the action was discontinued is perfectly lawful and can not give rise to any claim.

Second. The indirect damages which the Poggiolis may have suffered by reason of the imprisonment, even in case they were proved, could not be recovered, in the first place, because the imprisonment was justified, and, in the second place, because the Commission, in accordance with the fixed rule always followed by the Commissioners and umpire, does not allow indirect damages (see case of Giacopini decided by the umpire, p. 765), and in the matter of loss of crops in other commissions the point has been decided against the claimants. It is not certain, moreover, that the losses of the Poggiolis were caused by their imprisonment but by the misfortunes which in general wars bring, such as the scarcity of workmen, the difficulty of transportation, limitation of credit, etc.

Third. It appears that the Poggiolis suffered losses because General Ferrer took from them 95 mules, valued at 49,400 bolivars, and 100 head of cattle, valued at 20,000 bolivars; because of merchandise taken by the forces of General Ferrer at San José de Palmira, about 32,000. The half of these three amounts, or say 50,700 bolivars, belong to Silvio Poggioli, and I agree that it is owed by the Government of Venezuela. The other half belongs to the widow and son of Americo Poggioli, who are Venezuelans, and it can not be awarded by this Commission.

Fourth. The indirect damages claimed because the Government closed the port of Buena Vista. In the first place, it is not true that they exist, since the witnesses attribute the damages, not to the closing of the port, but especially to the lack of means of transportation; but even supposing that they might exist, they would not be recoverable, because beyond all doubt it is the right of the authorities to close a way of communication because it believed it expedient for military operations.

Fifth. Damages because of local antagonism from 1892 to 1895. The acts charged to the local authorities are not substantiated. The burning and devastation of some properties, which are the same ones that the Poggiolis so cruelly wrested from Rudecindo Hernandez, appear to be charged by the witnesses to this latter individual and to others who had escaped from prison and had succeeded in freeing themselves from a voluminous process which the judge of the first instance of Trujillo had instituted against them. No concrete determined damage can be found or ascertained. The bases of this item of the claim are the same as in the case of Victor de Zeo<sup>1</sup> and ought therefore to be disallowed for the same reasons as those expressed by the honorable umpire.

The coffee crop, even in the cold regions, is not gathered after January.

The instrument of 1891, in which the association of the Poggiolis appears, is not executed before the commercial judge; nevertheless if it be examined it will be seen that the real estate was not large.

The Poggioli claim amounts, for losses of the crops of certain plantations and other agreements of a temporary nature, to more than double the whole of their

<sup>1</sup> See *supra*, p. 526.



capital. Naturally this capital is exaggerated, and the damages are not asked except for the loss of the *products* of the capital.

The true cause of the losses of the Poggiolis in their interests is to be found in their immense debts, on which they were paying high interest, in the general depression in the time of war, and in the falling of the price of coffee during all these years.

This claim was presented to the Italian legation in 1892, and the claim ended, since the legation did not take any account of it, and therefore it is not admissible.

In the case of Giacopini <sup>1</sup> the honorable umpire disallowed indirect damages very similar to those of the Poggiolis.

I maintain that the loss of the Poggiolis is not a direct damage of the Government.

RALSTON, *Umpire* :

The above-entitled claim for 3,419,223.28 bolivars is referred to the umpire on difference of opinion between the honorable Commissioners for Italy and Venezuela.

Silvio and Americo Poggioli, natives and subjects of Italy, were domiciled in Venezuela long prior to 1892, the period when the larger share of the losses for which claim is made, was experienced. They had been in partnership for many years in the cultivation and sale of agricultural products, being, besides, the owners of considerable mercantile establishments at several points.

In the spring of 1892 the Legalista revolution broke out in the State of Los Andes, and early in its career, on the 26th of April, 1892, General Ferrer, who was the governmental chief in charge of the headquarters at Valera, demanded from the brothers a certain number of mules, which were not furnished, Americo insisting that they were no longer the property of the Poggiolis, but by contract belonged to another firm. He was given three days in which to produce them, at the end of which time, the mules not appearing and the Poggiolis being in Monte Carmelo, about 10 leagues away, some 85 soldiers were sent to that point, and they were put under arrest, retained there for a few days and afterwards transported elsewhere, remaining prisoners for forty-two days, when they were set at liberty.

About the time of their arrest a charge was instituted against them, at the instigation of the highest military officials, of having imported arms and ammunition intended for the use of the revolutionists, and witnesses were, according to the testimony, by subordination, threats, and promises, made to appear to sustain it. This charge, however, after being fully investigated by the court of first instance, was found to be without foundation, both by that court and its superior court.

About the time of the imprisonment of the Poggiolis there were taken from them 95 mules and 100 cattle, of the entire value of 69,400 bolivars.

After the release of the Poggiolis they went to Mendoza to recover their health, which had been injured by imprisonment, but before they were completely restored Silvio was again, in the following month of September, arrested, being kept in confinement this time some fifteen days, when he was released.

The arrest of the Poggiolis was the signal for the destruction of their extensive properties, since we find that by government authorities their sugar mill and house at San Rafael were at once destroyed, with a loss of 4,000 bolivars. Being reconstructed, they were again burned and robberies committed, the

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

additional loss being 4,875 bolivars. Heavy losses at San Antonio, San Rafael, San Emigdio, Los Ranchos, and Miraflores were attributed to an understanding between the criminals hereinafter referred to and the authorities, whereby was established a plan with fire and machete to devastate the properties. Ten hectares of sugar cane were destroyed, which, had it been harvested, would have yielded 12,000 bolivars. At San Emigdio there were destroyed coffee and a coffee mill of a total value of 6,900 bolivars. At Miraflores were destroyed banana trees, capable of producing to the value of 800 bolivars. At El Pescado a house worth 1,000 bolivars was burned by Juan Torres, agent of the government and commissary of the Caserio Cristóbal. At Santa María and El Pescado coffee mills worked by water, and worth 7,200 bolivars, were destroyed by agents of the government. When the employees of the Poggioli brothers complained to the authorities of the parish, some were recruited in the army and others expelled. At Emigdio 3 cattle were killed and a horse injured, at a total loss of 1,728 bolivars. The authorities at Monte Carmelo took and destroyed property to the value of 48,500 bolivars.

It is further stated circumstantially that high government officials convoked the agents and debtors of the Poggiolis, threatening them with all sorts of injuries unless they should give up their management of the properties of the brothers and refuse to pay their debts to them, and in many cases those who continued their friendship were finally driven off by violence. As incidental to the dispersal of their agents, and their own enforced absence, the Poggiolis claim to have lost, but without giving satisfactory details, 100,000 bolivars through neglect of their properties.

While the Poggiolis were prisoners, they had at Monte Carmelo 600 loads of coffee ready for shipment; at San José de Palmira 725 loads, and at San Cristóbal de Piñango 250 cargoes, but the port of Buena Vista was closed and exportation there and at the port of La Dificultad prevented, with a consequent loss of 24,000 bolivars.

Packages of merchandise on the road from Arapuey to Monte Carmelo, valued at 4,800 bolivars, were taken by the government troops.

The agents of the civil government, under General Vásques, burned the bodega at Buena Vista and other houses; the total loss of materials and labor at that point amounting to 24,000 bolivars.

The mercantile establishment of the brothers at San José de Palmira, containing a large quantity of merchandise, was completely sacked, and coffee destroyed of a total value of not less than 32,000 bolivars.

The preceding year B. Hernandez, C. Solarte, R. H. Trejo, and F. Suares had attempted the life of Silvio Poggioli, and in consequence were arrested and found guilty. They nevertheless were allowed to enter the army, while the expediente showing their guilt disappeared. The Poggioli brothers repeatedly called the attention of the superior authorities of the state, commencing at least as early as May 12, 1892, to this condition of affairs, insisting that these men should be rearrested, but in vain. So far from being retaken, they seemed to have received the tacit protection of the authorities at Monte Carmelo, who would warn them when there was danger of their being disturbed, and who with other officials joined with them in the larger part of the various offenses committed against the Poggiolis, this continuing to be the case until 1895, when the Poggiolis, were at last, after repeated efforts, finally assured of a proper administration of justice; competent and reliable authorities at Monte Carmelo replacing those against whom the Poggiolis had protested, even to the secretary of the interior of Venezuela.

Until the last of 1894 the Poggiolis were unable to return to their home at Monte Carmelo because of the events narrated, one effort resulting in the

attempted assassination of Silvio, and their properties therefore being meanwhile utterly neglected.

That the general condition in Los Andes was bad and a reign of anarchy existed we may readily believe, from the fact that on March 27, 1895, the minister of interior affairs at Caracas refused to favor calling elections because the State of Los Andes was "an eternal slaughterhouse," and laws protecting life and property were for the time being nonexistent. Another index of the local conditions is afforded in the fact that the officials of Monte Carmelo were changed seven times between April, 1892, and September, 1893.

As late as 1894 the Poggiolis were again called upon to defend themselves against an unfounded charge of introduction of arms, but this claim was quickly disposed of by the intervention of the superior authorities, although for the time being it subjected them to inconvenience and trouble.

They were compelled to expend in defending themselves from the various false charges 7,615.34 pesos, and they further expended to send Silvio Poggioli to Caracas to advance their claim the additional amount of 3,407 pesos.

As the result of all the acts herein set forth, the Poggiolis fell into a state of bankruptcy.

As early as June, 1893, Silvio Poggioli presented to the Venezuelan Government an account of the damages and injuries to which he and his brother had up to that date been subjected, and as a consequence on June 27, 1903, the secretary of the interior wrote to the President of Los Andes, ordering that the criminals be immediately imprisoned and an inquiry had as to the authors of the suppression of the expediente against them, in order to punish them severely. This was regularly transmitted to the authorities of Monte Carmelo, who filed it away without attention.

The foregoing is not a complete statement of the offenses and annoyances to which the Poggiolis were subjected, but gives a sufficient and at the same time concise account of their most grievous troubles.

It is urged, by way of excuse or defense, that the Poggiolis were usurers and had entrapped their neighbors into many contracts extremely disadvantageous to them, and that all of the difficulties to which they were subjected were to be attributed to personal animosities born of their conduct rather than to the acts of officials for which the government should be liable, and, supporting this, it is said that Hernandez himself lost his property because of an unfair contract executed by him at the instance of the Poggiolis, which they rigidly enforced, and that his activity in the various offenses committed against them was to be attributed to personal enmity. In addition, it is to be noted that General Francisco Vásquez, civil and military chief of the Trujillo section of the State of Los Andes, and Gen. Gabriel Briceño, who took part against the Poggiolis, were personal enemies of theirs before the war, while in the letter of Carrasquero, chief of the district of El Pescado in November, 1894, promising protection to the Poggiolis, their difficulties were spoken of as arising from commercial rivalries.

Again, some of their troubles with relation to loss of coffee sent by them to the port of La Dificultad for exportation seem to have relation to the fact that they refused to pay taxes thereon, which had been ordered, apparently illegally, by district councils.

These excuses are not, however, of a character to affect liability if it otherwise existed.

Since the events of which we speak, Americo Poggioli has died, having in fact been killed by a musket ball fired by one of the garrison stationed at Valera, and, it is suggested, by Solarte, one of the criminals who had assaulted Silvio Poggioli in the year 1901, and who had escaped confinement, practically

receiving in fact Government protection. However this may be, the claim of Americo Poggioli died with him, so far as this Commission is concerned, as his only heirs consist of his widow and children, all of whom are Venezuelans by birth. The claim of his heirs is therefore Venezuelan, under the rules heretofore adopted by the umpire, particularly in the Brignone and Miliani cases.<sup>1</sup>

As a preliminary question, it is suggested that all the Italian claims originating because of the acts of the revolution in 1892, were settled by an arrangement entered into between the Italian minister accredited to Venezuela and the Venezuelan Government, and some language contained in the expediente of the correspondence and negotiations between the two parties gives color to this opinion; for instance, a private letter from Count Magliano de Villar San Marco, the Italian minister, speaks of giving a definite solution to all the Italian reclamations arising from the revolution of 1892. An examination of the papers, however, fails to show that the Poggioli claim was ever taken into consideration between the two Governments, so far as the settlement in question is concerned, although it is manifest from the expediente under present consideration that during practically all the period when Italian claims were being adjusted, this claim was being urged by the Italian legation, receiving attention from the Venezuelan Government down to 1896.

The umpire is therefore disposed to consider that it was not the intention of the two Governments to determine the claim of the Poggioli brothers at that time, and he is confirmed in this belief by the fact that the Venezuelan direccion de crédito público, in its letter of March 9, 1895, addressed to the tesorero del servicio público, speaks of the amounts considered under the agreement as for aids (suplementos) to the national revolution, and the account accompanying the letter refers, not to all Italian claims, but to the Italian claims recognized by the junta de crédito público, and similar language is used in further communications of the Venezuelan Government. At a later period, in giving a list of the claims, those then settled are referred to as being for "suplementos" for the national revolution. Again, attached to a letter from the direccion de crédito público dated July 5, 1895, reference is made to what is entitled "Convención Entre la Legación Italiana y el Ministerio de Hacienda," which contains a résumé of the claims for "suplementos," etc.

Further, the junta, under the law of June 9, 1893, giving it special jurisdiction of claims arising out of the revolution, could scarcely have given an award indemnifying for all or any large portion of the offenses complained of in this case.

Before in detail passing upon the facts before us and the responsibility of the Venezuelan Government incident thereto, it may be worth while to state as nearly as may be some of the general principles to be applied to them.

Not many cases have been presented to international tribunals in which responsibility was claimed for the acts of private individuals, or for trespasses committed by civil authorities. The only cases brought to his attention are recited in the opinion of this umpire in the De Zeo case,<sup>2</sup> and to be found in 3 Moore, pages 3018 and 3032. In one it was claimed that the Government of Mexico had tolerated, and even set on foot, disorders affecting the claimant's business, and the Commission thought that so grave a charge should be maintained by the most unquestionable proof and alleged as a distinct act and ground of reclamation; and in the other (for the seizure of a boy by the governor of a State) relief was refused, because it did not appear that ample redress might not have been obtained by resort to the judicial tribunals of the country.

<sup>1</sup> See *supra*, pp. 542 and 584.

<sup>2</sup> See *supra*, p. 526.

Had the courts of Mexico been closed to the claimant and justice denied him, that might have constituted a ground for a claim of indemnity against the Government of Mexico. No such case, however, is presented. No appeal was made by the claimant to the courts, and no denial of justice had been proved. Under these circumstances, the board can not regard the Government of Mexico as responsible.

Let us now consider the question from the standpoint of text writers.

Calvo says:

SEC. 1263. Dans l'intérieur des limites juridictionnelles, les agents de l'autorité de toute classe sont personnellement seuls responsables dans la mesure établie par le droit public interne de chaque État. Lorsqu'ils manquent à leurs devoirs, excèdent leurs attributions ou violent la loi, ils créent, selon les circonstances, à ceux dont ils ont lésé les droits un recours légal par les voies administratives ou judiciaires; mais à l'égard des tiers, nationaux ou étrangers, la responsabilité du gouvernement qui les a institués reste purement morale et ne saurait devenir directe et effective qu'en cas de complicité ou de déni de justice manifeste.

Bonfilis, in his *Manuel de Droit International Public*, section 330, says:

Des étrangers, établis ou transitants sur le territoire d'un État, sont lésés à l'intérieur de ce territoire par des fonctionnaires en violation des lois. La responsabilité de pareil acte pèse sur les fonctionnaires qui en sont les auteurs. La partie lésée peut les poursuivre par les voies légales, judiciaires ou administratives. En principe, l'État n'est pas plus responsable vis-à-vis de ces étrangers qu'il ne l'est à l'égard de ses nationaux. Mais si l'acte dommageable était suivi d'un déni de justice; si les tribunaux locaux refusaient d'entendre l'étranger, d'accueillir son action à raison de son extranéité même, l'État qui tolérerait une pareille lésion deviendrait responsable du déni de justice, et le souverain de l'étranger pourrait par voie diplomatique demander que réparation soit accordée.

En ce qui concerne les actes réguliers et légaux d'instruction, de juridiction et de répression exercés sur des étrangers, le principe est que l'étranger reste soumis au régime de droit commun qui pèse sur les nationaux eux-mêmes.

After denying that a state is ordinarily responsible for the acts of its subjects, he adds (sec. 330):

Mais le gouvernement doit avoir pris les précautions nécessaires et ordinaires, ne pas laisser ces faits impunis quand il vient à les connaître, ou, si sa législation propre l'y autorise, livrer les coupables à l'État offensé.

Creasy says, page 343:

Apply then to a state the analogous test of whether it has been as diligent to provide itself in its neighbor's behalf with a sufficient system of criminal process as it is diligent in providing itself safeguards against mischief in its own important affairs; and, furthermore, bear in mind that the mere proof of an affirmative in answer to this interrogation would not be a sufficient justification against complaints if it appeared that the inculpatated state was habitually and grossly careless and disorderly in the management of its own affairs. But if it appeared that the state in question was civilized, and was reasonably firm and orderly in its self-government, an answer in the affirmative would be sufficient.

Halleck says, ch. 11, sec. 7, that —

The sovereign who refuses to cause a reparation to be made of the damage done by his subject, or to punish the guilty, or, in short, to deliver him up, renders himself in some measure an accomplice in the injury and becomes responsible for it.

Hall says, page 227, fourth edition:

With private persons the connection of the state is still less close. It only concerns itself with their acts to the extent of the general control exercised over everything within its territories for the purpose of carrying out the common objects of

government; and it can only therefore be held responsible for such of them as it may reasonably be expected to have knowledge of and to prevent. If the acts done are undisguisedly open or of common notoriety, the state, when they are of sufficient importance, is obviously responsible for not using proper means to repress them; if they are effectually concealed or if, for sufficient reason, the state has failed to repress them, it as obviously becomes responsible, by way of complicity after the act, if its government does not inflict punishment to the extent of its legal powers.

With regard to responsibility for the acts of administrative, official, naval, and military commanders, he holds, page 226, that —

Presumably, therefore, acts done by them are acts sanctioned by the state, and until such acts are disavowed, and until, if they are of sufficient importance, their authors are punished, the state may fairly be supposed to have identified itself with them. Where, consequently, acts or omissions which are productive of injury in reasonable measure to a foreign state or its subjects are committed by persons of the classes mentioned, their government is bound to disavow them, and to inflict punishment and give reparation when necessary.

Again, on page 232, he speaks of the higher degree of responsibility of the state which is "not reasonably well ordered."

Let us first seek to apply generally the principles above enunciated to the facts before us.

It appears that in 1891 an attempt was made upon the life of Silvio Poggioli by four people who were subsequently recruited into the Venezuelan army, and who have to this day escaped punishment, although guilt appears to have been completely established and although repeated requests were made of the higher officials in the state, judicial and administrative, that they be rearrested and subjected to proper punishment for their act. We find that one of these requests was made within two weeks after the wrongful arrest of the Poggiolis, and occasioned by the fact that these criminals were then engaged in ravaging their properties and driving off their employees.

After this demand for relief the criminals still remained at large, with the connivance of the authorities, who seemed to have notified them on at least one occasion of the danger of their arrest, so that they might temporarily conceal themselves. As late as 1894, notwithstanding express orders given by the Central Government at Caracas, we find the State authorities so blind to their duties that, although they thereafter afforded the Poggiolis the protection they had lacked for two previous years, they failed to make any arrests. It seems to the umpire that under these circumstances the local authorities of Venezuela were derelict in their duty and were guilty of a denial of justice, for justice may as well be denied by administrative authority as by judicial.<sup>1</sup> And it further appears to him that when the authorities of the State of Los Andes have acted in apparent conjunction with criminals, and have with them and under the circumstances heretofore detailed joined in the commission of offenses against private individuals, and no one has been punished therefor and no attempt made to insure punishment, the act has become in a legal sense the act of the government itself. One can not consider that the acts were the acts of a well-ordered state, but rather that for the time being some of the instrumentalities of government had failed to exercise properly their functions, and for this lack the Government of Venezuela must be held responsible. We are the more justified in this conclusion because of the opinion of the minister of interior affairs already quoted, and notwithstanding the undoubtedly correct intentions of the National Government.

Reviewing the authorities, it seems to the umpire that this case differs from

<sup>1</sup> 13 Opinions Attorneys-General, p. 547.

those cited from Moore's Arbitrations,<sup>1</sup> in that it is sustained by the clearest proof following distinct allegations, and that there has been in fact a denial of justice by the administrative authorities of the State; that the considerations herein narrated come within the language of Calvo, who finds responsibility "in case of complicity or of manifest denial of justice," for there certainly was complicity on the part of the officials and denial of justice as set out; that the criterion suggested by Bonfils was exactly met by the administrative refusal to grant relief when the local government failed to take ordinary and necessary precautions and allowed the offenses complained of to go unpunished after becoming known; that the State of Los Andes, during the years in question, in the language of Creasy, was "habitually and grossly careless and disorderly in the management of its own affairs;" that by its failure to make reparation or punish the guilty, Venezuela has, through the fault of Los Andes, rendered itself "in some measure an accomplice in the injury" and has become "responsible for it," and that, according to Hall, the acts complained of being "undisguisedly open and of common notoriety" and being of importance, the State "is obviously responsible for not using proper means to repress them," and has not inflicted "punishment to the extent of its legal powers."

The first considerable offense committed against the Poggiolis was their arrest and imprisonment; first, for a period of forty-two days, and second, of Silvio for a period of fifteen days. It is conceivable that such arrests might take place upon misinformation or mistake even of law, and that, honesty at any rate being assumed, no recourse would have remained for the unfortunate victim. In the case under examination, however, it is clearly manifest that the arrests took place pursuant to the order of the general in command, and that they were merely the result of bad feeling engendered by a very proper refusal on the part of the Poggiolis to surrender without compensation mules and other animals to the use of the Government. In another case<sup>2</sup> the umpire has awarded in favor of men of considerable financial means the sum of 250 bolivars for each day of detention, and the same award may now be made in favor of Silvio Poggioli; that is to say, the sum of 14,250 bolivars.

It is strenuously urged that an allowance should be made for the loss of credit to which the Poggiolis were subjected, but this item is entirely too indefinite and uncertain to be taken into consideration by the umpire.

A large claim is presented because threats of violence were made against agents and debtors unless they should give up their management of the properties of the Poggiolis and refuse to pay their debts to them. For the destruction of the properties involved in this situation, a sufficient award is made, but no award will be made for the refusal to pay the debts; the reason being that the debts might have been collected at a subsequent period, together at least with interest on them, which would measurably at any rate offset the important temporary loss to the Poggiolis. Aside from this, however, the loss is too indirect and uncertain.

Large damages are claimed for the closing of the port of Buena Vista with consequent injury to the commerce of the Poggiolis, and it is argued that the reason given for the closing of the port — that is, that arms were imported there for the use of the revolution — was insufficient, inasmuch as the port of La Dificultad, 1,200 meters distant, still remained open, where the same offense could have been committed, if there were foundation for the charge, and it is urged, therefore, that the port was closed simply as a matter of spite toward the Poggiolis. This may have been the case, but the umpire has nothing whatever

<sup>1</sup> Referred to and relied upon in the De Zeo case, *supra*, p. 526.

<sup>2</sup> Giacomini case, *supra*, p. 594.

to do with the reasons inducing the Government to close the port. The umpire assumes that it was within its police power to close it, and no contract existing between the Poggiolis and the Government (as in the Martini case <sup>1</sup>), by virtue of which damages could be claimed for the closing of the port, the power of the Government must be regarded as plenary and the reasons for its exercise beyond question.

An award is asked of 1,008,000 bolivars for the loss of the coffee crops, estimated at 14,000 quintals, during the three years of the enforced abandonment of the Poggioli plantations. In the opinion of the umpire, this claim is greatly exaggerated. Payment for a large part of the crop of the year 1892 taken and destroyed by Government officials and others is provided for in this opinion, and the Poggiolis returned to their properties in the latter part of the year 1894. The umpire believes he will be doing full justice if he makes an award for 5,000 quintals at 72 bolivars per quintal (less 15 bolivars per quintal for the cost of production) or a total of 285,000 bolivars. In the judgment of the umpire this loss was the direct result of the actions of the agents of the Government, joined with those of unpunished malefactors, and for which the Government was responsible, and is not at all to be classed as indirect, the umpire adhering to the rule in this respect laid down by him in the Martini case,<sup>1</sup> no suggestion being made that considerable crops were not or could not have been made during the time in question.

Without reciting in further detail the surrounding circumstances, an award will be made covering the following losses:

	<i>Bolivars</i>
Burning of San Rafael sugar mill and house (first time) . . . . .	4,000
Burning of San Rafael sugar mill and house (second time) . . . . .	4,875
Destruction of bodega and other houses and property at Buena Vista . .	24,000
Merchandise and coffee at San José de Palmira . . . . .	32,000
Cost of defending wrongful charges of importation of arms . . . . .	30,460
Trip to Caracas to submit claim to legation and Venezuelan Government	13,628
Taking of mules and cattle . . . . .	69,400
Destruction of 10 hectares of sugar cane and crop . . . . .	13,600
Destruction of coffee and coffee mill at San Emigdio . . . . .	6,900
Destruction of banana trees at Miraflores . . . . .	800
Burning of house at El Pescado . . . . .	1,000
Destruction of Santa María and El Pescado coffee mills . . . . .	7,200
Cattle killed and horse injured at Emigdio . . . . .	1,728
Sacking, etc., of store at Monte Carmelo . . . . .	48,500
Injuries to properties from driving off agents, etc. (loss reckoned in absence of details) . . . . .	25,000
Taking and destruction of coffee at San José de Palmira, San Cristóbal, and Monte Carmelo . . . . .	24,000
Taking of merchandise on road to Monte Carmel . . . . .	4,800
Loss of coffee from various points, taken or prevented from exportation at Buena Vista or La Dificultad . . . . .	2,400
Loss of coffee crop during abandonment of plantations . . . . .	285,000
<b>Total . . . . .</b>	<b>599,291</b>

It is said that the assets of the firm on December 31, 1901, were 2,803,524 bolivars and the liabilities 1,234,739 bolivars, including 72,000 bolivars due Manuela Rosales. The net worth of the firm was 1,568,795 bolivars. It appears, therefore, by a careful calculation made by the honorable Commis-

<sup>1</sup> See *supra*, p. 644.



sioner for Italy, that Silvio Poggioli's interest amounted to 65.99 per cent of the whole, and all allowances made on account of injuries to the partnership are to be represented by an award of this percentage in favor of Silvio Poggioli, without any award to the heirs of Americo Poggioli for reasons above stated.

A sentence will therefore be signed in favor of Silvio Poggioli for 14,250 bolivars, plus 395,672.13 bolivars, with interest at the rate of 3 per centum per annum on 395,672.13 bolivars from July 1, 1893, to December 31, 1903. And the claim of the heirs of Americo Poggioli will be dismissed without prejudice to their right to relief in any appropriate forum.

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