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Claims Commission established under the Convention concluded between the  
United States of America and Venezuela on 5 December 1885

**Case of John H. Williams v. Venezuela,  
decision of the Commissioner, Mr. Little**

Commission de réclamations constituée en vertu de la Convention conclue entre les  
États-Unis d'Amérique et le Venezuela le 5 décembre 1885

**Affaire concernant John H. Williams c. Venezuela,  
décision du Commissaire, M. Little**

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Case of John H. Williams *v.* Venezuela, decision of the  
Commissioner, Mr. Little\*

Affaire concernant John H. Williams *c.* Venezuela, décision du  
Commissaire, M. Little\*\*

Prescription—applicability of the doctrine of prescription as between States.

Prescription—applicabilité de la doctrine de la prescription entre États.

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It appears from the papers transmitted us that in 1841 John H. Williams, a merchant in New York, sold and delivered in that city to an agent of the Venezuelan Government certain mirrors with mountings for the government house at Caracas for \$2,489.11, which were duly forwarded and received.

On the 24th day of April 1868, Mr. Williams presented the account against that government before the former commission for these articles as of the date of November 9, 1841, and verified it under oath, claiming an award, including interest at 7 per cent, of \$7,019.11. The account had before been sent to the United States legation at Caracas for collection, but how long before does not appear. It had not, previous to 1868, been brought to the attention of the Venezuelan authorities from any source, so far as shown, and no reason or explanation is given for delay in presentation.

Venezuela claims the goods were paid for at the time of purchase. On the issue of fact thus made she was (1868) and is placed at a disadvantage by the long lapse of time as to the matter of personal testimony, some, if not all, her witnesses to the transaction having before then died.

The question with some collateral ones is thus presented whether time, figuratively stated, testifies in these adjudications. This case could perhaps be disposed of upon other grounds and in comparatively few words; but as the same question with like resulting ones is involved in other cases argued and submitted, we have concluded to treat it with some fullness and dispose of the

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case from this standpoint, in view of the fact that the general question appears to be a somewhat mooted one with each government.

It thus appears then the claim was not brought to the attention of the Venezuelan Government until twenty-six years after its inception. Its ownership, nature, and amount were such as would have made a delay in presentation to the debtor for a single three months a matter of surprise. By lapse of time the means of defense have been impaired, and there is total want of excuse for the long delay by claimant. Under such circumstances what does the law require at our hands?

It is a well-settled principle in common law jurisdictions, and a recognized one in civil law countries, that obligations are to be enforced according to the *lex loci fori* which here is the treaty and the public law. Beyond the requirement that its decisions must be according to justice, the treaty furnishes no guide to the commission respecting the operation of the lapse of time in extinguishing obligations. It is left to the direction of international law on the subject. Does that recognize the doctrine of such extinguishment as between states in controversies like these? The question has been argued with exceptional force and ability by counsel for the respective governments.

It will, perhaps, not be amiss to group extracts from the deliverances (*italics ours*) of some of the leading authorities upon the general doctrine of prescription and pertinent principles. We present them as they have been consulted, and without reference to any special order. It may be well preliminarily to note that, while individual interests are involved, these controversies, as elsewhere seen, are between states in some sense, and stand much as if so originating; and, further, that while the texts will be seen largely to relate to territorial acquisitions the principles announced comprehend the acquisition and loss of personal property, and pertain to other rights as well.

Says Wheaton:

The writers on natural law have questioned how far that peculiar species of presumption, arising from the lapse of time, which is called prescription, is justly applicable as between nation and nation; but the constant and approved practice of nations shows that by whatever name it is called the uninterrupted possession of territory *or other property* for a certain length of time by one state excludes the claim of every other; *in the same manner as by the law of nature, and the municipal code of every civilized nation, a similar possession of one individual excludes the claim of every other person to the article of property in question.* This rule is founded upon the supposition, confirmed by constant experience, that every person will naturally seek to enjoy that which belongs to him; and the inference fairly to be drawn from his silence and neglect of the original defect of his title, or his intention to relinquish it. (Elements Int. L. 6th ed. 218.)

Vattel:

It is asked whether usucaption and prescription take place between independent nations and states. . . . Now, to decide the question we have pro-

posed we must first see whether usucaption and prescription are derived from the law of nature. Many illustrious authors have asserted and proven them to be so. . . . It is impossible to determine by the law of nature the number of years required to found a prescription; this depends on the nature of the property disputed and the circumstances of the case.

...

After having shown that usucaption and prescription are founded in the law of nature, it is easy to prove that they are equally a part of the law of nations and ought to take place between different states. For the law of nations is but the law of nature applied to nations in a manner suitable to the parties concerned. And so far is the nature of the parties from affording them an exemption in the case, that usucaption and prescription are much more necessary between sovereign states than between individuals. (Law of Nations, Book 2, ch. 11.)

“Prescription,” this author defines in the same connection, “is the exclusion of all pretensions to right—an exclusion founded on the length of time during which that right has been neglected.”

Phillimore:

This [prescription of public law] is in principle very much the same as the prescription of the private law, which indeed may be said to be modeled upon the usage of the public law, *and which usage grew out of the reason of the thing*. . . . Does there arise between nations, *as between individuals*, and *as between the state and individuals*, a presumption from long possession of a territory, *or of a right*, which must be considered as a legitimate source of international acquisition? . . . The effect of the lapse of time upon the property *and right* of one nation relative to another is the real subject for our consideration. And if this be borne steadily in mind it will be found on the one hand, in the highest degree, irrational to deny that prescription is a legitimate means of international acquisition; and it will, on the other hand, be found both inexpedient and impracticable to attempt to define the exact period within which it can be said to have become established, or, in other words, to settle the precise limitation of time which gives validity to the title of national possessions. (Int. Law, 1, pp. 272–275.)

Hall:

The principle upon which, it [international prescription] rests is essentially the same as that of the doctrine of prescription which finds a place in every municipal law, although in its application to beings for whose disputes no tribunals are open some modifications are necessarily introduced. (Int. Law, 100.)

Polson:

How far prescription may be considered as operating upon nations jurists do not appear to have agreed; but the uniform practice of nations shows that they recognize the long and uninterrupted possession of a territory as excluding the claims of all other nations, *and that this principle*, whose expo-

sition fills so large a head in municipal jurisprudence, *is equally recognized, as reason dictates it should be, in international law.* (Law of Nations, 28.)

Calvo:

May usucaption and prescription be considered in regard to peoples and states as regular and normal means of acquiring property? If it is admitted that these two ways of acquiring are legitimate and based on natural law, one is logically bound to admit that they are equally conformable to the principles of the law of nations, and are to be applied to nations. Usucaption and prescription are even more necessary between states than between individuals. In fact the differences between nations have a much greater importance than individual contentions; these may be settled by tribunals, whilst international conflicts frequently end in war. (Droit International, vol. 1, § 171.)

Vico:

The inert, the incautious, the negligent, the luxurious, are punished in the injury they do to themselves by the loss of their interests and their rights through usucapio and prescriptio? (De Uno Universi Juris, etc. p. 331.)

*Grotius*, while seeming to indorse Vasquius in denying usucaption a place both in public and private international law, except as established by municipal law, is at pains to point out its national recognition from the earliest times. Among other instances he tells that, to the demand of the King of the Ammonites for the restoration of certain lands between the Arnon and the Jabbok, and from the deserts of Arabia to the Jordan, the leader of Israel opposed a three hundred years' possession, and demanded to know of the king why he and his forefathers had been quiescent so long. Also, that "the Lacedaemonians, according to Isocrates, laid it down as a most certain rule, acknowledged among all nations, that public possessions as well as private are so confirmed by length of time (*multo tempore*) that they can not be taken away. By which *natural law (quo jure)* they refused those who were seeking the recovery of Messina." (De Jure Belli ac Pacis, Lib. 2, cap. 4.)

Taparelli:

Hence the law of prescription—a necessary and just law—by means of which society stops, through certain limitations, all inquisitions of ancient rights.

...

Most reasonable is, therefore, the law of prescription in the natural order, although nature itself does not overtly establish its strict necessity nor fix its proper limitations. This is to be performed by society as it grows more and more perfect; and it is as much the more its office as it is therefrom and therein that the social complaint requiring such a remedy takes its rise. (Natural Law, vol. 2, 979.)

Sala:

1. By using anything with just title and good faith the right of possessing it is likewise acquired; but this manner of acquiring is considered to be civil, because of its being at first view resisted by natural reason that does not

allow anybody to be deprived of his possession without his fault or consent, although it does not cease to have great equity, as it is grounded on the requisitions of public good; so that we have no great objections to say that it can also be referred to the secondary law of nations.

2. To this manner of acquiring the Roman laws gave the name of usucaption or prescription, . . . and it is but acquisition of *dominium* by continued possession during the time determined "by the law." Its introduction was made necessary from public utility and the tranquillity of the republic, because, in default of it, possessors of things would be subject to unlimited disputes, which their long possession, even though acquired by sale or any other legitimate title, would not be enough to prevent. Any one would be enabled to claim that the thing belonged to his ancestors, and never to him who sold it, and possession would keep uncertain and the state subject to the grievances that may be easily conceived. With reason did Cicero call it the end of solicitude and disputes." (Illustration of Spanish Law, vol. 1, book 2, title 2.)

The Supreme Court of the United States, in *Rhode Island v. Massachusetts* (4th Howard, 639) said:

No human transactions are unaffected by time. Its influence is seen over all things subject to change. And this is peculiarly the case in regard to matters which rest in memory and which consequently fade with the lapse of time and fall with the lives of individuals. For the security of rights, *whether of states or of individuals*, long possession under the claim of title is protected.

And again, in *Wood v. Carpenter* (101 U.S. 139), although the question was as to a statutory bar, the observations of the court apply as well to the grounds of prescription. Said Mr. Justice Swayne:

Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at their foundation. They stimulate activity and punish negligence. *While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary.* Mere delay extending to the limit prescribed is itself a conclusive bar. The law and the antidote go together.

Lord Coke, while declaring limitation of actions to be by force of statutes, wrote:

But they have said that there is also another title by prescription that was at the common law before any estatute of limitations, and inasmuch as such title by prescription was at the common law, *ergo* it *abideth* as it was at the common law.

Bracton, who wrote long before the first English progressive limitations act (1540) and before Parliament named events as bounds of limitation even, said:

We must see also in what manner an obligation is got rid of; and it is known it is likewise got rid of sometimes by an exception in various ways, as if a person should claim and another should show he has discharged it. . . . Likewise, by an exception of a prescription on account of defect of proof because, as time is a mode of bringing in an obligation, so it is a mode of getting rid of it through dissimulation and negligence, which is limited under certain times, for *time runs against the indolent and those who are careless of their right*. (Twiss's Bracton, vol. 2, p. 123.)

Sir Henry Maine:

It was a positive rule of the old Roman law—a rule older than the Twelve Tables—that commodities which had become uninterruptedly possessed for a certain period become the property of the possessor. (Ancient Law, 280.)

Brocher declares:

Prescription is as much a necessity to society as is inheritance to a family. We can not conceive of the second without the first. Without such a sanction, nothing would be secure. (Droit Int. Priv. 321.)

Domat:

The use of prescription is wholly natural in the state and condition we are in.

*The same reason which makes that long possession acquires the property and strips the ancient proprietor, makes likewise that all sorts of rights and acquisitions are acquired and lost by the effect of time.* Thus a creditor who has omitted to demand what is due to him within the time regulated by law, has lost his debt and the debtor is discharged from it. . . . And, in general, *all sorts of pretensions and rights of all lands whatsoever are acquired and lost by prescription*, unless they be such as the laws have particularly excepted. Thus we have two effects of prescription, or rather two sorts of prescription. One which acquires to the possessor the property of what he possesses, and which divests the proprietor of his right because of his not possessing; and the other by which all other kinds of rights are acquired or lost; whether there be any possession of them—as in the case of the enjoyment of a service, or whether there be no possession of them at all—as *in the loss of a debt for not demanding it*.

All sorts of prescription by which rights are acquired or lost are grounded upon this presumption, that he who enjoys a right is supposed to have some just title to it, without which he had not been suffered to enjoy it so long; that he who ceases to exercise a right has been divested of it for some just cause; *and that he who has tarried so long a time without demanding his debt, has either received payment of it, or been convinced that nothing was due him.*

We must distinguish two sorts of rules relating to prescription. Those which concern the different manners in which the laws have regulated the times of prescribing, and those which respect the nature of prescriptions. . . . These are the natural rules of equity, but those which make the time of prescrip-

tion only arbitrary laws. For nature does not fix what time is necessary for prescribing. (Civil and Public Law Strahan's Ed. (1732) 483–484.)

Burke:

If it were permitted to argue with power, might not one ask these gentlemen whether it would not be more natural, instead of wantonly mooting these questions concerning their property, as if it were an exercise in law, to found it on the solid rock of prescription—the soundest, the most general, the most recognized title between man and man that is known in municipal or in *public* jurisprudence; a title in which not arbitrary institutions, but the eternal order of things gives judgment; a title which is not the creature but the master of positive law; a title which, though not fixed in its term, is rooted in its principles in the law of nature itself, and is indeed the original ground of all known property; for all property in soil will always be traced back to that source, and will rest there. . . . These gentlemen know as well as I that in England we have always had a prescription or limitation, *as all nations have against each other*. (Letter to Son: Works, vol. 6, p. 412. See also speech on English Constitution, vol. 7, p. 94.)

We add expressions on the subject from two of the great departments of the United States Government, that of State and that of Justice. Mr. Bayard, Secretary of State, in a note to Mr. Muruaga, December 3, 1886, said:

The same presumption maybe almost as strongly drawn from the delay in making application to this Department for redress. Time, said a great modern jurist, following therein a still greater ancient moralist, while he carries in one hand a scythe by which he mows down vouchers by which unjust claims can be disproved, carries in the other hand an hourglass which determines the period after which, for the sake of peace and in conformity with sound political philosophy, no claims whatever are permitted to be pressed. *The rule is sound in morals as well as in law*. (Wharton, Int. L. Appendix, vol. iii. See Crallé *infra*.)

The Government of the United States was indebted to Reside upon a judgment. The Secretary of the Treasury in 1858 undertook to withhold a part of it, because of an alleged indebtedness of Reside to the government of twenty-three years' standing. The question of his right to do so was referred to Attorney-General Black, and the following is a part of his answer to the President under date July 21, 1858:

It is a decisive answer to say that the claim is based on transactions which are twenty-three years old. It is a rule of common sense and reason as well as law that when a party has lain by with a claim until the evidence concerning it has ceased to exist, and then produces it, the other party is not bound to explain it. It is presumed that he could explain it if his witnesses were alive and his papers preserved, and that presumption shall stand in place of all the proof which might have been demanded when the matter was fresh.

I admit that the statutes of limitation can not be pleaded against the Government as a technical bar. I do not speak of that conclusive *legal* presumption which would be created in six years against an individual; but the Govern-

ment is bound, like anybody else, by the rules of evidence and by the *natural* presumptions arising from the facts of the case. In some countries there are no statutes of limitation; in all countries there are large classes of cases to which such statutes do not apply. But it is one of the rules of every civilized code that a certain length of time, generally about twenty years, shall be regarded as evidence that a claim is either unjust or satisfied, and such lapse of time proves that fact as fully as if it had been attested by credible witnesses.

The experience of all mankind has shown that the evidence thus furnished by time is true and reliable. The judge who disregards it would decide against the original honesty of the case ninety-nine times in a hundred. . . . When time testifies against the sovereign it is heard with as much respect as any other witness would be.

This is to be read in the light of the principles recognized in the case of *The United States v. R. R. Co.*, 118 U.S. 120, with which, it is believed, properly considered, it does not conflict.

It is pertinent to note, in this connection, that the late Dr. Wharton, quoting Mr. Crallé, formerly Assistant Secretary of State, in the first edition of his *Digest of International Law* (1886), issued from the United States State Department, employed this language (§ 239):

There is no statute of limitation as to international claims, nor is there any presumption of payment or settlement from the lapse of twenty years. Governments are presumed to be always ready to do justice, and whether a claim be a day or a century old, so that it is well founded, every principle of natural equity, of sound morals, requires it to be paid.

While in his second edition, issued therefrom a year after, are found these remarks (Appendix to 3d vol.):

While international proceedings for redress are not bound by the letter of specific statutes of limitations, they are subject to the same presumptions as to payment or abandonment as those on which statutes of limitations are based. A government can not any more rightfully press against a foreign government a stale claim, which the party holding declined to press when the evidence was fresh, than it can permit such claims to be the subject of perpetual litigation among its own citizens. It must be remembered that statutes of limitations are simply formal expressions of a great principle of peace which is at the foundation not only of our own common law but of all other systems of civilized jurisprudence.

The opposition (perhaps as strenuous now as at any former period) to international prescription among modern writers (instance Pomeroy's *Int. L.* 126) seems to us to arise in good measure from confusion of terms, and to be therefore largely apparent, rather than real. In other words, the difference between the two schools, as we conceive, partly at least, "lies in the terms." Prescription is confounded with limitation; not strangely either, considering the history of the terms carrying the two ideas, the common purpose to be

attained, and the consequent extent of their indiscriminate use. As the distinction is to be sharply marked in reaching a correct conclusion on the question under consideration, we briefly note that history and some distinguishing features between the two.

Under the Theodosian code, which required certain actions to be brought within a stated period after the cause of action arose, a plea that the action was begun too late was called "praescriptio" by the Roman lawyers, just as it is now called by the English a plea of the statute of limitation. Title and rights by this means—enjoyment for the defined period—were secured or maintained.

Usucapio indicated ownership acquired by enjoyment through long though undefined lapse of time.

Subsequently, under Justinian's code, usucapio was dropped and praescriptio used to express both ideas; and thus the latter term has come down to us, its derivative carrying the two meanings with modifications engrafted on it, in the course of the centuries. In the changes wrought prescription seems to have yielded its own meaning to that of the disused word, and found expression in some nations for its old signification in a distinct term.

Mr. Markby, from whose lectures on the Elements of Law we have freely drawn, says:

In France and Italy, whether a man claims that ownership is transferred to him by possession, or whether he defends himself on the ground that the action is brought too late, he calls it prescription.

In Germany the acquisition of ownership by possession is called "Ersitzung," and the bar to the action "Verjährung." We use in England the terms prescription and limitation. And inasmuch as the two things are really different it is better to have the two names. In England the word "prescription" (as defined by Lord Coke) signifies the acquisition of title by length of time and enjoyment. This would serve as a general description of usucapio. (Elements of Law, ch. 13.)

While statutes of limitation are doubtless in good part aimed to be, as they are often alluded to as, expressions of prescription, they are, nevertheless, inaccurate expressions, because, for one thing, of their rigidity and want of adaptation to varying conditions and circumstances.

It would be a bold assertion to say they are correct embodiments of true presumptive evidence, when, for instance, in the States of this Union the statutory periods within which actions of ejectment may be brought range all the way from five to forty years, and those upon promissory notes from two to twenty years.

A conclusive legal "presumption," such as is said to arise under these statutes, is *not* a rule of inference, but one attaching itself to a given state of facts upon grounds of public policy. (Greenleaf, Ev. § 32.) It does not postulate the truth of the facts, except in a general sense, or the furtherance of justice in *every* instance. For example:

“It does not assume,” says Greenleaf, “that all simple contract debts of six years’ standing are paid, nor that every man quietly occupying land twenty years as his own has a valid title by grant; but it deems it expedient that claims, opposed by such evidence as the lapse of those periods, should not be countenanced, and that society is more benefited by a refusal to entertain such claims than by suffering them to be made good by proof.”

On the contrary, prescription *is* a “rule” of inference; not necessarily perhaps that debts have been paid or titles granted, or other particular thing done, but that *something* at least has transpired which, in the *natural order*, as the Civilians say, forms a basis and demand for its operation. It is no more the creature of legislative will than is any other induction. That the lapse of time, variant according to circumstances, needed to raise a rational presumption of a past occurrence happens to coincide in a particular case with the statutory period in that behalf does not make prescription and statutory limitation one. They are always distinct. The former relates to substance, is the same in all jurisdictions, and aims at justice in every case, while the latter pertains to process, varies as a rule in all jurisdictions, and from time to time often arbitrarily in the same one, and admits occasional individual injustice. Lord Coke, as seen, thought prescription “abideth” at common law notwithstanding the “estate.”

The supreme court of California mark the distinction thus:

They [statutes of limitation] essentially differ from the civil law doctrine of prescription, as they act simply upon and defeat the remedy, while the latter defeats the right also.

And again in a later case:

No presumption is to be raised either as to payment or otherwise from the mere lapse of the *statutory* period, any more than would naturally arise as to any other stale demand.

And such is the generally accepted modern view.

Prescription has been denied a place in the public law because it has “no definite fixed limit” (Pomeroy, *supra*), which is very like objecting to it because it is not limitation.

As before seen, prescription was recognized when limitation was yet unknown. Bracton knew of it at common law before the English statutes on the subject. Courts of equity, where limitation acts do not apply, have invariably given lapse of time due weight in adjudications. They have always refused to enforce stale demands without undertaking to fix precise times for imparting the infirmity. Each case is left, under general principles, to be adjudged, as to time, according to its own character and circumstances. And the doctrine has been applied to the state acting for its citizens. In *The United States v. Beebee, McCreary J.*, in a suit where the United States Government sought (in the interest of certain patentees) to recover land adversely held for a long period under color of title, held:

Although the general rule is that statutes of limitation do not run against the state, yet when the state resorts to equity for relief it must come on the same condition with other suitors, and a stale claim by the state maybe rejected for that reason, as it might when presented by an individual. (17 C. L. J. 77.)

On appeal the Supreme Court of the United States (127 U. S., 346), while disavowing imputation of *laches* to government for negligence of officers in matters of state concern, affirmed the judgment, and said:

Courts of equity refuse to interfere to give relief where there has been negligence in prosecuting the claim, or where the lapse of time has been so long as to afford a clear presumption that the witnesses to the original transaction are dead, and the other means of proof have disappeared.

One had as well essay to bound memory, or the occurrences that constitute negligence, by exact limits of duration, as to attempt to define just what shall be time's efflux to establish true prescriptive rights. Parties, subject-matter, habits, conditions, circumstances, enter into the problem. It is one thing to forget or be able to show how one came by a farm, and another how one came by some animal on the farm. The fact that a nation obtained a particular territory by devastating-war will be treasured in memory long after every vestige of the transactions by which the implements of war were procured shall have been obliterated, and long after the titles of its bountied soldiers shall have been lost in oblivion.

To withhold causelessly a demand for goods sold until the witnesses to the transaction and other usual means of ascertaining the facts have, in ordinary course, passed away, is negligent conduct; while to withhold a bond issued by public authority and of which presumptively a public register is kept for a like time after maturity may not be. It is true experience teaches that such and such things are apt to occur ordinarily in about such and such times in the affairs of men, but it also recognizes the impossibility of prescribing exact periods for the occurrences, as well as the certainty of occasional departures from the general rule.

If today A have a watch of B procured ten years ago, and both, in the multiplicity of their mutual dealings and exchanges, have forgotten the circumstances of such procurement, and all means of determining the true ownership are lost, whose watch does it become? A's. His title arises out of the necessity of the situation, or as Pothier says of prescription, it is founded in the ordinary course of things. If in less complex transactions a like situation should arise only at the end of twenty years the result would then be the same. All know that continued possession by A and disregard or neglect of his property by B will ultimately so terminate. But no earthly power can prescribe just what lapse of time will be necessary to create that situation. To decree when such a condition shall be *deemed* to exist is another thing. That can be done by legislation or by treaty stipulation, and when done constitutes limitation—not prescription.

It is this prescription which underlies, varies from, antedates, and, as Phillimore says, forms the model for municipal limitation regulations that the

writers asserting the existence of the doctrine in the international law refer to and treat of.

On careful consideration of the authorities on the subject, much of whose discussion is only remotely applicable to the question as it is presented to us, we are of opinion that by their decided weight—we might say by very necessity—prescription has a place in the international system, and is to be regarded in these adjudications.

True, but few of them make reference to individual claims or to debts by one state on account of transactions with citizens of another state. But the principles recognized are general. Founded in nature, their application is imperative and broad as human transactions. They reach to debts necessarily, as Domat shows.

If an article be paid for when bought and the money left as a special deposit with the purchaser, time, under the doctrine, will run against a claim for it. *A fortiori* does it run, where the money is not segregated from, but left with the common fund of the buyer. Besides, the right to defend against is as substantial as the right to assert a demand. Its impairment is an injury. One whose act or negligence results in such injury must be charged in justice with its consequences. The causeless withholding of a claim against a state until, in the natural order of things, the witnesses to the transaction are dead, vouchers lost, and thereby the means of defense essentially curtailed, is in effect an impairment of the right to defend. The public law in such cases, where the facts constituting the claim are disputed and disputable, presumes a defense. But where there is valid reason for the withholding the case is different. The presumption is referable to some fault of the claimant. Incapacity, disability, want of legal agencies, prevention by war, well-grounded fear, and the like are not faults. Abandoned or neglected property or rights only are prescriptible.

Vattel says:

As prescription can not be grounded on any but an absolute or lawful presumption, it has no foundation if the proprietor has not really neglected his right.

Again:

After showing that “immemorial prescription” confers an indefeasible title because it is founded upon a possession the origin of which is lost in oblivion, he adds:

In cases of ordinary prescription the same argument can not be used against a claimant who alleges just reasons for his silence, as the impossibility of speaking, or a well-founded fear, etc., because there is then no longer any room for a presumption that he has abandoned his right. It is not his fault if people have thought themselves authorized to form such a presumption, nor ought he to suffer in consequence. He can not, therefore, be debarred the liberty of clearly proving his property.

It is “ordinary prescription” subject to be rebutted, with which we are especially concerned. How is one in practice to know in a given case when it

arises, it may be inquired, since it has no fixed periods, and no analogies to guide one arising from limitation acts, such as obtain in courts of equity. A definitive answer it would be difficult to frame. But in general we should say, where, all the evidence considered, it appears from long lapse of time and as a result thereof ordinarily to have been apprehended, that material facts including means of ascertainment pertaining to support or defense are lost, or so obscured as to leave the mind, intent on ascertaining the truth, reasonably in doubt about them, or in "danger of mistaking the truth," a basis for the presumption exists. If such situation be fairly imputable to a claimant's *laches* in withholding his demand, or, in Vattel's phrase, "when by his own fault he has suffered matters to proceed to such a state that there would be danger of mistaking the truth," prescription operates and resolves such facts against him; but if not so imputable, what the finding must be becomes a question of the preponderance of testimony merely, leaving each party to the misfortune time may have wrought for him in the support or in the defense of the claim.

While prescription names and can name no particular periods, since Sir Matthew Hale's enunciation to that effect twenty years have been looked upon as about the time, in the ordinary run of affairs, required to give rise to the presumption. And the general acceptance of that time is evidence of its reasonable foundation. Still it must be said the constantly increasing multiplicity of business transactions and intercourse tends to suggest a shorter period.

In this case it is not shown when the claim was first brought to the attention of the United States; and we have not sought to ascertain, for, in the view we take, it is immaterial. Whenever so brought, it came *cum onere*. It has been held that statutes of limitation can be pleaded against the state in an action upon an assigned claim. (*United States v. Buford*, 3 Peters, 30.) The principle applies here, and continues to operate until time ceases to run against the claim, so to speak. When does it so cease to run?

It has been urged with plausibility that this occurs on the claimant invoking the aid of his government, because then he ceases to have control of his claim. But notice to the plaintiff state is of itself no protection to the defendant state. The latter's means of defense may be dissipated while the claim lies in the archives of the former, and thus its right to defend impaired in the sense above indicated. If it be said the plaintiff state is an interested party and time should not begin to run against it till its discovery of the injury, it may be answered that where one of two states is liable to be placed at a disadvantage by the conduct of a citizen it should be that one whose citizen he is. We think the due notification to the debtor government marks the proper date. This puts that government on notice, and enables it to collect and preserve its evidence and prepare its defense.

Of course time's work of obscuration, effacement, and destruction goes constantly on under all circumstances. "Time and tide wait for no man." And all, we apprehend, is meant by its failing or its ceasing to run against a claim is that in such event that work is not to be imputed to the *laches* of the claimant. Delays are therefore harmful. Honest claims and honest defenses suffer

by them; only dishonest ones profit. And so it is a delayed demand naturally excites criticism, even where it escapes the ban of suspicion, and the greater the delay the stronger the tendency in this direction.

In a recent case, the claim of Carlos, Butterfield & Co., of New York, against the Government of Denmark, Sir Edmund Monson, the British minister in Athens, the arbitrator under a treaty (1888) between the United States and Denmark, where it appeared that a lapse of less than six years intervened between the occurrences (1854–55) complained of (being acts of the public authorities of the Island of St. Thomas in regard to claimants' ships, and of which the government at Washington had prompt notice) and the official notification of the claim to the Danish Government, said, while denying the insistence of Denmark that such delay constituted a conclusive objection to the validity of the claim, that neither claimants nor the United States Government used due diligence, "*and have thereby exposed themselves to the legitimate criticism, of the Danish Government on their dilatory action.*"

It is said there are old claims about which there is and can be no dispute as to the facts. It is enough to say as to such, that the present holding does not stand in their way. The statement of Mr. Crallé, Acting Secretary of State, to which our attention has been directed, namely, "Governments are presumed to be always ready to do justice; and whether a claim be a day or a century old, so that it as well founded, every principle of natural equity and of sound morals requires that it should be paid," may not in itself perhaps be opposed to prescription. Conceded that a claim "is well founded," there would seem to be no occasion for prescriptive or other evidence in regard to it. The objection to the remark, in the connection in which it was employed, is, that it assumed the truth of the matter in controversy, to wit, the validity of the claim, for the ascertainment of which the principle was invoked. As to any admitted or indisputable fact, the public law, not resting "upon the niceties of a narrow jurisprudence, but upon the enlarged and solid principles of state morality," we are inclined to think, would not oppose the lapse of time, except for the protection of intervening rights, should there be such, even where municipal prescription might.

The contention urged with force, we should have before observed, that the plaintiff government conclusively adjudges the question of *laches* on the part of claimants as against the defendant government is not, we think, tenable. It is only another form of denying prescription. If both governments are not bound by the principle, it is not the law. If it be the law, as we hold, neither can determine the occasion of its application for the other. By the same title the United States decides a claim is not, Venezuela may declare it is, barred. Of course, in their diplomatic discussions each government must determine the law for itself.

And the decisions of each, we may remark on the other hand, on such questions are entitled to high respect. Such decisions are not to be taken, as has been suggested, as persuasive arguments in support of or against claims in the ordinary acceptation. The state or foreign affairs department of a govern-

ment always commands the services of the most learned, able, and experienced statesmen and juriconsults the country affords. From every consideration affecting it, its purpose must always be to conform its decisions to the public law in international matters. It is, of course, apparent that such decisions are sometimes not the law, since they are occasionally in conflict as between two countries. They are, nevertheless, one of its important sources.

In some of the cases argued long periods have intervened after due notifications of claims by the United States Government to that of Venezuela, in which no official mention of them is made by either government. It is urged that such lapses should, on general principles, be held to operate peculiarly against claimants. Though the question is not involved in this case, we have considered it, and have thought it worth while here to say we are unable to find authority or a satisfactory footing for this insistence as a general-proposition. There are so many things that may induce one government not to press pending demands against another, disconnected with the demands themselves, consideration for the condition and welfare of the debtor state itself being prominent among them, that we are disposed to think the true and, so far as we are advised, the usual way is to regard time in such cases, in the absence of circumstances evincing abandonment, as no respecter of persons.

Upon these principles, too lengthily discussed, without awaiting further proof called for in defense from Venezuela, we disallow claim No. 36. It was withheld too long. The claimants' verification of the old urgent account of 1841, twenty-six years after its date, without cause for the delay, supposing it to be competent testimony, is not sufficient under the circumstances of the case to overcome the presumption of settlement.

**Case of Ann Eulogia Garcia Cadiz (Loretta G. Barberie) v.  
Venezuela, opinion of the Commissioner, Mr. Findlay\***

**Affaire concernant Ann Eulogia Garcia Cadiz (Loretta G. Barberie)  
c. Venezuela, opinion du Commissaire, M. Findlay\*\***

Limitation and prescription—great lapse of time to produce certain inevitable results such as the destruction or the obscuration of evidence, by which the equality of the parties is disturbed or destroyed—in such circumstances, impossible to accomplish exact or even approximate justice—time itself is an unwritten statute of repose,

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\* Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. IV, Washington, 1898, Government Printing Office, p. 4199.

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