

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

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

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

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

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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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a principle which belongs to no code or system of municipal judicature, but is as wide and universal in its operation as the range of human controversy.

Prescription—un grand laps de temps produit certains résultats inévitables, tels que la destruction ou l'obscurcissement des preuves, troublant ou supprimant ainsi l'égalité entre les parties—dans de telles circonstances, il est impossible de rendre une justice exacte ou même approximative—le temps lui-même constitue une limitation non écrite, un principe qui n'est propre à aucun code ou système judiciaire interne, mais qui est aussi vaste et universel dans son application que l'éventail de la controverse humaine.

At the threshold of this case there is a jurisdictional question which might give rise to serious difficulty if the claim was well founded in other respects. By the terms of the treaty we are only at liberty to pass upon such claims as were presented to the Government of the United States or to its legation at Caracas *before* the 1st day of August 1868. The papers in this case were submitted by the legation to the old commission on the 1st of August 1868, but there is no positive proof that they had been presented to the legation prior to that date, and by the strict terms of the language above quoted would be excluded. It appears, however, that they were mailed from New York on the 22d of June 1868 to D. M. Talmage, the commissioner of the United States, then engaged in the discharge of his official duty at Caracas, and in due course ought to have reached him in time to have been filed with the legation before the 1st of the following August. Had they been transmitted to the legation instead of Mr. Talmage we might have been willing to presume that they were received in time to come within the terms of the present submission; but, sent as they were, there is no presumption to be made in favor of their timely receipt. The question, however, is not a very important one, because on examining the papers and proofs submitted we must reject the claim upon other grounds which go to its merits. The petition alleges that José Felix Garcia Cadiz was a citizen of the United States, and that he acted as agent for an agent of the Government of Venezuela to purchase arms for her forces then engaged in the war for independence, and that in the performance of this service he was caused to suffer a pecuniary loss which is variously stated, and in such a loose and unsatisfactory manner that we can neither discern the precise nature of his injury nor the extent of his losses. The contract under which it is claimed he was acting is not among the papers, nor do they supply the evidence by which we can ascertain its terms. It appears, however, to adopt the language of the petition,

that during the years 1810, 1811, 1812, *and thereabouts*, the said Cadiz was the agent of the Venezuelan Government in the United States, acting by request and under the direction of Don Juan Vicente Bolivar, then agent of

Venezuela in the United States of America, and as such purchased arms, in the *neighborhood* of five thousand muskets, for the Venezuelan Government, at twelve (12) dollars each, for which he was obliged to pay in part, and on which he advanced considerable of his own money, and for which the said Bolivar as agent for the said Venezuelan Government agreed that he should be paid.

Reference is then made to a petition of his brother, Don Ramon Garcia, dated July 28, 1811, and the papers thereto annexed, as supplying the evidence which supports the averments of fact as above quoted. An examination of these papers shows that they consist of a letter addressed to some one as "Most Pleased Sir," and who, from the context, would appear to have been a person in high authority in Venezuela, particularly as the writer expects a great deal from the equity of this individual, whom, in the closing paragraph, he styles "Your Highness." This letter is dated "Caracas, *July 28, 1811*," and, although apparently written by Don Ramon Garcia, is not signed by anybody. This is the foundation of the claim, and it rests, therefore, upon an unsigned letter addressed to nobody. The claim, in fact, like an air plant, seems to draw sustenance from every source except its roots. On examining it, however, we find that the case made does not accord fully with the facts as alleged in the petition. The case as presented by the letter represents Joseph Cadiz as being exposed to an action by the manufacturers for breach of contract, and as certain to suffer in credit by the failure of Venezuela to take all the muskets ordered, besides suffering a direct pecuniary loss by the advance of \$3,000 on account of muskets and the payment of as much more on account of Bolivar, who had agreed to advance it, but failed.

There is no mention made of any loss suffered by the claimant in consequence of the difference between the price paid for the muskets and the proceeds of the sales of coffee for which they were bartered.

Appended to this letter, however, is a statement of account, under date of *July 12, 1823*, purporting to have been made by Joseph Cadiz, and which is entitled "A statement of the debt and its interests of Don Juan Vicente Bolivar, agent of Venezuela in the United States of America, during the year 1811." In this account Cadiz charges for \$10,851, with eleven years' interest on the same, \$6,161, as a sum of money due him on 3,617 muskets at \$12.50 apiece, explaining the item as follows: "These muskets were bartered for coffee at the rate of 100 lbs. of coffee for each musket; and, the coffee having been sold in Philadelphia at \$9 per 100 lbs. to meet the manufacturers' claims, etc., there was a difference as above stated against the accountant of the principal sum of \$10,851.

Here, then, is a claimant who, through his brother and agent in 1811, is alleged to have complained to some anonymous body in Venezuela that he had been injured by the refusal of the agent of that government in the United States to carry out a contract with respect to the purchase of muskets, and yet who fails to mention what in eleven years afterwards, according to an account

then made up by him, becomes one of the principal items of his loss. Not only so, but the claimant himself, in making up this account, does it so loosely that he makes an error of \$1,808.50 in the 3,617 muskets item, charging for them \$43,404, at \$12.50 per musket, which at that rate would yield \$45,212.50. It is true this error is against him, but as an evidence of the looseness with which the account is stated it matters not on which side of the column it occurs. A man with a *bona fide* claim and a reasonable expectation of having it paid does not usually fall into such errors. There is another thing to be noticed in connection with this account. The lot of 583 muskets complete with bayonets is mentioned as having been "taken along with him"; that is, Bolivar. The other lot of 3,617 is called "the remainder received from the manufacturers," and would appear to have been paid for in coffee, which fell short of the agreed price by \$10,851. Were these muskets received by Venezuela or not? The letter of Don Ramon Garcia before referred to, under date of July 28, 1811, and which constitutes the first presentation of the claimant's case, in its general tenor would seem to very pointedly indicate that the 5,000 muskets bargained for in some way by Cadiz and Bolivar had not been delivered. The language of Don Ramon is as follows: "But on asking of the above-mentioned agent, Don Juan Vicente Bolivar, the amount which was to be paid as first installment, the agent refused to pay it, and Don José Felix (meaning Cadiz) was left to pay the debt" (that is, as we understood it, the first installment). The writer then goes on to say: "And as about that time Don Telesforo Orea succeeded Mr. Bolivar in the agency and authority of the same, when the time for the fulfillment of the contract for the 5,000 muskets was up Don José Felix (that is, Cadiz) called on Bolivar, who told him to see Orea about the matter. He did so, but Orea sent him back to Bolivar; *therefore* (italics ours) the brother of the undersigned (although, as we have before stated, the letter is signed by nobody) is greatly exposed to be ruined *if, as it seems natural, the manufacturers sue him and take possession of his goods*" (italics again ours).

From this statement it would appear that the muskets were not delivered, and that what excited the fraternal solicitude of Don Ramon was the fear that his brother would be sued for a breach of contract. Besides, it may be accepted as a fact which requires no proof that the manufacturers would not have parted with their property until they were either paid or secured. But, again, the letter goes on to say "the undersigned can not forbear regretting, in the first place, the detriment caused to this province and its confederates *by not having secured* the considerable number of arms which were bargained at such a good price, considering that the Government of the United States pay 50 cents more for each musket." If this language has any significance at all, it can only mean that Don Ramon, in 1811, in the possession of letters recently received, as he states in this same letter before quoted, from his brother in the United States, complaining of the course of Bolivar, understood the cause of grievance to be that the claimant had made a bargain for muskets which he was not able to fulfill, and that his liability to a suit for breach of contract, together with certain money he had advanced in part payment for the muskets, constituted his claim. In 1823 the claimant, as we have

shown, appears to have enlarged his claim, and it then appears as if the muskets had been delivered, but he failed to realize in full what was agreed to be paid for them, by reason of the coffee which was taken in exchange not bringing as much per pound as had been anticipated.

There is not the slightest evidence in the papers that this anonymous letter and this account, neither of them sworn to, and constituting the grounds of claim, were ever presented by anybody to anybody. There is a minute at the bottom of the letter, also unsigned, which reads as follows: "The executive power ordered Don Telesforo Orea to fulfill the contract, provided that its terms were not very unreasonable. This was substantially the decision, and the order was sent to him thereupon." From this it would appear, however, that the contract had not been fulfilled, and the muskets not delivered, and the relief desired and obtained by the claimant was the escape from liability for a breach of the contract.

The claimant appears to have left the United States shortly after these occurrences and taken up his abode in different parts of South America, not returning, however, to Venezuela. He finally settled in Santiago de Chile, from which place it would seem from an indorsement on the account before mentioned, he communicated with his brother Don Ramon, then in Caracas, concerning his claim. He accordingly sent this account, together with all the papers in his case, to this brother, with full power of attorney, under date of the 3d of May 1823, to collect and receive "all the amounts due to him in the *Republic of Colombia*, and specially that he may demand and collect the amount specified in the documents attached to this power of attorney." What was done with the claim, and under this power, appears from the affidavit of the present claimant, daughter of Mr. Cadiz, made in New York on February 28, 1890, in which she says "that according to deponent's best knowledge, information, and belief, the family of Ramon, from 1823 to about 1866, all of which time they had charge and possession of the papers on which this claim is founded, never collected nor received anything on account of the claim in question, *and never endeavored or undertook to collect the said claim.*" . . . So it slumbered for more than forty years, until the papers were sent to Mr. Talmage in the summer of 1868, as before described, and having been disallowed by the commission of which he was a member, because it "was not filed with the United States legation previous to the organization of the commission," it now comes before us, after the lapse of nearly eighty years from the origin of the claim. Both the original claimant and his brother Ramon, to whom the power of attorney was given, appear to have died in 1823, but while the power was thus revoked, there is no reason why the parties interested should not have presented the claim, either in the tribunals of Venezuela or through the good offices of the United States, and not having done so when the circumstances in which it originated were comparatively recent, not even *endeavoring or undertaking* to collect it, but sleeping on their rights for nearly a half century, we are of opinion that the consideration of such a case, even if we could ascertain with reasonable certainty

what it was, would do violence to every principle of sound policy and open the door for the admission of any claim, however stale and obscure. It is true that this commission is an international tribunal and in some sense is not fettered by the narrow rules and strict procedures obtaining in municipal courts, but there are certain principles, having their origin in public policy, founded in the nature and necessity of things, which are equally obligatory upon every tribunal seeking to administer justice. Great lapse of time is known to produce certain inevitable results, among which are the destruction or the obscuration of evidence, by which the equality of the parties is disturbed or destroyed, and, as a consequence, renders the accomplishment of exact or even approximate justice impossible. *Time itself is an unwritten statute of repose.* Courts of equity constantly act upon this principle, which belongs to no code or system of municipal judicature, but is as wide and universal in its operation as the range of human controversy. A stale claim does not become any the less so because it happens to be an international one, and this tribunal in dealing with it can not escape the obligation of an universally recognized principle, simply because there happens to be no code of positive rules by which its action is to be governed. The treaty under which it is sitting requires that its decisions shall be made in conformity with justice, without defining what is meant by that term. We are clearly of the opinion that in no sense in which the term is used would it be just for us to make an award which would require the levying of a tax on the whole present population of Venezuela to pay a claim which originated before nearly all of the oldest of them were born, and which is presented at a time when it is impossible to say whether it is well founded or not, the delay being without excuse or justification; and we accordingly reject the claim and dismiss the petition.