SPADER ET AL. CASE

BAINBRIDGE, *Commissioner* (for the Commission):

William V. Spader, claimant herein, states that he is a citizen of the United States of America, and that he is the only child and sole heir-at-law of Mary Elizabeth Franken Spader, deceased, who was the sole legatee under the last will and testament of María Josepha Brion Franken, who was one of the legatees and beneficiaries under the last will and testament of Louis Brion, usually known as Admiral Louis Brion, who died on the 21st day of September, 1821. The memorial sets forth certain claims against the Republic of Venezuela in favor of Admiral Louis Brion for services rendered by the latter in the cause of Venezuelan independence. Admiral Brion left his estate to his brother, who died shortly afterwards intestate and unmarried, and to his three sisters, María Josepha, Carlota and Helena. María Josepha Brion married Morents E. Franken in Curaçao, and after her husband's death removed to the United States, where she died in 1859, bequeathing all her estate to her daughter, Mary Elizabeth Franken, who married Krosen T. B. Spader. Mary E. Spader was naturalized as a citizen of the United States April 29, 1865. Charlotte Brion married Joseph Foulke, a merchant of New York. She died in 1846.

William V. Spader claims that he and the other proper parties, heirs of Admiral Brion and citizens of the United States, are entitled to be paid by and to receive from the Republic of Venezuela the two-thirds part of the indebtedness of the Republic of Venezuela to the estate of Admiral Brion.

It appears from the record that this claim originated between the years 1810 and 1821. Citizens of the United States had, or appear to have had, interest in the claim prior to 1846. It was first brought to the attention of the United States Government, so far as the evidence shows, on November 1, 1889. No reason or explanation is given for delay in presentation. It was

[1] See the Italian - Venezuelan Commission (Gentini Case, Giacopini Case, Tagliaferro Case) in Volume X of these *Reports*.

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submitted to the Commission created by the Convention of December 5, 1885, between the United States and Venezuela. The Commission dismissed it without prejudice, for want of jurisdiction. It does not appear in evidence when or in what manner the claim was ever otherwise brought to the attention of the Government of Venezuela.

A right unasserted for over forty-three years can hardly in justice be called a " claim."

> Prescription [says Vattel] is the exclusion of all pretensions to right — an exclusion founded on the length of time during which that right has been neglected.
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> All these 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. (Domat, Civil and Public Law, Bk. III, Tit. VII, sec. 4.)
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> The same presumption may be 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. (Mr. Bayard, Secretary of State, to Mr. Muruaga, Dec. 3, 1886. Wharton, Dig. Int. Law, Appendix, vol. 3, sec. 239.)
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> 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 limitation 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. (Wharton, Dig. Int. Law, Appendix, vol. 3, sec. 239.)

It is doubtless true that municipal statutes of limitation can not operate to bar an international claim. But the *reason* which lies at the foundation of such statutes, that " great principle of peace," is as obligatory in the administration of justice by an international tribunal as the statutes are binding upon municipal courts.

In the case of Loretta G. Barberie *v.* Venezuela, decided by the United States and Venezuelan Commission of 1889, Mr. Commissioner Findlay said:

> A stale claim does not become any the less so because it so 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.[1]

The claim is disallowed.

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[1] United States and Venezuelan Claims Commission, 1889-90, Opinions, p. 79; Moore's Arbitrations, p. 4203.

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