

## TURINI CASE

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

On July 28, 1896, a contract was executed between the secretary of public works of the United States of Venezuela, fully authorized by the President of the Republic, and Giovanni Turini, sculptor, residing in New York City and a naturalized citizen of the United States, whereby it was agreed:

1. On the part of Giovanni Turini that he would execute for the Government of Venezuela three statues, one equestrian of Gen. José Antonio Páez, another of Liberty, and a third of Bolívar, the latter destined to be presented by the Government of Venezuela to the city of New York; that he would deliver the statues of Páez and Liberty on board ship at the port of New York two months before the day set for the inauguration of the same, being for the first statue April 2, 1897, and for the second July 5, 1897; that these two monuments would be made in conformity with the Executive decrees of July 3 and 4, 1896, in reference thereto, and also in conformity with the sketches of said statues delivered by Turini to the secretary of public works; that the equestrian statue of Bolívar would be a replica or copy of the statue of Bolívar erected in the Plaza Bolívar in Caracas, with one change, that the dimensions of the one to be built should be one-fourth larger than natural size; that the materials for the pedestal as well as the statue would be of the same kind as those used for the aforesaid monument, which was to serve as a model; that Turini would deliver the statue of Bolívar to the representative of Venezuela at New York, would engrave on the pedestal such inscription as the Government of Venezuela might suggest to him, and would place such statue in New York at the spot to be designated.

2. On the part of the Government of Venezuela that it would pay Turini for the execution of the three statues the sum of \$ 43,000 gold or 227,900

bolivars, in seventeen monthly payments of \$ 2,300 or 12,190 bolivars per month, besides one monthly payment of \$ 3,900 or 20,670 bolivars; that the first monthly payment would be made August 1, 1896, and that it would pay the freight and expenses of erection of the statues of Páez and Liberty.

It was further agreed that at the time of shipment of the statues of Páez and Liberty, the Venezuelan consul at New York must certify that they had been properly executed, were in good condition, and well packed.

Pursuant to this contract —

1. Turini executed the statue of General Páez, together with the pedestal; performed considerable direct work upon the statue of Liberty and that of Bolívar, the models of both being completed ready to be cast in bronze; and completed the pedestal for the statue of Liberty.

2. The Government of Venezuela paid to Turini altogether the sum of \$ 8,130, the last payment being made in April, 1897, in the sum of \$ 1,850.

By the terms of the contract the Government of Venezuela was to pay seventeen monthly installments of \$ 2,300, beginning August 1, 1896, besides one monthly payment of \$ 3,900. The contract was broken by Venezuela within four months from August 1, 1896, by its failure to make the stipulated payments. Nevertheless, Turini proceeded with the work and appears to have accepted the payment of \$ 1,850 made in April, 1897. But any failure of Turini to complete and deliver the statues at the time specified in the contract was clearly due to the prior failure of the Venezuelan Government to make the monthly payments as provided therein. This provision in the contract may have been and probably was the very reason why Turini agreed to complete and deliver the statues within the times specified.

In 1898 the Venezuelan Government claimed that it could not and would not accept the statue of Bolívar because the National Society of Sculpture of New York declared the statue to be without artistic merit; and also that fearing the statue of General Páez might be lacking the "necessary artistic requisites," it should be submitted to the judgment of a jury of artists, without the award of which the Government could not take into consideration Mr. Turini's claim.

But Turini did not agree to execute for Venezuela a statue of Bolívar which would be acceptable to the National Society of Sculpture of New York; nor did he agree to execute a statue of General Páez, subject to the judgment of a jury of artists. He agreed to execute statues of Páez and of Liberty, in conformity with the Executive decrees of July 3 and 4, 1896, in reference thereto, and in conformity with the sketches of said statues delivered by him to the secretary of public works. He agreed to execute a statue of Bolívar which would be a replica or copy of the one in the Plaza Bolívar in Caracas, the dimensions, however, to be one-fourth larger than natural size.

It is not claimed that Turini's work does not comply as to artistic merit with his agreement; but it is sought to measure it by standards other than those expressed in the contract. If the Venezuelan Government desired work done acceptable to the National Society of Sculpture of New York, or subject to the approval of a jury of artists, it should have so stipulated. Nor can it be assumed that Mr. Turini would have agreed to do such work at the price designated in the instrument before us.

The duty of the Commission is to determine the rights and obligations of the parties under the contract as it is — not as it might have been. And the true measure of damages in a case like this, where one engaged in the performance of a contract is prevented by the employer from completing it, is the difference between the price agreed to be paid for the work and what it would

have cost the party employed to complete it, deducting, of course, the amount already paid.

Here the price agreed to be paid is the sum of \$ 43,000, of which \$ 8,130 have been paid. The evidence shows that it will cost about the sum of \$ 11,000 to complete the work. The difference is the sum of \$ 23,870. Interest should be allowed on this sum at the rate of 3 per cent per annum from January 1, 1898, to December 31, 1903, the anticipated date of the final award by this Commission.

The estate of Giovanni Turini is therefore entitled to an award in the sum of \$ 28,166.60 gold.

Giovanni Turini died August 27, 1899, and thereafter on September 9, 1899, letters of administration of his estate were duly granted to his widow, Margaret Turini, by the surrogate of the county of New York.

At the time of Turini's death his estate was and still is liable for the following debts which were incurred by him in carrying out his contract with the Government of Venezuela:

(1) To the Gorham Manufacturing Company the sum of \$ 6,319, with interest thereon at 6 per cent per annum from July 1, 1897.

(2) To Joseph Carabelli, the sum of \$ 3,095, with interest thereon at 6 per cent per annum from October 22, 1898.

(3) To the Lyons Granite Company, the sum of \$ 2,358.45, with interest at 6 per cent per annum from October 1, 1898.

The above-named parties, as intervenors in this claim, should be protected to the extent of their proportionate interests, in the distribution, of the award herein made to the estate of Giovanni Turini, deceased.

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

This claim is presented by the Government of the United States on behalf of the administratrix and heirs at law of Giovanni Turini, deceased; the Gorham Manufacturing Company and Joseph Carabelli, jointly interested, for breach of a written contract. The amount of the claim is \$ 28,579.55, interest included.

Giovanni Turini, now deceased, was a naturalized citizen of the United States. The Gorham Manufacturing Company is a corporation existing under the laws of the State of Rhode Island, and a citizen of the United States; and Joseph Carabelli is a naturalized citizen of the United States.

The claim arises out of the following facts:

On July 28, 1896, an agreement was made between the secretary of public works of the United States of Venezuela, fully authorized by the President of the Republic and Giovanni Turini, sculptor, residing in the city of New York, represented by Messrs. J. Boccardo & Co., for the execution of three statues: One equestrian of Gen. José Antonio Páez; another one of "Liberty," both to be erected in the city of Caracas; and a third one of General Bolívar, destined to be presented to the city of New York by the Venezuelan Government.

Turini bound himself to execute the aforesaid statues for the amount of \$ 43,000 gold, payable by the Government of Venezuela, at the city of Caracas, to whomsoever should be authorized to represent Turini, in seventeen monthly payments of \$ 2,300 per month, and one monthly payment besides, of \$ 3,900; the first monthly payment to be made at the office of Messrs. J. Boccardo & Co., on the 1st day of August, 1896.

Turini also bound himself to deliver the statues of Páez and of Liberty, on board ship, at the port of New York, two months before the day set for the inauguration of the same, being for the first statue the 2nd day of April, 1897, and for the second the 5th day of July, 1897. These monuments had to be made

in conformity with the decrees of the Executive of the 3d and 4th days of July of the same year, 1896, in reference to the same, and also in conformity with the sketches of said statues delivered by Turini to the secretary of public works. The statue of Bolívar was to be a replica, or copy of the one erected in the Plaza Bolívar at Caracas, with one change, to wit, that it should be one-fourth larger than natural size. The material for the pedestal as well as for the statue to be of the same kind as those used for the aforesaid monument, which would serve as a model.

It was also agreed that at the time of the shipment of the two monuments, destined to Caracas, the Venezuelan consul at New York had to certify that the same had been properly executed and were in good condition and well packed.

The memorial of Turini shows that pursuant to said contract he executed the statue of General Páez, together with its pedestal, and the same had been ready for delivery many months. He also states that he performed considerable direct work upon the statue of Liberty and on the statue of General Bolívar; the models of both statues being completed and ready to be cast in bronze; and that the pedestal for the statue of Liberty was also completed, but by reason of the nonpayment of the moneys, as stipulated in the contract, further work on these statues was suspended.

Turini acknowledges that he had received from the Government of Venezuela the sum of \$ 8,130 gold on account of his contract, the last payment having been made in April, 1897, by General Crespo (then president), and being the sum of \$ 1,850. Under the contract Turini should have received, in April, 1897, the sum of \$ 20,700.

In the execution of the contract Turini incurred a liability to the Gorham Manufacturing Company, and the memorialists affirm that they had received from him an assignment to the extent of \$ 9,000 of the payments due him under the contract, with power to collect same. Turini also affirms that he incurred other liabilities, in and about the prosecution of the work, to Joseph Carabelli, amounting to \$ 3,095.97, for which sum Carabelli obtained an assignment, copy of which has been submitted to this Commission.

Margaret Turini, as administratrix of Giovanni Turini, deceased, on the 27th of August, 1899, addressed the Secretary of State of the United States of America. On the 11th of May, 1903, a supplemental memorial was filed with the Department of State, in which, after making an exposition of the indebtedness incurred by the said Giovanni Turini, in carrying out his contract with the Government of Venezuela, with the Gorham Manufacturing Company, Joseph Carabelli, and the Lyons Granite Company, and other expenses incurred by the said Turini for plaster and modeling and labor, affirms that the statue of General Páez has been cast in bronze by the Gorham Manufacturing Company, and since 1897 has been ready for delivery; that the model of the statue of Liberty is at the factory of the Gorham Manufacturing Company, ready to be cast in bronze; that the model for the statue of General Bolívar was fully completed by the said Giovanni Turini in his lifetime. That its artistic merits were passed upon by the Municipal Art Commission of the City of New York, as appears by letter of its president to the said Turini, dated May 25, 1899; that said Turini received in all from the Government of Venezuela the sum of \$ 8,130, leaving an unpaid balance amounting to the sum of \$ 34,870. That it has been estimated that it would cost the sum of about \$ 11,000 to complete the statues of Liberty and Bolívar, and in case the Venezuelan Government should prefer not to have the statues completed, deducting the sum of \$ 11,000 from the \$ 34,870, there would be a balance due of \$ 23,870, to which should be added either interest thereon from January 1, 1898, or the interest

on the said debts incurred to the Gorham Manufacturing Company, Joseph Carabelli, and the Lyons Granite Company, which item of interest, in the aggregate, amounts to the sum of \$ 3,623.36, and added to the said sum of \$ 23,870, makes a total sum of \$ 27,493.36.

As it appears from the above-stated facts, the points submitted to the decision of this Commission spring from the contract celebrated between the Government of Venezuela and Giovanni Turini for the execution of certain sculptorial works, and the case must be disposed of as being that of the administratrix and the heirs at law of Giovanni Turini, sufficiently authorized to prosecute this claim against the Government of Venezuela.

The assignments obtained by the Gorham Manufacturing Company and Joseph Carabelli only give to the creditors the right to collect the amount of their credits from what the Government of Venezuela might have to pay to the administratrix and heirs at law of Giovanni Turini for the responsibilities incurred by said Government by reason of the contract celebrated with Turini.

In his answer, the honorable agent of the Government of Venezuela refers to the merits of a memorial submitted to him by the minister of public works, containing the recital of the facts recorded in his department in reference to the above-mentioned contract with Turini, and the sundry incidents occurred thereon. The honorable agent of the United States, in his replication, admits that in that memorial the statement of facts is essentially in accord with that made in the brief submitted on behalf of the United States in this matter.

From the narrative of those facts it appears that several months after the beginning of the work which Turini undertook to execute, the Venezuelan consul in the city of New York, charged with the inspection of the statues, reported on June 22, 1897, to the Venezuelan Government that he had seen the model in clay of the statue of Bolívar uncompleted; that they were working on the bronze casting of the statue of Páez, and were making the miniature in clay of the statue of Liberty, and consequently he could not judge of the artistic merits and other conditions of the works.

Turini, on July 12, 1897, addressed a private letter to the President of the Republic, asking for the payment of \$ 10,000 promised him, inasmuch as to that date there was due him more than \$ 20,000. This letter was answered by the minister of public works, who informed him that the President would personally attend to his request, and would give a favorable solution to it, as soon as the financial situation would allow it.

The terms of that correspondence prove sufficiently that the suspension of payment of several monthly sums did not constitute a breach of contract, because Turini did not take the delay of payment as a resolatory cause, nor did he stop the execution of the work for that motive in order to put forward his claim against the Government of Venezuela. At this stage of events, and in the month of September of the same year, the Government of Venezuela had notice that the National Society of Sculpture of the City of New York refused to give its approval to the clay model of the liberator's statue, and consequently that the board of parks of the same city would not give its permit for the erection of the statue as then modeled. The Venezuelan Government having requested Turini to advise the reason of the rejection of the model, to send information about all the particulars pertinent to the execution of the statues, and about the report of the National Society of Sculpture, he answered that, having invited the said society to examine the model in clay of the liberator's statue, he was notified one month after that the statue could not be accepted; but that he succeeded in removing such difficulties after speaking with Mr. Strong, the president of the park commission, who agreed to have the statue accepted, provided it was an exact copy of the original existing in Caracas; and, finally,

that in that same month he would finish the new model in plaster, and the statue should not be cast until approved by the artists.

The terms of the official report addressed by the National Society of Sculpture to the board of public parks of New York, reads as follows:

That the clay model of the statue of Bolivar, such as it appears at the sculptor's study, does not have the conditions of artistic excellence required to be erected in a public place or park of the city, and consequently does not recommend its acceptance.

After these facts Turini sent on November 20, 1897, a demonstrative account of the sums he pretended the Government of Venezuela owed him for his contract, to wit:

	<i>Bolivars</i>
For the statue of General Páez . . . . .	106,000
For the statue of Liberty . . . . .	71,900
For the statue of the Liberator . . . . .	50,000
Total . . . . .	227,900

From that total sum Turini made the deduction of 50,000 bolivars for the statue of the Liberator, being in doubt at that time of the acceptance of the model by the board of public works of New York, and having to wait for the Government's order to cast it in bronze. Turini also stated that he had received the sum of 43,125 bolivars, leaving a balance of 134,775 bolivars for the statues of Páez and Liberty which he said would soon be finished and ready to be delivered on board ship.

It was not until May 25, 1899, that C. T. Barney, president of the Artistic Municipal Commission, sent a letter to Turini informing him that in session of the day before the commission had approved the new model of the statue of General Bolívar, and on July 31 of the same year, the Government of Venezuela addressed Turini in reference to a note of Messrs. Olney & Comstock, Turini's attorneys, about the acceptance by the Artistic Commission of New York of the modified model of the statue of Bolívar, and gave its conformity for its execution. One month after this authorization, on the 27th day of August 1899, Giovanni Turini died in the city of New York, leaving the statue of General Páez cast in bronze by the Gorham Manufacturing Company and ready for delivery with its pedestal constructed by Joseph Carabelli; leaving also two clay models of the statue of Liberty and of General Bolívar, and a granite pedestal with inscriptions thereon, for the statue of Liberty, constructed by the Lyons Granite Company.

From the aforesaid, and a just appreciation of the facts, come forth the following conclusions:

First. There was no breach of the contract on the part of the Government of Venezuela by the nonpayment of the stipulated monthly sums, as alleged, because Turini, with perfect knowledge of that fact, did not make it a cause of breach, and pursued the execution of the work, relying on the promises which were made to him that the payment of the sum overdue, in conformity with the agreement, should be paid as soon as the financial situation would allow it. It must be taken into consideration that the price of an artistic work is not properly due until finished and accepted as satisfactory by the person who ordered the execution of the same, and that the monthly advances offered to Turini on account of the prices of the statues were only a facility afforded Turini in order to help him in the performance of his duties as enterpriser, and he was at any time at liberty to renounce and not take advantage of it.

Second. The incidental and very important event of the refusal of the clay model of the liberator's statue by the board of public parks of New York, which took place in August of the year 1897, having as a motive for such refusal the circumstance that the clay model of the statue of Bolívar, such as it appeared in the sculptor's study, did not have the conditions of *artistic excellence* required in such monuments to be erected in a public place or park, *had the consequence of interrupting the final execution of the Liberty and Liberator's statues*, giving occasion to considerable correspondence between the Government of Venezuela and Turini *about the securities asked for by the said Government in reference to the artistic merits of all the statues, and was also the cause of a proposition made by Turini to the Venezuelan Government on November 20, 1897, to withdraw from the whole amount of his contract the sum of 50,000 bolivars, price estimated by him for the statue of General Bolívar, and of an offer to deliver the statues of General Páez and Liberty, all completed and free on board at the port of New York of the sum of 134,775 bolivars, deduction having been made of 43,125 bolivars already received by him.*

Afterwards, on the 22d of March, 1899, another proposition was made by Mr. Oldrini, Turini's attorney, to the Venezuelan Government regarding the delivery of the statue of General Páez and its pedestal, not on board, but at the factory, and to deliver the pedestal of the statue of Liberty, the clay model of this last, and its casted parts, Turini keeping the clay model of Bolívar's statue, all for the sum of \$ 25,000 to be paid: \$ 15,000 cash down and the balance in monthly installments, without taking into consideration the \$ 8,130 already paid to Turini. *To this proposition the Government of Venezuela answered on the 2d day of June, 1899, formulating a counter proposition, to wit: To pay \$ 15,000 for the statues of General Páez and Liberty all completed, in partial monthly payments of \$ 3,000 from the last day of said month of June. This counter proposition was not accepted by Turini's attorneys, and on the 31st of July the Government addressed again Messrs. Olney & Comstock, after the receipt of the final approval by the New York Artistic Commission of the new clay model of the statue of General Bolívar, requesting that sketches or reproductions of the models for the statues of General Páez and Liberty be sent for examination as to the artistic conditions of the one and the other, in order to make a definite arrangement about their prices and payments. In the meantime Messrs. Olney & Comstock, on behalf of Turini, addressed the Government of Venezuela, promoting the execution of the contract under the following conditions: That the Government would accept the three statues referred to in the original contract for the price stipulated of \$ 43,000, less \$ 8,130 already paid, and the balance of \$ 34,870 to be paid \$ 15,000 cash down and \$ 19,870 in monthly payments of \$ 3,000 each. To this last proposition the Government did not give any answer, and the death of Turini, which occurred one month later, on the 27th of August, 1899, caused the whole affair to remain at a standstill. As this matter stood at the time of the death of Giovanni Turini it is apparent that there was not any definite understanding established between the Government of Venezuela and Giovanni Turini, neither about the acceptance of the models for the statues of General Páez and Liberty, nor about the price to be paid for the execution of the same; there was only an understanding for the casting in bronze of the statue of General Bolívar by reason of the acceptance by the Venezuelan Government of the modified model executed by Turini and approved by the president of the Municipal Art Commission of the city of New York.*

Third. The death of Giovanni Turini, which took place before the completion of the statues of Liberty and General Bolívar, is a resolute cause of the original contract between the Government of Venezuela and Turini in reference to the execution, pending at the time of Turini's death, of the statues of Liberty

and the Liberator. That resolute cause entitled the administratrix and heirs at law of Turini to be paid, in proportion to the price agreed, for the work done, and for the value of materials employed and expenses incurred thereon, provided the work done and materials employed were of some use to the other party. In reference to the pedestal for the statue of Liberty, constructed by the Lyons Granite Company, it is not apparent that it could be of any use to the Government of Venezuela to have it without the statue, because in the matter of statues the material of the pedestal is of very secondary importance. The work executed by Turini in modeling the statues of Liberty and of the Liberator, and also the expenses incurred in such works, which amounted to the sum of \$ 1,250, must be recognized as good title for compensation. For that motive and in consideration of the sum of \$ 8,130 received by Turini during his lifetime, on account of the whole price of the statues and pedestals, a deduction of \$ 5,000 must be made from the \$ 8,130 as compensation for the personal work of the sculptor and expenses incurred by him in the modeling of said statues, thus leaving the sum of \$ 3,130 to be disposed of as determined in the following conclusions.

Fourth. The completion by Giovanni Turini of the statue of General Páez and its pedestal, entitles the administratrix and heirs at law of Giovanni Turini to the payment of the price of that work by the Government of Venezuela, provided, that the sculptural work should be in perfect accordance with the terms specified in article 5 of the original contract between the minister of public works of the Venezuelan Government and Giovanni Turini, dated on the 28th of July, 1896, and besides that the materials employed and the artistic execution prove satisfactory, as is necessary in all works of this kind.

The Commission not having at its disposal the necessary elements to decide on these technical points, nor being able to fix the price for the statue of General Páez and its pedestal in proportion to the full amount of the contract, it is advisable to refer both parties in this claim to the following decision:

The Government of Venezuela is not obliged to receive the pedestal for the statue of Liberty, nor to pay its value, but a compensation is granted in favor of the administratrix and heirs at law of Giovanni Turini, in the sum of \$ 5,000, to be deducted from the \$ 8,130 received by the *cujus*, for his labor and the expenses incurred in modeling the statues of Liberty and General Bolívar; the clay models for both statues to become the property of the Government of Venezuela.

The Government of Venezuela and the administratrix and heirs at law of Giovanni Turini are bound to appoint, by mutual agreement, an expert, or a commission of three experts, named one by each party and the third by the two experts named. And said expert or commission will proceed to examine whether the statue of General Páez and its pedestal, are constructed in accordance with the terms of article 5 of the aforesaid contract, dated July 28, 1896, and if they give sufficient satisfaction in regard to their material and artistic merits, the Commission will fix in such case the value of the monument in proportion to the total amount fixed in the original contract for the three statues and the two pedestals, two of which had to be put on board ship by Turini at the port of New York, and the third one to be erected at Turini's expense in Central Park, New York City. After fixing in such manner the sum that the Government of Venezuela should have to pay to the administratrix and heirs at law of Giovanni Turini for the value of the statue of General Páez and its pedestal, the Government of Venezuela is entitled to deduct from that the sum of \$ 3,130, as balance due by the administratrix and heirs at law of Turini on the sum of \$ 8,130 already paid by the Venezuelan Government during the lifetime of Turini; and the assignees, the Gorham Manufacturing Company



and Joseph Carabelli, are entitled to exercise their rights for collecting from the Government of Venezuela, from the balance due to the administratrix and heirs at law of Giovanni Turini, if any, up to the amount of \$ 6,319 on the part of the Gorham Manufacturing Company, and of \$ 3,095 on the part of Joseph Carabelli. Any balance left for the price definitely fixed by the decision of the experts, to belong to the administratrix and heirs at law of Giovanni Turini.

In no other way, it appears to me, can this Commission dispose of the claim.

*BARGE, Umpire:*

A difference of opinion arising between the Commissioners of the United States of America and the United States of Venezuela, this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol and also the documents, evidence, and arguments, and likewise all other communications made by the two parties, and having impartially and carefully examined the same, has arrived at the decision embodied in the present award.

Whereas, on July 25, 1896, an agreement was made between the secretary of public works of the United States of Venezuela, fully authorized by the President of the Republic, and Giovanni Turini, sculptor, citizen of the United States of America, residing in the city of New York, represented by Messrs. J. Boccardo & Co., Caracas, which agreement reads as follows:

Conditions agreed upon between the secretary of public works of the United States of Venezuela, fully authorized by the President of the Republic, and Giovanni Turini, sculptor, residing at the city of New York, Dongan Hills, Richmond County, of the United States of North America, represented by Messrs. J. Boccardo & Co., merchants of this city, as it will be further stated, for the execution of three statues, one equestrian of General José Antonio Páez, another one of La Libertad, both to be erected in the city of Caracas; and a third one, El Libertador, destined to the city of New York.

First. Giovanni Turini binds himself to execute the aforesaid statues for the amount of \$ 43,000 gold, or, say, 227,000 bolivars, which is its equivalent at the rate of exchange of 5 bolivars and 30 centimos to 1 dollar, which amount the Government of Venezuela will pay at the city of Caracas to Turini, or whomsoever shall be authorized to represent him, in seventeen monthly payments of \$ 2,300 per month, or 12,190 bolivars, and one monthly payment besides of \$ 3,900, or, say, 20,670 bolivars.

Second. Giovanni Turini names as attorneys with power to represent him in this city, Messrs. J. Boccardo & Co., merchants of the same. Said power accompanies this agreement so as to enable them to represent said Turini before the National Government in this arrangement, and to collect the payments for his account in accordance with the obligations this Government binds itself.

Third. The first monthly payment will be made at the office of Messrs. J. Boccardo & Co., the 1st day of August next.

Fourth. Turini binds himself to deliver the statue of Páez and of La Libertad on board ship at the port of New York, two months before the day set for the inauguration of the same, being for the first statue the 2d day of April, 1897; and for the second, the 5th day of July, 1897.

Fifth. These monuments will be made in conformity with the decrees of the Executive of the 3d and 4th of July of the present year in reference to the same, and also in conformity with the sketches of said statues Turini has delivered to the secretary of public works.

Sixth. The equestrian statue of El Libertador, which the National Government offers or presents to the city of New York to replace the one existing at present in that city at the Central Park, will be a replica or copy of the one erected to the memory of the said Libertador in the Plaza Bolívar of this capital with only one change, that the dimensions of the one to be built will be one-fourth larger than natural size. The materials for the pedestal as well as for the statue will be of the same kind as those used for the aforesaid monument, which will serve as a model.

Unique condition: Giovanni Turini binds himself to deliver this monument to the representative of Venezuela at New York, who will be opportunely named or appointed in the course of the month of December, 1897, said Turini binding himself also to engrave on the pedestal the inscriptions the Government of Venezuela may suggest to him.

Seventh. Giovanni Turini is under obligation to place for his account in New York, and at the spot that will be designated, the statue of El Libertador.

Eighth. In the price of \$ 43,000 the freight from New York to Caracas is not included, nor the expenses for the erection of the monuments to Páez and La Libertad.

Ninth. At the time of the shipment of the two monuments at New York the Venezuelan consul at that city will have to certify that the same have been properly executed and to be in good condition and well packed.

A duplicate copy of this agreement, both of the same tenor, has been drawn at Caracas the 28th day of July, 1896.

G. TURINI

Per J. BOCCARDO & Co.

H. PEREZ B.

And whereas Giovanni Turini died on the 27th of August, 1899, and his widow, Margaret Turini, who was legally instituted administratrix of his inheritance, brought a claim against the United States of Venezuela, based on the contract as cited here above, in which claim the Gorham Manufacturing Company and Joseph Carabelli, holding rights as citizens of the United States of America, appear as intervenors, there must be considered whatever claims may arise out of the above-mentioned agreement on behalf of the heirs of Giovanni Turini.

And whereas it appears from the evidence brought before the Commission that the Government of Venezuela did not fulfill the conditions of article 1 of the agreement, failing to make the stipulated monthly payments;

And whereas the same evidence shows that Giovanni Turini did not fulfill the conditions of article 4 of the agreement, not having ready for shipment at the port of New York on the 2nd day of February, 1897, the statue of Páez with pedestal, which failure can not in equity be said to be excused by the failure of the Venezuelan Government to meet the monthly payments at the time indicated, as this latter fact did not prevent Turini from entering into a contract with the Gorham Manufacturing Company for the casting in bronze of the said statue, whilst even in May, 1897, it did not prevent him from agreeing with Carabelli about the making of the pedestal that should have been ready before February 2 of that year;

And whereas the evidence clearly shows that neither of the two parties had the intention to make this mutual failure a resolute cause, but each requiring to attain the object of the agreement — Venezuela the statues according to contract and Turini the payment — both, to meet the changed circumstances, almost up to the date of Turini's death, interchanged propositions for a solution of the difficulties that arose out of the nonfulfillment of some conditions of the existing contract.

Whereas it is hereby clearly shown that the original contract was not regarded by them legally dissolved (annulled) the death of Turini should in equity be regarded by parties as the resolute cause, and therefore the administratrix and heirs at law are entitled to be paid in proportion to the price agreed for the work done and the value and materials employed and expenses incurred thereon, providing the work done and materials employed are of some use to the other party; and whereas it is proved that the statue of Páez, with its pedestal (for which the sculptor fixed \$ 20,000, this seeming a fair estimate when considering

the price established for the three statues in regard to the conditions announced in the decrees of their erection), had been ready for delivery many months before November, 1898; that Turini had completed the models of the statues of Liberty and Bolívar, and that the pedestal of the statue of Liberty was also completed; that the expense incurred for plaster and labor in modeling the two statues of Liberty and Bolívar amounted to the sum of \$ 1,250, and that the sum of \$ 3,500 may be regarded as a just compensation for the personal work of the sculptor on both models;

And whereas the pedestal of Liberty without its statue can not be said to be of any use to the Government of Venezuela, because a pedestal has to be regarded as being in harmony with the figure placed on it and from an artistic point of view, forming with the statue one whole monument; and whereas the statue of Páez, with its pedestal, as well as the models of the statues of Liberty and Bolívar, certainly can be of some use to the Government quite apart from the very varying and very personal opinions on their artistic value;

Whereas, therefore, the United States of Venezuela are indebted to the heirs of Turini, for the statue of Páez and pedestal, \$ 20,000; for making the models of the statues of Liberty and Bolívar (which models become the property of Venezuela), \$ 3,500; for material and labor in modeling these statues, \$ 1,250, making together the sum of \$ 24,750.

Whereas, however, Turini, during his lifetime already received for his work from the Government of Venezuela the amount of \$ 8,130, the Venezuelan Government owes the inheritance of Turini the sum of \$ 16,620, with interest at 3 per cent per annum from the 1st of January, 1898 — the date on which, according to the agreement, the money was due — until the 31st of December, 1903, the anticipated date of the final award by this Commission, making together the sum of \$ 19,611.60, which sum is therefore allowed to the administratrix and heirs at law of Giovanni Turini, deceased.

And whereas, further, at the time of Turini's death, the estate was and still is liable for the following debts, which were incurred by him in carrying out his agreement as to the statue of Páez, viz:

1. To the Gorham Manufacturing Company the sum of \$ 6,319, with interest thereon at 6 per cent per annum from July 1, 1897.

2. To Joseph Carabelli the sum of \$ 3,095, with interest thereon at 6 per cent per annum from October 1, 1898.

The above-named parties, intervenors in this claim, should be protected to the extent of their proportionate interest in the distribution of the award herein made to the estate of Giovanni Turini, deceased.