GENTINI CASE

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

At the session of the Italian-Venezuelan Mixed Commission of the 29th of August the honorable Commissioner for Venezuela, Doctor Zuloaga, intimated that he would not agree to a demand for indemnity from the Italian citizen Odoardo Gentini, because the facts upon which said claim is based occurred more than thirty years ago, from which it appears that my illustrious colleague of Venezuela intends to invoke the principle of prescription.

This conclusion must, it seems to me, be based on motives of equity, or upon rules of international law, or, finally, on the provisions of local legislation.

In each of these three cases the exception taken must be rejected.

With regard to the first point, I observe that a tribunal of equity can not invoke prescription in order to evade obligations established by authentic documents.

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[1] See Corvaia case, *infra*, p. 609.

[2] See Spader case, Vol. IX of these Reports, p. 223; and for limitations on rules laid down in the Gentini case see Giacopini case, *infra*, p. 594, and Tagliaferro case, *infra*, p. 592.

If to-morrow a creditor presents to me a receipt of mine, the genuineness of which I can not doubt, and representing a debt of more than thirty years' standing, even though I may legally refuse payment, my conscience would always counsel me to not recur to such exception unless in the case where, though a *summun jus*, it might be a *summum injuria*.

The law which declares a debt prescribed does not, on that account properly deprive a creditor of his rights, but interposes an exclusively legal obstacle to the double payment of the sum due.

The principle of prescription has indeed been admitted in the codes from motives of public order and with a political character (that of maintaining peace between individuals and preventing property from becoming a perennial source of contention), but it is not based on pure morals, so that when he who may does not invoke it the judge may not officially supplement an unexercised prescription (art. 2109 of the Italian Civil Code) even in case of minors or incapacitated persons. (Troplong on Prescription, No. 89.)

Dumond, commenting on art. 2223 of the French Civil Code, which has a similar provision, gave as the principal reason therefor " that he who does not oppose prescription may be induced thereto by remorse of conscience."

It is admitted in jurisprudence that a magistrate may not constitute himself an indiscreet patron of a party (V. Zacharie, Vol. III, p. 775; Troplong on Prescription, No. 91) or furnish officially a means of defense which, though permitted under the law, frequently offends the conscience of an honest debtor.

From the point of view of absolute equity, which should inspire the decisions of a mixed commission, I categorically reject the exception of my honorable colleague of Venezuela, and should this question come before the umpire, confidently expect his decision will found itself on my criteria.

On the second point I affirm that prescription is not admitted in the juridical reports based on the *jus gentium*.

I have consulted various authorities and found that while their opinions vary as regards the law to be applied when citizens of different nations raise the question of prescription in the act of regulating private interests, none of them has discussed or even raised this question in the settlement of claims, and therefore of actions of credit sustained by a government in the interest of its subjects as against another government and based on the treaties and protocols, as in our case.

I affirm that I have not found this question treated by the authorities consulted by me, though others may have done so; but on this matter we have the decision of the permanent court of arbitration of The Hague — that is to say, of the supreme tribunal in matters of international law, which decision must have a positive value, the more so that the decision to which I refer, that of the " Pious Fund of the Californias," is quite recent and absolutely analogous from the identical point of view in which we are concerned — the Gentini case.

The court of arbitration was convened to decide a case of credit of the Pious Fund of the Californias, represented by the Archbishop of San Francisco and the Bishop of Monterey *v.* Mexico, and the question was submitted to the court under the terms of a protocol stipulated at Washington, May 22, 1902, between the United States and Mexico.

It is worthy of note that, as in the case of present claims of Italy, so in the Pious Fund case, it was not a question of a credit of the United States against the Government of Mexico, but of a debt of this latter in favor of the prelates above named. The representatives of Mexico raised the question of prescription before the court because the case under consideration was one in which demand for payment had for many years been neglected.

The exception seemed to derive additional force that prescription, according

to the law of Mexico, requires five years, and by the existence of a decree of the same Government, promulgated June 22, 1885, calling on all its creditors to present their claims within a certain period (extended by another decree of 1894) under pain of prescription and extinguishment. In fact, the Catholic prelates of Upper California had not insisted upon their credit, either principal or interest, according to the provisions of the above decrees.

The distinguished agent of the United States before the court objected that it was not yet established, that an international tribunal had ever rejected a claim on the ground of an exception based on laws having no validity whatever before a tribunal of such character, and added (as I have already observed herein) that prescription does not extinguish the right of a creditor, but merely impedes his right of exercising it.

It did not require a lengthy argument from the honorable agent of the United States to obtain from the court a decree of payment from Mexico, including this maxim.[1]

Les règles de la prescription étant exclusivement du domaine du droit civil, ne sauraient être appliquées au présent conflit entre les deux États en litige.

This principle is besides absolutely logical and moral, since when it is a question of private credits and debits it may be presumed that he who has permitted the lapse of a long period without bringing his rights into court may have intended to renounce them; or it may be admitted that he should suffer the results of his negligence. But when the debtor is a government, and, moreover, when the demand of the individual may be the subject of a claim, the reasons which may induce a creditor to postpone his action may be many and of varied nature; as, for instance, the interruption of diplomatic relations between the Governments concerned, the lack of political influence of the creditor, the unfavorable financial conditions of the debtor government, the want of faith of the creditor in the impartiality of magistrates, who, unprotected by a feeling of permanency, might against their better judgment become pliant tools of a party, and many other similar motives.

Many reasons may therefore operate to render unavailable a credit against a government, and as it is a general rule that the term of a period of prescription does not commence to run until the day when the payment falls due and action for its recovery may be had, it would be necessary to prove (and the proof would always be difficult and uncertain) when these conditions occurred in the case of claims against governments.

As there is not in international law an exact and generally accepted provision which establishes when and within what limits a credit becomes null and void through prescription, there can not be a presumptive negligence on the part of the dilatory creditor, and the plea of prescription must be absolutely rejected.

In regard to the third point, to wit, the eventual invoking by my honorable colleague of the principle of prescription according to the provisions of local laws, it is only necessary to observe that I have already clearly expressed my opinion in the arguments used by me in my reference to the Pious Fund case, but I will add some further considerations. The law of prescription of Venezuela can not be considered here, inasmuch as it is contrary to the provisions of Article II of the Washington protocol of May 7.

If in the case of claims based on alleged denial of justice it may be opportune and even necessary to search the laws of the Republic to afford this Commission unlimited freedom and facility for the full performance of its duty, in any

[1] Sen. Doc. 28, 57th Cong., 2d session, p. 858.

other case the introduction of them would constitute so patent and manifest an infraction of that clause of the protocol, which is for us the supreme law, that such a fact might well be considered a sufficient cause for invalidating our sentence.

The clause referred to, which we should not and can not ignore, was not included in the protocol without due reason, which was not merely to avoid placing the Commissioner for Italy in a position of manifest inferiority to that of his Venezuelan colleague, who is known to be profoundly versed in the laws of his own country, while I am at best but superficially acquainted with them.

But inasmuch as the protocol requires no such learning on my part it is but just that I should avail myself of its authority and refuse to join in any discussion touching Venezuelan codes and legislation.

Without concerning myself, therefore, with the rules from which, according to Venezuelan law, prescription is derived, I wholly reject the principle of prescription as being contrary to Article II of the protocol of May 7, 1903, and request the Commissioner for Venezuela, or the honorable umpire in case the Commissioners fail to agree as to the question of principle, to receive the claim of Odoardo Gentini and award him an indemnity in the following amounts: 293.50 bolivars due him as per receipts; 360 bolivars for eighteen days forcibly closing of his store, and 546.50 bolivars for his illegal arrest — in all, a total of 1,200 bolivars.

ZULOAGA, *Commissioner:*

Thirty years have passed since the transaction to which this claim refers without its appearing that during this long period it has been submitted to the consideration of the Government of Venezuela. The cause upon which this claim is based is barred. It is barred in accordance with the internal law of Venezuela. It is barred in accordance with the Italian law (arts. 1956 and 1936, Civil Code of Venezuela, and 2135 and 2114, Italian Civil Code). It is barred in accordance with the principles of international law, which establishes prescription as a legitimate cause for the extinction of obligations.

Prescription is founded upon a social necessity, and by all civilized peoples and at all times, it has been recognized as a substantial element of stability and peace.

Prescription, says Laurent, is more than a right consecrated by a law. It is a right of humanity. Nations have conceded also that a State is subject to prescription the same as an individual. (Art. 1936, Civil Code of Venezuela; 2114, Civil Code of Italy; 2227, Civil Code of France.) Limitation, therefore, runs against a State as a State ordains that it should run against individuals. Limitation will run against the Italian State as it ordains that prescription should run against an individual, and I do not see why these principles, which have been considered just in the internal civil law, should not be so considered in the life of nations, and why a claim of a civil nature only, and therefore essentially liable to prescription, must become unextinguishable thereby because it is converted into an international claim. It is not explained how a right already barred (if it is called to the attention of the claimant government after the expiration of the legal term) can give rise to a valid claim by the circumstance that the claim, as in the present case, appears as in the first instance as an international one. What would be the length of time necessary for prescription? It would be difficult to determine the shortest period, because an internal law can not govern; but, for my part, I do not doubt that a period of thirty years is more than sufficient, especially where there is a reference to a question between Venezuela and Italy, all the more since this period is greater than both States have fixed for prescription; having made it such an

essential to public order that both recite in their respective laws that there can not be pleaded in opposition to it want of title or good faith.

As a precedent in the Mixed Commissions we find the case of John H. Williams, No. 36, of the United States and Venezuela Commission of 1890 (Moore, p. 4181), which disallowed the claim because it was barred by a lapse of twenty-six years. The argument contained in the opinion gives us to understand that a less term is sufficient.

I believe, therefore, the claim of Gentini against the Government of Venezuela is barred.

AGNOLI, *Commissioner* (supplemental opinion):

The undersigned prays the honorable umpire to take into consideration the fact that the Italian Government has never heretofore had a protocol or a mixed commission for the settlement of its claims against the Government of Venezuela, while the majority of the other European powers — that is to say, France, Spain, England, Holland, and even the United States — have obtained the adjustment of claims by means of commissions opened to all claimants. Therefore, even if the principle of prescription had been admitted by a previous mixed commission, such precedent could have no application to Italian claims, because Venezuela has always refused us mixed commissions and the liquidation of claims accorded by it to other nations, basing her refusal on an erroneous interpretation of the treaty of 1861, against which refusal we have always protested.

It is worthy of note in this connection, besides, that, notwithstanding that, in the French-Venezuelan Commission five claims more than 30 years old (not *one*, as affirmed by the honorable Commissioner for Venezuela), have been liquidated.

In any case, we have the right to invoke in this question also the " most-favored nation " clause (Art. VIII of the protocol), it not being admissible that Italy should have intended to renounce her right to indemnity in a category of claims which other nations have had occasion to obtain.

The honorable umpire should, in addition, appreciate the fact that in the protocol which confers upon this Commission the right of competency in all classes of Italian claims no reserve is made of antiquated claims, but express mention is made of those relative to holders of bonds and those otherwise settled (Art. IV), the only ones not submitted to the action of the Commission.

RALSTON, *Umpire:*

In this case, referred to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela, it appears that the claimant, an Italian, was, in 1871, a resident of Trujillo, when, as it is said, his store was closed temporarily and business injured by the presence of a large number of soldiers, the claimant sent to prison on the order of the jefe, his establishment plundered, and later on forced loans were imposed upon him under threat of imprisonment. The proofs were taken the following year, and from that time till the past month nothing appears to have been done with the claim, it not having even been called to the attention of the royal Italian legation. The claim is for the sum of 3,900 bolivars.

It is submitted on behalf of Venezuela that this claim is barred by prescription, although it is admitted that no national statute can be invoked against it.

On the other hand, it is insisted for Italy that prescription can not be recognized in international tribunals, this contention being based upon the arbitral sentence given by the Hague permanent court of arbitration in the Pious Fund

case. If this contention be correct the argument must stop at this point. Let us examine it carefully.

In the Pious Fund case it was urged by Mexico that the claim, as presented, was barred by two short statutes of limitation, one of five years and a later one of about the same length of time, the claimants having failed, it was said, to present their claims before the proper authorities within the time limited. On the other hand, it was contended on behalf of the United States (American agent's report, p. 63 [1]), that —

it has never yet been held in international tribunals that a claim brought before them could be defeated by reason of the existence of a statute of this sort, such statute having no authority whatsoever over international courts.

Passing upon these diverse contentions, the court held (American agent's report, p. 858) that

les règles de la prescription étant exclusivement du domaine du droit civil, ne sauraient être appliquées au présent conflit entre les deux États en litige,

adopting almost verbatim the position taken on behalf of the United States.

It will be noted that the declaration of the court had reference not to the principle of prescription, but to the rules with which civil law had surrounded it. A " règle," as we are told in Bourguignon & Bergerol's Dictionnaire des Synonymes —

est essentiellement pratique et, de plus, obligatoire * * *; il est des règles de l'art comme des règles de gouvernement,

while principle (principe)

exprime une vérité générale, d'après laquelle on dirige ses actions, qui sert de base théorique aux divers actes de la vie, et dont l'application à la réalité amène telle ou telle conséquence.

The permanent court of arbitration has never denied the principle of prescription, a principle well recognized in international law, and it is fair to believe it will never do so. Such denial would tend to upset all government, since power over fixed areas depends upon possession sanctified by prescription, although the circumstances of its origin and the time it must run may vary with every case. The expressions of many international law writers upon this point, including Wheaton, Vattel, Phillimore, Hall, Polson, Calvo, Vico, Grotius, Taparelli, Sala, Coke, Sir Henry Maine, Brocher, Domat, Burke, Wharton, and Markby, are collated in the case of Williams *v.* Venezuela, Venezuelan-American Claims Commission of 1888, cited at length in 4 Moore, page 4181. To them we may add Bello, who, on page 42 of his Derecho Internacional, says:

La prescripción es aun más importante y necesaria entre las naciones que entre los individuos, como que las desavenencias de aquellas tienen resultados harto más graves, acarreando muchas veces la guerra.

Bluntschli (sec. 279) finds that a taking of territory, originally wrongful, becomes by time transformed into a legal condition.

But it remains true that the international law writers have referred almost invariably to that form of prescription involved in the taking and possession of property known at one time as usucaption, and we are left to examine whether the general principles of prescription should be applied to claims for money damages as between nations.

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[1] Senate Document No. 28, 57th Cong., 2d session—United States *v.* Mexico. Report of Jackson H. Ralston, agent and of counsel.

In using the word " prescription " in the ensuing discussion, let us follow the definition given by Savigny (Droit Romain, vol. 5, sec. 237):

Quand un droit d'action périt parce que le titulaire néglige de l'exercer dans un certain délai, cette extinction de droit s'appelle prescription de l'action.

The same idea is embodied and somewhat enlarged in Article 2219 of the Code Napoléon, which says:

La prescription est un moyen d'acquérir ou de se libérer par un certain laps de temps et sous les conditions déterminées par la loi.

On examining the general subject we find that by all nations and from the earliest period has it been considered that as between individuals an end to disputes should be brought about by the efflux of time. Early in the history of the Roman law this feeling received fixity by legislative sanction. In every country have periods been limited beyond which actions could not be brought. In the opinion of the writer these laws of universal application were not the arbitrary acts of power, but instituted because of the necessities of mankind, and were the outgrowth of a general feeling that equity demanded their enactment; for very early it was perceived that with the lapse of time the defendant, through death of witnesses and destruction of vouchers, became less able to meet demands against him, and the danger of consequent injustice increased, while no hardship was imposed upon the claimant in requiring him within a reasonable time to institute his suit. In addition, another view found its expression with relation to the matter in the maxim " *Interest republica ut sit finis litium.*"

The universal opinion of publicists and lawgivers has been that the statutes of prescription or " limitation," as they have come to be called, were equitable and the outgrowth of a general desire for the attainment of justice. Let us quote some not given in the opinion hereinbefore referred to.

Savigny says (Vol. 5, sec. 237):

Le motif le plus général et le plus décisif également applicable à la prescription des actions et à l'usucaption est le besoin de fixer les rapports de droits incertains susceptibles de doutes et de contestations, en renfermant l'incertitude dans un laps de temps déterminé. Un second motif est l'extinction présumée du droit que protège l'action. Mais ce motif grave et véritable peut aisément être mal entendu. Le sens de cette présomption est l'invraisemblance que le titulaire du droit ait négligé pendant un temps aussi long d'exercer son action si le droit lui-même n'eût été éteint d'une manière quelconque, mais dont la preuve n'existe plus. * * *

Le demandeur peut intenter son action quand il lui plaît; il peut, donc, en la différant, augmenter les difficultés de la défense; car les moyens de preuve peuvent périr sans la faute du défendeur; par exemple, si des témoins viennent à mourir. Restreindre ce droit absolu du demandeur, dont la mauvaise foi peut abuser, est surtout ce qui mérite considération.

In section 245, Savigny says:

Mais la prescription, quoique de droit positif, n'en est pas moins une institution des plus bienfaisantes, et nous ne devons pas, à cause de son origine, affaiblir ou même annuler son efficacité par des restrictions sans fondement.

Says Troplong in " Droit Civil Expliqué," title Prescription, 2d ed., Vol. I, p. 14:

Ces considérations sont, je crois, suffisantes pour nous montrer tout ce qu'il y a d'équitable et de rationnel dans le principe de la prescription. Que le droit arbitraire soit intervenu ensuite pour déterminer la mesure du temps au bout duquel se trouve la déchéance, c'est ce qui était nécessaire pour tenir en éveil la prudence des

citoyens et pour donner à tous une règle uniforme. Mais le droit civil n'a fait que travailler sur des notions préexistentes; le droit naturel avait parlé avant qu'il ne songeât à codifier.

Says Laurent, title Prescription, volume 32, page 23, section 12:

C'est plus qu'un droit consacré par une loi; c'est un droit de l'humanité; donc, en cette matière toute distinction entre nationaux et étrangers s'efface, comme n'ayant pas de raison d'être; tout homme peut invoquer la prescription.

In Bouvier's Law Dictionary (Rawle's edition), title Prescription, we read:

The doctrine of Immemorial Prescription is indispensable in public law. (1 Phill., Int. L., sec. 255.) The general consent of mankind has established the principle that long and uninterrupted possession by one nation excludes the claim of every other. All nations are bound by this consent since all are parties to it. None can safely disregard it without impugning its own title to its possessions. (1 Wheaton, Int. L., 207.) The period of time cannot be fixed in public law as it can in private law; it must depend upon varying and variable circumstances. (1 Phill., Int. L., sec. 260.)

As appears to the writer, all the arguments in favor of it as between individuals exist equally as well when the case of a national is taken up by his government against another, subject to considerations and exceptions noted at the end of this opinion. For may not a government equally with an individual lose its vouchers, particularly when, if any exist, they are in the hands of far distant subordinate agents? If there be collusion between claimant and official will not government witnesses die as readily as those of private individuals? If the claimant's own action be the cause of the misfortunes of which he complains, will not knowledge of the fact be lost with the flight of time? May the claimant against the government, with more justice than if he claimed against his neighbor, virtually conceal his supposed cause of action till its investigation becomes impossible? Does equity permit it?

And this brings us to a further point. We are told with truth that this is a Commission whose acts are to be controlled by absolute equity, and that equity will not permit the interposition of a purely legal defense, as prescription is said to be.

But is this position correct? As appears from the foregoing citations, the principle of prescription finds its foundation in the highest equity — the avoidance of possible injustice to the defendant, the claimant having had ample time to bring his action, and therefore if he has lost, having only his own negligence to accuse.

Additionally, however, we may refer to the position taken by courts of equity in England and the United States with reference to statutes of prescription.

Says Bouvier (Rawle's edition) title Limitation:

Courts of equity, though not within the terms of the statute, have nevertheless uniformly conformed to its spirit, and have, as a general rule, been governed by its provisions, unless especial circumstances of fraud or the like require in the interest of justice that they should be disregarded. (12 Pet., 56; 130 U.S., 43, etc.) Courts of equity will apply the statute by analogy, and in cases of concurrent jurisdiction they are bound by the statutes which govern actions at law. (149 U.S., 436; 169 U.S., 189). Some claims, not barred by the statute, a court of equity will not enforce because of public policy and the difficulty of doing full justice when the transaction is obscured by lapse of time and loss of evidence. This is termed the doctrine of laches.

It thus appears that courts of equity, even when not bound by the statute recognizing its essential justice, have followed it in spirit.

Let us turn to the cognate title of Laches, in the same work, and we find that —

Courts of equity withhold relief from those who have delayed the assertion of their claims for an unreasonable time, and the mere fact that suit was brought within a reasonable time does not prevent the application of the doctrine of laches when there is a want of diligence in the prosecution. (5 Col. App., 391; 155 U.S., 449; 160 id., 171.) The question of laches depends not upon the fact that a certain definite time has elapsed since the cause of action accrued, but upon whether under all the circumstances the plaintiff is chargeable with want of due diligence in not instituting the proceedings sooner (160 U.S., 171); it is not measured by the statute of limitations (155 U.S., 449); but depends upon the circumstances of the particular case (141 U.S., 260). Where injustice would be done in the particular case by granting the relief asked, equity may refuse it and leave the party to his remedy at law (158 U.S., 41), or where laches is excessive and unexplained (34 U.S. App., 50).

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Laches in seeking to enforce a right will, in many cases in equity, prejudice such right, for equity does not encourage stale claims nor give relief to those who sleep upon their rights (4 Wait, Act. & Def., 472; 9 Pet., 405; 91 U.S., 512; 124 id., 183; 130 id., 43; 142 id., 236; 150 id., 193; 1 App. D. C., 36; 157 Mass., 46); this doctrine is based upon the grounds of public policy, which requires for the peace of society the discouragement of stale claims (137 U.S., 556). * * *

It has been held to be inexcusable for thirty-six years (16 U.S. App., 391); twenty-seven years unexplained (145 U.S., 317); twenty-three years (146 U.S., 102); twenty-two years, during which the defendant company spent much money and labor in improvements (161 U.S., 573); twenty-two years after knowledge of the facts (152 U.S., 412); nineteen years on a bill to establish a trust (7 U.S. App., 481); fourteen years in the assertion of title to lands which meantime had been sold to settlers (4 U.S. App., 160); ten years, in proceedings to enforce a trust in lands (158 U.S., 416); ten years, after the foreclosure and sale of a railroad in a bill by a stockholder to set aside the sale for collusion and fraud, which were patent on the face of the proceedings (146 U.S., 88); nine years in a suit to have a deed declared a mortgage on the ground that it was obtained by taking advantage of the grantor's destitute condition (7 U.S. App., 233); eight years' acquiescence in a trade-mark for metallic paint, during which the defendant had built up an extended market for his product (17 U.S. App., 145); eight years in proceedings where complainant in consideration of $10,000 had released certain claims and sought to set the release aside on the ground that it was entitled to a much larger sum than it received (159 U.S., 243); three years where a person bought property of uncertain value, and after three years brought suit to rescind the contract on the ground of fraudulent representation (31 U.S. App., 102).

We may refer for a moment before concluding to such international precedents as exist upon the subject.

The first case to be cited is that of Mossman before the American and Mexican Mixed Claims Commission of 1868. The claimant alleged that he had been imprisoned unjustly by the Mexican authorities in 1854, and first presented his claim in 1867. Sir Edward Thornton, the umpire (4 Moore, p. 4180), in the course of his discussion said:

It seems unfair that the latter (the Mexican Government) should be first informed of the alleged misconduct of its inferior authorities more than *fifteen years after the date of the acts complained of.* The umpire can not, under this circumstance, consider that the Mexican Government can be called upon to give compensation for a very doubtful injury, and he therefore awards that the claim be disallowed.

The same subject was thoroughly discussed in the case of Williams *v.* Venezuela (4 Moore, p. 4181), heretofore alluded to, in which there had been a delay of twenty-six years in the presentation of an account. After a very learned and thorough discussion, the Commission held (p. 4199):

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 claimant's 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.

We next have the case of Barberie *v.* Venezuela, No. 47, of the same Commission, and we quote from 4 Moore, pages 4202, 4203, expressions that cast a strong light upon the whole subject-matter under discussion.

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 a 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.

Before the same Commission was presented the case of Driggs *v.* Venezuela, No. 7, which was rejected on the same grounds as the Williams case. The Commission, among other things, say: [1]

Twenty-eight years had elapsed since the alleged wrong by the Colombian Government, and not a complaint had been made by Driggs. There is not a case on our list that better illustrates the wisdom of the prescriptive rule.

The same principle has just received the consideration of the American and Venezuelan Claims Commission now sitting. The claim of William V. Spader was, by the opinion of Commissioner Bainbridge, rejected. The honorable Commissioner, speaking of it, says: [2]

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

He further declares —

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 opposition to the foregoing it is suggested that the umpire of the French-Venezuelan Commission, now in session in Caracas, has admitted claims

[1] See Decisions United States and Venezuelan Claims Commission, 1890, p. 404.
[2] See vol. IX of these Reports, p. 223.

dating from 1867, although there have been intermediate French commissions. As it is understood that the arbitral sentences referred to were not accompanied by a statement of reasons, we may imagine that they were based upon some exception to the rule above indicated, and we may now refer, at least partially, to exceptions to the application of the principle of prescription between nations.

In a case referred to in 4 Moore, page 4179, it seemed to have been considered that where there was an infraction of a treaty obligation by the legislative power of the Government itself, prescription would not lie. Whether the position be sound or otherwise need not be discussed.

Again, it was recognized in the Williams case (4 Moore, p. 4194) that the time which would bar an account might not affect a bond as to which a public register had been kept.

Further, the fact will not be lost sight of that the presentation of a claim to competent authority within proper time will interrupt the running of prescription.

The qualifications above referred to, and others which might be imagined, can not, however, have any application to the present case, in which for thirty-one years after proof had been prepared the case does not appear to have been presented in any manner, the royal Italian legation, even, until very recently, having been in ignorance of its existence. Of this conduct on the part of the claimant no explanation is offered.

The umpire, while disallowing the claim, expresses no opinion as to the number of years constituting sufficient prescription to defeat claims against governments in an international court. Each must be decided according to its especial conditions. He calls attention to the fact that under varying circumstances the civil-law period is ten, twenty, and thirty years; in England, for many years — for contracts, six years; in the United States, on contracts with the Government, six years, and in the several States, on personal actions, from three to ten years.

It is sufficient to say that in the present case the claimant has so long neglected his supposed rights as to justify a belief in their nonexistence.

A judgment of dismissal will be signed.