

ITALIAN-VENEZUELAN COMMISSION
GIACOPINI CASE

RALSTON, Umpire:

This case comes to the umpire upon a difference of opinion between the honorable Commissioners for Italy and Venezuela.

In 1871 Domenico and Giuseppe Giacomini, Italian subjects, were merchants, doing an extensive business at Valera. In November of that year their partnership store was entered by Venezuelan troops, by order of General Pulgar, commanding the right wing, and there was forcibly taken from it property of the value indicated: Coffee, 14,400 fuertes; potatoes, 250 fuertes; cacao, 40 fuertes; fennel, 112 fuertes; general merchandise, 2,000 fuertes; personal and household effects, 500 fuertes; figs, 640 fuertes. In addition, mules were taken to the value of 2,400 fuertes and oxen worth 100 fuertes. About the same time Domenico Giacomini was arrested on an unfounded charge of complicity in political disturbances, and transported by the army, in chains, under dangerous conditions, to Maracaibo, where, contrary to the Venezuelan constitution, he was thrown into prison in association with criminals, and again, contrary to the same instrument, loaded with fetters. After some weeks he was released from prison upon payment of a forced exaction to General Pulgar of 400 fuertes and the execution of a bond requiring his presence in Maracaibo to meet any charge brought against him. None such was ever brought, and after seventy-five days of absence from his business, part in actual and part in virtual captivity, he was restored to his home in Valera. Giuseppe Giacomini also spent some time in prison, but its term is not fixed, and this element of damage is not considered for reasons hereinafter given.

Against the claim it is first urged that prescription should lie, about thirty-two years having elapsed since its origin. In the Gentini case, No. 280,¹ in this Commission, the umpire referred to the fact that under certain circumstances prescription would not be recognized as a defense, mentioning specifically that of bonds "as to which a public register had been kept," and furthermore stated that the presentation of a claim to competent authority within proper time would interrupt the running of the time of prescription, adding that there were other qualifications "which might be imagined" without entering into an attempt to enumerate them.

Examination of the expediente in the present case shows that the tribunal before which the proofs were made (in November, 1872), directed notice to the fiscal of the nation before their taking; that he was present and vigorously cross-examined the witnesses; that he asked and was accorded by the judge a copy of the evidence. The Government knowing in this manner of the existence of the claim had ample opportunity to prepare its defense.

As was stated in the Gentini case:²

The principle of prescription finds its foundation in the highest equity — the avoidance of possible injustice to the defendant.

In the present case, full notice having been given to the defendant, no danger of injustice exists, and the rule of prescription fails.³

In addition, as bearing upon the question of its good faith (though not to be considered as of conclusive legal value), the claim was made known to the royal Italian legation in 1872. At a later period one of the claimants (with a letter from a high Venezuelan authority recognizing the justice of his demand) came to Caracas to press for relief, but died here before anything could be accomplished.

¹ See *supra*, p. 551.

² *Supra*, p. 551.

³ See also the Tagliaferro case, *supra*, p. 592.

In the Gentini case the claimant never made his supposed grievances known to anyone in authority in any manner for thirty-two years.

We are brought next to the consideration of an objection to a part of the claim. As before stated, one of the original complainants, Giuseppe Giacopini, is dead. His widow has remarried with a Venezuelan citizen. Giuseppe Giacopini's children were born in Venezuela. By the laws of this country the foreign woman who marries a Venezuelan becomes Venezuelan. Under the decision in the Miliani case, No. 223,¹ the children of a foreigner who are born in Venezuela are Venezuelans. In so far, therefore, as the claim belongs to Venezuelans, it is not considered and must be dismissed without prejudice.

The value of mules, coffee, potatoes, cocoa, fennel, merchandise, household articles, figs, and oxen taken from the firm was 20,442 fuertes, or 102,210 bolivars. Four hundred fuertes, or 2,000 bolivars, were paid (apparently in the end by the firm) to General Pulgar, to secure the release of Domenico Giacepini. One-half of this amount may be awarded to Domenico Giacopini. For the time he was in constraint, either in prison or in Maracaibo, the average sum of 50 fuertes per day, or a total of 3,750 fuertes, will be awarded without interest.

The total award to Domenico Giacopini will therefore be 52,105 bolivars, upon which interest may be calculated since December 1, 1872, approximately the date of the taking of proof, and 3,750 fuertes without interest. No award is made of the sufferings of Giuseppe Giacopini nor for money expended by him personally, as only his heirs could possibly be entitled to an interest therein, and they are excluded from this judgment for the reasons hereinbefore set forth.
