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Mathison Case (on merits)

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MATHISON CASE

(By the Umpire):

In cases of dual nationality the law of the domicile is the law which governs as to citizenship.

The constitution of 1864 of Venezuela can not be retroactive in its effect so as to constitute one born before that date in Venezuela a citizen of Venezuela; but such was not the effect of said constitution.

CONTENTION OF BRITISH AGENT

In this case the claimant was born in Venezuela on September 14, 1858. His father was the child of British parents and was born in Trinidad. The claimant is therefore by the law of England a British subject. If he is also a Venezuelan it is admitted that he will have no standing before this Commission, since the wrong alleged was done to himself.

The Venezuelan law on the subject is as follows:

Constitution of Venezuela of 1830, article 10 —

The following are Venezuelans by birth: Free men born in the territory of Venezuela.

Constitution of 1857 —

The following are natural-born Venezuelans: All persons born in the territory of Venezuela.

The latter was the constitution in force at the time of the claimant's birth.

It is submitted that this does not and was not intended to apply to persons born in Venezuela of foreign parents, if such persons should be by the law of their parent's country nationals of that country.

If the local law of the country where a man happens to be born is to have the effect of preventing him from enjoying the privileges of his parents' nationality, it must expressly and in clear terms state that intention, otherwise it will be taken not to have intended to produce that effect and to have excluded the case of a man so circumstanced. General words can not be held sufficient to produce such a result.

Upon consideration of the context of the provision above quoted it becomes plain that the constitution gave Venezuelan nationality as a privilege and in no way intended to insist upon it as a compulsory burden.

Constitution of 1830, article 10, section 3:

Venezuelans by birth are those born in foreign countries of Venezuelan fathers while absent on the service of or on account of the Republic, or with the express license of competent authority.

The purport of the constitution of 1857 is the same.

In other words, Venezuelans going abroad, save under special circumstances, lose the privilege of having their children born Venezuelan. That is to say, the Venezuelan legislature regarded nationality in the light of a privilege and had no intention of making the nationals of other countries Venezuelan against their will and did not intend to include the case in question.

It was not till 1864 that it occurred to the legislature to insist that the nationals of other countries should be Venezuelan whether they wished it or not. The contention of the Venezuelan minister, cited on page 3 of the opinion of the Venezuelan Commissioner, is untenable in view of the above section.

It is hardly necessary to explain that the attitude of Great Britain toward this matter has always been the same, viz, that where the law of a foreign country clearly states that the nationals of Great Britain born in that country are to be

nationals of that country while there resident, Great Britain acknowledges the right of those countries to claim them on their own territory. Here, however, the law of the country does not and was not intended to have that effect.

That the earlier constitution was not intended or believed to have the effect alleged by the Venezuelan Commissioner is shown, in spite of subsequent explanations and protestations, by the terms of the later law. (Constitution of 1864.)

ART. 6. The following are Venezuelans: All persons who have been born or who may be born in the territory of Venezuela, *whatsoever may be the nationality of their parents*.

It will be seen that this provision was really meant by its framers to be a *change* in the law, as is evidenced by the attempt to make it retroactive in its effects, a pretention which Great Britain through its minister at once stated that it could not in any way countenance.

Having in view, then, that the words of the earlier constitution are on the face of them insufficient to produce the result contended for, that they were not intended to do so, and that this must be taken to have been the opinion of the framers of the constitution of 1864, there is no conflict of law as regards the nationality. The claimant was born a British subject; the law at the time in force in Venezuela did not have the effect of giving him any other nationality; no subsequent law, therefore, could have the effect of depriving him of the privileges of British nationality, and the British Government are entitled to maintain this claim on his behalf.

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

Edward A. Mathison demands of the Government of Venezuela payment of £ 4,966 owing to damages and injuries which, according to his own statement, were caused him by the Government troops.

The undersigned rejects such a claim because said Mathison is of Venezuelan nationality, and therefore has no right to claim before this Mixed Commission. Mathison was in fact born in Ciudad Bolívar in the year 1858, his father being an Englishman, therefore long after Venezuela had assumed its position as an independent nation and declared and inscribed in its constitution the principle *jure soli* by virtue whereof every man born in Venezuelan territory is a Venezuelan by birth.

See the following pertinent extracts:

Constitution of 1830. Title III. On Venezuelans.

ART. 9. Venezuelans are such by birth and by naturalization.

ART. 10. Venezuelans by birth are: The freemen born in the territory of Venezuela.

Constitution of 1857. Title III. On Venezuelans.

ART. 7. The quality of a Venezuelan proceeds from nature or may be acquired by naturalization.

Venezuelans by nature are: All men born in the territory of Venezuela.

Constitution of 1858. Title II. On Venezuelans.

ART. 6. Venezuelans are: First by birth, all those born in the territory of Venezuela; the children of Venezuelan father or mother born in the territory of Colombia, and those of Venezuelan parents born in any foreign country.

Constitutions of 1864. Title I. Section II. On Venezuelans.

ART. 6. Venezuelans are: All those born or that may be born in the territory of Venezuela whatever may be the nationality of the parents.

In the constitutions enacted by the Republic in the years 1874, 1881, 1891, 1893, and in the one actually in force, which is that of 1891, the last extract is textually reproduced.

Under the rule of the constitutions of 1857, 1858, it was claimed by some foreign governments that children who were born in the territory of Venezuela of foreign parents were to follow their parents' nationality, but the Republic always maintained that they were Venezuelans; and in order to avoid such discussions, no matter how unfounded the pretensions of the aforesaid governments might be, the provision contained in article 6, No. 1, of the constitution of 1864, was enacted.

No sooner was the fundamental law published than the chargé d'affaires of France addressed himself to the minister of foreign affairs in Venezuela, stating that his Government had ordered him to ask precise explanations about the meaning of certain provisions contained in the new constitution of the Republic with regard to nationality.

Article 6 [says the chargé d'affaires] reads thus: "They are Venezuelans: First, *all those born or that may be born in the territory of Venezuela, whatever their parents' nationality may be.*"

This paragraph being susceptible of two meanings, the undersigned wishes to know whether the legislature has intended to establish for every person born, or that may be born, of foreign parents in the territory of the Republic, the obligation of embracing, even against his will, Venezuelan nationality, or has only been willing to grant him the right of claiming this nationality in preference to that of his parents.

In this last case, the undersigned can but pay homage to the liberality of the new laws of the Republic, quite in conformity on this point with the provisions of French law.

On the other hand, he should be very sorry to be obliged to seriously protest against nationality being imposed by force on individuals born of French parents, if such be the meaning of the first paragraph, article 6, of the fundamental law of the United States of Venezuela.

Doubtless the provision referred to is not susceptible of two senses, having but one, that which has been expressed in the first place by the honorable French minister. As for the protest, it is absolutely unlawful, in view of the fact that Venezuela, on sanctioning said law, made use of its sovereignty, an essential tribute of every independent nation.

The minister of foreign affairs of Venezuela answered the chargé d'affaires, as follows:

In the former constitutions of Venezuela, it recognized as its citizens all men born in its territory, this declaration standing alone. The Executive power realized and always understood that such an article regarded as citizens, even against their will, all who were born in this country. There was only one case in which the Executive power yielded — that is to say, the one concerning the young man d'Empaire. His resolution, however, as coming from an authority who had no right to interpret the constitution, had only a transitory character, and so it was then submitted to Congress. The affair not being decided at the time of the inauguration of the present Government, this Government consulted the cabinet council, and its opinion maintained the principle of imposed nationality. In conformity with this a pretension of the chargé d'affaires of Spain was then decided. It claimed the native citizenship on behalf of the sons of Spaniards, taking as a precedent the circumstance that the same had been bestowed on descendants of French and English people. Other cases of the same nature were likewise decided by this secretaryship. (Foreign Memorial, 1865.)

At the same time (1865) Mr. Edward, chargé d'affaires of Great Britain, acknowledged the right of Venezuela to dictate the above provision in 1864, alleging only that in that case it was not to be extended to those born prior to it.

The minister of foreign affairs of Venezuela hastened to show that said decision was not retroactive, but explanatory. In truth, the constitutions of 1830, 1857, and 1858 sanctioned the same principle as well as that of 1864, only in this last one the expression is clearer, if possible, so as to make any pretension impossible. however rash, against the Venezuelan nationality forcibly imposed upon persons born in Venezuela of foreign parents.

It is worth mentioning that in the epoch in which Mathison was born the principle *jure soli* was in force in England absolutely, somewhat modified afterwards by the law of 1870.

Jusqu'à une époque toute récente, l'Angleterre était un pays de perpétuelle allégeance. Quiconque était né sur le territoire britannique était sujet britannique, et ne pouvait cesser de l'être sans le consentement du prince. (Ernest Lehr, *Eléments de Droit civil anglais*, 1885, p. 21.)

La loi de 1870 (sec. 4) confirme implicitement le vieux principe du *common law* que tout individu né sur territoire britannique est par ce fait seul sujet britannique. (Idem., p. 23).

And it is to be borne in mind also that England has decided on several occasions some controversies identical with the one arisen on account of Mr. Mathison's nationality in the way I contend to be right.

The diplomatic correspondence of the English Government furnishes us with numerous proofs in this respect.

Sec. 547. En 1842 le gouvernement de Buenos Aires ayant voulu obliger au service militaire plusieurs sujets anglais nés dans la République Argentine, ceux-ci réclamèrent la protection du gouvernement britannique. L'avocat général du royaume uni décida que "l'effet de la loi anglaise ne pouvait aller jusqu'à priver le gouvernement du pays où ces personnes étaient nées du droit de les considérer comme ses sujets naturels, et qu'elles ne pouvaient être protégées contre la loi qui atteignait les sujets du pays, à moins que cette loi ne refusât la qualité de nationaux aux fils d'étrangers." C'était donc au gouvernement argentin que les individus qui se croyaient lésés devait s'adresser.

En 1857 la même question se présenta de nouveau à Buenos Aires, où des sujets anglais nés dans cette ville furent astreints au service de la milice. En réponse à leur demande de protection, Lord Palmerston écrivit à l'Envoyé anglais que le gouvernement de S. M. ne pouvait réclamer de telles personnes comme sujets anglais. (*Le Droit international*. Calvo, t. 2, p. 42.)

Paragraphe 549. L'année suivante nous voyons encore le gouvernement anglais affirmer la même doctrine. Dans une dépêche de Lord Malmesbury à Lord Cowley nous lisons: "Il est permis à tout pays de conférer par des lois générales ou spéciales les privilèges de la nationalité aux personnes qui naissent hors de son territoire, mais il ne peut les leur accorder au détriment du pays où elle sont nées après qu'elles y sont retournées volontairement et y ont fixé leur domicile. En règle générale ceux qui naissent sur le territoire d'une nation sont tant qu'ils y résident soumis aux obligations inhérentes au fait de leur naissance. La Grande-Bretagne ne saurait permettre que la nationalité des enfants nés sur son territoire de parents étrangers soit mise en question. (Calvo, *ibid.*, p. 48.)

In 1843 a question arose between Great Britain and Portugal identical with the one we are studying, and Lord Aberdeen sent the English representative the following instructions:

I have received your official letter, dated the 5th of May, by which you advise me that you have informed the minister of foreign affairs of Portugal that the Government of Her Majesty can not admit even for a moment the right vindicated by the Portuguese Government of considering as Portuguese subjects all persons born in Portugal, notwithstanding their descending from foreigners residing in said country.

I think it necessary for your best information to let you know the opinion of the advocate-general of the Queen on several cases arisen in foreign countries, in which the right you refer to in your official letter has been discussed.

Such opinion is, substantially: That if, according to the written law of this country, all children born out of the King's obedience, whose parents or paternal grandfathers were subjects by birth, are themselves entitled to enjoy British rights and privileges while remaining in British territory, the British statute, however, in its effect can not be extended so far as to deprive the Government of the country where those persons were born of the right of claiming them as subjects, at least as long as they remain in that country. (Seijas, *Derecho Internacional Hispano-Americano*, Tomo I, p. 340.)

Not by the strength of my reasoning, but by the authority of the texts above cited, I have fully proven that Mr. Edward A. Mathison is of Venezuelan nationality, and being such has no right to resort to this Mixed Commission, making a claim against his own native country. Therefore said claim ought to be disallowed.

PLUMLEY, *Umpire*:

The claimant was born in Venezuela on September 14, 1858. He now resides and has always resided in Venezuela. His father was of British parents and was born in Trinidad. No question is made that by the law of Great Britain one born in another country of a British father domiciled in such foreign country is a British subject. It is admitted that if he is also a Venezuelan by the laws of Venezuela, then the law of the domicile prevails and the claimant has no place before this Mixed Commission.

His claim is for £ 4,766 for damages and injuries received by him through troops of the Venezuelan Government. No question is made that his claim is a just one, providing he brings himself within the jurisdiction of the Commission.

The honorable Commissioners fail to agree, and therefore this case comes to the umpire to be determined by him.

The constitution of Venezuela of 1864, title 1, section 2, subject, Venezuelans, is as follows:

ART. 6. They are Venezuelans: First. All those born or that may be born in the territory of Venezuela, whatever may be the nationality of their parents.

No question is made that the constitution then established by the Republic is textually the same now, and has remained thus ever since 1864.

No question is made by the learned agent for the British Government that, under the constitution of 1864, one born thereafter in circumstances similar to those of the birth of the claimant Mathison would be a Venezuelan citizen, but it is asserted that the constitution existing at the time of the claimant Mathison's birth did not impose Venezuelan citizenship upon the claimant. The interpretation to be given to the constitution of 1857 is decisive of the question in issue, as it is agreed that this is the constitution in force at the time of the claimant Mathison's birth.

The learned British agent contends that the constitution of 1864 can not have retroactive effect so as to constitute one born before that date a citizen of Venezuela by force thereof, and the umpire sustains his contention. The umpire does not understand the honorable Commissioner for Venezuela to claim retroactive force for the constitution of 1864, and understands him to accept the claim of the learned British agent in that regard.

The umpire understands that the honorable Commissioner for Venezuela claims in regard to the constitution of 1864 simply this, that it is exigetical, not additional, and that beginning with 1830 the constitution of Venezuela has had in this regard the same meaning and purport as the constitution of 1864.

It is insisted by the learned agent for Great Britain that to have the effect to deprive him of the nationality of his parents the law of a country where a man

happens to be born must be stated in express and clear terms, and that general words can not be held sufficient to produce such result; and he claims further that the language of the constitution of Venezuela as it was prior to 1864 comes within the force and effect of his objection.

The strength and value of this contention will depend in a great measure upon what is deemed the natural relation of the state to those born within its domain, and conversely the natural relation to the state of one so born. If the state owes to such the protection due to its citizens, and in return has a right to demand from such due allegiance, if this is the natural relation between the two, changed only by artificial rules legislative enactment, or kingly decrees, the language used in any law having reference to such relations will be interpreted to favor the natural status, unless it clearly appears to express a different purpose. On the other hand, if such is not the rule of nature, then an effort by enactment to make it a rule of the state will require very clear and unambiguous language to express such intention, and if ambiguities exist or the expression is weak the interpretation will be against the law which seeks to establish a principle in derogation of a great natural law.

Phillimore, volume 1, chapter 18 (star page), section 328, says:

First. As to the right of territorial jurisdiction over persons: They are either (1) subjects or (2) foreigners commorant in the land. * * * Under the term subjects may be included both native and naturalized citizens. * * * The native citizens of a State are those born within its dominions, even including, according to the law of England, the children of alien friends.

In a note to Phillimore, Volume IV, page 17, it is said that in *Shedden v. Patrick*, 1 Macqueen's House of Lords' Cases 611, Lord Chancellor Cranworth observes that in England, *independently of statute law* and with certain exceptions, every one *born* abroad is an alien. England holds that the happening of birth within its dominions from parents who are not enemies affixes and imposes an indelible citizenship in that country. See the case of Frost MacDonald in State Trials, 887. Here the respondent left Great Britain in his infancy, but he was born there. He was taken in arms holding a French commission, the latter being the country of his domicile; he was held guilty of treason by the courts of Great Britain.

Natural allegiance is such as is due from all men *born* within the King's dominions immediately upon their birth. (Blackstone (Cooley's), vol. 1, 369, citing 7 Rep. 7.)

The children of aliens born here in England are, generally speaking, natural-born subjects and entitled to the privileges of such. (Blackstone (Cooley's), vol. 1, p. 373.)

The first and most obvious division of the people is into alien and natural-born subjects. *Natural-born* subjects are such as are born within the dominions of the crown of England * * * and aliens such as are born out of it. The thing itself, or substantial part of it, is founded in reason and the nature of *government*. (Idem, p. 366.)

Such was the rule of the common law. All changes are the result of statutory legislation.

Blackstone contended, volume 1 (Cooley's), page 369:

That the natural-born subject of one prince can not by any act of his own * * * put off or discharge his *natural* allegiance to the former.

And that this is the principle of *universal law*, citing to sustain this 1 Hale's P.C., 68.

The universality of this principle to the extent of holding the inability of expatriation is, of course, very much questioned, and is only quoted here to show the force which attaches to the incident of birth in establishing one's

citizenship. In all these there are certain well-defined exceptions which, not being necessary to this discussion, are assumed to be in the minds of everyone, and therefore that no especial reference to them is necessary.

Story's Conflict of Law, second edition, Chapter III, section 48, gives as the general rule:

Persons who are *born* in a country are generally deemed to be citizens and subjects of that country.

That —

A reasonable qualification of the rule would seem to be that it should not apply to the children of parents who were *in itinere* in the country, or who were abiding there for temporary purposes, as for health, or curiosity, or for occasional business.

When I say that an alien is one who is born out of the King's dominion or allegiance, this always must be understood with some restrictions. The common law, indeed, stood absolutely so, with only very few exceptions. * * * And this maxim of the law proceeded upon a general principle that *every man owes natural allegiance where he is born*, and can not owe two such allegiances or serve two masters at once. (Blackstone (Cooley's), vol. 1, 373.)

The Century Dictionary says:

Natural-born citizen. One who is a member of a state or nation by virtue of birth.

Native. One born in a given country as a native of it. Of or pertaining to one by birth or the place or circumstances of one's birth.

Citizen. A native of a city or town. * * * A freeman of a city or town as distinguished from a foreigner or one not entitled to its franchise.

"Surely no native-born woman loves her country better than I love America."

Naturalize. To confer the rights and privileges of a native-born subject or citizen upon.

In ancient Rome citizenship, though most usually acquired by birth, might be obtained by special grant of the state. (International Encyclopædia; title, Citizen.)

Then the chief captain came and said unto him, Tell me, art thou a Roman? He said, Yea. And the chief captain answered, With a great sum obtained I this freedom; and Paul said, But I was *free born*. (Acts xxii, 27-28.)

But Paul said, I am a man which am a Jew of Tarsus, a city in Cilicia, a citizen of no mean city. (Acts xxi, 29.)

"Breathes there the man with soul so dead
Who never to himself hath said,
This is my own, my native land —
Whose heart hath ne'er within him burned
As home his footsteps he hath turned
From wandering on a foreign strand? "

(Scott's *Lay of the Last Minstrel*.)

Allegiance on the one hand and protection on the other ordinarily settle this without difficulty when applied to native-born or naturalized citizens, or mere commorant aliens. Serious questions arise only when the law must be applied to those who are domiciled from choice in a state of which they are not native and in which they have not sought or have not been permitted citizenship.

The necessities and blessings of commerce and the comity now existing between nations have enlarged these conditions and have permitted privileges to each quite beyond those pertaining to such relations in a not remote period. When the proportionate amount of these unattached persons to the great body of native citizens is relatively very small, the danger and the harm to the state is little, if any; but any considerable number, relatively, of persons who partake of the benefits of a country and yet deny to it allegiance and defense, while

claiming from it peculiar protection, become a serious menace and harm to the state of which they are a part. It is not egotism for a country to assume that a man who becomes de facto a citizen by his established domicile, who there erects his roof-tree, there selects and locates his wife, and there rears his children, has deliberately chosen that such country shall be for his children their native land, to whom they, if not he, shall owe allegiance. If citizenship is thereby imposed, it is not by the state, but by the parent.

This law of nature, of nativity, furnishes the most ready basis of citizenship, and a law which recognizes it and which denies continuous alienship to successive generations is as general as it is wise and as wise as it is general.

It follows, then, that in the judgment of the umpire a law defining citizenship to mean those who are born in its dominions is so far in accord with the universal trend of law upon such matters, so consistent with a due regard for the higher welfare of the inhabitants of the state, so sympathetic with natural law, that he would find nothing doubtful nor uncertain if it be expressed in general terms. Most certainly he finds no doubt or ambiguity in the expressions:

ART. 9. Venezuelans are such by birth and by naturalization.

ART. 10. Venezuelans by birth are: The free men born in the territory of Venezuela. (Venezuelan constitution, 1830.)

This is not generalization. Using the article "the" before "freemen" makes it specific and certain. It includes all that are born free. It excludes all others and none other. It gives one test only. It defines that one. There is no ambiguity here — nothing which suggests or permits interpretation. It comes within the rule quoted from Vattel in Phillimore (Vol. II, sec. 70):

If the meaning be evident and the conclusion not obscure, you have no right to look beyond or beneath it to alter or to add to it by conjecture.

Nor does the umpire find ambiguity in this:

ART. 7. The quality of a Venezuelan proceeds from nature or may be acquired by naturalization.

Venezuelans by nature are: All men born in the territory of Venezuela. (Venezuelan constitution, 1857.)

Here, also, there is no generalization. The most conclusive and comprehensive word known to the English language does duty here.

The Century Dictionary:

All. The whole quantity of, with reference to substance, extent, duration, amount, or degree, with a noun in the singular, as all Europe, all history, etc.

"All hell shall stir for this." (Shakespeare, *Henry V*, V, 1.)

"All heaven resounded, and had earth been then, all earth had to her center shook." (Milton, *Paradise Lost*.)

The Century Dictionary further says:

The *whole number of with reference to individuals* or particulars take collectively with a noun in the plural; as, all men, all natives, etc.

Nor is this less certain or significant:

ART. 6. Venezuelans are: First, by birth, all those born in the territory of Venezuela; the children of Venezuelan father or mother born in the territory of Colombia, and those of Venezuelan parents born in any foreign country. (Venezuelan constitution, 1830.)

These are identical in scope and largely in language with the fourteenth amendment of the Constitution of the United States, viz:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

It is well understood and clearly expressed by the learned agent for Great Britain that the expressions used in the different constitutions in Venezuela hereinbefore quoted are to be accepted as they have been interpreted by that country through the proper channels. Being wholly a matter of its own domestic concern it is not questioned that the interpretation which it has placed upon this language is authoritative and must be accepted by all other nations. Upon such matters if the laws of other nations conflict with the laws of Venezuela the laws of such other nation must yield, as they have no extraterritorial effect beyond the amount which the comity of Venezuela may allow. It is the belief of the learned British agent that the provisions concerning citizenship, hereinbefore quoted, from the constitution of Venezuela, and the provisions of the constitution of 1864, hereinafter written, are progressive, not interpretative. It is asserted by the honorable Commissioner for Venezuela that these several provisions are not progressive, that the several constitutions are identical in meaning and purpose, but that the language used is of the nature exegetical to meet the resisting contentions of other nations concerning the meaning of the constitution then existing — to meet those objections and protestations with language which would effectually preclude any such interpretation and stay all such contentions.

As an aid in understanding the spirit, scope, and purpose of the constitution of Venezuela of 1830, 1857, 1858, and 1864, the opinion of its statesmen is also of value. In the case before the American-Venezuelan Claims Commission under the convention of 1866 Commissioner Andrade, whose opinions give evidence of superior mental strength and ability, says (Moore's *Int. Arb.*, vol. 3, 2457):

By virtue of that right Venezuela declared in her constitutions of 1830, 1857, 1858, and 1864 a Venezuelan citizen by birth every free person born in the territory of Venezuela, such, for instance, as Narcissa de Hammer and Amelia de Brissot,

referring here to the widows who appeared as claimants before the Commissioners in virtue of their derived citizenship through their husbands, who were United States citizens in their lifetime, while the claimants were Venezuelan born, reared, and domiciled.

The honorable Commissioner for Venezuela further asserts that his present contention is in accord with all past interpretation of this point by Venezuela. This last proposition is nowhere and in nowise challenged by the learned British agent, and hence is accepted by the umpire as an admitted fact. Such being the interpretation by Venezuela of its own constitution in this regard it must prevail.

The law enacted by the supreme power of the state is to be interpreted according to the intention of that one power. (Phillimore, *International Law*, Vol. II, sec. 66.)

Such intention is to be gained by what the country or state enacting the law has said was the meaning if it has made a deliverance through the proper channels upon that subject. If not, then there comes to our aid another principal rule of interpretation.

Inculcates as a cardinal basis (which) is to follow the plain and obvious meaning of the language employed. (Phillimore, *International Law*, Vol. II, sec. 70.)

To hold in conformity with the contention of the honorable Commissioner for Venezuela that one born in the country of alien friends is a citizen of the

country of his birth, is to hold in accord with the position of England and the position of the United States of America and is in accord with the wise policy for a state which is growing or anticipates growth by immigration. It can not wisely have a large, foreign, cancerous growth of unaffiliated and unattached population alien to the country, its institutions, and its flag, but in due regard to its own safety it must fix a time when the domicile of the parent's choice shall create a citizen out of the son of his loins born within that domicile. It is the test of nature; it is the test of Venezuela. If citizenship is thereby imposed it is through the father's voluntary, intelligent selection. There must be an end to the citizenship of the national of a country when he is resident and domiciled in some other country. If the father can retain his foreign nationality and impart that to his own son on the soil of the country of his domicile, then may not the son of the son, and so on ad infinitum?

The umpire holds that the constitution of 1864 is but explanatory of the meaning of the constitutions preceding upon these questions of nationality, and, that since 1830, a free man born in Venezuela is a citizen of Venezuela; and that therefore Edward A. Mathison is a Venezuelan and not a British subject, and this tribunal has no jurisdiction over his claim.

It is therefore dismissed without any prejudice to any right which the claimant may have in any other tribunal for the recovery of his claim.

STEVENSON CASE

(By the Umpire):

A woman acquires the nationality of her husband by marriage, but if she continues to reside in the country of her birth after the death of her husband, and the law of such country provides that she is a citizen of the country of her husband during her marriage only, then the law of her domicile will control and she can not be considered as a subject or citizen of the country of her husband.

Where there appears to be a conflict of laws with respect to the nationality of a person, she is deemed to be a citizen of the country in which she has her domicile.

Under the protocol the Commission has no jurisdiction to decide claims of the British nation, as such, against Venezuela. Its jurisdiction is limited to hearing and deciding claims on behalf of British subjects.¹

Two children resulting from the marriage, who were born on British soil, are, under the laws of England, British subjects, and have a right to claim before the Commission.

The fact that they were in the military service of Venezuela can in no way affect their status as British subjects, and can not amount to a declaration to become citizens of Venezuela, and in no case can it be equivalent to formal naturalization as citizens thereof.

The decease of one of these children after the presentation of the claim and before the award will not defeat the allowance of his claim, as it was British in origin and at the time of its presentation to the Commission. The claim with respect to these two heirs allowed; with respect to the widow and other children, dismissed without prejudice.

CONTENTION OF BRITISH AGENT

This claim is presented by the British Government on behalf of the estate of the late J. P. K. Stevenson.

The circumstances of the claim are already before the Commission. Since the claim was presented by the British Government in 1869 the claimant, a

¹ See Italian - Venezuelan Commission (Miliani Case) in Volume X of these Reports.