REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Stevenson Case (on merits)

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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*.

British subject born in Scotland, has died, and the claim is now presented on behalf of his estate.

The principle upon which the British Government ask compensation is that underlying the diplomatic presentation of all claims of foreign subjects by their governments. Compensation in such cases is demanded and granted in respect of an international wrong, committed to the property of the subject of the demanding state by the state on which the demand is made. The injury done to the subject is an injury to the state and remains unatoned until the claim is satisfied. It is on this theory that the diplomatic support of claims is recognized in international law, and it is the principle upon which the British Government has always acted in such matters. (Cf. Vattel, book 2, ch. 6, quoted in Moore Int. Arb., at p. 2378. The decision in the case of Cassidy (id., p. 2378) exemplifies this principle.)

The claim, then, being a claim on behalf of a British subject in its inception, has not been satisfied. The injury done to the State therefore remains and is not affected by the death of the person injured and the vesting of the estate in another.

As regards the amount recovered this will devolve precisely as the damaged portion of the estate would have done, had it not suffered damage at the hands of the respondent Government.

Such claims as the present come under the terms of the protocol of February 13, 1903. Preamble:

> Whereas certain differences have arisen between Great Britain and the United States of Venezuela in connection with the claims of British subjects. * * *

One of the " differences " mentioned was the injury inflicted on the British Government in connection with this claim, which has been in dispute since 1869. The object with which this tribunal is constituted is by the terms of the protocol, to settle such differences, and therefore in this case to cause the Venezuelan Government to make atonement to the claimant Government for the wrong inflicted upon it in the person of its subject Stevenson.

As the claim also satisfies the conditions of Articles I and III of the protocol, this Commission has jurisdiction to make an award in favor of the claimant Government.

In the view of the British Government the nationality of Mrs. Stevenson and of her children is irrelevant; as, however, the conclusions drawn by the Venezuelan Commissioner appear to be inaccurate, his opinion ought not to remain unanswered.

The facts, which are not in dispute, are as follows:

Stevenson was an Englishman, but Mrs. Stevenson was, before marriage, a Venezuelan. The names, ages, and places of birth of the children may also be taken to be as stated by the Venezuelan Commissioner.

It will not be seriously disputed that Mrs. Stevenson became, by the law of both countries, a British subject by her marriage and that there was at that time no provision in the law of either country to modify or qualify the completeness of that status.

When a person has completely acquired a particular nationality (British) no subsequent legislation of a foreign country (Venezuela) can devest him of that nationality or of any of its privileges unless he goes through the prescribed form of naturalization in that country. By the law of both countries Mrs. Stevenson became, in 1855, a British subject for the rest of her life (unless remarried, which is not the case here).

The Venezuelan law of 1873, though possibly effective in giving a double nationality to any widow whose marriage with a British subject should have

taken place after that date, could have no effect as regards those already married.

As regards the children, the first six are British subjects according to the argument in the case of Mathison, to which the tribunal is respectfully referred.[1]

The two last, Juan and Guillermo, are British subjects by the laws of both countries. It is not disputed that the remainder are Venezuelans on Venezuelan territory.

The fact that a person takes a civil or military appointment under a foreign government does not affect his nationality, and it has never been held to do so.

GRISANTI, *Commissioner*:

The claim of J. P. K. Stevenson was submitted to the Venezuelan-British Mixed Commission which sat at Caracas in 1869. The Commissioner on the part of Venezuela refused to consider it, believing it was not within the jurisdiction of the Commission to do so, and the British Commissioner undoubtedly acknowledged this objection as right, for he withdrew the claim with the reservation that such withdrawal was without prejudice to the right of the claimant.

Said claim is presented anew before this tribunal, and the undersigned proceeds to give his opinion in regard thereto.

J. P. K. Stevenson married in Port of Spain, in 1855, Mrs. Julia Arostegui, she having been born in Venezuela in 1838 of parents who also were natives of the Republic. Stevenson had twelve children from his marriage, as follows: María, Hilaria, Agustina, Julia, Elena, Juan, Norman, Cecilia, Alejandrina, Corina, another Juan, and Guillermo. They were all born in Venezuelan territory (Maturín), except the last two, who were born in Trinidad, but have held public posts in Venezuela —Juan civil posts and Guillermo military ones. J. P. K. Stevenson died in Maturín about the middle of April 1882.

The British Government now presents the claim on behalf of the heirs of Stevenson, who are his widow and surviving children. The Venezuelan Commissioner hereby rejects said claim on the ground that the said heirs, being Venezuelans, have no right to claim before this Commission, which is called upon to examine and decide claims of British subjects.

Mrs. Julia Arostegui, as before stated, was born of Venezuelan parents in Venezuela, and is therefore a Venezuelan. If by the English laws the lady acquired British nationality, she regained her Venezuelan nationality by virtue of her widowship, in conformity with article 19 of the Venezuelan Civil Code of 1881, in force when Stevenson died. Said article reads as follows:

> The Venezuelan woman who marries a foreigner shall be considered as a foreigner with respect to the rights peculiar to Venezuelans, provided that by so marrying she acquires her husband's nationality whilst she remains married.

This provision is the same as that of the Civil Code of 1873 and that of 1896, at present in force.

If by the British law the woman who marries an Englishman acquires British nationality and retains it so long as she acquires no other, and it be considered that a conflict has arisen as to Mrs. Stevenson, between said law and the abovementioned provision of the Venezuelan Civil Code, the conflict should in justice be resolved, giving the Venezuelan law the preference. And, indeed, the ties which bind Mrs. Arostegui de Stevenson to Venezuela are many and close; it was here she and her parents were born, as also ten of her children; it is here her husband is buried; her affections all are centered in Venezuela, and likely

[1] See *supra*, p. 485.

enough she knows no other land which is not Venezuelan territory, excepting Port of Spain. Her marriage was solemnized at Trinidad because, the bridegroom being a Protestant, the priest of Maturín declined to marry them.

I shall now consider the nationality of her children. With regard to María, born in 1856; Hilaria, in 1858; Agustina, in 1860; Julia and Elena, in 1863; and Juan, in 1864; I hold that they are Venezuelans, and refer to the arguments contained in my opinion in reference to the claim of Mr. Edward A. Mathison.[1]

I consider that no discussion whatever is possible as to the Venezuelan nationality of Norman, born in 1865, Alejandrina, in 1869, and Corina, in 1871. Juan and Guillermo, born in Trinidad in 1873 and 1881, have mixed in the political affairs of Venezuela, and have held public offices; the former a civil and the latter a military position; both having been, therefore, deprived of the right to claim British protection.

In the verbal discussions with His Britannic Majesty's honorable Commissioner he has held that, as the British Government presented this claim in the year 1869 and it was withdrawn, they have now the right to present it anew, whatever be the nationality of its present owners. I have rejected such argument as being antijuridical, as the British Government is acting on behalf of the claimants, and they, being Venezuelans, such representation is unacceptable.

On the strength of the reasons assigned the Venezuelan Commissioner rejects entirely this claim.

I herewith produce three telegrams [2] referring to this case, addressed to the assistant Venezuelan agent, Dr. J. I. Arnal, two of which are from Gen. José Victorio Guevara, president of the State of Maturín, and the other one from Gen. L. Varela, jefe civil y militar of the State of Guayana. I am expecting other proofs, which I shall present as soon as received.

PLUMLEY, *Umpire*:

This case first came to the umpire on the disagreement of the honorable Commissioners concerning the objection of the honorable Commissioner for Venezuela that the claim was barred by limitation, which objection was overruled by the umpire, as set forth in his opinion in the same case of date October 16, 1903,[3] and the cause was returned to the honorable Commissioners to be considered on its merits.

The honorable Commissioners in their consideration of the merits of the case find no important disagreements as to the facts, but they do differ widely in their application of the law to the facts.

The admitted facts are that in 1859 J. P. K. Stevenson, since deceased, suffered recoverable injuries at the hands of the Venezuelan Government —

	Pesos
On the Rio de Oro estate to the amount of	13,277.60
On the La Corona Mapirito and San Jáime estate	77,645.00
	90,922.60
In 1863 on the Bucaral estate	43,660.80
In 1869 on the San Jacinto estate	1,260.00
Total	135,843.40

[1] *Supra*, p. 486.
[2] These telegrams refer to the place and time of birth of the claimants.
[3] *Supra*, p. 483.

J. P. K. Stevenson was at this time, had always been, and on the date of his death was a British subject domiciled in Venezuela. He died in Venezuela in 1882.

In 1855 the said J. P. K. Stevenson, then domiciled in Venezuela, married, at Port of Spain, Trinidad, Julia Arostegui, a Venezuelan by birth and domicile, who still survives him and is one of the parties in interest in this claim. This marriage was solemnized in Trinidad because the priest at their home in Venezuela declined to officiate, the groom being a Protestant. Of this marriage there were born to them, who still survive and are parties of interest in this claim, María, born in 1856; Hilaria, in 1858; Agustina, in 1860; Julia and Elena, in 1863; Juan, in 1864; Norman, in 1865; Cecilia, in 1867; Alejandrina, in 1869; Corina, in 1871; Juan, in 1873; and Guillermo, in 1881. Save the last two, all were born in Venezuela and have always had their domicile in Venezuela. The last two were born in Trinidad, but since 1881 they also have been domiciled in Venezuela and are said to have held offices, civil and military, in that country under the National Government. The domicile of the widow before and during her marriage and since has been in Venezuela.

Interest on this claim is asked as also expenses.

Upon these facts the honorable Commissioners disagree in judgment and the case has therefore come to the umpire for decision.

The umpire would first acknowledge to the learned agent for Great Britain and the honarable Commissioner therefor and to the honorable Commissioner for Venezuela his indebtedness for the very thorough, careful, and able manner in which the claims and counterclaims of the respective Governments have been laid before him. This presentation has in a great measure simplified the work of the umpire, and he is correspondingly grateful.

The claimant Government contends that it is not important to inquire into the citizenship of the widow and children of the deceased for the reason that it being acknowledged that the said J. P. K. Stevenson was a British subject and that this claim matured during his lifetime settle the question of jurisdiction in this tribunal. It is urged by the claimant Government that the injury having occurred to a British subject and an indignity having been committed through him against the British Government by the respondent Government it can not be atoned until full recompense has been made and that the true status of the case is found not in the citizenship of the representatives of the deceased at the time of the protocol, but in the unremoved indignity to the British Government. This position of the claimant Government is not assented to by the respondent Government, which insists that the jurisdiction of this tribunal turns upon the question whether the beneficiaries, the widow and heirs of Stevenson, are or are not in any part British, and they deny such nationality as to all and insist that the widow and children are all Venezuelans.

Venezuela was the domicile of J. P. K. Stevenson through long years of choice and settled purpose. It was the domicile of himself and his family at the time of his death. It was the domicile of origin in the case of Mrs. Stevenson. It was the domicile of origin in the case of all the children save two. This domicile of origin on the part of the children continued their domicile of choice, as well, after they became adults. As to the two born out of the country, it became with them a domicile of choice after they reached their majority. The domicile of the widow continued as it had always been — Venezuela. In Venezuela is found the home of her parents, her own birthplace, the old family rooftree, the graves of her family, and of her kindred and all of the tender associations which cluster around the home of one's youth. Here she found her husband; here her children were born; here she erected her own family altar; here remained the friends of her childhood, and here were all her children when

her husband died; here were all the familiar scenes which had become woven into the warp and woof of her life, and were therefore a part of her life, and it is not strange that here she remained. There is not the slightest evidence that she ever had a thought of allegiance to Great Britain or ever suggested to her sons in their strength that their hearts should be fixed in loyalty to the British sovereign and their hands ready for his defense. Her relation as subject of Great Britain was wholly by affinity, so far as appears, and when the connecting link between her and Great Britain was broken in the death of her husband her citizenship came back to her domicile not only by the law of Venezuela but as her natural selection. There is nothing to suggest that Mr. Stevenson ever yielded personal service, had any personal loyalty, or did aught that was due in the way of allegiance to his native country. Apparently, in every respect but that of de jure, he had become a Venezuelan. To hold that under these circumstances the children were born British subjects and the wife constituted a British subject after the death of her husband against the law of Venezuela, organic and statutory, seems forced and unnatural. It seems to the umpire that the conditions of domicile of such great length and constancy as in this case have an important bearing on the ultimate rightful solution of this question. According to Boullenois, quoted in Story's Conflict of Laws, page 1697, it is safe to stand upon the proposition —

First. To follow the general principles which declare that the person will be affected by the state and condition which his domicile gives him. Secondly. Not to derogate from those principles, except where the spirit of justice requires it.

If the position assumed by the learned British agent is correct, that the act of 1873 was the beginning of a claim by Venezuela that her daughters when married to a foreign subject thereby partook of the husband's nationality only during the lifetime of the husband, it could hardly be taken as retroactive or null. The law existing at the time when her widowhood begins and her rights as widow vest will be effective, unless, indeed, as urged by the learned British agent, the country of the husband would not permit that her citizenship being once fully established, and exclusively, in that country, that the law of the land of her nationality could vest her of such vested citizenship. The force of this contention, if she were then domiciled or resident in the land of her husband's nationality, or in any land other than that of her nationality, it is not necessary to discuss. When applied as in this case, in the judgment of the umpire its force is largely weakened if not entirely spent. Her very marital relation in Venezuela the legitimacy of her children, her rights of property in the estate of her husband, are all determined by the laws of Venezuela, which, while recognizing the privilege of one of her daughters to become the wife of a foreign subject, consent or refuses to consent, at her pleasure, to the passing of the citizenship of such wife into the nationality of the husband; and when Venezuela consents thereto qualifiedly she has the sole and exclusive right to settle her own interior policy in that matter, and to decree the extent of such qualification. This position gains peculiar force in this case, where, for eight years after the law of 1873, the husband, with his wife and family, continued their domicile in Venezuela through his continuing choice and election.

In the cases of Lucien Lavigne and Felix Bister before the Spanish Commission of 1871 in its sitting of 1878, the act of the Congress of the United States of February 19, 1855, was under consideration.

This act provides that —

Persons heretofore born or hereafter to be born out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States. (10 Stats. at L., p. 604.)

Held in those cases that this law could not operate so as to interfere with the allegiance which such children may owe to the country of *their birth when they continue in its territory*. (Moore, *Int. Arb.*, vol. 3, p. 2454.)

Under substantially identical conditions with the case now under consideration the question before this tribunal was passed upon by the Commission sitting in virtue of the convention between the United States and Venezuela of December 5, 1885. The questions were very ably discussed, and it was unanimously held that the Commission had no jurisdiction of the claim. The claimants were women born in Venezuela, widows of United States citizens who had resided in Venezuela during their married life, had had children born to them in Venezuela, and had continued to reside with their children in that country after the death of their respective husbands. By the laws of the United States, in virtue of their marriage they and their children also were citizens of the United States, their fathers having been citizens of the United States. (Moore, Int. Arb., vol. 3, p. 2456-2461.)

In Shanks *v.* Dupont (3 Peters, 243), the United States Supreme Court held that when the marriage is within the jurisdiction of the sovereign and the residence there, the sovereign is interested in the subject of allegiance, and it can not be dissolved without his consent so long as the wife remains within the jurisdiction.

Had Mr. Stevenson taken his wife within the dominions of Great Britain to reside, and had he there remained and died, leaving her domiciled there, and were she asserting a claim before this tribunal as one still domiciled in Great Britain or its dependencies, in the opinion of the umpire the law of Great Britain might well be taken as the controlling law and she be held to be a citizen of Great Britain as against Venezuela, notwithstanding the law of Venezuela reëstablishing her citizenship in that country after the death of her husband. In the opinion of the umpire, where, as in this case, there appears to be a conflict of laws constituting Mrs. Stevenson a British subject under British law and a Venezuelan under Venezuelan law the prevailing rule of public law, to which appeal must then be taken, is that she is deemed to be a citizen of the country in which she has her domicile; that is, Venezuela.

Bluntschli, *International Law,* section 374, says:

> Certain persons may, in rare instances, be under the juridiction of two or even a larger number of different states. In case of conflict the preference will be given to the state in which the individual or family in question have their domicile; their rights in the state where they had no residence will be considered suspended.

Twiss, *Law of Nations*, page 231-232, says:

> According to the law of nations, when the national character of an individual has to be ascertained, the first question is, in what territory does he reside? * * * If he resides in a given territory permanently he is regarded as adhering to the nation to which the territory belongs and to be a member of the political body settled there.

In the case of Elise Lebret, before the French and American Commission, Judge Aldis says:

> In case of conflict of laws, as neither country can claim superiority over the other, the only reasonable way of settling the difficulty is to hold him subject to the laws of the country where he resides. The British act of 1870 and the Italian Code of 1866 recognize residence as the turning point in such cases. In Alexander *v.* The United States, No. 45, before the British and American Claims Commissioner (Hale's Report, pp. 15, 16), where the claimant was by British law a British subject and by American law an American citizen, it was held that his claim as a British subject could not be allowed, for that would be giving the laws of one country (Great Bri-

tain) superiority over the laws of the other (the United States). See the opinion of Judge Frazier, in which Count Corti concurred. (Moore's *Int. Arb.,* vol. 3, p. 2505.)

That the national character of a married woman is always that of her husband is modified by the holding that such is the case when the domicile of the wife had continued to be that of the husband's nationality. (Moore's *Int. Arb.*, vol. 3, p. 2505.)

The duty to regard as of superior force, in a case like the present, the law of domicile of the claimant is in accord with the expression of Lord Aberdeen in his communication to the British minister to Portugal, in 1845, in which he said: [1]

> 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.*

See quotation from Commissioner Grisanti's opinion in Mathison case.[2] The learned agent for Great Britain contends that in this case —

> The principle upon which the British Government asks compensation is that underlying the diplomatic presentation of all claims of foreign subjects by their government. Compensation in such cases is demanded and granted in respect of an international wrong committed to the property of the subject of the demanding state by the state on which the demand is made. The injury done to the subject is an injury done to the state and remains unatoned until the claim is satisfied. It is on this theory that the diplomatic support of claims is recognized in international law. And it is the principle upon which the British Government has always acted in such matters. (Cf. Vattel, book 2, chap. 6, quoted in Moore's Int. Arb. at p. 2378.) The decision in the case of Cassidy (id., p. 2380) exemplifies this principle.
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> The claim, then, being a claim on behalf of a British subject in its inception has not been satisfied. The injury done to the state thereby remains and is not affected by the death of the person injured and the vesting of the estate in another.[3]

This places the claim for an allowance before the Commissioners not on the status of the claimants before this Commission as determined by the protocol of February 13, 1903, but rather on the unatoned indignity to the claimant Government through the injuries wrought upon Mr. Stevenson by the respondent Government in his lifetime.

Had Mr. Stevenson been unmarried and without heirs ascending, descending, or collateral, the indignity would sill be unatoned; but could there be a claim of a British subject before this tribunal under the protocol and there be no British subject living to be a beneficiary? Subsequent to the happening of those indignities to the British Government through J. P. K. Stevenson, if he had joined the revolutionists and fought the Republic of Venezuela the indignity to the British Government would have remained unatoned, but could the claim survive before this Commission?

Similarly, if, subsequent to the events complained of, Mr. Stevenson had renounced his British allegiance and had become a naturalized citizen of

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[1] Seijas, *Derecho Internacional Hispano - Americano,* t. I, p. 340.
[2] *Supra,* p. 488.
[3] *Supra,* p. 495.

Venezuela; or if, subsequently to said events, he had removed from Venezuela to the United States of America, for instance, and there sought and obtained citizenship by naturalization, what would have been the status of this claim before this Commission? Had this claim been assigned by Mr. Stevenson in his lifetime, or by the widow and heirs subsequent to his death, to a Venezuelan citizen at any time prior to February 13, 1903, would it have had standing before this Commission? In these hypothetical cases the right to reclamation turns upon the act of forfeiture by the claimant or his representatives which deny the right of the parent country to intervene. May it not as well turn upon the death of all those for whom Great Britain has a right of intervention? Is it not essential to jurisdiction in this Commission that the right to intervention shall exist at the time of the happening of the events complained of and at the date of the protocol creating this Commission?

The umpire cites the claim of M. J. de Lizardi against Mexico before the United States and Mexican Commission under convention of July 4, 1868. Lizardi was dead. The claim was presented by his niece, Doña María de Lizardi del Valle, wife of Don Pedro del Valle. It was not shown to what nation her husband belonged, but he was not a citizen of the United States. She was the legatee of the deceased. There was before the Commission the question of jurisdiction arising through her acquired nationality by marriage. Sir Edward Thornton, the umpire, in giving his opinion, said in part:

As therefore, Mr. Lizardi's niece is not a citizen of the United States, and as she would be the beneficiary of what award the Commissioners might make, the umpire is decidedly of the opinion that the case is not within the jurisdiction of the Commission. Even if the uncle, Mr. Lizardi, had been a citizen of the United States, which the umpire does not admit, whatever may have been the merits of the case the jurisdiction of the Commission would have ceased on the death of Mr. Lizardi. (Moore's *Int. Arb.*, vol. 3, 2483.)

In Calderwood, Executrix, against The United States (Moore's Int. Arb., vol. 3, 2485-2486), before the American and British claims commission, treaty of May 6, 1871, there was the case of a claimant who was the widow of a British subject resident in Louisiana who had, in his lifetime, a rightful claim against the United States. The claimant, but for the acquired allegiance, through marriage, to the British Crown, was a citizen of the United States. Counsel for the United States demurred to the claim for want of jurisdiction in the commission, denying to the claimant British citizenship after the death of her husband. To this demurrer the counsel for Great Britain made reply that the United States had no law providing for readmission to American nationality of one who had become alien through her marriage. The case evidently turned upon this point. Certainly it turned upon the question of citizenship of the claimant, and a majority of the commission held her still a British subject, overruled the demurrer of the United States, and sustained jurisdiction in the commission. The point which the umpire would make from this case is that, by unanimous consensus of opinion on the part of this eminent board, consideration of the claim was to be had or refused solely upon the question of citizenship of the claimant; not at all upon the indignity suffered by the Government of Greta Britain and which continued unatoned.

In the case of Elise Lebret, previously referred to in this opinion, counsel for the United States claimed the following to be the true rule of construction in such case:

5. * * * When the treaty pledges compensation by France to citizens of the United States, if refers to those persons only whose citizenship in the United States is not qualified or compromised by allegiance to France; and that when the treaty

pledges compensation by the United States to citizens of France reference is made to those persons only who are not only citizens of France, but who are also not included among the citizens of the United States. It can not be assumed of either Government that it is intended to compensate persons whom it claims as its own citizens, and that through the agency of another government. (Moore, vol. 3, 2491.)

In the commission between the United States and France under convention of January 15, 1890, there was presented the claim of Oscar Chopin *v.* The United States. It was presented on behalf of himself and three other heirs of Jean Baptiste Chopin, who was a French citizen, a resident of Louisiana, and died in 1870, leaving as a part of his estate this rightful claim. The four heirs, including Oscar, were born in the United States, but they had resided in France more or less, and there were such facts as justified the commission in giving an unanimous award for a certain sum, which they did not undertake to distribute, notwithstanding that Oscar Chopin himself, deceased before the making of the award, leaving a widow and five children, all born in the United States. In Boutwell's report, page 83, the result is stated, and with this comment by this eminent gentleman and lawyer: [1]

It may, however, be assumed fairly that the commission were of opinion that the children of Jean Baptiste Chopin, although born in this country, were citizens of France, and that inasmuch as the death of Oscar Chopin occurred after the ratification of the treaty and after the presentation of the memorial, his right to reclamation had become so vested that it descended to his children independently of the question of their citizenship in France.

Another point to be observed is that the counsel for France withdrew so much of the claim as represented the interest of one of the four heirs of Jean Baptiste Chopin, she having married a citizen of the United States, thus clearly recognizing on his part the principle that the right of recovery was governed by the lawful interest of the beneficiaries and not in the original indignity to France, which still remains wholly unatoned. (Moore, vol. 3, 2507.)

Concerning the agreement between the United States and Spain of February 12, 1871, for the settlement of the claims of citizens of the United States or of their heirs against the Government of Spain, in an interchange of notes between General Sickles, representative of the United States at Madrid, and Mr. Sagasta, Secretary of State for Spain, the instructions of Mr. Fish, the Secretary of State for the United States, and an eminent lawyer, were communicated to the Spanish Government in the following language:

The President contemplates that every claimant will be required to make good before the commission his injury and his right to indemnity * * * and it will be open to Spain to traverse this fact or to show that from any of the causes named in the circular of the Department of State of the United States of October 14, 1869, the applicant has forfeited his acquired rights. (See Moore, vol. 3, 2564.)

Attention is again called by the umpire to the claims of Narcissa de Hammer and Amelia de Brissot, heretofore, referred to in this opinion and found in Moore, volume 3, 2457. This commission was very ably constituted. The opinions of each of the commissioners are remarkable for erudition and wisdom and have genuine weight in the reasonableness of their conclusions and the reasons which they give therefor. The claims of these two women appealed with peculiar force to the tribunal. They were widows of American citizens who were shot dead by Venezuelans while in the strict performance of their duty and without fault or wrong on their part. The indignities to the United States had been in no

[1] House Ex. Doc. No. 235, Forty-eighth Congress, 2nd session.

part atoned for and they were clear, unquestioned, and of a most serious and aggravating character. But in the opinion of each member of the tribunal its jurisdiction turned not on the original indignity to the United States but on the status of the claimants before the commission. Commissioner Little said in part:

The question of citizenship here is not a Federal or municipal one. Inasmuch as the legislation of the two countries of these subjects does not conduce to the same result in this case, that of neither can be looked to as determinative of the issue. This must be resolved from the standpoint of the public law. Thus considered, I think Mrs. Hammer and Mrs. de Brissot are not citizens of the United States within the meaning of the treaty. (Shanks *v.* Dupont, 3 Peters, U. S., 243.) Their claims must, therefore, be dismissed for want of jurisdiction. This, of course, is not saying that the United States has no cause for reclamation on the account of the killing of her citizens — Captain Hammer and Mr. de Brissot. It is only holding that under the terms of the convention the question is not submitted to us. It would be to go beyond the limits of just interpretation and to enter the forbidden domain of judicial legislation to say that claims on the part of citizens means or includes claims growing out of the injuries to citizens. (Moore, 2459-2460.)

Commissioner Findlay said in part:

I quite agree with Commissioner Andrade that Mrs. Hammer and Mrs. de Brissot can not be considered citizens of the United States invested with the right of prosecuting a claim against the Government of Venezuela. (Moore, 2460.)

And, after making this statement, he proceeds with an argument valuable, to read, and concludes with the sentence following:

On the whole I think that we have no jurisdiction as to these particular claims.

In the memorial of Don José María Jarrero, under act of Congress March 3, 1849, to adjust claims of United States citizens against Mexico (Moore, 2324), it appeared that the original claim was in favor of a citizen of the United States, but that before the conclusion of the treaty between Mexico and the United States resulting in this commission it had been assigned to a Mexican citizen. The commission dismissed the claim, stating, among other things:

It matters not that the claim was American in its origin. It had ceased to be American at the date of the treaty, and the holder of it could not invoke the interposition of our Government for his protection.

In the case of L. S. Hargous *v.* Mexico, claims commission under convention of July 4, 1868, Thornton, umpire, gave the opinion dismissing the assigned claim, holding that the assignee must stand on the qualities of the claim. His opinion is worthy of careful study in connection with the principles involved by the case in this tribunal, and is found in Moore's International Arbitration, volume 3, page 2327. See also the Importers' case, Moore, volume 3, page 2331.

In Moore's International Arbitrations, volume 3, page 2388, there appear extracts from the published notes of the board of Commissioners, under the convention with France of July 4, 1831, where these rules were laid down as governing the board.

It was, of course, indispensable to the validity of a reclamation before the Commissioners that it should be altogether American. This character was held by them to belong only to cases where the individual in whose rights the claim was preferred had been an American citizen at the time of the wrongful act, and entitled as such to invoke the protection of the United States for the property which was the subject of the wrong and where the claim up to the date of the convention had at all times belonged to American citizens.

Again:

It was necessary for the claimant to show not only that his property was American when the claim originated, but that the ownership of the claim was still American when the convention went into effect. * * * Nor could a claim that lost its American character ever resume it if it had heretofore passed into the possession of a foreigner or of one otherwise incapacitated to claim before the Commission.

In the United States and Peruvian Claims Commission, which met at Lima, January 12, 1863, Mr. Benson, a United States citizen, had a claim against Peru, which he had previously assigned for value to one José F. Lasarte, a Peruvian citizen residing in the city of New York. Benson presented his claim to the Commissioners as a debt against Peru, saying nothing about the assignment; and Lasarte in the meanwhile presented the same claim, as assignee of Benson, as a claim of the United States. As a result the Commissioners dismissed the claim of Benson on the ground that he had parted with his interest to Lasarte, and had therefore no standing before the Commission. Concerning Lasarte it was held that he had no valid claim against the United States, because it was not a pending claim of a citizen of Peru against the Government of the United States. Mr. Lasarte's claim against the United States was Mr. Benson's claim against that country, and it was impossible to maintain that the interposition of the United States with Peru in favor of Mr. Benson can be made to answer the solicitation of interposition against itself. (Moore, 2390).

See the case of Julius Alvarez against Mexico, opinion rendered by Sir Edward Thornton, umpire, and delivered October 30, 1876 (Moore, 1353); by the same umpire (note on pp. 1353-1354), in the case of Herman F. Wulff *v.* Mexico, No. 232, as follows:

* * * The umpire is asked to amend his award of June 18, 1875, by making it absolute in favor of the administrator instead of conditional upon proof that the recipient shall be a citizen of the United States. The umpire can not acquiesce in the arguments put forward by the counsel for the claimant, whoever that claimant may be. He is of opinion that not only must it be proved that the person to whom the injury was done was a citizen of the United States, but also that the direct recipients of the award are citizens of the United States, whether these beneficiaries be heirs, or, in failure of them, creditors. The heirs are certainly benefited by being able to pay the debts of their deceased relative, even though the whole of the award may be swallowed up by the creditors. If there be no heirs and only creditors, the umpire is of the opinion that even those creditors who are the immediate recipients of the award must prove that they are citizens of the United States. The umpire thinks that the Commission can make no award except to corporations, companies, or private individuals who are citizens either of the United States or of the Mexican Republic, respectively.

Moore, 1353, lays down the rule thus:

On the other hand, where the nationality of the owner of a claim, originally American or Mexican, had for any cause changed, it was held that the claim could not be entertained. Thus, where the ancestor, who was the original owner, had died, it was held that the heir could not appear as claimant unless his nationality was the same as that of his ancestor. The person who had the "right to the award" must, it was further held, be considered as the "real claimant" by the Commission, and whoever he might be must "prove himself to be a citizen" of the Government by which the claim was presented.

That in such a matter as is now under consideration by the umpire the claimant Government is not proceeding primarily to punish for the governmental indignity named, but is rather acting as an international representative on behalf of the private interests of its subjects, gains force when we consult the language of the proposed general treaty for arbitration between Great Britain

and the United States negotiated on behalf of their respective Governments by Hon. Richard Olney, Secretary of State, for the United States, and Hon. Julian Pauncefote, envoy extraordinary and minister plenipotentiary of Great Britain on January 11, A. D. 1897. Article VII of that treaty provides:

If before the close of the hearing upon the claims submitted to the arbitral tribunal, constituted under Article III or Article IV, either of the high contracting parties shall move such tribunal to decide, and thereupon it shall decide, that the determination of such claim necessarily involves the decision of a disputed question of principle of grave general importance affecting the national rights of such party, as distinguished from the private rights *whereof it is merely the international representative*, the jurisdiction of such arbitral tribunal over such claim shall cease, and the same shall be dealt with by arbitration under Article VI.

The attention of the umpire has not been brought to an instance where the arbitrators between nations have been asked or permitted to declare the money value of an indignity to a nation simply as such. While the position of the learned agent for Great Britain is undoubtedly correct, that underlying every claim for allowance before international tribunals there is always the indignity to the nation through its national by the respondent government, there is always in Commissions of this character an injured national capable of claiming and receiving money compensation from the offending and respondent government. In all of the cases which have come under the notice of the umpire — and he has made diligent search for precedents — the tribunals have required a beneficiary of the nationality of the claimant nation lawfully entitled to be paid the ascertained charges or dues. They have required that this right should have vested in the beneficiary up to and at the time of the treaty authorizing and providing for the international tribunal before which the claim is to appear. That it was then vested has been held as sufficient, and subsequent events have been held as not devesting this vested right. This, however, is as far as any tribunal of repute has gone.

To have measured in money by a third and different party the indignity put upon one's flag or brought upon one's country is something to which nations do not ordinarily consent.

Such values are ordinarily fixed by the offending party and declared in its own sovereign voice, and are ordinarily wholly punitive in their character — not remedial, not compensatory.

It is one of the cherished attributes of sovereignty which it will not usually or readily yield to arbitrament or award. Herein is found a reason, if not the reason, why such matters are not usually, if ever, submitted to arbitration.

Inspection of the protocol of February 13, 1903, between Great Britain and Venezuela discloses in the preamble the occasion of arbitrating the existing differences and their scope, as follows:

Whereas certain differences have arisen between the United States of Venezuela and Great Britain in connection with the claims of British subjects against the Venezuelan Government.

Article III submits to arbitration certain of these claims of British subjects, reserving those dealt with in Article IV. Whence it follows that nothing being submitted to this tribunal except the claims of British subjects, nothing else can be heard. An arbitral tribunal between nations is one of great power within the terms of its creation, but absolutely powerless outside thereof. Nothing can be within its terms except such as is there by the clear and express agreement of the high contracting parties. The umpire fails to find in the solemn covenant creating this tribunal any authority given it to pass upon any other than claims of British subjects, or, in other words, and affirmatively, he fails to find that it has

authority to pass upon matters resting solely in unatoned indignities to the claimant Government. Hence he holds it necessary to consider the questions raised by the honorable Commissioner for Venezuela, denying that any of the claimants in this case are British subjects or were such February 13, 1903.

The British Government contends, as in the Mathison case,[1] (*a*) that all the children born before the adoption of the constitution of 1864 are British, (*b*) that the two born in Trinidad are British, and (*c*) they admit that the four born in Venezuela after 1864 are Venezuelans while in Venezuela. They also contend that under the laws of Venezuela existing in 1853 and continuing to 1861 the wife of J. P. K. Stevenson, by the laws of both countries, became a British subject by her marriage and retained such nationality after his death without regard to domicile, subject to being defeated only (*d*) by subsequent marriage to the subject of a different nationality, (*e*) by actual naturalization in some other country; and that the law of Venezuela establishing a different status for the domiciled widow of a foreigner, passed after her marriage, but before her husband's death, does not affect such relation. That the Venezuelan law of 1873 and the Venezuelan constitution of 1861, for a woman married thereafter to the subject of a foreign country, relegates her to her original nationality after the death of her husband, if then domiciled in Venezuela, is not seriously questioned so far as the obligations of Venezuela are concerned.

The respondent Government claims, as in the Mathison case, that the constitution of 1864 differs only exegetically from previous provisions in their constitution, beginning with 1830, and that always the respondent Government had claimed to be citizens all born under her flag, of whatever nationality their parents. There are well-recognized exceptions to this rule, but they need not be named here, as they are not relevant to this discussion.

The umpire sustains this claim of the respondent Government consistently with his holding, and for the reasons and upon the authorities given, in the Mathison case (q.v.). In the opinion of the umpire, if Mrs. Stevenson ever became a subject of Great Britain when in Venezuela it was not by the marriage in 1855, but by virtue of the marriage relation in 1873 under the Venezuelan law passed that year, heretofore referred to. Did she become a subject of Great Britain, while in Venezuela by virtue of the act of 1873; and if she did, did she retain that nationality after the death of her husband, under the facts and the law of this case? This is the first question of importance. That she was a Venezuelan, born in Venezuela and of Venezuelan parentage and always domiciled in Venezuela, both before and after marriage and since her husband's death, is not questioned. That the women of Venezuela, except as qualified by the law concerning marriage, take and retain citizenship under the same rule and conditions as men can not successfully be questioned. If Mrs. Stevenson became a subject of Great Britain at the time of her marriage with her husband — then and always a British subject during their married life — it was because of the force of the general international law and not because of any enactment of Venezuela up to that time. It can not be successfully contended, in the opinion of the umpire, that Venezuela was compelled to relinquish her claim to the citizenship of Mrs. Stevenson so long as they remained domiciled in Venezuela. What was the law of citizenship in Venezuela in 1855? Clearly, so far as it has appeared in this tribunal, and so far as the umpire has had opportunity to investigate, it was a law fixing citizenship upon *all those* born within her territory. If at this time the law of Great Britain gave to the wife of a British subject British nationality without reference to their domicile, it did not affect the status

[1] *Supra*, p. 485.

of such a wife in Venezuela as affecting Venezuelan interest while domiciled there.

In the judgment of the umpire, the act of 1873, followed by the constitution of 1891, was a concession of privilege and of comity in accordance with the general trend of opinion throughout the civilized world. A study of the language used will show its general permissive quality, enlarging the privileges of a married woman under such circumstances by the removal of the restrictions theretofore existing rather than the establishment or the assertion of new rights in Venezuela. As a whole, it was a surrender of things theretofore claimed. Theretofore the law, organic and statutory, in Venezuela was, once a citizen always a citizen, so far as the effect of marriage upon the citizenship of a woman is concerned. As changed, it released the Venezuelan claim of citizenship upon such while they remained married, provided the country of which the husband was a subject extended to her the privileges of a subject or a citizen, because of such marriage. If the husband's country did not give that privilege, then she was not to become a citizen of that country. If not a subject to that country, to what country was she subject? Clearly, a Venezuelan subject or citizen. She was to remain subject to the country of her husband's citizenship while she remained married. After the dissolution of her marriage, of what country was she a subject? Clearly, the intention was that her citizenship reverted to Venezuela. If, prior to 1873, she was hopelessly without the control of Venezuela and no longer of that country, in virtue of her marriage in 1855, Venezuela, by her act of 1873, was writing an absurdity. If until then there had been no recognition of a right of citizenship in another country attained by marriage to a subject of that country, then the law is written with unusual force and cunning. It is expressive and apt. The umpire prefers the opinion that in 1855 Mrs. Stevenson did not have the consent of Venezuela to any change of citizenship in virtue of her marriage to a British subject, and that in 1873 the law was changed so as to give such consent, certainly to those thereafter married.

Hence it follows that when Venezuela gave her consent to a citizenship, limited and qualified by subsequent events, to a woman marrying a subject of a foreign country, which country granted her citizenship because of such marriage, Venezuela gave such citizenship subject to the limitations and qualifications expressed in such law, and if thereby Mrs. Stevenson became a British subject it was to continue to her, so far as Venezuela should recognize it, only during her married life, and on the death of her husband she became again a citizen of her native land, then and always the place of her domicile. Hence the contention of the learned agent of Great Britain, which is presented with great force and learning, is held not to apply to the case in hand, because there never had been unqualified British citizenship in Mrs. Stevenson. The law of 1873 did not take away rights which had already attached to Mrs. Stevenson in the way of British citizenship, but rather it for the first time recognized and permitted such citizenship in any degree on the part of Venezuela.

This holding as to the law of Venezuela previous to 1873 and since is not inharmonious with the established laws of other and very important countries. The tenacious grasp of a country upon her native-born citizens is not peculiar to Venezuela; she has able and powerful contemporaries. Indeed, if the umpire is not misinformed, the honorable claimant Government for a long time denied the right of any of her subjects to expatriate themselves, however anxious they might be to do this and however solemn might be the proceeding which invested them with their new nationality. This holding as to the effect of the law of 1873 prevents the necessity of entering upon the discussion of the claim put forward that once British citizenship has fully attached no succeeding law of Venezuela could be allowed to take it away. The effect of this holding is

to decide that British citizenship never attached to Mrs. Stevenson by consent of Venezuela and in a manner to affect her interior policy, only while Mrs. Stevenson remained the wife of Mr. Stevenson. In the opinion of the umpire, then, the widow of J. P. K. Stevenson, from the moment of his death and during her entire widowhood, is, and as to Venezuela has been, a Venezuelan. Logically he holds to the same effect concerning the children of the late J. P. K. Stevenson who were born in Venezuela.

The reasons which control the umpire in his decision as to the citizenship of the widow of Mr. Stevenson and of the children born in Venezuela do not apply to Juan and Guillermo, both of whom were born in Trinidad. They were born on British soil of a British father and of a mother who, by virtue of her marriage with a British subject acquired his citizenship, which remained until the death of her husband.

It is not claimed that they were born *in itinere* nor under other circumstances negativing the general rule. Hence they are of British origin. It remains to determine whether in virtue of anything which has transpired since their birth they have lost their British nationality and their right of intervention by the British Government in their behalf.

Juan, in 1896, was an amanuensis in the office of the city secretary or city clerk in the city of Maturin at a small monthly wage. This was when he was 23 years of age. He is shown to hold no other civil position or to have participated otherwise in the affairs of Venezuela.

Guillermo, in 1898, when he was 17 years of age, was an aid-de-camp on the staff of one of the generals of the Venezuelan Government. It is not shown that he ever held any other position, civil or military, or in any other way mixed in the affairs of the National Government.

They were not Venezuelan citizens by birth. This is admitted. By the constitution of Venezuela they who are alien born can only obtain citizenship through naturalization. They have never been naturalized. Service in military and civil life is in no sense an equivalent for naturalization. It confers no citizen privileges or benefits. It confers no right upon them to claim of Venezuela the immunities and protection of a citizen. It permits no claim on the part of Venezuela for compulsory service by them. By the treaty of Great Britain with Venezuela, as British subjects they were especially exempt from all military demands and requisitions in property and person. Such service as is here shown might suggest on their part a leaning toward Venezuelan citizenship, but it would be no more than a suggestion. It certainly was not so forceful and suggestive as a formal declaration of intention to become a citizen as is provided in the United States naturalization laws. According to Van Dyne's Citizenship of the United States, page 77 —

> International claims commissions to which the United States has been a party have universally decided, whenever the question has been presented, that mere declaration of intention gave the person no standing before a commission as a citizen of the United States.

See also Moore, International Arbitration, pages 2549, 2550, 2553. See again Van Dyne's Citizenship, pages 78-81, wherein observe the claim of George Adlam *v.* The United States, before the Claims Commission under the treaty of Washington, May 8, 1871, between the United States and Great Britain, which is a case very much in point. The same case is also found in Moore.[1] These two sons are not Venezuelans. They were born British subjects; they are still such. They have not broken their neutrality by acts opposed to the Government.

[1] Pp. 2552-2553.

They have been law-abiding and helpful, not harmful, to the land of their domicile. The claim in question had its origin in a British subject, J. P. K. Stevenson. At his decease it came by descent to the widow and the legitimate children of Mr. Stevenson. As held by the umpire herein, it lost its original status in regard to the widow and children born in Venezuela. It retains its original status in the persons of the two sons, who were born British subjects.

From the testimony received from the respondent Government since the umpire returned to the United States of America, there appears, casually, a statement that Juan had deceased recently. Since no reference is made to this fact by the representative of the respondent Government, the umpire has a right to assume that such Government regards the incident of his death not to disturb the status fixed in him at the time of the presentation of this case to the Mixed Commission. The Chopin case, found in Moore, International Arbitration, page 2506, is full warrant for such a conclusion. Such would be the opinion of the umpire independent of the Chopin case. It meets the requirements, viz: (*a*) British citizenship at the time of the origin of the claim; (*b*) British citizenship at the time of the presentation of the claim before the Commission. When thus presented, a right to recovery vested in those then having a lawful claim.

The decision of the umpire is therefore unaffected if since then Juan has deceased.

The claim of the widow and of the children, who are held herein to be Venezuelans, is disallowed without any prejudice to their rights as Venezuelans before any proper tribunal. Under the Venezuelan law of distribution, as it was at the time of the death of J. P. K. Stevenson, the widow and the children each take an equal share of his estate. There are, then, thirteen equal shares into which this claim is divided. Two of these shares are allowed. For a portion of the time covered by this claim the legal rate of interest in Venezuela was 6 per cent; for the remainder of the time it was 3 per cent. Beginning at the time the claim was presented to the Claims Commission of 1868-69 interest has been calculated at the legal rate. There is no proof that the respondent Government had been informed previously of the claims of 1859 and 1865. Those of 1869 originated after the convention creating that Claims Commission. Certainly the respondent Government could make no compensation until a claim had been duly presented, and hence it could not be, until then, in default. Interest as damages begins only after default.

The award will be made for £8,940.

Puerto Cabello and Valencia Railway Company Case

A government is not liable for damages suffered by property which is situated in the track of war.

Where an agreement in a contract existed to refer all controversies to local courts, not more than the legal rate of interest can be allowed on amounts due the company when the Government insisted that such amounts were incorrect and the company had no resort to the local courts.

Plumley, *Umpire*:

This is a claim presented by the British Government for and on behalf of the Puerto Cabello and Valencia Railway Company, asking an award of £319,381 4s. 9d. on account of arrears of guaranty and accrued interest thereon, together with a small sum due for freight.