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RECUEIL DES SENTENCES ARBITRALES

Heirs of Jean Maninat Case

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This claim is dismissed for want of equity in the claimant company, and the award will be drawn accordingly.

NORTHFIELD, *July 31, 1905.*

CASE HEIRS OF JEAN MANINAT [1]

The respondent Government is held liable for injuries suffered by a Frenchman in the presence of the general in command of a division of the Venezuelan army, it appearing that the party injured was in the presence of the commanding general by his personal order and that the injury was caused by a subordinate officer without justifying reasons.

The injury being found to be reprehensible in character and the respondent Government for reasons of state declining or neglecting to punish the guilty persons, it is chargeable with the actual damages suffered by the injured person and such further sum as is held to be sufficient to make proper amends to the claimant Government for this affront to it through one of its nationals.

It being found by the umpire that the person came to his death through the injuries thus suffered, but before February 19, 1902, it is held that such only of his brothers and sisters as are of French nationality can present a claim before this commission to recover for his death.

This tribunal does not exist because of damages suffered in Venezuela, except these be damages of Frenchmen, limited in this case to the next of kin of the deceased, who are themselves Frenchmen. If none be French, then the claim falls. It is not possible to hold other than that the national quality of the claimant in fact determines the jurisdiction of the commission.

It is elementary that the burden of establishing nationality is with the claimant. It cannot be assumed or conjectured, but must be clearly proven.

Record proof is not essential if there be other that is convincing.

The marriage of a sister of the deceased to a Frenchman established her French nationality during marriage, which under French law remains after the death of her husband. There is some proof that she was born in France, none that she was born in Venezuela. Her French nationality being clearly established in her marriage, the burden shifts and rests upon Venezuela to show Venezuelan

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[1] EXTRACT FROM THE MINUTES OF THE SITTING OF MAY 19, 1905.

We then took up the examination of the claim of the heirs of Mr. Jean Maninat.

The French arbitrator, considering on one hand that Mr. Jean Maninat has died as a result of a wound which the Venezuelan officer gave him, but, on the other hand, that Mr. Pierre Maninat does not prove sufficiently his grievance against the Venezuelan authorities in the course of his legal proceedings with his creditors, accords to the heirs of Mr. Jean Maninat a sum of 500,000 bolivars for the *ensemble* of damages which they have suffered for the reparations which were due them.

The Venezuelan arbitrator is of the opinion that Mr. Jean Maninat was cured of his wound when he was attacked by tetanus, from which he died; that none of the grievances formulated by him or his heirs is established by sufficient proofs; that besides Pierre Maninat, born in Venezuela, is a Venezuelan according to Venezuelan law, and that all his four sisters, were born without doubt also in Venezuela. Two are married to foreigners, and have consequently lost their French nationality. Wherefore he rejects absolutely the claim in question.

M. de Peretti replies that according to the French law M. Pierre Maninat and his sisters, save those two who have married foreigners, have conserved their French nationality, besides the fact that Mr. Jean Maninat, born in France, enjoyed incontestably French nationality justifies in his eyes the competency of the commission.

As he maintained his opinion previously expressed, it is agreed that the claim be submitted to the Hon. Frank Plumley, Northfield, Vt.

origin to divest her of the nationality attained through her marriage. This not being done by Venezuela, she is declared French and competent to present her claim as next of kin to her deceased brother for the damages suffered by her because of his death.

Both Governments must be assumed to have had definite knowledge of the serious disagreement between them in the matter of citizenship, yet they agreed upon the use of the expression "Frenchmen." To agree there must have been mutual assent and common understanding of the term employed. It is not suggested that either of the contracting parties yielded any point of its difference in this matter of citizenship. To agree, then, they must meet upon a common ground. This common ground must have been the plain whereby the laws of *both* countries the claimant is a Frenchman.

Two interpretations being possible, that is to be taken which is least onerous upon the party to be charged with the service or with the loss resulting from the agreement.

There is also the rule that in conflict of laws the law of the place of domicile should prevail. For France to intervene where the claimant is a Venezuelan by the laws of Venezuela and French under the laws of France would make the law of France superior to the law of Venezuela, which is not permissible between two sovereign nations.

The right of the respondent Government to regulate her own internal affairs by determining who are her citizens, which involves mutual protection and support, is too essential an attribute of sovereignty to be invaded or disturbed.

The rule of a nation requiring that one who is born in the country shall ordinarily be its citizen is a reasonable requirement.

To all the world but Venezuela France may follow each succeeding generation born in Venezuela but of French origin so long as her affections dictate or her laws require or permit; but not so as to Venezuela.

The effort of one of the sons to establish French nationality by acts of allegiance after the death of the injured person cannot affect his right as a claimant here, as that depends in this case upon the national quality of the claimant at the time of the inception of the claim.

The next of kin found to be of French nationality, being a widowed sister, can properly sustain and maintain a claim for some pecuniary loss, although she was never dependent upon him for care or support and although there is no proof that he ever rendered either and no proof that she was ever so circumstanced as to need either.

In this case the greater portion of the damages assessed and made payable to the the next of kin, found to be French, is because of the unatoned indignity to France through the injury received by one of her nationals.

This tribunal has no part in the final allotment or distribution of the sum awarded to France through the personality of the sister for whom France has a right of intervention. France has absolute dominion over the proceeds of the award, and with its distribution this commission has nothing to do.

OPINION OF THE VENEZUELAN COMMISSIONER

Pedro Maninat, now a resident in Guatemala, presented to the minister of foreign affairs of France, on the 19th of August, 1901, a demand of indemnity against the Government of Venezuela for the sum of 2,000,000 francs, adducing as the ground thereof that in the year 1898, while he, with his brother Juan Maninat, was residing and established in the city of Valencia, under the firm

name of " Maninat Hermanos," with two branch houses, one at Tinaquillo and the other at San Cárlos, a revolution broke out; that his houses were robbed and submitted to requisitions; that his brother Juan Maninat was illtreated and wounded in the presence of General Atilio Vizcarrondo, the second chief of the expeditionary army of the government of General Andrade, and died one month after that outrage; that Pedro Maninat himself was the victim of numerous persecutions, in the subsequent years, which compelled him to abandon the country and thus avoid attempts of murder.

Mr. Pedro Maninat adds that the conformity of the amount of his claim is proved by the following documents, deposited with the legation of France at Caracas:

A. Declaration written by his brother himself before his death and addressed to Mr. Quiévreux.

B. Declaration signed by thirty-three merchants, witnesses of the facts that took place at Tinaquillo.

B^{bis}. Copy, certified and legalized by the legation at Caracas, of the final part of the declaration B, corroborating its contents.

C.D.E.F. Declaration of which the author of the outrage pretended to make use in order to make it appear that he had been attacked by the brother of Maninat. Extract of the certificate of birth. Report of the physicians. Certificate of death.

G. Petition of Mr. Pedro Maninat to Mr. Quiévreux asking him to ask for a certified copy of several writings forming part of the records relating to the bankruptcy of " Maninat Hermanos," existing in the archives of the court of the first instance in civil and mercantile matters at Valencia mentioned with indication of sheets, and which Maninat considers indispensable to ask for the intervention of the French Government and demand from the Government of Venezuela the payment of a just indemnification, the justice and precision of which are irrecusably established in the documents asked for.

There also appears among the papers of these records a letter dated Lima, the 2d of March of the current year, signed by Justina Maninat, widow of Cossé, addressed to the minister of France in Venezuela, bringing to his knowledge that she is one of the sisters of the late Juan Bautista Maninat, whose claim initiated by him in 1898 and pursued after his death by his brother Pedro Maninat in 1901, must be in his possession. The signer of this letter asks the minister of France, at the same time, to kindly take note of the existence of her sister Clotilde Maninat de Saldías, domiciled in Lima, and in whose house she lives with her sister Juana Maninat, as well as of the existence of Josefina Maninat de Beguerisse, residing in Guatemala; and that, as they are the only persons entitled to the claim brought against the Government of Venezuela for the robberies, outrages, and chiefly for the proved murder of their brother Juan, she asked, in her own name and in that of her sisters, to be informed as to the present state of said claim.

In this claim two orders of facts are intermingled *and confounded*, so as to give rise to a variety of questions, which, based only on the statement of the claimant, are destitute of all proof and ground. Some are relative to the wound received by Juan Bautista Maninat in the city of Tinaquillo on the 15th of April, 1898, and others to the suit of bankrupty entered at Valencia in the year 1899, against the firm of " Maninat Hermanos " on account of the state of insolvency in which said firm was at the death of Juan Bautista Maninat, which took place on the 13th of May, 1898.

What is styled " claim initiated by Juan Bautista Maninat, in the year 1898, and continued after his death by his brother Pedro Maninat," is only a simple statement of facts narrated by the former to Mr. Quiévreux in a letter of seven

pages, written in his own handwriting by Juan Bautista Maninat on the 26th of April, 1898, in which, already recovered from his wounds, gives him details as to the attempt of which he held that he was a victim on the 14th of April and asks in conclusion for the protection of the French Government for the punishment of those he considered guilty, and to the end that the fact of which he complained should not remain unpunished.

As appears proved by the letter dated the 26th of April of the same year, addressed by the consular agent at Valencia to the vice-consul of France in Caracas, Mr. Quiévreux, Mr. Juan Bautista Maninat was in a position by said date to come to Caracas, overrunning a distance of 150 kilometers, and to return soon after to Valencia. From the certificate produced by Messrs. Juan Bautista Posadas and Francisco Cisneros, medical doctors who examined at the request of the judge of the municipality of Tinaquillo, Juan Bautista Maninat, on the 16th of April, the following day after the occurrence, it appears that the wound situated on the left temporal auricular region had affected the skin and subcutaneous tissues, the respective auricular lap and a superficial part of the masseteric muscle, wherefore they declared it to be less dangerous.

From the certificate of death presented, issued by the competent official of the city of Valencia, the domicile of Juan Bautista Maninat, it appears that the latter died in said city on the 13th of May, twenty-eight days after the medical examination and sixteen days after his trip to Caracas, of traumatic tetanus, as was certified by Dr. J. R. Revenga. From what has been exposed it is inferred that the death of Juan Bautista Maninat was not caused by the wound he received at Tinaquillo, and that it was the consequence of a disease acquired, how and for what reasons it does not appear. The civil responsibility for indemnification of damages and prejudices in the cases of perpetration of an offense constitutes a claim of the person damaged against the author of the damage and is brought simultaneously with the penal action or separately. There is no responsibility on the part of the government of a country for such facts, except in the case of denial of justice or of notorious injustice in the action brought by the party offended against the author of the offensive act. The suit for civil responsibility that may be brought by everyone that has sustained a damage in his person or interests against the author or authors of an offensive act was not entered by Juan Bautista Maninat or by his lawful heirs against the party suspected of responsibility for the damage done to the former.

The claim against the Government of Venezuela, which can only be based on a denial of justice, in the respective suits in which both the penal and the civil action have been evidenced and decided, simultaneously or separately, is therefore destitute of all ground that may render it admissible, for Juan Bautista Maninat, or the present claimants, who have not entered the civil action pertaining to them against General Atilio Vizcarrondo.

The civil action to be entered for the reparations and restitutions in the cases established by the penal law can not be decided without a firm sentence having been rendered in the penal action, when the former has been entered separately, and when it has been simultaneously entered, or when the party offended has become a party in the civil suit, then the condemnatory sentence, which imposes a punishment on the defendant, gives by itself to the party offended a right to the reparations owed him by the author of the offense.

The commission of an offense can only give rise, therefore, to reparation by means of a civil action, the offended party constituting himself a civil party in the respective penal process, or separately entering his action as plaintiff, in which latter case, that such reparations may be obtained, the exhaustion must precede of all ordinary and extraordinary remedies which the law offers the defendant against the sentence declaring him guilty.

Nothing of this appears proved by the documents produced before this commission.

The declaration which has been presented with several signatures of private individuals of Tinaquillo, and another of the judge of the municipality of the district of Falcón relating to the acts which occurred during the stay of the forces of Gen. Atilio Vizcarrondo at Tinaquillo, are destitute of all evidential force and are not authentic, for which reason, besides our being unable to take them into consideration, they are not proper as evidence that there has been any denial of justice against Mr. Juan Bautista Maninat while endeavoring to obtain before the court the condemnation to the payment of damages and prejudices against him whom he considered responsible for his wound, as for that he would have been required to constitute himself as plaintiff in the respective process.

The local authorities proceeded to open the investigation ordered by the law immediately after the wound of Mr. Maninat had occurred, and the national Government, as appears from the notes interchanged between its minister of foreign affairs and the vice-consul of France, took, as soon as it was informed of the occurrence, all the steps leading to the investigation of the particulars of the case. It thus appears from the proceedings shown by the records kept in the court of the district of Falcón upon which the investigation of the fact was incumbent.

The Venezuelan arbitrator, therefore, finds no ground for the concession of an indemnity to the heirs of Juan Bautista Maninat, even if any of his sisters were of French nationality and had preserved it, for the wound received by the former, which wound was the object of investigation on the part of the competent officials who complied therein with the legal prescriptions, whilst it is not proved that Maninat ever brought on his part any action against those he considered responsible, and much less that the courts called to try and decide this demand of indemnification had committed any denial of justice or notorious injustice.

As to the acts mentioned by Mr. Pedro Maninat to justify the amount of his claim and relating to the bankruptcy suit entered before the competent tribunals of the State of Carabobo against the firm of " Maninat Hermanos," domiciled in Valencia, no faith-deserving evidence has been presented in support of the pretensions of Pedro Maninat; and, on the contrary, from the terms of the official notes of the vice-consul of France, Mr. Quiévreux, inserted in the records, it appears proved that said official always considered it to be his duty to remain alien to the reiterated demands of Pedro Maninat, that he should interfere in a commercial affair, exclusively submitted to the tribunals of the country and which could only be taken into consideration when there was a denial of justice, after the exhaustion of all the legal remedies. All the circumstances of that suit, presented by the claimant himself in different statements and letters, tend to prove the perfect regularity of the bankruptcy suit and the correctness of the proceedings followed by the tribunals that tried the case in conformity with the provisions of the commercial code. It is to be observed that it is proved by the certificate of birth existing in the parish church of Valencia that Pedro Maninat was born in that town in 1868, and that, therefore, he is of Venezuelan nationality, wherefore he can not claim from the Government of Venezuela before this commission.

For all the preceding reasons the claim of Pedro Maninat, amounting to the sum of 2,000,000 francs, is disallowed in all its parts, and likewise what Justina Maninat, widow of Cossé, pretends to adduce concerning the same claim must be rejected.

CARACAS, *May 19, 1903.*

NOTE BY THE VENEZUELAN COMMISSIONER

The French arbitrator, as appears from the record of the proceeding, allowed for this claim the sum of 500,000 bolivars for the death of Maninat, which he considered to have been occasioned by the wound, and for the damages that death caused the commercial house. In the discussion to which this opinion gave rise the Venezuelan arbitrator argued that the person who had presented the claim was Pedro Maninat, a Venezuelan citizen by birth, as he could soon prove it by producing the certificate of birth existing in the city of Valencia; that the sisters, Clotilde Maninat de Saldías and Josefina Maninat de Beguerisse, even in case of their having been French on account of their birth in French territory, by the time of the facts on which the claim is based and thereafter, had lost their French nationality by their marriages with persons alien to that nationality. These circumstances did not modify the opinion of the French arbitrator and the decision was submitted to the umpire.

OPINION OF THE FRENCH COMMISSIONER

M. Pierre Maninat and his sisters, Mdmes. Justine Cossé (née Maninat), Clotilde Saldías (née Maninat), Josephine Beguerisse (née Maninat), and Mlle. Jeanne Maninat, claim jointly an indemnity of 2,000,000 bolivars for the murder of their brother, M. Jean Maninat, who died in May, 1898, from the result of a wound received at the headquarters of the Government forces, for the damage which this death caused this house of commerce, Maninat Brothers, which had to liquidate its affairs after the departure of its head, for the requisitions and the confiscations upon the proprietors of this house by the Government and insurgent troops, for the persecutions and denials of justice of which M. Pierre Maninat was the victim in the years following in the course of the defense of his rights. I have reduced to 500,000 bolivars the indemnity which I believe in equity due to those interested. I have considered in the first place as not debatable that the Venezuelan Government is responsible for the death of M. Jean Maninat. The 15th of April, 1898, an officer sent by General Vizcarrondo, chief of the staff of General Crespo, presented himself at the home of M. Jean Maninat at Tinaquillo and requested him to hand over to him four drays, of which General Vizcarrondo had need to transport his ammunition. This Frenchman, who had already often loaned without remuneration a like aid to the Venezuelan authorities to further the reestablishment of public order and who had just been the victim of an armed invasion and of the theft of an amount of merchandise, showed himself ready to conform to this requisition on condition that General Vizcarrondo give him a written order. In this he only followed the precepts of good sense and conformed to the recommendations given by the legation of France to its compatriots. Then he sent to the general one of his employees, who, far from obtaining a written order, was told to invite his employer to present himself without delay at headquarters. Being questioned by the general in the midst of his staff and summoned to obey, M. Maninat did not refuse, but renewed his demand for a written order. This very natural insistence exasperated this strange chief of staff. M. Maninat was insulted, maltreated, threatened with death, grievously wounded by a Venezuelan officer, and put in prison, from which he only got out by the intervention of the French representative at Caracas. If there had been on his part the least provocation, the authorities would not have failed to invoke it and apply the penal law in all its rigor. The prompt release of the prisoner, culpable merely of having spoken the language of reason, of defending his rights, and the absence of all further prosecution, sufficed to prove that the report of the victim is true in every point. No one, besides, has denied the accuracy and the public opinion at the time of the incident and, since I have been able to verify during my sojourn at

Valencia, has been on the contrary unanimous in confirming it. In like manner the numerous witnesses and the certificates of the doctors who figured in the dossier confirm it, and also the authorized declaration of Mr. Quiévreux, representative of the French Government at Caracas, who received the visit of the victim some days after the incident. M. Jean Maninat was wounded by a blow from a saber, which laid open his face from the forehead to the ear and would have killed him if the straw hat which he wore had not lessened the violence of the blow. The wound was dressed, and M. Maninat was able to come to Caracas, but it was so little healed that the 13th of May M. Maninat died from traumatic tetanus. He surely would never have been attacked by this disease, which one can not contract except as a result of a wound, if he had not been wounded. One can affirm, then, that his death has certainly been caused by unqualified violence committed upon his person by a Venezuelan officer. It seems to me just that Venezuela indemnify the family of the victim of such treatment, which in all countries, even in time of war, would have raised a universal reprobation and led to an immediate reparation. It is necessary to consider in the second place that M. Jean Maninat was the elder of the family. His untimely death gave a blow the more disastrous to the house of Maninat Brothers, because of the circumstances, difficult for every commercial enterprise. Even in the hypothesis that the affairs of this company may have been jeopardized for some time, which is not in any way proven, but which would be very likely considering the state of the country, one ought to recognize that the disappearance of the head of the house was not calculated to ameliorate the situation of the firm. We know besides, by the report of the Venezuelan commission in bankruptcy, that the result of the examination of the books and of the correspondence has not resulted in finding any indication of fraud or of culpability on the part of the bankrupt, and on the contrary permits the conclusion that the bankruptcy was caused by the requisitions and exigencies of the two parties in the armed struggle continued for more than two years.

On these two main points the Venezuelan Government is much involved in the ruin of the house of commerce, Maninat Brothers, which must have had a considerable capital, if one can judge from the extent of its business and its triple establishment at Valencia, Tinaquillo, and San Cárlos.

Finally, so far as concerns the denials of justice of which M. Pierre Maninat has been the victim during the suit which on the occasion of the bankruptcy he had to present before the different judiciary powers, nothing seems to me sufficiently established to involve the responsibility of the Venezuelan Government and justify a demand for indemnity.

The reading of the articles merely show that delays have been produced, and they are not exaggerated. As for the persecutions of which the interested party would have been the object on the part of the administrator and judiciary authorities, if they are not proven by the dossier, it is almost certain that they have not been spared to M. Pierre Maninat. I wish to cite as proofs of this the unanimous opinion of the French and Venezuelan colonists whom I have questioned during my journey to Valencia, and also the fact that M. Pierre Maninat has had to leave Valencia and go to establish himself at Guatemala, and that they seem to have made his departure necessary.

It is true, on the other hand, and that has been confirmed equally at Valencia, that M. Pierre Maninat brought about many of the troubles which he had to undergo by his gruffness and his imprudent manners. He ought, consequently, to take upon himself more of the blame for his misfortunes. One could, however, object that it is not because a pleader is sturdy that one can refuse to render him justice.

Since he has left the country the ill will of Venezuelan authorities has con-

tinued to follow M. Pierre Maninat. They have raised in his way a thousand difficulties when he wished to have delivered to him copies of the exhibits of his suit. These copies were officially refused the minister of France, who demanded them, as the arrangement in force gave him a right, and the interested party had to resort to indirect means and to pay quite a large sum to obtain these copies which he wanted to join to his dossier. For all these reasons I have thought that the indemnity demanded might in justice be reduced to 500,000 bolivars, which would be for the heirs of M. Jean Maninat a just recompense for the death of their brother and the damage which preceded and followed his death.

My colleague has not shared this opinion. He concludes first, from the fact that M. Jean Maninat did not succumb until twenty-eight days after having been wounded, that the wound received at Tinaquillo was not the cause of his death, which was "the result of a disease contracted no one knows in what manner nor from what causes." The certificate of Doctor Revenga attests. however, M. Jean Maninat has died from traumatic tetanus; that is to say, of tetanus following his wound. We know that tetanus is a disease which develops only in those who are wounded. It is then indubitable that the saber blow received by M. Maninat was the efficient cause of his death, since the death was caused by tetanus, and tetanus is the result of a wound; but even if one refuses to admit it contrary to the declaration of the Venezuelan doctor and also contrary to the evidence, it remains, nevertheless, that M. Jean Maninat has been struck under circumstances of which we are acquainted; that he was wounded by an officer at headquarters where he had been ordered to come and where nothing proves that he did not conduct himself conformably to the proprieties. Even if not followed by the death of its victim, this cowardly deed, which nothing renders doubtful and which no one thinks a benefit, would it not have called for an indemnity so much the more so as no procedure has been set in motion against the guilty one? Why then reject entirely the claim? Doctor Paúl then established that M. Jean Maninat not having invoked a civil action consequent upon or parallel with a penal action because of a tort of which he was the victim, the responsibility of the Venezuelan Government is not involved, that resulting only from a denial of justice, or notorious injustice. One can reply that none of the numerous strangers injured in the course of the Venezuelan revolution and beneficiaries to this right of indemnity accorded by the mixed commission have appealed to the justice of the country. All protocols of Washington, like the protocol of Paris, have had precisely for their end to take away, by an exception, entered upon by its own free will so far as concerns France, by the Venezuelan Government, foreign claimants from ordinary tribunals to international tribunals before whom Venezuela is represented. One can not refuse to M. Jean Maninat and his heirs the privilege granted to several million other foreign claimants who have been benefited by this exception justified by the circumstances. It is to be noted that the protocols do not speak merely of denials of justice. They concern every claim of whatever nature it may be. In fact, of about five hundred French claimants three only have claimed for denials of justice, the others, like the Maninats, not having commenced by recourse to the Venezuelan justice and having directly addressed themselves to the commissions of arbitration. As for the investigation ordered by the local authorities, not only does it not seem to have been done intending to bring about a serious result, but it lacked penalty; besides it does not invalidate in any way the statement of the victim.

Moreover the Venezuelan commissioner holds that the claim of Pierre Maninat and his sisters is not admissible because they are Venezuelans by nationality, being born in Venezuela, but Jean Maninat, whose death and

material losses are the exclusive grounds of the indemnity to be awarded, was born in France, of French parents, and never did acquire Venezuelan citizenship, nor did he lose his French nationality, which, on the other hand, no one has ever disputed. This in itself is sufficient, no matter what the condition of the heirs might be, to submit the claim to the commission appointed to hear and decide on French claims. But I consider that if one takes account of the character of the heirs, the mixed commission remains with jurisdiction. In fact, Pierre Maninat and his sisters were born in Venezuela, but of French parents; they enjoyed then two nationalities at once — at their birth Frenchmen, according to French law, Venezuelans according to Venezuelan law. This is indisputable, but when the protocol mentions "claims for indemnities entered by Frenchmen," this means claims presented by persons whose protection the French Government endeavors to insure, because they are recognized as French citizens by the French laws. The protocol does not specify in any manner that the laws of Venezuela should also recognize such persons as French citizens. On the contrary, all the protocols signed in Washington last year between Venezuela and the foreign powers have expressly established that local legislation was not to be taken into consideration. Besides, two of the sisters of Jean Maninat have assuredly lost their Venezuelan nationality and are exclusively French, since they have married Frenchmen, Messrs. Cossé and Beguerisse. Mlle. Jeanne Maninat has been away from Venezuela since her childhood and lives in Peru. M. Pierre Maninat has never declared himself Venezuelan and has always maintained the title of a Frenchman. He left Valencia without intention of returning and has settled at Guatemala. Finally, he has fulfilled his military obligation according to the French law, and the French consular agents at Caracas and Valencia, at Puerto Cabello and at Guatemala, have already written him on their registers of matriculation of French citizens. In an analogous case, that of M. Piton, Doctor Paúl has recognized without difficulty the jurisdiction of the mixed commission and M. Piton has obtained a large indemnity. As for the fourth sister, Madame Saldías, she has married a Peruvian and she has not lost her French nationality unless the Peruvian law accords the nationality of her husband. In this case she has also lost her Venezuelan nationality; but even as to this last mentioned, the only one among the heirs of M. Maninat whose nationality may be doubtful, the commission of arbitration is competent to accord to her an indemnity, since she presents herself only as the heir of a claimant who enjoyed exclusively French nationality.

Finally, we ought not to forget that according to the terms of the protocol an indemnity ought to be paid in bonds of diplomatic debts and not in gold. Thanks to this concession granted to the Venezuelan Government by the French Government to permit her to pay her debts with greater ease, the figure of indemnities accorded to Frenchmen finds itself singularly reduced in reality while the indemnities of other foreigners are payable in gold and do not undergo any decrease on the fixed amount. The bonds issued by the Venezuelan Government sustain at this moment a depreciation of 60 per cent of their nominal value. The result would be then, if the umpire shares the sentiment of the French arbitrator and recognizes for those interested an indemnity of 500,000 bolivars, a sum of 200,000 bolivars in gold would be paid to the heirs of M. Jean Maninat by the Venezuelan Government.

ADDITIONAL OPINION OF THE VENEZUELAN COMMISSIONER

The claim under discussion was made by M. Pedro Maninat on April 19, 1901, as shown in his communication from the city of Lima, bearing said date,

addressed to his excellency the minister of foreign affairs for France (Exhibit 3, document 59). Subsequent to this, in a letter dated at the said city of Lima on March 2, 1903, Justina Maninat, widow of Cossé, informed the French minister in Caracas, M. Wiener, that she was a sister of the deceased Juan Bautista Maninat, having an interest as such in the claim entered by Pedro Maninat, and that there were three other sisters, Clotilde Maninat de Saldías, resident in Lima; Juana Maninat, resident in the same city, and Josefina Maninat de Beguerisse, residing in Guatemala (Exhibit 3, document 62).

Among the documents delivered to the French commissioner subsequent to the meeting of May 19, 1903, when I rendered my opinion on the subject — documents which have now come to my notice — there are two letters dated at Lima on March 24 and April 22, 1903, bearing the signatures of Clotilde Maninat, wife of Saldías, and duly authorized by her husband, Eulogio S. Saldías; Justina Maninat, widow of Cossé, and Juana Maninat, who, of their own personal accord, and desirous of maintaining their legitimate rights, urge upon the French minister in Caracas the continuation to a successful issue of the claim entered by their brother, Pedro Maninat, now a resident of Guatemala, and formerly of Lima. Neither at the time of the meeting of May 19, 1903, nor in conjunction with the new documents produced, has any proof whatever been introduced showing that the aforesaid Josefina Maninat de Beguerisse, who, it is averred, resides in Guatemala, claims any sum whatever from the Venezuelan Government, nor that either the lady herself or her husband, Charles Beguerisse, may have given their consent and authority to introduce their names and persons in this claim, an indispensable requisite to become a party to the case.

It becomes necessary to point out the several grounds, growing out of facts of very different nature, advanced by Pedro Maninat and his sisters Clotilde, Justina, and Juana, upon which rest their claim for the sum of 2,000,000 francs. Some of these grounds are made to originate at the death of M. Juan Bautista Maninat, which took place in May, 1898, as it is averred that his death was the result of a wound received by him in the general headquarters of the Government troops, and because of the damages sustained thereby by the firm of " Maninat Brothers," which it is claimed was compelled to go into liquidation after the death of the head of the firm. Other grounds are based upon certain requisitions and seizures made upon the property of the firm by both the Government and the revolutionary troops and upon the persecutions and denial of justice of which Pedro Maninat claims to have been the victim in subsequent years and while he was engaged in defending his rights.

The French commissioner in his opinion deems an indemnity of 500,000 bolivars to be a fair compensation for the heirs of Juan Maninat, by reason of the death of a brother and because of the damages suffered before and after his death; and as regards the denials of justice of which Pedro Maninat complains as having occurred during the proceedings originating in the failure of " Maninat Brothers," the commissioner does not deem the claim sufficiently substantiated to affect the responsibility of the Venezuelan Government and to justify a demand for indemnification.

Therefore our opinions as commissioners differ on points relating to the several questions directly connected with the wounding and death of M. Juan Bautista Maninat; to the persons of the claimants Pedro, Clotilde, Justina and Juana Maninat, and in the matter of the liability of the Venezuelan Government. All these questions must be investigated and decided by the light of the principles and precedents established by international law, the Venezuelan laws applicable to the case, and the sound and just consideration of such facts as are fully verified.

The learned commissioner for France makes the following statement on page 8 of his opinion: [1]

The Venezuelan commissioner holds that the claim of Pedro Maninat and his sisters is not admissible, because they are Venezuelans by nationality, being born in Venezuela, but Juan Maninat, whose death and material losses are the exclusive grounds (*sujet*) of the indemnity to be awarded, was born in France of French parents and did never acquire Venezuelan citizenship, nor did he lose his French nationality, which, on the other hand, no one has ever disputed. *This in itself is sufficient, no matter what the condition of the heirs might be,* to submit the claim to the commission appointed to hear and decide on "French claims."

According to the sound principles of international law, it is impossible to admit the opinion held by my learned colleague that, no matter what the condition or nationality of the claimants or heirs might be, it suffices that the bonds of kinship exist between them and the person wronged and that such person be or might have been of French nationality for the case to come under the claims commission, whose duty it is to hear and decide on " French claims."

The jurisdiction of this claims commission, according to the plain and precise terms of the Paris protocol of February 17, 1902, to which it owes its existence, can not embrace other claims for indemnification beyond those " entered by Frenchmen," it being, therefore, indispensable to prove that the nationality of the claimant was solely and exclusively French.

It can not therefore be held under any circumstances whatever that, no matter what the nationality of the claimant might be, the condition of being heir to a person who was a Frenchman at the time of his death is enough to bring such claim under the jurisdiction of this commission. In support of my opinion the following quotations are pertinent:

Sir Edward Thornton, umpire for the commission of the United States and Mexico, under the convention of July 4, 1868, makes the following statement:

As therefore Mr. Lizardi's niece is not a citizen of the United States, and as she would be the beneficiary of whatever 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, Int. Arb., Vol. 3, 2483.)

In the case of Elise Lebret before the Franco-American commission the counsel for the United States said:

When the treaty pledges compensation by France to citizens of the United States it 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 intended to compensate persons whom it claims as its own citizens, and that through the agency of another government. (Moore, Vol. 3, 2491; 48th Cong., 2d sess. Ex. Doc. 235 (Boutwell's Report), p. 129.)

It has been shown that there exist precedents of mixed commissions in which France was represented, when it was established that it does not matter whether the claim has been or may have been originally a French claim, if before or at the time the treaty was concluded it had ceased to be such, and that the holder of the claim can not invoke his government's mediation and protection.

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[1] *Supra*, p. 62.

The following principles were established by the commission created by the protocol concluded between the United States and France July 4, 1831, as the rules governing the commission:

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 name 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.*

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. (Moore, Int. Arb., vol. 3, 2388; Venezuelan Arbitrations of 1903, p. 74.)

As a precedent bearing upon the personal circumstances of the claimants, Pedro Maninat and sisters, that of Julio Alvarez against Mexico, and the opinion of Sir Edward Thornton, umpire, rendered October 30, 1876, may be cited, as well as that of Herman F. Wulff against Mexico. (Moore, note pp. 1353-1354.)

* * * the umpire can not acquiesce in the arguments put forward by the counsel for the claimant, *whoever that claimant may be.* He is of the 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 principle governing the matter under discussion of the nationality of the claimant is stated by Moore, page 1353, as follows:

* * * 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 a 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.

Juan Maninat did not establish any claim against the Venezuelan Government because of his wound, nor because of damages to or seizure of his property. During the twenty-eight days which elapsed between his wounding and May 8, 1898, when he was taken with traumatic tetanus, it only appears from a long letter in his own handwriting, consisting of 7 pages, addressed from Valencia on April 26, 1898, to M. Quiévreux, the French consul in Caracas, that having recovered from the wound he was about to give him details of the attempt at assassination to which he was a victim on April 15, in the presence of General Vizcarrondo, chief of the general staff of General Crespo, and *that he might perhaps state* (without affirming the fact, however), at the instigation of said General Vizcarrondo. After a minute statement of the facts leading to the wound and of the wound itself, he asks the French consul for the mediation of the French Government, stating that the attack upon him was an insult and that the French colony of Valencia and the neighbouring towns suffering from the evils of war were indignant and demanded justice to be done.

" If such deed should go *unpunished* our interests and our lives would be forever jeopardized," Maninat states at the end of the aforementioned letter.

This letter, as shown by note No. 19, gave rise to the official communication sent by M. Quiévreux, vice-consul of France in Caracas, to the minister of

foreign affairs, transmitting the original letter of M. Juan Bautista Maninat; and somewhat later, May 24, the same consular officer wrote again to the above-mentioned minister, informing him of the death of M. Maninat, produced by the disease called traumatic tetanus. From that date to the day when the claim was entered by Pedro Maninat before the French minister, three years later, no other mention whatever was made of this matter.

From the documents submitted, it does not appear that Juan Bautista Maninat, the aggrieved party, who during his convalescence was able to personally enter a claim against the Venezuelan Government, did ever enter such claim, naming in money the compensation for the injury and the damages sustained by his person and his property; neither does it appear that the minister of foreign affairs of France had demanded from the Venezuelan Government an apology to the French nation as a nation, because of the wound received by Maninat, nor that it had been ever pretended to make the Government authorities responsible for a deed which the victim himself qualifies as an outrage to the French colony.

Moreover, it can not be claimed that because the wrong done to a citizen or subject of another nation involves a breach of international law, the nationality of the aggrieved party must be taken into consideration to maintain that the wrong survives, still preserving its original nature, and that it is a matter to be submitted to a court of the nature of the present court, even in the case that the aggrieved party be dead or has changed his nationality, or the right to indemnification is claimed by persons of a different nationality in the capacity of heirs or creditors.

Ralston, umpire for the Venezuelan and Italian Claims Commission created by the Washington protocol of February 13, 1903, in the case of Miliani against Venezuela, sets forth:

> While it remains true that an offense to a citizen is an offense to the nation, nevertheless the claimant before an international tribunal is ordinarily the nation on behalf of its citizen. Rarely ever the nation can be said to have a right which survives when its citizen no longer belongs to it. (Venezuelan Arbitrations of 1903, Ralston's Report, p. 762.)

Dealing with the same subject, the honorable umpire, Mr. Plumley, in the case of Stevenson against Venezuela, before the Venezuelan and British Claims Commission, under the Washington protocol, February 13, 1903, makes the following statement:

> 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. * * * 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 offended party and declared in its own sovereign voice, and is ordinarily wholly punitive in its character, not remedial, not compensatory. (Ralston's Report, pp. 450, 451.)

Juan Bautista Maninat having died without having entered during his life any pecuniary claim whatever against the Venezuelan Government because of the wound and damages sustained by him, no actually existing property or vested rights which might be considered as having survived his death and capable of conveyance and continuation were transmitted to his heirs. The award in the case of Oscar Chopin against the United States under the convention of January 15, 1890, can not be applied to the present claim. The

Chopin claim was entered on behalf of Oscar Chopin himself and three other heirs to Jean Baptiste Chopin, formerly a French citizen, resident in Louisiana, and who died in 1870, leaving *as a portion of his estate the claim in question.* Boutwell's report refers to the award in favor of the claimants for a certain sum and makes the following comments:

> 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.[1]

The claim first made before the Government of France by Pedro Maninat, three years after the death of Juan Bautista Maninat, and subsequently supported by his sisters, does not constitute the exercise of any rights of inheritance which at the time of Maninat's death were a portion of the estate, which could have been transferred to his sisters as heirs independently of the question of citizenship. The claim originated three years after the death of the *de cujus* and is solely based, as the French commissioner says, on the death and materia losses sustained before and after such death.

The origin, the nature, and the moment when the pretension of the claimants came into life being so clearly and precisely established, and leaving aside the question of their capacity as heirs, as no property or right belonging to the estate of the deceased Juan Bautista Maninat is involved, we have to deal in the first place with the question of the nationality of the plaintiffs who have entered the claim for indemnification, viz, Pedro, Juana, Justina, and Josefina Maninat, and later with the question of the right they may show as the wronged parties because of the death of their brother, and the liability such death may cause to the Venezuelan Government in view of the established facts only.

From the statements subscribed to by Pedro Maninat and by Clotilde Maninat de Saldías, by Justina Maninat, widow Cossé, and by Jeanne Maninat, marked with the numbers 5 and 8, which documents are a part of those submitted after the session of the commission on May 19, 1903, it appears from the confession of the deponents themselves that Pedro, Clotilde de Saldías, and Juana Maninat were born in Venezuelan territory, being, therefore, Venezuelans by birth according to Venezuelan laws.

As regards Josefina Maninat de Beguerisse, a resident of Guatemala, not only has the fact of her being born on French soil not been established because the proper entry in the respective registers of births has not been submitted as required, but she has not made any claim against the Venezuelan Government, nor does it appear that her husband has authorized the action which her sisters residing in Lima have taken in her behalf. A certificate signed by the chargé d'affaires of France in Guatemala has been produced to show that in the register of citizenship of the legation there exists an entry under No. 547, dated on July 24, 1903 — that is to say, after the investigation and opinion of the arbitrators on this claim had been closed, May 19, 1903 — to the effect that Charles Beguerisse was born in Puebla, a city of Mexico, in 1859, and was married in Panama to Josefina Maninat in 1886. Such entry does not in itself constitute a trustworthy proof of the French nationality of Charles Beguerisse, the husband of Josefina Maninat; but, on the contrary, the fact of Beguerisse's birth in a Mexican city shows *prima facie* that he is a Mexican citizen according to the principle *jure territorii* adopted by the Central and South American Republics.

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[1] French and American Claims Commission, House of Representatives Ex. Doc. No. 235, Forty-eighth Cong., 2d sess. (Boutwell's Report), p. 83.

Justina Maninat, widow Cossé, has not established her French nationality and the authenticated copy of her certificate of marriage in the city of Panama to José Cárlos Cossé, wherein it is stated that she is a native of Tarbes, France, is not the proof of such fact, but merely a reference made to it before the priest of the parish in Panama, and can not be substituted for the evidence afforded by the record of the certificate of birth in Tarbes, which the claimant could have well obtained since this claim was introduced, four years ago. In the absence of such document, which is the only evidence that could prove the fact of the birth in Tarbes, the presumption prevails of her birth in Venezuela, as well as that of all her sisters and brothers, except Juan Bautista, whose birth in Tarbes is shown by the certificate of the mayor of that town. This certificate is among the documents lately submitted. As the above-mentioned Justina is at present the widow of Cossé, and was his widow on March 2, 1903, when she joined issue in the claim entered by her brother, Pedro Maninat, she comes under the provision of the Venezuelan laws, establishing that a Venezuelan woman married to a foreigner recovers her lost nationality when she becomes a widow.

Besides the confessions of the parties themselves, upon whom devolves the duty of establishing the facts of their nationality, stating that three of them were born in Venezuela (Pedro, Juana, and Clotilde de Saldías), the Venezuelan Government has submitted to me the respective certificates which I append to this opinion, establishing the fact that Pedro and Clotilde Maninat were born within Venezuelan territory. Clotilde Maninat having married Don Eulogio S. Saldías, a lieutenant in the Peruvian navy, has acquired the nationality of her husband.

Pedro Maninat, besides being a Venezuelan by birth, according to the Venezuelan laws, has submitted a certificate issued by the vice-consul in charge of the French legation in Caracas, by which it appears that on March 23, 1899, almost a year after the death of his brother, Juan Bautista, he appeared before the French vice-consul in the same city and made a declaration to the effect that he regretted not having complied with the military service of the class of 1883, requesting that a certificate be issued to him showing that he had made such avowal in order to secure, if needed, his return to France, binding himself to place himself immediately after his arrival in France at the disposal of the proper authorities, by whose decision in the matter he would abide. This act and the subsequent declaration made by him in Guatemala at the French legation as a French citizen — the fact of his having returned to France and fulfilled his military obligations not being established — clearly show that they were performed for the purpose of making out a case against the Venezuelan Government and to arm himself with a sham French citizenship — for the want of a legitimate citizenship of long standing — to use it against the country within which he was born. The case of Charles Piton, quoted by M. de Peretti de la Rocca, is in no way similar to the one under consideration either from the standpoint of proofs shown by M. Piton to establish his French citizenship, which was never contested, or from the circumstances attending his claim.

The French commissioner is of the opinion that this commission is competent to hear this claim, because, although Pedro Maninat and his sisters were born in Venezuela, they are the issue of French parents and had two nationalities at the moment of their birth — French, according to the French laws, and Venezuelan in accordance with the laws of Venezuela.

My learned colleague states:

> This is indisputable, but when the protocol mentions claims for indemnities entered by "Frenchmen," this means claims submitted by persons whose protection the French Government endeavors to insure, because they are recognized as French citizens by the French laws. The protocol does not specify in any manner

that the laws of Venezuela should also recognize such persons as French citizens. On the contrary, all the protocols signed in Washington last year between Venezuela and the foreign powers have expressly established that "local legislation" was not to be taken into consideration.[1]

Such is the opinion of my learned colleague. Now let us see what has been decided by the learned umpires upon whom has devolved the duty of determining the question of conflicting nationality at different times and in different commissions, decisions which, by reason of their uniformity and the enlightened doctrines they contain, have erected as principles of international law the ruling that, in case of conflicting laws creating a double citizenship; the law of the respondent nation controls, and also that, in cases of double citizenship, neither country can claim against the other nation, although it may claim against all other nations. Let me state at this juncture that there is no similarity between the Paris protocol of February 19, 1902, controlling this commission, and the protocols signed at Washington in 1903, quoted by my learned colleague in regard to the suppression of the " technicalities of local legislation." The Paris protocol does not deal with this question, and it is a well known fact that in the matter of authority or powers in themselves an exception to the general rules universally applied, such authority or powers must be expressly and formally stipulated, as was purposely done in the Washington protocols. The Paris protocol created a mixed arbitration court to hear and decide upon all claims for indemnification entered by French citizens, but did not except this commission from making its awards in strict accordance with the principles of international law generally admitted and with the local laws in such cases as they may properly apply. On the other hand — and this is merely a casual remark — the provision to which my learned colleague refers, stipulated in the Washington protocols, does not establish any distinctions between the local legislation of either of the contracting parties. Why should this discrimination in regard to local legislation be applicable only to Venezuela? What are the grounds for such strange interpretation?

In regard to conflicting citizenship the precedents and opinions quoted below may be submitted, deciding the point always in favor of the country against which the claim has been entered.

Commissioner Finlay in the case of Hammer et al. against Venezuela states the following:

> Whatever rights the United States has in its power to bestow will unquestionably pass under the law establishing the status of citizenship in favor of nonresident aliens, including the right to take property by descent and succession and the right to prosecute any claim against the United States; but more than this cannot be done without interfering with the rights of other states and involving them and herself in conflicting claims of the most absurd character. (Moore, p. 2460.)

The reasons advanced by the American commissioner which were approved by the umpire, Count Corti, of the British-American Claims Commission, are *in toto* applicable to the question of a double citizenship. The opinion referred to is the following:

> To treat his grievances (the claimant's grievances) against that other sovereign as subjects of international concern would be to claim a jurisdiction paramount to that of the other nation of which he is also a subject. Complications would inevitably result, for no Government would recognize the right of another to interfere thus in behalf of one whom it regarded as a subject of its own. It has certainly not been the practice of the British Government to interfere in such cases,

[1] *Supra*, page 62.

and it is not easy to believe that either Government meant to provide for them by this treaty. (Alexander v. U. S. Moore, p. 2531)

The same rule is found in Cogordan (Citizenship, p. 39), who has called attention to the eminently practical spirit of the English Government, as shown in the correspondence between Lord Malmesbury and Lord Cowley, ambassador in Paris, when, under date of March 13, 1858, he states that, if England did recognize as British subjects the children born in England of foreign parents, she did not pretend to protect them as such against the authorities of the country of such parents claiming them, particularly when they had voluntarily returned to such country; or, in other words, Frenchmen born in England would be protected in Germany, Italy, or any other country except France, where they could be legally called to serve in the army.

Tchernoff (Protection des Nationaux Résidant à l'Étranger p. 470) says:

Any person having a double citizenship can enjoy but one within the territory of each of the states which hold him as a subject. Such is the practice in England and Switzerland.

The foregoing opinions agree with those of the commissioner of the United States in the case of Elise Lebret before the Franco-American Commission, above mentioned. Notice should be taken of the opinions of Phillimore, Blackstone (Cooley's Vol. I, p. 369) 1, Hale's P.C., 68, Story's Conflict of Law, second edition, chapter III, section 48, and the Century Dictionary, all quoted by the Hon. Mr. Plumley in his learned decision as umpire in the case of Mathison against Venezuela before the British-Venezuelan Commission created by the Washington protocol of February 13, 1903 (Venezuelan Arbitrations, Ralston's Report, pages 433-434 and 435). See also the opinions of the above mentioned umpire in the case of Stevenson against Venezuela (Moore, p. 442 et seq.) and Ralston, umpire of the Italian-Venezuelan Commission, in the case of Brignone, Miliani, and Poggioli against Venezuela (Venezuelan Arbitrations of 1903, Ralston's Report, pp. 710, 754 and 847).

Thus the conflict of double citizenship has been solved by eminent authorities, establishing that in the cases where such double citizenship occurs the law of the respondent or defendant nation prevails.

In the event of conflict of laws creating double citizenship, that of respondent nation must control.[1]

In cases of double citizenship neither country can claim the person having the same as against the other nation, although it may as against all other countries.[2]

This condition of double citizenship occurs in Pedro Maninat, born in Venezuela of French parents, a resident of Venezuela until the date of the death of his brother Juan Bautista Maninat, a deserter from the military service of the class of 1883, in France; in Juana Maninat and Clotilde Maninat de Saldías, both born in Venezuela, according to their own confession and documents produced; in Justina Maninat, widow Cossé, and Josefina Maninat de Beguerisse, who have not established their birth in French territory, as it is indispensable to do before this commission. The presumption in the case of the two latter is, on the contrary, that they were born in Venezuela, and that the husband of Josefina Maninat, Charles Beguerisse, by reason of his birth in Puebla, a city in Mexico, is a Mexican citizen, as well as his wife. I beg to call the attention of the honorable umpire most especially to the fact already men-

[1] Brignone case, *infra*, p. 542.
[2] Miliani case, *infra*, p. 584.

tioned that from the documents submitted there does not appear that Josefina Maninat de Beguerisse, nor her husband Charles Beguerisse, for a long time residents of Guatemala, claim any sum whatever from the Venezuelan Government, nor that they authorized their brothers and sisters to do so.

Justina Maninat, widow of Cossé, has recovered her Venezuelan nationality since the death of her husband — under the supposition that he was a French citizen, which has not been established — in conformity with the Venezuelan laws, which control in case of conflict of double nationality, according to the opinions and decisions above cited.

In view of the foregoing, I hold that this commission has no jurisdiction to hear and decide the claim entered by Pedro Maninat and sisters, as their Venezuelan nationality controls in the conflict of double citizenship, Venezuela being the respondent nation.

The plaintiffs have no legal rights whatever to claim, by reason of the death of Juan Bautista Maninat, damages directly suffered by their persons and property. It has been further established that Pedro Maninat, as well as his sisters, all of whom are of age, three of the sisters being married and for some years absent with their respective husbands from Venezuelan territory, have not depended for their means of sustenance upon the person and life of Juan Bautista Maninat, but, on the contrary, each and every one of them has had and still has independent means of living. They might be entitled to claim damages for the death of a person, if there is a party responsible for such death, whether the party be a private individual, a corporation, or a state, in case the damages resulting from such death could be properly established. Such would be the case when a destitute wife or minors or other persons, either ascendants or brothers are concerned and the proof can be established that they are destitute and suffer material damages by reason of the wanton killing of a kinsman. These grounds for action are lacking in the present claim, and they are essential in order to warrant the indemnification sought, but such damages have not occurred, nor have the brothers and sisters of Juan Bautista Maninat established the facts beyond all reasonable doubt. Under the circumstances the present claim for indemnification lacks the essential basis of such claims, the *damnum emergens*, as a consequence of the death of Juan Bautista Maninat, and such claim can not exist, because it deals with brothers and sisters who did not depend for their living upon Juan Bautista Maninat, nor upon his business abilities or pecuniary means.

The indirect damages which the mercantile firm of Maninat Brothers might have sustained through such death do not affect the sisters, who were neither partners of the firm nor had any share or profits in the business. Whatever business Pedro Maninat might have had as an active partner did not suffer any damages because of his brother's death, as it appears from the papers submitted that at the time of the death the commercial firm was bankrupt and that the surviving partner was compelled to admit such bankruptcy in view of the state of complete insolvency in which the firm had been for some time previous. The French commissioner has acknowledged this to be a fact in his opinion.

Now, in regard to the liability which it has been the endeavor to establish against the Venezuelan Government for the wound — not a very serious wound — received by Juan Bautista Maninat at Tinaquillo, and his subsequent death, which took place twenty-eight days after, superinduced by the disease called *traumatic tetanus*, which is not necessarily the consequence of a wound, but may be contracted through several causes, generally through being exposed to the water and other sources of infection, I beg to submit again the arguments advanced by me in my opinion rendered at the session of the commission,

May 19, 1903, which I send herewith translated into English, and wherein I deny such liability as wholly unfounded, and entirely reject the merits of the claim for indemnification for 2,000,000 bolivars against the Venezuelan Government.

NORTHFIELD, VT., *February 3, 1905.*

ADDITIONAL OPINION OF THE FRENCH COMMISSIONER

After having read the additional memoir presented by my honorable colleague, I can only maintain the conclusions of the prior memoir. I will add, however, some observations which seem to me allow on my part certain consideration of this additional memoir.

In the first place Doctor Paúl remarks that one of the five heirs of the late Jean Maninat, Madame Josephine Beguerisse (née Maninat), has not presented any claim against Venezuela. I know this, but since the four other heirs have presented a claim the default of the fifth invalidates the claim in no wise. It will belong only to the French Government if the umpire accords an indemnity to the Maninat heirs to divide it conformably to French laws, among those of the latter who may have availed themselves of their rights at the proper time.

In the second place, my honorable colleague, returning to the question of nationality, declares that Mr. Pierre Maninat and his sisters, born in Venezuela, have not according to the protocol of 1902 a right to present a claim against the Venezuelan Government. With regard to this, I could only reproduce the argument already presented in my memoir. I request, moreover, the umpire to kindly revert to text of the aforesaid protocol, to which in section 1, page 4, of his additional memoir, Doctor Paúl gives an interpretation which I can not admit. Article 1 speaks in effect merely of claims presented " by the Frenchmen." This term is very comprehensive — " Frenchmen." It is not merely the " French citizens;" there are also French subjects, such as the Algerians or French protégés, such as the Tunisians — in a word, all those to whom the French Government extends its protection, because they are French according to French laws. The protocol says in no way that it is " indispensable to prove that the nationality of the claimants was solely and exclusively French." I have then been able to conclude with justice that it sufficed that the French Government consider an individual as French and deliver to him a certificate of French nationality that this individual be qualified to benefit from the provisions of the protocol of February 19, 1902. The precedents cited by my colleague prove only that there is not on this point any fixed rule and that international law is, as almost always, variable. I could call to mind many examples of a contrary jurisprudence without referring to distant date.

I have spoken of the case of Mr. Charles Piton. I maintain that the case is analogous to the present case. Mr. Piton was born in Venezuela of French parents, one of which was born there himself. Mr. Piton did not regularize his military position in France until long after the age required by the service. Mr. Piton has even exercised public Venezuelan functions at Venezuela and in foreign lands where he has been a Venezuelan consul, and yet my colleague has admitted that he was of French nationality and that there could be given to him a large indemnity.

In another analogous case — the Massiani affair — (claim presented by heirs, enjoying two nationalities, of a Frenchman who was exclusively French), the French-Venezuelan mixed commission constituted by the protocol of Washington and presided over in 1903 at Caracas by Mr. Filtz, umpire, accorded also the indemnity demanded.

I ought to call to the attention of the umpire the inconvenience which could be presented from the point of view of the fixity of international law, which seems to disturb my colleague so much, by the establishment of two different jurisprudences, not only by two commissions so analogous and so bound together, but even by the same commission.

Doctor Paúl seems to desire to refuse to Pierre Maninat the character of a Frenchman, but Pierre Maninat is French according to French law, and the competent French authorities having delivered to him the necessary certificate the commission can not deny French nationality to this claimant. I beg the umpire to take notice that I do not refuse in any way to admit that Pierre Maninat enjoys equally Venezuelan nationality according to the Venezuelan law. I am content to maintain that, being French (it makes no difference to me if he has two nationalities), he can profit from the provisions of the protocol of 19th of February, 1902.

In the third place my colleague relies, in order to reject the Maninat claim upon the fact that Jean Maninat has not made the claim in form against Venezuela. It will suffice for me to call the attention of the umpire again to the reading of the letter of Jean Maninat of April 26, 1898, in which the interested party declares that not only he but the whole French colony demands justice. I will add that his death coming quickly has alone prevented him from forming his dossier. Besides, this death itself making the principal subject of the claim, one will grant that Jean Maninat would with difficulty have been able to make his claim himself.

In the fourth place my colleague quotes decisions rendered within the English and Italian-Venezuelan commissions. I am not acquainted with the cases in question and consequently can not judge of their degree of analogy with that before us. In a general way I consider that in a matter of arbitration precedents have no value. Equity, good sense, and the terms of the protocol are the only rules for the conduct of an arbitrator, who is not bound to conform to the contradictory opinions of his predecessors any more than to the particular law of the States, as the protocols of Washington have expressly declared.

In the fifth place Doctor Paúl maintains that the heirs of Jean Maninat have no right to make a claim for the death of their brother, which would not have caused them direct damage. I will merely reply that Pierre Maninat was associated with his brother in the firm Maninat Brothers, and that the death of his elder brother will culminate the ruin of this house of commerce. Is not this a direct damage? Besides, is not the death alone under such conditions of a brother of whom one is the heir, even if one is not his partner, necessarily a cause of direct damage?

Finally, I maintain my opinion, supported by the declaration of the Venezuelan doctor, and upon the very sense of the words that the wound was indeed the cause of the death. It is evident that the infection would not have been produced and would not have brought on traumatic tetanus if there had not been any wound.

NORTHFIELD, *February 6, 1905.*

OPINION OF THE UMPIRE

Juan Maninat was born at Tarbes, France. November 4, 1864, and died of traumatic tetanus May 13, 1898, at Valencia in Venezuela, unmarried, leaving as next of kin Rosa Clotilde Maninat, born at Valencia in Venezuela June 2, 1859, wife of Eulogo S. Saldías, a Peruvian, and now residing at Lima, Peru; Josefina Maninat, resident in Guatemala, said to have been born in France, the wife of Charles de Beguerisse, who was born in Mexico of aprents having

French nationality; Justina Maninat, said to have been born in Tarbes, France, who was married in Panama to Charles Joseph Cossé, the latter having been born at Bois-Colombes, France, August 9, 1856, now deceased, the said Justina residing at Lima, Peru; Juan Pedro de Jesús Maninat, born at Valencia in Venezuela, December 29, 1863, also Juana Maninat, born in Valencia and now residing in Lima, Peru. The father and mother of these Maninat heirs were both of French nationality and are both deceased. Pedro resided in France from the time when he was a year old to his nineteenth year, since which time until recently he has resided and done business in Venezuela. Juan came to Venezuela at some time not important to this inquiry, and later entered into a mercantile relation with Pedro, and they established their principal house at Valencia and had branches at Tinaquillo and San Cárlos. They were engaged in these enterprises at the time of the injury to Juan, hereinafter stated, but had suffered seriously from some compulsory loans to and requisitions by both the revolutionary party and the Government troops, and they also suffered much from theft and pillage and from injury to their property by the soldiers alike of the revolutionary forces and of the Government.

April 15, 1898, the Government troops stationed at Tinaquillo were under the command of General Vizcarrondo, chief of staff of General Crespo. An officer under General Vizcarrondo on that day demanded of Juan Maninat certain supplies for his army in the nature of a requisition. Maninat refused the requisition except on the terms that an order be signed by the general, and for the purpose of obtaining this order Maninat sent an employee to the general at his headquarters. This employee was badly treated and was sent back to Maninat without the order requested but with peremptory orders to Juan Maninat to present himself at once before General Vizcarrondo at his headquarters, which order he obeyed. While Maninat was at the headquarters of the general and in his presence he was struck several times with the back of a machete by officers of the national army, was placed under arrest by the general and while under arrest and on his way to the place of his confinement he was given a severe machete wound on the side of the cheek by one of the officers then present. He was kept in close confinement by the military authorities at Tinaquillo and as late as the 18th of the month had not been permitted to meet his brother or the other members of the family who had come from Valencia to see and to assist him.

The minister of foreign affairs for Venezuela was officially informed of this matter by the French legation at Caracas on April 18, and it was officially asked that he be released from confinement, that there be an immediate investigation, a proper reproof administered to General Vizcarrondo by the Venezuelan Government, and proper satisfaction made to the injured man.

On April 19 Maninat was released from confinement on intervention from Caracas. On April 24, in a letter from Maninat, he speaks of himself as " a little recovered of his wound " and able to write to Consul Quiévreux, chargé d'affaires of France, relating the occurrences of April 15 and those which followed. In this communication he named the officer who inflicted the machete wound. All the facts necessary to a complete history of the case were easily ascertainable at that time. No reproof was administered to General Vizcarrondo or to his officers and no action was taken by Venezuela in reference to the punishment of the officer who inflicted the machete wound and no reparation was offered to France or to Maninat.

Pedro endeavored for a while to maintain the business of the company, but it resulted in failure and bankruptcy, and, later, the imprisonment of Pedro, and his release on terms that he abandon, permanently, a residence in Venezuela. He is now in Guatemala.

There is no record proof that any of these heirs were born in France except in the case of Juan. In the certificate of marriage, or the record thereof, of Justina, there is a declaration that she was born in Tarbes, France. Neither Josefina nor her husband has appeared as claimant or in anyway asserted or presented any claim against Venezuela or any right to claim anything because of the injury to or death of Juan.

In the joint letter of Clotilde Saldías, Justina Maninat, widow Cossé, and Juana Maninat, of date 1903, indited for use before the arbitrators at Caracas, it is stated that Justina and Josefina were born in France. In the letter of Pedro to the minister of France at Caracas, of date July 24, 1903, he states that Justina and Josefina are French by birth and have married Frenchmen. The records of both countries are silent, so far as appears in this tribunal, concerning the birthplace of these two ladies.

There is no proof that any of the brothers or sisters of Juan, except Pedro, ever received any benefits from or were in anyway dependent upon or connected with Juan.

The honorable commissioners failing to agree as to some of the facts in this case, and likewise failing to agree upon the rule to be drawn from those facts and applied, joined in sending this claim to the umpire for his decision. They have aided the umpire by very able opinions, stating the reasons for their respective holdings, and they have also given valued assistance to the umpire in their answers to his written questions.

The umpire is met at the outset with the conflicting claims of the honorable commissioners concerning the nationality of the claimants and its importance as a determinative factor in the case. The honorable commissioner for France is of the opinion that it is only necessary to establish the French citizenship of Juan Maninat at the time of his death to give jurisdiction to this tribunal. The honorable commissioner for Venezuela is equally certain that there must be a French citizen *in esse*, and having a demand for indemnity because of damages suffered on account of the injury to and death of Juan, in order that this mixed commission can have competency to make an award in relation thereto; hence, to settle this jurisdictional question is of primary importance. It is first to be observed that Juan Maninat is dead. He is not. Therefore, a tribunal organized under and in virtue of the convention of February 19, 1902, that it " might examine demands for indemnity presented by Frenchmen for damages sustained in Venezuela," does not exist because of damages which have been suffered in Venezuela but only in reference to damages suffered in Venezuela by Frenchmen who, as such, are claimants before this tribunal. In other words, it is not the injury done to Juan Maninat alone, but also damages suffered by Frenchmen, if such there be, through and because of the injury to and death of Juan, which give place to a claim under this protocol.

This particular reclamation rests upon the right of the next of kin of Juan to present a claim. Their ability to do so will depend upon the character of their citizenship; if any be French the claim stands; if all be Venezuelan there is no jurisdiction.

The opinion of the umpire given in heirs of Stevenson *v.* Venezuela, found in Ralston's Venezuelan Arbitrations of 1903, 438, is referred to and the attention of the honorable commissioners to this opinion is respectfully requested. It is based on a protocol of similar character in this regard, although it might be held to present a greater latitude to the claimant than the one now under consideration. The authorities referred to therein are relied upon by the umpire as sustaining him in this decision.

The honorable commissioner for France urges that in default of Frenchmen lawfully entitled to the award, the national treasury is competent to receive the

same. Since this case is disposed of without reaching this proposition, the umpire does not stop to discuss it.

The language of the protocol is the work of skilled and erudite diplomatists. Every word is weighed and its force and significance are definite and certain. The language used in other protocols and its application by other tribunals are with them matters of common knowledge. The restrictive interpretation given by the umpire in this opinion follows a well-defined and quite generally constant line of decision by arbitral tribunals whenever the question has been raised and the terms of the convention were in spirit similar. It follows, that if a different rule had been desired by the high contracting parties, they would have employed words susceptible of a different interpretation. They certainly would not have made a different ruling impossible. To hold that any other than the national quality of the person presenting the claim is to determine the jurisdiction of this commission, is to declare that which is impossible under the language here used. Nothing is easier than to walk in the path so well defined by the able minds who planned and built it. Hence the rule here laid down that to be within the jurisdiction of this tribunal the claim must be presented by or for a Frenchman, *in esse,* who has sustained damages in Venezuela.

For the rules of construction and interpretation which have been of great service to the umpire, see Ralston's Venezuelan Arbitrations of 1903, pages 352 to 355, both inclusive.

It is agreed that Juan Maninat was of French nationality. His sisters Rosa Clotilde and Juana and his brother Juan Pedro were unquestionably of Venezuelan birth. Are Josefina Berguerisse and Justina, or is either of them, of undoubted French nationality? The umpire holds that the burden of establishing this essential fact is with the claimant; that such nationality is not to be assumed or conjectured, but proved. No authority needs to be quoted to sustain either of those propositions. They are elementary.

In this case there is no record proof concerning the place of birth of either Josefina or Justina, and there is no explanation made for its absence.

The case of Justina will first be considered.

In the record of her marriage she is set down as having been born in Tarbes, France. This is a declaration of fact essential to the record, made at a time when there could have been no ulterior purpose to subserve. In the joint written statement of Justina, Clotilde, and Juana, made in 1903 for the use of the arbitrators at Caracas, the birth of Justina is placed in France. In the letter of Pedro to the minister of France at Caracas, of date July 24, 1903, he states that Justina is by birth French.

Justina married Charles Joseph Cossé, who was unquestionably French, which fixed her nationality as French during his life, and by French law this nationality continued after the death of her husband, as she has done nothing since to divest her of such nationality. By Venezuelan law if she were of Venezuelan birth and Venezuelan at the time of her marriage to Cossé her Venezuelan nationality is restored to her after the death of her husband. But there is no proof that she ever was Venezuelan. There is incontestable proof that she was French by marriage and by origin, if not by birth. To strip her of her French nationality once attained by the law of both countries requires definite and satisfactory proof. If she were of Venezuelan birth, the respondent Government could easily have produced the record, as Valencia is near Caracas, and its records are easy of access.

In view of all the facts affirmative and negative the umpire has reached a conviction of moral certainty that Justina Maninat Cossé is of French nationality and competent to appear as a claimant before this tribunal.

Concerning Josefina Maninat Beguerisse, wife of Charles de Beguerisse, it

is sufficient to say that she has not presented any claim before this commission and is not in any sense by any act or authority of hers a party thereto. She has apparently refrained from asking the intervention of France in her behalf in this matter, and her right to do so is wholly academic, and therefore unimportant to this tribunal.

It remains to determine whether the other next of kin, being without question French by French law, and Venezuelan by Venezuelan law, have rightful place before this commission.

A treaty is a solemn compact between nations. It possesses in ordinary the same essential qualities as a contract between individuals, enhanced by the weightier quality of the parties and by the greater magnitude of the subject-matter. To be valid, it imports a mutual assent, and in order that there may be such mutual assent there must be a similar understanding of the several matters involved. It can never be what one party understands, but it always must be what both parties understood to be the matters agreed upon and what in fact was the agreement of the parties concerning the matters now in dispute. In this case did Venezuela agree in the protocol that France alone should name those who are Frenchmen, or did France agree in the protocol that Venezuela alone should make the selection; or does the protocol, being an agreement, imply that the word Frenchman as there used shall mean such only as are recognized by the laws of both countries? It is evident that the high contracting parties agreed on this point, and yet both parties knew that there was in fact a very essential difference in the holding of each country upon that question. How, then, could they reach a point of agreement? Only by meeting upon a ground common to both; and that common ground is the plain where by the laws of both countries the claimant is a Frenchman.

This process of reasoning seems to dispose of all genuine doubt as to what is meant by this term as used in the protocol; yet were there room for doubt the ordinary rules of interpretation would be efficient aids. Among others, there is the rule of interpretation that where the agreement is susceptible of two interpretations that interpretation is to be taken which is least onerous upon the party who must render the service or suffer the loss under the agreement.

(Woolsey, Intro. Int. Law, sec. 113. Bouvier Law Dict., vol. 1, p. 124. Ib., p. 1107; ib., p. 429; ib., 416. Bouvier Law Dict., vol. 1, p. 1106, citing 71 Wisconsin, 177.)

In a conflict of laws as to nationality the law of the place of domicile should prevail. Such was the opinion of the umpire in the Mathison case found in Ralston's Venezuelan Arbitrations of 1903, page 429, wherein are found his reasons therefor and the authorities supporting them, to which he respectfully refers without further allusion. A similar holding by him is found in the Stephenson case, same volume, page 438, and to that case, his reasons there given and his authorities there quoted or cited, he respectfully invites attention. * * * So far as they apply he adopts them to save unnecessary amplification here. He would add a quotation from Bluntschli in a note which he places in his Droit Public Codifié, sec. 374, wherein he says:

> Contrary to my former opinions, I think to-day that in case of conflict of law one ought, in favor of the liberty of emigration, to accord the preference to the nationality of fact—that is to say, to that which unites itself to the domicile.[1]

When by the law of the respondent Government the claimant is a Venezuelan,

[1] Contrairement à mes opinions antérieures, je pense aujourd'hui qu'en cas de collision on doit, en faveur de la liberté d'émigration, accorder la préférence à la nationalité de fait, c'est-à-dire à celle qui s'unit au domicile.

France may not intervene, as to do so would make her law superior to the law of Venezuela, which is not permissible as between two sovereign nations. The right of Venezuela, as the respondent Government, to regulate her own internal affairs and to determine who are her citizens, involving mutual protection and support, is too essential an attribute of sovereignty to be invaded or disturbed. If the treaty bore unmistakable evidence that this attribute of sovereignty had been abdicated, it would be the duty of this tribunal to act accordingly, but it bears no such evidence.

When the nation insists that one who is native to the land shall under ordinary circumstances be a citizen, it is such a reasonable requirement that all nations should rest content. To all the world but Venezuela, France may follow each succeeding generation born in Venezuela, but of French origin, so long as her affections dictate or her laws require or permit, but to Venezuela, where the father established his domicile, raised his roof-tree, and reared his family, the sons and daughters there born are Venezuelans to all the world, until by emigration and selection they have foresworn allegiance to their native land and sworn allegiance to some other.

In this protocol France is permitted to intervene only on behalf of Frenchmen who are recognized as such by the laws of Venezuela, and whatever equities may exist between the claimants and Venezuela, none can be considered by this tribunal except those which are thus presented.

Pedro Maninat was born in Venezuela, passed a portion of his minority in France, attained his majority in Venezuela, and there remained by choice until several years after the happening of the events giving rise to this reclamation. Nothing which he has done since in the way of asserting French nationality affects his national quality at the time when this claim had its inception, since his right to appear in this tribunal is dependent upon the fact that he was a Frenchman when the injury was suffered of which he complains, and a Frenchman when this treaty was perfected.

Rosa Clotilde and Juana are either Venezuelans or Peruvians. They are not French in the meaning ascribed to that term by the umpire.

In the opinion of the umpire, therefore, Justina Maninat Cossé is the only next of kin of Juan who under the protocol of February 19, 1902, has that quality of French nationality which permits a claim for indemnity before this commission because of the injury to and death of her brother Juan.

Although alien born, Juan Maninat had a right under the laws of Venezuela to the same protection as is granted to its nationals. He had promptly complied with the several military exactions consequent upon the disturbed condition of the nation, and in requiring the production of an order before complying with the requisition made upon him at this particular time he was taking only a proper precaution. When he entered the presence of the Venezuelan general it was the duty of that general to throw around him the protection of the Government and to make his person while there safe — absolutely safe. When he was wounded under the eye and within the power of this general a gross outrage had been permitted, the office of the commanding general had been perverted or set at naught, and the respondent Government having intrusted this general to hold that office and stand in its stead in that community is responsible for the unlawful deeds done or suffered to be done by him. The presence of the national army and of an officer high in command should have brought to that village and to all of its inhabitants a sense of perfect security; that instead it brought to Juan Maninat threats, harsh treatment, imprisonment, and wounds, is clearly established. There results unquestioned, undebatable responsibility in the respondent Government. The extent of that responsibility alone remains to be determined.

Notwithstanding the apparent convalescence of Juan from his wound of May 15, the joint certificate of his two attending physicians, asserting his death from traumatic tetanus is proof that the convalescence was apparent only. The honorable commissioner for Venezuela speaks correctly of many causes for tetanus especially existing in torrid countries, but he has named no instance where traumatic tetanus has been certified by reputable physicians, except the primary cause was a wound or an external injury of the nature of a wound. The very name *traumatic* forbids. It is the adjective form of the noun *trauma*. Of *trauma* the Century Dictionary has this definition:

1. An abnormal condition of the living body produced by external violence, as distinguished from that produced by poisons, zymotic infections, bad habits, and other less evident causes; traumatism; an accidental wound as distinguished from a wound caused by the surgeon's knife while in operation. 2. External violence producing bodily injury; the act of wounding, or infliction of a wound.

Traumatic.—(1) Of or pertaining to wounds: as traumatic inflammation. (2) Adapted to the cure of wounds; vulnerary: as traumatic balsam. (3) Produced by wounds: as traumatic tetanus, etc.

Traumatism.—Any morbid conditions produced by wound, * * *

Tetanus.—It is occasioned either by exposure to cold or by some irritation of the nerves in consequence of local injury by puncture, incision, or laceration; hence the distinction of tetanus into idiopathic and traumatic.

Lacerated wounds of tendinous parts prove in warm climates a very frequent source of these complaints. In cold climates, as well as in warm, lockjaw (in which the spasms are confined to the muscles of the jaw or throat) sometimes arises in consequence of the amputation of a limb or from lacerated wounds.

Tetanic affections which follow the receipt of a wound or local injury usually prove fatal. * * * It is usually the sequel of wounds and injuries.

Witthaus and Becker, in their Medical Jurisprudence of Forensic Medicine, Toxicology, vol. 1, page 513, say that —

Tetanus is an infective bacterial disease, affecting chiefly the central nervous system and almost always, if not always, originating from a wound.

Tetanus, like erysipelas, is probably always traumatic and never strictly idiopathic. The wound may be so slight as to escape notice. When it follows such injuries as simple fracture, internal infection probably occurs, though such causes are extremely rare. It is said that the weather influences the development of tetanus, and that it is more common in the tropics. There are also certain sections where tetanus is much more common than elsewhere and where it may be said to be almost endemic. * * * Tetanus usually appears about the end of the first week after a wound has been received, but it may not appear for a longer period, even three or four weeks, so that the wound may have been sometime healed. To connect tetanus with a particular wound, note (1) if there were any symptoms of it before the wound or injury, (2) whether any other cause intervened after the wound or injury which would be likely to produce it, and (3) whether the deceased ever rallied from the effects of the injury.

In the work of Allan McLane Hamilton and others, entitled " A System of Legal Medicine," Vol. II, page 585, it is said that —

Tetanus occurs most frequently in wounds accidentally inflicted, particularly in punctured and penetrating wounds, and in those in which a foreign body remains behind. Its existence is now believed to depend upon the presence of a special organism, the *Bacillus tetani*. A variable length of time is occupied in the period of incubation, according to the number of bacilli introduced (Watson Cheyne), the location of the point of infection, the anatomical characteristics of the surrounding tissues, and the capacity of the different tissues to yield the ptomaines under the influence of the bacillus. It is also probable that the degree of virulence governs, to a certain extent, both the duration of the stage of incubation

and the severity of the attack. * * * and as the bacillus of tetanus requires the exclusion of oxygen in order to grow, it is evident that a punctured wound quickly closed offers just the conditions appropriate for the reproduction of the germ, if it has been introduced into the depths of the wound.

Trauma means, strictly speaking, a wound. The term is used justly as synonymous with an injury. Ib., 298.

When it comes to the actual trial of actions for personal injuries, there are two difficult questions, to the solution of which the testimony of the medical expert may be directed. One of these is how far the defendant's negligence is responsible for some subsequently developed infirmity or disease or, in other words, how far a given injury may be said to be the natural and proximate cause of a subsequently developed condition and therefore render the defendant liable for that condition.

The general rule is easily stated, to wit: if the subsequent disease or infirmity is one which would occur as the natural result of the injury, and it is not shown that any other independent cause existed of which it might have been the result, then the author of the original injury is liable for the subsequent disease or infirmity. Ib., 379.

From the foregoing authorities it easily develops that tetanus usually follows trauma, that it is a natural sequence of it, and that neither the severity of the laceration nor the length of time which had elapsed in this case after the wound was given, nor the apparent partial recovery have any significance in determining whether the traumatic tetanus stated by the physicians to be the cause of Juan's death was the result of the wound received on the 15th of May preceding. Tetanus from that wound was a natural result within the period which in fact elapsed between May 15 and the beginning of the tetanic attack. An early healing of the lacerated wound was an apt aid to tetanus. When the physicians in attendance ascribed Juan's death to traumatic tetanus, they said, in effect, that it was tetanus arising from wounds or external injuries. As no other wound or injury is even suggested, they also said, in effect, that the tetanus related back to the trauma inflicted by the machete of the officer upon Juan when he was under the care of the Government troops and in the presence of the commanding general. Since his death resulted through a line of natural sequences from a wound inflicted under the circumstances named, the responsibility of the respondent Government is the same as though death had been the immediate result of the machete stroke.

Whether the physicians who gave the certificate were intelligent and trustworthy is of course a proper inquiry. There is no question made by the respondent Government, and there is no indication in anything connected with the facts of this case which suggests the contrary.

It becomes, then, the duty of the umpire to hold that Juan Maninat came to his death because of a wound inflicted upon him under such circumstances as to impose responsibility upon the respondent Government.

In this case, unlike that of Jules Brun, there are other considerations than the loss which Justina de Cossé has suffered through the death of her brother Juan. There is no evidence that she was ever dependent upon him for care or support, or that he ever rendered either, or that she was so circumstanced as to need either, or that he was of ability or disposition to accord either. Therefore it is difficult to measure her exact pecuniary loss. There exists only the ordinary presumptions attending the facts of a widowed sister and a brother of ordinary ability and affection. Some pecuniary loss may well be predicated on such conditions. For this she may have recompense. But the more important feature of this case is the unatoned indignity to a sister Republic through this

inexcusable outrage upon one of her nationals who had established his domicile in the domain of the respondent Government.

There was abundant reason, which France may well appreciate, why the respondent Government could not censure or punish the general in command or the officer who, in fact, made the attack upon Juan. The country was in the throes of a strong revolution, the supporting hand of every one loyal to the titular government was essential to its support. It could not meet successfully the possible results if it had undertaken to censure or punish the guilty parties. Silence and tacit acquiescence was the only position then open to the titular government. Since that period and prior to the sitting at Caracas of this mixed commission there had been no real opportunity for the two governments diplomatically to consider or pass upon the merits of this case, and it remained practically for this tribunal to speak the voice of regret and to tender atonement for a sad result. Justina de Cossé can be the medium of transmission of this atonement from the respondent Government to France and by a payment of money honorably answer the just demands of the claimants and assure to the intervening Government the constant willingness of Venezuela to atone for this wrong by the only means now in her power.

The honorable commissioner for France disclaims all right to an award based upon the injuries directly attributable to the failure of Maninat Brothers as a claim consequent upon the death of Juan for reasons which he succinctly states; but he holds that some disastrous results following his death and the pillages and requisitions preceding his injury may properly move the generous impulses of the umpire when he comes to make up his award.

It is probable that the honorable commissioner for France and the umpire do not, in fact, really differ in their conception of what is equity in such a matter. But to plant an equity always requires the basic quality of a right in the party receiving, because of a wrong moving from the party to be charged with the onerous conditions of the equitable conclusion. Generosity is not equity; equity has no part in generosity. Equity exists when exactly the right thing is done between the parties. Neither more nor less than this is equity. A just conclusion only opens the door to equity. So far as the respondent Government is responsible for the wrongs suffered by the next of kin of Juan who have a right to the intervention of France because of their nationality, so far and so far only does equity require or permit action on the part of the umpire. In every respect other than this, he has no right either to add to nor subtract from. To act at all, he must find a right to claim on the part of the claimant, and a wrong to be redressed on the part of the respondent Government. Within those circumscribed limits he has liberty of and necessity for action; outside of those limits he is a trespasser. He can not be generous; he can only deal justly and equitably.

So far as the injuries to the Society of Maninat Brothers is concerned, the interest of Juan in the requisitions and pillages mentioned, which occurred prior to his death, it is sufficient to say that the claimants have had the preparation of this cause for presentation before this tribunal. No reason is given why this reclamation did not include a definite and precise statement under that head, if reimbursement was sought. It was surely capable of some degree of exactness in the statement and some degree of certainty in the proof. Neither has been attempted. By their own inattention and inaction they have deprived the umpire of all opportunity to know anything of this branch of their alleged injuries, and they must not ask him to conjecture and estimate when they might have permitted him a settled judgment, nor can they at all expect that he will add aught to his award because of these probable, but vaguely uncertain, losses which they project into this reclamation.

Because of the holding by the umpire that Pedro Maninat is a Venezuelan, it results necessarily that nothing can be considered in his behalf on account of failure of justice or denials of justice, if such occurred, succeeding the death of Juan and personal to him or to the mother of his wife, who attempted to assist him.

In naming one only of the Maninat heirs as competent to present a claim under the protocol of February 19, 1902, no inequity is done the other heirs. It does them no harm that she is not a Venezuelan, but of French nationality only. The laws of France governing the distribution of estates are not involved in this decision, neither are they invaded nor disturbed. This tribunal has no part in the final allotment or distribution of the sum which by the award herein is made payable to France, through the personality of Justina de Cossé, for whom that country has right of intervention. Over the proceeds of the award here made France has absolute dominion, so far as this tribunal is concerned, and in the perfect justice and equity of her procedure there can be complete content.

It is the judgment of the umpire that a just compensation which covers both aspects of this case is 100,000 francs, and the award will be prepared for that amount.

NORTHFIELD, *July 31, 1905.*

ANTOINE FABIANI CASE [1]

This claim came to the umpire after having been once heard and determined by the honorable President of the Swiss Federation, being submitted to him under the protocol of February 19, 1891, the first paragraph of which reads:

> " The Government of the United States of Venezuela and the Government of the French Republic have agreed to submit to an arbitrator the claims of M. Antonio Fabiani against the Venezuelan Government."

Against the proposition that such an arbitrament and award is conclusive upon all parties the claimant urges that the Swiss arbitrator held that he had not jurisdiction over a large part of the claims and therefore was incompetent to consider and to pass upon them; that the Swiss arbitrator in fact extracted and subtracted from those claims such as he held were without his jurisdiction and only awarded concerning the rest.

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[1] EXTRACT FROM THE MINUTES OF THE SESSION OF MAY 30, 1903.

The claim of Antoine Fabiani was then taken up.

Doctor Paúl rejects it as having already been judged by the arbitral court of Berne, the award of which, in his opinion, has decided definitely on all the points of indemnity presented by M. Fabiani.

M. de Peretti, on the other hand, claims that the Swiss arbitrator has brushed aside all the points represented to-day by M. Fabiani as not being covered by the agreement of arbitration signed the 24th of February, 1891, by the two Governments. The President of the Swiss Confederation has, then, declared himself incompetent to examine the aforesaid points, which by this very fact have found themselves reserved for the examination of the commission instituted by the protocol of Paris. Consequently M. de Peretti admits the demand of M. Fabiani, which he recognizes to be well founded, and accords to him the sum which he claims.

Doctor Paúl declares that the decision taken by M. de Peretti, according to M. Fabiani the sum which he claims, has not been preceded by any discussion between the arbitrators upon the amount of the claim, which Doctor Paúl rejects for the reason already expressed—namely, that all the claims newly presented by M. Fabiani have become res judicata.

This claim will then be submitted to the examination of the umpire.