REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Commission established under the Convention concluded between the United States of America and Great Britain on 8 February 1853

Case of Messrs. T. and B. Laurent v. the United States of America, opinions of the Commissioners and decision of the Umpire, Mr. Bates, dated 20 December 1854

Commission établie en vertu de la Convention conclue entre les États-Unis d'Amérique et la Grande-Bretagne le 8 février 1853

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United States Commissioner

Treaty interpretation—intention of the Parties.

Nationality under international law—individual domiciled in another country regarded as subject of such country for all civil purposes—*Migrans jura amittat ac privilegia et immunitates domicilii prioris*—interpretation of the term *subjects* in the Convention of 8 May 1854 as meaning persons actually and effectually under the rule and government of a country—absence of recognition of dual nationals.

Forfeiture of rights—placing themselves in the position of alien enemies during the war, the claimants forfeited their right to protection on the part of their government, which was neutral in this conflict.

International protection—under the Convention of 8 February 1853, persons domiciled abroad are to be protected by their country of residence.

British Commissioner

Treaty interpretation—interpretation of treaties according to international law—no unvarying meaning prescribed by international law to particular words for the construction of treaties—interpretation shall discover and give effect to the intention of parties, collected from the language of the agreement and taken in connection with surrounding circumstances—differentiation between the *letter* and the *spirit* of the Convention.

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[*] Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. III, Washington, 1898, Government Printing Office, p. 2677.

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Residence abroad in time of war—right of belligerents to consider and treat as enemy the foreigners domiciled in the other belligerent country.

Residence abroad and nationality—a subject residing abroad is not deprived of the protection of his government—certain rights of citizenship and certain liabilities may result from residence abroad, but original national character cannot be divested.

Diplomatic protection—practice of governments to extend their protection to their citizens domiciled abroad and successfully to insist upon redress for injuries—consuls and diplomatic agents especially instructed to protect the subjects of their country.

Umpire

Locus standi before the Commission—*locus standi* restricted to British subjects or citizens of the United States.

Treaty interpretation—Convention of 8 May 1854 interpreted in accordance with the law of nations and not with the municipal law of England.

Nationality of claimants—according to international law and for the purposes of the Commission, claimants being long-time residents in Mexico with the intention to stay there are to be regarded as Mexican citizens and not British subjects.

Commissaire des États-Unis

Interprétation des traités—intention des Parties.

Nationalité en vertu du droit international—un individu domicilié dans un autre pays que son pays de nationalité est considéré comme sujet de ce pays pour toutes affaires civiles—*Migrans jura amittat ac privilegia et immunitates domicilii prioris*—interprétation du terme *sujets* dans la Convention du 8 mai 1854 comme signifiant toutes les personnes soumises réellement et effectivement à la loi et au gouvernement d'un pays—absence de reconnaissance des binationaux.

Perte de droits—en se positionnant volontairement en tant qu'étrangers ennemis pendant la guerre, les requérants ont perdu leur droit à être protégés par leur gouvernement resté neutre dans ledit conflit.

Protection internationale—en vertu de la Convention du 8 février 1853, les personnes domiciliées à l'étranger doivent être protégées par leur État de résidence.

Commissaire britannique

Interprétation des traités—interprétation des traités conformément au droit international—absence de signification immuable imposée par le droit international à certains termes pour l'interprétation des traités—l'interprétation doit révéler et donner effet à l'intention des Parties, elle-même dégagée du langage de l'accord et mise en relation avec les circonstances environnantes—différenciation entre la *lettre* et *l'esprit* de la Convention.

Résidence à l'étranger en temps de guerre—droit des belligérants de considérer et traiter comme ennemis les étrangers domiciliés dans l'autre État belligérant.

Résidence à l'étranger et nationalité—un sujet résidant à l'étranger n'est pas privé de la protection de son gouvernement—certains droits de citoyenneté et certaines

responsabilités peuvent découler d'un domicile à l'étranger, mais le caractère national d'origine ne peut être supprimé.

Protection diplomatique—pratique des gouvernements d'étendre leur protection à leurs citoyens résidant à l'étranger et d'insister avec succès pour la réparation de leurs préjudices—les agents diplomatiques et consulaires sont spécialement chargés de protéger les sujets de leur pays.

Surarbitre

Locus standi devant la Commission—*locus standi* limité aux sujets britanniques et aux citoyens américains.

Interprétation des traités—Convention du 8 mai 1854 interprétée selon le droit des gens et non selon le droit national anglais.

Nationalité des requérants—selon le droit international et au vu des objectifs de la Commission, les requérants résidant depuis longtemps au Mexique avec l'intention de s'y établir doivent être considérés comme des citoyens mexicains et non comme des sujets britanniques.

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Opinion of Mr. Upham, United States Commissioner

The first article in the convention provides "that all claims of corporations, companies, or private individuals, *subjects* of Her Britannic Majesty, upon the Government of the United States, and all claims of *citizens* of the United States against the British Government" from the year 1814 to the present time, shall be submitted to the decision of this commission.

It is quite clear to me that the correlative terms "*citizens*" and "*subjects*" were used by the contracting parties in the convention in contrast with and exclusive of each other; and that it was not contemplated by them that subjects of Great Britain could be regarded, at the same period of time, as *citizens* of the United States, or that citizens of the United States might in the same manner have the additional character of *subjects* of Great Britain.

If, however, we affix to the term British subjects the meaning established by the municipal laws of England in their statutes, it will include vast numbers of American citizens, embracing not only all the emigrants from Great Britain who have become settled and naturalized citizens of the United States since the Revolution, but their children and grandchildren who may have been born there. (See 7 Anne, ch. 5 4 Geo. II. ch. 21, and 13 Geo. III. ch. 21.)

Thus, under this construction, every officer in the American Government might be entitled to enforce before this commission claims, as British subjects,

against their own government, as their grandfathers may have been subjects of Great Britain. . . .

It is possible that Great Britain may keep this provision upon her statute book in order that the children and grandchildren of emigrants from that country who may choose to return again to her jurisdiction shall be received at once into full fellowship as subjects; but in the decisions of her courts, in her international contracts, in her construction of the rights of actual subjects, and the disabilities of aliens, she holds, without exception, that a person going to a foreign country and becoming domiciled there, in the legal sense of that term, is to be regarded, for all civil purposes, as a subject and citizen of such country, entitled to the rights and subject to the disabilities arising from his domicil.

There never has been any international difference of opinion between the two governments as to who are actual citizens and subjects of either power in their dealings and relations with each other, and there can be no doubt that this well-understood international meaning was adopted and used in this convention in reference to the terms citizens and subjects of either country. . . .

The decisions of England and the United States, as well as those of every other nation, are uniform to the point that an individual going to another country and becoming domiciled there for purposes of trade, is, by the law of nations, to be considered a subject of such country for all civil purposes, whether such government be a hostile or a neutral power.

Authorities to this effect will be found in *Wilson* v. *Marryat* (8 Term Rep. 31); *M'Connel* v. *Hector* (3 Bos. & Pull. 113); *The Indian Chief* (3 Rob. Rep. 12); *The Anna Catherina* (4 Rob. Rep. 107; *Danous,* note, 255); *The President* (5 Rob. Rep. 277); *The Matchless* (1 Hagg. Ad. Rep. 103); *The Odin*, Hall, master (1 Rob. Rep. 296); *Bell* v. *Reid* (1 Maule & Selw. 726).

American authorities to the same point will be found in the case of *The Sloop Chester* (2 Dallas, 41); *Murray* v. *Schooner Betsey* (2 Cranch, 64); *Maley* v. *Shattuck* (3 Cranch, 488); *Livingston* v. *Maryland Insurance Company* (7 Cranch, 506); *The Venus* (8 Cranch, 253); *The Frances* (8 Cranch, 363); *Los Dos Hermanos* (2 Wheat. 76). These authorities, with various others, are cited and approved by Chancellor Kent in 1 Kent's Commentaries, 75; and he alleges that the doctrine sustained by them "is founded on the principles of international law, and accords with the reason and practice of all civilized nations."

All writers on international law concur in these views and adopt the maxim, "*Migrans jura amittat ac privilegia et immunitates domcilii prioris.*" (Voet, tome 1, 347; Grotius, book 3, p. 56, ch. 2, sec. 2; book 3, ch. 4, sec. 6; Vattel, book 1, ch. 19, sec. 212; Wheaton's International Law, part 4, ch. 1, secs 17 &19.)

The same principles are declared by public announcement of the present English ministry in reference to the existing war with Russia "as the settled law and practice of nations," and that, "by such law and practice, a belligerent has a right to consider as enemies all persons who reside in a hostile country, or maintain commercial establishments therein, whether such persons are by birth neutrals, allies, enemies, or fellow-subjects."

And in conformity with this declaration and the previous decisions on this subject it was adjudged by the admiralty court a short time since, in the case of *The Abo*, that "in time of war a person must be considered as belonging to the nation where he resides and carries on his trade, so far as the principles and rules of law are concerned, whether he resides in the enemy's or a neutral country." (*The Times*, July 22, 1854.)

The English authorities which have been cited expressly declare that a person domiciled in another country "is to be taken as a subject of such country." These are the words of Lord Stowell in the case of *The President*, above cited. And, in making such decision, he does not mean to be understood that such a person may be a citizen of another country and at the same time a British subject, as is contended before us; but he expressly declares, in *The Ann* (1 Dod. Ad. Rep. 224) that this can not be, because he says "he can not take advantage of *both characters at the same time*."

The owner of *The Ann* was a British-born subject, and his wife and child resided in Scotland, but he himself personally was domiciled in the United States. He was therefore clearly a British subject by the *municipal laws* of England, but Sir William Scott (Lord Stowell) held that, as regarded his *international intercourse and character*, he was not a British subject or entitled to redress as such, and his property was condemned accordingly, notwithstanding the decree in council declared "that all property of British subjects," seized under like circumstances, "should be restored."

The international definition of "subject" is also recognized and adjudged in *Drummond's case* (2 Knapp's Privy Council Reports, 295), where it was holden that though an individual might be formally and literally by the law of Great Britain a British subject, still there was a question beyond that, and that was whether he was a British subject within the meaning of the treaty then under consideration, and it was there contended that all treaties must be interpreted according to the law of nations, and that where a treaty speaks of the subjects of any nation it means those who are actually and effectually under its rule and government, and not those who for certain purposes under the mere municipal obligations of a country may be held to maintain that character.

And in *Long's case* (2 Knapp's Privy Council Reports, 51) it was holden that a corporation, composed of British subjects, existing in a foreign country, and under the consent of a foreign government, must be considered as a foreign corporation, and is not therefore entitled to claim compensation for the loss of its property under a treaty giving the right of doing so to *British subjects*.

In the same manner, and on the same principle, the converse of the proposition was holden in the *Countess of Conway's case* (2 Knapp's Privy Council Reports, 364), that a French native-born subject, residing in England, had the character of a British subject, and was entitled to claim compensation as such, against *his own country*, for losses under a treaty providing compensation to be made "to British subjects."

These cases seem to me to be sound in principle and explicit in authority; and I am surprised, after these well-established and adjudicated decisions, that the doctrine is still contended for, that in the interpretation of the term *subject*, in this convention, we are to be confined to the meaning affixed to it by the English statute.

It is desirable, before giving to it this construction, we should ascertain precisely what it means.

By applying this construction to the convention, the second article would be made to read as follows: "That all claims against the United States, of corporations, companies, or private individuals, resident subjects of Her Britannic Majesty, and of all native-born citizens of Great Britain, who may have emigrated to the United States since the revolution, and of their children and grandchildren who may have been born there, and all claims of citizens of the United States against the British Government, shall be submitted to the decision of the board of commissioners, whose decision shall be final," etc.

It seems to me that such an interpolation in the terms of this convention, or such a construction of it, would strike no persons with more surprise than its negotiators.

It is said, however, in order to obviate the evident difficulty of regarding the treaty in this light, that a person holding the statute relation of *subject* to England may appear before this commission and prosecute his claim as such, but if he is domiciled in another country his case is to be adjudged and determined by the commission as though he were a citizen of that country.

But I regard this as an erroneous and untenable position for any court or tribunal to take.

Suppose, for instance, that an American citizen whose grandfather was born in England should come before this commission armed with the power and authority of the British Government to enforce his claim here against his own country, will it answer for this commission to say that by the law of England he is a British *subject*, and as such we must *hear him*, but we will adjudge his case precisely as though he were a *citizen of the United States*? Surely not. Like any other citizen of the United States, he must pursue his remedy before the ordinary constituted tribunals of his country or before Congress. It would be a futile attempt in us to undertake to make any award on the merits of his case, as it can not be supposed that either nation would sanction such an extraordinary assumption of power.

This tribunal was not constituted to pass upon any such claim; neither was it constituted to pass upon the claim of any British-born subject who may have domiciled himself in Mexico, and who continued to reside there during a war between the United States and that country "carrying on", in the words of the legal authorities, "trade there, paying the taxes, and employing the people of the country, and expending his industry and capital in her service."

"Such a person," says Lord Chief Justice Alvanly, "who resides in a hostile country, is a subject of such country. He is to all civil purposes as much an alien enemy as if he were born there, and to hold to a different conclusion would be to contradict all the modern authorities on the subject." (*M'Connel* v. *Hector*, 3 Bos. & Pull. 114.)

This foreign character, however assumed, is a substantial recognized civil relation, as much as the prior subsisting relation with England. The Messrs. Laurent, in this case, are citizens of Mexico, and their claim against the United States is a Mexican claim. Such a claim can only be adjudicated between the two governments where it originated. They alone are the national parties to it. And neither Mexico nor the United States is here with the necessary papers and evidence for its adjustment, for the reason that neither of those governments has delegated to us any such authority, and an attempt by us to bind them in the decision of such claims would be wholly nugatory.

It is suggested in the argument in "this case that the claim of English *subjects* can not extend to every case in which a British subject has been a party, but would only extend to claims upon the United States Government, preferred by persons who had not by their acts *forfeited their right* to appeal to the English Government for its interposition."

What would constitute a forfeiture of such right of a British subject is not stated; whether the act of the father would bar the son of his right as a British subject, or whether being born in a foreign country, where his father was domiciled, would have such effect. Many such questions would arise under such a mode of determining the national character. If, however, the question whether an individual is to be regarded as a subject of Great Britain is to depend upon the fact whether he has, *by his own acts*, forfeited the right to appeal to the English Government for protection, it seems to me this case is clearly of that character.

The injury of which the Messrs. Laurent complain arose from their placing themselves in the position of *alien enemies* of the United States in the war with Mexico. They thereby forfeited their right to protection on the part of England, whose government was *neutral*, and could neither aid, abet, nor countenance any of its subjects in such acts of hostility. They could only, on this principle, be regarded as British subjects while holding the position of the British nation, and when they departed from such position and became alien enemies of the United States they *forfeited the protection of England* and their right to appear before this commission.

The United States has no remedy against Great Britain for the *conduct* of the Messrs. Laurent while domiciled in a foreign country as her *subjects*; and they, as British subjects, have no claim to redress against the United States, or to appear before this tribunal in that character.

Domicil, under all circumstances, stamps upon the individual the character of *foreigner*, *neutral* or *alien*, as the case may be. Chancellor Kent says it is "*the test of national character*"; and that the only limitation upon the principle of determining character from residence laid down in any authority is that the party, so far as regards his own country, must not take up arms against it. (1 Kent's Com., 76.)

The municipal relation of *subject* is, for the time being, wholly subordinate to the new relation impressed upon the individual, and can not exist as an *international relation*. His original right, as subject, may revive or revert if he returns to his native country, but it is otherwise inoperative.

Each nation may well claim of other governments that its own native-born citizens, who are domiciled with them, should be equally protected by law with the native-born citizens of other countries. Invidious distinctions in this respect would manifest a spirit of hostility against the parent country that could not be overlooked. But when individuals leave their own land, and have become domiciled in another country, and enjoy there the protection and the benefit of availing themselves of its laws, courts, tribunals, and appeals to its general government, as fully and freely as the native-born citizens of that country, for the protection of their rights and the business in which they are engaged, the original government of such persons has no claim to interfere in their behalf. Such persons become, by the settled adjudications of all countries, and the judgment of all writers on public law, in an international point of view, citizens of such country, as to all matters arising from such business and residence, and the treaties and conventions between foreign states are framed on this basis.

An attempt on the part of this commission to overrule or revise the decisions of British or American courts as to the business matters, transactions, or liabilities of persons thus domiciled in either country, or to pass upon them while such courts were fully open for their hearing and decision, would be an utter perversion of the powers granted by this convention.

Persons thus domiciled have the rights and the disabilities, under this convention, of the country under whose protection they have chosen to reside. An American native born citizen who has taken up his residence in London, and engaged in business there, has the same rights under this convention against the United States, for any claims arising from his business there, as any other citizen of London, but his claim is as a *British subject*; his domicil, by the settled construction of public law, affixes on him that character. The same is the case with an English native-born subject resident in New York; his claims under this convention can be those only of an American citizen, so far as regards the business of his elected domicil, or any adjudications upon it.

And where an individual is domiciled in another country, different from that of either of the contracting parties to this convention, as in Mexico, for instance, his claim arising from acts connected with and partaking of such domicil is not included in a convention for the adjustment of the claims of British subjects and American citizens.

Such a claim must be prosecuted through conventions made between the country of his adoption, under whose protection his business was carried on and his claim arose, and the United States. As regards any powers confided to us, he is to be holden as a Mexican citizen. Such a decision in no manner conflicts with or infringes on any international right of England as regards her subjects.

For these reasons, I am of opinion that the exception taken to our jurisdiction over the claim of the Messrs. Laurent, as presented to us, is sustained, and that no authority has been delegated to this commission to adjudicate upon it.

Opinion of Mr. Hornby, British Commissioner

It is not disputed that the Messrs. Laurent are British-born subjects, nor pretended that, except in so far as their character of British subjects may be affected by *mere* residence abroad, they have done anything to divest themselves of this character. They have not been naturalized in Mexico; on the contrary, they have annually taken out a permission to reside in Mexico, in which permission they have been uniformly designated as British subjects, and generally they have, so far as lay in their power, preserved their English character. This being so, and having, as they conceive, some ground of complaint against the United States Government, they have appealed to the English Government for its interposition on their behalf with that of the United States. It appears therefore to me that this case comes within the *letter* of the convention, and is *prima facie* within our jurisdiction.

But it is contended by the learned agent of the United States that though within the *letter*, the case is not within the *spirit* of the convention; submitting that the term "British subjects," used in the treaty, is not to be interpreted according to English law, but according to international law, and that by the latter a person *can only* be regarded as a citizen or subject of the country in which he is for the time being domiciled. I do not, however, understand it to have been assumed by the agent of Her Majesty's government that the claimants, being "British subjects" within the terms of a British statute, are therefore *necessarily* "British subjects" within the meaning of the convention. It is clearly not the statute law of England which is to give the rule of interpretation, but the obvious intention of the parties to the treaty.

Now, it is undoubtedly true that treaties are to be interpreted according to international law, but international law does not affix an unvarying meaning to particular words, or prescribe any rule for the construction of treaties, other

than that applicable to the interpretation of all written documents, namely, to discover and give effect to the intention of the contracting parties, which intention is to be collected from the language of the instrument of agreement, taken in connection with surrounding circumstances to which it has reference.

The cases which have been cited by the American agent are authorities for the well-known principle of international law that foreigners, domiciled in an enemy's country can not set up a *neutral* character as against an invading force on account of their *foreign* origin, so as to entitle them to immunity from the ordinary consequences of war; and with this undoubted principle, the declarations of the English ministers in reference to the present war with Russia, as well as the recent decision of the admiralty court in the case of *The Abo*, cited by the learned agent of the United States, are in strict conformity. It may be also, when we come to consider the *merits* of the Messrs. Laurent's claim, that this principle will be found to govern the decision which we shall have to give for or against the claimants; but upon examination of the cases cited, it is clear they do *not* establish the principle which they have been supposed to prove, viz, that the term "British subject," as used in this treaty, can not, under *any circumstances whatever*, be intended to apply to British subjects domiciled out of Her Majesty's dominions.

Several cases which were decided under the treaty of 1814 between France and England have been referred to.

The object of that treaty was to provide compensation for all "British subjects" whose property had been confiscated by the revolutionary government of France. If the construction which is *now* contended for by the American agent had been put upon the language of that treaty, it would have followed that no person domiciled in France could have been admitted to claim compensation under the title of "British subjects," and such a construction would have gone far to defeat the very object for which the treaty was entered into, as it is a matter of history that the property of many persons, established as merchants or otherwise in France at the time of the revolution, was seized upon the very ground that the owners were British subjects, which shows that mere domicil does not settle the question; and, moreover, on reference to the cases, I can not discover that the construction contended for by the learned agent was put upon the French and English treaty.

Genessee's case, reported in the 2d volume of Knapp's Reports, p. 345, is one in which it distinctly appears that Messrs. Boyd and Kerr, the claimants, were established as bankers at Paris. Now, if the present objection were valid, it would have been a sufficient answer to that claim to have said Messrs. Boyd and Kerr had established themselves for commercial purposes and were domiciled in France; that they had voluntarily divested themselves of the character of British, and had assumed that of French subjects, and can not, therefore, claim the benefit of a treaty which was intended for the protection of those British subjects only who had not quitted their own country. Messrs. Boyd and Kerr, however, were held to be clearly entitled to compen-

sion as British subjects, and by the decision of the same eminent judge, Sir William Scott, whose judgments in other cases have been quoted in opposition to the admissibility of the claim of Messrs. Laurent in the present case. Drummond's case, decided under the same convention, has been especially relied on. The reasons, however, which are expressly given for the decision in that case, show it was *not* determined on the mere fact of the claimant being domiciled in France, *but that* from special circumstances—such as accepting military employment under the French crown—he had voluntarily taken upon himself the character of a French subject, and having done so, the new French Government had a right to treat him as such, and consequently that he was not entitled to indemnity.

If there had been analogous circumstances in the present case I might have felt bound to hold that the Messrs, Laurent were not entitled to resume at pleasure, for their advantage, the character of British subjects, which, for their advantage, they had voluntarily renounced; but in the entire absence of such circumstances, I am of opinion that mere residence abroad does not deprive them of all title to the protection of the British Government, or can preclude that government from taking steps to procure for them redress if they have suffered an injury in violation of the law of nations, or absolve the American Government from the liability to redress such an injury.

In the case of the *Ann*, a British subject, who had been domiciled in the United States during the war between that country and Great Britain, sought to be admitted to the benefit of the orders in council which were intended to provide compensation for those British subjects who had been inadvertently injured in the course of the war by the English cruisers. The claimant, having adhered to the enemy, was plainly not one of the class of persons for whose relief the orders in council were issued. The injury he sustained was, under these circumstances, in no way wrongful. The decision therefore was not, as we are now asked to decide, that the claimant, being domiciled abroad, could not, under any circumstances, be entitled to the character of British subject; but that he was not a British subject, within the meaning of the instrument then under consideration, entitled to redress. The *Indian Chief*, reported in 3 Rob. Rep. 12, as well as the *President*, in 5 Rob. Rep. 107, are both cases in which the claimants had acquired a hostile character against their own country, and as enemies had sustained losses which were rightfully inflicted on enemies. It was impossible, therefore, for them to establish a claim *against this country* upon the ground that they were British subjects in the face of the fact of their having been in a position of hostility to Great Britain. In these cases, however, the *merits* and justice of the claim were in question, and they did not depend, nor were they decided, upon a mere question of domicil. It does not appear to me necessary to examine the other cases in detail, inasmuch as none of them, in my judgment, show that the term 'British subject' necessarily excludes every person domiciled out of the British dominions. And it becomes our duty to ascertain, from the object and language of the

present convention, the sense in which the words in question were employed by the contracting parties.

The object of the convention is stated to effect "a speedy and equitable settlement" of certain claims pending and which had become the subject of discussion between the two governments; and it is not merely for the settlement of the claims themselves, but rather to remove them from the arena of discussion between the two governments, that the present tribunal has been erected; and it is therefore provided that all claims, etc., which may have been or might be presented to either government for its interposition with the other should be referred to this commission.

It is a *fact* that the applications to the English and American governments for their interposition, one with the other, have not been confined to citizens or subjects domiciled in their own country, but the claims of persons domiciled abroad have in several instances become the subject of correspondence between the two governments, it appears to me, therefore, that if the sense in which, the term "British subject" or "American citizen" is to be construed be sought in the context of the convention, it will be found that the contracting parties contemplated American citizens or British subjects, wherever resident, whose claims had actually been or might properly become the subject of the interposition of the one government with the other.

If, then, this be a correct mode of stating the question which we have to determine, it can not be denied that the *practice* of governments has been to extend their protection to such of their citizens as may be domiciled abroad, and to insist upon, and with success, redress for injuries. Instances in which the American Government has so extended its protection and demanded compensation have been mentioned, and the case of Don Pacifico shows that the English Government has considered itself entitled to interfere on behalf of an Englishman, though domiciled abroad. And many other instances might be collected from the history of recent times.

Having regard, therefore, to the fact that both the English and American governments have from time to time interposed in respect to their subjects or citizens domiciled out of their respective countries, and that such interposition has in some instances led to the preferment of claims by the one government on the other which were pending at the time that the present convention was entered into, it is clear to me that the high contracting parties in entering into the present treaty intended to provide a tribunal for the settlement of all claims, whether preferred on behalf of subjects domiciled in the British dominions or elsewhere, and consequently that the claim of the Messrs. Laurent is admissible before us.

I can not find any force in the argument, that if the Messrs. Laurent are admitted under this convention as British subjects, thousands of American citizens by birth having claims against the American Government, might also have presented them before the commissioners as British subjects by descent. If I am right in the rule of interpretation which I have adopted, it is clear that

they could not, for it would be ridiculous to suppose that either of the contracting parties intended this international tribunal to adjudicate upon the claims of acknowledged citizens or subjects upon their own governments. The effect also of acquiescence in the interpretation to be given to the words "British subjects" in the treaty contended for by the learned agent of the United States, would be that henceforth no merchant residing in a foreign country could ever claim the assistance and protection of the government of the country of which he was a native, and to which country he owes allegiance. Thus an English merchant residing in France, or an American merchant residing in England, is to be considered as barred from appealing to England or America for protection and assistance.

Mr. Everett, in his correspondence with Lord Aberdeen on the rough rice question, incidentally maintains the same view of the law and practice of nations which I have already expressed, although he carries it somewhat further than is necessary for the purposes of the argument in the present case. The American minister there insisted on his right to interfere under the treaty of commerce between Great Britain and the United States on behalf of an English firm, claiming compensation for pecuniary damage done in consequence of a nonobservance of the treaty, because one of the members of that firm was an American citizen, *domiciled* in England. If in this case *domicil* in England had ousted the American partner of his right to appeal to the United States Government for protection, or for its interference in obtaining for him the compensation due for an injury thus done to him, Mr. Everett was wrong in claiming the right to interfere, and Lord Aberdeen was wrong in admitting it.

My judgment is founded on the following conclusions, at which, after a careful consideration of the arguments that have been advanced on either side, I have arrived. To recapitulate them, they are shortly as follows:

That the Messrs. Laurent are admitted to be—whatever else they may also be—British subjects.

That mere residence in a foreign country, in time of peace or war, does not deprive a merchant of his original citizenship or of the right to call for the protection of the government of his native country; although his continued residence in the country in time of war gives the right to the enemies of that country to consider and treat him as an enemy.

That although such residence may clothe him with certain rights of citizenship and involve certain liabilities, it does not divest him of his original national character.

That the practice and usage of nations sanction the interference of a government on behalf of its subjects or citizens resident abroad, as well as at home.

That consuls and diplomatic agents are especially instructed to watch over and protect the subjects of the countries of their respective governments resident in the countries to which they may be accredited.

That such being the usage and practice of nations, the words used in this treaty are to be interpreted in connection with and by the aid of such usage and practice.

That, consequently, it was the intention of the contracting parties to the convention of 1853, that the commissioners appointed under it should decide according to justice and equity upon the claims of individuals in the position of the Messrs. Laurent.

Decision of the Umpire, Mr. Bates

The claim by the Messrs. Laurent is for damage which, they allege, they received in the year 1847, from the conduct of the United States general, Scott, who captured the city of Mexico in that year. The treaty of peace between the United States and Mexico settled all claims of Mexican citizens against the United States. The Messrs. Laurent present their claim as British subjects. It is quite clear that none but British subjects or citizens of the United States can have any *locus standi* before this commission.

It is denied, on behalf of the United States, that the Messrs, Laurent can claim to be British subjects within the meaning of the words "British subjects" as used in the convention by virtue of which this commission was appointed; and this seems to me to be the correct view of the case, both on principle and with reference to the reported authorities on the subject.

According to the municipal law of England, the Messrs. Laurent may be, for some purposes, still British subjects, but the language of the convention must be construed in accordance with the law of nations, and not according to the laws of any one nation in particular; and it is sufficiently clear that by the rules of international law and for the purposes of this commission, the Messrs. Laurent were, for the time being at least, Mexican citizens and not British subjects.

There are many authorities which bear on this question. Lord Stowell, in giving judgment in the case of the *Matchless*, (1. Haggard, page 97), said:

> Upon such a question it has certainly been laid down by accredited writers on general law, and upon grounds apparently not unreasonable, *that if a merchant expatriates himself as a merchant to carry on the trade of another country, exporting its produce, paying its taxes, employing its people, and expending his spirit, his industry, and, his capital in its service, he is to be deemed a merchant of that country, notwithstanding he may in some respects be less favored in that country than one of its native subjects*. Our own country, which is charged with holding the doctrine of unextinguishable allegiance more tenaciously than others, is no stranger to this rule. Its highest tribunals which adjudicate the national character of property taken in war apply it universally. They privilege persons residing in a neutral country to trade as freely with the enemies of Great Britain in war as the native subjects of that neutral country, although our own resident merchants can not without special permission of the crown.

The words of Lord Stowell apply exactly to the case of the Messrs. Laurent. They as far as in them lay, had expatriated themselves; they had resided twenty years in Mexico carrying on their business, and with every intention of remaining there, as is sufficiently evidenced by their wishing to buy the freehold of the house in which they were living; and, according to Lord Stowell's judgment, ought to be considered Mexican citizens.

In the case of the *President* (5 Robinson, 277), which vessel was captured on a voyage from the Cape of Good Hope to Europe, and claimed by Mr. J. Elmslie, as a citizen of the United States, it appeared that he had been a British-born subject who had gone to the Cape during the last war, and had been employed as American consul at that place. In giving judgment, Sir William Scott said:

> This court must, I think, surrender every principle on which it has acted in considering the question of national character if it was to restore this vessel. The claimant is described to have been for many years settled at the Cape, with an established house of trade, and as a merchant of that place, and must be taken as a subject of the enemy's country. (The Dutch being then at war with England.)

In a recent case, the *Aina*, decided in the admiralty court in June last: The claimant was a native of the free Hanse town of Lubec, and consul of His Majesty the King of the Netherlands, at Helsingfors, in Finland; he had lent money, before the war with Russia, on bottomry on the ship, which ship was captured by the British fleet in the Baltic. Dr. Lushington, in giving judgment, is reported to have said:

> Two questions have arisen with respect to the present claim; first, as to the national character of the claimant, whether he is to be considered an enemy or a neutral. With reference to this question, it is stated that he is a citizen of the free Hanse town of Lubec, and consul of His Majesty the King of the Netherlands, at Helsingfors, in Finland. Upon this I can put but one construction—that he is a resident in Finland, and carrying on business there. I take it to be a point beyond controversy that where a neutral, after the commencement of the war, continues to reside in the enemy's country for the purposes of trade, he is considered as adhering to the enemy, and is disqualified from claiming as a neutral altogether.

I am unable to see why the principle laid down so fully in these cases (and many more might be cited) should not be applied to that of the Messrs. Laurent. They had, as before observed, long been residents in Mexico, they had a fixed home there, with apparently every intention of continuing to reside there, insomuch that they endeavored to buy a portion of the soil of Mexico.

I think, therefore, that for the purposes of this commission they were Mexican citizens and not British subjects, and that the commissioners do not form a tribunal competent to entertain their claims.