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Virginie Lessard Cameron (Great Britain) v. United Mexican States

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vate documents shall constitute full proof against the person who wrote them, when not objected to or once they are legally acknowledged," the origin of which is the Law of Civil Procedure of Spain.

Zavala, the author of *Elements of Private International Law* (Conflict of Laws), lays down on p. 319: "All the inhabitants of Mexico must be presumed to be Mexican citizens, which is in accord with article 257 of the International Code of Dudley Field."

Furthermore, a presumption is not destroyed by another presumption, but by proof.

It is true that there are no restrictions on the Mexican-British Claims Commission as regards the admission and weighing of evidence; but this power is undoubtedly always limited by the principles of public international law, especially when it is a matter of determining its own jurisdiction.

The Commission may not, therefore, be satisfied with evidence unless it complies with the principles generally accepted by jurists to enable such evidence to be considered as authentic. In other words, the sovereignty of the Commission when weighing the evidence is not absolute; its limits will always be those imposed by law and by ethics. So that although when estimating a fact in accordance with the best knowledge and judgment of the Commissioners, neither the Convention nor the Rules of Procedure are infringed, the Commission will always be obliged not to depart from the fundamental principles of international law.

(d) Because it must not, although there is subjectively no reason for doubting the certificate of baptism produced by Lynch, be forgotten that the *onus probandi* in this case falls wholly upon the demandant Government, and that the Commission is not authorized to supply any deficiencies in the evidence produced by either party.

In view of the whole of the foregoing, the Mexican Commissioner holds that the demurrer should be allowed, on the ground that the nationality of the claimant has not been properly established.

VIRGINIE LESSARD CAMERON (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 2, November 8, 1929, concurring opinions by British and Mexican Commissioners, undated. Pages 33-50.)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS. In the absence of any express provisions in its *compromis* to the contrary, an international tribunal may permit any evidence whatever to be introduced before it.

AFFIDAVITS AS EVIDENCE. Affidavits will be admitted as evidence but will be weighed with the greatest caution and circumspection.

NATIONALITY, PROOF OF.—CONFLICTING STATEMENTS BY CLAIMANT CONCERNING NATIONALITY. Presumption of nationality raised by an affidavit as to nationality of decedent, together with a certificate of British consular registration of decedent, *held* rebutted by a document produced by Mexican Agent signed by decedent in which he described himself as an American citizen.

CLAIM IN REPRESENTATIVE CAPACITY. A claimant purporting to act on behalf of a decedent's estate must submit evidence of his legal representative capacity.

Cross-references: Am. J. Int. Law, Vol. 25, 1931, p. 757; Annual Digest, 1929-1930, p. 452.

1. In this case the demurrer filed by the Mexican Agent is based on two grounds: (1) that no reliable document has been produced by the British Government to establish the British nationality of either Dr. Murdock C. Cameron or of Mrs. Cameron, and (2) that the Memorial does not comply with article 11 of the Rules of Procedure, which requires an executor or administrator who claims on behalf of the deceased person's estate to give evidence of the legal representative capacity in which he or she is acting.

In the course of his argument the Mexican Agent raised other points. He contended, in particular, that the Commissioners were not entitled to accept affidavits, on the ground that Article 4 of the Anglo-Mexican Convention does not specifically mention affidavits. A further contention was that the third paragraph of Article 4 was governed by Mexican law and that documentary evidence as well as parole evidence given in examination before the Commission should be in accordance only with Mexican law. He relied in particular upon the fact that affidavits were a form of evidence which was unknown to the law of Mexico.

The Mexican Agent declined to attach any importance to an affidavit sworn by a brother of Dr. Cameron (annex 2 of the Memorial), dated the 25th August, 1909, in which it is declared that Dr. Cameron was born on the 9th May, 1855, as a British subject, and that he never lost that nationality. He submitted that the affidavit possessed no value, because it was sworn to by a near kinsman of the claimant, who was therefore not an independent witness and as to whose trustworthiness the Commission had no information.

Furthermore, the respondent Government produced a document signed by Dr. Cameron in 1896 in which he described himself as a citizen of American nationality.

Finally, the Mexican Agent submitted that Dr. Cameron must be considered a Mexican citizen under article 30 of the Mexican Constitution of 1857, because he had acquired land in Mexico and was the father of Mexican children.

2. Against these contentions the British Agent relied upon various points in the course of his argument. In the first place, the affidavit of Dr. Cameron's brother was the evidence of a person in a better position to know the facts of Dr. Cameron's nationality than anyone else. He produced a certified copy of entries in the register of the British Consulate at Tampico, showing that Dr. Cameron and his children were registered as British subjects on the 5th June, 1908. The fact that Dr. Cameron was born in Canada was, he suggested, an explanation why the deceased had described himself as being of American nationality. He relied upon the authorities set out on p. 186 of *Ralston*, that article 30 was to be construed in a permissive and not in an obligatory sense. With regard to Rule 11, he submitted that no letters of administration were required by the law of Texas to administer an intestate estate.

The British Agent contested strenuously the claim of the Mexican Government that affidavits were excluded by the treaty and that Article 4 was to be interpreted according to Mexican law. In the whole history of international commissions no treaty had ever been signed which permitted the law of one

sovereign State to determine disputes to the exclusion of the law of the other sovereign State. Affidavits were covered by the words "other evidence" and the application of the Mexican law related exclusively to the parole examination of witnesses before the Commission.

3. It is necessary that the Commissioners should make clear once and for all what their attitude is with regard to the claim that matters of evidence and procedure were to be governed by Mexican law and that affidavit evidence was excluded by the language of the treaty. This is a matter of great general importance which must be examined with care.

In the first place the Commissioners consider that there is no limitation in the terms of the treaty to restrict them in the evidence they receive. The Commission is independent of both the Mexican law and the British law and there is nothing in the treaty to suggest the contrary.

As an international tribunal the function of the Commission is fundamentally different from the function of a civil national tribunal. The Commission has been created by two sovereign States for the purpose of carrying out a determinate object and both States have selected experienced lawyers who possess their confidence. In signing the Convention the Governments have acknowledged that it is in the interest of both States that the claims should be disposed of once and for all. In the preamble to the treaty both Great Britain and the United States of Mexico express their desire "to adjust definitively and amicably all pecuniary claims arising from losses or damage suffered by British subjects".

By article 2 of the treaty a duty is imposed upon the Commissioners "to examine with care and to judge with impartiality in accordance with the principles of justice and equity all claims presented". In order to carry out the object of the treaty and the duty of the Commissioners it is necessary that this body should be equipped with more extensive powers than a domestic tribunal can enjoy so that the Commissioners can ascertain the truth in a manner which is not subject to any restriction.

It appears to us that the true principles to be observed are expressed in the following words taken from pp. 38-39 of the Report of the Mexican-American Claims Commission, dated the 8th September, 1928:

"For the future guidance of the respective Agents, the Commission announces that however appropriate may be the technical rule of evidence obtaining in the jurisdiction of either the United States or Mexico as applied to the conduct of trials in their municipal courts, they have no place in regulating the admissibility or the weighing of evidence before this international tribunal. . . . On the contrary, the greatest liberality will obtain in the admission of evidence before this Commission, with a view of discovering the whole truth with regard to each claim submitted."

4. It appears to the Commissioners that the reference to Mexican law in article 4 of the treaty applies only to the examination of witnesses. It would be a unique event in the history of international treaties if two sovereign States solemnly agreed that the law of only one should prevail. The true interpretation of article 4 of the treaty is quite clear. It is the only article in the treaty which made it necessary for the Mexican Government to safeguard the rights of their own subjects. It authorized the Commissioners to have Mexican citizens examined under affirmation, and signing the Convention the Mexican Government had to be careful that their citizens should not be subject to a system of interrogation more stringent and more oppressive to their consciences or less familiar to them than the system prevailing in the courts of their own country. For this reason it was stipulated that the Mexican law must be observed.

5. With regard to affidavits it appears to the Commissioners that they are bound to reject the view put forward by the Mexican Government. It is true, no doubt, that affidavits contain evidence which can be described as secondary evidence and is often of a very defective character. In many cases, it may be, affidavit evidence may possess little value, but the weight to be attached to that evidence is a matter for the Commissioners to decide according to the circumstances of a particular case. Affidavits must and will be weighed with the greatest caution and circumspection, but it would be utterly unreasonable to reject them altogether.

The evidence of which the Commission will be able to dispose is limited by the very nature of the claims.

Most of the claims originate in acts of violence, of which documentary evidence will seldom, if ever, be available. The most recent of the facts have been committed nearly ten years ago and the most remote nearly twenty years ago. It is clear that oral testimonial evidence in most cases cannot be obtained owing to the death or the disappearance of witnesses, and that, if available, one would hesitate to attach much weight to the evidence of witnesses who spoke of events which happened so many years ago.

If, the evidence already being so scarce, the Commissioners were to be deprived of the light of truth, dim as it may be, that may shine out of some affidavits, it would mean that their task would be attended by greater difficulties than seems unavoidable, and that the position of one party to the convention would be seriously prejudiced.

Finally, there is nothing in the language of the treaty to warrant the proposition put forward by the Mexican Government.

6. In this particular case, the affidavit sworn by Dr. Cameron's brother is, however, not a document which ought to carry great weight with the Commissioners. Nothing is known about him, whether he is trustworthy or whether he kept in touch with his brother, who left Canada in 1881. On the other hand, for the reasons set out in our judgment in the case of R. J. Lynch, the certificate of consular registration put in by the British Agent does raise a presumption of British nationality, though that presumption is rebutted by another document put in by the Mexican Government. This is the annex attached to the demurrer, in which in 1896 Dr. Cameron designated himself as *ciudadano americano*. It may be that this referred to his Canadian birth, but, even so, the document affords evidence that Dr. Cameron did not at that time consider himself a British subject or had reasons for not avowing himself as such. The signature of Dr. Cameron to this declaration weakens very considerably the evidence of the consular certificate and justifies the Commissioners in holding that the claimant has not established his British nationality.

This being the case, it is not necessary to consider the effect of article 30 of the Mexican Constitution.

7. As regards the right of claimant to represent her deceased husband's estate, the Commission must declare that article 11 of the Rules of Procedure has not been observed. According to this article, claims on behalf of an estate must be filed by the deceased's legal representative, who shall duly establish his legal capacity therefor. The law of Texas, to which the British Agent appealed, cannot be conclusive for the decisions of the Commission, but even if it could, the Mexican Agent has in his brief put forward arguments raising serious doubt as to whether the Texas Law would give claimant any right to appear before the Commission. The Commission is not in possession of any document showing that Mrs. Cameron has the capacity to appear in her own right and in that of her children, three of whom were of age at the time of

Dr. Cameron's death, and all of whom were of age at the time when claimant made her statement (annex 1).

8. The Commission declares that *(a)* the British nationality of neither Dr. Cameron nor of his widow, the claimant, has been sufficiently established, and that *(b)* claimant has not duly shown her legal capacity to act on behalf of Dr. Cameron's estate in accordance with article 11 of the Rules of Procedure.

The demurrer is allowed.

The judgment is unanimous, but the other two Commissioners desire to express separately their reasons for arriving at the same conclusion.

Separate opinion of Mr. Artemus Jones, British Commissioner

Before dealing with the arguments of the respondent Government in the Cameron case, I want first to dispose of a point of great general importance. This is the question whether the Commissioners are free to decide all matters of evidence and procedure independently of the domestic law of Mexico or of the domestic law of Great Britain. In approaching this problem it is necessary to bear in mind the fundamental differences which distinguish an international claims commission from a municipal or national tribunal. The chief of these lies in the nature of their powers. On the one hand, a municipal or national tribunal is vested with compulsory powers for the purpose of enforcing the attendance of witnesses to give evidence and compelling litigants to disclose facts and documents relevant to the dispute. On the other hand, an international commission is equipped with no such powers, but it is wholly dependent and limited by the terms of the treaty which creates it. For example, in the case of this Commission Article 4 of the Anglo-Mexican Convention lays it down in emphatic language that the procedure adopted by the Commission shall not depart from the provisions of the treaty. An agreement between two sovereign States whereby compensation is paid in certain circumstances, not as a matter of right or of international law, but as a matter of grace on the part of one of the two Powers, stands of necessity in an entirely different category from those municipal laws which control the evidence and govern the procedure of national tribunals. On principle it appears to me beyond challenge that an international tribunal such as this cannot be bound by the municipal law of either country. In the course of the argument I drew the attention of the Agents of the British and Mexican Governments to the case of William A. Parker, which is reported in the American official reports of the American-Mexican General Claims Commission, 1927 Volume, pages 35 to 40. This very question was discussed in the unanimous judgment which was arrived at by three Commissioners in that case. It is of some significance that the Commissioner for Mexico concurred completely in the views of the American Commissioner and the President. The considerations which ought to guide international tribunals with regard to the question are set out at length on page 38 under the heading of "Rules of Evidence." The substance of the judgment is that an international commission cannot be governed by rules of evidence borrowed from municipal procedure. This view is fully established by the conclusive reasons set out therein. In my judgment the reasons which are there advanced ought to be adopted without qualification both by this and every other international commission. In expressing this opinion, I am not overlooking the fact that the decision of one international tribunal is not binding upon another. It is no less true, however, that the general principles relating to evidence and procedure which should guide them ought to be the same.

The broad question raised by the demurrer may be put in these terms: Does the word "proof" in Article 10, paragraph *(a)*, mean absolute and conclusive

proof of British nationality, as the Mexican Agent contends? Or does it mean, as the British Agent contends, *prima facie* evidence sufficient to satisfy the Commissioners, and to raise a presumption calling upon the Mexican Government to rebut the Memorial if they have any rebutting evidence? The Mexican Agent's first proposition is that consular certificates and baptismal certificates are *ex parte* statements and only secondary evidence, and that they ought not to be admitted in evidence unless it be proved that birth certificates are not procurable. He admits that such evidence of nationality as would satisfy an English Court of Justice would be sufficient for the Anglo-Mexican Claims Commission. It is necessary therefore that I should explain what the law in England is. In England, as elsewhere, the rule requiring the best evidence of the fact to be proved prevails, and secondary evidence is only admissible where the primary or best evidence is inaccessible. If, for example, an agreement in writing, or an entry in a bank-book or birth register, has to be proved, copies of such agreement or entries are only admissible on showing that the original agreement or original bank-book or original register has been lost or destroyed. It sometimes happens that it is extremely difficult or highly inconvenient to produce either the original book or the original register, and so Acts of Parliament have been passed, declaring that copies of entries therein (certified as being correct copies by the persons having custody of such books or registers) shall be admissible in evidence. A birth certificate is thus an easy and cheap method of proving the birth of a person, just as a copy of an entry in a bank-book proves payment or the state of a person's bank account. A birth certificate proves British nationality because the place of birth and the parentage of the person are facts from which British nationality is inferred. The register of births is the primary (or best) evidence of a birth because it records the statements made to the registrar about the time of birth by the parents of the child, who alone know the true facts about the birth and parentage. A birth certificate is secondary evidence, for it is the register (in which the particulars are entered by the registrar) which is the primary evidence of the fact to be proved. The registrar is a municipal official who accepts the *ex parte* (or uncross-examined) statements of the parents, but who may never see the child personally. Two strangers, man and woman, may induce him to make an entry in the register of a purely fictitious birth, but if they do so they can be prosecuted and punished, for it is a criminal offence in England to cause false entries to be made in a birth or marriage register. A birth certificate is thus just as much secondary evidence of the fact to be proved as the certificate of a Consul registering a man as a British national or a person's baptismal certificate. As a mode of satisfying the rule which requires the best evidence, a baptismal certificate is superior evidence in one or two respects to a birth certificate. Both documents are secondary evidence but the original entry in a baptismal register, recording the statements of the parents, is made in a church to which they both belong, to a clergyman who actually sees and baptizes the child. The signature of a clergyman who signs a baptismal certificate does not require to be verified by an attestation clause, and the same is true of a birth certificate. Where the original or first written statements are destroyed or inaccessible, verbal evidence of reputation may be given by neighbours who know the facts of birth and parentage. Similarly, entries of a family Bible are admissible in English law to prove the birth of a person. It follows from these considerations that the first proposition of the Mexican Agent is fallacious, since it rests upon the assumption that a birth certificate is primary evidence whereas, in fact, it is but secondary evidence.

The second proposition was that documents put in under clause 4 of the Convention can be admitted only in accordance with Mexican Law. It is

argued that the words "according to Mexican Law" which appear in the third paragraph of the clause govern the whole sentence and apply to documents as well as to parole testimony. The soundness or unsoundness of this proposition depends upon the true construction of clause 4. Now the golden rule of construction is that words in a document must be given their plain and ordinary meaning. It is true that negotiations leading to a treaty may be looked at, but no evidence has been given to the Commission as to what was said during the Anglo-Mexican negotiations. No verbal explanation ought to be given of the intention of the parties as expressed in a document. Thus parole evidence to vary or contradict the terms of a written agreement is not admissible. If, for instance, any question arises as to the meaning of a section or a word in an Act of Parliament, advocates are not allowed to quote Parliamentary debates to show what was the intention of Parliament. In England, the Mexican Agent would not have been allowed to tell the Court what his Government had in mind when they signed the Convention. The words of the clause must be interpreted according to the recognized canons of construction. If the words are read in their plain and ordinary meaning, clause 4 is free from ambiguity. The initial paragraph of the Article allows the Commission to determine their own method of procedure, with the stringent qualification that the provisions of the treaty must not be departed from. The second paragraph then permits both Governments to appoint Agents for the purpose of presenting documentary or parole evidence to the Commission. The third paragraph deals first with documentary evidence and then with parole evidence. It declares, first of all, that the Agents may offer documentary evidence in support of or against any claim. It then deals with parole evidence (which means evidence of witnesses by word of mouth at the trial) and declares that the Agents shall have the right to examine witnesses under affirmation, in accordance with Mexican Law, and such rules of procedure as they may adopt (e.g., Rule 27). In Mexico evidence is given in Courts of Law under affirmation. In England a witness must give evidence under the sanctity of an oath sworn upon the Bible, although a witness who objects to an oath may choose to affirm. This difference in the two systems explains the presence of the words "in accordance with Mexican Law" in the sentence immediately after the phrase relating to witnesses who are examined before the Commission in Mexico. It is clear that the words have no application to the first clause of the sentence, and that the contention of the Mexican Agent has no foundation.

The third proposition advanced by the Mexican Agent was that the absence from Article 4 of the word "affidavit" prevents the Commission from receiving evidence in that form. This proposition is fraught with vital consequences to the future work of the Commission. The object of the Convention is to compensate persons who suffered loss and damage between 1910 and 1920, and, as a result, a large proportion of the documents in support of the claims are affidavits. It follows therefore that if the demurrer is upheld, a very large number of the claims presented must be excluded from consideration at the hands of the Commissioners. The contention rests not so much upon the language of Article 4 as upon the verbal statements made to the Commissioners by the Mexican Agent that his Government intended, when drafting the Convention, to exclude affidavits. Accordingly, the duty rests upon the Commissioners of examining closely the reasoning upon which the Mexican Government founds such a proposition. If, according to legal principles the contention is sound, the Commissioners must say so, irrespective of what the consequences may be. The *onus probandi* of establishing the demurrer being upon the Mexican Government, they have to satisfy the Commissioners that the language of the Convention excludes affidavits from being admitted in evidence. In my opi-

nion, little consideration should be given by the Commissioners to the personal explanations, given both by the Mexican Agent as well as the British Agent, as to what the intentions of their respective Governments were. The question which the Commissioners have to decide must be determined solely by the meaning of the language both parties have used in the document. If the language is plain, there is no need to apply those canons of interpretation which are resorted to in Courts of Justice. If, however, the words are susceptible of more than one meaning, those rules of construction must be applied to remove any ambiguity.

The question is, do the words "documents, interrogatories or other evidence" exclude affidavits from being admissible? Each of these terms must be examined. No ambiguity can be found in the first word "documents." It is a generic term comprehensive enough to include affidavits as well as every other form of written evidence. Under this term all documents which are relevant to the issues before the Court are admissible in evidence. It is by virtue of this term that the Mexican Government put in evidence the official report which is attached to the Cameron demurrer as an appendix (consisting to some extent of pure gossip and hearsay evidence). "Documents" is followed by the word "interrogatories." This is a specific term which describes a particular kind of written testimony common in Courts of Justice. This specific term is followed by the general words "or other evidence." What was the intention of the Mexican Government and the British Government as expressed in the words "or other evidence"? There can be no doubt as to the meaning of the word "other." It means documentary evidence of the same kind or class as that to which interrogatories belong. The term "evidence" standing alone would include parole as well as written evidence, but the generality of this meaning is cut down here to documentary evidence by reason of its association with the preceding word "interrogatories." Are affidavits documentary evidence of the same kind or class as interrogatories? The answer is in the affirmative, since, in nearly all material respects, affidavits are almost identical with interrogatories.

On the assumption, however, that the meaning of the words is not plain, let us see how the position stands. The case for the demurrer is that affidavits are excluded, because in the American General Claims Commission, the words of the Convention were "documents, affidavits, interrogatories or other evidence," whereas in the Anglo-Mexican treaty the word "affidavits" is omitted. In order to deal fairly with this contention, certain principles of interpretation must be borne in mind. In the first place, the language of the American General Claims Commission has nothing whatever to do with the Anglo-Mexican Treaty. The former document was never placed before the British Government at the time when the latter treaty was negotiated. The document must be construed without reference to anything outside it. The Mexican Agent's proposition is that the words "other evidence" do not include affidavits, because (1) there was an intention to omit it in the mind of the Mexican Government when they negotiated the Anglo-Mexican Convention, and (2) because the statements of a witness in an affidavit are what Mexicans call testimonial (or parole) evidence and, therefore, not included in the term "documentary evidence." The fallacy underlying the latter argument lies in assuming that statements of a witness taken down in writing place this evidence in the class of parole testimony. If the language of the article is susceptible of more than one meaning, we must fall back upon the recognized canons of interpretation. The words here are subject to the *ejusdem generis* rule, namely, that the word "other" can only mean the same kind or class of thing as the specific term preceding the word. Apart from this, however, there is another ground why the Mexican Government cannot

sustain their objection. On their own showing the words of the article are ambiguous. If it was their intention to exclude affidavits (as the Mexican Agent assures us), and if it was the intention of the British Government to include them (as the British Agent assures us), it follows that the words used by both parties are ambiguous in the sense that the treaty did not express their true meaning. Can the Mexican Government reap any benefit from an ambiguity for which they are to a certain extent responsible? According to the *contra preferentes* rule of interpretation, no party to an agreement can take advantage of an ambiguity to which he has contributed. That is to say, no contracting party can be allowed to take advantage of his own ambiguity to the prejudice of the other party to the contract. There is another objection to the proposition of the Mexican Government. The very rule upon which the Mexican Government rely in the Cameron demurrer, Rule 11, requires the claim of the deceased British subject to be put forward by his executor or administrator. The probate of a will, whereby the appointment of an executor is proved, or the grant of letters of administration by which an administrator is appointed by the Court to administer the estate, can only be obtained in England and her Dominions by means of affidavits. Such affidavits must be sworn and taken before Commissioners for Oaths, solicitors who are appointed Commissioners expressly by Act of Parliament in their capacity as officers of the High Court of Justice for that purpose. To authenticate the probate of any will Dr. Cameron may have made, or the grant of letters of administration to Mrs. Cameron for production to the Anglo-Mexican Commissioners, as well as to obtain them, an affidavit would have been necessary. It is impossible, to my mind, to reconcile this fact with the contention put forward by the Mexican Government.

Another contention was that "interrogatories" ought to carry greater weight with the Commission than *ex parte* statements such as affidavits, because in the former case they are the statements of a witness who has been subjected to cross-examination. As a general proposition it is true that the evidence of a witness who has been cross-examined may carry greater weight than the evidence of a witness who has not. This proposition, however, depends upon what is meant by the term "cross-examination." To make the position clear, it is necessary that I should describe what "interrogatories" mean in England. A party to a civil action has the right to facilitate the proof of his own case by getting the other party to the suit to admit, in answer to interrogatories, certain facts within his own knowledge relevant to the issues in the case. Accordingly he frames in writing certain questions which the person interrogated has to answer in writing upon oath. From the information supplied by the Mexican Agent, in answer to my questions, it appears that interrogatories in Mexico are something different. Here a plaintiff or defendant who wishes to interrogate a witness has the right to put to him certain questions in writing, and the questions are put and the answers given by the witness in the presence of a judge. A copy of the questions is furnished beforehand to the other side, who have the right, if they so choose, to frame certain cross-questions which are enclosed in a sealed envelope and handed to the judge, and the judge apparently puts these questions to the witness at the time when the interrogatories are taken. Is this cross-examination in the generally accepted sense of the term? Cross-examination is one of the salient features of most judicial systems, and it is a powerful weapon for getting at the truth. Cross-examination in the true sense of the word means that a witness has to face the ordeal of an open court in which he is verbally cross-questioned by counsel, both with regard to the facts of the case, and his own antecedents and credibility. The value of this method of ascertaining the truth lies in the personal contact between the witness, who has no idea of what questions may be asked him, and the personality of the

advocate who puts the questions to him. The effect of the evidence of a witness subjected to this ordeal may be completely destroyed. In this sense the evidence of a witness who has been cross-examined is of greater weight than an *ex parte* statement. It appears to me that interrogatories as administered in Mexico should carry not much more weight than the statements of a witness in an affidavit. In nearly all essential respects interrogatories as understood in Mexico and affidavits as understood in England are identical. (1) In both cases the statements of the witness are taken down in writing. (2) They are taken down in writing by officials authorized to do so. (3) Both are written evidence taken down for the information of the Court. (4) Both must be relevant to the issues in the case. The Mexican Agent, in depreciating the value of affidavits, overlooks the fact that they are made before a public official. In England no affidavit can be taken except by Commissioners for Oaths, who are appointed expressly for the purpose and who, as solicitors, are officers of the High Court of Justice. The different notaries public before whom the affidavits were taken in the Cameron case are public officials quite as much as Señor Sierra, who certifies the annex attached to the Cameron demurrer. If the statements contained in that document are admissible because Señor Sierra certifies them as an official of the Court, so likewise are affidavits because they are made before notaries public who are officers of the High Court of Justice. It was argued by the Mexican Agent that as the statement of a witness in an affidavit was not cross-examined to, the affidavit should not be produced before the Commissioners. Here again there is a fallacy. The fact of the statement not being cross-examined to, does not remove affidavits out of the kind or class of written testimony to which that form of evidence pertains; it merely goes to the weight which the statements ought to carry with the tribunal or their probative value. In other words, the circumstance does not render affidavits inadmissible, but is a matter which the Commissioners can take into account in deciding what weight to attach to them. The case for the British Government against the demurrer can be put into a sentence. You have first of all, in Article 4, a generic term "documents," then a specific term "interrogatories," and then follow general words which extend the meaning of the specific term to documents of the same class or kind. In my opinion, affidavits, being in the same class of written evidence as interrogatories, are thus included in the words of the article.

The next contention was that public documents are superior in weight to any other kind of evidence. For example, the annex attached to the Cameron demurrer is a report taken from the files of the Mexican Government, recording a dispute with regard to certain land which Dr. Cameron had acquired prior to 1896. The case for the Mexican Government rests upon the proposition that, as the statements are contained in an official document, they amount to conclusive evidence. It is necessary to examine the grounds upon which this proposition is founded. The basis of this contention is admittedly derived from the maxim *omnia praesemunter esse*, which is derived from the Roman law and is in operation in most systems of jurisprudence, including the British. The maxim simply means that public documents shall be admitted in evidence without question on the ground that the law presumes that all acts done by public officials are done regularly and in good faith. In other words, the maxim merely facilitates the mode of proof. The evidential value of the contents of such documents is not in any way affected by the application of the maxim. For instance, the annex referred to consists in part of hearsay evidence and partly of extracts from official documents. The fact that these extracts are contained in Government archives dispenses with the necessity of proving them in a formal way. Notwithstanding this fact, it is still for the Commissioners to decide for themselves what credence to attach to the statements. It was alleged by the Mexican

Government that Dr. Cameron was not a British subject, inasmuch as he had signed a document in which he had described himself as an American citizen. In support of this allegation, they produced an official copy of the document referred to. No reflection was cast in any way on the authenticity of this document, but the Mexican Government, in their anxiety to produce all the evidence at their disposal, put in evidence the original document bearing Dr. Cameron's signature. It appears to me that the demurrer is established beyond all doubt by means of this document. The claimant had produced *prima facie* evidence, in my judgment, of Dr. Cameron's British nationality, but this evidence is rebutted by a document bearing Dr. Cameron's own signature, describing himself as a citizen of American nationality. On this ground I agree with my brother Commissioners that the demurrer must be allowed. This unanimous decision of the Commissioners renders it unnecessary to consider the further question whether the claim is barred by the operation of paragraph 3 of article 30 of the Mexican Constitution.

The final submission made by the Mexican Agent was founded on clause 11 of the Rules of Procedure, which requires an executor or an administrator to establish his legal capacity before the Commissioners can entertain a claim on behalf of a deceased person's estate. It appears that when Dr. Cameron was forced to leave Mexico in July 1916 in the circumstances set out in the Memorial, he moved, with his family, into the State of Texas. They were resident there at the time of his death in 1918 and the claimant lives there now. The Mexican Agent contended that Mrs. Cameron could not, under Rule 11, bring the claim before the Commission until she had obtained letters of administration from the courts to administer the estate of her husband, who had died intestate. The Agent of the British Government relied on a letter, written by Mrs. Cameron's lawyer in Texas, that husbands and wives are virtually partners in the property accumulated during marriage under the laws of that State, and also that it was not considered necessary in Texas that an intestate estate should be administered under the authority of the court. This contention, however, is of no avail, as the Mexican Agent has filed in reply a copy of article 2859 of the Texas Civil Code. According to the Texas Civil Code, Dr. Cameron's marital rights are governed by the law of Canada. There is no evidence before the Commission to suggest that the law of Canada does not require the administration of an intestate estate under the authority of the court. In these circumstances, it appears to me that Mrs. Cameron's failure to comply with Rule 11 is fatal to the hearing of her claim.

Separate opinion of Dr. Benito Flores, Mexican Commissioner

The demurrer is based on failure to establish the British nationality of Dr. Murdock C. Cameron and of his widow, Mrs. Virginie Lessard Cameron; and on the fact that, the claim having been made for damage to the property of a person deceased, the said claim should, pursuant to article 11 of the Rules of Procedure, be preferred on behalf of the estate interested and through its legal representative, the claimant not having shown that she is the legal representative of her husband's estate.

The Facts

I. This is a claim for damages, and compensation for loss of property by reason of the confiscation of the Glen Urquhart Ranch, situated at Gomez Farias, by Carranza soldiers under the orders of Lieutenant-Colonel Rodrigo Flores Villarreal, in the month of July 1916.

II. The evidence of the British nationality of Mrs. Cameron is based on an affidavit (annex 2) relating to the British nationality of her husband, Murdock C. Cameron, made by Daniel Cameron before Chas. E. Tanner, Notary, on the 25th August, 1909, in the Province of Nova Scotia, Canada. In said affidavit Daniel Cameron declares that his brother, Murdock C. Cameron, was born at West River, Pictou County, Province of Nova Scotia, on the 9th May, 1855, and that he preserved such nationality until the 25th day of August, 1909, deponent having added that the name and birth of his brother were entered in his father's family Bible, which was in his possession. The claimant further produced a certificate of the marriage solemnized between herself and husband (annex 3).

III. The Mexican Agent forthwith entered a demurrer, which he based on two grounds:

1. That the British nationality of Murdock C. Cameron has not been established, nor that of his widow, Mrs. Cameron.

2. On the fact that the claim should, pursuant to article 11 of the Rules of Procedure, be filed on behalf of the estate of the said Murdock C. Cameron, and that the claimant has not proved that she is the legal representative of the said estate.

IV. The British Agent replied to the effect that the affidavit of Mr. Daniel Cameron is the best evidence available for proof of the British nationality of Dr. Cameron, as due to the fact that he was born on the 9th May, 1855, before civil registration was compulsory in England, it was impossible to produce a birth certificate; that proof of the marriage of the claimant to Dr. Cameron was furnished by annex 3 to the Memorial, and that as the nationality of a wife is the same as that of her husband, the British nationality of Mrs. Cameron had been properly established; and, lastly, the British Agent contended that the claimant did not need to prove by means of any document whatsoever that she is the legal representative of the estate of her husband, because he died in the State of Texas, United States of America, where he had resided for some time; that according to the laws of that State, husband and wife were virtually partners in so far as concerned property acquired during marriage, and that it was not held to be necessary when a person died intestate without leaving real property that his estate be administered by the Courts, and that Dr. Cameron had died intestate and had left no real property, for which reason no proceedings were instituted in the Courts for winding up the estate; that Mrs. Cameron considered herself as the surviving member of the partnership with her husband, in community, and he in this manner contended that the claimant was entitled to claim in her own right and as the legal representative of the late Dr. Cameron.

V. The Mexican Agent filed a brief in this matter, and in support of the grounds on which he based his demurrer, contended that citizenship was one of so many facts that have to be proved in the same manner as any other facts: that evidence taken *ex parte*, such as depositions in the form of affidavits, was wanting in probative value; that even in the contrary supposition, the evidence of witnesses might not be offered as proof of nationality, except when proof was shown that no better evidence, such as a birth certificate, certificate of baptism or family register, was available; that the testimony of a single witness was not admissible as proof; furthermore, that the deposition of Daniel Cameron, the brother of the person from whom the claim was derived was open to suspicion and should be struck out, due to the degree of their relationship, and that he had all the more reason for requiring authentic proof of the nationality of Dr. Cameron, and that this gentleman, in a document filed with Mexican

authorities, in connexion with a different matter, had stated that he was of American nationality. And he submitted a certified copy of the document to which he had referred.

VI. The said Mexican Agent contended in his brief that the claim ought to be filed on behalf of the estate of Dr. Murdock C. Cameron, and through his legal representative, pursuant to the terms of the Convention, and in accordance with the practice followed in Courts of Arbitration. He assailed the proposition of the British Agent, to the effect that as Dr. Cameron had died in the State of Texas, United States, where husband and wife are virtually partners as regards property acquired since marriage, he did not consider it necessary to establish her capacity as the legal representative of the estate of Dr. Cameron by means of any document, because if he accepted the principle that the law of the country of the husband governs the marriage contract, the law of England, and not that of Texas, would apply; and if the Anglo-Saxon principle, that the relations of husband and wife in so far as concerns personal property must be governed by the law of the first domicile of husband and wife, be accepted, then as this claim was personal property, the law of England would also apply.

VII. This case having begun to be tried at the meeting of the 10th October, 1929, arguing of the same was concluded on the 17th day of the said month of October, both Agents having defended their standpoints at length, as mentioned above, the learned British Agent having submitted a copy of entries in a register at the British Consulate at Tampico, relating to registration of the children of Dr. Cameron. The Mexican Agent referred very fully to the nature of *ex parte* evidence, not conceding that it has any value, especially for proof of nationality, and developed his proposition to the effect that affidavit evidence should not, under the Convention, be admitted, a proposition which was assailed by the British Agent.

Considerations of a Legal Order

I. This case gave rise to the problem of the interpretation of paragraph 3 of Article IV of the Mexican-British Convention and was the cause of serious discussion, in which the Mexican Agent contended that affidavits should not be admitted under that provision, and it was called in question whether the Commission was or was not at liberty to weigh the evidence submitted, independently of the laws of Mexico and of England.

The British Agent contended that the Commission was authorized to receive all kinds of evidence, even that known as affidavits, on the understanding that the question of the admissibility of any evidence should not prejudge its sufficiency, and that the Commission is only bound to comply with the Mexican laws, when it is a matter of examining witnesses produced by the agents or counsel of either Government, pursuant to that provision of the Convention.

The Mexican Commissioner holds that as the admission of affidavits as evidence is not forbidden by the Convention, the Commission is authorized to receive them and to weigh them in due course, in accordance with the rules universally accepted, both in Municipal and International Law, and holds that a Judge should not be hindered in any way from investigating the truth of the facts, on which foundation he will have to deliver his judgment.

II. As regards the probative value of the affidavit made by the brother of Dr. Cameron, the Mexican Commissioner holds that no probative value should be ascribed to it, for the following reasons:

(a) Because Daniel Cameron is the brother of the claimant, and naturally his testimony cannot be impartial and will always have a tendency to be favourable to the interests of that member of his family, an objection that may very justly be made, which deprives his deposition of all value.

(b) Because he is the only person testifying as to the fact of the claimant's birth, and as a general rule the testimony of a single witness, however honourable he may be, cannot constitute full proof.

(c) Because the testimony of Cameron's brother is in open contradiction to the deposition of the claimant himself, as the latter in 1896 stated before the Land Agency of the Ministry of Fomento that he was an American citizen, while his brother now asserts that the claimant always preserved his British nationality. The declaration made by Cameron in 1904 was laid before the Commission for inspection in a document issued from the above-mentioned Ministry, in the form of a certified copy, the authenticity of which is undeniable. That being the case, the affidavit of Daniel Cameron should be rejected.

(d) Because, although the Commission by a majority has declared that consular certificates as to registration of British subjects constitute *prima facie* evidence of nationality, and in this case a certificate from His Britannic Majesty's Consul at Tampico has been produced, in which six persons of the name of Cameron, among whom the name of Murdock Campbell Cameron is to be found, appear as having been registered as British subjects in 1908; this evidence, far from being corroborated by other evidence, is contradicted by the admission of the late Murdock C. Cameron himself, in the document of 1896, mentioned above; and that being the case, a declaration should be made to the effect that Mrs. Virginie Lessard Cameron has not established either the British nationality of her husband, or her own.

The principles on which the above arguments for the rejection of the affidavit of the claimant's brother as insufficient are based find their origin in the remotest antiquity, and are duly applied in all modern courts. In this regard, we may cite article 283 of the French Code of Civil Procedure; article 283 of the Belgian Code; the Civil Code of the Netherlands, articles 1942, 1945 and 1946 (sections 1 and 2); Spanish Civil Procedure, article 660 (sections 1, 2 and 3); the Italian Civil Code, article 327 (second part); and our Federal Code of Civil Procedure, articles 302 and 356.

III. The second ground on which the Mexican Agent founds his demurrer is that the claimant has not shown that she is the legal representative of the estate of Dr. Murdock C. Cameron, notwithstanding that she claims for damage to the property of a deceased person.

In effect, article 11 of the Rules of Procedure, approved by the Mexican-British Commission, reads:

"Any claims presented for damage to a British subject already deceased at the time of filing such claim, if for damage to property, shall be filed on behalf of his estate and through his legal representative, who shall duly establish his legal capacity therefor."

In the Cameron case, his widow has not shown that she is the legal representative of the estate of her husband; either under the laws of England, or under those of Texas, or in any other way, having pleaded that she was not, under the laws of the place where Dr. Cameron died, bound to obtain any letters of administration; but the unquestionable fact is that in the present case the only rule governing the claim under discussion is that laid down by article 11 of the Rules of Procedure approved by the Commission, the relevant part of which is transcribed hereinabove. The Mexican Commissioner holds that Mrs. Cameron has failed to comply with that provision, and that the demurrer

interposed by the Mexican Agent on the ground of such omission should therefore be sustained.

In view of the whole of the foregoing, the Mexican Commissioner, concurring with the learned opinion of the Presiding Commissioner and with that of the British Commissioner, although in the latter case on different grounds, holds that the demurrer interposed by the Mexican Agent should be sustained, and the Commission abstain from taking cognizance of the aforesaid claim.

ANNIE BELLA GRAHAM KIDD (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 3, undated, dissenting opinion by Mexican Commissioner, undated. Pages 50-54.)

NATIONALITY, PROOF OF.—BIRTH CERTIFICATE AS PROOF OF NATIONALITY. Proof of loss of a birth register will excuse a failure to submit a birth certificate of a British subject alleged to have been born in England at a time when compulsory registration of births was in operation.

CONSULAR CERTIFICATE AS PROOF OF NATIONALITY. Consular certificate, affidavit of a father, and corroborating evidence *held* sufficient to establish British nationality.

1. In this case the Mexican Agent has filed a demurrer on the ground that the British nationality of the late William Alfred Kidd (and therefore of his widow and children) has not been established. The claimant relies on an affidavit sworn by the late Mr. Kidd's father (annex 8) to the effect that his son was born and baptized at Arundel in Canada in 1877.

In addition to the general objections to affidavits which were pleaded in the case of Mrs. Cameron, the Mexican Agent pointed out that compulsory registration of births was in operation in England a few years before the late Mr. Kidd was born, and that in all probability it was also in operation in Canada. In these circumstances, he contended that a birth certificate could have been procured or a baptismal certificate, and that in any event evidence of a better quality was required than the affidavit of a near relation to the claimant's husband.

It appears, according to the information given by the British Agent, that the birth register had been lost, and he contended that secondary evidence of the birth by means of an affidavit was the best available evidence. The British Agent also put in evidence the birth certificates relating to the claimant's children, together with the declaration of the British Consul-General in Mexico City, dated the 27th December, 1916, to the effect that the claimant had been duly registered as a British subject.

2. It is not necessary, in the opinion of the Commissioners, to repeat their views on the question of the admissibility or the value of affidavit evidence generally; those views are fully set out in the judgment in the Cameron case. From one point of view, an affidavit sworn by a father concerning the birth of his child has more value than the statement he may make to the Registrar of Births, since the latter statements are not made upon oath. In this instance the affidavit is corroborated by other documents.

There is first of all the consular certificate, which was delivered a few months after the murder of the late Mr. Kidd and at a moment when the Consul-