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Decisions

ROBERT JOHN LYNCH (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 1, November 8, 1929, dissenting opinion by Mexican Commissioner, October, 1929. Pages 20-32[1]*.)*

NATIONALITY, PROOF OF. Nationality is a continuing legal relationship between a State and its citizen and not susceptible of proof in the same degree as a physical fact. Consequently, an international tribunal will merely require *prima facie* evidence of nationality sufficient to satisfy the tribunal and to raise the presumption of nationality, such presumption to be rebutted by the respondent State.

CONSULAR CERTIFICATE AS PROOF OF NATIONALITY. A consular certificate constitutes *prima facie* evidence of nationality and may even possess greater evidential value than a birth certificate.

BAPTISMAL CERTIFICATE AS PROOF OF NATIONALITY. A baptismal certificate showing baptism in Cape Town, Cape Colony, on June 21, 1868, of a child stated thereon to be born June 9, 1868, but apparently silent as to place of birth, will be accepted as further proof of nationality.

Cross-references: Am. J. Int. Law, Vol. 25, 1931, p. 754; Annual Digest, 1929-1930, p. 221.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission," Law Q. Rev., Vol. 49, 1933, p. 226 at 233.

1. In this case the respondent Government have lodged a demurrer to the claimant's memorial on the ground that it fails to establish the British nationality of the claimant in accordance with Rule 10, paragraph *(a)*, of our Rules of Procedure. According to the terms of that rule, every claimant must, as a condition precedent to the consideration of his claim, give proof of his British nationality in the memorial.

The British Agent relies upon two documents in support of the memorial. The first is a certificate of consular registration, delivered on the 25th May, 1916, by the British Vice-Consul at Tampico, stating that the claimant was duly registered in the register of British subjects of the British Consulate-General of Mexico. The second document (which was delivered after the memorial was printed) is a baptismal certificate to the effect that the claimant was baptized at St. Mary's Cathedral in Cape Town, Cape Colony, on the 21st June, 1868.

The submission of the Mexican Agent is that these documents, taken either singly or in combination, do not amount to sufficient proof of the claimant's nationality within the meaning of Rule 10, paragraph *(a)*.

The British Agent contends, on the other hand, that the consular certificate is sufficient to establish *prima facie* evidence of the claimant's British nationality

[1] References to page numbers herein are to the original report referred to on page 15.

and that the second document is strong corroboration of the statements contained in the first.

The question which the Commissioners have to decide is which of the two contentions is right.

2. The question whether a consular certificate constitutes proof of nationality is not a new problem. From the date when international commissions were first established right up to the present time, the question has engaged the attention of these tribunals from time to time. Respondent governments have often contested the point that consular certificates afford sufficient proof of nationality. Sometimes the question has been decided in the affirmative and at other times in the negative. Various decisions were relied upon by both Agents in the course of the argument, and in a recent decision of the Mexican-German Claims Commission *(Memoria de Labores de la Secretaría de Relaciones Exteriores de agosto de 1926 a julio de 1927, página 221-235*[1]*)* the conflicting authorities are reviewed at some length. It is common ground between both sides in this case that the point has been decided in different ways.

The fact that so many international commissions have failed to agree in the matter points to one conclusion, namely, that international jurisprudence has not yet established any firm criterion whereby the problem can be determined. Neither in the actual decisions of the Commissions nor in the practice observed by such bodies can one find any universally accepted rule upon the point. It is quite clear that any enactment on the part of the British Legislature on the subject of nationality is not enough and is certainly not binding on this Commission. It is equally clear that the same observation applies to any enactment on the part of the Mexican Legislature. In these circumstances the Commission is of opinion that they must consider themselves free in each case to form their own independent judgment on the evidence placed before them. In other words, the Commissioners must attach such weight to the documents as appears to them to be just and fair in the particular circumstances of each case.

3. In the course of the discussion between the Agents of the respective Governments a general proposition was advanced to the effect that nationality is an issue of fact which admits of the same degree of proof as any physical fact, such as birth or death, and that it ought to be proved in the same way. This view, in the judgment of the Commission, is erroneous. A man's nationality forms a continuing state of things and not a physical fact which occurs at a particular moment. A man's nationality is a continuing legal relationship between the sovereign State on the one hand and the citizen on the other. The fundamental basis of a man's nationality is his membership of an independent political community. This legal relationship involves rights and corresponding duties upon both—on the part of the citizen no less than on the part of the State. If the citizen leaves the territory of this sovereign State and goes to live in another country, the duties and rights which his nationality involves do not cease to exist, although such rights and duties may change in their extent and character. A man's nationality is not necessarily the same from his birth to his death. He may according to circumstances lose his nationality in the course of his life. He may elect to become a citizen of another sovereign State. Moreover, the country into which he has moved may, by its domestic laws, impose upon him the nationality of the new country and in this way a state of dual nationality may be created.

These considerations show clearly that it would be impossible for any international commission to obtain evidence of nationality amounting to certitude

[1] See below, page 579. (Klemp case.)

unless a man's life outside the State to which he belongs is to be traced from day to day. Such conclusive proof is impossible and would be nothing less than *probatio diabolica*. All that an international commission can reasonably require in the way of proof of nationality is *prima facie* evidence sufficient to satisfy the Commissioners and to raise the presumption of nationality, leaving it open to the respondent State to rebut the presumption by producing evidence to show that the claimant has lost his nationality through his own act or some other cause. In the same way the respondent State may show that the citizen's first nationality has come into conflict with its domestic laws and that the position has arisen which is described as dual nationality.

4. A consular certificate is a formal acknowledgment by the agent of a sovereign State that the legal relationship of nationality subsists between that State and the subject of the certificate. A Consul is an official agent working under the control of his Government and responsible to that Government. He is as a rule in permanent touch with the colony of his compatriots who live in the country to which he is designed, and he is, by virtue of his post as Consul, in a position to make inquiries with respect to the origin and antecedents of any compatriot whom he registers. He knows full well that the registration of a compatriot entitled to all the rights of citizenship is a step which imposes serious obligations upon the State which he serves. That circumstance in itself is an inducement to him to see that the registration must be attended to with great care and attention.

It is, of course, conceivable that the inclusion of a man's name in the consular register may be made carelessly or erroneously or under circumstances which later may give rise to serious doubts. It is no less true that consular registration does not in any way solve the problem of dual citizenship. In such circumstances as those, a consular certificate cannot be considered as absolute proof of nationality, and it will be competent for the agent of the respondent State to produce evidence in rebuttal. But when, as in this case, nothing is alleged which raises the slightest doubt as to the accuracy or *bona fides* of the entries in the register, a consular certificate ought to be accepted as *prima facie* evidence which does not in any way lose its force from the general objections taken by the respondent Government.

A consular certificate, originating as it does at a more recent date than a birth certificate, may even possess greater evidential value.

5. With regard to the baptismal certificate, it was signed by a Roman Catholic priest and shows that Robert John Lynch, born on the 9th June, 1868, was baptized on the 21st June, 1868, in St. Mary's Cathedral, Cape Town. In the judgment of the Commission, this is still further proof to show that Robert John Lynch was of British nationality. The original certificate has been produced, and in the opinion of the Commission must be accepted as an authentic and genuine document. In view of the date of compulsory birth registration in England, it can be safely assumed that compulsory registration of births was not in existence in Cape Colony in 1868. A baptismal register established both the date of birth and the place and date of baptism. The objection was taken on the part of the respondent Government that the most essential fact on the question of nationality was the place of birth, and that the best evidence of the place of birth was not a baptismal certificate. This objection, however, carries little or no weight in view of the circumstances that the geographical location of Cape Town and the state of the means of communication in 1868 render it extremely unlikely that a child baptized in Cape Town on the 21st June could have been born on the 9th June in any country other than Cape Colony.

6. On these various grounds the Commission rules that the claimant's nationality has been established and that the demurrer must be overruled.

The Mexican Commissioner does not agree with this judgment and expresses a dissenting view.

Dissenting opinion of Dr. Benito Flores, Mexican Commissioner

The Mexican Commissioner regrets to have to dissent from the opinions of his honourable colleagues, the Presiding Commissioner and the Commissioner for Great Britain, and, with all due respect, begs to give his vote in the form of the following opinion in regard to the demurrer interposed by the Mexican Agent, in the matter of Claim No. 32, presented by His Britannic Majesty's Government on behalf of Robert John Lynch.

The demurrer is based on failure to establish the British nationality of the claimant.

The Facts

I. This is a case of a claim for losses sustained at the hands of "Zapatistas" on the Puente de Garay Ranch, Ixtapalapa, Mexico, in the month of July 1914, and at the hands of Constitutionalist forces, which occupied the ranch shortly afterwards.

II. The claimant endeavours to establish his British nationality by means of a certificate issued by the British Consulate at Mexico City, in which it is stated that the said Robert John Lynch was registered at the said Consulate as a British subject, said certificate having been issued on the 25th May, 1916, by the Vice-Consul, R. C. E. Milne.

III. The Mexican Agent forthwith interposed a demurrer with the Mexican-British Claims Commission, which can only deal with the claims of British subjects, having argued that the consular certificate produced by the British Government was in this case insufficient to establish the nationality of the claimant.

IV. The British Agent replied to the effect that the consular certificate submitted for the purpose of proving the nationality of Robert John Lynch was *prima facie* evidence of his British nationality; but that for better proof of the nationality of the claimant he produced a certificate of birth and baptism of the said Robert John Lynch. This certificate of baptism was issued by a priest of the name of John Colgan, in charge of St. Mary's Cathedral, Cape Town, South Africa, and it appears from it that Robert John Lynch was born on the 9th June, 1868, and that he was baptized on the 21st June, 1868. The names of his parents appear in the said certificate, and that of the clergyman who baptized him.

V. On the 8th October, 1929, the demurrer was argued before the Commission. The Mexican Agent averred that the only way of proving the nationality of a person is by means of a certificate issued from a civil register, and that only in the event that the British Agency should fully be able to prove that it had been impossible to obtain that document, could a certificate of baptism be accepted.

On those grounds the Mexican Agent challenged the certificate issued by the British Consulate in Mexico to Robert John Lynch, as being insufficient proof of nationality.

VI. The British Agent answered that he agreed that in a majority of cases a consular register is not convincing proof of nationality, but that it had been

impossible to obtain any evidence other than the certificate of baptism of Robert John Lynch and that it, in his opinion, was sufficient to establish his nationality.

VII. The Mexican Agent, in order to show that consular registers are insufficient to prove the nationality of a person, cited the precedents laid down to that effect by various internationalists, among them Cruchaga Tocornal, Umpire, in the claim of Carlos Klemp *v.* the United Mexican States, and Thornton, Umpire, in the Brockway case, before the Claims Commission, Mexico and United States in 1868.

VIII. The Mexican Agent also challenged the certificate of baptism produced by Lynch, and added that it should be looked upon as a private document lacking authenticity, due to not having been legalized by any English authorities, and called attention to the fact that this document did not state where Robert John Lynch was born, nor that his parents were English.

IX. The British Agent, on his side, contended that there was as yet no uniform jurisprudence in regard to this case in international law, and to that end he cited the cases of William A. Parker and Willard Connelly, decided by the General Claims Commission, Mexico and the United States; that in the first case the nationality of the claimant had been held proved by mere affidavits, and in the Connelly case the nationality of the claimant had been held to have been proved by means of a certificate of baptism, and that in this last case the decision of the Commission had been a unanimous one.

X. This matter took up two meetings: those of the 8th and 9th. On this last day, the Mexican Commissioner asked certain questions of the British Agent, for the purpose of obtaining information about English law and practice in regard to proof of nationality, and as a result of the said questionnaire, the latter agreed to the following points:

(a) That the fact of registration in a British Consulate abroad was of no assistance to a person desiring to acquire British nationality, this being the answer to the following question:

In England, is insertion in British consular registers abroad included among the ways of acquiring British nationality?

(b) That British Consuls do not exercise judicial functions, except in those places where extraterritorial jurisdiction exists.

(c) That as a general principle he admitted that the impossibility of producing certificates from a civil register should, when secondary evidence, such as certificates of baptism, is furnished, be established; but that in the particular instance, as Lynch was born six years prior to the enactment of the statute which created Civil Registers in England, the certificate of baptism was in itself sufficient to establish nationality.

(d) That clergymen in charge of parishes in England are not considered as authorities, and that documents issued by them are not in themselves public proof.

(e) That when a certificate of baptism is produced as a proof of nationality, the law requires that such certificate be compared with the original by the judicial authorities of the Kingdom; in the event of controversy, proof of authenticity of the document is required.

The above in substance is how the argument on this case was closed.

Considerations of a Legal Order

I. The Mexican Commissioner holds that the certificate from His Britannic Majesty's Consulate-General in Mexico, issued by the Vice-Consul, to the

effect that the name of Robert John Lynch appears in its register as a British subject, is not in itself sufficient to establish the fact of his British nationality, for the following reasons:

(a) Because as it is the imperative duty of the Mexican-British Claims Commission to satisfy itself as to the nationality of a claimant, inasmuch as its jurisdiction only extends to claims of British subjects; the Commission itself is the only authority competent to decide upon the nationality of a claimant, not by inspection of a consular certificate only, but also with the data taken into consideration by the Consulate when registering Lynch as a British subject, as the Commission would otherwise delegate its powers to the Consuls, for decision on so important a point; and as the British Agent reported in the course of the above-mentioned argument, as the Government of Great Britain does not specify fixed and concrete rules for its Consuls, for registration of persons as British subjects, but leaves such registration to their own discretion, it is unquestionable that if the Commission held that the certificate in question was sufficient proof for establishing the fact of Lynch's nationality, the British Consul, and not the Commission, would practically be the person to decide in every case as to nationality; that is, by overriding the jurisdiction of the Commission itself, which would be highly dangerous to the interests of the respondent Government.

(b) Because under international law consuls are not judicial officers, but of a merely administrative and commercial character, and registration in consular registers only determines nationality for statistical purposes, for compliance with laws as to compulsory military service, for payment of taxes on income from property which a national residing abroad may have in his own country, for the acquisition of property, the receipt of inheritances or legacies, annuities or allowance, &c.

It was thus most properly laid down in the Mexican-German Claims Commission, by the distinguished Chilean jurist, in the matter of Carlos Klemp *v.* the United Mexican States, pp. 20 and 21 of the booklet in which the decision was published by the Ministry of Foreign Affairs in Mexico, in the year 1927.

(c) Because, according to the opinion of the learned jurist and British Agent, Mr. Montague Shearman, registration at a British Consulate would be of no assistance to a person desiring to acquire British nationality.

(d) Because, according to the selfsame learned British Agent, Consuls do not exercise judicial functions, except in cases where extraterritorial jurisdiction exists.

(e) Because in order to establish the fact of British nationality by birth in a legal and authentic manner, it is necessary to produce a copy or extract from the proper Register of Births and this would not in itself constitute proof of such birth unless bearing the name of a person authorized to declare, register, &c. (Lehr, *Eléments de droit civil anglais*, Paris, 1885, p. 17), (British Act, 1874, in the *Annuaire de législation étrangère*).

(f) Because proof of nationality by means of a consular certificate has been declared insufficient by Courts of Arbitration (Borchard, *Diplomatic Protection of Citizens Abroad*, p. 490, with reference to the following cases: Brickway, U.S. *v.* Mexico, the 4th July, 1868, *ibid*, 2534; Goldbeck, U.S. *v.* Mexico, *ibid*, 2507; *vide* also Gilmore, U.S. *v.* Costa Rica, the 3rd July, 1860, *ibid*, 2539).

II. In so far as concerns the probative value of Lynch's certificate of baptism, as issued by the parish priest of St. Mary's Cathedral, Cape Town, South Africa, as regards the nationality of the claimant, the Mexican Commissioner would accept it as being sufficient for the purpose, if said document had been duly authenticated, due to the fact that Lynch was born prior to

compulsory registration in that colony and as he would therefore not be obliged to establish his nationality by means of a certificate from a civil register; but said document having been taken exception to by the Mexican Agent, on the ground of the failure to legalize the signature of the priest who issued the certificate, it undoubtedly cannot be considered as authentic and genuine, for the following reasons:

(a) Because the parochial certificate produced is a private document issued by a person not endowed with public functions in England; because by it an endeavour is made to determine the nationality of the claimant, in full controversy with Mexico, for which reason the said document should have been authenticated so that it might constitute proof before this International Tribunal, of the facts therein set out.

(b) Because who can affirm that the Rev. Mr. Colgan actually exists? Who can affirm that he really is in charge of St. Mary's parish, at Cape Town? Who can affirm that he is, within his own special functions, authorized to issue the certificate in question? Who can affirm that the signature on the document is authentic?

Authentication of documents, not only private documents like Lynch's baptismal certificate, but also of those issued by authorities lawfully acknowledged, is a requirement that must be met, so that they may be accepted as proof by International Courts, according to the opinion of such learned jurists as M. Charles Calvo *(Le droit international)*, Title II, paragraph 885, which reads as follows:

"*Deux catégories d'actes*

"Section 885. On peut diviser ces actes en deux grandes catégories; les actes authentiques et les actes sous seing privé.

"*Actes authentiques*

"L'acte authentique est défini par l'article 1317 du Code civil français comme celui qui a été reçu par officiers publics ayant le droit d'instrumenter dans le lieu où il a été rédigé et avec les solennités requises. Cette définition s'applique aux actes notariés et, en général, aux actes de juridiction volontaire.

"*En France*

"Les actes notariés ont force exécutoire comme les jugements en France et dans les pays qui ont adopté la législation française sur la matière, tels que la Belgique, les Pays-Bas. Dans les autres pays, les actes notariés et même ceux qui sont reçus par les membres des tribunaux n'emportent pas l'exécution parée; ils n'obtiennent force exécutoire qu'en vertu d'un jugement. Les législations allemandes admettent, pour arriver à l'exécution des conventions constatées par actes publics, une procédure sommaire, plus expéditive que la procédure ordinaire, la procédure du *mandatum sine ou cum clausula*, ou le 'procès d'exécution'.

"Pour déterminer si l'acte fait dans un pays est authentique ou non, pour apprécier le degré de foi qu'on lui doit en justice, il est nécessaire de tenir compte de la loi du pays où l'acte a été passé, de s'assurer que l'acte a été reçu réellement dans le pays à la loi duquel on veut le soumettre.

"Pour cela, il suffit que la partie qui prétend que l'acte est authentique prouve que l'officier qu'il l'a reçu avait caractère pour lui conférer l'authenticité et que la forme de cet acte est attestée et légalisée par un autre officier public digne de foi pour le Gouvernement auprès duquel on veut faire valoir l'acte.

"En ce qui concerne les rapports internationaux sur ce point, on comprend qu'il ne saurait être question de l'exécution forcée des actes étrangers passés dans les États dont la législation n'admet pas *de plano* l'exécution forcée des actes reçus par les officiers publics des mêmes États.

"Pour être exécutés en France, les actes passés en pays étrangers doivent être déclarés exécutoires par un tribunal français (Code de procédure, article 546); mais ils font foi devant les tribunaux sans cette déclaration, pourvu que la signature de l'officier public soit légalisée et que les formalités prescrites par la loi étrangère aient été observées.

"Les actes authentiques passés à l'étranger, conformément à la règle *locus regit actum*, peuvent-ils recevoir la force exécutoire d'une autorité française?

"L'article 546 parle bien de ces actes, mais c'est pour renvoyer à l'article 2128, qui ne donne pas de solution. Aussi dans un premier système qui se subdivise en deux opinions, on répond affirmativement. Quelques partisans de ce système attribuent au président du tribunal du ressort dans lequel on sollicite l'exécution de ces actes, compétence pour leur donner la force exécutoire.[1] D'autres reconnaissent que le tribunal entier a seul qualité à cet effet.[2]

"Mais l'opinion générale se prononce dans le sens de la négative, on déclare que ces actes ne peuvent directement recevoir en France la force exécutoire, en conséquence on traitera ces actes comme des actes sous seing privé et le demandeur devra s'adresser aux tribunaux pour faire condamner son adversaire, ces actes ne serviront qu'à titre de documents et ce qui sera exécutoire sera le jugement français.

"En général, lorsqu'on veut rendre un acte exécutoire, il est nécessaire, pour le compléter relativement à la forme, d'observer toutes les dispositions en vigueur dans le pays où l'on demande l'exécution, quand même l'acte serait valable et complet, d'après la loi du lieu où il a été passé.

"C'est un principe généralement adopté par l'usage des nations que la forme des actes est réglée par la loi du lieu où ils sont faits ou passés. C'est-à-dire que, pour la validité de tout acte, il suffit d'observer les formalités prescrites par la loi du lieu où cet acte a été dressé; l'acte ainsi passé exerce ses effets sur les biens meubles aussi bien que sur les immeubles situés dans un autre territoire dont les lois établissent des formalités différentes.

"En d'autres termes, les lois qui règlent la forme des actes étendent leur autorité tant sur les nationaux que sur les étrangers qui contractent ou qui disposent dans le pays. C'est l'application de la règle *locus regit actum*.

"*Prusse*

"Le Code général de Prusse, part. I, tit. 5, § III, porte: 'La forme d'un contrat sera jugée d'après les lois du lieu où il a été passé.'

"Le § 115, part. I, tit. 10, du Code de procédure civile reproduit le même principe.

"Dans les traités relatifs à l'administration de la justice que la Prusse a conclus avec divers États allemands de 1824 à 1841, on lit, à l'Article 33 de chacun des traités, la disposition suivante: 'Lorsque, d'après les lois de l'un des États contractants, la validité de l'acte dépend uniquement de la circonstance qu'il a été reçu par une autorité spécialement désignée et établie dans le même État. cette disposition recevra son exécution.'

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[1] "De Belleyme-Demangeat sur Foelix," t. II, p. 220, note.

[2] Cass., 25 novembre 1879: "Journal du droit international privé," p. 583, année 1880; p. 428, 1881; Grenoble, 11 mai 1881.

"*Pays-Bas*

"L'article du Code des Pays-Bas dit que 'la forme de tous les actes est régie par la loi du pays ou du lieu où l'acte a été passé'.

"*Russie*

"On lit dans le *Digeste russe :* 'L'acte passé à l'étranger d'après les formes qui y sont en vigueur, bien que non conforme au mode adopté en Russie, sera néanmoins admis à faire preuve jusqu'à production de moyens propres à en infirmer l'authenticité' (lois civ., x. suppl., article 546).

"*Wurtemberg*

"Le projet de Code de commerce pour le royaume de Wurtemberg (article 999) porte: 'Les conditions exigées pour la validité d'un acte passé en pays étranger, en ce qui concerne la forme et la matière de cet acte, sont déterminées par la loi du lieu où il a été passé, et particulièrement par la loi du lieu de la date portée dans un acte écrit: toutefois un Wurtembergeois ne peut attaquer l'acte pour cause d'omission d'une de ces conditions, lorsque cet acte se trouve conforme aux lois du royaume.'

"*Louisiane*

"L'article 10 du Code de l'État de la Louisiane est ainsi conçu: 'La forme et l'effet des actes publics ou privés se règlent par les lois et les usages du pays où ces actes sont faits ou passés; cependant, l'effet des actes passés pour être exécutés dans un autre pays se règle par les lois du pays où ils ont leur exécution.'

"La règle *locus regit actum* admet toutefois certaines exceptions, dont les plus généralement admises sont celles qui se rapportent aux Ambassadeurs ou Ministres publics et à leur suite, qui ne sont pas soumis aux lois de l'État auprès duquel ils exercent leur mission diplomatique; et le cas où la loi du lieu de la rédaction de l'acte attribue à la forme qu'elle prescrit un effet qui se trouve en opposition avec le droit public du pays où l'acte est destiné à recevoir son exécution."

F. Surville (Cours élémentaire de droit international privé), paragraph 420, says:

"1° Preuve littérale. Le juge devant lequel une pareille preuve sera invoquée devra naturellement s'enquérir avant tout de l'origine de l'acte.

"Lorsqu'il s'agira d'un acte émané d'une autorité publique étrangère, cette preuve de l'origine se fera au moyen de légalisations émanées d'abord d'autorités publiques étrangères, et, en dernier lieu, d'un fonctionnaire auquel le Gouvernement français ajoute foi, tel qu'un Ambassadeur, un chargé d'affaires, un consul, &c.

"Quant aux actes sous signature privée, ce sera à celui qui produira l'acte à justifier qu'il a été passé en pays étranger et que la règle *locus regit actum* a été obéie.

"Faisons un pas de plus. L'origine de l'acte est constatée. Il est établi que celui-ci a force probante d'après la loi du pays où il a été rédigé. Quel va être en dehors de ce pays, particulièrement en France, le degré de cette force?

"D'abord, s'il s'agit d'un acte sous seing privé il ne saurait s'élever de difficulté: tout doit se passer comme pour celui rédigé en France. En d'autres termes, les articles 1322 et 1328 du Code civil, puis les articles 193 et suivants du Code de procédure civile recevront leur application.

"Mais arrivons aux actes authentiques. L'acte authentique dressé conformément à la loi étrangère, par l'officier compétent aura-t-il la même autorité en France qu'un acte authentique français? Fera-t-il foi jusqu'à inscription de faux ou seulement jusqu'à preuve contraire? On pourrait être tenté de dire qu'un pareil acte n'aura pas en France un degré de force probante plus grand que l'acte sous seing privé. En effet, l'officier public étranger n'a agi comme tel que parce qu'il avait délégation de la puissance publique de son pays, délégation qui expire à la frontière. Ce n'est pas là toutefois la solution à admettre. En matière d'actes authentiques, il faut en effet se garder de confondre deux choses; d'une part, la *force probante* attachée à l'acte [1] et, d'autre part, la *force exécutoire*. Les actes publics étrangers ne peuvent pas, en raison même du principe de la souveraineté respective des États, avoir force exécutoire en France: mais rien ne s'oppose, étant donné le caractère officiel de ceux qui les ont rédigés à l'étranger, qu'ils y aient une force probante analogue à celle des actes français de même nature. Le principe de souveraineté est ici hors de cause. Les actes publics seront donc crus jusqu'à inscription de faux, et c'est par la procédure édictée à cet égard dans notre Code de procédure civile français qu'ils seront susceptibles d'être attaqués.

"Quant à la foi à attacher aux livres des commerçants, elle sera déterminée par la loi du lieu où ces livres ont été tenus."

F. Laurent (Le droit civil international), t. VIII, paragraph 27, provides that:

"Celui qui produit en France un acte authentique reçu à l'étranger, doit en prouver l'authenticité. Les actes notariés passés en France font preuve par eux-mêmes, parce qu'ils portent la signature d'un officier public français, sauf à contester la validité de l'acte; mais rien ne prouve que l'acte étranger soit dressé par l'officier public dont il porte le nom.

"Il faut d'abord que la signature soit légalisée conformément aux usages diplomatiques. Puis le porteur de l'acte doit établir que l'écrit a été rédigé d'après les lois en vigueur dans le lieu d'où il est daté. Pour faciliter cette preuve, la loi hypothécaire belge dispose que l'acte établissant une hypothèque sur des biens situés en Belgique soit visé par le président du tribunal de la situation des biens. Ce magistrat, dit l'article 77, est chargé de vérifier si les actes réunissent les conditions nécessaires pour leur authenticité dans le pays où ils ont été reçus. Si le président refuse le visa, il peut être interjeté appel. L'acte n'a d'effet en Belgique, c'est-à-dire qu'il n'est considéré comme acte authentique que lorsqu'il a été revêtu du visa. Cette disposition est spéciale aux actes d'hypothèque. J'ai proposé, dans l'avant-projet de revision du Code civil, de la généraliser; je le préviendrai des contestations presque inévitables sur la validité des actes reçus en pays étranger. Quoi qu'il en soit, la loi hypothécaire consacre le principe que je viens d'établir. Un acte authentique dressé à l'étranger n'a par lui-même aucun *effet* en Belgique. C'est-à-dire qu'il n'existe pas aux yeux de la loi (comparez l'article 1131 du Code Nap.); pour qu'il ait effet et, par conséquent, une existence légale, il faut que la partie intéressée le soumette au visa du président, ce qui implique qu'elle doit prouver que l'acte est authentique d'après la loi du lieu où il a été reçu et qu'il est valable comme tel; à défaut de visa, l'acte n'aura d'effet que si la preuve de l'authenticité est faite en justice."

(c) Because the principle that a private document has no probative value, once same has been challenged by the opposite party, is laid down in article 338 of our Federal Code of Civil Procedure, which reads literally as follows: "Pri-

[1] Rapp. J. Clunet, 1910, p. 478 *et seq.*

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.