

CASE
PRESENTED ON BEHALF
OF THE
GOVERNMENT OF HIS BRITANNIC MAJESTY
TO THE
PERMANENT COURT OF INTERNATIONAL JUSTICE.
NOVEMBER 25TH, 1922.

THE REFERENCE.

On October 4th, 1922 ⁽¹⁾ the following resolution was adopted by the Council of the League of Nations :

“The Council has examined the proposals made by Lord Balfour and M. Léon Bourgeois on the subject of the following question, placed on its agenda of August 11th, at the request of the Government of His Britannic Majesty :

“Dispute between France and Great Britain as to the Nationality Decrees issued in Tunis and Morocco (French zone) on November 8th, 1921, and their application to British subjects, the French Government having refused to submit the legal questions involved to arbitration.

“The Council, noting that friendly conversations have taken place between the representatives of the two Governments and that they have agreed on the proposals to be made to the Council,

“Expresses its entire adhesion to the principles contained in these proposals, and has adopted the following resolution :

“(a.) The Council decides to refer to the Permanent Court of International Justice for its opinion the question whether the dispute referred to above is or is not by international law solely a matter of domestic jurisdiction (article 15, paragraph 8 of the Covenant) ;

“(b) And it requests the two Governments to bring

(1) Appendix No. 1, p. 65.

this matter before the Permanent Court of International Justice and to arrange with the Court with regard to the date on which the question can be heard, and with regard to the procedure to be followed

“.....”

On November 6th, 1922, the Secretary-General of the League of Nations, in accordance with the above resolution, addressed the following formal request to the Court ⁽¹⁾ :

“In execution of the resolution of the Council of the League of Nations, adopted on October 4th, 1922, of which a certified copy is annexed hereto, and by virtue of the authorisation given by this resolution.

“The Secretary-General of the League of Nations has the honour to present to the Permanent Court of International Justice the request of the Council that the Court will, in accordance with article 14 of the Covenant of the League, give an advisory opinion on the question referred to it by paragraph (a) of the resolution above-mentioned, and will give effect, as far as is possible and convenient, to the request of paragraph (b) of the resolution relating to the date and procedure of the hearing of the question.

“The Secretary-General has also the honour to enclose herewith, but merely for the information of the Court pending the submission of statements by the two Governments concerned, a copy of the memorandum by which the present matter was originally submitted to the Council.”

The question stated for the opinion of the Court is, therefore, as follows :

“Whether the dispute between France and Great Britain as to the Nationality Decrees issued in Tunis and Morocco (French zone) on November 8th, 1921, and their application to British subjects is, or is not, by international law, solely a matter of domestic jurisdiction (article 15, paragraph 8 of the Covenant of the League of Nations).”

(1) Appendix No. 2, p. 66.

Article 15 of the Covenant of the League of Nations provides as follows :

“If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

“For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

“The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

“If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

“Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

“If a report by the Council is unanimously agreed to by the members thereof other than the representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

“If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves

the right to take such action as they shall consider necessary for the maintenance of right and justice.

"If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

"The Council may in any case under this article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

"In any case referred to the Assembly, all the provisions of this article and of article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the representatives of one or more of the parties to the dispute."

The dispute mentioned in the question referred to the Court, and hereinafter more particularly described, is claimed by the Government of the French Republic to come within the exception laid down by paragraph 8 of article 15 set out above.

The Government of His Britannic Majesty, on the other hand, contend that the dispute does not come within the said exception.

It appears, therefore, that the question upon which the Court is invited to give its opinion is purely one of law, and is in the nature of a preliminary objection in point of law taken by the Government of the French Republic.

In order to enable the Court to decide this question of law, it is necessary briefly to state the facts relating to, and relevant to the appreciation of, the dispute referred to in the question.

THE FACTS.

The dispute in question relates, as indicated above, to certain Nationality Decrees issued in Tunis and in Morocco (French zone), respectively, and it is convenient to deal with the facts in relation to the two countries separately.

I. — TUNIS.

Tunis is a sovereign independent State, under the sovereignty of a Bey and placed under the protection of France⁽¹⁾.

The Bey is variously described in official documents as "Possessor of the Kingdom of Tunis", as "His Highness the Bey of Tunis", and as "Lord of the Regency of Tunis".⁽²⁾

Tunis is usually described officially as "the Regency of Tunis".

The religion, institutions and civilisation of Tunis are Mahommedan.

The relations between Tunis and France depend upon, and are defined by, the Treaty of Casr Saïd, dated May 12th, 1881⁽³⁾, which, both in form and substance, is a treaty between two sovereign independent States.

The preamble of the treaty (which states its object) is to the following effect :

"The Government of the French Republic and that of His Highness the Bey of Tunis, wishing to prevent for ever the renewal of the disorders which recently occurred on the frontiers of the two States and on the coast of Tunis, and desirous of making closer their longstanding relations of friendship and neighbourliness, have resolved to conclude a convention to this end, in the interests of the High Contracting Powers."

The rights given to, and the obligations imposed upon, the Government of the French Republic by the treaty are, so far as material, briefly as follows :

(1) Appendix No. 3, p. 69.

(2) Appendix No. 11, p. 120

(3) Appendix No. 4, p. 70

1. The Government of the French Republic is allowed to occupy militarily certain points in Tunis for a specific purpose, such occupation to end when the French and Tunisian military authorities recognise, by mutual consent, that the local Administration is in a state to maintain order. (Article 2).
2. The Government of the French Republic undertakes to support the Bey in case of danger to his person or dynasty or to the tranquillity of his States. (Article 3.)
3. The Government of the French Republic guarantees the execution of existing treaties between the Government of Tunis and European Powers. (Article 4.)
4. The Government of the French Republic is to be represented with the Bey by a Minister Resident, who will watch over the execution of the treaty and will be the intermediary in the relations between the French Government and the Tunisian authorities in all matters common to the two countries. (Article 5.)
5. French diplomatic agents and consuls abroad are entrusted with the protection of Tunisian interests and nationals. In return, the Bey undertakes not to conclude any act of an international character without having informed the Government of the French Republic and previously arrived at an understanding with such Government. (Article 6.)

The Minister Resident is under the control of, and responsible to, the Ministry for Foreign Affairs of the French Government.

The above being a summary statement of the relations between France and Tunis, attention is invited to the position of Great Britain in regard to Tunis.

On July 19th, 1875 ⁽¹⁾, a general convention was entered into between Great Britain and Tunis, whereby, amongst other matters, capitulatory rights of jurisdiction over British subjects in Tunis were conferred upon Great Britain. This convention contained the following, amongst other, provisions :

(1) Appendix No. 5, p. 72.

“ARTICLE 5 (1). In accordance with the friendship which has at all times existed between the two Governments, His Highness the Bey engages to protect British subjects who may come to his country either for the purposes of trade or for travelling. They shall be free to travel or to reside in any part of the Regency without hindrance or molestation, and they shall be treated with respect, love and honour. They shall be exempt from forced military service, whether by land or by sea ;.....”

“ARTICLE 24 (2). In all criminal cases and complaints where the prosecutor and prisoner are British subjects, and all civil differences, disputes or litigation which may occur between British subjects exclusively, the Agent and Consul-General, Consul or other British authority shall be sole judge or arbiter. No one shall interfere, but they shall be amenable to the British Consular Courts only.

“All civil differences, disputes or litigations between British subjects and the subjects of any foreign country other than Great Britain shall be decided solely in the Tribunals of the foreign Consuls, according to the usages heretofore established, or which may hereafter be arranged between such Consuls, without the interference of the Tunisian Courts or Government.”

“ARTICLE 25. Disputes and differences arising between a British and a Tunisian subject, whether the British subject is plaintiff or defendant, of a commercial and civil nature (criminal and correctional excepted), shall be settled by His Highness the Bey, or his delegate, in the presence and with the concurrence of the British Consul-General or Consul.

“It is likewise agreed that, should any new procedure differing from the above be adopted and applied at present or in future in the treatment of any other nation, the British subjects, without exception, shall be entitled to the enjoyment thereof, whenever Her Majesty’s Government shall request it.

(1) Appendix No. 5, p. 75.

(2) Appendix No. 5, p. 84.

"It is, however, understood that, if Mixed Courts should be at any time established in Tunis with the assent and approval of Her Majesty's Government, in that case all civil and commercial suits and disputes arising between British and Tunisian subjects shall be heard and determined by such Mixed Courts and Tribunals, according to the rules and procedure that may be agreed upon between the Contracting Parties."

"ARTICLE 40 (1). In order that the two Contracting Parties may have the opportunity of hereafter treating and agreeing upon such other arrangements as may tend still further to the improvement of their mutual intercourse and to the advancement of the interests of their respective people, it is agreed that at any time after the expiration of seven years from the date of the present Convention of Commerce and Navigation either of the High Contracting Parties shall have the right to call upon the other to enter upon a revision of the same ; but, until such revision shall have been accomplished by common consent, and a new Convention shall have been concluded and put into operation, the present Convention shall continue and remain in full force and effect."

"ARTICLE 41. If any doubt should arise with regard to the interpretation or the application of any of the stipulations of the present convention, it is agreed that in Tunis the interpretation the most favourable to British subjects shall be given, and in Her Majesty's dominions that most favourable to Tunisians. It is not pretended by any of the foregoing Articles to stipulate for more than the plain and fair construction of the terms employed, nor to preclude in any manner the Tunisian Government from the exercise of its rights of internal administration where the exercise of those rights does not evidently infringe upon the privileges accorded by the present convention to British subjects or British commerce."

(1) Appendix No. 5. p. 91.

No revision of the above convention (see article 40 above) has taken place.

At all times from before the date of the above-mentioned convention up to the present time there has been a considerable number of British subjects in Tunis.

As already mentioned, the Treaty of Casr Saïd, by virtue of which France became the Protecting Power of Tunis, was made on May 12th, 1881 (1).

Soon afterwards negotiations took place between M. Tissot, French Ambassador in London, and Lord Granville, Her Majesty's Principal Secretary of State for Foreign Affairs, with regard to a proposal by the French Government that Great Britain should abandon its extraterritorial jurisdiction over British subjects in Tunis, secured by the Convention of 1875.

The only portion of these negotiations to which it is necessary to refer is a note from Lord Granville to M. Tissot, dated June 20th, 1883 (2), in which the following passage occurs:

"As I have had occasion to inform your Excellency in the course of conversation on this subject, Her Majesty's Government are quite disposed to waive the rights of this country, under the Capitulations and treaties, to the extent which may be required to give full scope to the exercise of civil and criminal jurisdiction over British subjects by the new French tribunals.

"They do not, however, believe that it would be expedient to extend the change beyond what is required by the circumstances of the case, and they lay much stress, for instance, on the maintenance of those privileges and immunities which are enjoyed by consular officers in the East, and which partake of the character of those accorded to diplomatic agents in Europe.

"Subject to these reserves . . . Her Majesty's Government will have much pleasure in acceding to the request of the French Government, and will take the proper measures to relieve Her Majesty's consular officers

(1) Appendix No. 4, p. 70.

(2) Appendix No. 6, p. 92.

in the Regency of their judicial functions as soon as the other foreign Governments represented in Tunis have signified their willingness to adopt a similar course."

Reference is made to this note for the reason that the Government of the French Republic, in the course of the present dispute, have relied upon it as constituting a complete abandonment by Great Britain of its capitulatory rights of jurisdiction in Tunis.

Her Majesty's Government, on the contrary, contend that the note amounts merely to a consent on the part of Great Britain to allow French tribunals to exercise on its behalf capitulatory rights of jurisdiction which it still maintained *vis-à-vis* the Bey of Tunis.

On the 31st December, 1883, an Order in Council⁽¹⁾ was made giving effect to the agreement expressed in the above-mentioned note. The terms of this Order in Council are as follows :

"Whereas by Treaty, Capitulation, grant, usage, sufferance, and other lawful means Her Majesty the Queen has power and jurisdiction in the Regency of Tunis; and whereas the exercise of the power and jurisdiction aforesaid is now regulated by an Order of Her Majesty in Council made the 12th day of December, 1873, and several amending Orders in Council, and by the Ottoman (Tunis) Order in Council of 1881, establishing Her Britannic Majesty's Court for Tunis;

"And whereas by virtue of certain laws of the French Republic and of certain Decrees of His Highness the Bey of Tunis, French tribunals have been established in the Regency;

"And whereas by a Decree of His Highness the Bey of Tunis dated the 5th March, 1883, it is declared that the subjects of Foreign Powers whose Consular Courts in the Regency shall be abolished, shall be justiciable by the said French tribunals under the same conditions as French subjects;

(1) Appendix No. 7, p. 94.

“And whereas Her Majesty the Queen has consented to abandon Her Consular Jurisdiction with a view to British subjects in the Regency becoming justiciable by the said French tribunals, under the same conditions as French subjects, and to the extent of the jurisdiction vested by law in the said tribunals :

“Now therefore, Her Majesty by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Acts 1843 to 1878, or otherwise in Her Majesty vested, is pleased by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows :

“As regards all such matters and cases as come within the jurisdiction of the said French tribunals, the operation of the Orders in Council regulating Her Majesty’s Consular Jurisdiction in Tunis shall cease to be in force and operation within the Regency on and after the 1st day of January, 1884, except as regards any judicial matters pending in Her Britannic Majesty’s Court for Tunis on the day above mentioned.”

It will be observed that by the terms of this Order in Council the jurisdiction which Her Majesty abandoned was expressly limited to “such matters and cases as come within the jurisdiction of the said French tribunals,” and, further, that it is only “the operation of the Orders in Council regulating Her Majesty’s Consular Jurisdiction in Tunis,” which is determined and not the convention with the Bey of Tunis whereby capitulatory rights of jurisdiction were conferred upon Her Majesty.

On September 18th, 1897, a convention (1) was entered into between Great Britain and France for the purpose of determining the relations of the United Kingdom and France in the Regency of Tunis, and to define clearly the position, as established by convention, of the United Kingdom in Tunis.

This convention between Great Britain and France provided (*inter alia*) :

(1) Appendix No. 8, p. 95.

1. That the treaties and conventions of every kind in force between the United Kingdom and France should be extended to Tunis. (Article 1, paragraph 1.)

2. That the Government of Her Britannic Majesty should abstain from claiming for its consuls, its subjects and its establishments in Tunis other rights and privileges than those secured for it in France. (Article 1, paragraph 2.)

By notes dated respectively March 8th, 1919, and May 23rd, 1919, (1) exchanged between M. Paul Cambon, French Ambassador in London, and Lord Curzon of Kedleston, His Majesty's Principal Secretary of State for Foreign Affairs, certain terms were substituted for the third, fourth and fifth paragraphs of article 1 of the convention. These terms, in so far as material, were that the French Government undertook not to accord to the subjects, protected persons or merchandise of a third Power any treatment which should not be effectively applicable to the subjects, protected persons or merchandise of the United Kingdom.

It is desired to point out that (in the submission of His Majesty's Government) neither by the Convention of 1897, nor by the modifications introduced by the aforesaid notes were the rights of Great Britain as against the Bey of Tunis under the Convention of 1875 between Great Britain and Tunis affected.

In connection with the Anglo-French Convention of 1897, and the terms introduced into it by the above-mentioned notes, it is necessary to refer to a Consular Convention between France and Italy, signed at Paris on September 28th, 1896. (2)

By article 1 of this convention it was provided (*inter alia*) that Italians in Tunis should be exempt from obligatory military service as well in the army as in the navy, the national guard or the militia.

His Majesty's Government have contended throughout the present dispute that by reason of the terms introduced into the Anglo-French Convention of 1897 by the notes

(1) Appendix No. 9, p. 99.

(2) Appendix No. 10, p. 100.

of 1919, the French Government is bound to accord to British subjects in Tunis, treatment not less favourable than that accorded to Italian subjects in Tunis by the said Consular Convention of 1896.

The French Government, on the other hand, maintain that the Anglo-French Convention of 1897, and the terms introduced into it by the notes of 1919 are applicable exclusively to commercial matters.

The foregoing being a summary statement of the position of Tunis and the relations of Great Britain and France in regard to that State, the attention of the Court is now invited to the matter out of which the present dispute, in so far as it related to Tunis, arose.

On November 8th, 1921, two Decrees were issued affecting the nationality of persons born in Tunis.

1. A Decree⁽¹⁾, made by the Bey of Tunis, in the following terms :

*"Décret du 8 novembre 1921 (7 rabia-el-aoual 1340).
"Louanges à Dieu !*

*"Nous, Mohammed-en-Nacer Pacha-Bey, Possesseur
du Royaume de Tunis,*

"Vu notre décret du 19 juin 1914,

"Avons pris le décret suivant :

"ARTICLE 1^{er}. Est Tunisien, à l'exception des citoyens, sujets ou ressortissants de la Puissance protectrice autres que nos sujets, tout individu né sur le territoire de notre royaume de parents dont l'un y est né lui-même, sous réserve des dispositions des conventions ou traités liant le Gouvernement tunisien.

"ARTICLE 2. Est abrogé notre décret du 19 juin 1914 en ce qu'il a de contraire au texte ci-dessus.

"Vu pour promulgation et mise à exécution :

*"Le Ministre plénipotentiaire, Résident général
de la République française, à Tunis,*

"LUCIEN SAINT.

"Tunis, le 8 novembre 1921."

(1) Appendix No. 11, p. 120.

2. A Decree, (1) made by the President of the French Republic, in the following terms :

“Le Président de la République française,
 “Vu la loi du 16 juillet 1875, article 8 ;
 “Vu les lois du 27 mai 1881 et du 29 avril 1884 ;

“Décrète :

“ARTICLE 1^{er}. Est Français tout individu né dans la Régence de Tunis de parents dont l'un, justiciable au titre étranger des tribunaux français du protectorat, est lui-même né dans la régence, pourvu que sa filiation soit établie en conformité des prescriptions de la loi nationale de l'ascendant ou de la loi française avant l'âge de 21 ans.

“Si ce parent n'est pas celui qui, en vertu des règles posées par la législation française, donne à l'enfant sa nationalité, celui-ci peut, entre sa 21^e et sa 22^e année, déclarer qu'il renonce à la qualité de Français.

“Cette déclaration sera reçue dans les formes et sous les conditions déterminées par les articles 9 et suivants du décret du 3 octobre 1910.

“ARTICLE 2. Le Président du Conseil, Ministre des Affaires étrangères, et le Garde des Sceaux, Ministre de la Justice, sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret.

“Fait à Paris, le 8 novembre 1921.

“MILLERAND.

“Pour le Président de la République :

“Le Président du Conseil, Ministre des
 Affaires étrangères,

“BRIAND.

“Le Garde des Sceaux, Ministre de la
 Justice,

“BONNEVAY.”

Among the persons “born in the Regency of Tunis of parents of whom one justiciable as a foreigner (“au titre étranger”)

(1) Appendix No. 12, p. 121.

by the French tribunals of the Protectorate is himself born in the Regency" within the meaning of the last-mentioned decree, are a number of persons who claim and are claimed by His Majesty's Government to be British subjects.

In the course of the diplomatic correspondence ⁽¹⁾ which has passed between the French and British Governments, the Government of the French Republic have disputed the British nationality of these persons upon various grounds. They have contended

1. That His Majesty's rights of jurisdiction over British subjects in Tunis came to an end at the date of Lord Granville's note of June 20th, 1883 ⁽²⁾, mentioned above, and that, therefore, persons born in Tunis after that date were not born in a place where His Majesty was exercising jurisdiction over British subjects ;
2. That "The British Nationality and Status of Aliens Act, 1914" ⁽³⁾, section 1 (1) cannot retrospectively confer British nationality upon persons born in Tunis before June 20th, 1883, so as to make such nationality effective internationally ; and
3. That according to the law of England as it existed before "The British Nationality and Status of Aliens Act, 1914", the persons born in Tunis before June 20th, 1883, were not British subjects.

A decision upon these points is not material to the question now before the Court, even if an International Tribunal constituted the proper forum for the determination of the questions of municipal law involved, but it is well to state that His Majesty's Government, on the contrary, contend

1. That His Majesty's capitulatory rights of jurisdiction did not come to an end in 1883 ;
- 2: That "The British Nationality and Status of Aliens Act, 1914", section 1 (1) is declaratory of the previously existing law of England, by which all persons born in a

(1) Appendix No. 21, p. 160.

(2) Appendix No. 6, p. 92.

(3) Appendix No. 13, p. 122.

place where His Majesty exercises extraterritorial rights of jurisdiction who are the descendants in the male line of British subjects are British subjects ;

3. That in any case the provisions of section 1 (3) of that Act would prevent any person born before the passing of the Act from losing the nationality to which he was entitled under previous Statutes ; and
4. That accordingly all the persons affected by the decree and claimed by His Majesty's Government to be British subjects are, in fact, British subjects.

In pursuance of the last-mentioned decree, the Government of the French Republic proceeded to require the said persons to register themselves forthwith as French citizens, and in the case of those of the said persons who were males and of military age, to come forward to have their names inscribed in the French military registers in Tunis, and, in some instances, to join the colours.

Some of the said persons, who declined to obey the above requirements, were arrested and forcibly incorporated into the French army. (1)

II. MOROCCO (FRENCH ZONE).

Morocco is a sovereign independent State, under the sovereignty of a Sultan. It is officially known as the "Shereefian Empire", and the Sultan is officially described as "His Shereefian Majesty".

The Shereefian Empire includes Tangier, which occupies a special position, and a zone which is reserved to Spanish influence. The remaining parts of Morocco (known as the French zone) are under the protectorate of France. (2)

Morocco, inclusive of the French zone, is governed in the name of the Sultan. His Ministers, officials and political and administrative organisation constitute the Shereefian Government or "Maghzen."

The religion, institutions and civilisation of Morocco are, like those of Tunis, Mahommedan.

(1) Appendix No. 21 (16). p. 192.

(2) Appendix No. 14, p. 135.

The relations between Morocco and France depend upon, and are defined by, the Treaty of Fez, dated March 30th, 1912, (1) which is a treaty between two sovereign independent States.

The preamble of the treaty (which states its objects) is to the following effect ;

“The Government of the French Republic and the Government of His Shereefian Majesty, anxious to establish in Morocco a regular régime, founded upon internal order and general security, which will permit the introduction of reforms and assure the economic development of the country, are agreed upon the following stipulations :”

The more material provisions of the treaty may be summarised as follows :

1. The Government of the French Republic and His Majesty the Sultan agree to institute a new régime admitting of the administrative, judicial, scholastic, economic, financial and military reforms which the French Government shall judge it useful to introduce upon Moroccan territory.

This régime will safeguard the respect and traditional prestige of the Sultan and the exercise of the Mussulman religion.

It will admit of the organisation of a reformed Shereefian “Maghzen”. (Article 1).

2. The Sultan allows the French Government to occupy militarily such parts of Moroccan territory as it judges necessary for the maintenance of order and the security of commercial transactions, and to exercise all police action on land and in Moroccan waters. (Article 2).
3. The French Government undertakes to lend constant support to the Sultan against any danger menacing his person or Throne, or which might compromise the tranquillity of his States. (Article 3.)

(1) Appendix No. 15, p. 136.

4. The measures which the new régime render necessary shall be enacted, on the proposition of the French Government, by the Sultan or by the authorities to which he shall have delegated the power. The same shall apply to new regulations and modifications in existing regulations. (Article 4.)
5. The French Government shall be represented with the Sultan by a Resident Commissioner-General, depositary of all the powers of the Republic in Morocco, who will watch over the execution of the present agreement.

The Resident Commissioner-General shall be the only intermediary of the Sultan with foreign representatives and in the relations which such representatives keep up with the Moroccan Government. He shall, in particular, be charged with all questions interesting foreigners in the Shereefian Empire.

He shall have power to approve and promulgate, in the name of the French Government, all decrees made by the Sultan. (Article 5.)

6. The French diplomatic and consular agents are charged with the representation and protection of Moroccan subjects and interests abroad.

The Sultan undertakes not to conclude any Act of an international character without the previous consent of the Government of the French Republic. (Article 6.)

Following upon this treaty, the President of the French Republic made the following decree, dated June 12th, 1912, ⁽¹⁾ fixing the attributions and powers of the Resident Commissioner General in Morocco :

"Décret du 12 juin 1912, fixant les attributions et les pouvoirs du Commissaire Résident général au Maroc.

"Le Président de la République française,

"Sur la proposition du Président du Conseil, Ministre des Affaires étrangères,

"Décrète :

"ARTICLE 1er. — Le représentant de la République

(1) Appendix No. 16, p. 139.

française au Maroc porte le titre de Commissaire Résident général et relève du Ministre des Affaires étrangères.

“ARTICLE 2. — Le Commissaire Résident général est le dépositaire de tous les pouvoirs de la République dans l'Empire chérifien. Il est le seul intermédiaire du Sultan auprès des représentants des Puissances étrangères. Il approuve et promulgue, au nom du Gouvernement de la République, les décrets rendus par Sa Majesté chérifienne. Il dirige tous les services administratifs ; il a le commandement en chef des forces de terre et la disposition des forces navales.

“ARTICLE 3. — Le Commissaire Résident général communique, par l'entremise du Ministre des Affaires étrangères, avec les divers membres du Gouvernement de la République ; il les saisit, sans délai, des questions qui intéressent leurs Départements.

“ARTICLE 4. — Le Commissaire Résident général est assisté d'un délégué à la Résidence générale, destiné à le remplacer en cas d'absence ou d'empêchement.

“ARTICLE 5. — Le président du Conseil, Ministre des Affaires étrangères, est chargé de l'exécution du présent décret.”

The above being a summary statement of the relations between France and Morocco, attention is now invited to the position of Great Britain in regard to Morocco.

On December 9th, 1856, a general treaty was concluded between Her Majesty Queen Victoria and His Majesty the Sultan of Morocco, whereby, amongst other matters, capitulatory rights of jurisdiction over British subjects in Morocco were conferred upon Her Majesty. (1)

This treaty contained the following, amongst other provisions :

“ARTICLE 4 (2) They (British subjects in Morocco) shall be exempt from all military service, whether by land or sea.

(1) Appendix No. 17, p. 139.

(2) Appendix No. 17, p. 142.

“ARTICLE 8 (1). In all criminal cases and complaints, and in all civil differences, disputes, or causes of litigation which may occur between British subjects, the British Consul-General, Consul, Vice-Consul, or Consular Agent, shall be sole judge and arbiter. No Governor, Kadi, or other Moorish authority, shall intermeddle therein ; but the subjects of Her Britannic Majesty shall, in all matters of criminal or civil cognisance arising or existing between British subjects exclusively, be amenable to the tribunal of the Consul-General, Consul, or other British authority only.

“ARTICLE 9. — All criminal cases and complaints, and all civil differences, disputes, or causes of litigation arising between British subjects and subjects of the Moorish Government, shall be adjusted in the following manner :

“If the plaintiff be a British subject and the defendant a Moorish subject, the Governor of the town or district, or the Kadi, according as the case may appertain to their respective Courts, shall alone judge the case ; the British subject making his appeal to the Governor or Kadi, through the British Consul-General, Consul, or his deputy, who will have a right to be present in the Court during the whole trial of the case.

“In like manner, if the plaintiff, be a Moorish subject, and the defendant a British subject, the case shall be referred to the sole judgment and decision of the British Consul-General, Consul, Vice-Consul or Consular Agent ; the plaintiff shall make his appeal through the Moorish authorities ; and the Moorish Governor, Kadi, or other officer who may be appointed by them shall be present, if he or they so desire, during the trial and judgment of the case. Should the British or Moorish litigant be dissatisfied with the decision of the Consul-General, Consul, Vice-Consul, Governor, or Kadi (according as the case may appertain to their respective Courts), he shall have a right of appeal to Her Britannic Majesty's *Chargé d'Affaires* and Consul-General, or to the Moorish Commissioner for Foreign Affairs, as the case may be.

(1) Appendix No. 17, p. 144.

“ARTICLE 12 (1). If any subject of the Sultan be found guilty before the Kadi of producing false evidence to the injury or prejudice of a British subject, he shall be severely punished by the Moorish Government according to the Mahommedan law. In like manner, the British Consul-General, Consul, Vice-Consul or Consular Agent, shall take care that any British subject who may be convicted of the same offence against a Moorish subject, shall be severely punished according to the law of Great Britain.

“ARTICLE 13. — All British subjects, whether Mahomedans, Jews or Christians, shall alike enjoy all the rights and privileges granted by the present treaty and the Convention of Commerce and Navigation which has also been concluded this day, or which shall at any time be granted to the most favoured nation.

“ARTICLE 14. In all criminal cases, differences, disputes, or other causes of litigation arising between British subjects and the subjects or citizens of other foreign nations, no Governor, Kadi, or other Moorish authority shall have a right to interfere, unless a Moorish subject may have received thereby any injury to his person or property, in which case the Moorish authority, or one of his officers, shall have a right to be present at the tribunal of the Consul.

“Such cases shall be decided solely in the tribunals of the foreign Consuls, without the interference of the Moorish Government, according to the established usages which have hitherto been acted upon, or may hereafter be arranged between such Consuls.

“ARTICLE 19 (2). — The present treaty shall apply generally to all the dominions of Her Britannic Majesty, and to all subjects who are under her obedience, and all those who inhabit any town or place which is considered part of her kingdom, as also to all her subjects in Gibraltar and its inhabitants, and likewise to the inhabitants of the United States of the Ionian Islands which are under

(1) Appendix No. 17, p. 146.

(2) Appendix No. 17, p. 149.

her protection ; and all those who are called or described as English, shall be considered as British subjects, without any distinction between those born in and those born out of Great Britain : and if the Queen of Great Britain should hereafter possess a town or a country which, either by conquest or by treaty, shall enter under her authority, all its people and inhabitants shall be considered as British subjects, even if only for the first time subjected to Great Britain."

At all times from the date of the above-mentioned treaty up to the present time, there has been a considerable number of British subjects in Morocco.

The capitulatory rights of jurisdiction conferred upon His Britannic Majesty by the above treaty are still being exercised by His Majesty's Consular Courts in Morocco, there has been no delegation of those rights to the French tribunals as in the case of Tunis, nor have those rights been waived, abandoned or modified in any way.

In December 1914 ⁽¹⁾ the French protectorate over Morocco was recognised by His Majesty's Government, such recognition being announced in the following notice, dated December 19th, 1914, published in the "London Gazette" :

"NOTICE.

"His Majesty's Government, having been informed that the Government of the French Republic have recognised the British protectorate over Egypt, His Britannic Majesty's Principal Secretary of State for Foreign Affairs hereby gives notice that His Majesty's Government adhere to the Franco-Moorish Treaty of March 30th, 1912.

"Foreign Office, December 19th, 1914."

It is now proposed to turn to the matters out of which the present dispute, in so far as it relates to Morocco, arose.

On November 8th, 1921 (the same date as in the case of Tunis), two decrees, similar in character to the Tunis decrees, were issued :

(1) Appendix No 18, p. 157.

1. A decree, made by His Shereefian Majesty, in the following terms (1) :

“Dahir du 8 novembre 1921 (7 Rebia I 1340) relatif à la Nationalité marocaine.

“Louange à Dieu seul !

“(Grand sceau de Moulay Youssef.)

“Que l'on sache par les présentes—puisse Dieu en élever et en fortifier la teneur !

“Que notre Majesté chérifienne

“A décidé ce qui suit :

“Article unique. Est Marocain, à l'exception des citoyens, sujets ou ressortissants de la Puissance protectrice autres que nos sujets, tout individu né dans la zone française de notre Empire, de parents étrangers dont l'un y est lui-même né.

“Fait à Rabat, le 7 Rebia I 1340 (8 novembre 1921).

“Vu pour promulgation et mise à exécution :

“Le Maréchal de France, Commissaire

“Résident général,

“LYAUTEY.

“Taza, le 8 novembre 1921.”

2. A decree, made by the President of the French Republic, in the following terms : (2)

“Décret relatif à la Nationalité française dans la Zone française de l'Empire chérifien.

“ (‘Journal officiel’, No. 307, du 13 novembre 1921).

“(Erratum ‘Journal officiel’, No. 309, du 16 novembre 1921).

“Le Président de la République française,

“Vu la loi du 16 juillet 1875, article 8 ;

“Vu la loi du 15 juillet 1912,

“Décrète :

“ARTICLE 1^{er}. — Est Français tout individu né dans la zone française de l'Empire chérifien de parents dont l'un,

(1) Appendix No. 19, p. 158.

(2) Appendix No. 20, p. 159.

justiciable au titre étranger des tribunaux français du protectorat, est lui-même né dans cette zone, pourvu que sa filiation soit établie en conformité des prescriptions de la loi nationale de l'ascendant ou de la loi française, avant l'âge de 21 ans.

"Si ce parent n'est pas celui qui, en vertu des règles posées par la législation française, donne à l'enfant sa nationalité celui-ci peut, entre sa 21^e et sa 22^e année, déclarer qu'il renonce à la qualité de Français.

"Cette déclaration sera reçue dans les formes et sous les conditions déterminées aux articles 8 et suivants du décret du 29 avril 1920.

"ARTICLE 2. — Le Président du Conseil, Ministre des Affaires étrangères, et le Garde des Sceaux, Ministre de la Justice, sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret.

"Fait à Paris, le 8 novembre 1921.

"A. MILLERAND.

"Par le Président de la République :

"Le Président du Conseil, Ministre des
Affaires étrangères par intérim,

"L. BONNEVAY.

"Le Garde des Sceaux, Ministre de la
Justice,

"L. BONNEVAY."

It is to be observed that the Decree No. 2 above is only applicable to individuals "born in the French zone of the Shereefian Empire of parents of whom one, justiciable as a foreigner ('au titre étranger') by the French Tribunals of the protectorate, is himself born in that zone," and inasmuch as British subjects were not at any time and are not now "justiciable as foreigners by the French Tribunals" the decree is not, at present, applicable to British subjects.

The Decree No. 1 set out above is, in so far as its express language is concerned, applicable to British subjects, but its application to British subjects would be in derogation to His Majesty's existing rights under the general treaty with

the Sultan of Morocco, and it is understood by His Majesty's Government that neither the Sultan of Morocco nor the Government of the French Republic claim to apply this decree to persons who are claimed by His Majesty's Government to be British subjects.

The Government of the French Republic, however, contend that the French Decree (No. 2 above) is applicable to persons born in Morocco (French zone) of a parent also born there who claim and whom the British Government claim (and the French Government deny) to be British subjects.

The Government of the French Republic contend that although His Britannic Majesty's rights of extraterritorial jurisdiction in Morocco are in full force and effect, persons born in Morocco who are descendants in the male line of British subjects, are not British subjects by the law of England as it existed before "The British Nationality and Status of Aliens Act, 1914", and further, that the said Act cannot retrospectively confer privileges effective against France.

His Majesty's Government, on the contrary, maintain that persons born in Morocco who are the descendants in the male line of British subjects are British subjects by the law of England, as it existed before the said Act, which in Section 1 (1) is merely declaratory of the pre-existing law.

As in the case of Tunis, these questions in dispute between the two Governments as to the nationality of the persons referred to do not arise for decision in the present case, even if the question of English law involved were an appropriate one for determination by an international tribunal.

CORRESPONDENCE.

Correspondence has taken place between the French and British Governments in regard to the Tunis and Morocco Decrees and the acts of the French and British authorities in Tunis consequent upon the Tunis Decrees.

The most relevant portions of this correspondence are set out in the Appendix. ⁽¹⁾ From them, the Court will see the views and contentions held and advanced by the respective Governments.

The Appendix ⁽²⁾ also contains copies of a few of the communications received by His Majesty's Principal Secretary of State for Foreign Affairs from His Majesty's acting consul-general in Tunis.

THE DISPUTE.

From the above statement of fact and the correspondence, the nature of the dispute which is referred to in the question submitted to the Court has been indicated.

It may, however, be convenient to summarise here the issues upon which the views of the French and British Governments are in conflict.

These are, very briefly stated, as follows :

1. Are the persons affected by the Tunis and Morocco Decrees who claim and are claimed by His Majesty's Government to be British subjects rightly to be deemed British subjects ?
2. It is competent for France, according to international law, to impose, without the consent of Great Britain, French nationality and the obligations resulting therefrom, including military service, upon British subjects in Tunis and Morocco, being States not under her sovereignty, but under her protection, so as to override their existing nationality ?
3. Is it in accordance with international comity for France to impose French nationality upon British subjects without giving to the individuals affected for the first time the opportunity of opting against such nationality ?
4. Did the note of 1883 constitute an abandonment of His Majesty's extraterritorial rights of jurisdiction in Tunis ?

(1) Appendix No. 21, pp. 160—213.

(2) Appendix No. 21, pp. 192, 205.

5. Does the Anglo-French Convention of 1897 entitle France to impose French nationality upon British subjects in Tunis as if Tunis were France?
6. If so, are the terms upon which French nationality is imposed by the Tunis Decree, in fact, the same as those provided by the French Nationality Laws, having regard to the successive stages of those laws?
7. Do the terms introduced into the Anglo-French Convention of 1897 by the Notes of 1919 enable His Majesty's Government to claim treatment for British subjects in Tunis equal to that accorded to Italian subjects by the Convention of 1896, or are such terms confined exclusively to commercial matters?

In addition to the above issues, there was a controversy between the French and British Governments as to whether the dispute was suitable for submission to arbitration either under the Anglo-French Arbitration Convention of October, 14th, 1903, ⁽¹⁾ or under article 13 of the Covenant of the League of Nations, or both, but this issue is no longer material.

THE QUESTION BEFORE THE COURT.

The question as stated in the Resolution of the Council of the League of Nations ⁽²⁾ is "whether the dispute" described above "is or is not by international law solely a matter of domestic jurisdiction (article 15, paragraph 8 of the Covenant).

From the reference to article 15, paragraph 8 of the Covenant it is clear that the point upon which the decision of the Court is desired is whether or not the dispute is one which comes within the provisions of that paragraph. It is France which claims that the present dispute is one to which the paragraph applies, and, accordingly, His Majesty's Government submits that the question before the Court can be stated in the following terms :

⁽¹⁾ Appendix No. 22, p. 214.

⁽²⁾ Appendix No. 1, p. 65.

“Does the dispute, which has been described above, arise out of a matter which, by international law, is solely within the domestic jurisdiction of France?”

The matter out of which the dispute arises is the imposition by France of French nationality and its consequential obligations, including military service, upon persons in Tunis and Morocco who are claimed by Great Britain to be British subjects.

The point in issue in the present case is whether such imposition of French nationality is, by international law, solely within the domestic jurisdiction of France.

It is to be remembered that it is the Government of the French Republic which maintains the affirmative case, the onus of establishing which, therefore, lies upon them.

CONTENTIONS OF LAW.

His Majesty's Government submit to the Court the following reasons in support of their contention that the question in issue falls to be answered in the negative.

1. The French legislation in point applies, and operates, in its entirety outside the territories subject to the sovereignty of France. It purports to impose French nationality upon the subjects of another Power, Great Britain, within the territory of a third Power, so as to over-ride the existing nationality of those subjects.

The jurisdiction of a sovereign State to legislate so as to confer its nationality upon the subjects of another sovereign State is an attribute of its territorial sovereignty. Such legislation affects the relation which binds the subjects of the State whose nationality it is proposed to change, and, therefore, affects the sovereignty of that State, and it is only by virtue of territorial sovereignty that the jurisdiction so to affect the sovereignty of another State arises.

The matter is still more clear where the new nationality is imposed *in invitum* both of the State whose subjects are affected and the individual subjects themselves.

It is obvious that if, as is suggested above, the legislation in point is, in international law, beyond the competence of the French Government, it cannot be a matter which, by international law, is solely within the domestic jurisdiction of France.

In the submission of His Majesty's Government, the fact that the territory within which the legislation purports to operate is a protectorate of the Power enacting it is, according to international law, immaterial.

The above argument assumes that the individuals affected are, in fact, British subjects for all purposes. As has already been stated, this is disputed by the Government of the French Republic, and from the statement of the points at issue in that dispute it has been seen that the question involved is solely one of English law. It is, therefore, submitted by His Majesty's Government that the British nationality of the persons affected by the nationality decrees can properly be assumed for the purposes of the above argument, and without prejudice to the decision of that question by an appropriate Tribunal if and when it arises.

In connection with the considerations presented under 1 above, His Majesty's Government further submit generally that the domestic jurisdiction of a State is limited to matters within the ambit of its territorial sovereignty.

2. In regard to Tunis, France's right to impose her nationality depends, in part, upon whether His Majesty's rights of jurisdiction over British subjects there came to an end in 1883. This question depends upon the interpretation of the note from Lord Granville to M. Tissot, dated June 20th in that year (1).

It is submitted that the interpretation of an international agreement affecting the rights and obligations of two Powers cannot be a matter solely within the domestic jurisdiction of one of them.

3. Again in regard to Tunis, the right of France to impose French nationality and the consequent obligation of military service depends, in part, upon the interpretation of the Anglo-

(1) Appendix No. 6, p. 92.

French Convention of 1897, ⁽¹⁾ as modified by the notes exchanged in 1919. ⁽²⁾ As already pointed out, the question arises whether the convention, as modified, entitles His Majesty's Government to claim for British subjects in Tunis treatment not less favourable than that accorded by France to Italian subjects in Tunis by the Consular Convention between France and Italy of 1896. ⁽³⁾

His Majesty's Government repeat the submission under 2 above, and say that the interpretation of a treaty between two Powers conferring reciprocal rights and imposing reciprocal obligations cannot by international law, be a matter solely within the domestic jurisdiction of one of them.

4. Further, in regard to Tunis, the right in question depends, in part, upon the interpretation of the words, in article 1 paragraph 2 of the Anglo-French Convention of 1897 ⁽⁴⁾ : "The Government of Her Britannic Majesty will abstain from claiming for its subjects in the Regency of Tunis other rights and privileges than those secured for it in France."

Two questions of construction arise upon these words :

- (i.) Do they apply to such matters as nationality and entitle France to enact legislation imposing French nationality on British subjects in Tunis as if Tunis were France ?
- (ii.) If so, is the French nationality legislation in Tunis consistent with the "rights and privileges secured for Great Britain in France," having regard to the successive stages of the nationality laws and regulations in France and the right to opt against French nationality given thereby to persons affected for the first time ?

His Majesty's Government submit, as in the case of 2 and 3 above, that the interpretation of a treaty between two Powers cannot, by international law, be a matter solely within the domestic jurisdiction of one of them.

(1) Appendix No. 8, p. 95.

(2) Appendix No. 9, p. 99.

(3) Appendix No. 10, p. 100.

(4) Appendix No. 8, p. 95.

5. The nationality legislation, both in Tunis and Morocco, also involves the question of international comity referred to earlier in this case, viz., whether it is in accordance with international comity for a State to enact legislation imposing, for the first time, its nationality upon the subjects of another State without giving them the opportunity of opting against such nationality.

His Majesty's Government submit that this question, being one of international comity, is not, by international law, solely within the domestic jurisdiction of the State enacting the legislation, within the meaning of the words "solely within the domestic jurisdiction" in article 15, paragraph 8, of the Covenant of the League of Nations. It is not suggested that a State has not full power, within the territories under its sovereignty, to enact such legislation, but it is submitted that where a question of the consonance of such legislation with international comity is raised by another State affected by it, the matter becomes a proper one for the application of the procedure laid down in article 15 and is not within the exception provided by paragraph 8.

6. The imposition by France of its nationality upon the persons affected in Tunis and Morocco raises the question of the rights of a protecting Power in virtue of its protectorate over a Mahommedan State within the territory of which another European Power enjoys extraterritorial rights over its subjects to alter and affect the status and position of those subjects in the protectorate.

In the case of Tunis, the extraterritorial rights of His Majesty over British subjects are exercised by the French Tribunals, but, as already pointed out, it is the view of His Majesty's Government that these rights, granted by the General Convention of 1875 between Great Britain and Tunis, still subsist as against the Bey of Tunis.

In the case of Morocco, the extraterritorial rights of His Majesty over British subjects, granted by the General Treaty of 1856 between Great Britain and Morocco, are in full exercise by the British Consular Courts.

It is submitted that the question referred to under 6 above, involving as it does three distinct parties: the Protecting

Power, the Protected State and the other European Power, and involving also the treaty rights of the other European Power as against the Protected State—in the one case, exercised in a fiduciary capacity by the Protecting Power on behalf of the other European Power, and, in the other case, exercised by the other European Power itself — is not, by international law, a matter solely within the domestic jurisdiction of the Protecting Power.

Acts of one Power which affect the treaty rights of a second Power as against a third Power cannot, in the submission of His Majesty's Government, be solely within the domestic jurisdiction of the first Power, in contemplation of international law.

Turning now to another matter, it is to be observed that the question before the Court requires the consideration and interpretation of the words "solely within the domestic jurisdiction" as used in paragraph 8 of article 15 of the Covenant.

For the purpose of arriving at the true interpretation of these words, it is material to look at the whole of article 15 and the Covenant generally, with a view to ascertaining the object and intention of its framers as expressed therein. If this is done, it is submitted that the relevant words will be found to bear a narrow and restrictive meaning, and to include only matters of ordinary domestic and internal activity, such, for example, as immigration or tariff laws and regulations, in contradistinction to matters which, in any degree, involve external operation or application.

CONCLUSION.

For the above, amongst other, reasons, His Majesty's Government submit that the question before the Court should be answered in the negative.

Appendix 1.

Geneva, October 3, 1922.

RESOLUTION OF THE COUNCIL OF LEAGUE OF NATIONS.

Dispute between France and Great Britain as to the Nationality Decrees in Tunis and Morocco (French Zone) on November 8, 1921, and their application to British Subjects.

The following resolution was adopted by the Council on the 4th October, 1922 :

"The Council has examined the proposals made by Lord Balfour and M. Léon Bourgeois on the subject of the following question, placed on its agenda of the 11th August, at the request of the Government of His Britannic Majesty :

"Dispute between France and Great Britain as to the Nationality Decrees issued in Tunis and Morocco (French zone) on November 8th, 1921, and their application to British subjects, the French Government having refused to submit the legal questions involved to arbitration.

"The Council, noting that friendly conversations have taken place between the representatives of the two Governments, and that they have agreed on the proposal to be made to the Council,

"Expresses its entire adhesion to the principles contained in these proposals, and has adopted the following resolution :

"(a) The Council decides to refer to the Permanent Court of International Justice for its opinion the question whether the dispute referred to above is or is not by international law solely a matter of domestic jurisdiction (article 15, paragraph 8 of the Covenant.)

"(b) And it requests the two Governments to bring this matter before the Permanent Court of International Justice, and to arrange with the Court with regard to the date on which the question can be heard and with regard to the procedure to be followed."

Appendix 2.

Communication by Secretary-General of League to the Permanent Court of International Justice.

TO THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

In execution of the resolution of the Council of the League of Nations, adopted on October 4th, 1922, of which a certified copy is annexed hereto, and by virtue of the authorisation given by this resolution, the Secretary-general of the League of Nations has the honour to present to the Permanent Court of International Justice the request of the Council that the Court will, in accordance with article 14 of the Covenant of the League, give an advisory opinion on the question referred to it by paragraph (a) of the resolution above-mentioned, and will give effect, as far as is possible and convenient, to the request of paragraph (b) of the resolution relating to the date and procedure of the hearing to the question

The Secretary-General has also the honour to enclose herewith, but merely for the information of the Court pending the submission of statements by the two Governments concerned, a copy of the memorandum by which the present matter was originally submitted to the Council.

Secretary-General of the League of Nations,

Geneva, November 6th, 1922.

A LA COUR PERMANENTE DE JUSTICE INTERNATIONALE.

Le Secrétaire général de la Société des Nations, en exécution de la résolution adoptée par le Conseil le 4 octobre 1922, dont copie certifiée conforme est annexée à la présente, et

en vertu de l'autorisation à lui donnée par ladite résolution, a l'honneur de présenter à la Cour permanente de Justice internationale la requête du Conseil demandant à la Cour de bien vouloir, conformément à l'article 14 du Pacte, donner un avis consultatif sur la question qui lui a été renvoyée aux termes du paragraphe (a) de la résolution ci-dessus mentionnée, et donner effet, dans la mesure où elle jugera possible et expédient, à la requête, en ce qui concerne la date à fixer pour l'examen de cette question et la procédure à suivre.

Le Secrétaire général a également l'honneur de joindre à la présente communication, mais uniquement à titre de renseignement pour la cour, en attendant que les deux Gouvernements intéressés aient présenté leur exposé de l'affaire, copie du mémorandum dans lequel la question actuelle a été primitivement soumise au Conseil.

Secrétaire général de la Société des Nations,

Genève, le 6 novembre 1922.

MEMORANDUM.

His Majesty's Government have placed the following question on the agenda of the Council of the League of Nations at its forthcoming meeting :

“Dispute between France and Great Britain as to the Nationality Decrees issued in Tunis and Morocco on November 8th, 1921, and their application to British subjects, the French Government having refused to submit the legal questions involved to arbitration.”

The circumstances are as follows :

On November 8th, 1921, the French Government published in Tunis and Morocco (French zone), under the sovereignty of the Bey of Tunis and the Sultan of Morocco respectively, certain Nationality Decrees, the text of which is annexed. The effect of these decrees is shortly to confer French nationality

on persons born in those countries of parents also born there and justiciable before French tribunals. In virtue of these decrees, the French Government claim to impose the obligations of French nationality upon British subjects in Tunis and Morocco (French zone) in such manner as to override their status as British subjects and render them liable to French military service. In Tunis, British subjects have been visited by the French military police, handcuffed and forcibly taken to the French barracks in order to compel their acceptance of these obligations.

His Majesty's Government have entered repeated protests against these proceedings. They pointed out that the persons affected are British subjects in English law. They represented to the French Government that they were unable to admit that that Government could impose French nationality and its obligations on British subjects in virtue of their birth in a country which is not French territory, but is only under French protection. His Majesty's Ambassador at Paris not only contested the legality of these proceedings in international law, but pointed to rights guaranteed by treaty which, in the view of His Majesty's Government, entitle them to claim for British subjects in Tunis the same rights as are accorded to the subjects of all other Powers. To these representations the French Government replied that they, in conjunction with the territorial sovereigns of Tunis and Morocco, possess sovereign rights which justify the imposition of French nationality on persons born in those countries and the proceedings taken to enforce this claim; and to the claim of His Majesty's Government that existing treaty provisions guarantee to British subjects the same treatment as is accorded to the subjects of other Powers in Tunis, the French Government replied by a simple denial that any such treaty provisions are applicable to the present case.

In these circumstances His Majesty's Government urged that the dispute, being one which is exclusively of a legal nature, should be submitted to arbitration. They maintained that the dispute was of the nature contemplated as proper for submission to arbitration both under the Anglo-French

Arbitration Agreement of October 14th, 1903, and under article 13 of the Covenant of the League of Nations. It can hardly be denied that the dispute is one as to the interpretation of a treaty and as to a question of international law. The French Government, however, refuse to agree that the case should be referred to arbitration.

The circumstances therefore leave His Majesty's Government no alternative but to submit the dispute to the Council of the League of Nations in accordance with the terms of the Covenant of the League.

TUNIS.

Appendix 3.

EXTRACT FROM FRENCH "ANNUAIRE COLONIAL."

TUNIS.

(B.) — *Administration.*

Organisation administrative.

Aux termes du Traité de Kasr-el-Saïd, en date du 12 mai 1881, la Tunisie constitue une Régence gouvernée par un Bey et placée sous le protectorat de la France. L'Administration est autonome, mais le Ministère des Affaires étrangères de la métropole exerce sur elle un droit de surveillance et de contrôle.

La France est représentée par un Résident général; la Tunisie est divisée en 19 régions placées sous l'autorité de contrôleurs civils relevant du Résident général, plus les territoires militaires du sud-tunisien.

Appendix 4.

TREATY OF FRIENDSHIP, ETC., BETWEEN FRANCE AND TUNIS. — SIGNED AT CASR SAÏD, MAY 12TH, 1881.

Le Gouvernement de la République française et celui de Son Altesse le Bey de Tunis voulant empêcher à jamais le renouvellement des désordres qui se sont produits récemment sur les frontières des deux États et sur le littoral de la Tunisie, et désireux de resserrer leurs anciennes relations d'amitié et de bon voisinage, ont résolu de conclure une convention à cette fin, dans l'intérêt des deux hautes parties contractantes.

En conséquence, le Président de la République française a nommé pour son plénipotentiaire M. le Général Bréart, qui est tombé d'accord avec Son Altesse le Bey sur les stipulations suivantes :

ARTICLE 1^{er}.

Les Traités de Paix, d'Amitié, et de Commerce, et toutes autres conventions existant actuellement entre la République française et Son Altesse le Bey de Tunis, sont expressément confirmés et renouvelés.

ARTICLE 2.

En vue de faciliter au Gouvernement de la République française l'accomplissement des mesures qu'il doit prendre pour atteindre le but que se proposent les hautes parties contractantes, Son Altesse le Bey de Tunis consent à ce que l'autorité militaire française fasse occuper les points qu'elle jugera nécessaires pour assurer le rétablissement de l'ordre et la sécurité de la frontière et du littoral. Cette occupation cessera lorsque les autorités militaires françaises et tunisiennes auront reconnu, d'un commun accord, que l'Administration locale est en état de garantir le maintien de l'ordre.

ARTICLE 3.

Le Gouvernement de la République française prend l'engagement de prêter un constant appui à Son Altesse le Bey de Tunis contre tout danger qui menacerait la personne ou la dynastie de Son Altesse ou qui compromettrait la tranquillité de ses Etats.

ARTICLE 4.

Le Gouvernement de la République française se porte garant de l'exécution des traités actuellement existants entre le Gouvernement de la Régence et les diverses Puissances européennes.

ARTICLE 5.

Le Gouvernement de la République française sera représenté auprès de Son Altesse le Bey de Tunis par un Ministre Résident, qui veillera à l'exécution du présent Acte et qui sera l'intermédiaire des rapports du Gouvernement français avec les autorités tunisiennes pour toutes les affaires communes aux deux pays.

ARTICLE 6.

Les agents diplomatiques et consulaires de la France en pays étrangers seront chargés de la protection des intérêts tunisiens et des nationaux de la Régence.

En retour, Son Altesse le Bey s'engage à ne conclure aucun acte ayant un caractère international sans en avoir donné connaissance au Gouvernement de la République française et sans s'être entendu préalablement avec lui.

ARTICLE 7.

Le Gouvernement de la République française et le Gouvernement de Son Altesse le Bey de Tunis se réservent de fixer, d'un commun accord, les bases d'une organisation financière de la Régence, qui soit de nature à assurer le service de la Dette Publique et à garantir les droits des créanciers de la Tunisie.

ARTICLE 8

Une contribution de guerre sera imposée aux tribus insoumises de la frontière et du littoral.

Une convention ultérieure en déterminera le chiffre et le mode de recouvrement, dont le Gouvernement de Son Altesse le Bey se porte responsable.

ARTICLE 9.

Afin de protéger contre la contrebande des armes et des munitions de guerre les possessions algériennes de la République française, le Gouvernement de Son Altesse le Bey de Tunis s'engage à prohiber toute introduction d'armes ou de munitions de guerre par l'Ile de Djerba, le port de Gabès, ou les autres ports du sud de la Tunisie.

ARTICLE 10.

Le présent traité sera soumise à la ratification du Gouvernement de la République française, et l'instrument de ratification sera remis à Son Altesse le Bey de Tunis dans le plus bref délai possible.

Casr Saïd, le 12 mai 1881.

MOHAMMED ES SADOQ BEY.
GAL. BRÉART.

Appendix 5.

GENERAL CONVENTION BETWEEN THE GOVERNMENTS OF GREAT BRITAIN AND TUNIS. — SIGNED IN THE ENGLISH AND ARABIC LANGUAGES,
JULY 19, 1875.

The Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Most Serene Highness Mohammed Essaddock Bey, Lord of the Regency of Tunis, being desirous to maintain and improve the relations

of friendship and commerce which have long subsisted between them and between British and Tunisian subjects, have resolved to proceed to a revision and improvement of the Treaties subsisting between the respective countries, in consequence of which the following stipulations have been entered into and concluded between His Most Serene Highness the Bey, and Richard Wood, Esquire, Companion of the Most Honourable Order of the Bath, Her Majesty's Agent and Consul-General, duly authorized to that effect.

ARTICLE I.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland may appoint, besides her Political Agent, such Consuls, Vice-Consuls, and Consular Agents in the Regency of Tunis as she may deem necessary; and such Consuls, Vice-Consuls, and Consular Agents shall be at liberty to reside in any of the seaports or cities of His Highness the Bey, which they or the British Government may choose and find most convenient for the affairs and service of Her Majesty, and for the assistance of her subjects.

ARTICLE 2.

Every mark of honour and respect shall at all times be paid, and every privilege and immunity allowed, to Her Majesty's Agent and Consul-General accredited to His Highness the Bey which is paid or allowed to the Representative of any other nation whatsoever; and respect and honour shall be shown to the British Consuls, Vice-Consuls, and Consular Agents, who shall reside in the Regency of Tunis. Their houses and families shall be safe and protected. No one shall interfere with them, or commit any act of oppression or disrespect towards them, either by word or deed; and if any one should do so, the Tunisian authorities shall take immediate measures for the punishment of the offender. The British Consuls, Vice-Consuls, and Consular Agents shall, moreover, continue to enjoy, in the most ample sense, all the privileges and immunities which are now or may be hereafter accorded to the Consuls, Vice-Consuls, and Consular Agents of the most favoured nation.

ARTICLE 3.

The British Agent and Consul-General shall be at liberty to choose his own interpreters, brokers, guards, and servants either from among the natives or others. His interpreters, brokers, guards, and servants shall be exempt from the conscription, and from payment of any poll-tax, forced contribution, or other similar or corresponding charge. In like manner, the Consuls, Vice-Consuls, and Consular Agents residing at the Tunisian Ports, under the orders of the said Agent and Consul-General, shall be at liberty to choose, that is to say, the Consuls, each one interpreter, one broker, two guards, and three servants ; the Vice-Consuls and Consular Agents, each one interpreter, one broker, and one guard, and two servants, not being in the military service, who shall likewise be exempt from the conscription, from the payment of any poll-tax, forced contribution, or other similar or corresponding charge. No prohibition nor tax shall be put upon the provisions, furniture, or any other articles which may come to the said Agent and Consul-General, Consuls, or Vice-Consuls, for their own use and for the use of their families, upon their delivering to the Officer of the Customs a note under their hand, specifying the number of articles which they shall require to be passed on that ground, but this privilege shall only be accorded to Consular Officers who are not engaged in trade. If the service of their Sovereign should require their attendance in their own country, no impediment shall be offered to their departure, and no hindrance shall be offered either to themselves or their servants, or in regard to their property, but they shall be at liberty to go and come, respected and honoured. If they should depute another person to act for them in their absence, they shall not be prevented in any way from so doing, nor shall the deputy be prevented from acting in that capacity.

ARTICLE 4.

There shall be reciprocal freedom of commerce between the dominions of Her Majesty the Queen and the Regency of Tunis.

British merchants or their agents and brokers shall be permitted to purchase at all places within the Regency, whether for the purpose of internal trade or of exportation, all articles, without any exception whatsoever, being the produce or manufacture of the said Regency; and the purchaser shall be free to remove his goods, when purchased, from one place to another, without any attempt being made on the part of the Local Governors to interfere with them.

ARTICLE 5.

In accordance with the friendship which has at all times existed between the two Governments, His Highness the Bey engages to protect British subjects who may come to his country either for the purposes of trade or for travelling. They shall be free to travel or to reside in any part of the Regency without hindrance or molestation; and they shall be treated with respect, love, and honour. They shall be exempt from forced military service, whether by land or by sea; from forced loans, and from every extraordinary contribution. Their dwellings and warehouses destined for the purposes of residence and commerce, as well as their property, both real and personal, of every kind, shall be respected, and, in particular, all the stipulations of the Convention concluded between Her Majesty's Government and His Highness the Bey on the 10th of October, 1863, relative to the permission granted to British subjects to hold real property in the Regency of Tunis, are hereby confirmed. And British subjects, vessels, commerce, and navigation shall enjoy, without any restriction or diminution, all the privileges, favours, and immunities which are now or may hereafter be granted to the subjects, vessels, commerce, and navigation of any other nation whatever.

Her Britannic Majesty, on her part, engages to insure to Tunisian subjects, vessels, commerce, and navigation within her Dominions, the enjoyment of the same protection and privileges which are or may be enjoyed by the subjects, vessels, commerce, and navigation of the most favoured nation.

ARTICLE 6.

The perfect security which His Highness the Bey accords to the British merchants and subjects who may reside in the Regency extends likewise to the free exercise of the rites of their religion. They shall be free to erect churches, upon the application of the British Agent and Consul General to His Highness the Bey, who will grant the necessary permission. The British Cemetery of Saint George, and other burial places, now or hereafter to be established, shall be protected and respected as heretofore.

ARTICLE 7

His Highness the Bey engages that he will not prohibit the importation into the Regency of any article the produce and manufacture of the dominions and possessions of Her Britannic Majesty, from whatever place arriving, and that the duties to be levied upon such articles of produce or manufacture so imported shall in no case exceed one fixed rate of 8 per cent, *ad valorem*, to be calculated upon the value of such merchandize at the place of landing, or a specific duty, fixed by common consent, equivalent thereto.

Such articles, after paying 8 per cent. import duty, shall not be subject to any other internal charge or impost whatsoever, whether the buyer be a Tunisian or a foreigner. And if such articles should not be sold for consumption in the Regency, but should be re-exported within the space of one year, the Administration of the Customs shall be bound, provided the bales or packages have not been opened, to restore, at the time of their re-exportation, the duty levied to the merchant, who shall be required first to furnish proofs that the goods so exported have paid the said import duty.

After the expiration of one year the merchant shall be free to re-export his foreign goods without claiming the drawback, and the Custom-house shall not levy upon them any duty whatsoever on re-exportation.

Should a British merchant or his agent desire to convey, by sea or by land, from one port or place to another port or place

in the Regency of Tunis, goods upon which the *ad valorem* duty above mentioned has been already paid, such goods shall be subject to no further duty, either on their embarkation or disembarkation, provided they be accompanied by a certificate from the Tunisian Administrator of Customs that the duty has been paid.

And it is moreover agreed that no other or higher duties shall be imposed on the importation of any article the produce or manufacture of one of the Contracting Parties into the country of the other, which shall not equally extend to the like articles being the produce or manufacture of any other country.

ARTICLE 8.

Vessels navigating under the British flag and vessels navigating under the Tunisian flag shall be free to carry on the coasting trade in the States and Dominions of the Contracting Parties. They shall enjoy the same rights and immunities as are enjoyed by national vessels, and they shall be free either to land a portion of their cargoes, or to embark goods, foreign or native, to complete their cargoes, in each other's ports, without being obliged in each case to procure any special license from the Local Authorities, or to pay any charges and dues that are not paid by national vessels.

The stipulations of this Article shall, however, as regards the Colonial coasting trade, be deemed to extend only to the coasting trade of such of the Colonial possessions of Her Britannic Majesty as; under the provisions of the Act relating thereto, may have opened their coasting trade to foreign vessels.

ARTICLE 9.

His Highness the Bey formally engages to abolish all monopolies of agricultural produce or of any other article whatsoever, save and except tobacco and salt, and save and except the fisheries, and the tannery of hides of oxen, camels, and horses.

British subjects, however, or their agents, buying or selling salt and tobacco in virtue of licenses or permits for consumption

in the Regency of Tunis, shall be subject to the same regulations as the most favoured Tunisian subjects trading in the two articles aforesaid; and, furthermore, they shall be free to compete for, obtain, and exercise the right of fishery, subject to the local laws and regulations.

ARTICLE 10.

If British merchants or their agents in the Regency of Tunis should purchase any article of Tunisian produce or manufacture for internal consumption, the said merchants or their agents shall not pay, on the purchase and sale of such articles, any higher duties or charges than are paid, under similar circumstances, by the most favoured class of Tunisians or foreigners engaged in the internal trade of the Regency of Tunis. In like manner Tunisian merchants or their agents in the British dominions shall not pay on the purchase and sale of British produce or manufactures, for internal consumption in the said dominions, higher duties or charges than are paid by British subjects or the most favoured foreigners engaged in the internal trade of the said dominions, upon similar articles of produce or manufacture.

ARTICLE 11.

If a British merchant or his agent shall purchase for exportation any article of Tunisian produce or manufacture, either at the place where such article is produced or in its transit from that place to another, upon which article of produce or manufacture the internal taxes known by the names of "Ushr", "Kanoon", and "Mahsoulat", and others, have been already levied, such article of produce or manufacture shall be subject at the port of shipment to the payment of the export duty only, and the notarial fees and charges for measurement established by law.

ARTICLE 12.

In case of any dispute arising between the Custom-house and a merchant regarding the value to be put upon any mer-

chandize or goods imported by him into the Regency of Tunis, the merchant shall be free to pay the duty in kind, in the most equitable manner.

Should, however, the merchant be unable or unwilling to make use of the above faculty, the Custom-house shall have the right to purchase such merchandize or goods at the price at which the merchant has valued them, with an augmentation of 5 per cent.

But should the foregoing two modes fail to solve the difficulty, His Highness the Bey and Her Majesty's Agent and Consul-General shall each name an arbitrator, being a merchant, and, in case of a divergence of opinion, the two arbitrators shall name an umpire, also a merchant, whose decision shall be final.

ARTICLE 13.

With a view to the encouragement of agriculture, His Highness the Bey furthermore engages to permit the importation, free of import duty and of every other internal charge, of agricultural implements and machinery, as well as of cattle and animals for the improvement of the native breeds, whenever such agricultural implements, machinery, cattle, and animals are proved to be for private use and not for purposes of trade, in which latter case they shall be subject to the payment of an import duty not exceeding 8 per cent.

ARTICLE 14.

In case the importation of foreign wheat, barley, and Indian corn should be rendered necessary in consequence of the failure of the crops, in consequence of famine or other causes, which God forbid, such foreign wheat, barley, and Indian corn shall be as heretofore exempt from the payment of any import duty, and shall be subject only to the payment of 20 karoobs ($7\frac{1}{2}$ d.) per kaffis.

With the exception of the above three articles, all other foreign provisions, such as rice, lentils, beans, and other pulse known by the appellation of "Hashahesh" (dried vegetables) shall pay an import duty not exceeding 8 per cent., but the

importer or his agent shall be free to sell such provisions in retail or in any other manner without the payment of any other charge whatsoever.

ARTICLE 15.

It is understood between the Contracting Parties that the Tunisian Government reserves to itself the faculty and right of issuing a general prohibition against the importation into the Regency of gunpowder, unless Her Majesty's Agent and Consul-General shall think fit to apply for a special license, which license shall, in that case, be granted, provided no valid objection thereto can be alleged.

Gunpowder, when allowed to be imported, shall be subject to a duty not exceeding 8 per cent., and shall be liable to the following regulations :

1. It shall not be sold by subjects of Her Britannic Majesty in quantities exceeding the quantities prescribed by the local regulations.

2. When a cargo, or a large quantity of gunpowder arrives in a Tunisian port on board a British vessel, such vessel shall be anchored at a particular spot, to be designated by the local authorities, and the gunpowder shall then be conveyed, under the inspection of such authorities, to dépôts or fitting places, designated by the Government, to which the parties interested shall have access under due regulations.

Gunpowder imported in contravention of the prohibition, or in the absence of the license aforementioned, shall be liable to confiscation, save and except small quantities of gunpowder for sporting reserved for private use, which shall not be subject to the regulations of the present Article.

Cannon, arms of war, or military stores, as well as anchors, masts, and chain cables, shall be imported free of duty, provided they are landed at the opened and recognized ports ; provided, also, that previous to the landing of cannon the permission of the Government is obtained.

ARTICLE 16.

The people of the Contracting Parties shall have the right to establish in each other's country commercial, industrial,

and banking companies, co-operative, or mutual or shareholding associations, or any other association, whether between and amongst themselves, or between them and Tunisian subjects or subjects of any other Power ; provided the object of such companies and associations be lawful, and subject always to the laws of the country in which they shall be established.

It is , however, understood, that no joint stock companies limited, whose capital is made up of nominal shares to bearer, and no anonymous association shall be established in their respective territories without the authorization of the local Government.

ARTICLE 17.

British subjects and Tunisian subjects shall be free to exercise be free to exercise in each other's country any art, profession, or industry ; to establish manufactories, and factories, and to introduce steam machinery or machinery moved by any other power, without being subjected to any other formality or to the payment of higher or other taxes and imposts than those prescribed by the laws or municipal regulations, or which are paid by natives.

It is understood that the manufactories and their appurtenances, being immovable property, shall be subject to the provisions of the Convention of October 10th, 1863, relative to the permission granted to British subjects to hold real property in the Regency of Tunis.

ARTICLE 18

No harbour, pilotage, light-house, or quarantine dues, or other local dues, shall be levied upon British vessels, which are not imposed upon Tunisian vessels or upon the vessels of the most favoured nation.

If a British vessel shall enter a Tunisian port from stress of weather and depart, it shall not be subject to the payment of the aforesaid dues, but shall pay only the fee to the pilot, should a pilot be required. Should such vessel, however, visit a Tunisian port for the purpose of procuring water and

of purchasing provisions, it shall pay only a portion, not exceeding half, of the harbour, pilotage, light-house, and quarantine or other local dues payable at the said port.

In like manner Tunisian vessels which shall visit any of the ports of Her Majesty's dominions shall pay only the harbour, quarantine, and other dues which are levied upon British vessels.

ARTICLE 19.

The captains of merchant-vessels having goods on board destined for the Regency of Tunis shall, on their arrival at the port where such goods are to be landed, deposit in the Custom-house of such port a true copy of their manifest.

ARTICLE 20.

If a British subject be detected in smuggling into the Regency any description of goods or should be detected in embarking any goods, the produce of Tunis for which he can exhibit no Custom-house permit, such goods shall be confiscated by the Tunisian Treasury, but a report or *procès-verbal* of the alleged contraband must, as soon as the said goods are seized by the authorities, be drawn up and communicated to the British Consular authorities, and no goods can be confiscated as contraband unless the fraud with regard to them shall be duly and legally proved.

It is stipulated that vessels navigating under the British flag shall submit to the regulations of the port ; that such vessels, sponararas, boats, and the like craft shall not serve as depôts for merchandize ; and that whenever their detention in the Tunisian ports shall exceed eight calendar months, they shall, when required to do so, give satisfactory explanations to the British Consular authority and to the Local Authorities in regard to the motive of their detention in such ports. Should such explanations be deemed unsatisfactory, the Custom-house may, with the consent of Her Majesty's Agent and Consul-General, place a guard on board for the prevention of fraud, the expenses for such guard being at the charge of the vessel.

ARTICLE 21.

Should British subjects desire to embark in, or discharge goods from any vessel, they can employ the Tunisian Custom-house boats, paying the usual charges for the use of such boats. They are free, however, to discharge their merchandise without using the Custom-house boats, in which case they will apprise the Administration of the Customs of it in writing, taking care to mention, on the arrival of each steamer or vessel having goods on board to their consignment, that they will be present themselves, or be represented by their agents, to assist at the discharge of said goods. In case of their absence, however, the Custom-house will proceed to discharge their goods, rendering itself responsible as heretofore, unless in a case of "force majeure". Nor sort of claim can be preferred by the consignee against the Custom-house on the plea that it had not the right to discharge his goods, seeing that the discharge is made with the sanction of the master of the vessel and not with that of the Custom-house.

Every consignee who discharges his goods after making the demand in writing, will provide himself with a Custom-house officer, who will accompany him to the vessel and return with him to the Custom-house. The fee to the Custom-house officer shall be paid by the merchant.

ARTICLE 22.

Whenever the Tunisian Government shall temporarily prohibit the exportation of wheat, barley, cattle, or any other article of native produce, such prohibition shall not come into operation until three months after official notification shall have been given, and shall apply only to the specific article or articles mentioned in the Decree enacting the prohibition.

ARTICLE 23.

No British subject, nor any person under British protection, shall, in the Regency of Tunis, be made liable to pay a debt due from another person of his nation unless he shall have made himself responsible or guarantee for the debtor

by a valid document. Neither shall any British subject be compelled to sell anything to, or to buy anything from, a Tunisian without his own free will. The seller shall be obliged to deliver up to the purchaser only that portion of the goods which he voluntarily sold to him, and the purchaser shall have no claim or right upon the remaining portion of such goods or merchandise.

In like manner, no Tunisian subject in the Dominions of the Queen of Great Britain shall be made liable to pay a debt due from another person of his nation to a British subject, unless he shall have made himself responsible or guarantee for the debtor by a valid document.

ARTICLE 24.

In all criminal cases and complaints where the prosecutor and prisoner are British subjects, and in all civil differences, disputes, or litigation which may occur between British subjects exclusively, the Agent and Consul-General, Consul, or other British authority, shall be sole judge or arbiter. No one shall interfere, but they shall be amenable to the British Consular Courts only.

All civil differences, disputes, or litigations between British subjects and the subjects of any foreign country other than Great Britain, shall be decided solely in the Tribunals of the foreign Consuls, according to the usages heretofore established, or which may hereafter be arranged between such Consuls, without the interference of the Tunisian Courts or Government.

ARTICLE 25.

Disputes and differences arising between a British and a Tunisian subject, whether the British subject is plaintiff or defendant, of a commercial and civil nature (criminal and correctional excepted), shall be settled by His Highness the Bey, or his delegate, in the presence and with the concurrence of the British Consul-General or Consul.

It is likewise agreed that, should any new procedure differing from the above, be adopted and applied at present, or in future, in the treatment of any other nation, the British

subjects, without exception, shall be entitled to the enjoyment thereof, whenever Her Majesty's Government shall request it.

It is, however, understood that, if Mixed Courts should be at any time established in Tunis with the assent and approval of Her Majesty's Government, in that case all civil and commercial suits and disputes arising between British and Tunisian subjects shall be heard and determined by such Mixed Courts and Tribunals, according to the rules and procedure that may be agreed upon between the Contracting Parties.

ARTICLE 26.

The cognizance of crimes committed by British subjects in the Tunisian territory, as well as all contraventions of the police, and other regulations, shall devolve upon the Consul-General or Consul; and the punishment thereof shall be applied by the said Consul-General or Consul, in concurrence with His Highness the Bey. In case the criminal or offender should escape from the Consular, or other prison, the Consul-General or Consul shall not be held responsible in any manner whatsoever.

ARTICLE 27.

No quittance or receipt presented by a British subject to a Court, purporting to be a discharge of a debt which he has contracted towards a Tunisian subject, shall be held as a legal and a valid discharge, unless he can show that such quittance or receipt is under the handwriting, seal, or signature of the Tunisian subject, or duly executed by native notaries, and attested by the Cadi or the Governor of the place. And in like manner no quittance or receipt presented by a Tunisian subject, purporting to be a discharge of a debt which he has contracted towards a British subject, shall be held as a legal and valid discharge of his debt, unless he can show that such quittance or discharge is under the handwriting, signature, or mark of the British subject, duly attested by the Consul, or unless the discharge is drawn up by two notaries and attested by the British Consul.

ARTICLE 28.

Should any Tunisian subject be found guilty before the Tunisian Courts of procuring false evidence to the injury or prejudice of a British subject, he shall be severely punished by the Tunisian Government. In like manner, the competent British Consular authorities shall severely punish; according to English law, any British subject who may be convicted of the same offence against a Tunisian subject.

ARTICLE 29.

If, at any time, Her Majesty's Agent and Consul-General, Consul, Vice-Consul, or Consular Agent, should require the assistance of soldiers, guards, armed boats, or other aid for the purpose of arresting or transporting any British subject, the Tunisian authorities shall immediately comply with the demand, on payment of the usual fees given on such occasions by Tunisian subjects.

ARTICLE 30.

If a ship belonging to the Queen of Great Britain, or to any of Her subjects, should be wrecked or stranded on any part of the coast of the Regency of Tunis, the Tunisian authorities within whose jurisdiction the accident may occur shall, in accordance with the rules of friendship, respect her and assist her in all her wants. They shall allow and enable the master to take such steps as he may think necessary or desirable, and shall take immediate steps for the protection of her crew and of her cargo, and of any goods, papers, or other articles which may be saved from her at the time of the wreck or afterwards; and, moreover, they shall lose no time in informing the nearest British authority of the accident. They shall deliver over to him, without exception or loss, all the cargo, goods, papers, and articles which have been saved and preserved from the wreck, and they shall likewise furnish the master and the crew of the wrecked ship with such victuals and provisions as they may require, for which they shall receive payment. For their friendly aid

and services in protecting, saving, preserving, and restoring to the British Consular authorities the goods and contents saved through their exertions from the wrecked vessel, or any portion thereof, they shall be entitled to such an amount of salvage as Her Majesty's Agent and Consul-General and the Chief Tunisian authority on the spot shall judge a fair compensation for their services. The master and crew shall be at liberty to proceed to any place they please, and at any time they may think proper, without any hindrance.

In like manner, the ships of His Highness the Bey, or of Tunisian subjects, shall be assisted and protected in the dominions of the Queen of Great Britain as though they were British ships, and shall be subject only to the same lawful charges of salvage to which British ships, under similar circumstances, are liable.

ARTICLE 31.

Should, however (which God forbid), the crew of any portion of the crew of a wrecked or stranded British vessel be murdered by the natives, or its cargo, or any part of its cargo or contents, be stolen by them, the Tunisian Government binds itself to take the most prompt and energetic measures for seizing the marauders or robbers, in order to proceed to their severe punishment. It, moreover, engages to make the most diligent search for the recovery and restitution of the stolen property; and whatever compensation for the damage done to individuals or to their effects, under similar circumstances, is granted, or may hereafter be granted to the subjects of the most favoured nation, or the equivalent of it, shall be also accorded to the subjects of the Queen of Great Britain.

ARTICLE 32.

It is agreed and covenanted that if any of the crew of Her Majesty's ships of war or of British merchant-vessels, of whatever nationality they may be, borne on the papers of said ships, shall desert within any port in the Regency of Tunis, the authorities of such port or territory shall be bound

to give every assistance in their power for the apprehension of such deserters, on the application of the British authority. In like manner, if any of the crew of the ships of His Highness the Bey, or of Tunisian merchant-vessels, not being slaves, shall desert in any of the ports or harbours, within the dominions of Her Majesty the Queen of Great Britain, the authorities of such ports or harbour shall give every assistance in their power for the apprehension of such deserters on the application of the Commanding Officer, Captain, or any other Tunisian authority, and no person whatsoever shall protect or harbour such deserters.

ARTICLE 33.

The ships of war belonging to Her Majesty the Queen, and the ships belonging to His Highness the Bey, shall have free liberty to use the ports of each country for washing, cleansing, and repairing any of their defects, and to buy for their use any sort of provisions alive or dead, or any other necessaries, at the market price, without paying custom to any officer.

And it is moreover agreed that, whenever any of Her Majesty's ships of war shall arrive in the Bay of Tunis, and shall fire a salute of twenty-one guns, the Castle of the Goletta, or the Tunisian ships of war, shall return the same number of guns as the Royal salute to Her Majesty's colours, according to ancient usage.

ARTICLE 34.

The Government of the Queen of the United Kingdom of Great Britain and Ireland, in consideration of the sincere friendship that has at all times existed between Her Majesty and His Highness the Bey, agrees that Tunisian ships and cargoes shall be received at the ports and harbours of the British dominions upon the same footing as British vessels and cargoes.

ARTICLE 35.

British vessels arriving in any of the Tunisian ports for the purpose of trade or by reason of stress of weather, or to

repair damages, shall not be compelled to discharge their cargoes or any portion of their cargoes, and they shall not be made to change their destination or to receive any passengers on board unless it be with their own free will, but they shall be respected, and they shall be allowed to depart without any hindrance. Should they be compelled to land their cargoes, or a portion thereof, in order to effect repairs, they shall also be permitted to re-embark such goods free of any duty or charge whatsoever.

Tunisian vessels shall receive the like friendly treatment in ports and harbours of the British dominions.

ARTICLE 36.

If any British subject should die in any place or territory appertaining to His Highness the Bey, no Governor or other Tunisian officer shall, on any pretence whatsoever, take possession or dispose of, or interfere with the goods and property of the deceased, but such goods and property, of whatever description, may be taken possession of by his heirs, or by the British Consular authority, without any hindrance or impediment whatsoever on the part of such Governor or Tunisian officer.

If, however, a British subject should die at a place where there is no British Consul, or whilst travelling, in such a case the Tunisian authorities of the place where he died shall be bound to preserve and protect his goods and effects; they shall make, with the assistance of notaries, a faithful inventory of them, which inventory they shall lose no time in sending to the nearest Governor of a place where an English Consul resides.

Should the deceased British subject leave behind him debts due from him to a native, the Consul-General or his deputy shall assist the creditor in the recovery of his claim upon the estate of the deceased; and, likewise, if the deceased should leave behind debts due to him from Tunisians, the Governor, or those who have such power, shall compel the debtors to pay what is due by them to the Consul-General or his deputy, for the benefit of the estate of the deceased.

ARTICLE 37.

The British Government and His Highness the Bey, moved by sentiments of humanity and having regard to the free institutions which, under Providence, their respective countries happily enjoy, mutually engage to do all in their power for the suppression of slavery. Whilst, on the one part, the British Government engage not to relax their efforts with friendly powers for the prevention of the barbarous traffic in human beings, and for the emancipation of slaves, His Highness the Bey especially engages, on the other, to cause the Declaration of Moharem, 1262 (23rd January, 1846), abolishing for ever slavery in the Regency, to be obeyed and respected, and to use his utmost efforts to discover and punish all persons within his Regency who contravene or act contrary thereto.

ARTICLE 38.

The British Government and His Highness the Bey engage to do all in their power for the suppression of piracy ; and His Highness especially engages to use his utmost efforts to discover and punish all persons on his coasts or within his territory who may be guilty of that crime, and to aid the British Government in so doing.

ARTICLE 39.

Privateering is now and for ever abolished : His Highness the Bey being desirous to maintain inviolable the neutrality of the Regency of Tunis, it has been established and agreed that, in case of war or hostilities, he shall not permit the enemies of Her Majesty the Queen of Great Britain to fit out privateers in the ports of the Regency, or to sail from them to prey upon the ships and commerce of her subjects, and it is moreover established that His Highness shall not permit or tolerate in the Regency of Tunis the sale of any prize whatsoever which shall have belonged or may belong to the belligerents.

The Queen of Great Britain will cause to be observed the same rules of neutrality towards Tunisian ships and subjects in all the seaports of Her Majesty's dominions.

ARTICLE 40.

In order that the two Contracting Parties may have the opportunity of hereafter treating and agreeing upon such other arrangements as may tend still further to the improvement of their mutual intercourse, and to the advancement of the interests of their respective people, it is agreed that at any time after the expiration of seven years from the date of the present Convention of Commerce and Navigation, either of the High Contracting Parties shall have the right to call upon the other to enter upon a revision of the same ; but until such revision shall have been accomplished by common consent, and a new Convention shall have been concluded and put into operation, the present Convention shall continue and remain in full force and effect.

ARTICLE 41.

If any doubt should arise with regard to the interpretation or the application of any of the stipulations of the present Convention, it is agreed that in Tunis the interpretation the most favourable to British subjects shall be given, and in Her Majesty's dominions that most favourable to Tunisians.

It is not pretended by any of the foregoing Articles to stipulate for more than the plain and fair construction of the terms employed, nor to preclude in any manner the Tunisian Government from the exercise of its rights of internal administration where the exercise of those rights does not evidently infringe upon the privileges accorded by the present Convention to British subjects or British commerce.

ARTICLE 42.

The stipulations of the present Convention shall come into immediate operation and shall be substituted for the stipulations of all preceding Treaties between Great Britain and Tunis, with the exception of the Convention of October 10th, 1863, already referred to in Article 17 preceding, which is renewed and confirmed.

This Convention has been written in triplicate, consisting

in forty-two Articles, besides the introduction, and contained in the preceding forty-three pages, to be signed by both parties, and to be executed in the manner explained and clearly set forth in its several provisions, having for object the duration, confirmation, and maintenance of amity between them.

Dated Monday, the sixteenth day of Gumad-el-Thany, 1292 of the Hegira, corresponding to the nineteenth of July, 1875.

(L. S.) RICHARD WOOD.

(L. S.) MUHAMMAD AS-SADIG PASHA,
Bey.

Appendix 6.

EARL GRANVILLE TO M. TISSOT.

Foreign Office, London, June 20th, 1883.

M. l'Ambassadeur,

In my note to Count d'Aunay of the 14th ultimo, I had the honour to acknowledge the receipt of the *note verbale*, which he was good enough to place in my hands on May 10th, enclosing the text of the French law establishing French jurisdiction in Tunis, of a decree of the Bey authorising that measure, and of two administrative regulations on the same subject. The note expressed the desire of the French Government that British subjects residing in the Regency should be, in future, amenable to the new jurisdiction thus created.

The question of the abandonment of the Queen's exterritorial jurisdiction over British subjects in the Regency of Tunis, which is vested in Her Majesty under the Capitulations and recent treaties, has occupied the careful attention of Her Majesty's Government; and the examination of the documents enclosed in Count d'Aunay's note has suggested some enquiries into their precise meaning and effect, which I desire

to submit to your Excellency, with the request that you will be good enough to furnish me, at your convenience, with the further information required by Her Majesty's Government. All those enquiries being more or less of a technical nature, I have thought it more convenient to present them in the form of a memorandum which I have the honour to enclose.

As I have had occasion to inform your Excellency, in the course of conversation on this subject, Her Majesty's Government are quite disposed to waive the rights of this country, under the Capitulations and treaties, to the extent which may be required to give full scope to the exercise of civil and criminal jurisdiction over British subjects by the new French tribunals.

They do not, however, believe that it would be expedient to extend the change beyond what is required by the circumstances of the case, and they lay much stress, for instance, on the maintenance of those privileges and immunities which are enjoyed by consular officers in the East, and which partake of the character of those accorded to diplomatic agents in Europe.

Subject to these reserves, and to the explanations which your Excellency may be good enough to furnish me on the points referred to in the enclosed memorandum, Her Majesty's Government will have much pleasure in acceding to the request of the French Government, and will take the proper measures to relieve Her Majesty's consular officers in the Regency of their judicial functions as soon as the other foreign Governments represented in Tunis have signified their willingness to adopt a similar course.

I have, &c.

GRANVILLE.

Appendix 7.

ORDER IN COUNCIL DATED DECEMBER 31ST, 1883.

At the Court at Osborne House, Isle of Wight, the 31st day of December, 1883.

Present :

The Queen's Most Excellent Majesty.
 His Royal Highness Prince Leopold, Duke of Albany.
 Lord President.
 Sir Henry Ponsonby.

Whereas by Treaty, Capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction in the Regency of Tunis ; and whereas the exercise of the power and jurisdiction aforesaid is now regulated by an Order of Her Majesty in Council made the 12th day of December, 1873, and several amending Orders in Council, and by the Ottoman (Tunis) Order in Council of 1881, establishing Her Britannic Majesty's Court for Tunis ;

And whereas by virtue of certain laws of the French Republic and of certain Decrees of His Highness the Bey of Tunis, French tribunals have been established in the Regency ;

And whereas by a Decree of His Highness the Bey of Tunis, dated March 5th, 1883, it is declared that the subjects of Foreign Powers whose Consular Courts in the Regency shall be abolished, shall be justiciable by the said French tribunals under the same conditions as French subjects ;

And whereas Her Majesty the Queen has consented to abandon Her Consular Jurisdiction with a view to British subjects in the Regency becoming justiciable by the said French tribunals, under the same conditions as French subjects, and to the extent of the jurisdiction vested by law in the said tribunals :

Now therefore, Her Majesty by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Acts 1843 to 1878, or otherwise in Her Majesty vested, is pleased by and

with the advice of Her Privy Council, to order, and it is hereby ordered as follows :

As regards all such matters and cases as come within the jurisdiction of the said French tribunals, the operation of the Orders in Council regulating Her Majesty's Consular Jurisdiction in Tunis shall cease to be in force and operation within the Regency on and after the 1st day of January, 1884, except as regards any judicial matters pending in Her Britannic Majesty's Court for Tunis on the day above mentioned.

And the Right Honourable the Earl Granville, one of Her Majesty's Principal Secretaries of State, and the Lords Commissioners of the Treasury and the Lords Commissioners of the Admiralty are to give the necessary directions herein as to them may respectively appertain.

C. L. PEEL.

Appendix 8.

CONVENTION BETWEEN GREAT BRITAIN AND FRANCE RELATIVE TO TUNIS. — SIGNED AT PARIS, SEPTEMBER 18th, 1897.

[Ratifications exchanged at Paris, October 15th, 1897.]

With a view to determine the relations of the United Kingdom of Great Britain and Ireland and France in the Regency of Tunis, and to clearly define the position as established by convention of the aforesaid United Kingdom in the Regency, the undersigned, duly authorised by their respective Governments, have agreed as follows :

ARTICLE I.

The treaties and conventions of every kind in force between the United Kingdom of Great Britain and Ireland and France are extended to the Regency of Tunis.

The Government of Her Britannic Majesty will abstain from claiming for its consuls, its subjects and its establish-

ments in the Regency of Tunis other rights and privileges than those secured for it in France.

Moreover, the treatment of the most favoured nation,¹⁾ which is secured on either side by the aforementioned treaties and conventions, and the reciprocal enjoyment of the lowest customs tariff are guaranteed to the United Kingdom of Great Britain and Ireland in the Regency of Tunis and to the Regency of Tunis in the United Kingdom for a period of forty years from the date of the exchange of ratifications of the present agreement.

All merchandise and all manufactured goods, the produce of the United Kingdom, imported into the Regency of Tunis, either directly or after transshipment at Malta, shall enjoy the advantages conceded by the present article.

It is further understood that the treatment of the most favoured nation in the Regency of Tunis does not comprise the treatment enjoyed by France.

ARTICLE 2.

Cotton goods, the produce of the United Kingdom and of British colonies and possessions, shall not be subject in the Regency of Tunis to import duties higher than 5 per cent, *ad valorem* at the port of discharge. They shall not be charged with any other tax or impost whatsoever.

This provision shall remain in force until December, 31st 1912, and, after that date, until the expiration of six months from the day on which one of the contracting parties shall have notified to the other its intention of terminating its operation.

ARTICLE 3.

The present agreement shall be ratified, and the ratifications thereof shall be exchanged at Paris as soon as possible.

It shall come into force immediately after the exchange of ratifications.

1) See Appendix No. 9. — Notes of March 8/May 23, 1919.

The existing customs tariff on imports into the Regency of Tunis shall, however, continue to be applied until December, 31st 1897.

Done at Paris, in duplicate, September, 18th 1897.

(L.S.) EDMUND MONSON.

(L.S.) G. HANOTAUX.

[*French text.*]

En vue de déterminer les rapports du Royaume-Uni de la Grande-Bretagne et d'Irlande et de la France en Tunisie, et de bien préciser la situation conventionnelle dudit Royaume-Uni dans la Régence, les soussignés, dûment autorisés par leurs Gouvernements respectifs, sont convenus de ce qui suit :

ARTICLE 1^{er}.

Les traités et conventions de toute nature en vigueur entre le Royaume-Uni de la Grande-Bretagne et d'Irlande et la France sont étendus à la Tunisie.

Le Gouvernement de Sa Majesté britannique s'abstiendra de réclamer pour ses consuls, ses ressortissants et ses établissements en Tunisie d'autres droits et privilèges que ceux qui lui sont acquis en France.

En outre, le traitement de la nation la plus favorisée, qui est assuré de part et d'autre par les traités et conventions précités et la jouissance réciproque des tarifs de douane les plus réduits, sont garantis au Royaume-Uni de la Grande-Bretagne et d'Irlande en Tunisie et à la Tunisie dans le Royaume-Uni pendant une durée de quarante années à partir de l'échange des ratifications du présent arrangement.

Toutes les marchandises et tous les produits manufacturés, originaires du Royaume-Uni, importés en Tunisie, soit par la voie directe, soit après transbordement à Malte, jouiront des avantages concédés par le présent article.

Il est, d'ailleurs, entendu que le traitement de la nation la plus favorisée en Tunisie ne comprend pas le traitement français.

ARTICLE 2.

Les cotonnades originaires du Royaume-Uni et des colonies et possessions britanniques ne pourront pas être frappées en Tunisie de droits d'importation supérieurs à 5 pour cent de leur valeur au port de débarquement. Elles ne seront pas grevées d'autres taxes ou impôts quelconques.

Cette disposition restera en vigueur jusqu'au 31 décembre 1912, et, après cette date, jusqu'à l'expiration du sixième mois à partir du jour où l'une des parties contractantes aura notifié à l'autre son intention d'en faire cesser les effets.

ARTICLE 3.

Le présent arrangement sera ratifié, et les ratifications en seront échangées à Paris aussitôt que faire se pourra.

Il entrera en vigueur immédiatement après l'échange des ratifications.

Toutefois, le tarif actuel des douanes à l'importation en Tunisie continuera à être appliqué jusqu'au 31 décembre 1897.

Fait à Paris, en double exemplaire, le 18 septembre 1897.

(L. S.) EDMUND MONSON.

(L. S.) G. HANOTAUX.

Appendix 9.

Notes exchanged between Great Britain and France modifying the Anglo-French Convention relative to Tunis, signed at Paris, September 18, 1897. — London, March 8 to May 23, 1919.

(I.)

THE FRENCH AMBASSADOR IN LONDON TO THE
SECRETARY OF STATE FOR FOREIGN AFFAIRS.

Ambassade de France,
Londres, le 8 mars 1919.

M. le Comte,

Pour faire suite à mes lettres des 7 et 10 septembre dernier, je suis chargé par le Gouvernement français de notifier la dénonciation de l'article 2 de la Convention franco-britannique du 18 septembre 1897, relative à la Tunisie.

En même temps, je suis chargé de proposer au Gouvernement britannique le texte suivant, qui tient compte des observations contenues dans la lettre de Mr. Balfour du 26 octobre dernier :

“Les deux Gouvernements s'entendent pour considérer comme abrogé l'article 1er de l'arrangement franco-anglais du 18 septembre 1897, concernant la Tunisie dans sa partie relative au traitement de la nation la plus favorisée. Toutefois, sans préjudice des arrangements qui pourront être ultérieurement conclus entre les deux pays et qui seront de nature à modifier d'un commun accord la condition qui suit, le Gouvernement français, à la demande du Gouvernement britannique, s'engage à ne pas accorder aux sujets et protégés ou aux marchandises d'une tierce Puissance tel traitement qui ne soit effectivement applicable aux sujets et protégés ou aux marchandises du Royaume-Uni de la Grande-Bretagne et d'Irlande, pendant le temps pour lequel la disposition correspondante de l'article 1er de l'arrangement de 1897

avait été convenue. Il y aura naturellement réciprocité pour les sujets et les marchandises de Tunisie dans le Royaume-Uni. Dans ces conditions, le Gouvernement de la République prie le Gouvernement de Sa Majesté britannique de prendre en outre acte de la dénonciation de l'article 2 dudit arrangement, cette dénonciation devant porter la date du 10 mars 1919 et produire son effet, ainsi qu'il a été prévu dans cet article lui-même, six mois après sa notification."

Veillez agréer, etc.

PAUL CAMBON.

(2.)

THE SECRETARY OF STATE FOR FOREIGN AFFAIRS
TO THE FRENCH AMBASSADOR IN LONDON.

Foreign Office, May 23rd, 1919.

Your Excellency,

I have the honour to inform you that His Majesty's Government concur in the terms of the denunciation of article 2 of the Franco-British Convention of September 18th, 1897, relative to Tunis, as suggested in the note which your Excellency was good enough to address to me on March 8th last.

I have etc.

CURZON OF KEDLESTON.

Appendix 10.

CONSULAR CONVENTION BETWEEN FRANCE AND
ITALY IN REGARD TO TUNIS. — SIGNED AT PARIS,
SEPTEMBER 28th, 1896.

[Ratifications exchanged at Paris, January 25th, 1897.]

Le Président de la République Française, agissant tant en son nom qu'au nom de Son Altesse le Bey de Tunis, et Sa Majesté le Roi d'Italie, également désireux de régler l'établis-

sement des Tunisiens en Italie et des Italiens en Tunisie, et de déterminer avec toute l'extension et la clarté possibles les droits, pouvoirs, attributions, privilèges, et immunités de leurs Agents Consulaires respectifs en tant qu'ils sont chargés de la protection des Tunisiens et de leurs intérêts en Italie et de la protection des Italiens et de leurs intérêts en Tunisie, ont résolu de conclure une Convention à cet effet, et ils ont nommé pour leurs Plénipotentiaires, savoir :

Le Président de la République Française, son Excellence M. Gabriel Hanotaux, Ministre des Affaires Étrangères, etc. ; et

Sa Majesté le Roi d'Italie, son Excellence le Comte Joseph Tornielli Brusati de Vergano, Sénateur du Royaume, son Ambassadeur Extraordinaire près le Gouvernement de la République Française, etc. ;

Lesquels, après s'être communiqué leurs pouvoirs, trouvés en bonne et due forme, sont convenus des Articles suivants :

ARTICLE 1^{er}.

Les Tunisiens en Italie et les Italiens en Tunisie seront reçus et traités, relativement à leurs personnes et à leurs biens, sur le même pied et de la même manière que les nationaux et les Français ; ils jouiront des mêmes droits et privilèges en se soumettant aux conditions, aux contributions, et aux autres charges qui sont imposées aux dits nationaux et Français. Ils seront, toutefois, exempts, dans l'autre pays, de service militaire obligatoire tant dans l'armée que dans la marine, la garde nationale et la milice, comme de toute contribution en argent ou en nature qui viendrait à être imposée pour l'exonération du service militaire.

ARTICLE 2.

Les Tunisiens en Italie et les Italiens en Tunisie sont admis, sans conditions ou restrictions autres que celles résultant des lois de leur propre pays, à la jouissance des mêmes droits civils que les nationaux et les Français.

En conséquence, ils pourront librement voyager et séjourner, s'établir où ils le jugeront convenable, acquérir et posséder toutes espèces de biens meubles et immeubles, faire le

commerce tant en gros qu'en détail, exercer toutes sortes d'art, de profession, et d'industrie, louer et occuper des maisons, magasins, et boutiques, ouvrir des fabriques et des manufactures, effectuer des transports de marchandises et d'argent, recevoir des consignations tant de l'intérieur que de l'étranger, faire leurs affaires eux-mêmes et présenter à la douane leurs propres déclarations, ou bien employer à cet effet qui bon leur semblera sous le nom de mandataire, agent, interprète, consignataire, ou tout autre, remplir ces mêmes fonctions pour le compte de tiers, quelle que soit la nationalité de ces derniers, fixer comme bon leur semblera le prix des marchandises qu'ils auraient l'intention de vendre ou d'acheter ; le tout, en observant les conditions établies par les lois et les règlements du pays. Et, pour l'exercice de tous ou de l'un quelconque de ces droits et pour toutes ou quelques-unes de ces opérations, ils ne seront pas assujettis à des obligations ou à des formalités autres ou plus onéreuses et ne payeront point de droits, taxes, ou impôts autres ou plus élevés que les nationaux eux-mêmes ou que les non-nationaux qui jouiraient d'un régime plus favorable encore.

ARTICLE 3.

Les Tunisiens en Italie et les Italiens en Tunisie pourront librement établir des sociétés commerciales, industrielles, et financières, des associations mutuelles et en participation, et toute autre association, soit entre eux, soit avec des personnes d'une autre nationalité, pourvu que le but qu'ils se proposent soit légitime et qu'ils se soumettent aux lois du pays.

ARTICLE 4.

Les Tunisiens et les Italiens pourront disposer à leur volonté par donation, vente, échange, testament, ou de toute autre manière, de tous les biens meubles ou immeubles qu'ils posséderaient dans les territoires respectifs et retirer intégralement leurs biens et capitaux du pays ; ils pourront également prendre possession et disposer sans empêchements des biens, meubles ou immeubles, qui leur seraient dévolus en vertu d'une loi ou d'un testament dans les mêmes territoires ; et les dits

propriétaires, héritiers, ou légataires ne seront pas tenus d'acquitter des droits de mutation ou succession autres ou plus élevés que ceux qui seraient imposés dans des cas semblables aux nationaux ou aux non-nationaux qui jouiraient d'un régime plus favorable encore.

ARTICLE 5.

Pour être admis à ester en justice, les Italiens en Tunisie et les Tunisiens en Italie ne seront tenus de part et d'autre qu'aux conditions et formalités prescrites pour les nationaux eux-mêmes ou pour les non-nationaux qui jouiraient d'un régime plus favorable encore ; ils seront dispensés de plein droit de toute caution ou dépôt qui, sous quelque dénomination que ce soit, peut être exigée des étrangers plaidant contre les nationaux par la législation du pays où l'action est introduite.

ARTICLE 6.

Les Tunisiens jouiront en Italie et les Italiens en Tunisie du bénéfice de l'assistance judiciaire, comme les nationaux eux-mêmes et les Français, en se conformant à la loi du pays dans lequel l'assistance sera réclamée.

Dans tous les cas, le certificat d'indigence doit être délivré à l'étranger qui demande l'assistance par les autorités de sa résidence habituelle. Si le Tunisien indigent ne réside pas en Italie et si l'Italien indigent ne réside pas en France ou en Tunisie, le certificat d'indigence sera visé par l'Agent Diplomatique représentant du pays où le certificat doit être produit. Lorsque l'étranger réside dans le pays où la demande est formée, des renseignements pourront, en outre, être pris auprès des autorités Consulaires dont il relève.

ARTICLE 7.

Les Italiens en Tunisie ne sont justiciables que de la juridiction Française ; toutefois, en matière d'immeubles, à moins que ceux-ci soient immatriculés ou que toutes les parties en cause soient personnellement justiciables des Tribunaux Français, il sera statué par les Tribunaux Tunisiens et, dernier ressort, par Son Altesse le Bey.

Les assignations devant un Tribunal Tunisien destinées à un Italien seront transmises par l'intermédiaire et par ordonnance du Consul Italien, lequel sera appelé, à peine de nullité du jugement qui interviendra, à assister aux débats ou à s'y faire représenter. Les jugements rendus en matière immobilière par le Tribunal Tunisien compétent à l'encontre d'un Italien continueront à être exécutés par les autorités judiciaires françaises.

ARTICLE 8.

Les deux Hautes Parties Contractantes s'engagent à faire remettre les significations et à faire exécuter les Commissions Rogatoires en matière civile et commerciale, autant que les lois du pays ne s'y opposent pas.

Les deux Gouvernements accepteront réciproquement les actes traduits en Français, en se chargeant de leur traduction dans la langue du pays, dans les cas où leurs lois judiciaires défendraient la signification d'un acte en langue étrangère.

ARTICLE 9.

La remise des significations aura lieu sans frais pour l'État requérant dans les conditions ci-après indiquées :

Les significations de toute nature, c'est-à-dire, les citations, notifications, sommations, et autres actes de procédure dressés en Tunisie ou en Italie, et destinés à des personnes domiciliées ou résidant en Italie ou en Tunisie, seront adressés directement par le Gouvernement Français ou Italien à l'Agent Diplomatique ou Consulaire placé le plus près de l'autorité chargée de les faire remettre aux destinataires. L'Agent Diplomatique ou Consulaire les transmettra à cette autorité, qui lui enverra les récépissés délivrés par les personnes auxquelles les actes auront été remis.

ARTICLE 10.

Les Commissions Rogatoires décernées par les Tribunaux Français en Tunisie et Italiens en Italie à l'occasion d'affaires civiles ou commerciales sont transmises par la voie diplo-

matique, et exécutées d'office par les soins et sur les diligences des Magistrats du Ministère Public sans frais de timbre ni d'enregistrement.

Cette disposition n'a point pour effet d'empêcher les deux Gouvernements de réclamer respectivement le remboursement des sommes qu'ils peuvent se trouver dans la nécessité d'avancer pour l'exécution des Commissions Rogatoires décernées à l'occasion d'affaires civiles ou commerciales, telles que frais d'expertises, d'examens médicaux, de descentes sur lieux, insertions, indemnités dues à des témoins, droits revenant à des greffiers.

ARTICLE II.

Les jugemens et arrêts en matière civile et commerciale prononcés en Tunisie par les Tribunaux français et dûment légalisés auront en Italie, et ceux prononcés en Italie par les Tribunaux italiens et dûment légalisés auront en Tunisie, lorsqu'ils auront acquis la force de chose jugée, la même valeur que les jugemens et arrêts prononcés par les Tribunaux du pays. Néanmoins les dits jugemens et arrêts ne pourront être exécutés qu'après que le Tribunal compétent du pays où ils doivent recevoir leur exécution les aura déclarés exécutoires à la suite d'un jugement prononcé dans la forme sommaire, et dans lequel il sera constaté qu'ils ont été prononcés par une autorité judiciaire compétente, les parties dûment citées et régulièrement représentées, ou légalement déclarées défaillantes, et qu'ils ne contiennent aucune disposition contraire à l'ordre public et au droit public de l'État.

ARTICLE 12.

Les deux Hautes Parties Contractantes se transmettront réciproquement des expéditions dûment légalisées des actes dressés en Tunisie et en Italie par les officiers de l'état civil et concernant les Italiens et les Tunisiens.

Cette communication aura lieu tous les six mois par la voie diplomatique, sans frais, en la forme usitée dans chaque pays.

Il est expressément entendu que la délivrance ou l'acceptation des dites pièces n'a pour effet de préjuger ni les questions de nationalité, ni celles qui pourraient s'élever au sujet de la validité des mariages.

ARTICLE 13. ¹⁾

Seront considérés comme sujets tunisiens en Italie et comme sujets italiens en Tunisie ceux qui auront conservé, d'après les lois de leurs pays, la nationalité tunisienne ou italienne.

ARTICLE 14.

Le Gouvernement italien aura la faculté d'établir des Consuls-Généraux, Consuls, Vice-Consuls et Agents consulaires dans les ports, villes et localités de Tunisie où il sera permis à une tierce Puissance d'en établir.

L'*exequatur* nécessaire pour le libre exercice en Tunisie des fonctions consulaires des Agents italiens leur sera délivré sans frais, et, sur la production du dit *exequatur*, l'autorité supérieure du lieu de leur résidence prendra immédiatement les mesures nécessaires pour qu'ils puissent s'acquitter des devoirs de leur charge et qu'ils soient admis à la jouissance des exemptions, prérogatives, immunités, honneurs et privilèges qui y sont attachés.

Les Consuls-Généraux, Consuls, Vice-Consuls et Agents consulaires de la République française en Italie y sont chargés de la protection des Tunisiens et de leurs intérêts. Ils jouissent, à cet effet, de plein droit, des exemptions, prérogatives, immunités, honneurs et privilèges que les Conventions consulaires conclues entre les Gouvernements français et italien leur assurent en Italie en vue de la protection des Français et de leurs intérêts.

ARTICLE 15.

Les Consuls-Généraux, Consuls, Vice-Consuls et Agents consulaires italiens, envoyés, c'est-à-dire citoyens italiens, n'exerçant ni commerce, ni industrie, ni autre profession en dehors des fonctions consulaires, sont exempts en Tunisie des logements militaires et des contributions de guerre, ainsi que des contributions directes imposées par l'État, par les provinces ou par les communes et dont la perception se fait

1) See Protocol.

sur des rôles nominatifs; mais s'ils possédaient des biens immeubles ou des capitaux ayant leur assiette en Tunisie, ils seront soumis à toutes les taxes, charges et impositions qu'ont à payer les autres habitants du pays comme propriétaires de biens-fonds et de capitaux. Ils jouiront de l'immunité personnelle et ne pourront être arrêtés ni emprisonnés, excepté pour les faits et actes que la législation française qualifie de crimes et punit comme tels.

Les Consuls-Généraux, Consuls, Vice-Consuls et Agents consulaires italiens pourront placer au-dessus de la porte extérieure de la maison Consulaire l'écusson italien avec cette inscription: "Consulat-Général, Consulat, Vice-Consulat ou Agence consulaire d'Italie". Ils pourront également arborer le pavillon italien sur ladite maison consulaire aux jours de solennités publiques ainsi que dans les autres circonstances d'usage, mais il est bien entendu que ces marques extérieures ne pourront jamais être interprétées comme constituant un droit d'asile, mais serviront avant tout à désigner aux Italiens la Maison consulaire. Les mêmes Agents consulaires pourront encore arborer le pavillon italien sur le bateau qu'ils monteraient dans le port pour l'exercice de leurs fonctions.

ARTICLE 16.

Les Consuls-Généraux, Consuls, Vice-Consuls ou Agents consulaires italiens, envoyés, ne pourront, en Tunisie, être sommés de comparaître comme témoins devant les Tribunaux. Quand la justice locale aura besoin de recueillir auprès d'eux quelque déclaration juridique, elle devra se transporter à leur domicile pour la recevoir de vive voix, ou déléguer à cet effet un fonctionnaire compétent, ou la leur demander par écrit.

ARTICLE 17.

En cas d'empêchement, d'absence ou de décès des Consuls-Généraux, Consuls, Vice-Consuls ou Agents consulaires italiens en Tunisie, les Elèves Consuls, Chanceliers ou Secrétaires qui ont été présentés antérieurement en leurs qualités respectives seront admis de plein droit à exercer, par intérim, les fonctions consulaires. Les autorités locales devront leur

prêter assistance et protection, et leur assurer, pendant leur gestion intérimaire, la jouissance de tous les droits et immunités reconnus aux titulaires.

ARTICLE 18.

Les archives consulaires des Agents italiens en Tunisie seront inviolables en tout temps, et les autorités locales ne pourront, sous aucun prétexte, visiter ou saisir les papiers qui en font partie.

Ces papiers devront toujours être complètement séparés des livres et papiers relatifs au commerce ou à l'industrie que pourraient exercer les dits Agents consulaires

ARTICLE 19.

Les Consuls-Généraux et Consuls Italiens, envoyés, pourront, en Tunisie, nommer des Agents consulaires dans les ports et villes de leurs arrondissements consulaires respectifs, sauf l'approbation du Gouvernement territorial.

Ces Agents pourront être indistinctement choisis parmi les Italiens comme parmi les Français ou les étrangers, et ils seront munis d'un brevet délivré par le Consul qui les aura nommés et sous les ordres duquel ils devront être placés. Ils jouiront des privilèges et immunités stipulés par la présente Convention pour les Agents consulaires italiens non envoyés.

ARTICLE 20.

Les Consuls-Généraux, Consuls, Vice-Consuls et Agents consulaires d'Italie en Tunisie pourront s'adresser aux autorités de leur arrondissement pour réclamer contre toute infraction aux Traités ou Conventions existant entre les deux pays, et contre tout abus dont leurs nationaux auraient à se plaindre. Si leurs réclamations n'étaient pas accueillies par ces autorités, ils pourraient avoir recours, à défaut d'un Agent diplomatique de leur pays, au Gouvernement du pays dans lequel ils résident.

ARTICLE 21.

Les Consuls-Généraux et Consuls, ou leurs Chanceliers, ainsi que les Vice-Consuls et Agents consulaires, d'Italie en Tunisie, auront le droit de recevoir, soit dans leur Chancellerie, soit au domicile des parties, soit à bord des navires de leur nation, les déclarations que peuvent avoir à faire les capitaines, les matelots, les passagers, les négociants et tous autres ressortissants de leur pays. Ils sont également autorisés à recevoir, comme notaires, les dispositions testamentaires de leurs nationaux.

Les dits Consuls et Agents ont le droit de recevoir tout acte notarié destiné à être exécuté en Italie et intervenant soit entre leurs nationaux seulement, soit entre un ou plusieurs de leurs nationaux et des personnes résidant en Tunisie. Ils peuvent même recevoir les actes dans lesquels des Tunisiens ou des Français résidant en Tunisie sont seuls parties, lorsque ces actes contiennent des conventions relatives à des biens situés ou à des affaires à traiter en Italie.

Les Agents consulaires français en Italie auront, de leur côté, tous les droits ci dessus spécifiés à l'égard des capitaines, matelots et passagers tunisiens, et pour les actes à dresser en Italie dans l'intérêt des sujets tunisiens y résidant, ou contenant des clauses relatives à des biens situés ou à des affaires à traiter en Tunisie.

ARTICLE 22.

Les actes mentionnés à l'Article précédent auront la même force et valeur que s'ils avaient été passés devant un notaire ou autre officier public compétent du pays, lorsqu'ils ont été rédigés dans les formes voulues par les lois en vigueur en Tunisie pour les actes établis en Italie par les Consuls français dans l'intérêt de sujets tunisiens ou destinés à être produits en Tunisie, par les lois italiennes pour ceux établis en Tunisie par les Consuls d'Italie ; ils sont, d'ailleurs soumis au timbre, à l'enregistrement et à toute formalité en usage dans le pays où ils doivent recevoir leur exécution.

Les expéditions des dits actes, lorsqu'elles ont été signées ou légalisées par les Consuls ou Agents consulaires et revê-

tues du sceau officiel du Consulat ou de l'Agence Consulaire, font foi, tant en justice que hors de justice, devant tous les Tribunaux, juges et autorités de Tunisie ou Italie, au même titre que les originaux.

Dans le cas où un doute s'élèverait sur l'authenticité de l'expédition d'un acte public enregistré à la Chancellerie d'un des Consulats respectifs, on ne pourra en refuser la confrontation avec l'original à l'intéressé qui en fera la demande et qui pourra assister à cette collation, s'il le juge convenable.

Les Consuls-Généraux, Consuls, Vice-Consuls ou Agents consulaires de France et d'Italie pourront traduire ou légaliser toute espèce de documents émanés respectivement des autorités ou fonctionnaires de Tunisie ou d'Italie ; ces traductions auront, dans le pays de leur résidence, la même force et valeur que si elles eussent été faites par les interprètes jurés du pays.

ARTICLE 23.

En cas de décès d'un Tunisien en Italie ou d'un Italien en Tunisie, les autorités locales devront en donner avis immédiatement au Consul Général, Consul, Vice Consul ou Agent consulaire dans la circonscription duquel le décès aura eu lieu. Ceux-ci, de leur côté, devront donner le même avis aux autorités locales, lorsqu'ils en seront informés les premiers.

Quand un Tunisien en Italie ou un Italien en Tunisie sera mort sans avoir fait de testament ni nommé d'exécuteur testamentaire, ou si les héritiers, soit naturels, soit désignés par le testament, étaient mineurs, incapables ou absents, ou si les exécuteurs testamentaires nommés ne se trouvaient pas dans le lieu où s'ouvrira la succession, le Consul-Général, Consul, Vice Consul ou Agent consulaire auquel ressortissait le défunt aura le droit de procéder successivement aux opérations suivantes :

1. Apposer les scellés, soit d'office, soit à la demande des parties intéressées, sur tous les effets, meubles et papiers du défunt, en prévenant de cette opération l'autorité locale compétente, qui pourra y assister et apposer également ses scellés.

Ces scellés, non plus que ceux de l'Agent consulaire, ne

devront pas être levés sans que l'autorité locale assiste à cette opération.

Toutefois, si après un avertissement adressé par le Consul ou Vice-Consul à l'autorité locale pour l'inviter à assister à la levée des doubles scellés, celle-ci ne s'était pas présentée dans un délai de quarante huit heures, à compter de la réception de l'avis, cet Agent pourra procéder seul à la dite opération.

2. Former l'inventaire de tous les biens et effets du défunt, en présence de l'autorité locale, si, par suite de la notification susindiquée, elle avait cru devoir assister à cet acte.

L'autorité locale apposera sa signature sur les procès-verbaux dressés en sa présence, sans que, pour son intervention d'office dans ces actes, elle puisse exiger d'office des droits d'aucune espèce.

3. Ordonner la vente aux enchères publiques de tous les effets mobiliers de la succession qui pourraient se détériorer et de ceux d'une conservation difficile, comme aussi des récoltes et effets pour la vente desquels il se présentera des circonstances favorables.

4. Déposer en lieu sûr les effets et valeurs inventoriés ; conserver le montant des créances que l'on réalisera, ainsi que le produit des rentes que l'on percevra, dans la maison consulaire ou les confier à quelque commerçant présentant toutes garanties. Ces dépôts devront avoir lieu, dans l'un ou l'autre cas, d'accord avec l'autorité locale qui aura assisté aux opérations antérieures, si, par suite de la convocation mentionnée au paragraphe suivant, des sujets du pays ou d'une Puissance tierce se présentaient comme intéressés dans la succession *ab intestat* ou testamentaire.

5. Annoncer le décès et convoquer, au moyen des journaux de la localité et de ceux du pays du défunt, si cela était nécessaire, les créanciers qui pourraient exister contre la succession *ab intestat* ou testamentaire, afin qu'ils puissent présenter leurs titres respectifs de créance, dûment justifiés, dans le délai fixé par les lois de chacun des deux pays.

S'il se présentait des créanciers contre la succession testamentaire ou *ab intestat*, le paiement de leur créance devra s'effectuer dans le délai de quinze jours après la clôture de l'inventaire, s'il existait des ressources qui pussent être

affectées à cet emploi ; et, dans le cas contraire, aussitôt que les fonds nécessaires auraient pu être réalisés par les moyens les plus convenables ; ou enfin dans le délai consenti d'un commun accord entre les Consuls et la majorité des intéressés.

Si les Consuls respectifs se refusaient au paiement de tout ou partie des créances, en alléguant l'insuffisance des valeurs de la succession pour les satisfaire, les créanciers auront le droit de demander à l'autorité compétente, s'ils le jugeaient utile à leurs intérêts, la faculté de se constituer en état d'union.

Cette déclaration obtenue par les voies légales établies dans chacun des deux pays, les Consuls ou Vice-Consuls devront faire immédiatement la remise à l'autorité judiciaire ou aux syndics de la faillite, selon qu'il appartiendra, de tous les documents, effets ou valeurs appartenant à la succession testamentaire ou *ab intestat* ; les dits Agents demeurant chargés de représenter les héritiers absents, les mineurs et les incapables.

En tous cas les Consuls-Généraux, Consuls, et Vice-Consuls ne pourront faire la délivrance de la succession ou de son produit aux héritiers ou à leurs mandataires qu'après l'expiration d'un délai de six mois à partir du jour où l'avis du décès aura été publié dans les journaux.

6. Administrer et liquider eux-mêmes, ou par une personne qu'ils nommeront sous leur responsabilité, la succession testamentaire ou *ab intestat*, sans que l'autorité locale ait à intervenir dans les dites opérations, à moins que les sujets du pays ou d'une tierce Puissance n'aient à faire valoir des droits dans la succession ; car, en ce cas, s'il survenait des difficultés, provenant notamment de quelques réclamations donnant lieu à contestation, les Consuls-Généraux, Consuls, Vice-Consuls, et Agents consulaires n'ayant aucun droit pour terminer ou résoudre ces difficultés, les Tribunaux du pays devront en connaître selon qu'il leur appartient d'y pourvoir ou de les juger.

Les dits Agents consulaires agiront alors comme représentants de la succession testamentaire ou *ab intestat*, c'est-à-dire que, conservant l'administration et le droit de liquider définitivement la dite succession, comme aussi celui d'effectuer les ventes d'effets dans les formes précédemment indiquées, ils

veilleront aux intérêts des héritiers et auront la faculté de désigner des avocats chargés de soutenir leurs droits devant les Tribunaux. Il est bien entendu qu'ils remettront à ces Tribunaux tous les papiers et documents propres à éclairer la question soumise à leur jugement.

Le jugement prononcé, les Consuls-Généraux, Consuls, Vice-Consuls, ou Agents consulaires devront l'exécuter, s'ils ne forment pas appel, et ils continueront alors de plein droit la liquidation qui aurait été suspendue jusqu'à la conclusion du litige.

7. Organiser, s'il y a lieu, la tutelle ou curatelle, conformément aux lois des pays respectifs.

ARTICLE 24.

Lorsqu'un Tunisien en Italie ou un Italien en Tunisie sera décédé sur un point où il ne se trouverait pas d'Agent consulaire français ou italien, l'autorité territoriale compétente procédera, conformément à la législation du pays, à l'inventaire des effets et à la liquidation des biens qu'il aura laissés et sera tenue de rendre compte, dans le plus bref délai possible, du résultat de ces opérations à l'Ambassade qui doit en connaître ou au Consulat le plus voisin du lieu où se sera ouverte la succession *ab intestat* ou testamentaire.

Mais dès l'instant que l'Agent consulaire le plus rapproché du point où se serait ouverte la dite succession *ab intestat* ou testamentaire se présenterait personnellement ou enverrait un délégué sur les lieux, l'autorité locale qui sera intervenue devra se conformer à ce que prescrit l'Article précédent.

ARTICLE 25.

Ces dispositions sont applicables aux successions des Tunisiens qui, étant décédés hors d'Italie, et des Italiens qui, étant décédés hors de Tunisie, laissent, en Italie ou en Tunisie, des biens mobiliers ou immobiliers.

ARTICLE 26.

Lorsqu'un Tunisien se trouvera intéressé dans une succession ouverte sur le territoire Italien ou qu'un Italien se trou-

vera intéressé dans une succession ouverte sur le territoire tunisien, les autorités locales, quelle que soit la nationalité du défunt, devront informer de l'ouverture de la succession l'autorité consulaire française ou italienne la plus rapprochée du lieu d'ouverture de la succession.

ARTICLE 27.

Les Consuls-Généraux, Consuls, Vice-Consuls, ou Agents consulaires de France en Italie, et les Consuls-Généraux, Consuls, Vice-Consuls, ou Agents consulaires d'Italie en Tunisie, connaissent exclusivement des actes d'inventaires et des autres opérations à accomplir pour la conservation des biens et objets de toute nature laissés par les gens de mer et les passagers tunisiens et italiens qui décèdent dans le port d'arrivée, en Italie ou en Tunisie, soit à terre, soit à bord d'un navire soumis à leur autorité.

Les valeurs et effets appartenant aux marins ou passagers morts à bord d'un navire soumis à l'autorité du Consul de l'une ou l'autre des Hautes Parties Contractantes seront envoyés, dans le port d'arrivée, au Consul auquel ressortissait le défunt pour être remis à l'autorité du pays de ce dernier.

ARTICLE 28.

Les Consuls-Généraux, Consuls, Vice-Consuls, et Agents consulaires respectifs peuvent aller personnellement ou envoyer des délégués à bord des navires soumis à leur autorité, après leur admission à la libre pratique, interroger le capitaine et l'équipage, examiner les papiers du bord, recevoir les déclarations sur le voyage, la destination du bâtiment et les incidents de la traversée, dresser les manifestes et faciliter l'expédition du navire.

Les fonctionnaires de l'ordre judiciaire et administratif ne peuvent, en aucun cas opérer à bord ni recherches ni visites, sans prévenir auparavant, ou, en cas d'urgence, au moment même de la perquisition, le Consul, Vice-Consul, ou Agent consulaire de qui relève le bâtiment.

Ils doivent, également, donner, en temps opportun, au Consul, Vice-Consul, ou Agent consulaire les indications

nécessaires pour qu'il puisse assister aux déclarations que le capitaine ou l'équipage auraient à faire devant les Tribunaux ou les administrations du pays.

L'avis adressé, à cet effet, au Consul, Vice-Consul, ou Agent consulaire indique une heure précise, et, si celui-ci ne s'y rend pas en personne ou ne s'y fait pas représenter par un délégué, il est procédé en son absence.

L'intervention des Consuls ou Vice-Consuls n'est cependant pas requise pour l'accomplissement des formalités ordinaires de la part des autorités locales à l'arrivée et au départ des navires, en conformité des règlements de police, de douane et de santé, leur assistance n'étant nécessaire que dans les cas où il est question de procédures judiciaires ou administratives.

ARTICLE 29.

En tout ce qui concerne la police des ports, le chargement et le déchargement des navires et la sûreté des marchandises, biens en effets, on observera les lois, ordonnances, et règlements du pays.

Les Consuls-Généraux, Consuls, Vice-Consuls, ou Agents Consulaires seront chargés exclusivement du maintien de l'ordre intérieur à bord des navires marchands soumis à leur autorité ; ils régleront eux-mêmes les contestations de toute nature qui seraient survenues entre le capitaine, les officiers du navire et les matelots, et spécialement celles relatives à la solde et à l'accomplissement des engagements réciproquement contractés.

Les autorités locales ne pourront intervenir que lorsque les désordres survenus à bord des navires seraient de nature à troubler la tranquillité et l'ordre public à terre ou dans le port, ou quand une personne du pays ou ne faisant pas partie de l'équipage s'y trouvera mêlée.

Dans tous les autres cas, les autorités précitées se borneront à prêter tout appui aux Consuls, Vice-Consuls, ou Agents consulaires, si elles en sont requises par eux, pour faire arrêter et conduire en prison tout individu inscrit sur le rôle de l'équipage, chaque fois que pour un motif quelconque les dits Agents le jugeront convenable.

ARTICLE 30.

Les Consuls-Généraux, Consuls, Vice-Consuls, ou Agents consulaires pourront faire arrêter et renvoyer, soit à bord, soit dans leur pays, les marins et toute autre personne faisant, à quelque titre que ce soit, partie des équipages des navires de commerce, de guerre ou de plaisance soumis à leur autorité, qui auraient déserté.

A cet effet ils devront s'adresser par écrit aux autorités locales compétentes, et justifier, au moyen de la présentation des registres du bâtiment ou du rôle de l'équipage, ou, si le navire était parti, en produisant une copie authentique de ces documents, que les personnes réclamées faisaient réellement partie de l'équipage. Sur cette demande, ainsi justifiée, la remise des déserteurs ne pourra être refusée.

On donnera, en outre, aux dits Agents consulaires tout secours et toute assistance pour la recherche et l'arrestation de ces déserteurs, qui seront conduits dans les prisons du pays et y seront détenus à la demande et aux frais du Consul ou Vice-Consul, jusqu'à ce que celui-ci trouve une occasion de les faire partir.

Cet emprisonnement ne pourra durer plus de trois mois, après lesquels, et moyennant un avis donné au Consul trois jours à l'avance, la liberté sera rendue au prisonnier, qui ne pourra être incarcéré de nouveau pour la même cause.

Toutefois, si le déserteur avait commis quelque délit à terre, l'autorité locale pourrait surseoir à l'extradition jusqu'à ce que le Tribunal eût rendu sa sentence, et que celle-ci eût reçu pleine et entière exécution.

Les Hautes Parties Contractantes conviennent que les marins ou autres individus de l'équipage, Français ou Tunisiens, qui auraient déserté en Tunisie, et, Italiens, qui auraient déserté en Italie, sont exceptés des stipulations du présent Article.

ARTICLE 31.

Toutes les fois qu'il n'y aura pas de stipulation contraire entre les armateurs, chargeurs et assureurs, les avaries que les navires tunisiens ou italiens auront souffertes en mer, soit

qu'ils entrent dans les ports d'Italie ou de Tunisie, volontairement ou par relâche forcée, seront réglées par les Consuls-Généraux, Consuls, Vice-Consuls, ou Agents consulaires respectifs, à moins que des personnes ne relevant pas de l'autorité du Consul ne soient intéressées dans ces avaries ; dans ce cas, et à défaut de compromis amiable entre toutes les parties intéressées, elles devraient être réglées par l'autorité locale.

ARTICLE 32.

Lorsqu'un navire tunisien fera naufrage ou échouera sur le littoral Italien, les autorités locales devront porter le fait à la connaissance de l'Agent consulaire français dans la circonscription duquel le sinistre a eu lieu. De même, lorsqu'un navire italien fera naufrage ou échouera sur le littoral tunisien, les autorités locales devront porter le fait à la connaissance de l'Agent consulaire italien dans la circonscription duquel le sinistre a eu lieu.

Toutes les opérations relatives au sauvetage des navires tunisiens qui naufrageraient ou échoueraient dans les eaux territoriales de l'Italie seront dirigées par les Consuls-Généraux, Consuls, Vice-Consuls, ou Agents consulaires français ; réciproquement, toutes les opérations relatives au sauvetage des navires italiens qui naufrageraient ou échoueraient dans les eaux territoriales de la Tunisie seront dirigées par les Consuls-Généraux, Consuls, Vice-Consuls, ou Agents consulaires italiens.

L'intervention des autorités locales n'aura lieu dans les deux pays que pour assister les Agents consulaires, maintenir l'ordre, garantir les intérêts des sauveteurs étrangers à l'équipage et assurer l'exécution des dispositions à observer pour l'entrée et la sortie des marchandises sauvées.

En l'absence et jusqu'à l'arrivée des Agents consulaires ou de la personne qu'ils délègueront à cet effet, les autorités locales devront prendre toutes les mesures nécessaires pour la protection des individus et la conservation des objets qui auront été sauvés du naufrage. L'intervention des autorités locales dans ces différents cas ne donnera lieu à la perception de frais d'aucune espèce, hors ceux que nécessiteront les

opérations du sauvetage et la conservation des objets sauvés, ainsi que ceux auxquels seraient soumis, en pareil cas, les navires nationaux et français.

En cas de doute sur la nationalité des navires naufragés, les dispositions mentionnées dans le présent Article seront de la compétence exclusive de l'autorité locale.

Les marchandises et effets sauvés ne sont sujets au paiement d'aucun droit de douane à moins qu'ils n'entrent dans la consommation intérieure.

ARTICLE 33.

Les Consuls-Généraux, Consuls, Vice-Consuls, ou Agents consulaires français jouiront, pour la protection des Tunisiens et de leurs intérêts en Italie, et les Consuls-Généraux, Consuls, Vice-Consuls, ou Agents consulaires italiens jouiront en Tunisie de tous les privilèges, immunités, et prérogatives respectivement accordés en Italie et en Tunisie aux Agents de la même classe de la nation la plus favorisée.

ARTICLE 34.

La présente Convention restera en vigueur jusqu'au 1er octobre, 1905. Dans le cas où aucune des Hautes Parties Contractantes n'aurait notifié, douze mois avant la dite date, son intention d'en faire cesser les effets, elle demeurera obligatoire jusqu'à l'expiration d'une année à partir du jour où l'une ou l'autre des Parties Contractantes l'aura dénoncée.

ARTICLE 35.

La présente Convention sera soumise à la ratification de M. le Président de la République française et de Sa Majesté le Roi d'Italie, et les ratifications en seront échangées à Paris le plus tôt que faire se pourra.

Elle entrera en vigueur immédiatement après l'échange des ratifications.

En foi de quoi les Plénipotentiaires respectifs ont signé la présente Convention et y ont apposé leurs cachets.

Fait en double exemplaire, à Paris, le 28 septembre, 1896.

(L. S.) G. HANOTAUX.

(L. S.) G. TORNIELLI.

Protocole.

Au moment de signer la Convention Consulaire et d'Établissement en date de ce jour, les Plénipotentiaires soussignés, à ce dûment autorisés par leurs Gouvernements respectifs, sont convenus de ce qui suit :

I. Il est entendu que les dispositions de l'Article 13 ne sont pas applicables aux Italiens qui auraient acquis une autre nationalité, en Tunisie, en vertu d'un acte de naturalisation, ou hors de Tunisie, soit en vertu d'un acte de naturalisation, soit par l'effet de la loi.

II. Les indigènes protégés, actuellement inscrits au Consulat-Général d'Italie à Tunis, auront droit en Tunisie au même traitement que les Italiens eux-mêmes.

III. Les associations et établissements italiens existant actuellement en Tunisie seront considérés comme étant déjà en possession de l'autorisation légale. La liste de ces associations et établissements, avec leurs actes et les documents constitutifs, sera remise à l'autorité locale dans un délai de six mois à dater de la ratification de la Convention.

En ce qui concerne les écoles italiennes actuellement ouvertes en Tunisie et l'hôpital de Tunis, le *statu quo* sera maintenu sans préjudice des droits supérieurs appartenant à l'administration locale en matière d'hygiène et d'ordre public pour l'application des lois de police et de sûreté.

Fait en double exemplaire, à Paris, le 28 septembre, 1896.

(L. S.) G. HANOTAUX.

(L. S.) G. TORNIELLI.

Appendix 11.

DÉCRET DU 8 NOVEMBRE 1921
(7 RABIA-EL-AOUAL 1340).

Louanges à Dieu !

Nous, Mohammed en Nacer Pacha-Bey, Possesseur du
Royaume de Tunis,

Vu Notre décret du 19 juin 1914,

Avons pris le décret suivant :

Article 1^{er}. Est Tunisien, à l'exception des citoyens, sujets
ou ressortissants de la Puissance protectrice autres que Nos
sujets, tout individu né sur le territoire de Notre royaume de
parents dont l'un y est né lui-même, sous réserve des disposi-
tions des conventions ou traités liant le Gouvernement tuni-
sien.

Art. 2. Est abrogé Notre décret du 19 juin 1914 en ce qu'il
a de contraire au texte ci-dessus.

Vu pour promulgation et mise à exécution :

Le Ministre plénipotentiaire, Résident général
de la République française, à Tunis,

LUCIEN SAINT.

Tunis, le 8 novembre 1921.

Appendix 12.

DECREE OF PRESIDENT OF FRENCH REPUBLIC, DATED NOVEMBER 8TH, 1921,

Le Président de la République française,

Vu la loi du 16 juillet 1875, article 8 ;

Vu les lois du 27 mai 1881 et du 29 avril 1884,

Décète :

Article 1er. Est Français tout individu né dans la Régence de Tunis de parents dont l'un, justiciable au titre étranger des tribunaux français du protectorat, est lui-même né dans la Régence, pourvu que sa filiation soit établie en conformité des prescriptions de la loi nationale de l'ascendant ou de la loi française avant l'âge de 21 ans.

Si ce parent n'est pas celui qui, en vertu des règles posées par la législation française, donne à l'enfant sa nationalité, celui-ci peut, entre sa 21^e et sa 22^e année, déclarer qu'il renonce à la qualité de Français.

Cette déclaration sera reçue dans les formes et sous les conditions déterminées par les articles 9 et suivants du décret du 3 octobre 1910.

Art. 2. Le Président du Conseil, Ministre des Affaires étrangères et le Garde des Sceaux, Ministre de la Justice, sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret.

Fait à Paris, le 8 novembre 1921.

MILLERAND.

Pour le Président de la République :

Le Président du Conseil, Ministre des
Affaires étrangères,
BRIAND.

Le Garde des Sceaux, Ministre de la
Justice,
BONNEVAY.

Appendix 13.

BRITISH NATIONALITY AND STATUS OF ALIENS ACT 1914.

[4 & 5 Geo. V. Ch. 17.]

ARRANGEMENT OF SECTIONS.

PART I. — *Natural-born British Subjects.*

Section.

1. Definition of natural-born British subject.

PART II. — *Naturalisation of Aliens.*

2. Certificate of naturalisation.
3. Effect of certificate of naturalisation.
4. Special certificate in case of doubt.
5. Persons under disability.
6. Persons previously naturalised.
7. Revocation of certificate of naturalisation.
8. Power of Governments of British possessions to grant certificates of Imperial naturalisation.
9. Application of part II to Self-Governing Dominions.

PART III. — *General.*

National Status of Married Women and Infant Children.

10. National status of married women.
11. Status of widows.
12. Status of children.

Loss of British Nationality.

13. Loss of British nationality by foreign naturalisation.
14. Declaration of alienage.
15. Power of naturalised subjects to divest themselves of their status in certain cases.
16. Saving of obligations incurred before loss of nationality.

Status of Aliens.

17. Capacity of alien as to property.
18. Trial of alien.

Procedure and Evidence.

19. Regulations by Secretary of State.
20. Evidence of declarations.
21. Evidence of certificates of naturalisation.
22. Evidence of entries in registers.
23. Penalty for false representation or statement.
24. Form of oath of allegiance.

Supplemental.

25. Saving for letters of denisation.
26. Saving for powers of Legislatures and Governments of British possessions.
27. Definitions.
28. Repeal, short title and commencement.

Schedules.

(Royal Arms.)

CHAPTER 17.

An Act to consolidate and amend the Enactments relating to British Nationality and the Status of Aliens.

[7th August 1914.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I. — *Natural-born British Subjects.*

1. — (1.) The following persons shall be deemed to be natural-born British subjects, namely :

- (a.) Any person born within His Majesty's dominions and allegiance ; and
- (b.) Any person born out of His Majesty's dominions, whose father was a British subject at the time of that person's birth and either was born within His Majesty's allegiance or was a person

to whom a certificate of naturalisation had been granted ; and

- (c.) Any person born on board a British ship whether in foreign territorial waters or not :

Provided that the child of a British subject, whether that child was born before or after the passing of this Act, shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty exercises jurisdiction over British subjects.

(2.) A person born on board a foreign ship shall not be deemed to be a British subject by reason only that the ship was in British territorial waters at the time of his birth.

(3.) Nothing in this section shall, except as otherwise expressly provided, affect the status of any person born before the commencement of this Act.

PART II. — *Naturalisation of Aliens.*

Certificate of naturalisation. 2. — (1.) The Secretary of State may grant a certificate of naturalisation to an alien who makes an application for the purpose, and satisfies the Secretary of State

- (a.) That he has either resided in His Majesty's dominions for a period of not less than five years in the manner required by this section, or been in the service of the Crown for not less than five years within the last eight years before the application ; and
- (b.) That he is of good character and has an adequate knowledge of the English language ; and
- (c.) That he intends if his application is granted either to reside in His Majesty's dominions or to enter or continue in the service of the Crown.

(2.) The residence required by this section is residence in the United Kingdom for not less than one year immediately preceding the application, and previous residence, either in the United Kingdom or in some other part of His Majesty's dominions, for a period of four years within the last eight years before the application.

(3.) The grant of a certificate of naturalisation to any such alien shall be in the absolute discretion of the Secretary of State, and he may, with or without assigning any reason, give or withhold the certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision.

(4.) A certificate of naturalisation shall not take effect until the applicant has taken the oath of allegiance.

(5.) In the case of a woman who was a British subject previously to her marriage to an alien, and whose husband has died or whose marriage has been dissolved, the requirements of this section as to residence shall not apply and the Secretary of State may in any other special case, if he thinks fit, grant a certificate of naturalisation, although the four years' residence or five years' service has not been within the last eight years before the application.

oot of certi-
te of natu-
sation.

3.—(1.) A person to whom a certificate of naturalisation is granted by a Secretary State shall, subject to the provisions of this Act, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, duties and liabilities to which a natural-born British subject is entitled or subject, and, as from the date of his naturalisation, have to all intents and purposes the status of a natural-born British subject.

& 13 Will.
c. 2.

(2.) Section 3 of the Act of Settlement (which disqualifies naturalised aliens from holding certain offices) shall have effect as if the words "naturalised or" were omitted therefrom

pecial certifi-
ce in case of
doubt.

4. The Secretary of State may in his absolute discretion, in such cases as he thinks fit, grant a special certificate of naturalisation to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in the certificate that the grant thereof is made for the purpose of quieting doubts as to the right of the person to be a British subject, and the grant of such a special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

sons under
ability.

5.—(1.) Where an alien obtains a certificate of naturalisation, the Secretary of State may, if he thinks fit, on the application of that alien, include in the certificate the name of any child of the alien born before the date of the certificate

and being a minor, and that child shall thereupon, if not already a British subject, become a British subject ; but any such child may, within one year after attaining his majority, make a declaration of alienage, and shall thereupon cease to be a British subject.

(2.) The Secretary of State may, in his absolute discretion in any special case in which he thinks fit, grant a certificate of naturalisation to any minor, although the conditions required by this Act have not been complied with.

(3.) Except as provided by this section, a certificate of naturalisation shall not be granted to any person under disability.

Persons
previously
naturalised.

6. An alien who has been naturalised before the passing of this Act may apply to the Secretary of State for a certificate of naturalisation under this Act, and the Secretary of State may grant to him a certificate on such terms and conditions as he may think fit.

Revocation of
certificate of
naturalisation.

7.—(1.) Where it appears to the Secretary of State that a certificate of naturalisation granted by him has been obtained by false representations or fraud, the Secretary of State may by order revoke the certificate, and the order of revocation shall have effect from such date as the Secretary of State may direct.

(2.) Where the Secretary of State revokes a certificate of naturalisation he may order the certificate to be given up and cancelled, and any person refusing or neglecting to give up the certificate shall be liable on summary conviction to a fine not exceeding 100*l.*

Powers of
Governments
of British pos-
sessions to
grant certifica-
tes of Imperial
naturalisation.

8.—(1.) The Government of any British Possession shall have the same power to grant a certificate of naturalisation as the Secretary of State has under this Act, and the provisions of this Act as to the grant and revocation of such a certificate shall apply accordingly, with the substitution of the Government of the Possession for the Secretary of State, and the Possession for the United Kingdom, and also, in a Possession where any language is recognised as on an equality with the English language, with the substitution of the English language or that language for the English language.

Provided that, in any British Possession other than British

India and a Dominion specified in the First Schedule to this Act, the powers of the Government of the Possession under this section shall be exercised by the Governor or a person acting under his authority, but shall be subject in each case to the approval of the Secretary of State, and any certificate proposed to be granted shall be submitted to him for his approval.

(2.) Any certificate of naturalisation granted under this section shall have the same effect as a certificate of naturalisation granted by the Secretary of State under this Act.

Application of Part II to Territories Governed by Local Authorities in the Dominions.
 9.—(1.) This Part of this Act shall not, nor shall any certificate of naturalisation granted thereunder, have effect within any of the Dominions specified in the First Schedule to this Act, unless the Legislature of that Dominion adopts this Part of this Act.

(2.) Where the Legislature of any such Dominion has adopted this Part of this Act, the Government of the Dominion shall have the like powers to make regulations with respect to certificates of naturalisation and to oaths of allegiance as are conferred by this Act on the Secretary of State.

(3.) The Legislature of any such Dominion which adopts this Part of this Act may provide how and by what Department of the Government the powers conferred by this Part of this Act on the Government of a British Possession are to be exercised.

(4.) The Legislature of any such Dominion may at any time rescind the adoption of this Part of this Act, provided that no such rescission shall prejudicially affect any legal rights existing at the time of such rescission.

PART III. — *General.*

National Status of Married Women and Infant Children.

10. The wife of a British subject shall be deemed to be a British subject, and the wife of an alien shall be deemed to be an alien: Provided that where a man ceases during the continuance of his marriage to be a British subject it shall be lawful for his wife to make a declaration that she desires

to retain British nationality, and thereupon she shall be deemed to remain a British subject.

Status
of widows

11. A woman who, having been a British subject, has by, or in consequence of, her marriage become an alien, shall not, by reason only of the death of her husband, or the dissolution of her marriage, cease to be an alien, and a woman who, having been an alien, has by, or in consequence of, her marriage become a British subject, shall not by reason only of the death of her husband or the dissolution of her marriage, cease to be a British subject.

Status of
children.

12.—(1.) Where a person being a British subject ceases to be a British subject, whether by declaration of alienage or otherwise, every child of that person, being a minor, shall thereupon cease to be a British subject, unless such child, on that person ceasing to be a British subject, does not become by the law of any other country naturalised in that country :

Provided that, where a widow who is a British subject marries an alien any child of hers by her former husband shall not, by reason only of her marriage, cease to be a British subject, whether he is residing outside His Majesty's dominions or not.

(2.) Any child who has so ceased to be a British subject may, within one year after attaining his majority, make a declaration that he wishes to resume nationality, and shall thereupon again become a British subject.

Loss of British Nationality.

Loss of British
nationality by
foreign
naturalisation.

13. A British subject who, when in any foreign State and not under disability, by obtaining a certificate of naturalisation, or by any other voluntary and formal act, becomes naturalised therein, shall thenceforth be deemed to have ceased to be a British subject.

Declaration of
alienage.

14.—(1.) Any person who by reason of his having been born within His Majesty's dominions and allegiance or on board a British ship is a natural-born British subject, but who at his birth or during his minority became under the law of any foreign State a subject also of that State, and is still such a subject, may, if of full age and not under disability,

make a declaration of alienage, and on making the declaration shall cease to be a British subject.

(2.) Any person who though born out of His Majesty's dominions is a natural-born British subject may, if of full age and not under disability, make a declaration of alienage, and on making the declaration shall cease to be a British subject.

power of naturalised subjects to divest themselves of their status in certain cases.

15. Where His Majesty has entered into a convention with any foreign State to the effect that the subjects or citizens of that State to whom certificates of naturalisation have been granted may divest themselves of their status as such subjects, it shall be lawful for His Majesty, by Order in Council, to declare that the convention has been entered into by His Majesty ; and from and after the date of the Order any person having been originally a subject or citizen of the State therein referred to, who has been naturalised as a British subject, may, within the limit of time provided in the convention, make a declaration of alienage, and on his making the declaration he shall be regarded as an alien and as a subject of the State to which he originally belonged as aforesaid.

having of obligations incurred before as of nationality.

16. Where any British subject ceases to be a British subject, he shall not thereby be discharged from any obligation, duty or liability in respect of any act done before he ceased to be a British subject.

Status of Aliens.

capacity of alien as property.

17. Real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural-born British subject ; and a title to real and personal property of every description may be derived through, from or in succession to an alien in the same manner in all respects as through, from or in succession to a natural-born British subject :

Provided that this section shall not operate so as to—

- (1.) Confer any right on an alien to hold real property situate out of the United Kingdom ; or
- (2.) Qualify an alien for any office or for any municipal, parliamentary, or other franchise ; or

- (3.) Qualify an alien to be the owner of a British ship ; or
- (4.) Entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him ; or
- (5.) Affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the 12th day of May, 1870, or in pursuance of any devolution by law on the death of any person dying before that day.

Trial of alien. 18. An alien shall be triable in the same manner as if he were a natural-born British subject.

Procedure and Evidence.

Regulations by
Secretary of
State.

19. — (1.) The Secretary of State may make regulations generally for carrying into effect the objects of this Act, and in particular with respect to the following matters :

- (a.) The form and registration of certificates of naturalisation granted by the Secretary of State ;
- (b.) The form and registration of declarations of alienage and declarations of resumption or retention of British nationality ;
- (c.) The registration by officers in the diplomatic or consular service of His Majesty of the births and deaths of British subjects born or dying out of His Majesty's dominions ;
- (d.) The time within which the oath of allegiance is to be taken after the grant of a certificate of naturalisation ;
- (e.) The persons by whom the oath of allegiance may be administered, and the persons before whom declarations of alienage and declarations of resumption of British nationality may be made ;
- (f.) Whether or not oaths of allegiance are to be subscribed as well as taken, and the form in which the taking and subscription are to be attested ;
- (g.) The registration of oaths of allegiance ;

- h.) The persons by whom certified copies of oaths of allegiance may be given, and the proof in any legal proceeding of any such oaths ;
- (i.) The transmission to the United Kingdom, for the purpose of registration or safe keeping or of being produced as evidence, of any declarations, certificates or oaths, made, granted or taken out of the United Kingdom in pursuance of this Act or of any Act hereby repealed, or of any copies thereof, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of this Act or any Act hereby repealed ;
- (j.) With the consent of the Treasury, the imposition and application of fees in respect of any registration authorised to be made by this Act or any Act hereby repealed, and in respect of the making of any declaration or the grant of any certificate authorised to be made or granted by this Act or any Act hereby repealed, and in respect of the administration or registration of any oath : Provided that in the case of a woman who was a British subject previously to her marriage to an alien, and whose husband has died or whose marriage has been dissolved, the fee for the grant of a certificate shall not exceed five shillings.

(2.) Any regulation made by the Secretary of State in pursuance of this Act shall be of the same force as if it had been enacted therein, but shall not, so far as respects the imposition of fees, be in force in any British Possession, and shall not, so far as respects any other matter, be in force in any British Possession in which any Act or ordinance, or, in the case of a Dominion specified in the First Schedule to this Act, any regulation made by the Government of the Dominion under Part II of this Act, to the contrary of, or inconsistent with, any such regulation may for the time being be in force.

(3.) Any regulations made by the Secretary of State under any Act hereby repealed shall continue in force and be deemed to have been made under this Act.

Evidence of declarations. 20. Any declaration made under this Act or under any Act hereby repealed may be proved in any legal proceeding by the production of the original declaration or of any copy thereof certified to be a true copy by the Secretary of State, or by any person authorised by him in that behalf, and the production of the declaration or copy shall be evidence of the person therein named as declarant having made the declaration at the date therein mentioned.

Evidence of certificates of naturalisation. 21. A certificate of naturalisation may be proved in any legal proceeding by the production of the original certificate or of any copy thereof certified to be a true copy by the Secretary of State or by any person authorised by him in that behalf.

Evidence of entries in registers. 22. Entries in any register made in pursuance of this Act or under any Act hereby repealed may be proved by such copies and certified in such manner as may be directed by the Secretary of State, and the copies of any such entries shall be evidence of any matters, by this Act or by any Act hereby repealed or by any regulation of the Secretary of State, authorised to be inserted in the register.

Penalty for false representation or statement. 23. If any person for any of the purposes of this Act knowingly makes any false representation or any statement false in a material particular, he shall, in the United Kingdom, be liable on summary conviction in respect of each offence to imprisonment with or without hard labour for any term not exceeding three months.

Form of oath of allegiance. 24. The oath of allegiance shall be in the form set out in the Second Schedule to this Act.

Supplemental.

Saving for letters of denisation. 25. Nothing in this Act shall affect the grant of letters of denisation by His Majesty.

Saving for powers of Legislatures and Governments of British possessions. 26. — (1.) Nothing in this Act shall take away or abridge any power vested in, or exercisable by, the Legislature or Government of any British Possession, or affect the operation of any law at present in force which has been passed in exercise of such a power, or prevent any such Legislature or Government from treating differently different classes of British subjects.

(2.) All laws, statutes and ordinances made by the Legislature of a British Possession for imparting to any person any of the privileges of naturalisation to be enjoyed by him within the limits of that Possession shall, within those limits, have the authority of law.

(3.) Where any parts of His Majesty's Dominions are under both a central and a local legislature, the expression "British Possession" shall, for the purposes of this section, include both all parts under the central legislature and each part under a local legislature: Provided that nothing in this provision shall be construed as validating any law, statute or ordinance with respect to naturalisation made by any such local legislature in any case where the central legislature possesses exclusive legislative authority with respect to naturalisation.

Definitions.

27.—(1.) In this Act, unless the context otherwise requires—

The expression "British subject" means a person who is a natural-born British subject, or a person to whom a certificate of naturalisation has been granted:

The expression "alien" means a person who is not a British subject:

The expression "certificate of naturalisation" means a certificate of naturalisation granted under this Act or under any Act repealed by this or any other Act:

The expression "disability" means the status of being a married woman, or a minor, lunatic or idiot:

The expression "territorial waters" includes any port, harbour or dock.

Repeal, short title and commencement.

(2.) Where in pursuance of this Act the name of a child is included in a certificate of naturalisation granted to his parent, such child shall, for the purposes of this Act, be deemed to be a person to whom a certificate of naturalisation has been granted.

28.—(1.) The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

(2.) This Act may be cited as "The British Nationality and Status of Aliens Act, 1914."

(3.) This Act shall come into operation on the 1st day of January, 1915.

Sections
8, 9, 19.

FIRST SCHEDULE.

List of Dominions.

The Dominion of Canada.
The Commonwealth of Australia (including, for the purposes of this Act, the territory of Papua and Norfolk Island).
The Dominion of New Zealand.
The Union of South Africa.
Newfoundland.

Section 24.

SECOND SCHEDULE.

Oath of Allegiance.

"I, A. B., swear by Almighty God that I will be faithful and bear true allegiance to His Majesty King George the Fifth, his Heirs and Successors, according to law."

Section 28.

THIRD SCHEDULE.

Enactments Repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
25 Edw. III, stat. 1.	Statute for those who are born in parts beyond the seas	From "and in the right of other children" to the end of the statute.
42 Edw. III, cap. 10	A statute made at Westminster on the 1st day of May in the forty-second year of King Edward III	The whole chapter.
12 & 13 Wm. III, cap. 2	The Act of Settlement	In section 3 the words "naturalised or."
7 Anne, cap. 5	"The Foreign Protestants (Naturalisation) Act, 1708"	The whole Act.
4 Geo. II, cap. 21 . .	"The British Nationality Act, 1730"	The whole Act.
13 Geo. III, cap. 21	"The British Nationality Act, 1772"	The whole Act.
33 & 34 Vict., cap. 14	"The Naturalisation Act, 1870"	The whole Act.
33 & 34 Vict., cap. 102	"The Naturalisation Oath Act, 1870"	The whole Act.
58 & 59 Vict., cap. 43	"The Naturalisation Act, 1895"	The whole Act.

MOROCCO.

Appendix 14.

EXTRACT FROM FRENCH "ANNUAIRE COLONIAL."

MOROCCO.

(B.)— *Administration.**Organisation administrative.*

Depuis 1912 (traité du 30 mars), le Maroc est soumis, sauf une zone réservée à l'influence espagnole et Tanger ville internationalisée, au protectorat de la France. L'organisation de celui-ci se poursuit de jour en jour.

Le Maroc est nominalement gouverné par un Sultan. Ses Ministres, ses fonctionnaires et son organisation politique et administrative constituent le Gouvernement chérifien ou Maghzen. L'administration locale indigène est entre les mains des pachas des villes et des caïds ruraux. Les pachas des ports ont à la fois des attributions administratives et judiciaires vis-à-vis des sujets marocains. Les caïds des villes de l'intérieur et des tribus ont, en outre, des attributions financières. Ils sont assistés par des khalifas, des mokaddems (chefs de quartiers dans les villes) et des cheiks (dans les douars). Les Européens ressortissent des Légations et des consulats de leurs pays réciproques.

Appendix 15.

TRAITÉ ENTRE LA FRANCE ET LE MAROC POUR L'ÉTABLISSEMENT D'UN RÉGIME RÉGULIER ET L'INTRODUCTION DES RÉFORMES NÉCESSAIRES. — SIGNÉ À FEZ, LE 30 MARS 1912 ¹⁾.

Le Gouvernement de la République française et le Gouvernement de Sa Majesté chérifienne, soucieux d'établir au Maroc un régime régulier, fondé sur l'ordre intérieur et la sécurité générale, qui permette l'introduction des réformes et assure le développement économique du pays, sont convenus des dispositions suivantes :

ARTICLE 1^{er}.

Le Gouvernement de la République française et Sa Majesté le Sultan sont d'accord pour instituer au Maroc un nouveau régime comportant les réformes administratives, judiciaires, scolaires, économiques, financières et militaires que le Gouvernement français jugera utile d'introduire sur le territoire marocain.

Ce régime sauvegardera la situation religieuse, le respect et le prestige traditionnel du Sultan, l'exercice de la religion musulmane et des institutions religieuses, notamment de celles des Habous. Il comportera l'organisation d'un Maghzen chérifien réformé.

Le Gouvernement de la République se concertera avec le Gouvernement espagnol au sujet des intérêts que ce Gouvernement tient de sa position géographique et de ses possessions territoriales sur la côte marocaine.

De même, la ville de Tanger gardera le caractère spécial qui lui a été reconnu et qui déterminera son organisation municipale.

ARTICLE 2.

Sa Majesté le Sultan admet dès maintenant que le Gouvernement français procède, après avoir prévenu le Maghzen,

1) "Journal officiel," July 27, 1912.

aux occupations militaires du territoire marocain qu'il jugerait nécessaires au maintien de l'ordre et de la sécurité des transactions commerciales et à ce qu'il exerce toute action de police sur terre et dans les eaux marocaines.

ARTICLE 3.

Le Gouvernement de la République prend l'engagement de prêter un constant appui à Sa Majesté chérifienne contre tout danger qui menacerait sa personne ou son trône ou qui compromettrait la tranquillité de ses États. Le même appui sera prêté à l'héritier du trône et à ses successeurs.

ARTICLE 4.

Les mesures que nécessitera le nouveau régime de protectorat seront édictées, sur la proposition du Gouvernement français, par Sa Majesté chérifienne ou par les autorités auxquelles elle en aura délégué le pouvoir. Il en sera de même des règlements nouveaux et des modifications aux règlements existants.

ARTICLE 5.

Le Gouvernement français sera représenté auprès de Sa Majesté chérifienne par un Commissaire Résident général, dépositaire de tous les pouvoirs de la République au Maroc, qui veillera à l'exécution du présent accord.

Le Commissaire Résident général sera le seul intermédiaire du Sultan auprès des représentants étrangers et dans les rapports que ces représentants entretiennent avec le Gouvernement marocain. Il sera, notamment, chargé de toutes les questions intéressant les étrangers dans l'Empire chérifien.

Il aura le pouvoir d'approuver et de promulguer, au nom du Gouvernement français, tous les décrets rendus par Sa Majesté chérifienne.

ARTICLE 6.

Les agents diplomatiques et consulaires de la France seront chargés de la représentation et de la protection des sujets et des intérêts marocains à l'étranger.

Sa Majesté le Sultan s'engage à conclure aucun acte ayant un caractère international sans l'assentiment préalable du Gouvernement de la République française.

ARTICLE 7.

Le Gouvernement de la République française et le Gouvernement de Sa Majesté chérifienne se réservent de fixer d'un commun accord les bases d'une réorganisation financière qui, en respectant les droits conférés aux porteurs des titres des emprunts publics marocains, permette de garantir les engagements du Trésor chérifien et de percevoir régulièrement les revenus de l'Empire.

ARTICLE 8.

Sa Majesté chérifienne s'interdit de contracter à l'avenir, directement ou indirectement, aucun emprunt public ou privé et d'accorder, sous une forme quelconque, aucune concession sans l'autorisation du Gouvernement français.

ARTICLE 9.

La présente Convention sera soumise à la ratification du Gouvernement de la République française et l'instrument de ladite ratification sera remis à Sa Majesté le Sultan dans le plus bref délai possible.

En foi de quoi les soussignés ont dressé le présent acte et l'ont revêtu de leurs cachets.

Fait à Fez, le 30 mars 1912.

(L.S.) REGNAULT.

(L.S.) MOULAY ABD-EL-HAFID.

Appendix 16.

DÉCRET DU 12 JUIN 1922, FIXANT LES ATTRIBUTIONS ET LES POUVOIRS DU COMMISSAIRE RÉSIDENT GÉNÉRAL AU MAROC.

Le Président de la République française,
Sur la proposition du Président du Conseil, Ministre des
Affaires étrangères,

Décète :

Article 1er. Le représentant de la République française au Maroc porte le titre de Commissaire Résident général et relève du Ministre des Affaires étrangères.

Art. 2. Le Commissaire Résident général est le dépositaire de tous les pouvoirs de la République dans l'Empire chérifien. Il est le seul intermédiaire du Sultan auprès des représentants des Puissances étrangères. Il approuve et promulgue, au nom du Gouvernement de la République, les décrets rendus par Sa Majesté chérifienne. Il dirige tous les services administratifs ; il a le commandement en chef des forces de terre et la disposition des forces navales.

Art. 3. Le Commissaire Résident général communique, par l'entremise du Ministre des Affaires étrangères, avec les divers membres du Gouvernement de la République ; il les saisit, sans délai, des questions qui intéressent leurs Départements.

Art. 4. Le Commissaire Résident général est assisté d'un délégué à la Résidence générale, destiné à le remplacer en cas d'absence ou d'empêchement

Art. 5. Le Président du Conseil, Ministre des Affaires étrangères, est chargé de l'exécution du présent décret.

Appendix 17.

GENERAL TREATY BETWEEN HER MAJESTY AND
THE SULTAN OF MOROCCO, SIGNED, IN THE
ENGLISH AND ARABIC LANGUAGES, AT TANGIER,
DECEMBER 9th, 1856.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Sultan of Morocco and Fez, being desirous to maintain and strengthen the relations of friendship which have long subsisted between their respective dominions and subjects, have resolved to proceed to a revision and improvement of the Treaties subsisting between the respective countries, and have for that purpose named as their Plenipotentiaries, that is to say :

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, John Hay Drummond Hay, Esquire, Her Chargé d'affaires and Consul-General at the Court of His Majesty the Sultan of Morocco and Fez ;

And His Majesty the Sultan of Morocco and Fez, Seed Mohammed Khateeb, His Commissioner for Foreign Affairs ;

Who, after having communicated to each other their respective full powers, have agreed upon and concluded the following Articles :

ARTICLE 1.

There shall be perpetual peace and friendship between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, her heirs and successors, and His Sherifian Majesty the Sultan of Morocco and Fez, and between their respective dominions and subjects.

ARTICLE 2.

Her Majesty the Queen of Great Britain may appoint one or more Consuls in the dominions of the Sultan of Morocco and Fez ; and such Consul or Consuls shall be at liberty to reside in any of the sea-ports or cities of the Sultan of Morocco which

they or the British Government may choose, and find most convenient for the affairs and service of Her Britannic Majesty and for the assistance of British merchants.

ARTICLE 3.

The British Chargé d'Affaires, or other Political Agent accredited by the Queen of Great Britain to the Sultan of Morocco, as also the British Consuls who shall reside in the dominions of the Sultan of Morocco, shall always have respect and honour paid to them, suitable to their rank. Their houses and families shall be safe and protected. No one shall interfere with them, or commit any act of oppression or disrespect towards them, either by words or by deeds; and if any one should do so, he shall receive a severe punishment, as a correction to himself and a check to others.

The said Chargé d'Affaires shall be at liberty to choose his own interpreters and servants, either from the Mussulmans or others, and neither his interpreters nor servants shall be compelled to pay any capitation tax, forced contribution, or other similar or corresponding charge. With respect to the Consuls or Vice-Consuls who shall reside at the ports under the orders of the said Chargé d'Affaires, they shall be at liberty to choose one interpreter, one guard, and two servants, either from the Mussulmans or others; and neither the interpreter, nor the guard, nor their servants shall be compelled to pay any capitation tax, forced contribution, or other similar or corresponding charge. If the said Chargé d'Affaires should appoint a subject of the Sultan of Morocco as Vice-Consul at a Moorish port, the said Vice-Consul, and those members of his family who may dwell within his house, shall be respected and exempted from the payment of any capitation tax, or other similar or corresponding charge; but the said Vice-Consul shall not take under his protection any subject of the Sultan of Morocco except the members of his family dwelling under his roof. The said Chargé d'Affaires, and the said Consuls, shall be permitted to have a place of worship, and to hoist their national flag at all times on the top of the houses which they may occupy, either in the city or out of it, and also in

their boats whenever they go to sea. No prohibition nor tax shall be put upon their goods, furniture, or any other articles which may come to them for their own use and for the use of their families, in the dominions of the Sultan of Morocco; but the said Chargé d’Affaires, Consuls, or Vice-Consuls, shall be required to deliver to the officers of the Customs a note of hand, specifying the number of articles which they shall require to be passed. This privilege shall only be accorded to those Consular Officers who are not engaged in trade. If the service of their Sovereign should require their attendance in their own country, or if they should depute another person to act for them in their absence, they shall not be prevented in any way from so doing; and no impediment shall be offered either to themselves, their servants, or their property, but they shall be at liberty to go and come, respected and honoured; and both they themselves and their deputies or Vice-Consuls shall be entitled, in the most ample sense, to every privilege which is now enjoyed, or may in future be granted, to the Consul of any other nation.

ARTICLE 4.

With respect to the personal privileges to be enjoyed by the subjects of Her Britannic Majesty in the dominions of the Sultan of Morocco. His Sherifian Majesty engages that they shall have a free and undoubted right to travel and to reside in the territories and dominions of His said Majesty, subject to the same precautions of police which are practised towards the subjects or citizens of the most favoured nations.

They shall be entitled to hire, on lease or otherwise, dwellings and warehouses; and if a British subject shall not find a house or warehouse suitable for his dwelling or for his stores, the Moorish authorities shall assist him in finding a site, within the localities generally selected for the habitations of Europeans, if there be a suitable site within town, for building a dwelling or stores, and an agreement shall be entered upon, in writing, with the authorities of the town, regarding the number of years that the British subject shall retain possession of the land and buildings, in order that he shall thus be repaid

the expenses of the outlay he shall have made ; and no person shall compel the British subject to give up the dwelling or warehouses until the time mentioned in the said document shall have expired. They shall not be obliged to pay, under any pretence whatever, any taxes or impositions. They shall be exempt from all military service, whether by land or sea ; from forced loans, and from every extraordinary contribution. Their dwellings, warehouses, and all premises appertaining thereto, destined for purposes of residence or commerce, shall be respected. No arbitrary search of or visit to the houses of British subjects, and no arbitrary examination or inspection whatever of their books, papers, or accounts, shall be made ; but such measures shall be executed only in conformity with the orders and consent of the Consul-General or Consul. And, generally, His Majesty the Sultan engages that the subjects of Her Britannic Majesty residing in his states or dominions shall enjoy their property and personal security in as full and ample manner as subjects of the Emperor of Morocco are entitled to do within the territories of Her Britannic Majesty.

Her Britannic Majesty, on her part, engages to ensure the enjoyment of the same protection and privileges to the subjects of His Majesty the Sultan of Morocco within her dominions, which are or may be enjoyed by the subjects of the most favoured nations.

ARTICLE 5.

All British subjects and merchants who may wish to reside in any part of the dominions of the Sultan of Morocco shall have perfect security for their own persons and property ; and they shall be free to exercise the rites of their own religion, without any interference or hindrance, and to have a burial-place for their dead ; and they shall be allowed to go out to bury them with safety and protection in going and in returning. They shall be free to appoint anyone whom they may choose of their own friends or servants for the transaction of their affairs, either on land or at sea, without any prohibition or interruption ; and if a British merchant shall have a ship in or outside of one of the harbours of the Sultan of Morocco, he

shall be permitted to go on board of her, either by himself or with any whom he likes of his own friends or servants, without either himself or his friends or servants being subjected to any forced contribution for so doing.

ARTICLE 6.

Any person subject to the Queen of Great Britain, or under her protection, shall not be compelled to sell or to buy anything without his own free will; nor shall any of the Sultan of Morocco's subjects have a claim or right upon any goods of a British merchant, but what such merchant may give them voluntarily; and nothing shall be taken away from any British merchant but what shall be agreed upon between the respective parties.

The same rule shall be observed with regard to Moorish subjects in the dominions of the Queen of Great Britain.

ARTICLE 7.

No subject of the Queen of Great Britain, nor any person under her protection, shall, in the dominions of the Sultan of Morocco, be made liable to pay a debt due from another person of his nation, unless he shall have made himself responsible or guarantee for the debtor, by a document under his own handwriting; and, in like manner, the subjects of the Sultan of Morocco shall not be made liable to pay a debt due from another person of his nation to a subject of Great Britain, unless he shall have made himself responsible or guarantee for the debtor by a document under his own handwriting.

ARTICLE 8.

In all criminal cases and complaints, and in all civil differences, disputes, or causes of litigation which may occur between British subjects, the British Consul-General, Consul, Vice-Consul, or Consular Agent, shall be sole judge and arbiter. No Governor, Kadi, or other Moorish authority, shall intermeddle therein; but the subjects of Her Britannic Majesty shall, in all matters of criminal or civil cognizance arising

or existing between British subjects exclusively, be amenable to the tribunal of the Consul-General, Consul, or other British authority only.

ARTICLE 9.

All criminal cases and complaints, and all civil differences, disputes, or causes of litigation arising between British subjects and subjects of the Moorish Government, shall be adjusted in the following manner: —

If the plaintiff be a British subject and the defendant a Moorish subject, the Governor of the town or district, or the Kadi, according as the case may appertain to their respective Courts, shall alone judge the case; the British subject making his appeal to the Governor or Kadi, through the British Consul-General, Consul, or his deputy, who will have a right to be present in the Court during the whole trial of the case.

In like manner, if the plaintiff be a Moorish subject, and the defendant a British subject, the case shall be referred to the sole judgment and decision of the British Consul-General, Consul, Vice-Consul, or Consular Agent; the plaintiff shall make his appeal through the Moorish authorities; and the Moorish Governor, Kadi, or other officer who may be appointed by them shall be present, if he or they so desire, during the trial and judgment of the case. Should the British or Moorish litigant be dissatisfied with the decision of the Consul-General, Consul, Vice-Consul, Governor, or Kadi (according as the case may appertain to their respective Courts), he shall have a right of appeal to Her Britannic Majesty's Chargé d'Affaires and Consul-General, or to the Moorish Commissioner for Foreign Affairs, as the case may be.

ARTICLE 10.

A British subject suing, in a Moorish Court of Law, a subject of the Sultan of Morocco, for a debt contracted within the dominions of the Queen of Great Britain, shall be required to produce an acknowledgment of the claim written either in the European or Arabic characters, and signed by the

Moorish debtor in the presence of, and testified by, the Moorish Consul, Vice-Consul, or Consular Agent, or before two witnesses whose signatures shall have been at the time, or subsequently, certified by the Moorish Consul, Vice-Consul, or Consular Agent, or by a British Notary in a place where no Moorish Consul, Vice-Consul, or Consular Agent resides. Each document so witnessed or certified by the Moorish Consul, Consular Agent, or British Notary, shall have full force and value in a Moorish tribunal. Should at any time a Moorish debtor escape to any town or place in Morocco where the authority of the Sultan may be established, and where no British Consul, or Consular Agent may reside, the Moorish Government shall compel the Moorish debtor to come to Tangier, or other port or town in Morocco where the British creditor may desire to prosecute his claim before a Moorish Court of Law.

ARTICLE II.

Should the British Consul-General, or any of the British Consuls, Vice-Consuls, or Consular Agents, have at any time occasion to request from the Moorish Government the assistance of soldiers, guards, armed boats, or other aid for the purpose of arresting or transporting any British subject, the demand shall immediately be complied with, on payment of the usual fees given on such occasions by Moorish subjects.

ARTICLE 12.

If any subject of the Sultan be found guilty before the Kadi of producing false evidence to the injury or prejudice of a British subject, he shall be severely punished by the Moorish Government according to the Mahometan law. In like manner, the British Consul-General, Consul, Vice-Consul, or Consular Agent, shall take care that any British subject who may be convicted of the same offence against a Moorish subject, shall be severely punished according to the law of Great Britain.

ARTICLE 13.

All British subjects, whether Mahometans, Jews, or Christians, shall alike enjoy all the rights and privileges granted by the present Treaty and the Convention of Commerce and Navigation which has also been concluded this day, or which shall at any time be granted to the most favoured nation.

ARTICLE 14.

In all criminal cases, differences, disputes, or other causes of litigation arising between British subjects and the subjects or citizens of other foreign nations, no Governor, Kadi, or other Moorish authority shall have a right to interfere, unless a Moorish subject may have received thereby any injury to his person or property, in which case the Moorish authority, or one of his officers, shall have a right to be present at the tribunal of the Consul.

Such cases shall be decided solely in the tribunals of the foreign Consuls, without the interference of the Moorish Government, according to the established usages which have hitherto been acted upon, or may hereafter be arranged between such Consuls.

ARTICLE 15.

It is agreed and covenanted that neither of the High Contracting Parties shall knowingly receive into or retain in its service any subjects of the other Party who have deserted from the naval or military service of that other Party; but that, on the contrary, each of the Contracting Parties shall respectively discharge from its service any such deserters, upon being required by the other Party so do to.

And it is further agreed, that if any of the crew of any merchant-vessel of either Contracting Party, not being slaves nor being subjects of the Party upon whom the demand is made, shall desert from such vessel within any port in the territory of the other Party, the authorities of such port and territory shall be bound to give every assistance in their power for the apprehension of such deserters, on application

being made by the Consul-General or Consul of the Party concerned, or by the deputy or representative of the Consul-General or Consul ; and no person whatever shall protect or harbour such deserters.

ARTICLE 16.

No British subject professing the Mahometan faith, or who may have professed the Mahometan religion, shall be considered as having in any manner lost, or as being by reason thereof in any degree less entitled to, the rights and privileges, or the full protection, enjoyed by British subjects who are Christians ; but all British subjects, whatever their religion may be, shall enjoy all the rights and privileges secured by the present Treaty to British subjects, without any distinction or difference.

ARTICLE 17.

Any subjects of the Queen of Great Britain who may be found in the dominions of the Sultan of Morocco, either in time of peace or in time of war, shall have perfect liberty to depart to their own country, or to any other country, in their own ships or in the ships of any other nation ; and they shall also be free to dispose as they please of their goods and property of every kind, and to carry away with them the value of all such goods and property, as well as to take their families and domestics, even though born and brought up in Africa or elsewhere out of the British dominions, without any one interfering with or preventing them under any pretence. All these rights shall be likewise granted to the subjects of the Sultan of Morocco who may be in the dominions of the Queen of Great Britain.

ARTICLE 18.

If any subject of Her Britannic Majesty, or any native of a State or place under British protection, should die in the dominions of the Sultan of Morocco, no Governor or officer, of the Sultan shall, under any pretence, dispose of the goods or property of the deceased, nor shall any one interfere

therewith ; but all the property and goods belonging to the deceased, and all that was under his hands and in his possession, shall be taken possession of by the persons chosen by him for that purpose, and named in his will as his heirs, if they should be present ; but in case such heir or heirs should be absent, then the Consul-General, Consul, or his deputy, shall take possession of all the property and effects; after making a list or inventory thereof, specifying every article correctly, until he delivers the same to the heir of the deceased. But should the deceased die without making any will, the Consul-General, Consul, or his deputy shall have the right to take possession of all the property left by him, and to preserve it for the persons entitled by law to the property of the deceased ; and if the deceased should leave behind him debts due to him from individuals, then the Governor of the town, or those who have such a power, shall compel the debtors to pay what is due from them either to the Consul-General, Consul, or his deputy, for the benefit of the estate of the deceased ; and likewise, if the deceased should leave behind him debts due from him to a subject of the Sultan of Morocco, the Consul-General, Consul, or his deputy shall assist the creditor in the recovery of his claim upon the estate of the deceased.

ARTICLE 19.

The present Treaty shall apply generally to all the dominions of Her Britannic Majesty, and to all subjects who are under her obedience, and all those who inhabit any town or place which is considered part of her kingdom, as also to all her subjects in Gibraltar and its inhabitants, and likewise to the inhabitants of the United States of the Ionian Islands which are under her protection ; and all those who are called or described as English shall be considered as British subjects, without any distinction between those born in and those born out of Great Britain : and if the Queen of Great Britain should hereafter possess a town or a country which, either by conquest or by Treaty, shall enter under her authority, all its people and inhabitants shall be considered as British subjects, even if only for the first time subjected to Great Britain.

ARTICLE 20.

The subjects of the Queen of Great Britain, and those who are under her government or protection, shall have the full benefit of the privileges and of the particular favours granted by this Treaty, and which may be allowed to the subjects of other nations that are at war with Great Britain ; and if after this date any other privileges shall be granted to any other Power, the same shall be extended and apply to and in favour of all British subjects in every respect, as to the subjects of such other Power.

ARTICLE 21.

If a subject of the Sultan of Morocco should ship himself and his goods on board of a vessel belonging to a nation at war with the Queen of Great Britain, and that ship should be taken by a British man-of-war, the said Moroquine subject, and also his goods, provided they be not contraband of war, shall not be molested or interfered with, but both he and the goods which he has on board the vessel thus taken, shall be let free, and he shall be set at liberty to go where he pleases. In like manner, if a British subject should take his passage on board of a vessel belonging to a nation at war with the Sultan of Morocco, and that vessel be taken by a Moroquine cruizer, such British subject shall not be molested, nor shall his goods, if not contraband of war, which he may have with him on board of the vessel thus taken, be interfered with, but he shall have his liberty, and be left free to go where he pleases, with his goods, without impediment or delay.

ARTICLE 22.

If any duly commissioned British vessel should capture a ship, and take her to a harbour in the dominions of the Sultan of Morocco, the captors shall be allowed to sell such prize or the goods taken in her, without impediment from any one ; or they shall be at liberty to depart with their prize and take her to any other place they please.

ARTICLE 23.

If a British vessel should be chased by an enemy to within gun-shot from the seaports or shores of the dominions of the Sultan of Morocco, the local authorities shall respect and defend her as much as they can ; and, in like manner, the ships of Morocco shall be protected in all the seaports or coasts of the dominions of the Queen of Great Britain.

ARTICLE 24.

If a cruizer not belonging either to the Queen of Great Britain or to the Sultan of Morocco should possess letters of marque from a nation at war with Great Britain or with Morocco, that cruizer shall not be permitted to remain in any of the harbours or seaports of either of the two parties, nor to sell its prizes therein, nor to exchange such prizes or their cargo for other merchandize ; nor shall any such cruizer be allowed to purchase stores or provisions, except as much as may be absolutely necessary for the voyage to the nearest port of its own country.

ARTICLE 25.

If an armed ship of a nation at war with Great Britain should be found in any of the harbours or seaports of the Sultan of Morocco, and at the same time a British ship should happen to be also there, such ship of the enemy of Great Britain shall not be allowed to seize upon the British vessel, nor to cause it any injury ; and the enemy's ship shall not be allowed to sail in the track of the British vessel till twenty-four hours shall have elapsed after the departure of the said vessel, if the authorities of the port or harbour have the power of detaining the vessel of the enemy. The same rule shall be observed towards the ships of the Sultan of Morocco or his subjects, in all the harbours and seaports of the Queen of Great Britain.

ARTICLE 26.

If any British vessels of war or merchant-vessels should enter one of the harbours or seaports of the Sultan of Morocco,

and be in want of provisions or refreshments, such vessels shall be at liberty to buy what they require at the current prices of the time, free of duty ; but the quantity shall not exceed that which may be sufficient for the sustenance of the master and crew during the voyage to the port whither the vessel may be bound, and also the necessary provisions required for the daily maintenance of the crew during the time the vessel remains at anchorage in the Moorish port.

ARTICLE 27.

Vessels or boats freighted by order of the British Government for the conveyance of mails, or employed by the British Government under contract for the same service, shall be respected, and shall have the same privileges as ships of war, if they do not bring or take articles of merchandize to or from a port of the Sultan of Morocco ; but if they carry any merchandize from a port of these dominions, they shall pay the same charges as any other merchant-vessel.

ARTICLE 28.

If any vessel belonging to the subjects or to the inhabitants of the dominions of either Contracting Party should enter one of the seaports of the other, and should not wish to go into harbour nor to declare nor sell her cargo there, she shall not be compelled to do so, nor shall any one inquire or search in any way to know what she contains ; but a guard may be placed on board by the Custom-house officers, as long as the vessel remains at anchor, to prevent any illegal traffic.

ARTICLE 29.

If a British vessel with a cargo should enter one of the harbours of the Sultan of Morocco, and should wish to land a part of her cargo which may be destined for that place, she shall not be compelled to pay duties upon more than the landed part of her cargo, and shall not be required to pay any duty upon the rest of the cargo which is left on board, but she shall be at liberty to depart with the remainder of her cargo to any place she pleases. The manifest of the cargo of

each vessel shall on her arrival be delivered up to the Moorish Custom-house officers, who will be permitted to search the vessel on her arrival and departure, or to place a guard on board the vessel to prevent any illegal traffic.

The same rule shall be observed in British ports with regard to Moorish vessels.

The master of each vessel, on departure from a Moorish port, shall be required to present a manifest of the cargo of articles exported, certified by the Consul or the Vice-Consul, and shall exhibit the manifest to the administrators of customs when required to do so, in order that they may verify that no goods have been embarked in contraband.

ARTICLE 30.

No captain of a British vessel in a Moorish port, and no captain of a Moorish vessel in a British port, shall be in any way compelled to carry any passengers or any kind of goods against his own will, nor shall he be forced to sail for any place which he does not wish to go to ; and his ship shall not be molested in any way whatever.

ARTICLE 31.

If any of the subjects of the Sultan of Morocco should hire a British vessel to carry goods or passengers from one place to another within the dominions of Morocco, and if in the course of her voyage such British vessel should be forced by stress of weather or accident of the sea to enter a different port in the same dominions, the captain shall not be obliged to pay anchorage or any other duty on account of his entering such port ; but if such vessel should discharge or take on board at such port any cargo, the said vessel shall be treated like any other.

ARTICLE 32.

Any British ships or vessels which may be damaged at sea, and may enter one of the harbours of the Sultan of Morocco for repairs, shall be received and assisted in all their wants during their stay in such harbour, during their refit, or at their departure for the place of their destination, if the articles

required for the repairs of the vessel shall be found for sale in such harbour, and in such case they shall be bought and paid for at the same prices as are usually paid by others ; and the British ships or vessels shall not be in any way whatever molested or prevented from proceeding on their voyage.

ARTICLE 33.

If a ship belonging to the Queen of Great Britain, or to any of her subjects, should get on shore, or be wrecked on any part of the dominions of the Sultan of Morocco, she shall be respected and assisted in all her wants, in accordance with the rules of friendship ; and such ship, and all her contents, cargo, or any goods which may be saved from her at the time or after the wreck, shall be preserved and given up to the owners, or to the British Consul-General, Consul, or his deputy, without the loss or concealment of anything whatever. Should the wrecked vessel have on board any goods which the proprietors desire to sell within the dominions of Morocco, the proprietors shall pay upon these goods the requisite duties ; but if the goods on board the vessel had been embarked from any port of the dominions of Morocco, no other duties in addition to those which may already have been paid, shall be demanded, either on importation or on exportation, and the proprietors shall have the right either of selling the goods in Morocco, or of embarking them, as they please. The captain and crew shall be at liberty to proceed to any place they please, and at any time they may think proper, without any hindrance. In like manner, the ships of the Sultan of Morocco, or of his subjects, shall be treated in the dominions of the Queen of Great Britain ; it being understood that such ships are to be subject to the same lawful charges for salvage to which British ships are subject. If a British vessel should be wrecked at Wadnoon, or on any part of its coast, the Sultan of Morocco shall exert his power to save and protect the captain and crew, till they return to their own country ; and the British Consul-General, Consul, or his deputy shall be allowed to inquire and ascertain, as much as they can, about the captain and crew of any such ship, in order that they may obtain and save

them from those parts of the country ; and the Governors appointed in those places by the Sultan of Morocco shall also assist the Consul-General, Consul, or deputy, in his researches, agreeably to the rules of friendship.

ARTICLE 34.

Her Majesty the Queen of Great Britain and His Majesty the Sultan of Morocco engage to do all in their power for the suppression of piracy ; and the Sultan especially engages to use his utmost efforts to discover and punish all persons on his coasts or within his dominions who may be guilty of that crime, and to aid Her Britannic Majesty in so doing.

ARTICLE 35.

If any of the subjects or of the ships of either of the two Parties should do anything contrary to any of the conditions of this Treaty, whether intentionally or unintentionally, the peace and friendship thereby stipulated for shall not be disturbed, but shall remain preserved, fixed, and always durable upon the basis of sincerity, till communication shall be forwarded to the Sovereign of the aggressor, without his being in the mean time molested ; and if any of the subjects of either party should wish or attempt to violate this Treaty, or any of its conditions, his Sovereign shall be bound to chastise and punish him severely for his conduct.

ARTICLE 36.

If this Treaty of Peace and Friendship between the two Contracting Parties should be infringed, and if, in consequence of such infringement, (which God forbid !) war should be declared, all the country and subjects of the Queen of Great Britain, and those under her protection, of whatever degree or class, who may happen to be found in the dominions of the Sultan of Morocco, shall be permitted to depart to any part of the world they choose, and to carry with them their goods and property, their families and their servants or establishments, whether they be British born or not ; and they

shall be allowed to embark on board of any ship of another nation which they may select. Moreover, a period of six months shall be granted them, if they ask for it, for the arrangement of their affairs, the sale of their goods, or for doing what they please with their property; and during such period of six months they shall have full liberty and perfect security for their persons and property, without any interference, injury, or hindrance in any way, by reason of such war; and the Governors or authorities shall assist and help them in the arrangement of their affairs, and attend them in the recovery of the debts due to them, without delay, dispute, or postponement. In like manner, all this shall be granted to the subjects of the Sultan of Morocco in all the dominions of the Queen of Great Britain.

ARTICLE 37.

This Treaty shall be declared and made public to the subjects of both parties, lest any one of them should remain ignorant of its conditions, and copies shall be prepared and sent to the Governors and men of authority who are entrusted with the revenue and the expenditure; and also to all the seaports and the captains of cruizers belonging to the Sultan of Morocco.

ARTICLE 38.

The present Treaty shall be ratified by Her Majesty the Queen of Great Britain, and by His Majesty the Sultan of Morocco, and the ratifications shall be exchanged at Tangier, as soon as possible within four months from the date hereof.

When the ratifications of the present Treaty, and of the Convention of Commerce and Navigation, which has also been concluded this day between the High Contracting Parties, shall have been exchanged, the stipulations of the said Treaty and Convention shall come into immediate operation, and shall be substituted for the stipulations of all preceding Treaties between Great Britain and Morocco.

In witness whereof the respective Plenipotentiaries have signed the present Treaty, and have affixed thereto their respective seals.

Done at Tangier, the ninth day of December, in the year one thousand eight hundred and fifty-six, corresponding to the Moorish date of the tenth day of the month of Rabbea the second, in the year one thousand two hundred and seventy-three.

(L. S.) J. H. DRUMMOND HAY.

(Arabic signature of)

(L. S.) SEED MOHAMED KHATEEB.

Appendix 18.

NOTICE OF RECOGNITION OF FRENCH PROTECTORATE OF DECEMBER 19th, 1914

His Majesty's Government, having been informed that the Government of the French Republic have recognised the British Protectorate over Egypt, His Britannic Majesty's Principal Secretary of State for Foreign Affairs hereby gives notice that His Majesty's Government adhere to the Franco-Moorish Treaty of March 30th, 1912.

Foreign Office, December 19th, 1914.

Appendix 19.

DAHIR DU 8 NOVEMBRE 1921 (7 REBIA I 1340)
RELATIF À LA NATIONALITÉ MAROCAINE.

Louange à Dieu seul !

(Grand Sceau de Moulay Youssef.)

Que l'on sache par les présentes—puisse Dieu en élever et
en fortifier la teneur !

Que Notre Majesté chérifienne

A décidé ce qui suit :

Article unique. Est Marocain, à l'exception des citoyens,
sujets ou ressortissants de la Puissance protectrice autres
que Nos sujets, tout individu né dans la zone française de
Notre Empire, de parents étrangers dont l'un y est lui-
même né.

Fait à Rabat, le 7 Rebia I 1340 (8 novembre 1921).

Vu pour promulgation et mise à exécution : .

Le Maréchal de France, Commissaire
Résident général,
LYAUTEY.

Taza, le 8 novembre 1921.

Appendix 20.

DÉCRET RELATIF À LA NATIONALITÉ FRANÇAISE DANS LA ZONE FRANÇAISE DE L'EMPIRE CHÉRIFIEN.

("Journal officiel," N°. 307, du 13 novembre 1921.)

(Erratum "Journal officiel," N°. 309, du 16 novembre 1921.)

Le Président de la République française,

Vu la loi du 16 juillet 1875, article 8 ;

Vu la loi du 15 juillet 1912,

Décète :

Article 1er. Est Français tout individu né dans la zone française de l'Empire chérifien de parents dont l'un, justiciable au titre étranger des tribunaux français du protectorat, est lui-même né dans cette zone, pourvu que sa filiation soit établie en conformité des prescriptions de la loi nationale de l'ascendant ou de la loi française avant l'âge de 21 ans.

Si ce parent n'est pas celui qui, en vertu des règles posées par la législation française, donne à l'enfant sa nationalité, celui-ci peut, entre sa 21^e et sa 22^e année, déclarer qu'il renonce à la qualité de Français.

Cette déclaration sera reçue dans les formes et sous les conditions déterminées aux articles 8 et suivants du décret du 29 avril 1920.

Art. 2. Le Président du Conseil, Ministre des Affaires étrangères, et le Garde des Sceaux, Ministre de la Justice, sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret.

Fait à Paris, le 8 novembre 1921.

A. MILLERAND.

Par le Président de la République :

Le Président du Conseil, Ministre des
Affaires étrangères, par intérim,

L. BONNEVAY.

Le Garde des Sceaux, Ministre de la
Justice,

L. BONNEVAY.

Appendix 21.

(1.)

LORD HARDINGE TO THE MARQUESS CURZON
OF KEDLESTON.

(No. 3281.)

Paris, November 25, 1921.

My Lord,

I have the honour to transmit to your Lordship herewith copy of a telegram which I have received from His Majesty's consul-general at Tunis, with regard to orders issued by the French authorities for the enlistment of certain categories of British subjects. I should be grateful if I might be instructed as to what reply I should return to the enquiry contained in the last paragraph of Mr. Sarell's telegram.

The decree of the President of the Republic, referred to by Mr. Sarell, was forwarded to your Lordship in my despatch No. 3151 of the 14th November.

I have, etc.

HARDINGE OF PENSHURST

(2.)

CONSUL-GENERAL SARELL TO LORD HARDINGE.

(Telegraphic.)

Tunis, November 23, 1921.

Under decrees of President of the Republic and Bey of Tunis of November 8th, relative to nationality in Tunis, French authorities ordered enlistment forthwith of all British subjects born in Tunis in 1902 of parents also born in Tunis.

Maltese and other British subjects claim extra-territorial privileges and equal rights with Italians, and protest against enlistment.

Request instructions as to reply which should be returned to these objections, and what, if any, communication should be made to the Resident-General.

(3.)

MR. ROBERTSON TO THE MARQUESS CURZON
OF KEDLESTON.

(No. 516.)

Tangier, December 23, 1921.

My Lord,

I have the honour to transmit to your Lordship herewith a copy of a dahir, dated November 8th, and published in the "Bulletin officiel" of the 6th instant, on the subject of Moroccan nationality. A copy of a French presidential decree dealing with the definition of French nationality in the protectorate is annexed to the dahir.

2. Your Lordship will observe that by virtue of this dahir any child born in the French zone, one of whose parents was also born in that zone, is claimed as a Moroccan subject. Although I presume that it is not your Lordship's intention to apply this dahir to British subjects by King's Regulation, yet I would point out that the result of this sweeping enactment is to confer a second nationality on a large number of British families, mostly of Gibraltarian origin, whose homes are in Morocco. Its effect, if British capitulatory rights were abolished, will also have to be borne in mind, should negotiations to that end be at any time resumed.

3. I am making enquiries of the French authorities at Rabat as to effect that this dahir might have in a hypothetical case which I am submitting to them.

I have, etc.

ARNOLD ROBERTSON.

(4.)

COUNT DE SAINT-AULAIRE TO THE MARQUESS
CURZON OF KEDLESTON.

Ambassade de France, Londres, le 14 décembre 1921.

M. le Marquis,

Par un décret du 8 novembre dernier, le Gouvernement de la République a conféré la nationalité française à « tout individu né dans la Régence de Tunis de parents dont l'un, justiciable au titre étranger des tribunaux français du protectorat, est lui-même né dans la Régence. » De ce fait, un certain nombre de Maltais établis dans la Régence depuis deux générations sont devenus Français.

Or, aux termes de la loi sur la nationalité britannique du 7 août 1914, sont Anglais ou sujets anglais : (1) les individus nés dans les domaines de Sa Majesté britannique, (2) ceux qui, fils des précédents, sont nés à l'étranger. Il en résulte que l'individu né à l'étranger d'un père né lui-même à l'étranger n'est pas Anglais.

Par application de ces dispositions, les enfants nés en Tunisie d'un Anglo-Maltais qui lui-même y est né, n'ayant pas la nationalité britannique, n'auraient aucune nationalité si le souverain du lieu de leur naissance ne leur donnait la sienne. Mais comme la nationalité tunisienne entraînerait pour les Anglo-Maltais avec le statut civil indigène une modification profonde du régime sous lequel leur famille avait antérieurement vécu, le décret français du 8 novembre substitue pour eux, et d'une façon plus générale pour tous ceux dont les parents étaient justiciables, à raison de leur nationalité, des tribunaux français du protectorat, la nationalité française à la nationalité tunisienne.

Une telle mesure ne souffre, au point de vue juridique, aucune objection dès l'instant qu'elle a pour but de donner une nationalité à des individus qui n'en ont pas, alors surtout que toutes précautions sont prises pour leur conserver le bénéfice d'un statut personnel européen, grâce à la substitution de la nationalité du protecteur à celle du protégé.

Toutefois, le consul général de Sa Majesté britannique à Tunis s'est efforcé de diverses manières de mettre obstacle à l'application du décret précité. Il a, notamment, fait distribuer, à Tunis et dans les ports de la côte, des circulaires invitant, « en ce qui concerne le service militaire, les sujets britanniques et descendants de sujets britanniques de Tunisie » à attendre un appel individuel avant de se rendre à l'invitation des autorités françaises.

Le Gouvernement de la République estime que l'attitude de Mr. Sarell est incompatible avec le respect de la souveraineté territoriale. De plus, elle ne se justifie point.

Dans ces conditions, le Gouvernement français serait obligé au Gouvernement britannique de vouloir bien prescrire à Mr. Sarrel de cesser la campagne d'obstruction qu'il a entreprise contre la mise en vigueur du décret en question.

Veillez agréer, etc.

SAINT-AULAIRE.

(5.)

LORD HARDINGE TO M. POINCARÉ

His Majesty's Ambassador presents his compliments to the President of the Council, Minister for Foreign Affairs, and has the honour, under instructions from His Majesty's Secretary of State for Foreign Affairs, to make the following communication to the French Government :

2. His Majesty's Government have learned with surprise that, by a Presidential decree of the 8th November last, it is sought to impose French nationality upon British subjects born in Tunis of parents who were born in that protectorate. They are also concerned to learn that in virtue of that decree measures are being taken locally to compel these British subjects to register themselves forthwith with the military authorities for service with the French army.

3. While the decree is drawn up in general terms, His Majesty's Government understand that it is specifically directed against members of the British Maltese community in Tunis, who, owing to some misconception

of English nationality law, are supposed by the French Government not to possess British nationality. In a note of December 14th, (1) addressed by the French Ambassador in London to His Majesty's Government, this theory is advanced on behalf of the French Government as affording justification for the measures taken by them against these members of the British Maltese community.

4. Where questions of the interpretation of English law are concerned, His Majesty's Government might have anticipated that they would have been consulted before the adoption by the French Government of measures dependent on such interpretation and affecting the welfare of British subjects. Had this been done, they would have been able to point out at once that the French Government labour under an entire misapprehension. English law provides that persons born of British parents of whatever generation in countries where His Majesty's Government possess extra-territorial rights, are deemed to have been born within British allegiance and are so placed on the same footing as persons who derive British nationality in virtue of birth within the British dominions. In foreign countries where His Majesty's Government do not possess extra-territorial rights, children of British parents of the first generation are British subjects in contemplation of English law. It was not till September 18th, 1897, that His Majesty's Government finally gave up British capitulatory rights in the Regency. It follows, therefore, that in contemplation of English law, all persons born of British parents in Tunis before the 18th September, 1897, and all children of such persons, are British subjects.

5. In these circumstances, His Majesty's Government must protest strongly against any attempt to impose French nationality and the obligations of French military service upon such persons in Tunis. As these measures have apparently resulted from the misconception of English law referred to, they anticipate that the French Government will now take steps to withdraw them.

1) No. (4).

6. His Majesty's Government are fortified in making this protest by the terms of article 1 of the Anglo-French Convention of September 18th, 1897, relative to Tunis. The convention extended to Tunis treaties and conventions of every kind in force between the United Kingdom and France, guaranteed to His Majesty's Government in Tunis for a period of forty years the treatment of the most favoured nation secured by these treaties, and afforded to British subjects in Tunis the same rights and privileges as those enjoyed in France. These provisions modified by the notes exchanged on the 8th March to 23rd May, 1919, are infringed by the treatment of British subjects in Tunis in any manner different from the treatment accorded to the nationals of other foreign Powers, as well as by any treatment differing from that accorded to British subjects in France. British subjects of the first generation born in France are by the French law of 1889 given the right to decline French nationality on attaining their majority, provided they retain their British nationality.

7. His Majesty's Government have no doubt that in the light of the above considerations the French Government will at once take steps to ensure that the decree in question should not be applied to British subjects in Tunis.

Paris, January 3, 1922.

(6.)

LORD HARDINGE TO M. POINCARÉ.

His Majesty's Embassy has the honour, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to inform the Ministry for Foreign Affairs that the attention of His Majesty's Government has been called to the decree of the 8th November, 1921, and the dahir of the same date respecting the nationality of foreigners resident in the French zone of Morocco.

These decrees have as effect to impose French or Moroccan nationality on the descendants of British subjects born in Morocco who, in virtue of their birth in a country where the King of England possesses extra-territorial jurisdiction, are born within His Majesty's allegiance and so are British subjects in contemplation of English law.

His Majesty's Embassy is therefore to state that in view of the extra-territorial rights which His Majesty's Government possess in Morocco, they are unable in any way to admit that these decrees are applicable to persons entitled to British nationality.

Paris, January 10th, 1922.

(7.)

M. POINCARÉ TO LORD HARDINGE.

Par sa note du 3 de ce mois, ¹⁾ l'Ambassade d'Angleterre à Paris a bien voulu exposer au Ministère des Affaires étrangères les raisons pour lesquelles le Gouvernement de Sa Majesté britannique conteste la légitimité de l'application aux descendants d'Anglo-Maltaïes, nés en Tunisie, des décrets du 8 novembre 1921, et demande que des mesures soient immédiatement prises en vue d'en arrêter l'effet.

2. Le Ministre des Affaires étrangères a l'honneur d'appeler la plus bienveillante attention de l'Ambassade de Sa Majesté sur les considérations suivantes :

3. Le droit du souverain territorial à légiférer sur la nationalité des enfants nés dans les limites de son territoire est hors de conteste. Quelle que soit, aux termes des lois étrangères, la condition de ceux qu'atteint la législation du 8 novembre, cette législation n'excède pas les limites de la souveraineté locale. Étroitement calqués sur les dispositions de la loi française (Code civil, article 8, paragraphe 3), qui n'a pas soulevé de protestations de la part des Gouvernements étrangers et,

1) No. (5).

notamment, du Gouvernement britannique, les décrets du 8 novembre 1921 semblent devoir être d'autant plus aisément acceptés par la Grande-Bretagne que, depuis la loi du 7 août 1914, elle cesse, à la seconde génération, de réclamer les enfants d'Anglais nés hors des possessions britanniques.

4. Le Gouvernement britannique estime cependant que les décrets du 8 novembre ne peuvent atteindre les descendants nés dans la Régence d'un père anglais, né lui-même en Tunisie antérieurement au 17 septembre 1897. Jusqu'à cette date, en effet, la Grande-Bretagne avait, dans la Régence, le bénéfice des Capitulations. Or, aux termes de la loi anglaise sur la nationalité du 7 août du 1914 : « L'enfant né d'un sujet britannique, soit avant, soit après l'adoption de la présente loi, sera considéré comme né sous l'allégeance de Sa Majesté britannique s'il est né sur un territoire où, par . . . capitulation . . ., Sa Majesté britannique exerce un droit de juridiction sur des sujets britanniques. » Toutes les naissances d'Anglo-Maltaïes antérieures à 1897 étant alors placées, par fiction, non en Tunisie, mais dans les possessions britanniques, les décrets du 8 novembre n'atteignent encore qu'un très petit nombre d'enfants, tous en bas âge : la grande masse de la population anglo-maltaïse échappe à l'application, *jure soli*, de la nationalité française.

5. Le Ministère des Affaires étrangères regrette de ne pouvoir accepter cette manière de voir. Il n'ignore pas que la loi britannique sur la nationalité du 7 août 1914 assimile, en ce qui regarde les descendants de ressortissants britanniques, au territoire de la Grande-Bretagne celui « d'un pays où, par . . . capitulation . . ., Sa Majesté britannique exerce un droit de juridiction sur des sujets britanniques. » Mais il ne peut admettre que cette assimilation, créée pour la première fois en 1914, par l'acte unilatéral du législateur britannique, puisse, rétroactivement, dans les relations internationales, donner à la Grande-Bretagne un droit qu'elle ne réclamait pas encore quand, à la suite de l'établissement du protectorat français, le régime des Capitulations prit fin dans la Régence. A ce moment, la naissance des Anglo-Maltaïes en Tunisie n'était pas considérée par la Grande-Bretagne comme une naissance en territoire britannique. Le souverain territorial a

donc repris la totalité de ses droits, qui échappent dès lors à toute action étrangère.

6. Si le Ministère des Affaires étrangères pouvait ici se rallier à la thèse du Gouvernement du Roi, il serait, dans l'obligation de substituer à la date de 1897 celle de 1884. Par l'arrangement du 18 septembre 1897, la Grande-Bretagne a renoncé, dans l'ordre économique, aux privilèges capitulaires — quatorze ans plus tôt, par l'ordonnance du 31 décembre 1883, la Grande-Bretagne avait déjà renoncé, dans l'ordre de la juridiction, à ces mêmes privilèges ; or, c'est aux Capitulations relatives à la juridiction, non aux Capitulations relatives au commerce que se réfère la loi britannique du 7 août 1914 sur la nationalité.

7. Si d'ailleurs, comme veut bien le rappeler le Gouvernement britannique, l'arrangement du 18 septembre 1897 accorde au Royaume-Uni, dans la Régence, le traitement de la nation la plus favorisée, tout, dans cet arrangement, démontre qu'il a trait au régime des relations économiques ; le problème, politique et juridique, de la nationalité des personnes demeure étranger à cet ordre des considérations.

8. Enfin, si, comme le croit le Gouvernement du Roi, l'arrangement du 18 septembre 1897 devait trouver ici son application, il en résulterait qu'à la seconde génération, les descendants d'Anglais nés en Tunisie devraient être, en tout cas, considérés comme Français : « Le Gouvernement de Sa Majesté britannique, s'abstiendra, dit cet arrangement (article 1^{er}, paragraphe 2), de demander pour ses consuls, ses ressortissants et ses établissements en Tunisie d'autres droits et privilèges que ceux qui lui sont acquis en France. » En France, l'enfant d'un Anglais qui lui-même y est né, est Français, sans avoir le droit d'exciper de la qualité d'Anglais que, par ailleurs, lui reconnaîtrait la loi anglaise. S'il en est ainsi en France, il ne saurait en être autrement en Tunisie. Le Gouvernement britannique n'a d'ailleurs pas oublié qu'en 1897, il s'est engagé à ne pas demander, en Tunisie, pour ses ressortissants, plus de droits et privilèges qu'en France.

9. Le Ministère des Affaires étrangères regrette, dans ces conditions, de ne pouvoir prendre, au regard des Anglo-Maltaïses de Tunisie, les mesures que le Gouvernement britannique

désire. Le décret français du 8 novembre a d'ailleurs trouvé dans la Régence le meilleur accueil. Sans aucune contrainte ni intervention de l'autorité militaire, les contrôleurs civils, chargés de l'exécution du décret, ont reçu de nombreuses immatriculations, d'autant plus précieuses que spontanées. Avec la même faveur qu'en 1884 ils accueilleraient la justice française, les Anglo-Maltaïes de Tunisie viennent d'accueillir la nationalité française dans un enthousiasme qui ne laisse aucun doute sur leurs sentiments. Ces adhésions à la nationalité française créent à la France des devoirs auxquels elle espère vivement que le Gouvernement du Roi voudra bien reconnaître qu'elle ne saurait manquer.

10. Jusqu'à présent, le Gouvernement britannique semblait s'être fait une règle d'interdire à ses consuls, en cas de double nationalité, d'intervenir en faveur des ressortissants britanniques sur le territoire de l'État étranger qui les regarde comme siens. Le Gouvernement de la République ne doute pas que le Gouvernement du Roi, éclairé par les explications qui précèdent, n'ait la bienveillance de rappeler son consul général à Tunis au respect de cette règle traditionnelle de la diplomatie britannique.

11. Au surplus, les décrets du 8 novembre 1921 ne s'adressent pas seulement aux Anglo-Maltaïes, mais à tous les étrangers. Il ne s'appliquent pas seulement à la Tunisie, mais à la zone de l'Empire chérifien et ils sont l'extension naturelle aux pays de protectorat français de dispositions qui ont donné dans la France métropolitaine les meilleurs résultats.

Paris, le 16 janvier 1922.

(8.)

LORD HARDINGE TO M. POINCARÉ.

Paris, February 6th, 1922.

M. le Président du Conseil,

I forwarded to His Majesty's Secretary of State for Foreign Affairs a copy of your Excellency's note of the 16th January,¹⁾

1) No. (7).

containing the reply of the French Government to the representations made by me on the 3rd ultimo concerning the application of the French decree of the 8th November last to British subjects born in Tunis.

2. In this reply the French Government contend (1) that the provision of English law under which the children of British subjects born in countries where His Majesty has capitulatory rights of jurisdiction are deemed to be born within His Majesty's allegiance dates only from the passing of the *British Nationality and Status of Aliens Act of 1914*, and cannot, therefore, apply to Tunis, where British capitulatory rights had already ceased; (2) that the capitulatory rights of jurisdiction possessed by this country in Tunis came to a definite end in 1884; (3) that in so far as the *Anglo-French Convention of September 18th, 1897*, relative to Tunis, may be held to apply to the question which has arisen, there is entire similarity in the treatment of British subjects born in that protectorate and those born in France, seeing that the children born in France of foreigners also born there are in French law deemed to be French citizens; and (4) that the most-favoured-nation rights possessed by Great Britain in Tunis in virtue of existing treaty arrangements have no application beyond the economic sphere. On these various points the Marquess Curzon of Kedleston desires me to make the following observations:—

3. The principle of English law expressed in section 1 (i) of "*The British Nationality and Status of Aliens Act, of 1914*," is not, as the French Government suppose, of recent creation. The British law whereby the rights and duties of a British subject are acquired and lost has hitherto consisted partly of the common law of England and partly of statute law. By the common law all those who are born within the King's allegiance, whether within the King's dominions or within the King's protection, are British subjects. The provision in the Act of 1914 was inserted because various groups of British subjects who had been born in places where the King exercises extra-territorial jurisdiction felt some misgiving as to whether it was sufficiently clear that they had been born within the King's protection, and, though their status as British subjects

under the common law was fully recognised by the executive Government, it was thought well to remove all doubt on this point by the enactment of a statutory provision.

4. With regard to the second point raised by the French Government, His Majesty's Government are unable to accept the contention that British capitulatory rights of jurisdiction in Tunis came to a definite end in 1884. The conditions of the understanding reached in 1883 are set out in Lord Granville's note to M. Tissot of June 20th of that year. The change then brought about amounted to no more than that by agreement His Majesty's Government consented to the French tribunals exercising on their behalf capitulatory rights of jurisdiction which they still maintained *vis-à-vis* His Highness the Bey of Tunis. On the conclusion of the Anglo-French Convention of September 18th 1897, relative to Tunis, the relations between Great Britain and the French protectorate were thereafter placed on the treaty basis which finds expression in that convention.

5. It results from the foregoing that persons born of British parents in Tunis previous to October 15th, 1897, the date when the convention of September 18th, 1897, was ratified, are British subjects in contemplation of English law, as are also (by statute) their children born in Tunis since that date. If, as observed in my previous communication, the French Government had thought fit to consult His Majesty's Government beforehand as to the status in English law of these members of the Anglo-Maltese community in Tunis, His Majesty's Government would have been in a position to furnish them at an earlier date with authoritative information on this point.

6. As regards the third point raised, His Majesty's Government are equally unable to accept the view of the French Government that there is similarity of treatment as between these British subjects in Tunis and British subjects in France. The note from the French Ambassador of December 14th last ¹⁾ to Lord Curzon explains very clearly the position taken up by the French Government, and gives as the reason for

1) No. (4).

the French decree of November 8th being applied to the Anglo-Maltese concerned, who were presumed to possess no nationality, that this was in substitution of the Tunisian decree which would have subjected that Christian community to a régime repugnant to them. With the latter sentiment His Majesty's Government cordially agree, but they are unable to follow the reasoning by which it is sought to establish that these persons born in the protectorate may therefore be deemed to be French citizens. There are here three distinct questions : (1) the error committed by the French authorities in regarding these members of the Maltese community in Tunis as being without nationality ; (2) the admission of the French Government that they should not be placed under a local régime alien to them both in religion and law ; and (3) the fact that there is no need, and apparently no right, to impose upon them a French nationality, when they already possess British nationality.

7. Moreover, the successive changes made in French nationality law by the law of December 16th, 1874, and that of June 26th, 1889, allowed to British subjects born in France who were affected for the first time thereby the right on each occasion to decline French nationality if it were shown that they retained their nationality of origin. No corresponding provision appears in the present decrees, which appear to have been launched suddenly and without warning in a form which envisages two generations of British subjects born in a protectorate where no nationality law affecting foreign residents has hitherto existed. If, as the French Government believe, the decrees of November 8th last have been welcomed with enthusiasm by the British-Maltese community in Tunis, there should be the less hesitation in according to all persons affected by those decrees the fullest rights of option to accept or decline the French nationality which it is sought to impose upon them.

8. There remains the fourth point raised by the French Government, viz., that the most-favoured-nation rights enjoyed by Great Britain in Tunis do not extend beyond the economic sphere. On this point His Majesty's Government would remind the French Government that in his Excellency's

note of March 8th, 1919, the French Ambassador at this capital, on the initiative of the French Government, proposed to substitute for article 1 of the convention of September 18th, 1897, stipulations which, on condition of reciprocity, accorded to British subjects in Tunis a treatment in effect identical with that accorded to the subjects of any third Power in that protectorate. His Majesty's Government deem themselves therefore entitled to request that the treatment of British subjects in Tunis shall in all respects conform not only with rights guaranteed by treaties entered into between Great Britain and France but also with those guaranteed to the subjects of other States under existing treaties.

9. In bringing the above considerations to the notice of the French Government, I am instructed to state that His Majesty's Government can in the circumstances only reaffirm the protest which has already been entered by them on the 3rd ultimo. I am to add that the difference between the two Governments would appear to be one which is exclusively of a legal nature, and as such to be suitable to submission to arbitration. His Majesty's Government would therefore urge upon the French Government that it should be referred to the Permanent Court of International Justice, and that an agreement to this effect should be entered into before the dispute should have time either to impair the relations between the two countries or to embitter the feelings of those who are alleged to be affected by the decrees in question.

I have, etc.
(For the Ambassador),
MILNE CHEETHAM.

M. POINCARÉ TO LORD HARDINGE.

Par sa note du 10 janvier 1922 ¹⁾, l'Ambassade de Sa Majesté britannique a bien voulu appeler l'attention du Ministère des Affaires étrangères sur le fait qu'en vertu du droit de juridiction encore exercé par Sa Majesté le Roi d'Angleterre sur ses ressortissants au Maroc, les descendants des sujets britanniques, nés dans la zone française de l'Empire chérifien, devraient être, par application de la fiction d'extraterritorialité, réputés nés sur le territoire britannique et, dès lors, tenus pour Anglais, à quelque génération que ce fût, sans que la souveraineté territoriale pût, à aucun moment, opposer au *jus soli* britannique le *jus soli* local et, par substitution de la nationalité du protecteur à celle du protégé, le *jus soli* français.

Dans ces conditions, le Gouvernement britannique estime que le dahir du 8 novembre 1921 et le décret français de la même date ne pourraient s'appliquer aux enfants nés dans la zone française du Maroc d'un père né dans cette même zone que postérieurement à l'abandon par la Grande-Bretagne des privilèges juridictionnels qu'elle y exerce encore.

Le Ministère des Affaires étrangères a l'honneur de faire savoir à l'Ambassade de Sa Majesté britannique qu'il ne peut, à son grand regret, partager cette manière de voir.

Elle suppose, en effet, qu'en vertu des Capitulations il y a assimilation pleine et entière du territoire du Souverain local à celui du Souverain étranger qui y exerce sa juridiction. Une telle identification ne saurait être admise : ni les principes, ni les textes ne l'autorisent, soit au point de vue général, soit plus spécialement au point de vue de l'application des lois sur la nationalité. Jusqu'à la récente loi sur la nationalité du 7 août 1914, la Grande-Bretagne n'a d'ailleurs jamais prétendu qu'il en fût ainsi. Or, aucun état ne saurait, postérieurement à la reconnaissance d'un protectorat, augmenter, par un acte unilatéral de sa volonté, les privilèges auxquels l'établissement de ce protectorat doit naturellement mettre

1) No. (6).

fin. Si d'ailleurs la nouvelle loi anglaise de 1914 maintient indéfiniment au bénéfice de la nationalité britannique les descendants de sujets anglais en pays de Capitulations, alors que partout ailleurs elle leur fait perdre cette nationalité à la seconde génération, cette disposition ne s'explique que par la crainte de voir les descendants de sujets britanniques tomber du régime européen au régime indigène. Mais, dans la zone française de l'Empire chérifien, une telle appréhension n'a pas raison d'être : mû par une préoccupation semblable à celle qui manifestement inspire la loi britannique de 1914, le décret français du 8 novembre a précisément pris soin de substituer le *jus soli* de l'État protecteur à celui de l'État protégé pour conserver aux descendants des ressortissants de Puissances étrangères le bénéfice du statut européen.

Paris, le 11 février 1922.

(10.)

LORD HARDINGE TO M. POINCARÉ.

Paris, February 28th, 1922.

M. le Président du Conseil,

His Majesty's Government have had under their consideration the note which the French Ministry for Foreign Affairs addressed to His Majesty's Embassy on the 11th instant ¹⁾ relative to the decrees of November 8th last, imposing French and Moroccan nationality on certain categories of persons born within the French zone in Morocco.

His Majesty's Government have difficulty in following the reasoning contained in the note of the French Government, which appears to proceed on the assumptions that His Majesty's Government regard Moroccan territory as assimilated to British territory, and that their claim to regard as British

1) No. (9).

subjects the children born in Morocco of British parents dates only from the passing of the enactment known as "The British Nationality and Status of Aliens Act, 1914." Both these assumptions are incorrect.

The legal condition of foreigners resident in extra-territorial countries, who enjoy the benefit of capitulatory rights and are exempted by treaty from the jurisdiction of the local courts of those countries, is well defined. It is dealt with in the writings of eminent authorities, and, if it is necessary to cite instances, reference may be made to the passage in *M. Feraud-Giraud's* well-known work "*De la Juridiction française dans les Echelles du Levant et de la Barbarie*" (vol. ii, p. 56), where that learned writer, after examining in detail the "condition légale des Français, des protégés de France et des autres étrangers dans le Levant et la Barbarie," concludes as follows: "C'est ainsi que l'étranger établi dans les Echelles du Levant et de la Barbarie conservera toujours sa nationalité, ses droits civils et politiques, comme s'il n'avait jamais cessé de conserver sa résidence et son domicile dans la métropole."

The prescriptions of English law take cognisance of these conditions. They do not, as explained in paragraph 3 of the note which I had the honour to transmit to your Excellency on the 6th instant ¹⁾ relative to the Tunis decrees, date merely from the passing of the Act of 1914, but existed in the common law of England long anterior to that date. Neither, as the French Government appear to think, was the claim of His Majesty's Government to treat the children of British parents born in extra-territorial countries as British subjects put into practice for the first time in 1914. There exists a long and unbroken practice to this effect, and such children have been registered at His Majesty's consulates in those countries for many years previous to 1914. Nor can His Majesty's Government doubt that the descendants of French citizens in those countries have been similarly registered at French consulates as French citizens, or that the French Government would deny that in any way they should be regarded as

1) No. (8).

deriving their nationality from the country in which they were born. There is no ground therefore for the assumption that there has been since 1914 any augmentation on the part of His Majesty's Government of privileges claimed in Morocco on behalf of British subjects, or for the theory that the dispositions of English law depend on the assumption that Moroccan territory is British territory.

But, while His Majesty's Government make no claim to the assertion of a *jus soli* in Morocco in the manner suggested by the French Government, they are wholly unable to admit that that Government can themselves assert such a claim in a country of which they occupy only the position of protecting Power, in regard to persons who are not only not of French descent but are actually British subjects and entitled to the benefit of the capitulatory rights guaranteed by treaty to His Majesty's Government in that country. In other respects they are in agreement with the French Government that the handing over of persons of European descent to a native régime would be an act which no civilised Power should countenance, and they would add that in the case of Morocco any act of this nature would be in violation of the treaty rights of jurisdiction which they possess in that country.

It is, however, increasingly evident to His Majesty's Government that the contemplated application of the decrees of November 8th last, both in Tunis and Morocco, to British descendants born in those protectorates has resulted from the erroneous impression of the French authorities that these British subjects do not possess British nationality. In the French Ambassador's note to Lord Curzon of December 14th last,¹⁾ his Excellency observes "*une telle mesure ne souffre au point de vue juridique aucune objection dès l'instant qu'elle a pour but de donner une nationalité à des individus qui n'en ont pas.*" It is here clearly implied that the French Government are fully aware that valid objection would exist if these persons did in fact possess British nationality. Now that the French Government are made aware that this

1) No. (4).

is the case, and that the view of English law formerly entertained by them is entirely erroneous, His Majesty's Government are confident that the intended application of these decrees to British subjects will be withdrawn and instructions given to the French representatives to this effect. Unless the French Government are willing to take this action His Majesty's Government can only reiterate their demand that the question should be referred to arbitration.

I have, etc.

HARDINGE OF PENSHURST.

(II.)

M. POINCARÉ TO LORD HARDINGE.

Paris, le 22 mars 1922.

M. l'Ambassadeur,

Par sa lettre du 6 février 1922, ¹⁾ votre Excellence a bien voulu me faire connaître la réponse du Principal Secrétaire d'Etat des Affaires étrangères de Sa Majesté à la note dans laquelle mon Département avait, le 16 janvier dernier, exposé les raisons pour lesquelles le Gouvernement français considérerait que la législation du 8 novembre 1921 sur la nationalité était applicable aux sujets anglais nés en Tunisie, antérieurement à 1897, d'un père qui lui-même y était né.

2. Les considérations présentées par le Gouvernement britannique ont été l'objet de l'examen le plus attentif.

3. Dans sa note du 16 janvier, mon Département avait rappelé que si, actuellement, les descendants de ressortissants britanniques en pays de Capitulations sont, de génération en génération, considérés comme sujets britanniques, c'est seulement en vertu de la loi récente du 7 avril 1914. Aux termes de la note de l'Ambassade royale du 6 février, le principe exprimé dans cette loi ne serait pas, comme le Gouvernement français a pensé, de date récente. Tandis que le

1) No. (8).

droit français ne connaît qu'une source : la loi, telle qu'elle résulte de l'exercice du pouvoir législatif, le droit britannique procède de deux sources : le « common law » qui se forme sans textes, par l'évolution de la jurisprudence, et le « statute law » qui se crée, comme la loi française, par décision législative. Si, dans le « statute law, » le nouveau principe a été introduit pour la première fois en 1914, il était antérieurement reconnu par le « common law. »

4. Bien que la controverse soit plutôt d'ordre théorique, le Gouvernement de la République ne croit pas pouvoir accepter l'opinion du Gouvernement du Roi.

5. En effet, le « common law » n'admet, de l'avis des commentateurs, que le *jus soli* : tout individu né sur le territoire britannique est sujet britannique. Mais, dès le XVIII^e siècle, deux lois, l'une de George II (St. 4 Geo. II, cap. 21, sec.), l'autre de George III (St. 13 Geo. III, cap. 21), apportent une double exception au principe qui fait dépendre la nationalité du lieu de naissance ; les enfants nés à l'étranger de sujets britanniques seront considérés comme sujets de la Couronne si le père, d'après la loi de George II, ou le grand-père, d'après la loi de George III, est né en territoire britannique. Ainsi le « common law » ne connaît que le *jus soli*, tandis que le *jus sanguinis* n'est inscrit que dans le « statute law ». L'une des plus grandes autorités de la science juridique anglaise, Westlake, est catégorique à cet égard (« Private International Law, » chapitre XV, paragraphes 280 et 381). Si la transmission de la nationalité britannique indéfiniment de génération en génération en pays de Capitulations s'explique par le principe de la filiation, elle doit être inscrite expressément dans le « statute law ». Mais elle n'y fait son apparition qu'en 1914. Si, au contraire, cette transmission dérive du « common law », elle ne peut s'expliquer que par l'assimilation du territoire étranger au territoire britannique. Cette assimilation contraire au droit international n'est certainement pas dans la pensée du Gouvernement britannique, et dans ces conditions il ne semble pas que le Gouvernement de Sa Majesté soit fondé à prétendre que la disposition dont l'insertion a été jugée nécessaire en 1914, avec effet rétroactif, dans le « statute law » ait antérieurement trouvé place dans le « common law ».

6. Si mon Département pouvait se rallier à la thèse du Gouvernement royal, il serait, d'ailleurs, dans l'obligation de substituer, comme l'indique la note du 16 janvier, à la date du 17 septembre 1897 celle du 31 décembre 1883 ; c'est, en effet, à la naissance dans le territoire soumis à la juridiction britannique que la loi de 1914 attribue l'acquisition de la nationalité. Or, par l'ordonnance du 31 décembre 1883, la Grande-Bretagne avait, en Tunisie, renoncé à tout privilège juridictionnel issu des Capitulations. A cette constatation faite par le Gouvernement français, le Gouvernement britannique oppose qu'il ne saurait admettre que ses droits capitulaires de juridiction en Tunisie aient définitivement pris fin en 1884. De 1884 à 1897, il y aurait eu, de la part de la Grande-Bretagne, non pas renonciation à ses droits de juridiction, mais simple délégation, de ces mêmes droits aux tribunaux français. Le Foreign Office cite, à l'appui de sa manière de voir, une lettre de Lord Granville à M. Tissot, du 20 juin 1883. Or, les termes de cette lettre ne font aucune mention de la *délégation* à la France des privilèges juridictionnels issus des Capitulations, mais simplement de la renonciation de la Grande-Bretagne aux droits qu'elle tient des Capitulations et traités, dans la mesure nécessaire au plein exercice de la juridiction civile et criminelle des nouveaux tribunaux français sur ses ressortissants. Une délégation des droits de juridiction de la Grande-Bretagne à la France se fût comprise si, par une renonciation pure et simple, la Grande-Bretagne eût abandonné ses ressortissants aux tribunaux indigènes ; or, par un décret du 5 mai 1883, le Bey de Tunis avait pris soin de décider que les nationaux des Puissances étrangères, qui renonceraient aux privilèges de juridiction issus des Capitulations, seraient justiciables, non des tribunaux indigènes, mais des tribunaux français du protectorat. Il est vrai que l'Italie crut devoir se borner à suspendre au début, par un protocole du 25 juin 1884, sa juridiction sur ses ressortissants. Mais, antérieurement, la Grande-Bretagne avait déjà supprimé, par un Ordre en Conseil du 31 décembre 1883, sa juridiction sur les sujets britanniques. Dans ces conditions, le Gouvernement de la République ne peut admettre qu'à partir de cette date, les ressortissants

britanniques puissent être encore soumis, à quelque point de vue que ce fût, même simplement en principe, à la juridiction anglaise.

7. La législation du 8 novembre n'a jamais eu pour but d'attribuer une nationalité à des personnes qui, abandonnées à la première ou à la seconde génération par le pays de leurs ascendants, n'échapperaient à l'heimatlosat que par l'intervention de la loi territoriale leur conférant la nationalité locale. Cette législation ne s'applique pas seulement, en effet, aux Anglo-Maltaïes de la Régence, mais à tous ceux qui ne peuvent pas invoquer la disposition expresse d'un traité particulier. De plus, elle ne se restreint pas à la Tunisie, mais s'étend à la zone française de l'Empire chérifien. Si l'Ambassadeur de France à Londres a pu, le 14 décembre dernier, *faire mention, incidemment*, de la situation particulière des Anglo-Maltaïes en Tunisie, c'est seulement en ce qui concernait la faculté d'application de la mesure législative prise le 8 novembre et nullement pour en expliquer l'origine ou en déterminer le principe. Il ne serait pas impossible au Gouvernement français de montrer que les actes de l'autorité consulaire britannique en Tunisie n'ont pas toujours été conformes au point de vue exposé par le Gouvernement de Sa Majesté britannique dans la note du 6 février dernier. Mais entrer dans cette voie serait donner à la mesure prise, pour des raisons générales, par les deux Gouvernements de France et de Tunisie étroitement associés comme protecteur et protégé, un principe tout autre que celui qui seul explique l'ensemble des mesures législatives prises le 8 novembre dernier en Tunisie et au Maroc.

8. Le Gouvernement français avait eu soin de faire observer au Gouvernement du Roi que la législation du 8 novembre n'avait eu d'autre but que d'étendre à la Tunisie et au Maroc la législation française de 1889 sur la nationalité (article 8, paragraphe 3, du Code civil). A cette considération, le Gouvernement britannique oppose que les modifications successives apportées à l'acquisition de la nationalité française par les lois du 16 décembre 1874 et du 26 juin 1889 laissaient à ceux qu'elle saisissait pour la première fois le droit de décliner la nationalité française, sous la seule condition

d'avoir conservé leur nationalité étrangère. L'observation est exacte pour la loi de 1874 qui laisse à l'individu né en France d'un étranger qui lui-même y est né le droit de décliner la qualité de Français à sa majorité. Mais elle ne l'est pas pour la loi de 1889, qui ne donne à l'individu né en France d'un étranger qui lui-même y est né aucun droit de décliner la qualité de Français. Si, ultérieurement (loi du 22 juillet 1893), cette faculté lui a été offerte, c'est seulement au cas où celui des parents qui est né en France ne donne pas à l'enfant sa nationalité. La circonstance que la loi de 1889 a été préparée par une série de lois antérieures, tandis que la législation du 8 novembre 1921 est apparue soudainement, ne constitue entre les deux législations, de la France et de la Tunisie, qu'une différence de fait sans valeur juridique. Aux termes de la Convention franco-britannique du 18 septembre 1897 relative à la Tunisie : « Le Gouvernement de Sa Majesté britannique s'abstiendra de réclamer . . . pour ses ressortissants . . . d'autres droits et privilèges que ceux qui leur sont acquis en France. » En France, toutes les dispositions introduites en Tunisie par la législation du 8 novembre sont actuellement applicables. Dès lors elles peuvent, en Tunisie, s'étendre aux descendants des sujets britanniques sans que la Grande-Bretagne puisse élever contre leur introduction en Tunisie une protestation qu'elle n'élève pas contre leur application en France.

9. Le Gouvernement britannique estime que, si les Anglais de Tunisie ont droit au même traitement que ceux de France, c'est avec cette réserve que, si un traitement meilleur est accordé à d'autres étrangers dans la Régence, il doit s'étendre aux sujets britanniques. Cette assertion n'est pas conforme aux termes de l'article 1er du traité du 18 septembre 1897. Au paragraphe 2, cet article règle la situation des personnes, consuls, ressortissants, établissements, qui ne doivent pas avoir d'autres droits et privilèges que ceux qui leur sont acquis en France. Au paragraphe 3, le même article règle, non plus la condition juridique des personnes, mais le régime économique des biens : le traitement de la nation la plus favorisée est assuré à la Grande-Bretagne pour ses marchandises et produits (paragraphe 2 et 3 combinés). Réclamer ici.

par la clause de la nation la plus favorisée, un traitement supérieur à celui des ressortissants anglais en France est donc, manifestement, contraire aux dispositions de l'Arrangement franco-britannique du 18 septembre 1897.

10. En terminant l'exposé des raisons pour lesquelles il croit devoir renouveler sa protestation contre la législation du 8 novembre dernier relative à l'acquisition de la nationalité française en Tunisie, le Gouvernement du Roi propose au Gouvernement de la République de soumettre à la Cour permanente de Justice internationale la solution d'un différend qui, d'après lui, est exclusivement juridique. Le Gouvernement de la République ne peut accepter cette manière de voir. Sans doute, aux termes de la Convention d'Arbitrage du 14 octobre 1903 entre la France et la Grande-Bretagne, il est exact que les « différends d'ordre juridique ou relatifs à l'interprétation des traités existant entre les deux parties contractantes ou qui viendraient à se produire entre elles, et qui n'auraient pu être réglés par la voie diplomatique, seront soumis à la Cour permanente d'Arbitrage établie par la convention du 29 juillet 1899 à La Haye, à la condition qu'ils ne mettent en cause, ni les intérêts vitaux, ni l'indépendance ou l'honneur des deux Etats contractants, et qu'ils ne touchent pas aux intérêts des tierces Puissances ». Mais, outre que les intérêts d'une tierce Puissance, la Tunisie se trouvent en cause, les questions de nationalité, formellement exceptées de l'arbitrage par une des conventions les plus générales d'arbitrage obligatoire, celle de l'Italie et de l'Argentine de 1907, sont trop intimement liées à la Constitution même de l'Etat pour qu'on puisse les considérer comme d'ordre « exclusivement juridique. » C'est le point de vue même de la science anglaise : « It will be superfluous constantly, » a dit l'un de ses maîtres, « to repeat the word « political » ; if « nationality » or « character » could leave a doubt, « British » would prevent it, since the civil character may be English, Scotch or other, but not British, the Empire having no common civil law » (Westlake, « Private International Law, » chapitre XV, « British Nationality »). Si, maintes fois, les questions de nationalité ont été résolues par l'arbitrage, il s'agissait alors de la solution, dans des cas individuels, d'un conflit de nationalités pour déterminer

la responsabilité internationale d'un Etat ; jamais le droit de légiférer en matière de nationalité sur toute une catégorie de personnes, comprenant des milliers d'individus, n'a été déferé à l'arbitrage.

11. La demande du Gouvernement britannique manque ainsi de tout précédent de jurisprudence, comme de tout appui dans le texte des traités.

12. Pour toutes ces raisons, j'ai l'honneur de faire savoir à votre Excellence qu'à son grand regret, le Gouvernement français ne peut, ni se rallier au point de vue du Gouvernement du Roi, ni même accepter, pour clore le débat, la procédure envisagée par lui.

13. Ne pouvant déférer à l'arbitrage une question qui touche intimement à l'exercice du droit souverain de légiférer, le Gouvernement français se plaît à espérer qu'après un nouvel examen de la législation du 8 novembre et de son principe, le Gouvernement britannique voudra bien reconnaître que cette législation a été prise tant par la Tunisie que par la France dans le plein et régulier exercice de leur souveraineté. Quel que soit le point de vue qu'adopte en définitive le Gouvernement britannique, le Gouvernement français ne peut douter qu'il ne donne sans plus tarder à ses consuls en Tunisie l'ordre formel de cesser leur opposition à l'application des lois du pays dans lequel ils ont été autorisés à exercer leurs fonctions.

Veillez agréer, etc.

R. POINCARÉ.

(12.)

M. POINCARÉ TO LORD HARDINGE.

Paris, le 7 avril 1922.

M. l'Ambassadeur,

Par sa lettre du 28 février dernier, ¹⁾ votre Excellence a bien voulu me faire savoir qu'après avoir examiné les raisons

1) No. (10).

données dans la note de mon Département du 11 du même mois, le Gouvernement de Sa Majesté britannique croyait devoir maintenir sa protestation contre l'application aux descendants de sujets britanniques dans la zone française de l'Empire chérifien de la législation du 8 novembre 1921 conférant la nationalité française aux individus nés au Maroc d'un père qui lui-même y est né.

Le Gouvernement royal ne croit pas pouvoir accepter le point de droit développé dans cette note : elle prête à la Grande-Bretagne l'intention d'assimiler la naissance sur le territoire marocain des descendants de ses ressortissants à la naissance sur le territoire britannique ; d'autre part, elle avance que la transmission indéfinie de la nationalité britannique en pays de Capitulations ne serait pas, en droit anglais, antérieure au Status of Aliens Act de 1914. Le Gouvernement britannique ne peut accepter ni l'une ni l'autre de ces allégations : la première, parce qu'elle lui prête une pensée qui n'a jamais été la sienne ; la seconde, parce qu'elle n'est pas exacte. En présence de ces déclarations, le Gouvernement de la République ne peut que maintenir le point de vue que mon Département a déjà eu l'honneur d'exposer à l'Ambassade de Sa Majesté britannique.

Le Gouvernement français est heureux de constater que le Gouvernement du Roi n'a jamais pensé que, même pour la transmission par la filiation de la nationalité britannique en pays de Capitulations, le territoire d'un de ces pays dût être considéré, par fiction, comme un territoire étranger, et que, par suite, la naissance au Maroc d'un descendant de sujet britannique dût être considérée comme assimilée à sa naissance sur le territoire britannique. Mais, s'il en est ainsi, le Gouvernement français ne peut s'expliquer comment, dans une législation qui ne donne la nationalité par la filiation qu'aux enfants dont le père ou le grand-père est né sur le territoire britannique, il leur est permis à la troisième génération de conserver la nationalité britannique.

Votre Excellence veut bien invoquer à l'appui de sa thèse l'autorité d'un jurisconsulte français. Dans son livre « De la Juridiction française dans les Échelles du Levant et de Barbarie, » vol. ii, p. 56, M. Féraud-Giraud examine en détail la

condition légale des Français, des protégés de la France et des étrangers dans le Levant et la Barbarie, puis il conclut : « C'est ainsi que l'étranger établi dans les Échelles du Levant et de Barbarie conservera toujours sa nationalité, ses droits civils et politiques, comme s'il n'avait jamais cessé de conserver sa résidence et son domicile dans la métropole. » Mais si, de ce passage, il résulte que le domicile en pays de Capitulations équivaut au domicile dans la métropole, il n'en résulte pas que la naissance en pays de Capitulations ait la valeur d'une naissance dans le Royaume-Uni. Ce que le droit britannique exige pour que l'enfant d'un sujet britannique ait la nationalité britannique, ce n'est pas que son père ou son grand-père soit *domicilié* en Angleterre ou dans les possessions britanniques, mais qu'il y soit *né*. Tel n'est pas le cas. Bien plus, en déclarant que la naissance de parents anglais au Maroc ne peut être considérée comme intervenue sur le territoire britannique, le Gouvernement du Roi s'oppose lui-même à toute extension de l'exterritorialité du domicile du père à l'exterritorialité de la naissance de l'enfant.

Le Gouvernement de la République se croit donc fondé à penser qu'en introduisant, pour la première fois, dans un statut britannique la transmission indéfinie de la nationalité par la filiation en pays de juridiction, la loi anglaise 1914 a créé un régime nouveau qui, postérieur à l'établissement du protectorat marocain, ne saurait être, au Maroc, opposable au Gouvernement protecteur.

Enfin, dominant ces raisons spéciales, une considération générale prime tout.

Responsable de l'ordre et des réformes dans la zone française de l'Empire chérifien, le Gouvernement français a, conjointement avec le Sultan, le droit souverain de légiférer sur la nationalité des descendants des étrangers, en vertu de leur naissance sur le territoire, dès l'instant que les Puissances étrangères qui les réclament ont, en acceptant le protectorat, abdiqué tout titre au maintien de la prolongation de leurs privilèges juridictionnels.

De ce droit souverain aucune application ne saurait être déferée à l'arbitrage.

Tels sont les principes qui s'imposent au Gouvernement

français, et je serais heureux que le Gouvernement du Roi voulût bien en reconnaître la justesse.

Veuillez agréer, etc.

R. POINCARÉ.

(13.)

LORD HARDINGE TO M. POINCARÉ.

Paris, May 4th, 1922.

M. le Président du Conseil,

I have the honour to inform your Excellency that His Majesty's Government have received information from their accredited representative in Tunis to the effect that British subjects in that protectorate are being peremptorily summoned to join the French army on the 10th instant.

As your Excellency is aware, His Majesty's Government have formally requested that all local action against British subjects should be suspended pending the result of the discussions in which we are now engaged on the subject of the applicability of the recent nationality decrees in Tunis. His Majesty's Government have nevertheless observed, to their deep regret, that the Tunisian authorities have continued, in a number of cases, to adopt an aggressive attitude towards their nationals. It is their intention to address further representations to the French Government in reply to your Excellency's note of April 12th last dealing with the action of certain French local officials. In the meantime, I am instructed by the Marquess Curzon to state, in drawing the attention of the French Government to the reported conscription of British subjects, that His Majesty's Government anticipate that your Excellency will take, in communication with the authorities of the Regency, the necessary steps to prevent these unfriendly proceedings.

I have, etc.

HARDINGE OF PENSHURST.

(14.)

M. POINCARÉ TO LORD HARDINGE.

Paris, le 12 mai 1922.

M. l'Ambassadeur,

Par sa lettre du 4 de ce mois,¹⁾ votre Excellence a bien voulu me faire part du désir exprimé par le Gouvernement britannique de voir mettre fin aux opérations de conscription auxquelles sont soumis en Tunisie les Français d'origine britannique, à qui ont été appliquées les dispositions de la législation du 8 novembre 1921 sur la nationalité.

J'ai l'honneur de faire remarquer à votre Excellence qu'il s'agit dans la circonstance de l'application de la loi sur le recrutement de l'armée et que cette loi, pas plus que toute autre, ne saurait être suspendue au profit d'une catégorie d'individus. Le Gouvernement de la République ne s'explique pas que l'observation de ce principe d'ordre public ait été interprétée par le Gouvernement britannique d'une façon telle que votre Excellence ait cru devoir la qualifier de procédé inamical. Les sentiments que traduisent cette expression sont d'autant plus injustifiés que le Gouvernement français, dans un esprit de conciliation, a toujours pris soin de présenter au Gouvernement de Sa Majesté sous une forme très atténuée les griefs sérieux qu'il a à formuler contre certains agents anglais en Tunisie et la surprise pénible que lui a causée leur attitude. Il regrette que cette modération n'ait pas permis au Gouvernement britannique de se rendre exactement compte de la justesse de ces réclamations, dont le bien-fondé lui serait certainement apparu d'une façon plus nette si les abus de pouvoir commis en Tunisie par les agents britanniques avaient été exposés en termes plus précis.

Le Gouvernement de la République prendra connaissance de la façon la plus attentive des documents annoncés par la lettre de votre Excellence. Je crois, cependant, devoir encore une fois signaler dès maintenant à toute son attention qu'en

1) No. (13).

étendant à la Tunisie, pays placé sous le protectorat de la France, les dispositions de la loi française sur la nationalité, le Gouvernement de la République a agi dans la plénitude de sa souveraineté et de ses droits, et qu'il ne saurait être question d'une modification quelconque des décrets du 8 novembre dernier. Ceux-ci doivent être appliqués, et je me plais à espérer que le Gouvernement de Sa Majesté donnera à ses agents dans la Régence les mêmes instructions de modération qui ont été données aux représentants de la République.

Veuillez agréer, c.

R. POINCARÉ.

(15.)

MEMORANDUM COMMUNICATED
BY SIR M. CHEETHAM TO FRENCH GOVERNMENT,
JULY 14TH, 1922.

His Majesty's Government have carefully considered the reply of the French Government, dated March 22nd last, ¹⁾ to their further representations on the subject of the decrees promulgated in Tunis under which the French Government seek to impose French nationality and the obligations of French military service upon British subjects resident in that country, together with the French reply of April 7th last ²⁾ to the representations of His Majesty's Government in the case of the similar decrees promulgated in Morocco (French zone).

2. In these replies the French Government dispute the various contentions urged by His Majesty's Government. In particular, they deny that the British subjects affected by these decrees are in fact British subjects; they assert that the rights possessed by France in Tunis and Morocco entitle the French Government, in conjunction with the territorial Sovereigns of those countries, to impose upon the subjects of other foreign Powers resident therein French nationality in such manner as to override rights and privileges appertaining to

1) No. (11).

2) No. (12).

them as the subjects of those foreign Powers ; and they decline to admit that such rights of sovereignty can be submitted to arbitration. Further, they assert that the capitulatory rights of jurisdiction formerly possessed by Great Britain in Tunis terminated in 1883 and that the terms of the agreement of March 8th/May 23rd, 1919, have no application to matters other than economic.

3. His Majesty's Government find themselves in entire disagreement with the French Government on all these points. As regards that concerning the status in British law of the members of the British communities affected, they have already pointed out that the provision of section 1 (1) of "The British Nationality and Status of Aliens Act, 1914," is declaratory of the law of this country as it previously existed. Both in the case of Tunis and Morocco, it can be said that, in virtue of the common and statute law of this country, the members of these communities who are descended in the male line from persons born within His Majesty's dominions are, with but few possible exceptions, British subjects. On such a point His Majesty's Government are obviously entitled to speak with authority.

4. The claim of the French Government to exercise sovereign rights in Tunis and Morocco in such a manner as to impose the obligations of French nationality on British subjects is one from which His Majesty's Government must emphatically dissent. In the case of both countries the desire of the French Government has ever been that foreign Powers should close their courts on the footing that their nationals should come under the French courts and not the native courts. At no time has any suggestion been made that foreigners should be subjected to a native régime. Foreign Powers were invited to give up their capitulatory régime, because a French régime was being substituted therefor, which rendered the continuance of an extra-territorial régime unnecessary. This was, however, a French régime in the form of a protectorate, and not a French régime on the footing of French sovereignty. It was, therefore, a French régime which could not comprise a claim on the part of France to confer her nationality on other foreigners in Tunis and Morocco on such terms that it

would override any other nationality they might possess.

5. It follows that neither recognition of the French protectorate nor any arrangements concluded with foreign Powers for the closing of their consular courts afford any sufficient basis in law for the claim advanced by the French Government to impose French nationality upon individuals entitled to another foreign nationality, either in Tunis or Morocco. In the case of the latter, the question does not indeed, at present, arise so far as concerns British subjects, seeing that British capitulatory rights exist, and the British community in Morocco are therefore neither to native nor French legislation.

6. As regards the further points respecting the date at which British capitulatory rights of jurisdiction terminated in Tunis, and the interpretation of the agreement of March 8th and May 23rd, 1919, His Majesty's Government see no reason to depart from the views they have already expressed, and they maintain these views in their entirety.

7. For the reasons shown in the present and their former notes, His Majesty's Government cannot but regard as inadequate the grounds on which the French Government decline to submit to arbitration questions seriously affecting the welfare of British subjects. The contention that the questions arising cannot be submitted to arbitration because they relate to nationality merely evades the point at issue, which is whether the French Government are entitled to enact legislation affecting British subjects in a State which is only subject to their protection, and to expose those British subjects thereunder to compulsory service in the French army. This question is entirely juridical, as the point is to what extent a State is entitled in international law to impose its nationality outside its own territories and to claim that a foreign subject shall waive in its favour his nationality of origin. The controversy is, in the view of His Majesty's Government, of the nature contemplated as proper for submission to arbitration both under the Anglo-French Arbitration Agreement of October 14th, 1903, and article 13 of the Covenant of the League of Nations. A refusal to submit to arbitration such a question, if persisted in by the French Government, would seem to

reduce to mere empty words the arbitration conventions on which hope had been placed as the best means of ensuring the pacific settlement of international disputes.

8. His Majesty's Government accordingly invite a reconsideration of the matter by the French Government. Should they nevertheless persist in their decision to refuse arbitration, His Majesty's Government will, in this event, have no alternative but to place the whole question before the Council of the League of Nations in accordance with the terms of the Covenant of the League.

9. His Majesty's Government having in the meantime learnt that fresh orders have been issued under which British subjects in Tunis are compelled to join the French colours on July 20th, they protest strongly against this action, and desire to place on record that they must hold the French Government responsible for any loss or damage to British subjects or interests consequent thereon.

Foreign Office, July 14th, 1922.

(16.)

ACTING CONSUL-GENERAL ANDREWS TO THE
EARL OF BALFOUR.

(No. 107.)

Tunis, July 22nd, 1922.

My Lord,

With reference to Mr. Sarell's former despatches, in which he reported a renewal of activity on the part of the French authorities in applying to British subjects the nationality decrees of November 8th, 1921, and, as a consequence, the issue of "ordres de route" summoning a certain number of them to the colours, I have the honour to report that ten British subjects (total so far reported for the Regency), described on their "ordres de route" as "jeunes soldats de la classe 1922" (*i. e.*, born in 1902), and placed in the category of young recruits for the first half of the present year, were on the

20th and 21st instant arrested by the military police ("gendarmierie"), escorted to the barracks of the 4th Regiment of Zouaves in Tunis, and there put into military uniform.

The British subjects concerned comprise five resident in Tunis, one from Porto-Farina (in the administrative district of Bizerta), two from Sfax, and two from Gerba.

They had all, as far back as April or May, received first a summons to present themselves before a military medical board, to which they did not reply, but which was followed at a later date by an "ordre de route," calling them to the colours, to which also, as instructed by consular officers in Tunisia, they paid no heed, except for informing the gendarme presenting it that they were British subjects and were under no obligation to serve in the French army.

For the time being they were left unmolested, evidently as a result of the personal intervention of General Robillot. Further orders, however, resulted in a fresh "ordre de route" being presented to each of them, the date fixed for reporting at the barracks being the 20th instant.

It was apparent that the authorities intended this time to resort, if necessary, to coercion. I accordingly sent, on the 17th instant, to all the subordinate consular officers in this district, a telegram, copy of which I have the honour to enclose.

The five British subjects in Tunis and the one from Porto-Farina all called together at this Office on the 18th instant to inform me of their desires and ask for instructions. As a result of our conversation I am in possession of a signed letter from every one of them, stating that they protest in advance against any coercion that might eventually be used against them, that their one desire is to retain their British nationality, and that they intend only to cede to force, and have no intention of voluntarily presenting themselves for service under the French colours. The British vice-consul at Sfax has forwarded me similar declarations, signed before himself, by the two British subjects, concerned in his district. From the British consular agent at Gerba I have so far received only a telegram, but he will no doubt have carried out my instructions contained in the telegram of the 17th instant.

Your Lordship will thus see that on no solid ground can the

French Government pretend (as has so far been their usual policy in similar matters connected with this question) that the above men voluntarily — and even with enthusiasm — enrolled in the French army.

Being desirous of sending this despatch by this afternoon's direct mail *viâ* Marseilles, I am unable to enclose with it copies of all the declarations just referred to. I propose, however, to forward these to your Lordship at an early date, together with any further details that might be of use.

The first arrests took place at Sfax, where according to telephonic and telegraphic communications from the British vice-consul there, the two British subjects concerned were arrested in the morning of the 20th instant, detained all day in the local gendarmerie and escorted in the evening by train to Tunis. Arrests at Tunis and Gerba followed during the following day.

I understand that the young men in question, although still confined to barracks, as is the case with all recruits during their first week of service, are being kindly treated, and allowed to be visited by their parents.

I have the honour to enclose herewith, for your Lordship's information, copies of three successive letters which I have addressed to the French Resident-General.

Of these, I would more particularly refer your Lordship to the last two, which both together contain the names and addresses of the British subjects concerned, various details tending to show that no justification exists for the action taken against them, a formal protest against such action, and a request that they be released without delay.

I would also desire respectfully to draw your Lordship's attention to the fact that this act of aggression, on the part of the French authorities in this protectorate, deliberately carried out in spite of the formal requests made by His Majesty's Government to the Government of the French Republic, and by Mr. Sarell to the Resident-General, that all coercive measures against British subjects be suspended until final settlement of the whole question, constitutes, as it were, a new phase (the seriousness of which can hardly be exaggerated) in the history of the decrees of November 8th, 1921.

During the past eight months everything possible seems to have been done to make the lives of British subjects who refused to renounce their national rights untenable. Bullied or cajoled, as the case might be, they have had to face every effort, honest or dishonest, to make them sign away their nationality ; many of them, completely illiterate and ignorant of such matters, quietly doing so. Press and other forms of propaganda, resorting when necessary to deliberate untruths, have endeavoured to lead them astray as to their position in the eyes of English law and to their international status and rights. Companies like the Bône-Guelma Railway, where a large number of Maltese are employed, have threatened them with dismissal if they failed immediately to present themselves at the offices of the Contrôle civil in order to register as French citizens ; whilst in their own homes members of the police force were repeatedly calling, also to inform them that their presence was required at those same offices, threatening dire punishment in the event of their failing to do so. Finally, as your Lordship is well aware, their spiritual chief, Mgr. Lemaître, in whom they would naturally, as a very religious people, place their trust, has made use of his high position to encourage and assist this policy.

This is the first time, however, so far as I am aware, that a deliberate attack has been made by the responsible authorities in this country on the personal liberty of a British subject, and that the humiliation has been imposed upon him of being escorted through the streets before the eyes of the natives, of his own compatriots, and of other foreign (including French) residents, in order to impose upon him a nationality, and the uniform of an army, that are not his.

At the very moment of writing this, I have received a second telegram from the British consular agent at Gerba, informing me that the two men arrested there left this morning for Tunis on a motor-lorry, handcuffed, and under escort of gendarmes.

I need hardly add that these forcible enrolments, under such conditions, although producing varying impressions on the natives and on the various foreign residents in Tunisia, have not, on the whole, been conducive to the enhancement of British prestige in the Regency. To the Maltese community,

who were beginning to think that the question of their nationality was practically settled, the arrest of their compatriots has come as a thunderbolt, causing among them a feeling of discouragement and of surprise that Great Britain's power has been unable to save them from such humiliation ; although I feel it my duty to add that these ten latest recruits of the 4th Regiment of Zouaves seem to have shown a remarkable spirit, being in no way despondent, but, on the contrary, glad to have an opportunity of showing their devotion to the Empire. The Arab population, who have usually looked upon British power with the highest respect, are even more impressed by the idea that such treatment of British subjects should be possible. Among the Italian community (who are by far greater in number than the French), I understand a feeling of anxiety and expectancy exists, as it is felt that the decrees of November last, aiming particularly at the Maltese British subjects in Tunisia, only constituted a preliminary step to the suppression of the special rights and privileges which Italy enjoys here, in accordance with the policy of the French Government, in which M. Saint seems to have shown considerable energy and determination, more and more to make Tunisia an exclusively French colony (even if under the cloak of a protectorate), abolishing all special rights at present enjoyed by other Powers but France and turning all the inhabitants of the country into French citizens.

There certainly seems to be some foundation to the belief that the decrees of November 8th, 1921, are not unconnected with a more drastic policy, as soon as is considered opportune, towards Italian subjects residing here.

I have, &c.

CYRIL F. W. ANDREWS.

(17.)

CIRCULAR TELEGRAM TO ALL SUBORDINATE
CONSULAR OFFICERS IN THE REGENCY
OF TUNIS.

Tunis, le 17 juillet 1922.

Concernant télégramme de M. Sarell 10 juillet et spécialement le cas des sujets britanniques ayant reçu ordres de route pour 20 juillet. Veuillez obtenir de chaque intéressé si possible avant cette date précision indiquée dans télégramme en question sous forme soit de lettre à vous adressée, soit de déclaration signée devant vous. Intéressés feraient aussi bien adresser lettre formelle dans même sens au Contrôleur civil.

(18.)

ACTING CONSUL-GENERAL ANDREWS TO FRENCH
RESIDENT-GENERAL, TUNIS.

Tunis, le 18 juillet 1922.

M. le Ministre,

Comme suite à la lettre du 10 juillet courant que vous a adressée M. Sarell et à votre réponse en date de ce jour, j'ai l'honneur de vous communiquer les instructions télégraphiques suivantes que j'ai cru devoir transmettre, le 17 courant, aux agents consulaires britanniques placés sous ma surveillance :

« Concernant télégramme de M. Sarell 10 juillet et spécialement le cas des sujets britanniques ayant reçu ordres de route pour 20 juillet. Veuillez obtenir de chaque intéressé, si possible avant cette date, précision indiquée dans télégramme en question sous forme soit de lettre à vous adressée, soit de déclaration signée devant vous. Intéressés feraient aussi bien adresser lettre formelle dans même sens au Contrôleur civil. »

Je vous prie, &c.

CYRIL F. W. ANDREWS.

(19.)

ACTING CONSUL-GENERAL ANDREWS TO FRENCH
RESIDENT-GENERAL, TUNIS.

Tunis, le 21 juillet 1922.

M. le Ministre,

Me référant à ma lettre du 18 juillet courant, j'apprends que les jeunes gens suivants, tous sujets britanniques, réceptionnaires, malgré cela, d'ordres de route les enjoignant à se présenter le 20 juillet comme « jeunes soldats de la classe 1922 » au 4^e Régiment de Zouaves à Tunis, viennent d'être arrêtés par la gendarmerie et conduits sous escorte à leur destination :

Dimech, Giulio, 19, Passage Chicli, Tunis.

Mangani, Antoine, 14, Rue Sidi Ben Deghemiche, Tunis.

Pace, Giuseppe, 17, Rue de l'Algérienne, Tunis.

Saliba, Robert, 35, Rue de la Kasbah, Tunis.

Farrugia, Antoine, Sfax.

Zahara, Emmanuel, Sfax.

Tous les susnommés se trouvent enregistrés dans les chancelleries respectives de ce consulat général et d'agences consulaires britanniques en Tunisie, cet enregistrement n'ayant lieu qu'après soigneux examen de leurs papiers et de leur situation ; de sorte que leur nationalité britannique est incontestable.

Sur l'ordre de route de chacun il est déclaré, dans le procès-verbal du gendarme l'ayant présenté, que l'intéressé avait revendiqué sa qualité de sujet britannique et ne se considérait sous aucune obligation de servir dans l'armée française.

Enfin, je possède de chacun de mes ressortissants en question une lettre par laquelle, revendiquant formellement leur nationalité britannique, sur laquelle ils font toutes leurs réserves et qu'ils se déclarent désireux de conserver, ils protestent d'avance contre toute contrainte qui pourrait être exercée à leur égard et affirment à ce sujet qu'ils céderont uniquement à la force.

Le Gouvernement de Sa Majesté britannique a déjà demandé, à maintes reprises, au Gouvernement de la Répub-

lique de faire surseoir à toute action coercitive en ce qui concerne les décrets du 8 novembre 1921, en attendant que la question soit définitivement réglée.

C'est avec un sentiment pénible, M. le Ministre, que je constate la situation ainsi créée par les autorités françaises dans la Régence : d'une part, droits essentiels et inviolables attachés à la nationalité de mes ressortissants ; de l'autre, atteinte directe à ces droits par la mesure qui vient d'être prise.

Contre cette mesure, les instructions catégoriques et formelles que M. Sarell a depuis longtemps reçues du Gouvernement royal m'obligent à protester avec toute mon énergie.

L'admiration et l'affection mutuelles des nations française et britannique ont été cimentées pour toujours sur les champs de bataille de la grande guerre ; et j'aurais bien mieux aimé croire qu'il s'agit, dans cette atteinte à la liberté personnelle de mes ressortissants, d'un malentendu seulement—simple erreur facilement réparable.

Je viens avoir recours, M. le Ministre, à votre haute bienveillance pour vous prier de bien vouloir prendre les mesures nécessaires afin que les sujets britanniques en question soient, avec le moins de retard possible, mis en liberté.

J'ai l'honneur de vous informer que je communique copie de la présente lettre à son Excellence le Ministre des Affaires étrangères de Sa Majesté britannique.

Je vous prie, etc.

CYRIL F. W. ANDREWS.

(20.)

ACTING CONSUL-GENERAL ANDREWS TO FRENCH
RESIDENT-GENERAL, TUNIS.

Tunis, le 21 juillet 1922.

M. le Ministre,

Depuis que j'ai eu l'honneur de vous adresser ma lettre en date de ce jour, relativement à l'arrestation de six sujets britanniques qui avaient refusé de répondre, en raison même

de leur statut national, à des ordres de route les décrivant comme « jeunes soldats de la classe 1922, » j'apprends l'arrestation par la gendarmerie, dans les mêmes conditions, des sujets britanniques suivants :

Cilia, Joseph, 106, Rue de la Kasbah, Tunis.
 Baldacchino, Jean, de Porto-Farina.
 Spiteri, Jean, de Djerba.
 Briffa, Antoine, de Djerba.

A leur sujet je ne puis, M. le Ministre, que vous renouveler très respectueusement, au nom du Gouvernement de Sa Majesté britannique, l'énergique protestation que je me suis trouvé obligé de formuler dans ma précédente lettre. J'ai confiance que vous voudrez bien, dans votre haute bienveillance, ainsi que j'ai eu l'honneur de vous prier de faire, dans le cas des six jeunes gens faisant l'objet de ma lettre, prendre les mesures nécessaires pour que, comme sujets britanniques résidant dans un pays où la France, nation protectrice dudit pays, a garanti par le fait même la protection des nationaux étrangers s'y trouvant, ils soient sans délai remis en liberté. Je saisis, etc.

CYRIL F. W. ANDREWS.

(21.)

SIR M. CHEETHAM TO M. POINCARÉ.

Paris, August 1st, 1922.

M. le Président du Conseil,

I had the honour to communicate to your Excellency's Department on July 15th a copy of a memorandum, under date of July 14th,¹⁾ drawn up by His Majesty's Secretary of State for Foreign Affairs and containing the reply of His Majesty's Government to the contentions of the French Government in regard to the validity of the decrees recently

¹⁾ No. (15).

promulgated in Tunis and Morocco and imposing French nationality on British subjects.

The Earl of Balfour now learns from His Majesty's acting consul-general in Tunis that several British subjects have been arrested by the French authorities for having refused, on the grounds of their national status, to present themselves when summoned to join the French colours. Mr. Andrews has addressed a protest to the Resident-General against this action and has requested the immediate release of these British subjects.

I am instructed by Lord Balfour to enter a strong protest with the French Government against these proceedings, which, in the view of His Majesty's Government, constitute a violation of the rights of these British subjects; and I am to repeat the declaration, already made in the last paragraph of the memorandum of July 14th, that His Majesty's Government must hold the French Government responsible for any losses or damage consequent upon the action taken by their officials.

I have, &c.

MILNE CHEETHAM.

(22.)

SIR M. CHEETHAM TO M. POINCARÉ.

Paris, August 3, 1922.

M. le Président du Conseil,

I had the honour, in my note of August 1st ⁽¹⁾, to convey to your Excellency a strong protest from His Majesty's Government against the proceedings of the French authorities in Tunis in arresting British subjects in order to compel their acceptance of the obligations of French nationality which it is sought to impose upon them. At that time His Majesty's Government had received only telegraphic intelligence of these proceedings. They are now in possession of

1) No. (21).

despatches from His Majesty's acting consul-general at Tunis giving full details. It appears that ten British subjects (five resident in Tunis, one from Porto-Farina, two from Sfax, and two from Gerba) have been arrested, escorted to the barracks of the 4th Regiment of Zouaves in Tunis, and there put into military uniform. All these ten British subjects have recorded in writing their desire to retain their British nationality and their objection to the compulsion put upon them. The two men arrested at Gerba left that town for Tunis on a motor-lorry, handcuffed; and under escort of gendarmes.

His Majesty's Government are loth to believe that indignities of the nature reported have, with the knowledge of the French Government, been perpetrated on British subjects who reside in territory under French protection. Unfortunately, however, there seems no doubt that this is the case, and His Majesty's Government must, in these circumstances, emphatically reaffirm the protests already addressed by them to the French Government against the violation of the rights and personal liberties of British subjects in Tunis.

In expressing the indignation of His Majesty's Government at the facts reported to them by Mr. Andrews, I am to add that unless an early and favourable reply is received to the renewed request for arbitration contained in the memorandum handed by me to your Excellency's Department on July 15th, His Majesty's Government will have no option but to place the question on the agenda of the meeting of the Council of the League of Nations fixed for August 30th.

I have, &c.

MILNE CHEETHAM.

(23.)

M. POINCARÉ TO SIR M. CHEETHAM.

Paris, le 5 août 1922.

M. le Chargé d'Affaires,

Par votre lettre du 1er août ¹⁾, vous avez bien voulu me rappeler le mémorandum que vous m'avez adressé le 14 juillet dernier, au sujet des décrets du 8 novembre 1921 qui auraient imposé la nationalité française à des sujets britanniques. Vous me faites savoir que le consul général de Sa Majesté à Tunis a informé le Principal Secrétaire d'État des Affaires étrangères de l'incorporation par force de plusieurs sujets britanniques et que Mr. Andrews a demandé leur libération immédiate. Vous renouvelez à ce sujet les protestations du Gouvernement du Roi contre ce que vous appelez une violation des droits du Gouvernement britannique et vous rappelez que ce Gouvernement se voit obligé de rendre le Gouvernement français responsable de toutes les pertes et de tous les dommages qui seraient la conséquence de l'attitude prise par les autorités françaises.

En accusant réception de cette communication, j'ai l'honneur de vous faire savoir que le mémorandum du 14 juillet dernier est encore soumis à l'examen le plus attentif de mes services et que vous recevrez prochainement la réponse de mon Département.

Je me disposais à faire toutes réserves sur les termes dans lesquels est conçue votre lettre du 1^{er} de ce mois quand m'est parvenue votre communication du 3. ²⁾ Vous me faites savoir que le Gouvernement du Roi est maintenant en possession de lettres du consul général par intérim d'Angleterre à Tunis, donnant des détails complets sur les conditions dans lesquelles des sujets britanniques auraient été obligés de se conformer aux obligations qui résultaient pour eux de la nationalité française qui leur a été récemment reconnue.

1) No. (21).

2) No. (22).

Dix sujets britanniques (cinq résidant à Tunis, un à Porto-Farina, deux à Sfax, deux à Djerba) auraient été arrêtés et conduits au casernement du 4^e Régiment de Zouaves à Tunis et revêtus de l'uniforme militaire. Ces dix sujets auraient affirmé par écrit leur désir de conserver la nationalité britannique et protesté contre la violence qui leur était faite. Les deux hommes arrêtés à Djerba auraient été conduits à Tunis en camion, les menottes aux mains et sous l'escorte de gendarmes.

Je demande au délégué à la Résidence générale de la République à Tunis de me fournir d'urgence des précisions sur les faits dont vous m'avez entretenu, et qui, d'après des renseignements qui m'ont été déjà transmis, diffèreraient sensiblement de ceux qui vous ont été signalés. Je crois devoir, à ce propos, appeler votre attention sur l'attitude du représentant de Sa Majesté à Tunis, qui donne lieu de ma part à de sérieuses critiques. Je me réserve, après une nouvelle étude de cette dernière question, d'en entretenir le Gouvernement britannique.

Mais je ne puis accepter la mise en demeure formulée au dernier paragraphe de votre seconde lettre.

Si je suis disposé à continuer à examiner avec la plus grande attention les considérations exposées par le Gouvernement britannique, je ne puis admettre que cette affaire soit traitée autrement que par la voie diplomatique. J'ai déjà fait savoir à l'Ambassade de Sa Majesté que cette question n'était pas de celles qui pouvaient être soumises au jugement de la Cour de Justice internationale. Elle ne semble pas davantage pouvoir être soumise au Conseil de la Société des Nations, car elle ne rentre pas dans la liste des différends prévus aux articles 13 et 15 du Pacte.

Dans ces conditions, je me permets de vous restituer ci-joint votre lettre du 3, dont je ne doute pas que vous ne consentiez à modifier le dernier paragraphe dans le sens que j'ai eu l'honneur de vous indiquer.

Veillez agréer, etc.

R. POINCARÉ.

(24.)

SIR M. CHEETHAM TO M. POINCARÉ.

Paris, August 14th, 1922.

M. le Président du Conseil,

I duly transmitted to the Earl of Balfour the text of the communication which your Excellency was so good as to address to me on August, 5th¹⁾ in reply to the representation which I was instructed to make to you on the 3rd instant, relative to the proceedings of the French authorities in Tunis in arresting British subjects in order to compel their acceptance of the obligations of French nationality which it is sought to impose on them under the decrees of November 8th last.

I have now the honour, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to inform your Excellency that, in view of the attitude displayed by the French Government, His Majesty's Government have now no alternative but to submit the dispute which has arisen to the Council of the League of Nations; and that they are accordingly taking steps with a view to this question being placed upon the agenda for the Council of the League at its forthcoming meeting.

I have, etc.

MILNE CHEETHAM.

(25.)

ACTING CONSUL-GENERAL ANDREWS TO THE
MARQUESS CURZON OF KEDLESTON.

(No. 112.)

Tunis, August 11th, 1922.

My Lord,

With reference to my despatch No. 107, dated the 22nd ultimo,²⁾ relative to the forcible enrolment in the French

1) No. (23).

2) Not printed.

army of ten British subjects resident in Tunisia, and particularly to paragraph 8 thereof, I have the honour to transmit herewith copies of the letters addressed to, and declarations made and signed before, British consular officers in the Regency by each of the parties concerned.

2. I also have the honour to enclose copy of a circular despatch, dated the 2nd instant, which I addressed to all the subordinate consular officers under my superintendence, expressing, for the knowledge of the Maltese British subjects in the interior, the present official views of His Majesty's Government in regard to the nationality decrees of November last, and explaining the position as it now stands. News of this nature travels rapidly from mouth to mouth in this country, and the information in question would have rapidly spread, both in Tunis itself and in other parts, even had it not been for a short article, of which I have the honour to enclose a copy, in the "Tunisie française" for the 4th instant, regarding a question put in the House of Lords by Lord Mayo as to these arrests of British subjects in Tunisia. As the article is not dated in the form of a telegram from London or Paris, I can only presume that it has been taken from one of the Paris newspapers. I have been informed that it was inserted, almost by error, by a member of the staff, without the knowledge of the editor, who was particularly grieved on reading it in his journal. This information, whether true or not, does not sound unlikely, the "Tunisie française" not having shown itself particularly Anglophile during the past eight or nine months. The same article was immediately reproduced in the local Italian paper "Unione," which is read by a large number of Maltese as well as by the great majority of Italian residents in Tunisia. It is probably not exaggerated to state that the effect produced by it has been quite electric, the state of depression lately existing among the Maltese, as reported in my despatch No. 107, having given place to a new feeling of confidence and enthusiasm.

3. I would inform your Lordship that, of the ten British subjects enlisted in the 4th Regiment of Zouaves, one of them, Joseph Cilia, has since been definitely rejected as physically unfit for medical service; whilst a second, Antoine

Farrugia, has been temporarily rejected for the same reason, but with orders to present himself again for medical examination next year. Even the first case, however, in no way constitutes a satisfactory reply to the representations made by His Majesty's Government to the French Government, as Cilia has been discharged, in the same manner as any French citizen, with a "livret militaire," or military book, describing him as called up under the recruiting laws of France. The two men in question formed the subject of paragraph 2 of my despatch No. 108, dated the 24th ultimo.

4. With regard to paragraph 1 of the last-named despatch, I have the honour to inform your Lordship that a reply which I have since received from the Acting French Resident-General to my letter No. 56 addressed to him was couched, as I expected, in terms exactly similar to those of his reply to my letter No. 55.

I have, etc.

CYRIL F. W. ANDREWS.

(26.)

CIRCULAR DESPATCH TO SUBORDINATE
CONSULAR OFFICERS.

Tunis, le 2 août 1922.

M. le Consul,

Me référant à vos récentes communications relatives à l'enrôlement forcé de sujets britanniques sous les drapeaux français, je suis chargé par son Excellence le Ministre des Affaires étrangères de Sa Majesté britannique de vous informer, et de vous prier de faire connaître à tous les intéressés, qu'une protestation énergique vient d'être adressée au Gouvernement de la République contre de pareilles violations des droits de sujets britanniques.

Vous voudrez bien faire connaître, en outre, à tous les Maltais de vos ressortissants que, loin de considérer la question comme close, le Gouvernement de Sa Majesté britannique maintient, en ce qui concerne les décrets du 8 novembre 1921, le même point de vue qu'il a toujours eu, et continue à regarder leur application aux sujets britanniques comme une violation des principes de droit international et des traités et conventions anglo-français relatifs à la Tunisie.

Je vous prie de bien vouloir me tenir au courant de toutes nouvelles atteintes par les autorités locales aux droits et à la liberté de sujets britanniques dans votre région.

Veuillez agréer, etc.

CYRIL F. W. ANDREWS.

(27.)

EXTRACT FROM "TUNISIE FRANÇAISE" OF
AUGUST 4th 1922.

LA NATURALISATION DES MALTAIS DE TUNISIE.

A la Chambre des Lords, Lord Mayo a demandé s'il était vrai que les autorités du protectorat français en Tunisie eussent arrêté des sujets britanniques et les eussent forcés à faire du service militaire dans l'armée française. Lord Mayo a demandé au Gouvernement quelles démarches ont été faites par le Gouvernement britannique pour protéger les nationaux anglais contre ces mesures arbitraires.

Lord Crawford a répondu :

"Le consul général britannique de Tunis a signalé le fait dont parle Lord Mayo. Le Gouvernement britannique a protesté énergiquement contre un acte qui est la conséquence de certains décrets promulgués à Tunis en novembre 1921 et par lesquels on cherchait à imposer la nationalité française et par conséquent l'obligation du service militaire aux membres de la colonie britannique et étrangère habitant la Tunisie.

"Lorsque ces décrets ont été promulgués, le Gouvernement britannique a mis en question leur légalité. Mais comme le

Gouvernement français ne donnait pas satisfaction au Gouvernement anglais, l'Angleterre a exigé que la question fût soumise à l'arbitrage. Si le Gouvernement français n'y consent pas, le Gouvernement britannique soumettra la question au Conseil de la Société des Nations."

(28.)

LORD HARDINGE TO THE MARQUESS CURZON OF
KEDLESTON.

(No. 1924.)

Paris, August 17th, 1922.

My Lord,

I have the honour to transmit herewith copy of a note received to-day from M. Poincaré, enclosing a memorandum in reply to the memorandum ¹⁾ on the subject of the nationality decrees promulgated in Tunis and Morocco, which was enclosed in Lord Balfour's despatch No. 2213 of July 14th, and communicated to the French Government on the following day.

In the note which M. Poincaré addressed to this Embassy on August 5th last the President of the Council stated that the British memorandum of July 14th was still under examination, and that he hoped shortly to reply to it.

It will be noticed in the penultimate paragraph of his memorandum that M. Poincaré makes it clear that the French Government intend to claim that the question of the nationality decrees in Tunis and Morocco is a matter which by international law lies solely within the domestic jurisdiction of France, and is therefore not a fit subject for settlement by a recommendation by the Council of the League.

My attention has been drawn to a statement, which I regret escaped my notice at the time, made by M. Poincaré in the Chamber of Deputies on July 5th during a discussion on the colonisation of Tunis and Morocco. When on that

1) No. (15).

occasion a Deputy, M. Morinaud, urged that Italians resident in Tunis and born on Tunisian territory of a father born there also should be compelled to become naturalised French citizens, the President of the Council interjected that an objection could be raised that the *jus soli* could be applied in France, but not in protected territory. A copy of the debate is herewith enclosed.

This objection by M. Poincaré proves the weakness of his claim to sovereign rights in Morocco and Tunis, and may be of some use at Geneva.

I have, etc.

HARDINGE OF PENSURST.

(29.)

M. POINCARE TO SIR M. CHEETHAM.

Paris, le 16 août 1922.

M. le Chargé d'Affaires,

Le 15 juillet dernier, vous avez remis au Directeur des Affaires politiques et commerciales de mon Département un mémorandum du Gouvernement britannique, en date du 14 du même mois, relatif à l'application de la législation du 8 novembre 1921 en Tunisie et au Maroc.

J'ai l'honneur de faire parvenir, ci-inclus, la réponse de mon Département.

Agréez, etc.

R. POINCARÉ.

MEMORANDUM.

Par son mémorandum du 14 juillet 1922, ¹⁾ relatif à l'application de la législation du 8 novembre 1921 en Tunisie et au Maroc, le Gouvernement de Sa Majesté britannique main-

¹⁾ No. (15).

tient les différentes considérations auxquelles le Gouvernement de la République a déjà répondu.

Aucun argument nouveau n'ayant été avancé à ce sujet, le Ministère des Affaires étrangères ne peut qu'affirmer une fois de plus soit en Tunisie, soit au Maroc le droit pour l'Etat protecteur et l'Etat protégé de déterminer de concert la nationalité des personnes qui naissent sur le territoire de l'Etat protégé, pourvu que cette détermination respecte les règles généralement reçues en matière de nationalité d'origine et n'impose pas aux individus de race européenne un statut personnel qui ne serait pas d'accord avec la condition privée des parents dont ils sont issus.

Après avoir constaté que, d'après sa plus récente conception de la nationalité (loi du 7 août 1914), le Gouvernement britannique n'élève aucune réclamation sur les personnes nées en dehors du territoire britannique de parents qui eux-mêmes sont nés en dehors de ce territoire, le Ministère des Affaires étrangères a peine à comprendre comment le Gouvernement de Sa Majesté britannique peut, en Tunisie, revendiquer des individus nés dans un territoire non soumis à la Puissance britannique d'un père né dans ce même territoire. Dès l'instant qu'il reconnaît qu'après une double naissance hors de son territoire il a perdu toute autorité sur les descendants de ses ressortissants, on ne peut s'expliquer qu'il revendique, parce qu'ils sont nés en Tunisie, ceux qu'il ne revendiquerait pas s'ils étaient nés en France. La Tunisie est sous le protectorat de France aussi indépendante de toute immixtion de la souveraineté britannique que la France elle-même. La Grande-Bretagne ne saurait donc réclamer comme ses nationaux en Tunisie ceux qu'elle n'aurait pas le droit de réclamer comme ses nationaux en France. Tout autre raisonnement aurait pour conséquence de limiter la souveraineté territoriale qui demeure d'un indivisible exercice entre le protecteur et le protégé.

En vertu de cette souveraineté qui ne peut rencontrer d'atténuation que de la part de la Puissance protectrice, l'Etat protégé reste maître de fixer sur son territoire la condition des personnes qui naissent sous sa juridiction : cette précision, en vertu du décret du 8 novembre 1921, s'est

opérée de concert entre la Puissance protectrice et la Puissance protégée. Elle est d'autant moins critiquable que la distinction de la personnalité juridique de la France et de la Tunisie ne se manifestant pas dans les relations internationales, il n'appartient pas à une Puissance tierce de contester l'assimilation par l'Etat protecteur du territoire de l'Etat protégé au sien. Elle est d'autant plus légitime qu'une telle assimilation est de l'intérêt même de ceux qui, vivant de la culture européenne, ont le désir naturel de rester sous une loi européenne. Elle est enfin d'autant plus inattaquable que ceux que touche le décret du 8 novembre, s'ils sont fondés à recevoir un statut conforme à leur état social, n'ont pas le droit de refuser à l'Etat protégé, dont ils écartent la loi civile, les devoirs de l'allégeance, et à l'Etat protecteur, auquel ils doivent des avantages de tout ordre matériel et moral, les obligations qui en forment la juste contrepartie.

Posée dans ces termes, la question ne saurait être soumise à l'arbitrage : permettant sous l'autorité de l'État protecteur la consolidation d'une colonie nationale progressivement accrue suivant les règles mêmes de l'assimilation métropolitaine de l'élément étranger, elle présente, avec l'exercice légitime de l'autorité politique de la Puissance protectrice, un lien étroit, et, dès lors, échappe à l'arbitrage.

D'une sérieuse importance pour l'accomplissement de la mission de l'État protecteur, une telle question ne saurait être considérée comme susceptible d'affecter au même degré les intérêts d'une Puissance tierce. Dans les cas de double nationalité d'origine si fréquents dans le droit international, c'est une règle généralement reçue de ne pas exercer la protection diplomatique en cas de contre-réclamation du Souverain territorial. Ainsi, la question de l'application aux Anglo-Maltaïses de la législation du 8 novembre se présente comme une de celles que le droit international laisse à la compétence exclusive de l'autorité territoriale.

En raison des dispositions très limitées et d'ailleurs facultatives des articles 13 et 14 du Pacte de la Société des Nations, cette question ne saurait de droit relever de la Cour de Justice internationale. Elle ne saurait pas davantage, en présence de

la réserve de l'alinéa 8 de l'article 15 du même pacte, appartenir à l'examen du Conseil de la Société des Nations.

Pour toutes ces raisons, le Ministère des Affaires étrangères ne peut que renouveler ses plus expresses réserves sur l'interprétation donnée par le Gouvernement britannique à la législation du 8 novembre 1921, tant en Tunisie qu'au Maroc. Se référant aux développements antérieurement présentés, il se voit dans le sentiment absolu de son droit, obligé de maintenir les décisions qu'il a prises.

Paris, le 16 août 1922.

(30).

CHAMBRE DES DÉPUTÉS, PREMIÈRE SÉANCE DU
5 JUILLET 1922.

(Extrait.)

M. MORINAUD.—

.....
La convention de 1896 assurait aux citoyens italiens sur le sol tunisien, la pérennité de leur qualité d'Italiens. Mais cette convention a été dénoncée en 1919, le champ est libre, la table rase ; nous ne sommes plus gouvernés que par le droit des gens, par le *jus soli*. Est-il une nation au monde, y compris l'Italie, qui accepte que des étrangers restent éternellement étrangers sur leur sol, profitant ainsi sans rien lui donner, de ce que fait la nation, de ses travaux, de son génie, du talent de ses administrateurs ? (Applaudissements.)

M. le Président du Conseil. — On peut vous objecter que le *jus soli* s'applique en France mais non sur sol protégé.

Appendix 22.

AGREEMENT BETWEEN THE UNITED KINGDOM
AND FRANCE PROVIDING FOR THE SETTLEMENT
BY ARBITRATION OF CERTAIN CLASSES OF QUES-
TIONS WHICH MAY ARISE BETWEEN THE TWO
GOVERNMENTS. — SIGNED AT LONDON,
OCTOBER 14th, 1903.

The Government of His Britannic Majesty and the Govern-
ment of the French Republic, signatories of the Convention
for the pacific settlement of international disputes, concluded
at The Hague on July 29th, 1899 ;

Taking into consideration that by article 19 of that conven-
tion the high contracting parties have reserved to themselves
the right of concluding agreements, with a view to referring to
arbitration all questions which they shall consider possible to
submit to such treatment,

Have authorised the undersigned to conclude the following
arrangement :

ARTICLE 1.

Differences which may arise of a legal nature, or relating to
the interpretation of treaties existing between the two con-
tracting parties, and which it may not have been possible to
settle by diplomacy, shall be referred to the Permanent Court
of Arbitration established at The Hague by the Convention
of July 29th, 1899, provided, nevertheless, that they do not
affect the vital interests, the independence or the honour of
the two contracting States, and do not concern the interests of
third parties.

ARTICLE 2.

In each individual case the high contracting parties, before
appealing to the Permanent Court of Arbitration, shall con-
clude a special agreement defining clearly the matter in dispute,
the scope of the powers of the arbitrators and the periods to
be fixed for the formation of the Arbitral Tribunal and the
several stages of the procedure.

ARTICLE 3.

The present agreement is concluded for a period of five years, ⁽¹⁾ dating from the day of signature.

Done in duplicate at London, the 14th day of October, 1903.

(L. S.) LANDSDOWNE.

(L. S.) PAUL CAMBON.

[*Texte français*].

Le Gouvernement de Sa Majesté britannique et le Gouvernement de la République française, signataires de la Convention pour le règlement pacifique des conflits internationaux conclue à La Haye le 29 juillet 1899 ;

Considérant que par l'Article 19 de cette convention, les hautes parties contractantes se sont réservé de conclure des accords en vue du recours à l'arbitrage, dans tous les cas, qu'elles jugeront possible de lui soumettre,

Ont autorisé les soussignés à arrêter les dispositions suivantes :

ARTICLE 1^{er}.

Les différends d'ordre juridique ou relatifs à l'interprétation des traités existant entre les deux parties contractantes qui viendraient à se produire entre elles, et qui n'auraient pu être réglés par la voie diplomatique, seront soumis à la Cour permanente d'Arbitrage établie par la Convention du 29 juillet 1899 à La Haye, à la condition toutefois qu'ils ne mettent en cause, ni les intérêts vitaux ni l'indépendance ou l'honneur des deux États contractants, et qu'ils ne touchent pas aux intérêts de tierces Puissances.

ARTICLE 2.

Dans chaque cas particulier, les hautes parties contractantes, avant de s'adresser à la Cour permanente d'Arbitrage,

1) The agreement has since been renewed for successive periods of five years, the latest renewal being from the date October 14th, 1918.

signeront un compromis spécial, déterminant nettement l'objet du litige, l'étendue des pouvoirs des arbitres et les délais à observer, en ce qui concerne la constitution du Tribunal arbitral et la procédure.

ARTICLE 3.

Le présent arrangement est conclu pour une durée de cinq années, à partir du jour de la signature.

Fait à Londres, en double exemplaire, le 14 octobre 1903.

(L. S.) LANSDOWNE.

(L. S.) PAUL CAMBON.
