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Flutie Cases

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mercantile house established at Belen, a village in the State of Carabobo, and the confiscation of all his material goods — such as money, beasts, cattle — by the forces of the Government of Venezuela.

Fourth. Copy of certificate of naturalization of Isaac J. Lasry in the court of common pleas for the city and county of New York, on October 26, 1893; and copy of passport issued to Isaac J. Lasry on March 22, 1898, by the United States legation at Caracas.

It is to be observed that no legally competent evidence under the rules of municipal law is here presented, either as to the fact or amount of the alleged loss. The learned counsel for Venezuela urges that the facts upon which the claim is founded are not proved as the common law requires, and that it should therefore be disallowed.

Article II of the protocol constituting this Commission provides:

> The commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments.

The Commission, then, is not limited in the adjudication of the claims submitted to it to only such evidence as may be competent under the technical rules of the common law, but may also investigate and decide claims upon information furnished by or on behalf of the respective Governments. It has indeed been found impossible in proceedings of this character to adhere to strict judicial rules of evidence. Legal testimony presented under the sanction of an oath administered by competent authority will undoubtedly be accorded greater weight than unsworn statements contained in letters, informal declarations, etc., but the latter are under the protocol entitled to admission and such consideration as they may seem to deserve.

The information furnished as to this particular claim is both meager and unsatisfactory. The statement of the claimant that the suffered some loss, and the manner thereof is corroborated by the declarations of various residents of Belen, but none of the latter gives an estimate of the amount of the loss sustained by Mr. Lasry. Belen is referred to by the declarants as a little town or village in the State of Carabobo. Lasry states that " the better part " of his stock of merchandise was taken by the soldiery, and he gives the value of the part taken as $ 15,000 gold, manifestly an exaggeration.

The Commissioners regarding the fact as shown that Lasry sustained some loss, but unable to accept his uncorroborated estimate of the value of the property taken, have agreed to make an allowance in this claim of the sum of $ 2,000, without interest, as being under all the cricumstances the nearest approach possible to an equitable determination.

Flutie Cases

Recitations in the record of naturalization proceedings are binding only upon parties to the proceedings and their privies. The Government of the United States and that of Venezuela are not parties, and such recitations are not conclusive upon either of these governments.

International tribunals competent to decide their own jurisdiction.

Certificate of naturalization an element of proof subject to be examined according to the principle of locus regit actum. Certificates of naturalization made in due form presumed to be true, but when it becomes evident that statements therein contained are incorrect this presumption must yield to the truth.

Certificate of naturalization decided to have been granted by fraud or mistake

because evidence showed that claimant did not " reside " in the United States for the statutory period immediately preceding issuance of such certificate, and claim dismissed without prejudice.

BAINBRIDGE, *Commissioner* (for the Commission):

For reasons hereinafter made apparent, it is deemed advisable to consider these two claims together.

The memorial of Elias Assad Flutie, subscribed and sworn to on March 7, 1903, before William J. Marshall, a notary public in and for the county of Middlesex, State of Massachusetts, states:

1. That the said Elias A. Flutie is a native of Syria, 27 years of age; that he came to the United States in the year 1892, and was naturalized a citizen of the United States on the 2d day of July in the year 1900, in the district court of the United States of America for the eastern district of New York, sitting in the city of Brooklyn, in proof whereof said claimant produces with his memorial a certified copy of said certificate of naturalization, marked " Exhibit A," and that claimant is now a citizen of the United States, and a resident of the city of Wilkesbarre, State of Pennsylvania.

2. That about the year 1899 claimant went temporarily to the city of Yrapa, in the Republic of Venezuela, to establish a business as a general merchant, returning shortly afterwards to the United States, leaving said business in charge of his brothers; that said business was conducted for the period of one year without interruption, resulting in a large profit to the claimant; that claimant returned to Venezuela from time to time to supervise the conduct of said business; that he was at all times the sole person interested in said business; that his stock in trade was worth about $ 30,000; that all of claimant's books of account and records of what stock he had were destroyed, but that he is able to state from memory what amount of stock there was on hand and he attaches an inventory thereof marked " Exhibit B; " that he employed as clerks to assist him in said business his two brothers, Julian and Abraham Flutie, and also two other persons named Victor Ferralle and José R. Romero.

3. That the claimant returned from the United States in August 1900, and from that time claimed citizenship in the United States and the protection of the United States Government; that prior to his return to Venezuela, a revolution broke out in that Republic; that at various times after his return, between September 1900, and March 1902, he was the victim of forced loans, destruction of property, false arrests, and illtreatment in connection therewith, received partially at the hands of the Government officials and troops, and partially at the hands of the insurgents; that his store was raided on repeated occasions, he himself was repeatedly arrested and lodged in jail, and kept for indefinite periods, and released only upon his consenting to make the demanded forced loans, or when the officers of the Government had in the meantime obtained from his store such goods and money as they demanded. The memorial states seventeen specific instances of such alleged illegal acts on the part of the officers of the Government, and seven similar unlawful acts on the part of the revolutionists; that because of said acts of violence all of claimant's property to the value of $ 30,000 in United States gold was confiscated, lost, or destroyed; and that on June 7, 1901, the claimant, together with his wife and children, was forced to leave the country.

4. Claimant demands from the Government of Venezuela as a just recompense for the injuries he has suffered, for loss of property, the sum of $ 30,000,

and for illtreatment the sum of $ 50,000; in all the sum of $ 80,000 in United States gold coin.

The memorial of Emilia Alsous Flutie, subscribed and sworn to on March 31, 1903, before Arthur L. Turner, a notary public in and for Luzerne County, State of Pennsylvania, states:

1. That the said Emilia Alsous Flutie is a native of Syria, 25 years of age; that in the city of Carúpano, in the Republic of Venezuela, on the 22d day of July, 1897, she was married to Elias Assad Flutie, according to the rites of the Roman Catholic Church, having previously, to wit, on the 25th of April, 1896, been married by the civil authorities of said Republic to said Elias A. Flutie; that her husband was naturalized a citizen of the United States of America on the 2d day of July, 1900, in the district court of the United States for the eastern district of New York, sitting in the city of Brooklyn; that a duplicate of his certificate of naturalization is attached to her memorial marked " Exhibit A;" that by virtue of the naturalization of Elias Assad Flutie, as a citizen of the United States, claimant is a citizen thereof, and that she is now a resident of the city of Wilkesbarre, State of Pennsylvania.

2. That from the month of September, 1900, to the month of June, 1901, claimant was with her husband in the city of Yrapa, Venezuela; that apart from her husband's business and in her own name, for her own separate benefit, claimant used to carry on a small trade in toilet articles, etc.: that her stock in trade was worth $ 1,500; that claimant was unable to preserve any documents showing her actual stock, but is able to state from memory what amount of stock she had on hand, and attaches to her memorial an inventory thereof marked " Exhibit B " which sets forth the amount and cost value of the articles; and that she was the sole person interested in said business.

3. That during the year 1900 and 1901, there was a revolution in progress in Venezuela, in the course of which she was subjected, at various times, to such illtreatment, at the hands of both the Government officials and the insurgents, that she became ill; that as a result of such illtreatment her health has been permanently impaired; that toward the close of December, 1900, certain Government officials arrested and imprisoned claimant's husband, and in his enforced absence, said officials tried to criminally assault claimant, and were driven off by the claimant at the point of a pistol; that they took possession of all goods which belonged to claimant, and after having destroyed some, took the remainder away with them, said property being of the value of $ 1,500 gold; and that on June 7th, the claimant, together with her husband and children, was forced to leave the country, sailing from Yrapa at night during a heavy tropical tempest in a small sailboat of about 5 tons burden, which afforded absolutely no shelter, and that after four days of such exposure they at length reached the island of Trinidad.

4. Claimant demands as a just recompense for her loss of property the sum of $1,500, and for the illtreatment she has suffered the sum of $ 20,000, in all the sum of $ 21,500 in United States gold coin.

The two claims aggregate the sum of $ 101,500 gold.

The only testimony introduced is that of the claimants themselves and of Abraham and Julian Flutie, brothers of Elias A. Flutie.

It appears from the evidence that the claimants were suspected by the Venezuelan authorities of unlawful traffic in fraud of the revenues, but the charges of smuggling are denied by the claimants and the arrests are alleged to have been without just foundation. It is a fact, not without significance, however, that although the alleged outrages extended over a period of nearly a year, the evidence does not show that during that time any notice of them

was brought to the attention of the consular officers or diplomatic representative of the United States in Venezuela.

But, in view of the position taken by the Commission relative to these claims, a further discussion of their merits is unnecessary.

Article I of the protocol constituting this Commission confers jurisdiction over —

all claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration, between the two Governments.

This Commission has no jurisdiction over any claims other than those owned by citizens of the United States of America. The American citizenship of a claimant must be satisfactorily established as a primary requisite to the examination and decision of his claim. Hence the Commission, as the sole judge of its jurisdiction, must in each case determine for itself the question of such citizenship upon the evidence submitted in that behalf.

The citizenship of claimants is as fully a question of judicial determination for the Commission in respect to the relevancy and weight of the evidence and the rules of jurisprudence by which it is to be determined as any other question presented to this Tribunal, subject only to the provisions of Article II of the protocol that the commissioners, or umpire, as the case may be, shall investigate and decide claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments.

The jurisdiction of the Commission over both of these claims depends upon the American citizenship of Elias A. Flutie. The evidence of Flutie's citizenship in each case is a copy of the record of his naturalization on July 2, 1900, in the district court of the United States for the eastern district of New York. The record recites that Flutie had produced to the court such evidence and made such declaration and renunciation as are required by the naturalization laws of the United States, and that he was accordingly admitted to be a citizen thereof.

This certificate of naturalization, as the record of a judgment of a high court, is prima facie evidence that Elias A. Flutie is a citizen of the United States. It is not, however, conclusive upon the United States, or upon this Tribunal.

In the case of Moses Stern (13 Op. Atty. Gen., 376) the Attorney-General of the United States, Mr. Akerman, said:

Recitations in the record (i. e., of naturalization) of matters of fact are binding only upon parties to the proceedings and their privies. The Government of the United States was no party, and stands in privity with no party to these proceedings. And it is not in the power of Mr. Stern, by erroneous recitations in ex parte proceedings, to conclude the Government as to matters of fact.

In the circular of Mr. Fish, Secretary of State, dated May 2, 1871, he says:

It is material to observe that according to the opinion of the Attorney-General in the case above mentioned, the recitations contained in the record of naturalization, as to residence, etc., are not conclusive upon either this or a foreign Government; but that when such recitals are shown, by clear evidence, to be erroneous, they are to be disregarded. (Foreign Relations, 1871, p. 25.)

Such is still the position taken by the Department of State.

As for the naturalization laws to which you allude, they are of direct concern to this Department only so far as they affect the international status of those who become naturalized. As you are aware, the Department's regulations require every naturalized citizen when he applies for a passport to make a sworn statement concerning his own or his parents' emigration, residence, and naturalization; and when-

ever the naturalization appears to have been improperly or improvidently granted, it is not recognized under the Department's rules. (Mr. Hay, Secretary of State, to Mr. Sampson, June 21, 1902. Foreign Relations, 1902, p. 389.)

The record of a judgment rendered in another State may be contradicted as to the facts necessary to give the court jurisdiction; and if it be shown that such facts did not exist, the record will be a nullity, notwithstanding it may recite that they did exist. (Thompson *v.* Whitman, 18 Wall. U. S., 457.)

In Pennywit *v.* Foote (27 Ohio St., 600), the court said that a judgment offered in evidence —

may be contradicted as to the facts necessary to give the court jurisdiction, and if it be shown that such facts did not exist, the record will be a nullity, notwithstanding it may recite that they did exist, and this is true either as to the subject-matter or the person, or in proceedings in rem as to the thing.

The functions and authority of an international court of arbitration are clearly expressed by Mr. Evarts, Secretary of State, in a communication relative to the United States and Spanish Commission of 1871, which Mr. Evarts declared to be —

an independent judicial tribunal possessed of all the powers and endowed with all the properties which should distinguish a court of high international jurisdiction, alike competent, in the jurisdiction conferred upon it, to bring under judgment the decisions of the local courts of both nations, and beyond the competence of either Government to interfere with, direct, or obstruct its deliberation. (Moore's Arbitrations, p. 2599.)

He says, furthermore, that the tribunal had authority —

to fix, not only the general scope of evidence and argument it will entertain in the discussion both of the merits of each claim and of the claimant's American citizenship, but to pass upon every offer of evidence bearing upon either issue that may be made before it. (Moore's Arbitrations, p. 2600.)

In Medina's case, decided by the United States and Costa Rican Commission of 1860, Bertinatti, umpire, says:

An act of naturalization, be it made by a judge ex parte in the exercise of his voluntario jurisdictio, or be it the result of a decree of a king bearing an administrative character; in either case its value, on the point of evidence, before an international commission, can only be that of an element of proof, subject to be examined according to the principle locus regit actum, both intrinsically and extrinsically, in order to be admitted or rejected according to the general principles in such a matter. * * *

The certificates exhibited by them (the claimants) being made in due form, have for themselves the presumption of truth; but when it becomes evident that the statements therein contained are incorrect, the presumption of truth must yield to truth itself. (Moore's Arbitrations, 2587.)

Whatever may be the conclusive force of judgments of naturalization under the municipal laws of the country in which they are granted, international tribunals, such as this Commission, have claimed and exercised the right to determine for themselves the citizenship of claimants from all the facts presented.

(Medina's case, *supra*; Laurent's case, Moore's Arbitrations, 2671; Lizardi's case, *ibid.*, 2589; Kuhnagel's case, *ibid.*, 2647; Angarica's case, *ibid.*, 2621; Criado's case, *ibid.*, 2624.)

The present Commission is charged with the duty of examining and deciding all claims owned by citizens of the United States against the Republic of Venezuela. It is absolutely essential to its jurisdiction over any claim presented to it to determine at the outset the American citizenship of the claimant. And

the fact of such citizenship, like any other fact must be proved to the satisfaction of the Commission or jurisdiction must be held wanting.

Notwithstanding the certificates of naturalization introduced in evidence here, the Commission is not satisfied that Elias Assad Flutie is a citizen of the United States, or that it has under the protocol any jurisdiction over these two claims.

Section 2170 of the Revised Statutes of the United States provides that:

No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

This law is not construed to require the uninterrupted presence within the United States of the candidate for citizenship during the entire probationary period. Transient absence for pleasure or business with the intention of returning does not interrupt the statutory period or preclude a lawful naturalization at the expiration thereof. But the law does require the candidate to " reside " within the United States for the continued term of five years next preceding his admission.

No alien who is domiciled in a foreign country immediately prior to and at the time he applies to be admitted to citizenship can be lawfully naturalized a citizen of the United States.

Domicile is residence at a particular place accompanied with an intention to remain there; it is a residence accepted as a final abode. (Webster.) Domicile in Venezuela during a certain period precludes for the same period residence in the United States within the meaning and intent of the statutes of naturalization.

A man's domicile, as involving intent, is often difficult of ascertainment. But publicists and courts regard certain criteria as establishing the fact.

If a person goes to a country with the intention of setting up in business he acquires a domicile as soon as he establishes himself, because the conduct of a fixed business necessarily implies an intention to stay permanently. (Hall, Int. Law, 517.)

If a person places his wife and family and " household gods " * * * in a particular place, the presumption of the abandonment of a former domicile and of the acquisition of a new one is very strong. (4 Phillimore's Int. Law, 173.)

If a married man has his family fixed in one place and he does business in another, the former is considered the place of his domicile. (Story, Conflict of Laws, Ch. III, sec. 46.)

The residence of a man, says Judge Daly, is the place where he abides with his family, or abides himself, making it the chief seat of his affairs and interests. (Quoted in Medina's case, supra.)

The apparent or avowed intention of constant residence, not the manner of it, constitutes the domicile. (Guier *v.* O'Daniel, 1 Binney, 349.)

Intention may be shown more satisfactorily by acts than declarations. (Shelton *v.* Tiffin, 6 How. U. S., 163.)

These are the criteria of domicile, recognized by both international and municipal law. Concurrently existing in this case, they fix the domicile of Elias A. Flutie prior to and on July 2, 1900, in the Republic of Venezuela.

The evidence bearing upon the residence of Elias A. Flutie is the following:

Elias A. Flutie states that he is a native of Syria, 27 years of age (in 1903); that he came to the United States in 1892; that during the years 1899, 1900 and 1901, his occupation was that of a merchant and his residence was in the city of Brooklyn, in the State of New York, where he had resided for several years past; that about the year 1899 he went temporarily to the city of Yrapa in Venezuela to establish a business as a general merchant, returning shortly afterwards to the United States, leaving said business in charge of his brothers; that he had temporarily left his family in Yrapa in charge of his brothers, and

visited them from time to time for a greater or less period; that he made frequent trips to Yrapa to supervise the management of his business, returning each time to his home in Brooklyn; that he was naturalized a citizen of the United States on July 2, 1900; that in August, 1900, he returned to Venezuela where he remained until compelled to flee from the country in June, 1901.

In Flutie's testimony there is no intimation that he was ever in Venezuela prior to "about 1899," when he went there "temporarily" to establish the business at Yrapa, where he "temporarily" left his family whom he visited from time to time "for a greater or less period." Indefiniteness, evasion, a manifest shaping of his statements to accord with the supposed necessities of his case, and a suppression of material facts characterize all his testimony on the subject of his residence and discredit it.

Emilia Alsous Flutie testifies (on March 25, 1903), that she had known Elias A. Flutie for seven and one-half years. Her acquaintance with him must have begun therefore about September, 1895. She swears that she was married to him by the civil authorities of Venezuela on the 25th day of April, 1896, and that she was married to him again, according to the rites of the Roman Catholic Church, on July 22, 1897, at Carúpano, Venezuela; that during part of the year 1899 she resided at Carúpano, Venezuela, going from Carúpano to Yrapa, Venezuela, in the latter part of that year, where she resided until June, 1901; that in both Carúpano and Yrapa she was engaged in the sale of laces, fancy needlework, and fancy goods.

Abraham A. Flutie testifies that he has known Mrs. Emilia Flutie since July, 1897, when she was married to his brother by Father Pedro Ramos, and that the business at Yrapa was established in July or August, 1899.

Julian A. Flutie testifies that the business at Yrapa was conducted under the name of Flutie Hermanos, although it belonged entirely to Elias A. Flutie; that the first met Mrs. Emilia Flutie on the 8th of July, 1897, when he was introduced to her by his brother Elias, who told him that he had been civilly married to her on April 25, 1896; that on July 22, 1897, his brother was married to her according to the rites of the Roman Catholic Church at Carúpano, Venezuela; that he was best man at the wedding, and the ceremony was performed by Rev. Antonio Ramos. He says that in June, 1901, Mrs. Flutie became so frightened, both for her own safety and that of her children, that she was forced to leave the country.

As it does not appear in evidence that Mrs. Flutie was ever in the United States until she went there with her husband in 1901, it is apparent that Elias A. Flutie must have left the United States as early as September, 1895; it is proven that he was married in Venezuela in April, 1896, and remarried there in July, 1897, and by his own statement he was established in business there in 1899.

Flutie claims that for several years prior to July 2, 1900, he resided in the United States, and that subsequent to about 1899 he made frequent trips to Venezuela to visit his family for greater or less periods and to supervise the management of his business, returning each time to his home in Brooklyn.

The Commission is satisfied from all the evidence before it in these cases that the reverse is true; that Flutie resided in Venezuela from at least the fall of 1895 up to July or August, 1899, at or near Carúpano, and after that time at Yrapa; that he may have made trips to the United States, and undoubtedly did make one there shortly before July 2, 1900, returning to his home and family and business in Venezuela shortly afterwards, that is to say, in August, 1900; from which time there is neither allegation nor proof in the record nor any fair implication therefrom that he ever intended voluntarily to return to the United States.

Naturalization in the United States, without any intent to reside permanently therein, but with a view of residing in another country, and using such naturalization to evade duties and responsibilities to which without it, he would be subject, ought to be treated by this Government as fraudulent. (14 Op. Atty. Gen., 295; Wharton, Int. Law Dig., sec. 175.)

The evidence presented in these cases convinces the Commission that Elias A. Flutie did not " reside " in the United States for the continued term of five years nor any considerable portion thereof prior to the 2nd day of July, 1900; that the facts necessary to give the court jurisdiction did not exist, and therefore that the certificate of naturalization was improperly granted.

It follows that these claimants have no standing before the Commission as citizens of the United States, and their claims are therefore dismissed for want of jurisdiction, without prejudice, however, to their presentation in a proper forum.

Underhill Cases

(By the Umpire:)

Claim of J. L. Underhill, as successor in interest of her deceased husband, G. F. Underhill, disallowed because of failure on her part to show succession in interest.

Damages allowed for unlawful detention of claimant, J. L. Underhill, in Venezuela by the governmental authorities refusing to furnish passport.

Bainbridge, *Commissioner* (claim referred to umpire):

I am unable to agree with my honorable colleague in regard to this claim.

At the time of the alleged transfer of the waterworks, Underhill was not, in my judgment, enjoying that freedom from restraint and equality of position as a contracting party which are necessary to give validity to every contract. Furthermore it appears to me that Mrs. Underhill is entitled in propria persona to an award for her unlawful detention.

As this claim must go to the umpire, however, it is unnecessary to discuss in detail the evidence upon which the foregoing opinion is based.

Paúl, *Commissioner* (claim referred to umpire):

Both of these cases represent a claim for an indemnity amounting to $ 232,316.28 for personal injuries, insults, abuses, and unjust imprisonment. The claim of George Freeman Underhill includes an indemnity for having been forced to sacrifice, or abandon, his property; having been obliged to leave the place of his residence.

George Freeman Underhill died in the city of Havana, Cuba, on the 26th of October, 1901, and his widow, Jennie Laura Underhill, presented on the 17th of June of this year, to the Department of State in Washington, a supplementary memorial as administratrix of the estate of her deceased husband, although it is not proven that she had obtained from the surrogate's court of the county of New York, State of New York, the appointment to said charge.

Underhill's death put an end to any claim that could arise from personal injuries, insults, or other offenses, because these facts require, to serve as a reason for an indemnity, to be preceded by the consequential trial for responsibility against the perpetrator of said offense, and Underhill, as it is proven, limited himself, in his lifetime, to entering an action of responsibility against Gen. José Manuel Hernandez, in the city of New York, and both the circuit court and the Supreme Court of the United States, decided that General Hernandez's acts were not of such nature as to be properly brought within