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Max Fox (United States) v. Austria and Hungary

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the laws of Austria he also possessed Austrian nationality by parentage. This created a conflict in citizenship, frequently described as "dual nationality". When the claimant was five years of age he accompanied his parents to Austria, where he continued to reside.

In August, 1914, the claimant, while residing in Austria a short distance from the Russian border, was subjected to preventive arrest as an agitator engaged in propaganda in favor of Russia. After investigation he was interned and confined in internment camps for 16 months. He then took the oath of allegiance to the Emperor of Austria and King of Hungary and was impressed into service in the Austro-Hungarian army. A decision of the sharply controverted claim that this oath was taken under duress and that he protested that he was an American citizen is not necessary to a disposition of this case. It appears that in 1915 and later representatives of the Government of the United States in Austria interested themselves in securing his release, but the application was denied.

In July, 1916, the claimant deserted from the Austro-Hungarian army and escaped into Russia, where he was arrested and held by the Russian army authorities as a prisoner of war until the outbreak of the Kerensky revolution, when he was released and thereupon returned to Prague, where he still lives and where he is practicing medicine.

The action taken by the Austrian civil authorities in the exercise of their police powers and by the Austro-Hungarian military authorities, of which complaint is made, was taken in Austria, where claimant was voluntarily residing, against claimant as an Austrian citizen. Citizenship is determined by rules prescribed by municipal law. Under the law of Austria, to which claimant had voluntarily subjected himself, he was an Austrian citizen. The Austrian and the Austro-Hungarian authorities were well within their rights in dealing with him as such. Possessing as he did dual nationality, he voluntarily took the risk incident to residing in Austrian territory and subjecting himself to the duties and obligations of an Austrian citizen arising under the municipal laws of Austria.

Assuming that the claimant suffered the loss and injury alleged and had not lost his American citizenship by taking the Austrian Army oath, the Commissioner finds no provision of the Treaty of Vienna or of Budapest obligating Austria and/or Hungary to make compensation therefor.

Wherefore the Commission decrees that under the Treaty of Vienna and the Treaty of Budapest the Government of Austria and the Government of Hungary are not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

MAX FOX (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(May 25, 1928. Pages 73-74.)

JURISDICTION: DUAL NATIONALITY, DETERMINATION OF NATIONALITY BY MUNICIPAL LAW.—RESPONSIBILITY FOR ACTS OF MILITARY AUTHORITIES.—ENROLMENT IN ARMY, IMPRESSMENT INTO MILITARY SERVICE, DURESS. Enrolment in 1914 of claimant, a national of Hungary and United States, residing in Hungary, in Austro-Hungarian army, followed in May, 1915, by his being compelled to render military service. Oath of allegiance to Emperor (King) of Austria (Hungary), taken under duress. *Held* that claim for compensation

of damages growing out of enforced military service falls outside terms of Treaty of Vienna (Budapest): reference made to Alexander Tellech award, see p. 248 *supra*.

Bibliography: Bonyngé, p. 28.

This claim is put forward by the United States on behalf of Max Fox (formerly Fuchsbalg) to recover damages alleged to have been sustained by him growing out of enforced military service in the Austro-Hungarian army.

The claimant was born in the United States May, 1, 1896, of Hungarian parents. When claimant was some three years of age he returned with his parents to Hungary, where his mother died and where he continued to live with relatives after his father (who remained an Hungarian national until 1923 at least) returned to the United States. After attending the schools he entered the employ of a bank about 1912 and continued his studies in a college. At the outbreak of the European war he was enrolled for military duty. He claims that he protested that he was an American citizen and not subject to military services in the Austro-Hungarian army, but beginning with May, 1915, was compelled to render such service. The representatives of the Government of the United States in Hungary interested themselves in claimant's application for relief from service but the application was denied. In October, 1916, as a result of a flesh wound, he was in a hospital for several months. He was promoted to the rank of lieutenant and continued in the active service until the Armistice was signed. He returned to the United States in 1920 and has since remained there.

While he took an oath of allegiance to the Emperor of Austria and King of Hungary, he claims that this was under duress. While controverted, for the purposes of this decision the truth of his statement is assumed.

The facts in this case are very similar to those in the case of Alexander Tellech, claimant, docket No. 2, this day decided. For the reasons therein set out neither Austria nor Hungary is obligated to make compensation on account of the damages alleged to have been sustained by claimant.

Wherefore the Commission decrees that under the Treaty of Vienna and the Treaty of Budapest the Government of Austria and the Government of Hungary are not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

GRUBNAU BROS., INC., AND ATLANTIC MUTUAL INSURANCE
COMPANY (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(May 25, 1928. Pages 74-76.)

RESPONSIBILITY FOR ACTS OF MILITARY AUTHORITIES.—WAR: SEIZURE OF PRIVATE PROPERTY.—DAMAGES: INVOICE VALUE. Seizure on October 2, 1914, at Trieste, by Austro-Hungarian military authorities, of wool sold by Carl Grubnau & Son, to all of whose rights the first claimant succeeded, and insured by the second claimant. *Held* that Austria obligated to pay 63.6 per cent, and Hungary 36.4 per cent, of price owing on December 31, 1914, by purchaser, with interest thereon at 5 per cent per annum from December 31, 1914, less sum paid through Austrian Clearing Office since claim was filed.

From the record it appears that in 1914 Carl Grubnau & Son (a co-partnership composed at all material times of American nationals) sold 42 bales of