

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Indian Motorcycle Company (United States) v. Austria and Hungary

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deliver to claimant 5% Hungarian Treasury notes due in 1918 in the principal amount of marks 1,000. From the record it appears that Zimmermann & Forshay did not comply with their obligation to claimant but on July 27, 1920, delivered to the claimant a Hungarian Treasury note for marks 1,000 dated August 29, 1918, which matured on April 1, 1921. The claim is based on this treasury note. While the transaction as between the claimant and Zimmermann & Forshay was a pre-war transaction, the acquisition by claimant of the Hungarian Treasury note from Hungary through Zimmerman & Forshay was not a pre-war transaction. On this count of the claim Hungary is not liable.

Second, with respect to that part of the claim dealt with in paragraph (2) of the Agreed Statement Hungary is liable and an interlocutory judgment B (1) will be entered against Hungary in the usual form for Kronen 30.

INDIAN MOTOCYCLE COMPANY (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(May 25, 1928. Pages 77-78.)

RESPONSIBILITY FOR ACTS OF MILITARY AUTHORITIES.—WAR: SEIZURE OF PRIVATE PROPERTY.—DAMAGES: INVOICE VALUE. Seizure at Trieste, by Austro-Hungarian military authorities, of motorcycles and parts shipped by claimant. Surrender of shipment, some of the parts missing, to American Consul, followed by sale. Proceeds paid to claimant on May 25, 1915. *Held* that Austria obligated to pay 63.6 per cent and Hungary 36.4 per cent, of difference between proceeds and invoice value, with interest thereon at 5 per cent per annum from May 25, 1915.

While the evidence adduced in the above captioned case is meager and unsatisfactory, the Commissioner finds:

(1) That on July 18, 1914, the Hendee Manufacturing Company, an American corporation, forwarded a shipment of Indian motorcycles and parts by steamship *Belvedere* consigned to Odessa, Russia, via Trieste, Austria, covered by shipper's order bill of lading notify F. Zorn, Odessa, and at the same time drew on Zorn for the invoice value of the shipment, \$402.

(2) On October 26, 1923, the corporate name of the Hendee Manufacturing Company was changed to Indian Motorcycle Company.

(3) This shipment was seized by the Austro-Hungarian military authorities at Trieste. On the representations of the claimant through the American Department of State and the American Consul at Trieste, the austro-Hungarian military authorities recognized the shipment as the property of an American national and delivered it to the American Consul for account of claimant.

(4) On account of some of the parts being missing from the shipment at the time it was surrendered by the military authorities and sold, the net proceeds of the sale were only \$240.20, which amount was paid to the shipper on May 25, 1915.

(5) The Commissioner finds that the claimant has been damaged by the acts of the Austro-Hungarian military authorities in the sum of \$161.80 with interest thereon at the rate of 5 per cent per annum from May 25, 1915, of which 63.6 per cent will be borne by Austria and 36.4 per cent by Hungary.

Wherefore the Commission decrees that under the Treaty of Vienna the Government of Austria is obligated to pay to the Government of the United

States on behalf of the Indian Motorcycle Company the sum of one hundred two dollars ninety cents (\$102.90) with interest thereon at the rate of 5 per cent per annum from May 25, 1915, and that under the Treaty of Budapest the Government of Hungary is obligated to pay to the Government of the United States on behalf of the Indian Motorcycle Company the sum of fifty-eight dollars ninety cents (\$58.90) with interest thereon at the rate of 5 per cent per annum from May 25, 1915.

HENRY ROTHMANN (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(July 11, 1928. Pages 78-87.)

NATIONALITY OF CLAIM.—NATIONALITY AND RIGHT TO PROTECTION.—NATURALIZATION: MISUSE OF NEW NATIONALITY, EXPATRIATION, EFFECT OF RETURN TO ADOPTED COUNTRY.—INTERPRETATION OF MUNICIPAL LAW.—RESPONSIBILITY FOR ACTS OF MILITARY AUTHORITIES: PERFORMANCE OF MILITARY SERVICE. Arrival of claimant, Austrian by birth, in United States on or about June 6, 1901. Naturalization as United States citizen on June 6, 1906. Return to Austria not later than February 18, 1910, followed by marriage, pecuniary investments and personal activities in local business, conclusion on June 6, 1913, of non-assignable contract with Austrian military authorities for term ending December 31, 1920. Application on April 30, 1915, to American Embassy, Vienna, for passport. Declination of passport by American Department of State on May 28, 1915, on account of statutory presumption of expatriation (Act of Congress, March 2, 1907), but issuance of emergency passport valid only for journey to United States, conditioned on claimant's agreement that he could and would return forthwith to United States for permanent residence. Failure to comply with condition. Order on July 15, 1916, to report to Austro-Hungarian military authorities for military service. Performance of military service until November 3, 1918. Issuance on January 8, 1917, of second emergency passport on same condition as first one. Application on March 22, 1917, to American Embassy, Vienna, for extension of second emergency passport. Denial of extension and cancellation of passport on ground of misrepresentation; claimant applied for emergency passports not for immediate return to United States for permanent residence, but for use in effecting release from military service in order to return to his business. Continued residence in Austria until latter part of 1919, when claimant returned to United States. *Held* that during period when acts complained of occurred claimant not entitled to recognition and protection as American citizen and claim, therefore, not impressed with American nationality: Commission construes and applies to facts Act of Congress, March 2, 1907, *supra*, which provides against misuse of new nationality to avoid obligations to native land, and which for time being deprives of right to recognition and protection as American citizens those against whom statutory presumption of expatriation has arisen, even though presumption is not conclusive and residence abroad for period prescribed by statute does not of itself terminate permanently American citizenship. *Held* also that, even did claimant's return to United States retroactively overcome statutory presumption, this cannot affect nationality of claim.