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Camilla Short (United States) v. Austria and Hungary

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made after the United States entered war, and alleged exceptional war measures against claimant's brother and his property fall outside jurisdiction of Commission, and that claimant, therefore, failed to prove existence of claim within terms of Treaty of Vienna.

The debt on which this claim is based represents the proceeds of the sale of real estate located in Austria the legal title to which was in claimant's brother, a Danish national. The claimant asserts that the equitable title in this real estate was in him. Under the laws of Austria the claimant could not have enforced as against his brother any claim or interest in this real estate or the proceeds thereof. Claimant's brother, however, admits that he was indebted to the claimant to the amount of the proceeds received by him for this real estate but asserts that he has discharged this indebtedness by payments already made to the claimant and by depreciated currency and securities which he has set aside and holds for claimant's account.

The indebtedness declared upon by claimant was an indebtedness due him by a Danish national and therefore not within the jurisdiction of the Commission. The securities and currency notes which claimant now holds were acquired by him from his brother after the United States entered the war and therefore not within the jurisdiction of the Commission. The alleged exceptional war measures, if they were such, were taken against claimant's brother and his property and not against the claimant or his property. On the record submitted, giving the claimant the benefit of every doubt, the facts do not bring the claim within the jurisdiction of this Commission. The claim is dismissed on the ground that the claimant has failed to discharge the burden resting on him to establish facts bringing his claim within the terms of the Treaty of Vienna.

CAMILLA SHORT (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(*March 29, 1929. Pages 106-107.*)

BONDED PUBLIC DEBTS: COLLECTION OF INTEREST COUPONS.—EVIDENCE: BURDEN OF PROOF, AFFIDAVITS OF CLAIMANT AND HUSBAND.—NATIONALITY OF CLAIM. *Held* that from affidavits of claimant and husband it appears that until January, 1920, claimant's mother, an Austrian national, entitled to proceeds of interest coupons of bonds Austrian "unified public debt" owned by claimant, and that claimant, therefore, failed to prove that during period of belligerency of United States claim was or became impressed with American nationality.

From the meager record in this case it appears that the claimant inherited from her father, an Austrian national, certain bonds issued by Austria, known as Unified Public Debt bonds, which have been held by her for some 25 years, and that these bonds were deposited in the Austro-Hungarian Bank in Vienna in a trust fund, the interest thereon to be paid to the claimant's mother, Countess Hoyos, during her lifetime. The instrument creating this trust fund is not in the record and its terms are not disclosed. It is apparent from the affidavit of the claimant and the later affidavit of her husband, Charles W. Short, that the claimant's mother had and claimed the right to receive the proceeds of the interest coupons, which right she undertook in January, 1920, to relinquish to the claimant. The record indicates that the claimant and her husband are at least morally obligated to claimant's mother for all amounts which claimant

may collect on account of said coupons. The claimant's mother was on the death of her husband, and so far as is disclosed by the record still remains, an Austrian national.

On the unsatisfactory record submitted the Commissioner holds that the claimant has failed to discharge the burden resting on her to prove that during the period of the belligerency of the United States the claim for the interest coupons or the proceeds thereof was impressed with American nationality or became so impressed by operation of law. The claim is dismissed.

JACOB MARGULIES (UNITED STATES) *v.* AUSTRIA AND HUNGARY
(*May 11, 1929. Pages 107-111.*)

NATIONALITY OF CLAIM.—NATIONALITY AND RIGHT TO PROTECTION.—NATURALIZATION: EXPATRIATION, EFFECT OF RETURN TO ADOPTED COUNTRY.—INTERPRETATION OF MUNICIPAL LAW.—RESPONSIBILITY FOR ACTS OF FORCES.—EVIDENCE: CLAIMANT AS WITNESS, PROOF OF NATIONALITY.—PROCEDURE: RELAXATION OF RULES, EXAMINATION OF CLAIMANT, ADDITIONAL BRIEFS, ORAL ARGUMENTS BY CLAIMANT'S PERSONAL ATTORNEY. Emigration of claimant, Austrian by birth, to United States in May, 1888. Naturalization as United States citizen on October 26, 1893. Return to Austria in 1903, followed by marriage, operation after father's death of farm held on lease by the latter, conclusion in 1906 of unassignable lease for another farm extending well beyond 1914, and investment of considerable sums in equipping that farm. Failure of claimant to register in Austria as United States citizen, though on November 25, 1912, he claimed to be United States citizen in letter to United States Consul General at Vienna, from which inference to be drawn is that he intended not to return to United States but to continue to live in Austria. Occupation on September 12, 1914, by Russian troops of territory where claimant was residing. Flight to Vienna where, on false sworn statements made by claimant and wife to United States Embassy, emergency passports issued. Arrival in United States, late 1914, where claimant and family have since continuously resided. Claim brought before Commission for value of personal property alleged to have been requisitioned by Austro-Hungarian Army, and for damage to other property. Personal appearance and testimony by claimant. Relaxation of Commission's rules: claimant's personal attorney permitted to examine claimant, file additional briefs, and make oral argument. *Held* that issuance of passports is neither material in determining prior citizenship status of claimant, nor evidence of citizenship at time of issuance. *Held* also that claim was not impressed with American nationality at time it arose (reference made to Henry Rothmann award, p. 253 *supra*).

Bibliography: Prossinagg, p. 25; Bonynge, p. 27.

This claim is put forward on behalf of Jacob Margulies as a naturalized citizen of the United States for the value of personal property alleged to have been requisitioned by the Austro-Hungarian Army in August, 1914, and for damage to other property, all located in territory of the former Austrian Empire now constituting a part of Poland.

This case was first submitted to the Commissioner by the Agents of the United States, of Austria, and of Hungary on briefs and oral arguments on November 9, 1928. Thereafter on March 22, 1929, at the request of the American Agent the