

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Jacob Margulies (United States) v. Austria and Hungary

11 May 1929

VOLUME VI pp. 279-282



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

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

claimant was permitted personally to appear and testify before the Commissioner and also, at the request of the American Agent, the rules of the Commission were relaxed and the claimant's personal attorney was permitted to examine the claimant, file additional briefs, and make an oral argument before the Commissioner.

On the record as it now stands the Commissioner finds:

- (1) The claimant was born in Galicia, Austria, May 20, 1872.
- (2) He emigrated to the United States in May, 1888, landing at New York.
- (3) He became a citizen of the United States by naturalization on October 26, 1893.

(4) He returned to his father's home in Austria in 1903. Shortly after his return his father died.

(5) During his residence in the United States he was employed in an establishment for the manufacture of women's clothing, operating a sewing machine for the greater part of that time. He had accumulated no property at the time of his return to Austria in 1903.

(6) A few months after his father's death the claimant married in Galicia a girl whom he had known prior to first leaving for the United States.

(7) This was his first and only marriage. His wife is still living. At the time of the marriage she had never been in the United States.

(8) There were born in Galicia to claimant and his wife three children, all of whom are living.

(9) Claimant was the second of two sons, and he had a sister younger than himself. Both his brother and sister were living in Galicia at the time of his return in 1903, engaged in farming under separate leases held by them. The claimants' father was also engaged in farming under a lease. Upon his father's death the claimant with the assistance of his brother and sister took over and operated his father's farm.

(10) When the lease on his father's farm expired in 1906 the claimant entered into a lease for another farm which was equivalent in size to about four or five hundred American acres. The term of this lease is not accurately established, but on the record submitted, including the sworn testimony of the lessor, the Commissioner holds that it ran several years beyond the year 1914, with an option of the lessee to renew. It was not assignable, but the claimant had the conditional right to sublet.

(11) The claimant's brother, an Austrian national, while not nominally a party to this lease was a "silent party" thereto and interested with the claimant therein. The extent of their respective interests is not disclosed by the record.

(12) The claimant never registered in Austria as an American citizen.

(13) On November 25, 1912, the claimant addressed a letter to the Consul General of the United States at Vienna in which he claimed to be an American citizen; called attention to the fact that he lived on the Russian frontier and that disturbances had broken out in that vicinity, and asked advice as to how he should proceed in case the Russians should interfere with his property. There is nothing in this communication indicating that he sought to register as an American citizen or that he contemplated returning to the United States. On the contrary, the inference to be drawn from his letter is that it was his purpose to continue to live in Galicia where he was a leaseholder. Consul General Denby on November 27 made a routine reply to this letter advising that "In case of war, the Austrian authorities at your place will undoubtedly advise you as to what to do". This exchange of letters between the claimant and Consul General Denby is the only correspondence which claimant ever had with the American authorities, following his return to Austria in 1903 and prior to August, 1914, at the time the claim here put forward arose.

(14) On September 12, 1914, Russian troops occupied the territory in which claimant was residing, and a few hours prior to such occupancy the claimant fled to Vienna, reaching there September 19. On that day he applied to the American Embassy for an emergency passport which was issued to him. On October 10, 1914, Mrs. Margulies and the three children reached Vienna and applied for emergency passports which were issued to them.

(15) In the application for passport the claimant under oath stated that he had resided uninterruptedly in New York City for 22 years from 1888 to 1910; that he returned to Austria in October, 1910, for the purpose of disposing of his father's property; that their three children were born in New York, Laura in 1902, Israel in 1907, and Abraham in 1909. Like statements were made in the application of Mrs. Margulies for a passport for herself and children, and she further stated that she resided in the United States uninterruptedly for 15 years from 1895 to 1910. The claimant now admits that all of these statements were untrue. His attempt to explain them and to make it appear that he had not wilfully misrepresented the facts is not convincing.

(16) The claimant landed in New York in the early fall of 1914, where he was joined by his wife and children a short time later and where they have since continuously resided. Prior to that time his wife and children had never been in the United States.

(17) From the claimant's testimony it appears that, measured by pecuniary standards, he was more successful in Galicia than in the United States either before his return to Galicia or since his return to the United States in 1914.

(18) The claimant had returned to the land of his origin where he married and was rearing a family. He had, through borrowings and otherwise, invested considerable sums in equipping a farm, which he held under a long and non-assignable lease which in 1914, at the expiration of his ten years' continuous residence in Galicia, still had several years to run. He was more prosperous than he had been at any time before or since. On the record as a whole the inferences are strong that had it not been for the World War and the losses which he sustained as a consequence thereof he would have continued to reside with his family in the land of his birth. The Commissioner finds that during his ten years' residence in Galicia the claimant had no fixed intention ever to return to the United States.

The Commissioner agrees with the statement contained in claimant's recent brief that the false statements under oath referred to in the foregoing paragraph numbered (15) were, in the language of claimant's counsel, "made after the claimant's claim arose, and hence after the time as of which the claimant's citizenship status and the nationality of his said claim became fixed" and therefore cannot affect the nationality of this claim. The fact that passports were issued to claimant and to his wife and children on applications containing these misstatements of fact is not material in determining the prior citizenship status of the claimant, nor is it even evidence that the persons to whom they were granted were citizens of the United States at the time of issuance.¹ The false statements in these affidavits are immaterial save as they affect claimant's credibility.

Applying the rule laid down by this Commission in the Rothmann case² to the findings of fact as above set out, it is apparent that under the laws of the United States then in effect the claimant had presumptively ceased to be an American citizen in August, 1914, at the time the claim here asserted arose; that the claimant had at that time done nothing to rebut this presumption of

¹ *Miller v. Sinjen*, 289 Fed. at p. 394, and cases there cited.

² See p. 253 *supra*.

expatriation arising under the Act of March 2, 1907, from a residence of more than two years in the foreign state from which he came; that the nationality of the claim is determined by the status of the claimant's citizenship at that time; and that, as the claimant was not at that time entitled to protection as an American citizen, the claim at its inception was not impressed with American nationality. The reason for this rule is fully stated in the Rothmann case and need not be repeated here.

It is unnecessary for the Commissioner to consider other questions arising on the record.

For the reasons stated the Commission decrees that neither the Government of Austria nor the Government of Hungary is obligated under the Treaty of Vienna or of Budapest to pay to the Government of the United States any amount on behalf of Jacob Margulies, claimant herein.

EMIL FRENKEL (UNITED STATES) *v.* AUSTRIA

(May 11, 1929. Pages 111-115.)

PUBLIC DEBTS: GOVERNMENT OBLIGATION TO PAY ANNUAL AMOUNT TO RAILROAD COMPANY, LIABILITY FOR DIVIDENDS ON COMPANY'S SHARES. Guaranty by Austria, in 1864 and 1867, respectively, to Austrian railroad company, of certain net annual income from two railroads in Austria, superseded in 1894 with fixed obligation to pay annually certain amount. Guaranty by Romania, in 1868, to same company, of certain net annual income from branch lines in Romania. Payments to company made by Austria until October 15, 1918, and by Romania until October 13, 1916. Failure of company to declare and pay dividends on claimant's shares on May 1, 1918, and subsequent thereto, due in part at least to default of Romania, and not to any default of Austria. No payments to company made by Austria after Armistice, November 1918, the railroads in question lying outside post-war Austria. Claim brought before Commission for payment by Austria of dividends which claimant alleges should have been paid him between May 1, 1918, and November 11, 1921, inclusive. *Held* that unpaid dividends are not debts owing claimant by Austria within meaning of Treaty of Vienna: Austria never agreed to pay or guaranteed payment of dividends to company's shareholders.

Bibliography: Prossinagg, p. 33; Bonyngé, p. 40.

This claim is put forward on behalf of Emil Frenkel as a naturalized citizen of the United States, hereinafter referred to as claimant. The facts, as disclosed by the record, are as follows:

(1) In the year 1864 the Government of the former Austrian Empire, to encourage the construction of a railroad from Lemberg to Czernowitz, guaranteed to the company building it a net annual income of 1,500,000 florins, Austrian silver currency.

(2) In the year 1867 the Government of the former Austrian Empire, to encourage the construction of a railroad from Czernowitz to Suczawa, guaranteed to the company building it a net annual income of 700,000 florins, Austrian silver currency.

(3) Both of these lines were constructed and operated by the Lemberg-Czernowitz-Jassy Railway Company, an Austrian corporation. The amounts for which the Government of the former Austrian Empire was obligated under