

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

**James F. Bishop, Administrator of the Estate of William Mounsey, Deceased,
and Others (United States) v. Germany**

5 March 1925

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Administrator of the Estate of Charles A. Plamondon, deceased, the sum of one thousand four hundred thirty dollars forty-eight cents (\$1,430.48) with interest thereon at the rate of five per cent per annum from May 7, 1915, and (8) Charles A. Plamondon, Jr., Administrator of the Estate of Mary Mackin Plamondon, deceased, the sum of three thousand six hundred four dollars twenty-five cents (\$3,604.25) with interest thereon at the rate of five per cent per annum from May 7, 1915; and further decrees that the Government of Germany is not obligated to pay to the Government of the United States any amount on behalf of the Saladin Pneumatic Malting Construction Company.

Done at Washington October 2, 1924.

Edwin B. PARKER
Umpire

JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF
WILLIAM MOUNSEY, DECEASED, AND OTHERS (UNITED STATES)
v. GERMANY

(*March 5, 1925, pp. 577-580.*)

NATIONALITY OF CLAIMS: PRIMARY, SECONDARY EVIDENCE.—NATURALIZATION: EFFECT OF DECLARATION OF INTENTION TO BECOME AMERICAN CITIZEN.— DAMAGES IN DEATH CASES: ACTUAL FINANCIAL CONTRIBUTIONS. Claim for alleged losses suffered by children of *Lusitania* victims. Application of rules announced in *Lusitania* Opinion and Administrative Decisions Nos. V and VI, see pp. 32, 119, and 155 *supra*. Held that decedent, who in 1886 made formal declaration of intention to become American citizen, nevertheless was British subject at time of death: no primary evidence of naturalization as American citizen (record of competent court or authenticated copy thereof) has been brought, only secondary, inconclusive, evidence (long residence in United States, exercising of right of vote and other privileges and rights of citizenship); and that, therefore, no claim for value of personal property lost can be asserted. Damages allowed on behalf of one (American) child for lost pecuniary contributions.

PARKER, *Umpire*, rendered the decision of the Commission.

This case is before the Umpire for decision on a certificate of the two National Commissioners^a certifying their disagreement.

William Mounsey, 58 years of age, a second-cabin passenger, was lost with the *Lusitania*. He was born a British subject. It is contended that, through naturalization, he became a citizen of the United States. From the record it appears that he migrated to America in May, 1883, and that on January 23, 1886, he took the first step toward naturalization by formally declaring, in the manner prescribed by the statutes of the United States, "that it is bona fide his intention to reside in and become a citizen of the United States; and to renounce forever all allegiance and fidelity to every foreign" sovereignty. But this declaration of intention was far from constituting him a citizen of the United States, notwithstanding he resided therein continuously for a subsequent period of 29 years and continued to claim citizenship and to vote and to exercise other rights and privileges of citizenship. Such claim by him and the exercise of such privileges coupled with the declaration of intention to

^a Dated February 11, 1925.

become a citizen did not make him a citizen. (See opinion of Thornton, Umpire, under the Convention between the United States of America and Mexico of July 4, 1868, in the case of *Gatter v. Mexico*, III Moore's International Arbitrations, at page 2547.) The primary evidence of naturalization under the statutes of the United States is the record of a competent court or an authenticated copy thereof decreeing citizenship. In support of the contention that "final papers" had been issued to the decedent, evidence of a secondary nature has been placed in this record with respect to his long residence in the United States and his conduct in voting and exercising other privileges and rights of citizenship. As a basis for offering this secondary evidence, proof has been made of the most thorough and painstaking search of the records of every court having jurisdiction which could have entered a decree declaring the decedent a citizen of the United States and it has been affirmatively established that there is no evidence that such a decree was ever issued. There is no suggestion that the records of any court in which the decedent could have been admitted to citizenship have been lost, mutilated, or destroyed. The proof offered as a basis for the introduction of secondary evidence goes so far as to prove that no decree was ever entered by a competent court of the United States admitting the decedent to citizenship. In this state of the record the Umpire reluctantly holds that the decedent never became an American citizen and lived and died a British subject.

But in view of the rule announced in this Commission's Administrative Decision No. VI it is immaterial whether the decedent was a British or an American national, save as it affects the claim for the personal property lost with the decedent, valued at \$458.

The decedent, a widower, was survived by three sons and six daughters, all of whom had attained their majority except the daughters Myrtle, who had married in 1913, and Bertha, then 19 years of age, who married in October, 1916. There is no evidence that any of them suffered damages resulting from his death, as measured by pecuniary standards, save possibly his son George A., then 28 years of age, his son William E., then 26 years of age, his daughter Elizabeth, then 24 years of age, and his daughter Ethel, then 23 years of age. The last-named married Ralph A. Westlund, an American national, in December, 1916. The four children enumerated were all born in and have ever remained citizens of the United States.

From the year 1905 to the decedent's death in 1915 he and his son William E. Mounsey as copartners were engaged in a general coal, wood, and express business in the city of Chicago under the firm name of William Mounsey and Son. It would seem that when such partnership was first formed the son was only 16 years of age. For the five years last prior to the death of the decedent the net income from this business averaged \$4,200 per annum. How this income was divided as between the decedent and his son William is not clearly disclosed by the record, but from the statements therein it may be safely assumed that the decedent received the major portion thereof. The decedent owned a home which he shared with his daughter Elizabeth and his sons William and George. The latter apparently had no interest in the business of William Mounsey and Son but was sometimes employed by that firm. Elizabeth performed the ordinary duties of a housekeeper and was wholly dependent upon her father for support. Statements are found in the record to the effect that the decedent, during a period of 18 months prior to his death, contributed to his daughter Elizabeth \$150 per month and that prior to that period he contributed to her approximately \$1,000 per annum. How much of this was in the nature of compensation for services rendered by her as housekeeper is not disclosed by the record.

The evidence with respect to the damages, if any, resulting from the death of the decedent suffered by his daughter Ethel is meager and inconclusive and too indefinite to support an award in her behalf. While her testimony is not produced, the inferences from the record are that she was self-supporting, in part at least, and that she married the year following her father's death.

With respect to the two sons George A. and William E., the statement is made that the decedent furnished them "with a home and considerable support". It is evident that neither was dependent upon his father for support, and the son William had for 10 years been a member of his father's firm and active in the conduct of the business. The meager and unsatisfactory statements contained in the record are insufficient to support an award on behalf of either of these sons. But with respect to the daughter Elizabeth, while she doubtless earned her support through her services as keeper of her father's household, the record clearly indicates that her relations to her father, her dependency upon him, and the contributions which he made to her were such that she suffered pecuniary damages resulting from his death.

A claim is put forward on behalf of the administrator of the decedent's estate for \$458, the value of personal property belonging to and lost with him. As this property was impressed with the British nationality of the decedent a claim for its value can not be asserted here.

Applying the rules announced in the *Lusitania* Opinion, in Administrative Decisions No. V and No. VI, and in the other decisions of this Commission to the facts as disclosed by this record, the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is obligated to pay to the Government of the United States on behalf of Elizabeth Mounsey the sum of seven thousand five hundred dollars (\$7,500.00) with interest thereon at the rate of five per cent per annum from November 1, 1923; and further decrees that the Government of Germany is not obligated to pay to the Government of the United States any amount on behalf of the other claimants herein or any of them.

Done at Washington March 5, 1925.

Edwin B. PARKER
Umpire

ELIZABETH ANN HARRISON AND OTHERS
(UNITED STATES) *v.* GERMANY

(*March 11, 1925, pp. 586-589.*)

NATIONALITY OF CLAIMS.—NATURALIZATION: EFFECT OF DECLARATION OF INTENTION TO BECOME AMERICAN CITIZEN, "INCHOATE CITIZENSHIP". Claim for alleged losses suffered by brothers and sister of *Lusitania* victim. Application of rules announced in *Lusitania* Opinion and Administrative Decisions Nos. V and VI, see pp. 32, 119, and 155 *supra*. Held that brothers suffered no pecuniary damage and that no claim on behalf of sister can be asserted, since at time of decedent's death she was a British subject: 17 years before she made formal declaration of intention to become American citizen, but under Treaty of Berlin "inchoate citizenship" insufficient and permanent allegiance to United States required.