REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Elizabeth Ann Harrison and Others (United States) v. Germany

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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.

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

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

Herbert K. Harrison, 39 years of age, went down with the *Lusitania* on which he was a passenger. He had never married. He was born a British subject and had on April 24, 1912, formally declared his intention to become a citizen of the United States but he never matured this intention by complying with the requirements of its statutes. He was survived by his father and mother, British nationals resident in the Isle of Man, both of whom have since died, and also by four brothers and one sister who, with the decedent, resided in Chicago.

Frank Edward Harrison, then a naturalized American citizen, 33 years of age, seems to have been the most prosperous of the brothers. He was married and maintained his own domestic establishment. The sister and the four unmarried brothers lived together in a house furnished to them by their brother Frank at a rental much less than its market value. In this way Frank contributed to the support of his sister, Elizabeth Ann, then 48 years of age, and of his four brothers, the decedent, George D., a British national, then 53 years of age, William, a British national, then 46 years of age, and Thomas, a naturalized American citizen, then 41 years of age.

The decedent was a driver and collector for a laundry company in Chicago, earning approximately $100 per month, substantially all of which he gave to his sister to be used, with like funds contributed by his three unmarried brothers, for the maintenance of the household and for her personal expenses, including clothing.

A claim is asserted on behalf of Frank Edward Harrison, but the record indicates that this claimant and the decedent did not live together and that instead of the decedent contributing anything of pecuniary value to this claimant he made contributions to the decedent. All of the other surviving members of decedent's family were British subjects save Thomas, a naturalized American citizen and a claimant herein. The sole basis of his claim is that by reason of his brother's death his burden of supporting their sister was increased and it became necessary for him to increase the amount of his contributions to the support of that sister—a British subject—and the maintenance of the household kept by her. For the reasons announced in the previous decisions of this Commission this damage, if any, is too remote to support an award against Germany.

The record discloses no evidence of any pecuniary damages suffered by anyone resulting from the death of the decedent save to his sister, and a claim on her behalf can not be here asserted because she was at the time of her brother's death a British national.

This sister at the time of the sinking of the *Lusitania* had been continuously domiciled in the United States for more than 24 years and had more than 17 years prior to that time formally declared her intention of becoming an American citizen, but she has never been admitted to citizenship. During all of that time she had not exercised, or claimed the privilege of exercising, any of the rights of a subject of Great Britain. Private counsel for the claimant, with the consent of the American Agent, have filed a brief herein in which they urge with much earnestness that a *bona fide* formal declaration to become an American citizen, followed by a long-continued domicile in the United States, entitles the declarant to the protection of the Government of the United States and constitutes such declarant an American national within the meaning of the Treaty of Berlin. The Umpire has no hesitancy in rejecting this contention.

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[a] Dated February 11, 1925.

The Government of the United States was careful to incorporate in the Treaty of Berlin broad and far-reaching provisions for the protection of American nationals. But it was also careful to make such provisions applicable only to persons "who owe permanent allegiance to the United States". An expression of an intention to become a citizen does not make such declarant a citizen. The status of declarant has sometimes been described as "inchoate citizenship". The term between the filing of the declaration and the admission to citizenship has sometimes been referred to as "a probationary period" (Foreign Relations of the United States, 1890, page 695). But it has never been held that the mere declaration of an intention to become an American citizen constituted a tie permanently binding the declarant to the United States to which he should thenceforth owe permanent allegiance. The allegiance which a declarant owes to the United States is at most of a temporary nature. His declaration is a step toward the transfer of his allegiance, which is completed only when he has matured his "intention" to become a citizen by complying with all the requirements of the statutes of the United States (see Ehlers' Case, III Moore's Arbitrations 2551). Then, but not until then, does his allegiance become permanent. The Congress of the United States in its act approved July 9, 1918 (40 Statutes at Large, at page 885), recognized the soundness of the rule here announced by so amending the Selective Draft Act as to provide "That a citizen or subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States". It will be noted that the Congress there treated such a declarant as an alien to the United States and still a citizen or subject of the neutral country. Had such declarant owed permanent allegiance to the United States he would not have been permitted at his election to be relieved from the provisions of the draft law and from liability to military service at the price of withdrawing his declaration of intention and being thenceforth forever debarred from becoming an American citizen.

It will serve no useful purpose here further to pursue the inquiry with respect to the status—internationally and nationally—of one who has formally declared his intention to become an American citizen. While a declarant has sometimes been recognized as entitled to limited protection, all of the departments of the Government of the United States—executive, legislative, and judicial—have uniformly treated a declarant as remaining a foreign subject until he shall have complied with the requirements prescribed by the Congress of the United States as necessary to admit him to American citizenship (see City of Minneapolis *v.* Reum, 1893, 56 Federal Reporter 576; *In re* Siem, 1922, 284 Federal Reporter 868, at page 870, same case, 1924, 299 Federal Reporter 582; Ralston's International Arbitral Law and Procedure, sections 227-231; and Borchard's Diplomatic Protection of Citizens Abroad, sections 247, 248, and 249). But quite independent of the decisions of the courts of the United States and the practical constructions of its executive and legislative departments, it is clear that a declarant does not owe permanent allegiance to the United States, and hence a claim asserted on behalf of such declarant does not fall within the terms of the Treaty of Berlin.

It follows that the claimant Elizabeth Ann Harrison was at the time of her brother Herbert's death and has since remained a British subject.

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 the record herein, the Commission decrees that

under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is not obligated to pay to the Government of the United States any amount on behalf of any of the claimants herein.

Done at Washington March 11, 1925.

Edwin B. PARKER
Umpire

MARGARET EMERSON BAKER AND OTHERS, AND REGINALD C. VANDERBILT AND OTHERS AS EXECUTORS OF THE ESTATE OF ALFRED G. VANDERBILT, DECEASED (UNITED STATES) *v.* GERMANY

(March 19, 1925, pp. 593-595.)

DAMAGES IN DEATH CASES: VALUE OF LIFE LOST, LOSS TO SURVIVORS; ACTUAL FINANCIAL CONTRIBUTIONS, DECEDENT'S PRODUCING POWER. Claims for alleged losses suffered by widow and children of *Lusitania* victim. Application of rules announced in *Lusitania* Opinion, see p. 32 *supra*, and in other decisions. *Held* that, since no evidence offered of producing power of decedent, and pecuniary returns to widow and children from his bequests to them are greater than contributions received from him during his life, no damages can be allowed: measure of awards is not value of life lost, but losses to claimants.

Bibliography: Kiesselbach, *Probleme*, p. 63.

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

This case has been certified by the two National Commissioners[a] to the Umpire for decision.

Alfred Gwynne Vanderbilt, an American national, 37 years of age, was lost with the *Lusitania*. He was survived by his wife, Margaret Emerson Vanderbilt, then 33 years of age, two sons, issue of their marriage, Alfred G., Jr., then two years seven months old, and George, then seven months old, and also by a son by a former marriage, William Henry, then 13 years of age, all American nationals. The claim put forward on behalf of the widow is in the name of Margaret Emerson Baker, she having married Raymond T. Baker, an American national, June 12, 1918.

Using as a basis the appraisals made for the purpose of fixing the transfer tax payable to the State of New York, the net value of the decedent's estate, after the payment of all debts and funeral and administration expenses, was $15,594,836.32. By the terms of decedent's will bequests were made to sundry individuals aggregating $1,180,098.18 and the balance was bequeathed to, or placed in trust for the use and benefit of, the decedent's widow and his three sons, all claimants herein. During his life Mr. Vanderbilt maintained for himself, wife, and children several country places and town residences both in the United States and in England. For their maintenance and for the support and comfort of his wife and children he expended and contributed approximately $300,000 annually, or about two per cent of the amounts bequeathed to them and for their use and benefit.

The producing power, if any, of the decedent is not disclosed by the record. No evidence is offered of his having had any income other than the fruits of

[a] In a certificate dated December 22, 1924.