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Thomas H. Richards and Others (United States) v. Germany

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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 the claimants herein.

Done at Washington October 30, 1925.

Edwin B. PARKER
Umpire

THOMAS H. RICHARDS AND OTHERS
(UNITED STATES) *v.* GERMANY

(November 11, 1925, pp. 637-639.)

NATIONALITY OF CLAIMS, EVIDENCE: EXPATRIATION, REBUTTABLE STATUTORY PRESUMPTION. Claim for alleged losses suffered by relatives of *Lusitania* victim. Naturalization as American citizen of British-born first claimant, father of decedent, in 1906. Residence with other claimants (wife and children) in England, since May, 1915, without registering as American citizen and without definite intention to return to United States. Application of rules announced in *Lusitania* Opinion and Administrative Decision No. V, see pp. 32 and 119 *supra*, and in other decisions. *Held* that claimants no longer have American nationality: though in time of war statutory presumption of expatriation because of residence for two years or more in land of alien parents does not arise, statute nevertheless runs; when United States entered war (April 6, 1917), statute therefore continued to run against first claimant and at war's end (July 2, 1921) presumption arose, which since has not been rebutted.

Cross-references: A.J.I.L., Vol. 20 (1926), pp. 599-601; Annual Digest, 1925-26, pp. 271-272.

Bibliography: Annual Digest, 1925-26, p. 272; Borchard, p. 75.

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

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

Dora Millicent Richards, an infant 19 months of age, born in the United States, lost her life on the *Lusitania* while traveling with her father, mother, and two older brothers, all claimants herein, from Butte, Montana, to England. The claim is put forward for pecuniary damages alleged to have been suffered resulting from the decedent's death. No claim is made for any personal injuries sustained or property lost.

The decedent's father, Thomas H. Richards, born a British subject, became an American citizen through naturalization in Montana in 1906. The very meager and unsatisfactory evidence submitted fails to disclose the purpose of Richards in returning with his entire family to his native land. Since May, 1915, he and his family have resided in England, apparently engaged in agriculture. Under date of May 5, 1925, 10 years after the sinking of the *Lusitania*, he states that the lease which he had taken on the farm upon which he and his family are living still had six years to run and he declined to follow the advice of the American Consul at Plymouth that he make application for passport to the United States or for registration as an American citizen. He expressed the hope that he would "some day" return to the United States but is apparently unwilling to state with greater definiteness when, if at all, he

will return, and, while admitting that he has failed to register as an American citizen, maintains that he still is an American citizen and has not registered otherwise or voted in England.

The German Agent challenges the American nationality of the claimants and of the claim. This presents a very different question than that in the case submitted on behalf of William Mackenzie and others,¹ where the citizenship of the decedent and of the claimants turned on the nationality of the husband of decedent, Robert A. G. Mackenzie, a native American citizen, who during most of his minority and for several years after attaining his majority resided within the jurisdiction of Great Britain, to which his parents owed allegiance, and then returned and established a permanent residence in the United States, where he died and where his widow and children continued to live. In that case there was no statutory presumption of expatriation arising from residence within the jurisdiction of the land of alien parents. In the instant case section 2 of the Act of the Congress of the United States approved March 2, 1907, applies. That statute, still in effect, provides that:

"When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however,* That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe: *And provided also,* That no American citizen shall be allowed to expatriate himself when this country is at war."

Under this statute the continued residence of Thomas H. Richards in his native land did not *ipso facto* operate to deprive him of American citizenship, but it raised a rebuttable presumption of his expatriation. However, the rights of American citizenship carry with them correlative duties, and while the American rule clearly recognizes the general right of expatriation that right does not exist while the United States is at war. Since Richards had not resided in his native land—England—for the full period of two years when the United States on April 6, 1917, entered the war, no statutory presumption of his expatriation had up to that moment arisen. Thereafter he was not *allowed*, under the statute, to expatriate himself while the United States was at war. But this statutory limitation on his right of expatriation did not toll the running of the statute against him, and when on July 2, 1921, the United States ceased to be at war the statutory presumption of expatriation arising from a residence in his native land of two years or more, including the war period, did obtain.² It is not seriously contended by the American Agent that this presumption has been rebutted. The clear inference from the record is that it can not be rebutted. On the record as submitted the Umpire decides that the claimants have failed to discharge the burden resting upon them to prove American nationality entitling the United States to put forward this claim under the rule announced in Administrative Decision No. V.

Applying the rules announced in the *Lusitania* Opinion, in Administrative Decision No. V, and in other decisions of this Commission to the facts as disclosed by the record herein, the Commission decrees that under the Treaty

¹ Docket No. 2482, decided by the Umpire on October 30, 1925. (*Note by the Secretariat*, this volume, p. 288 *supra*.)

² General Instruction No. 919 (Diplomatic Serial No. 225-A), issued by the Department of State of the United States on November 24, 1923, compilation of "Circulars Relating to Citizenship, Etc.", 1925, at page 120.

of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is not obligated to pay any amount to the claimants herein or any of them.

Done at Washington November 11, 1925.

Edwin B. PARKER
Umpire

ALICE E. AND BERTE SCHOLBORG
(UNITED STATES) *v.* GERMANY
(*January 20, 1926, pp. 646-648.*)

ESTATE CLAIMS: EXCEPTIONAL WAR MEASURES.—DAMAGE: DEPRECIATION OF SECURITIES. Claim for damage resulting from prevention by German exceptional war measures of transmission of interest to American heirs in German estate. Claim allowed: application of rules announced in Administrative Decision No. IV, see p. 117 *supra*. *Held* that claimant not, in addition, entitled to recover amount equal to depreciation of securities voluntarily left in Germany.

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

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

The claimants, Alice E. Scholborg and Berte Scholborg, sisters, were on July 17, 1914, and have since remained American nationals. On that date their aunt, Bertha Scholborg, died in Germany. Her death released a legacy bequeathed to the claimants by their uncle, George Scholborg, the income from which Bertha Scholborg was entitled to receive during her life. This legacy was in the form of securities held by Dr. C. Bulling, executor of the estate of George Scholborg. On October 27, 1914, Dr. Bulling wrote to the claimants, then residing in the State of New York, stating that he was prepared to deliver the securities bequeathed to them by George Scholborg to such person as they might authorize to receive them. The claimants, however, instructed Dr. Bulling to hold these securities "until the war is over" and added: "Any interest which accumulates I should like you to send". In accordance with these instructions, Dr. Bulling as executor continued to hold these securities and from time to time remitted the income therefrom to the claimants, the last remittance made being on October 18, 1916. The war legislation enacted by the German Government prohibited his remitting the claimants subsequent to that date the amounts collected by him, either as income or as principal of the maturing securities which he would have remitted but for this restraining legislation.

Under the rules announced by this Commission in Administrative Decision No. IV the claimants are entitled to recover, in terms of dollars, the amounts paid in marks to the executor valorized at the rate of exchange existing on the several dates when he would have paid them over to the claimants had he not been prevented from so doing by the German exceptional war measures, less the value, in terms of dollars, of these marks on January 10, 1920, when this war legislation was repealed and the statutory obstacle to making remittance removed.