REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

American-British Commission established by Article XII of the Treaty of Washington of 8 May 1871 to deal with claims arising out of acts committed against persons or property during the American Civil War

Cases of Charles M. Smith, later John C. Ferris, administrator v. the United States of America; and Agnes Pollock, later J. B. Halley, administratrix, v. the United States of America, decision of 25 September 1873 and dissenting opinion

Commission américano-britannique de requêtes, établie par l'article XII du Traité de Washington du 8 mai 1871 pour traiter des requêtes émanant d'actes commis contredes sujets ou des biens pendant la Guerre de sécession américaine

Affaires concernant Charles M. Smith, par la suite John C. Ferris, administrateur c. les États-Unis d'Amérique; et Agnes Pollock, par la suite J. B. Halley, administratrice, c. les États- Unis d'Amérique, décision du 25 septembre 1873 et opinion dissidente

25 September 1873

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NATIONS UNIES - UNITED NATIONS

The rebellion was a struggle against the United States for the establishment in a portion of the country belonging to the United States of a new state in the family of nations, and it failed. Persons contracting with the so-called Confederate States voluntarily assumed the risk of such failure, and accepted its obligations, subject to the paramount rights of the parent state by force to crush the rebel organization, and seize all its assets and property, whether hypothecated by it or not to its creditors.

Such belligerent right of the United States, to seize and hold was not subordinate to the rights of creditors of the rebel organization, created by contract with the latter; and when such seizure was actually accomplished, it put an end to any claim of the property which the creditor otherwise might have had.

We are therefore of opinion that after such seizure the claimant had no interest in the property, and the claim is dismissed.

Cases of Charles M. Smith, later John C. Ferris, administrator *v.* the United States of America; and Agnes Pollock, later J. B. Halley, administratrix, *v.* the United States of America, decision of 25 September 1873 and dissenting opinion[*]

Affaires concernant Charles M. Smith, par la suite John C. Ferris, administrateur c. les États-Unis d'Amérique; et Agnes Pollock, par la suite J. B. Halley, administratrice, c. les États-Unis d'Amérique, décision du 25 septembre 1873 et opinion dissidente[**]

Authority to present a claim—right of administrators of deceased British claimants to fill claims regardless of their own nationality.

Dissenting opinion

Treaty interpretation—literal interpretation—restrictive interpretation to effectuate the intention of both States parties.

Recognition of nationality under international law—question of diplomatic protection of dual nationals—question of admission of claims by dual nationals.

Qualité pour présenter une réclamation—droit des administrateurs des requérants britanniques décédés de présenter une réclamation sans égard à leur propre nationalité.

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[*] Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party,* vol. III, Washington, 1898, Government Printing Office, p. 2239.

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Opinion dissidente

Interprétation des traités—interprétation littérale—interprétation restrictive afin de donner effet aux intentions des deux États parties.

Reconnaissance de la nationalité en droit international—question de la protection diplomatique des binationaux—question de l'admissibilité des réclamations de binationaux.

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First part of the decision

No. 109—Charles M. Smith, later John C. Ferris, administrator, No. 212, v. *The United States*

Agnes Pollock, later J.B. Halley, administratrix, No. 205, v. *The United States*

Charles M. Smith, a minor, filed his claim on the 24th of February 1872. He claimed compensation for property destroyed, carried off, and occupied by the armies of the United States, at Athens, Alabama, during the war. The said property belonged to his father, John Donohue Smith, who died on the 9th of April 1870. He prosecuted the claim as heir at law and distributee of the said J. B. Smith, deceased, through J. R. Dillin, his attorney, empowered by J. C. Ferris, the administrator of the said Smith, deceased.

The United States agent on the 9th of March 1872 filed a motion to dismiss the claim on the ground that the memorialist, being a minor, could not prosecute the claim in person or by attorney, but must proceed by guardian or next friend, and that the said claim should be prosecuted in the name of the administrator of the said J. D. Smith, deceased.

On the 19th of March 1872 the case was dismissed by the commissioners, and on the next day the same claim was filed again in the name of J. C. Ferris, administrator of the estate of the deceased, J. D. Smith. Shortly after the filing of the new memorial the defense filed another demurrer on the following grounds:

1. That neither the claimant, administrator, nor his alleged *cestui que* trust, C. M. Smith, was alleged to be a British subject.
2. That it appeared that J. D. Smith died prior to the conclusion of the treaty of Washington, and that said claim ever since was not a claim of a subject of Her Britannic Majesty upon the United States, but was claim of a citizen of the United States.

Agnes Pollock, the petitioner in the second claim to be reported under this head, filed her memorial on the 20th of March 1872 as widow of James Pollock, deceased, claiming compensation for property carried off by the United States armies in Itawamba County, Mississippi, in the years 1862, 1863,

and 1864, belonging to said James Pollock. Both man and wife were British subjects by birth.

On the 3d of May 1872 the United States agent demurred to the memorial on the ground that it showed no title in the claimant to said property, or to any claim for the avails thereof; and on the 17th of June of the same year, and before said demurrer had been acted on by the commissioners, a new memorial was filed, putting the claim in the name of James B. Halley, administrator of the estate of James Pollock, deceased.

J. B. Halley described himself as of Tishomingo County, Mississippi.

On the 2d of July 1872 the defense filed a motion to dismiss this latter memorial because it had been filed after the expiration of the six months allowed by the treaty for the filing of memorials from the time of the first meeting of the commission; on the same day a demurrer to the claim was also filed by the defense, which was almost identical with the one filed in the case of J. C. Ferris, above cited.

In the arguments filed by the United States agent in the support of these demurrers he held:

1. That in the absence of any allegations to the contrary, the claimants, and all persons interested in the estate of the deceased, are to be taken as not being British subjects, and no claim can be prosecuted for the benefit of American citizens according to the twelfth article of the treaty.
2. That a person, who had been a British subject at the time of the injury complained of, but had become a naturalized United States citizen before presenting his claim, had no standing before the commission.
3. That if a British subject had assigned his claim absolutely to a person of another country, the assignee could not prosecute the same, at least in his own name.
4. That a sole legatee, made likewise a sole executor by will of a British subject, if an American citizen, could have no standing before the tribunal.
5. That it was only on behalf of Her Majesty's subjects, and while they remained such subjects, that Her Majesty's government assumed to intervene.
6. That it was evident that in case of involuntary transfer of title by death and operation of law, the rule must be the same.

Her Majesty's counsel in his brief stated:

1. That Charles Smith, the beneficiary in the case of J. C. Ferris, administrator, No. 212, was the son of John D. Smith, a British subject, and was therefore also a subject of Her Britannic Majesty.

2. That the United States counsel would no doubt contend that children born in the United States of British parents were citizens of the United States as well as British subjects, and could have no benefit under the treaty; but supposing that the fact of birth alone gave them American nationality, that fact would not deprive them of their rights as British subjects under the laws of Great Britain, and the treaties made by that power; nor could the United States impress upon infant heirs the character of American citizens to the extent and for the sole purpose of shutting them out from the benefits of the treaty of Washington.
3. That the twelfth article of said treaty was intended to provide for all claims in their character British, and in respect of which there was a right or duty on the part of the British Government to obtain redress; and that it was sufficient that the claim itself in its nature and all its essential attributes was a British claim, as treated by recognized principles of international law.
4. That by the laws of the United States, their consuls in foreign countries (if the laws of such countries permit) were bound to collect the personal property of American citizens dying there, in the absence of any legal representative; to collect and pay debts due to them or by them, and to settle their estates, and to remit the balance to the Treasury of the United States. This is done irrespective of the nationalities of the legatees or distributees of the deceased.
5. That manifest injustice would be done, if the commissioners deemed it necessary that all the beneficiaries of a claim be British subjects, and Her Majesty's counsel cites several cases as illustrations of how such injustice would be committed.
6. That any award made in the name of an administrator would be paid to him, and would have to be distributed by him under the orders of an authorized tribunal, which would utterly disregard all questions of nationality.
7. That the nationality of an administrator is unimportant and not at all material to the commission.

Second part of the decision

No. 205, James B. Halley, administrator; No. 212, John C. Ferris, administrator, v. *The United States*

These demurrers are overruled; the majority of the commissioners being of opinion that where the claim is prosecuted by an administrator in respect of injury to property of an intestate who was exclusively a British subject, and the beneficiaries are British subjects as well as American citizens, the claim may be prosecuted for their benefit.

The commissioners are all of opinion that the particular nationality of the administrator does not affect the question.

Dissenting opinion to the first part of the decision by Mr. Frazer, United States Commissioner

By the very words of the treaty (article 12) the claim must be, first, for an act done to the "person or property of" a British subject; second, it must be made "on the part of" a British subject. Distinctly, then, these two things must concur to give us jurisdiction. This is too plain to admit of controversy. The treaty is the language of both governments, and must be construed to effectuate not the intent of *one* only, but of *both*. If any of its terms have one sense in Great Britain and another in the United States by reason of their respective laws, neither of these senses can fairly be taken; another, though limited, sense must be sought, common to both countries. There is such a restricted sense of the language employed here. In Alexander's case I expressed myself on this branch of the present question. One born in the United States of British parents residing here would be protected by the United States as fully as any American against wrongs from other countries, Great Britain probably not excepted. And Great Britain would not, as against the United States, intervene in his behalf, though she would claim him as her subject, and hold him to accountability as such if found bearing arms against her. And if born here of British parents during a temporary sojourn, but afterwards domiciled in England and never residing here, the United States would practically treat him as not an American, refusing to intervene in his behalf against any other government, though she, too, would hold him to accountability as a citizen if found in arms against her. And so of persons born in Great Britain of American parents. The treaty is the product of diplomacy, providing this international tribunal for the amicable settlement of claims concerning which each power could lawfully claim redress as it saw fit, not of claims for which it would have no right to claim redress.

Alexander's case was a little different. He had estates and a domicil in both countries; was born in the United States of British parents domiciled here, but claiming only British nationality. This would be an interpretation of the treaty which would maintain our jurisdiction in all cases in which the complaining government would, by international law, have been at liberty to demand redress. It would settle all such cases, and thus effectuate the purpose of the treaty which was to terminate our diplomatic differences. The principles above stated, it seems to me, apply quite as fully where the person beneficially interested in the claim made before us is of both nationalities as where the person originally injured, being also of both nationalities, is still living and makes claim. To entertain the claim in either case is to assume that each government has by the treaty recognized its responsibility to the other for injuries done to those who are by its laws its own citizens or subjects. This construction, it seems to me, is utterly inadmissible. I can not possibly bring myself to believe that either government intended any such thing.