REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Mixed Commission on claims of citizens of the United States of America against Spain
established under the Agreement of 12 February 1871

Case of Pedro D. Buzzi v. Spain, No. 22,
decision of the Umpire, Count Lewenhaupt, dated 18 April 1881

Commission mixte de réclamations des citoyens des États-Unis d'Amérique à l'encontre de l'Espagne
constituée en vertu de l'Accord du 12 février 1871

Affaire Pedro D. Buzzi c. Espagne, No 22,
décision du Surarbitre, Count Lewenhaupt, datée du 18 avril 1881

18 April 1881

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The umpire therefore finds nothing to justify a reversal of his decision. While leaving entirely untouched the capture of the *Mary Lowell* in its relations to international law and in its consequences upon such rights as the United States and Spain may respectively possess in the premises, he must adhere to the dismissal of these claims, C. *H. Campbell* and *A. A. Arango* v. *Spain,* and deny the applications for a rehearing.

Case of Pedro D. Buzzi *v.* Spain, No. 22, decision of the Umpire, Count Lewenhaupt, dated 18 April 1881*

Affaire Pedro D. Buzzi c. Espagne, N° 22, décision du Surarbitre, Count Lewenhaupt, datée du 18 avril 1881**

Nationality under international law—right for every country to confer, by general or special legislation, the privilege of nationality upon a person born out of its own territory—no person without nationality—according to international law, a person without nationality by descent or by birth shall be considered to have the nationality of the birth place.

Recognition of naturalization—not the duty of the Commission to examine whether the requirements of the American law of naturalization have been fulfilled but just to determine whether there has been naturalization in good faith as against Spain—criterion of uninterrupted residence of five or more years.

Nationalité en vertu du droit international—droit de tout pays d'accorder, par le biais d'une législation générale ou spéciale, le privilège de la nationalité à une personne née en dehors de son territoire—aucune personne ne peut être dépourvue de nationalité—en vertu du droit international, une personne ne disposant pas de nationalité par descendance ou naissance devrait être considérée comme ayant la nationalité du lieu de naissance.

Reconnaissance de la naturalisation—il ne relève pas du devoir de la Commission d'examiner si les conditions posées par le droit américain de la naturalisation sont remplies, mais juste de déterminer s'il y a eu une naturalisation opposable de bonne foi à l'Espagne—critère de la résidence ininterrompue durant cinq ans ou plus.

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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. 2613.

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The arbitrators, having been unable to agree upon the question whether they should recognize the quality of American citizen in the claimant, said question has been referred to the umpire.

The claimant, who was born in Trinidad de Cuba about 1833, states that he is an American citizen by descent, but he supports this allegation only by a copy of a declaration of intention made by his father in 1824, and by a statement that he has always understood from older members of his family that his father had completed his naturalization. He claims further that, not knowing this alleged fact at the time other- wise than as mere impression or belief, he procured in 1869 a certificate of naturalization, issued by the judge of Baltimore city court July 28, 1869. He produces also a declaration of intention made by himself in 1850, at the age of sixteen or seventeen, before the superior court of New York. He came from Cuba to New York at six years of age, but according to his own statement he returned to Cuba some time before he became twenty-one, or about 1854, and thereafter he did not come back to the United States before 1869. Between 1864 and 1869 he was United States consular agent at Zuza, Cuba.

The father of the claimant was born in Milan, Italy, in the year 1799. It is contended that he was a native-born Austrian, but that he had become by naturalization an American citizen, but the only documents furnished in this connection are the following certificates:

EXHIBIT P. D. B. NO. 1.

(Duplicate.)

CITY OF NEW YORK

Report of Pietro Buzzi, an alien, of himself, made to the clerk of the marine court of the city of New York, on the 26th day of October, in the year 1824.

Name, Pietro Buzzi; sex, male; place of birth, Milan, in Italy; age, twenty-five years; nation and allegiance, German. Gulian, the Emperor of Germany; places whence emigrated, London; conditions or occupations, physician; places of actual or intended residence, city of New York.

Pietro Buzzi

John G. Lardy, Clerk.

(Duplicate.)

Tuesday, October 26, 1824

The marine court of the city of New York

Present, Justice Hegeman.

I, Pietro Buzzi, at present of the city of New York, physician, do declare on oath, before the marine court of the city of New York, that it is bona fide my intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly to the Emperor of Germany, of whom I am a subject.

Pietro Buzzi

The umpire is of opinion that there is no proof to which nationality the claimant's father belonged at the time of his death; that there is no proof that the claimant had a nationality by descent; that according to Spanish law existing at the time he would not have become a Spaniard only in consequence of the locality of birth, if he had had a nationality by descent, but that inasmuch as no person can be without nationality, he must, according to international law, be considered and held a Spanish subject by birth, as, besides, stated by himself in 1850, before the superior court of New York, and in 1869, before the city court of Baltimore, and that therefore the remaining question to be considered in this case is, whether, being a native-born Spanish subject, the claimant has a right to appear before this commission as a naturalized citizen of the United States.

According to the agreement between the United States and Spain of February 11, 1871, it is the duty of the umpire to impartially determine this question to the best of his judgment and according to public law and the treaties in force between the two countries and the stipulations of said agreement.

The umpire is of opinion that according to international law every country has a right to confer, by general or special legislation, the privilege of nationality upon a person born out of its own territory; but in the absence of special consent or treaty such naturalization has, within the limits of the country of origin, no other effect than the government of said country chooses voluntarily to concede. If the emigrant's wife and children remain in the old country it depends upon the law of the land whether their condition be affected by the foreign naturalization of the emigrant. The same principle applies to property of any kind which the emigrant leaves behind him, and if the emigrant returns himself he may become as amenable as any other subject to any laws which may be in force.

As the laws concerning nationality and naturalization differ in almost every country, it follows that very frequently persons may have more than one nationality; for instance, one by locality of birth, one by descent, and one by naturalization. Such cases can not be avoided, except by special treaty stipulations.

It is not contended that the various treaties between the United States and Spain concluded prior to the agreement of 1871 throw any light upon the present question.

Article 5 in the agreement of 1871 contains the following stipulation:

> No judgment of a Spanish tribunal disallowing the affirmation of a party that he is a citizen of the United States shall prevent the arbitrators from hearing a reclamation presented in behalf of said party by the United States Government; nevertheless, in any case heard by the arbitrators the Spanish Government may traverse the allegation of American citizenship, and thereupon competent and sufficient proof thereof will be required. The commission having recognized the quality of American citizens in the claimants, they will acquire the rights accorded to them by the present stipulations as such citizens.

There is a great difference between the parties concerning the true interpretation of this stipulation.

The advocate for the United States says:

> It will be remarked as perfectly clear that without the existence of this clause in the treaty Spain could not be heard to deny the quality of citizenship in anyone whom the Government of the United States recognized and presented before the commission as invested with that character. But under the agreement Spain may deny the fact of citizenship. (Brief, October, 1878, p. 2.)
>
> The decree which changes the status of an individual and converts him from the citizenship of one country to that of another is known as a judgment *in rem*, and such judgment by public law is of universal obligation. . . .
>
> The right which the agreement of 1871 extends to Spain to traverse the allegation of citizenship is a substantial privilege by the exercise of which Spain can deny the authenticity of any certificate of naturalization offered by the United States; for example, Spain may deny that there existed such a court as the certificate declares admitted the alien to citizenship, or may allege that the signature of the clerk or attesting officer, or the seal of the court is forged, as it occurred in the United States and Mexican Commission. . . .Such is the whole extent of the signification of the terms "traverse the allegation of American citizenship," found in the agreement. (Appendix, p. 13.)

The advocate for Spain says:

> It is denied at the outset that this is an extraordinary privilege, only to be claimed under the special sanction of the express terms of the convention. (Reply of Spain, December, 1878, p. 2.)
>
> I have already indicated the nature of the evidence that Spain offers to meet the claims of the naturalized Cubans. It is that they obtained naturalization without that residence in the United States which the laws of that country required. (Views, p. 59.)
>
> The question in the case is not whether the United States can confer American nationality but whether the United States can destroy Spanish nationality. (Brief for Spain, February 1881.)

The advocate for the United States contends that a Spaniard lawfully naturalized in the United States has thereby lost his prior nationality. The advocate for Spain contends that a Spaniard naturalized in the United States, without the consent of Spain, has a double nationality.

In order to decide between these conflicting interpretations, it is necessary to examine what persons both the United States and Spain, according to the correspondence preceding the agreement, intended should be regarded as citizens of the United States within the meaning of the agreement.

This act grew out of remonstrances and complaints urged by the Government of the United States upon that of Spain in relation to wrongs and injuries said to have been committed in Cuba in violation of certain privileges con-

ferred upon American citizens in Spain by the treaty between the two nations of October 27, 1795.

On the 24th of June 1870 Mr. Fish instructed Mr. Sickles, the minister of the United States in Madrid, to bring the whole subject to the notice of the Spanish Government.

On the 26th of July Mr. Sickles executed this order and transmitted a list of cases, giving names of parties and grounds of complaint.

On the 12th of September Mr, Sagasta, minister of foreign affairs in Madrid, replied to Mr. Sickles that the good faith of the United States Government had been imposed upon by worthless men; that the greater portion of the natives of Cuba who had given allegiance to the American flag had done so with the studied intention of making use of it at some future day as a shield for their criminal designs. To this Mr. Sickles answered, on the 14th of October, by a note containing the following assurance:

> . . . The Government of the United States will not be found disposed to extend its protection to persons who have not the right to invoke it. It is to be presumed, unless the presumption is overcome by proof, that aliens who have deliberately renounced, after an uninterrupted residence of five or more years within the territory of the Union, all allegiance to any other government, and have thereupon become citizens of the United States, are sincere in their solemnly avowed purpose. If it shall be made to appear that any one of the claimants in whose behalf the Government of the United States intervenes is not a citizen thereof, or, having been naturalized in conformity with its laws, has by any act of his own forfeited his acquired nationality or that he has voluntarily relinquished it, your excellency may rest assured that the case of such claimant will be dismissed from the further consideration of the American Government.

In the opinion of the umpire, this correspondence shows that by neither party was the convention intended for the benefit of other in the United States naturalized Spaniards than those who had been naturalized in good faith; and conformably to the proposal of Mr. Sickles it was agreed that naturalization after an uninterrupted residence of five or more years should be considered as a conclusive test. The umpire is of opinion that Article V of the agreement, interpreted in the light of the correspondence, and only with reference to the present case, stipulates that the Spanish Government may traverse the allegation that the claimant has acquired American citizenship in good faith, and thereupon proof satisfactory to the commission will be required of an uninterrupted residence in the United States during the five years immediately preceding the naturalization.

The umpire has been unable to find any indication in either the agreement or in the correspondence that, as contended by Spain, the commission ought to examine whether the requirements of the American law of naturalization have been fulfilled. In such case the umpire would have to examine, in the present case, not only the question of five years' residence, but also whether

the declaration of intention made in 1850 was legal or not; whether it could be replaced by the declaration of intention made by the claimant's father in 1824; whether the claimant resided one year in Maryland, where he was naturalized; whether he conducted himself as a man of good moral character; whether he was attached to the principles of the Constitution, etc. It is not probable that when the question was to determine naturalization in good faith as against Spain, either party intended an examination of these questions, because it seems entirely indifferent to Spain whether the claimant abjured his allegiance only once at the end of five years, or whether he made also a similar oath two years previously; whether in case of five years' residence he resided one year in Maryland or the whole time in other parts of the United States.

The umpire is further of opinion that the claimant in this case during the five years immediately preceding his naturalization resided about four years and a half in Cuba; and the umpire hereby decides that the claimant has no right to appear as an American citizen before this commission.