

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Commission for the Settlement of Claims under the Convention of 7 August 1892
concluded between the United States of America and the Republic of Chile

**Case of Charles G. Wilson v. Chile, No. 11,
decision of 10 April 1894**

Commission pour le règlement des réclamations en vertu de la Convention du 7 août 1892
conclue entre les États-Unis d'Amérique et la République du Chili

**Affaire concernant Charles G. Wilson c. Chili, No 11,
décision du 10 avril 1894**

10 April 1894

VOLUME XXIX, pp.301-304



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2012

COMMISSION FOR THE SETTLEMENT OF CLAIMS UNDER THE
CONVENTION OF 7 AUGUST 1892 CONCLUDED BETWEEN THE
UNITED STATES OF AMERICA AND THE REPUBLIC OF CHILE

COMMISSION POUR LE RÈGLEMENT DES RÉCLAMATIONS EN
VERTU DE LA CONVENTION DU 7 AOÛT 1892 CONCLUE ENTRE
LES ÉTATS-UNIS D'AMÉRIQUE ET LA RÉPUBLIQUE DU CHILI

Case of Charles G. Wilson v. Chile, No. 11, decision of 10 April 1894¹

Affaire concernant Charles G. Wilson c. Chili, N° 11, décision du
10 avril 1894²

Declaration of intention to become citizen of a State does not have the effect of its author acquiring rights of citizenship—power of States to determine the conditions and qualifications of citizenship, including naturalization.

Une déclaration d'intention de devenir citoyen d'un Etat n'entraîne pas l'acquisition par son auteur des droits liés à la nationalité dudit État—pouvoir des États de déterminer les conditions et qualifications de la nationalité, y compris la naturalisation.

The memorialist represents that he was born in Stockholm, Sweden, on the 7th day of February 1834, and emigrated to the United States, and resided in Brooklyn, N.Y., during the years 1869, 1870, and 1871, and resided later on at several places in the western part of the United States, that while residing in Brooklyn, New York, on the 23d day of July 1869, he renounced his allegiance to the Government of Sweden and declared under oath his intention to become a citizen of the United States of America, and having complied with the law, applied for citizenship, and on the 11th day of October 1893, said application for citizenship was perfected by the superior court of the city of New York, in

¹ 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. 2553.

² Reproduit de John Bassett Moore (éd.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. III, Washington, 1898, Government Printing Office, p. 2553.

the State of New York; that he is advised that his protection as a citizen of the United States relates back to and began on the day of his declaration to become a citizen of the United States, to wit, the 23d day of July 1869; that his present residence is Iquique, Chile, and at the time when the acts complained of herein occurred he resided at that place. He further represents that on the 20th of January 1891 he was engaged in business at Iquique, Chile, and was the owner of valuable buildings at that place; that in the conflict of arms which took place between the troops of Balmaceda, in command of Colonel Jose Maria Soto, and the Congressional troops and war vessels, in command of Merino Jarpa and Jorge Montt, on the 19th day of February 1891, all of said buildings, with the furniture, merchandise, account books, and other property contained therein, amounting to the sum of \$124,498, were totally destroyed.

The republic of Chile, through its agent, has filed a general demurrer to the memorial. We are of opinion that according to the showing made by the memorialist himself this commission can not take jurisdiction of his claim. By the express terms of the convention under which this commission has been created its jurisdiction is confined to claims on the part of citizens of the two governments respectively. The wrongs and injuries complained of were committed on the 19th of February 1891. At that time the claimant was not a citizen of the United States, and did not become such until the 11th day of October 1893. It is true that on the 23d of July 1869, he declared his intention to become a citizen of the United States, but that declaration did not make him a citizen. It was only an incipient step in that direction. Among other attributes of sovereignty exercised by governments is the right to determine the conditions and qualifications of citizenship, and to decide who shall be deemed citizens. In a case decided under the treaty between the United States and Mexico of July 4, 1868, very similar in its provisions to the treaty under which this commission has been organized, Dr. Francis Lieber, the eminent publicist, who was acting as umpire at that time, coincided in the following views expressed by the counsel of the United States:

- 1st. That every state exercises the power of determining who shall enjoy the right of membership of the political society or body politic of which it consists.
- 2d. That those who are invested by the municipal constitution and laws of a country with this quality or character, and *none others*, are citizens of the state.
- 3d. That nations proceed in their municipal legislation upon the idea that the citizens of other countries have the right to change their nationality and incorporate themselves with new political societies.
- 4th. That all nations provide by their laws the terms and conditions upon and in pursuance of which this change of nationality may be and is effected.

- 5th. That except in pursuance of those laws, and upon the terms and conditions so provided, no member of any political society can incorporate himself with a new state and become a citizen or subject of such state.
- 6th. That until a change of nationality is thus effected the old relation subsists, unless the individual has done some act which under the laws of the state of his origin has the effect of denationalizing him.

If these views be accepted as correct, it only remains to inquire: What are the terms and conditions prescribed by the Government of the United States under which a citizen or subject of another country can become a citizen of this country? The first section of the fourteenth amendment of the Constitution of the United States declares: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." How can a person become naturalized? This is a matter of national and not of international arrangement, except in cases where it is regulated by treaty. Accordingly we find that the laws of the United States prescribe the method of naturalization in this country. Section 2165 of the Revised Statutes of the United States provides:

An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

First. He shall declare on oath before a circuit or district court of the United States, or a district or supreme court of the Territories, or a court of record of any of the States having common-law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is *bona fide* his 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, and, particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.

Second. He shall, at the time of his application to be admitted, declare, on oath before some one of the courts above specified, that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the State or Territory where such court is at the time held one year at least; and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

It thus appears that according to the plain and explicit provisions of law, both constitutional and statutory, the claimant was not a citizen of the United States at the time he sustained the damages and losses complained of. Nor could the United States recognize him as such without violating a solemn treaty stipulation made with the Government of Sweden. Article I. of the convention, relative to naturalization, between the President of the United States of America and His Majesty the King of Sweden and Norway, proclaimed January 12, 1872, reads as follows:

Citizens of the United States of America who have resided in Sweden or Norway for a continuous period of at least five years, and during such residence have become and are legally recognized as citizens of Sweden and Norway, shall be held by the Government of the United States to be Swedish or Norwegian citizens, and shall be treated as such. Reciprocally citizens of Sweden or Norway who have resided in the United States of America for a continuous period of at least five years, and during such residence have become naturalized citizens of the United States, shall be held by the Government of Sweden and Norway to be American citizens, and shall be treated as such. *The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of citizenship legally acquired.*

We are sustained in our views on this subject by the decisions of similar commissions that have existed under treaties between the United States and other countries. (See the leading case of *Joseph Napoleon Perche v. The United States*, decided by the French and American Claims Commission.)

It also appears from the diplomatic correspondence of the State Department that the Government of the United States has uniformly held that a mere declaration of intention to become a citizen is not sufficient to clothe a person with the rights of citizenship in the United States. In a letter from Mr. Marcy, Secretary of State, to Mr. Buchanan, April 13, 1854, he says:

If a person has been here and declared his intention to become a citizen and afterwards leaves this country, goes to another and there takes up his permanent abode, his connection with the United States is dissolved, and consequently his intention to become a citizen thereof must be adjudged to have been abandoned. By such a course of conduct his previous declaration ceases to be available for any purpose whatever, and our ministers and functionaries abroad would not be warranted in such case to do any act to give it effect.

See to the same effect the letter of Mr. Marcy, Secretary of State, to Mr. Siebels, May 27, 1854; also a letter of Mr. Bayard, Secretary of State, to Mr. Mackey August 5, 1885; and of Mr. Bayard, Secretary of State, to Mr. Williams, October 29, 1885.

Inasmuch as the memorial does not show that the claimant was a citizen of the United States on the 19th day of February 1891, when the alleged losses occurred, we decide that the demurrer should be sustained and the claim disallowed for want of jurisdiction.