REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Mixed Commission established under the Convention concluded between the United States of America and Costa Rica on 2 July 1860

Case of Crisanto Medina & Sons v. Costa Rica, decision of the Umpire, Commander Bertinatti, dated 31 December 1862

Commission mixte établie en vertu de la Convention conclue entre les États-Unis d'Amérique et le Costa Rica le 2 juillet 1860

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Naturalization—certificate of naturalization obtained from a New York court without compliance with the five years of residence required by the naturalization law—residence viewed as the place where a man abides with his family, or himself, making it the chief seat of his affairs and interests.

Effect of judgments in foreign countries—judgments given in the United States are not binding in Costa Rica without being declared executable there according to a treaty—no particular privilege for a declaration of naturalization to be admitted there as an absolute truth.

Competence of the Commission to examine the veracity of the naturalization certificates—Commission cannot be prevented from examining the intrinsic value of an act exhibited as evidence by any limitation or extrinsic objection arising from a matter of form established by a municipal law—presumption of truth must yield to truth itself.

Naturalisation—certificat de naturalisation obtenu auprès d'un tribunal de New York sans respecter la condition des cinq ans de résidence requise par la loi de naturalisation—la résidence s'entend du lieu où un homme demeure seul ou avec sa famille, y établissant ainsi le siège principal de ses affaires et intérêts.

Effets des jugements dans les pays étrangers—les jugements rendus aux États-Unis ne sont pas contraignants au Costa Rica s'ils n'y ont pas été déclarés exécutoires

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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. 2586.

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conformément à un traité—une déclaration de naturalisation ne bénéficie pas de privilège particulier pour y être admise en tant que vérité absolue.

Compétence de la Commission pour examiner l'authenticité des certificats de naturalisation—la Commission ne peut être empêchée d'examiner la valeur intrinsèque d'un acte présenté comme preuve par une quelconque restriction ou objection externe résultant d'une question de forme établie par le droit interne—la présomption de vérité doit céder le pas à la vérité en tant que telle.

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This claim comes before me first on the preliminary objection by which the claimants are denied the quality of citizens of the United States. They admit that they are not native-born citizens, but allege to have been naturalized, and present the naturalization papers as evidence which can not be controverted.

The circumstance that naturalization in the United States is granted by a general law of Congress to all who prove before certain courts that they have complied with the conditions of the same law, has led the claimants to regard the record of the declaration of naturalization as a real sentence, namely, the act of a court endowed with power to judge between contending parties—*contentiosa jurisdictio*—judging in the last resort, and having special jurisdiction to decide a question of status when it is raised, to which sentence, thus considered as definitive, may properly be applied the well-known principle, *res judicata pro veritate habetur*, in regard to those who were parties to the judgment.

If this principle should be applied to the present case, it would lead to erroneous consequences. The judgments given in the United States are not binding in Costa Rica, without being declared executable there according to a treaty, in the manner prescribed by the same. A declaration of naturalization, even if it were a definitive sentence, could not claim a particular privilege of being admitted there as an absolute truth, though its intrinsic falsity might be evident.

An act of naturalization be it made by a judge *ex parte* in the exercise of his *voluntario jurisdictio*, or be it the result of a decree of a king bearing an administrative character; in either case its value, on the point of evidence, before an international commission, can only be that of an element of proof, subject to be examined according to the principle—*locus regit actum*, both intrinsically and extrinsically, in order to be admitted or rejected according to the general principles in such a matter.

To attack such an act because obtained by *obseptio* as it has been alleged by Costa Rica, showing that truth was concealed and falsity alleged, in order to evade the law of the United States, far from being an offense against their territorial sovereignty, denying it the power of giving naturalization to foreigners, is on the contrary an homage to the same sovereignty; because it could never

be the intention of the legislator, either in a kingdom or in a republic, that his laws may be violated or evaded with impunity.

Moreover, the question in this case is not as to the right of the United States to naturalize a foreigner, though he may not have complied with the conditions prescribed by their law. The claimants have alleged to have been naturalized by complying with said law; and they must prove their allegation to the commission which is to judge, first of their quality of citizens of the United States, and afterward of their claim.

The certificates exhibited by them being made in due form, have for themselves the presumption of truth; but when it becomes evident that the statements therein contained are incorrect, the presumption of truth must yield to truth itself.

It has been alleged in behalf of the claimants that even admitting that their acts of naturalization are intrinsically void, it is not in the power of this commission to reject them as proof, if they are not first set aside as fraudulent by the same tribunal from which they were obtained.

To admit this would give those certificates in a foreign land or before an international tribunal an absolute value which they have not in the United States, where they may eventually be set aside, while Costa Rica, not recognizing the jurisdiction of any tribunal in the United States, would be left with no remedy. Moreover, this commission would be placed in an inferior position, and denied a faculty which is said to belong to a tribunal in the United States.

If we examine this question with a view to the law of the United States, and if in the matter under consideration we establish a contrast between the powers of a tribunal of one of the States and the powers of the federal constitution, of treaties and of other acts which the executive can make in virtue of his faculty of treating with foreign nations, and so also with the powers of this joint commission, which precisely is the result of the exercise of that faculty, there can be no doubt as to which of the two shall be the supreme law of the land.

Consequently this commission judges according to truth and justice, and can not be prevented from examining the intrinsic value of an act exhibited as evidence by any limitation or extrinsic objection arising from a matter of form established by the municipal law of the United States. The claimants having chosen to place themselves under the jurisdiction of this commission, must bring before it proofs which are really true and not merely considered so by a fiction introduced by the municipal law of the United States.

Now, the proofs offered by Costa Rica and the admission made by the claimants themselves have established that the two sons were *minors* and could have been naturalized only by the naturalization of their father, Crisanto Medina; but when he received his certificate of naturalization from the court of common pleas of New York in 1859, he had not been a resident of the United States for the term of five years, which the law requires as a period of proba-

tion and a proof of a determined and constant intention to become a *bona fide* citizen of the United States.

"The residence of a man", says Hon. Judge Daly, "is the place where he abides with his family, or abides himself, making it the chief seat of his affairs and interests." Now, the residence of Crisanto Medina for many years previous to 1856 had been, no doubt, at Costa Rica, where he abode with his family and made it the seat of his business. During that year he visited New York, declared there his intention to become a citizen of the United States, and immediately went back to Costa Rica, where he continued to abide and to have the seat of his business. Moreover, he engaged there in business requiring his presence for many years to come, and accepted the office of consul resident for Ecuador.

Three years after that declaration the said claimant made another visit to New York, took out his naturalization papers and went back to reside in Costa Rica. That he left or did not leave his family in New York or in any other part of the United States during those three years between 1856 and 1859 is immaterial. In fact, he did not reside in the United States either five years or three years; nor even one year in the State of New York. Had this been represented to Hon. Judge Daly, he could not have granted the certificate of naturalization; and should the case be legally brought now before that learned judge he could not hesitate a moment to set aside that certificate. . . .

In conclusion, my opinion is that the claimants have no standing before this commission, and therefore, without prejudice to their rights and actions against the Government of Costa Rica, to be asserted before the ordinary tribunals, I hereby dismiss their demand.

Case of Accessory Transit Company *v.* Costa Rica, decision of the Umpire, Commander Bertinatti, dated 31 December 1862[*]

Affaire concernant l'Accessory Transit Company c. le Costa Rica, décision du Surarbitre, Commandant Bertinatti, datée du 31 décembre 1862[**]

Recognition of government—new government of Nicaragua, born from a revolution and piratical in its origin, became the only *de facto* government of that State—recognition by the United States of the *de facto* government as belligerent and as the regular government of Nicaragua.

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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. II, Washington, 1898, Government Printing Office, p. 1560.

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