

MAUD THOMPSON DE GENNES (UNITED STATES) *v.* GERMANY

(March 11, 1925, pp. 215-219; Certificate of Disagreement by the National Commissioners, February 16, 1925, pp. 213-215.)

Certificate of disagreement by the National Commissioners

The American Commissioner and the German Commissioner have been unable to agree upon the jurisdiction of the Commission over the claim of Mrs. Maud Thompson de Gennes, Docket No. 2262, and hereby certify that question to the Umpire for decision.

The facts upon which this question arises are briefly as follows:

The claimant was born in the United States and on March 31, 1904, married Elbridge B. Thompson, an American citizen, born at Seymour, Indiana, August 2, 1882. The claimant's husband was lost on the *Lusitania*. The claimant married again on November 17, 1917. Her second husband was a citizen of France, and by reason of this marriage she lost her American citizenship, under the laws of the United States then in force, and she has not since resumed her American nationality.

In August, 1915, and prior to her loss of American nationality, the claimant filed with the Department of State of the United States her claim against Germany for damages for the loss of her husband, Elbridge B. Thompson, through the sinking of the *Lusitania*. On February 4, 1916, the German Government, through its Ambassador at Washington, delivered the following communication to the Secretary of State:

"The Imperial German Government having subsequent to the event issued to its naval officers the new instructions which are now prevailing, expresses profound regret that citizens of the United States suffered by the sinking of the *Lusitania* and assuming liability therefor offers to make reparation for the life of the citizens of the United States who were lost by the payment of a suitable indemnity."

It will be noted that the claimant was an American citizen at the time the *Lusitania* was sunk and also on February 4, 1916, when the Government of Germany first assumed liability for losses sustained by American nationals through the sinking of the *Lusitania*.

The American Commissioner is of the opinion that this claim was espoused by the Government of the United States at the time that Government undertook the diplomatic negotiations with the German Ambassador at Washington with reference to the liability of Germany to make compensation for damages to American nationals arising out of the sinking of the *Lusitania*, which negotiations resulted in Germany's assumption of liability for such losses.

The American Commissioner is further of the opinion that, for the reasons stated in his Opinion on the jurisdiction of this Commission as determined by the nationality of claims, when a claim of American nationality has been espoused by the Government of the United States, it must thereafter be treated as a claim of American nationality, irrespective of any subsequent change in the nationality of the subordinate private interests therein, and consequently that this claim possessed the status of American nationality at the time the Treaty of Berlin became effective, within the meaning of Administrative Decision No. V. In this case it is proper to distinguish between the nationality of the claim and the nationality of the claimant on whose behalf the Government of the United States presents the claim.

The German Commissioner disagrees with the American Commissioner on all these points.

The German Commissioner believes that the negotiations leading to the German note of February 4, 1916, do not constitute an espousal of the specific claims in the legal meaning of that term.

The German Commissioner is further of the opinion that the Treaty of Berlin and its provisions have superseded all previous understandings between

the United States and Germany as to war claims by creating, as stated by the Umpire in Administrative Decision No. V (at page 184),^a "rights in behalf of American nationals which had no prior existence but which were created by the Treaty".

The question is discussed in the German Commissioner's Opinion on the nationality question (page 173)^b and is, to his understanding, already decided by the Umpire under clause II of Administrative Decision No. V, stating that a claim must be "impressed with American nationality both (a) on the date when the loss, damage, or injury occurred and (b) on November 11, 1921, when the Treaty of Berlin became effective".

The National Commissioners have also disagreed as to the amount of the damages suffered, and if the Umpire should decide that this claim comes within the jurisdiction of the Commission the National Commissioners also certify to the Umpire for decision the question of the amount to be awarded.

Done at Washington February 16, 1925.

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner

^a Note by the Secretariat, this volume, pp. 147-148 *supra*.

^b Note by the Secretariat, this volume, p. 138 *supra*.

Decision

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

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

Elbridge B. Thompson, an American national, 32 years of age, was lost with the *Lusitania*. He was survived by his wife and sole heir-at-law, Maud R. Thompson, then 36 years of age, who on November 17, 1917, at Paris, married Jean de Gennes, a citizen of France. By reason of this marriage the claimant lost her American citizenship and became, and has since remained, a French subject. She is the sole claimant herein. For the reasons fully set forth by this Commission in its Administrative Decision No. V (Decisions and Opinions, pages 175-194 inclusive),^a this claim does not fall within the terms of the Treaty of Berlin, inasmuch as it was not impressed with American nationality on November 11, 1921, when that Treaty became effective.

But the American Commissioner is of the opinion that this particular case does not fall within the rule laid down in Administrative Decision No. V, because in August, 1915, the claimant, who was then an American national, lodged with the Department of State of the United States a memorial making claim for damages sustained by her resulting from the loss of her husband, through the sinking of the *Lusitania*, and on February 4, 1916, the German Government, through its Ambassador at Washington, in a formal note expressed

"... profound regret that citizens of the United States suffered by the sinking of the *Lusitania* and assuming liability therefor offers to make reparation for the life of the citizens of the United States who were lost by the payment of a suitable indemnity."

The views of the American Commissioner in support of this opinion and the views of the German Commissioner dissenting therefrom are set forth in their certificate of disagreement.

^a Note by the Secretariat, this volume, pp. 140-155 *supra*.

It appears from the record that the attorney for the claimant addressed a letter to the Secretary of State of the United States which reached the office of the Solicitor of the Department of State on August 20, 1915. Accompanying that letter was a document signed and sworn to by Maud R. Thompson August 16, 1915, addressed "To the Department of State, of the United States, Washington, D. C.", and entitled "Memorial Setting Forth the Claim of Maude R. Thompson". This memorial briefly states that claim is made by Mrs. Thompson, a native-born American citizen, for the loss of her husband and of personal property belonging to him and to her lost with the *Lusitania*. Germany is not mentioned in any way in either the memorial or the letter transmitting it. Apparently it was treated as a claim against Germany, and the Solicitor of the Department of State on August 24, 1915, acknowledged its receipt and informed the claimant's attorney that "the claim will in due course receive careful consideration". Apparently no further action was taken until May 20, 1920, when the Department of State wrote to claimant's attorney calling his attention to the insufficiency of the evidence submitted and added that "The Department therefore considers that any claim which your client desires to file should be prepared in accordance with the Department's form of Application for the Support of Claims against Foreign Governments". It is apparent that this particular claim had never been espoused by the United States or asserted by it as a claim against Germany until long after the claimant relinquished her American citizenship by becoming a subject of France. When the Treaty of Berlin became effective the claimant had not been an American citizen for nearly four years.

But it is insisted that the diplomatic negotiations between the United States and Germany with respect to the sinking of the *Lusitania* amounted to an espousal of *this claim* by the Government of the United States and that such espousal together with the assumption of liability by Germany, in the language above quoted from its diplomatic note of February 4, 1916, at a time when the claimant was an American national, impressed this claim with American nationality.

It is manifest from a careful reading of the whole of the diplomatic correspondence between the United States and Germany with respect to the sinking of the *Lusitania*, beginning with the note of May 10, 1915, that neither Government was attempting to deal with any specific claim or claims. The United States was asserting a principle and insisting that Germany should disavow the act of its submarine commander in sinking the *Lusitania* and give assurance that such acts would not recur. This is made perfectly clear by the telegrams from the American Secretary of State to the American Ambassador at Berlin of July 14 and 19, 1915, in which the following language occurs:

"It was hoped at least that principle for which Government of the United States stood would be acknowledged by German Government and the failure in this respect has made adjustment by compromise practically impossible."

"In your conversations with Foreign Office avoid giving hope that your Government might consider any form of compromise."

"Make it clear that the *Lusitania* case is incidental to issue of principle as to safeguarding neutrals on the high seas; that admission of liability as to Americans on *Lusitania* will not be sufficient unless avoidance of future acts is substantially assured."

The demands of the Government of the United States were not met by the note of the German Government of February 4, 1916, relied on to bring this claim within the Treaty of Berlin, nor was it or any subsequent note accepted by the United States as a satisfactory reply to its demands. Germany's offer to pay "a suitable indemnity" "for the life of the citizens of the United States

who were lost” on the *Lusitania* was never accepted by the United States before the Treaty of Berlin became effective. All offers theretofore made by Germany, as well as all of her obligations to the United States or its nationals, whatever their nature, arising during the war period, were merged in and fixed by the Treaty of Berlin. This Commission has so held in its decision with respect to Germany’s obligations under that Treaty as determined by the nationality of claims presented (Administrative Decision No. V, Decisions and Opinions, at pages 184-185).^b The basis of Germany’s liability under the Treaty of Berlin for damages suffered by American nationals growing out of injuries resulting in death (including deaths of *Lusitania* victims) is fully stated in the decision of this Commission in the “Life-Insurance Claims” (Decisions and Opinions, pages 121-140 inclusive)^c and need not be repeated here, save to point out that Germany’s obligations are fixed by that Treaty quite independently of and without any even remote reference to the unaccepted offer made by Germany in the diplomatic note of February 4, 1916.

As late as March 31, 1922, the American Secretary of State in submitting a report of “*Lusitania* Claims” in response to a resolution of the Senate of the United States wrote: “The adjustment of claims growing out of the sinking of the *Lusitania* is at present the subject of diplomatic negotiations between the Government of the United States and the Government of Germany.”

The Umpire finds that, during that period in which the claimant herein remained an American national, (1) her specific claim was not espoused by the Government of the United States and (2) no agreement was reached between the United States and Germany fixing liability on the part of the latter for damages suffered by the claimant or any other American national growing out of the sinking of the *Lusitania*.

The Umpire decides that the record in this case presents no exception to the rule announced in this Commission’s Administrative Decision No. V and that as this claim was on the date the Treaty of Berlin became effective impressed with the claimant’s French nationality it does not fall within the terms of the Treaty of Berlin and Germany is not obligated to pay it.

Applying the rules announced in Administrative Decision No. V and in the other decisions of this Commission to the facts as disclosed by the record 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 claimant herein.

Done at Washington March 11, 1925.

Edwin B. PARKER
Umpire
