ELIZABETH ANN HARRISON AND OTHERS (UNITED STATES) *v.* GERMANY

(March 11, 1925, pp. 586-589.)

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

Herbert K. Harrison, 39 years of age, went down with the *Lusitania* on which he was a passenger. He had never married. He was born a British subject and had on April 24, 1912, formally declared his intention to become a citizen of the United States but he never matured this intention by complying with the requirements of its statutes. He was survived by his father and mother, British nationals resident in the Isle of Man, both of whom have since died, and also by four brothers and one sister who, with the decedent, resided in Chicago.

Frank Edward Harrison, then a naturalized American citizen, 33 years of age, seems to have been the most prosperous of the brothers. He was married and maintained his own domestic establishment. The sister and the four unmarried brothers lived together in a house furnished to them by their brother Frank at a rental much less than its market value. In this way Frank contributed to the support of his sister, Elizabeth Ann, then 48 years of age, and of his four brothers, the decedent, George D., a British national, then 53 years of age, William, a British national, then 46 years of age, and Thomas, a naturalized American citizen, then 41 years of age.

The decedent was a driver and collector for a laundry company in Chicago, earning approximately $100 per month, substantially all of which he gave to his sister to be used, with like funds contributed by his three unmarried brothers, for the maintenance of the household and for her personal expenses, including clothing.

A claim is asserted on behalf of Frank Edward Harrison, but the record indicates that this claimant and the decedent did not live together and that instead of the decedent contributing anything of pecuniary value to this claimant he made contributions to the decedent. All of the other surviving members of decedent's family were British subjects save Thomas, a naturalized American citizen and a claimant herein. The sole basis of his claim is that by reason of his brother's death his burden of supporting their sister was increased and it became necessary for him to increase the amount of his contributions to the support of that sister—a British subject—and the maintenance of the household kept by her. For the reasons announced in the previous decisions of this Commission this damage, if any, is too remote to support an award against Germany.

The record discloses no evidence of any pecuniary damages suffered by anyone resulting from the death of the decedent save to his sister, and a claim on her behalf can not be here asserted because she was at the time of her brother's death a British national.

This sister at the time of the sinking of the *Lusitania* had been continuously domiciled in the United States for more than 24 years and had more than 17 years prior to that time formally declared her intention of becoming an American citizen, but she has never been admitted to citizenship. During all of that time she had not exercised, or claimed the privilege of exercising, any of the rights of a subject of Great Britain. Private counsel for the claimant, with the consent of the American Agent, have filed a brief herein in which they urge with much earnestness that a *bona fide* formal declaration to become an American citizen, followed by a long-continued domicile in the United States, entitles the declarant to the protection of the Government of the United States and constitutes such declarant an American national within the meaning of the Treaty of Berlin. The Umpire has no hesitancy in rejecting this contention.

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[a] Dated February 11, 1925.

The Government of the United States was careful to incorporate in the Treaty of Berlin broad and far-reaching provisions for the protection of American nationals. But it was also careful to make such provisions applicable only to persons "who owe permanent allegiance to the United States". An expression of an intention to become a citizen does not make such declarant a citizen. The status of declarant has sometimes been described as "inchoate citizenship". The term between the filing of the declaration and the admission to citizenship has sometimes been referred to as "a probationary period" (Foreign Relations of the United States, 1890, page 695). But it has never been held that the mere declaration of an intention to become an American citizen constituted a tie permanently binding the declarant to the United States to which he should thenceforth owe permanent allegiance. The allegiance which a declarant owes to the United States is at most of a temporary nature. His declaration is a step toward the transfer of his allegiance, which is completed only when he has matured his "intention" to become a citizen by complying with all the requirements of the statutes of the United States (see Ehlers' Case, III Moore's Arbitrations 2551). Then, but not until then, does his allegiance become permanent. The Congress of the United States in its act approved July 9, 1918 (40 Statutes at Large, at page 885), recognized the soundness of the rule here announced by so amending the Selective Draft Act as to provide "That a citizen or subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States". It will be noted that the Congress there treated such a declarant as an alien to the United States and still a citizen or subject of the neutral country. Had such declarant owed permanent allegiance to the United States he would not have been permitted at his election to be relieved from the provisions of the draft law and from liability to military service at the price of withdrawing his declaration of intention and being thenceforth forever debarred from becoming an American citizen.

It will serve no useful purpose here further to pursue the inquiry with respect to the status—internationally and nationally—of one who has formally declared his intention to become an American citizen. While a declarant has sometimes been recognized as entitled to limited protection, all of the departments of the Government of the United States—executive, legislative, and judicial—have uniformly treated a declarant as remaining a foreign subject until he shall have complied with the requirements prescribed by the Congress of the United States as necessary to admit him to American citizenship (see City of Minneapolis *v.* Reum, 1893, 56 Federal Reporter 576; *In re* Siem, 1922, 284 Federal Reporter 868, at page 870, same case, 1924, 299 Federal Reporter 582; Ralston's International Arbitral Law and Procedure, sections 227-231; and Borchard's Diplomatic Protection of Citizens Abroad, sections 247, 248, and 249). But quite independent of the decisions of the courts of the United States and the practical constructions of its executive and legislative departments, it is clear that a declarant does not owe permanent allegiance to the United States, and hence a claim asserted on behalf of such declarant does not fall within the terms of the Treaty of Berlin.

It follows that the claimant Elizabeth Ann Harrison was at the time of her brother Herbert's death and has since remained a British subject.

Applying the rules announced in the *Lusitania* Opinion, in Administrative Decisions No. V and No. VI, 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 any of the claimants herein.

Done at Washington March 11, 1925.

Edwin B. PARKER
Umpire
