

MARY BARCHARD WILLIAMS (UNITED STATES) *v.* GERMANY

(March 11, 1925, pp. 225-229; Certificate of Disagreement by the National Commissioners, February 16, 1925, pp. 221-224.)

CERTIFICATE OF DISAGREEMENT BY THE NATIONAL COMMISSIONERS

The American Commissioner and the German Commissioner have been unable to agree as to the jurisdiction of the Commission over the claim of Mrs. Mary Barchard Williams, Docket No. 594, their respective Opinions being as follows:

Opinion of Mr. Anderson, the American Commissioner

This is a claim on behalf of Mary Barchard Williams, for damages suffered by her on account of the death of her first husband, who was lost on the *Lusitania*.

The claimant's first husband, Edmond E. Barchard, was a subject of Great Britain at the time of his marriage to the claimant on October 9, 1909, and also at the time of his death.

The claimant was a citizen of the United States by birth and became a British subject by marriage and admittedly remained a British subject until the death of her first husband.

On April 1, 1917, the claimant was married to her present husband, Charles G. Williams, a citizen of the United States.

The claimant contends that this is a claim of American nationality, notwithstanding the British nationality of herself and her husband up to the time of his death. She bases this contention upon the effect of Section 3 of the United States Naturalization Act of March 2, 1907, as applied to the facts in her case.

Section 3 of that Act provides:

"That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship * * * if residing in the United States at the termination of the marital relation, by continuing to reside therein."

The claimant was residing in the United States when her first marriage was terminated by the death of her husband and thereafter continued to reside in the United States. She contends that on these facts and under this law her American nationality was immediately reestablished as of the moment of her husband's death, and consequently that she had the status of an American national at the time when this claim accrued.

The German Agent contests the claimant's contention, that on these facts her American nationality was immediately reestablished under this law.

These contentions present two questions for decision, (1) when did the claim arise and (2) when was the claimant's American nationality reestablished?

As to the time when the claim accrued, it has been settled by the decisions of this Commission in the *Lusitania* Opinion, in the Life-Insurance Claims, and

in the claims of American nationals growing out of the death of aliens, that under the terms of the Treaty of Berlin the right to recover damages resulting from death accrued when, but not until, the death occurred. This is expressly stated in the Umpire's decision as to claims of American nationals growing out of the death of aliens in which the earlier decisions above mentioned are reviewed and applied.

That decision holds further that:

"The right to such compensation does not vest in the claimant through the decedent, for such right was never lodged in the decedent. On his death the initial right to demand compensation for damages suffered vests in the survivor. The basis of the liability to respond in damages is not the loss sustained by the nation, or by the estate of the deceased, or the value to them of the life lost, but rather the damages resulting to the survivor from the death. The claim of such survivor is original and not derivative."

And again:

"A claim put forward by the United States on behalf of an individual who was an American national both on May 7, 1915, the date of the destruction of the *Lusitania*, and on November 11, 1921, when the Treaty of Berlin became effective, and who has suffered damages by reason of the loss on the *Lusitania* of the life of a British subject, fully meets these tests and falls within the terms of the Treaty of Berlin. In such a case an American national has unquestionably been damaged by the act of Germany in the prosecution of the war, and such damage is clearly attributable to Germany's act as a proximate cause. The fact that the damage was inflicted through the taking of the life of a British subject is immaterial."

Under these decisions this claim comes within the jurisdiction of the Commission for the determination of the damages suffered by the claimant resulting from the death of her husband, if the claimant is right in her second contention that she was reinstated as an American national immediately upon the death of her husband.

The question of American nationality depends upon the laws of the United States, and the nationality status of a claimant under the Treaty of Berlin must be determined in accordance with those laws.

It is true that under the laws of Great Britain this claimant might have continued her British nationality after the death of her husband, but the fact was that upon his death she was, and thereafter remained, a resident of the United States, which was sufficient, under the laws of the United States, to reestablish her American nationality as of the moment when her marriage terminated.

It is not necessary to determine whether or not there was a deliberate election on the part of the claimant, immediately upon the death of her husband, to resume her American nationality in preference to continuing her British nationality. The laws of the United States did not require her to make any formal declaration of election or resumption of American nationality. Continuing to reside in the United States was the only condition imposed by its laws, and as that condition was complied with from the instant of her husband's death, her resumption of American nationality must be regarded as having taken effect as of the moment of her husband's death.

That the Government of the United States considers that this was the effect of its laws as applied to the facts of this case is evidenced by the espousal and presentation of this claim on behalf of this claimant by the Government of the United States.

Chandler P. ANDERSON

Opinion of Dr. Kiesselbach, the German Commissioner

I disagree with the American Commissioner and beg to refer to the exhaustive argument of German Counsel prepared in this case and filed November 20, 1924.

Since under the statute applicable here claimant has a right either to *resume* her former American citizenship or to retain her British nationality, I do not think that the death of claimant's husband can effect in itself a reversion of claimant's nationality, thus depriving her of the optional right warranted under the statute.

Therefore claimant has to be considered as an alien at the time of the death of her husband in the meaning of the Treaty and of the Umpire's decision on the rights of American nationals for damages growing out of the death of aliens.

Under these circumstances it may be left in abeyance whether, even if upon the husband's death claimant would become an American citizen *eo instanti*, such legal effect could make her loss the loss of an American national within the meaning of Administrative Decision No. V.

I further disagree with the American Commissioner on the legal effect the espousal and presentation of this claim can have on this Commission.

As it was unavoidable that the American Government turned over more than 12,000 claims unexamined and uncontrolled to the American Agency acting before this Commission, it is not the discretion of the American Government but the discretion of the American Agent which causes a claim to be presented to this Commission. This discretion, though carefully and diligently applied, can have no effect on the legal status of a case and on the decision of this Commission.

W. KIESELBACH

The National Commissioners accordingly certify to the Umpire of the Commission for decision the points of difference which have arisen between them as shown by their respective Opinions above set forth.

The National Commissioners have also disagreed as to the amount of 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. KIESELBACH
German Commissioner

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.

Edmond E. Barchard, a British subject, with domicile in the United States, was lost with the *Lusitania*. He had married the claimant herein at El Paso, Texas, on October 9, 1909. There was no issue of this marriage. At the time of his death his wife, who was 31 years of age, was wholly dependent on him for support and the only one dependent on him for support.

The decedent, who was 40 years of age at the time of his death, was a mining engineer by profession with an income of approximately \$4,000 per

annum. The record indicates that he was a man of good character and good habits and was physically sound. He was growing professionally and the outlook for increasing his income from his profession was good. His entire income was applied by the decedent to the support and maintenance of himself and wife. On his death she was left destitute and thrown on her own resources for support. On April 1, 1917, she married Charles G. Williams, an American national and a member of the bar of Columbus, Ohio. No claim is made for the personal property belonging to and lost with the decedent, which was impressed with his British nationality.

The claimant was born in the United States and throughout her life has resided therein. The decedent and claimant maintained their domicile in the United States during their entire married life. For some time prior to decedent's death they were domiciled at Columbus, Ohio, where the claimant then was and where she has ever since resided.

Is the claim here presented impressed with American nationality in point of origin? The answer to this question depends on the construction and the application to the facts in this case of so much of the act of the Congress of the United States approved March 2, 1907, which was in effect at the time of the marriage of the claimant and decedent and at the time of decedent's death, as provides—

"That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein."

It will be noted that this statute divided American women married to foreigners into two classes, viz: (1) those residing abroad at the termination of the marital relation and (2) those residing in the United States at the termination of the marital relation. As a condition to the resumption of American citizenship the statute required those belonging to the first class to take affirmative action after the termination of the marital relation either by registering as an American citizen within one year with a consul of the United States or by returning to reside in the United States. The statute required no act, election, or volition of a woman belonging to the second class as a condition to the resumption of American citizenship. All that it required of her was that she do nothing but passively permit the statute to clothe her with the American citizenship of which this same statute had deprived her during the period of her marriage to a foreign citizen or subject.

By virtue of this statute and of a similar British statute the claimant by her act in marrying a British subject was *eo instanti* deprived of her American citizenship and coincidentally became a British subject. This statutory rule had its source in the ancient principle of the identity of husband and wife and was designed to prevent domestic as well as international embarrassments and controversies (*Mackenzie v. Hare*, 1915, 239 U. S. at pages 311-312). But the statute in effect provided that the operation of the rule should cease upon the termination of the marital relation in which the reason of the rule had its source. Because of her residence and domicile in the United States the claimant owed temporary allegiance to it even while she was a British subject. When the marital relation was severed by her husband's death she continued to reside in the United States and that temporary allegiance became permanent by virtue of the statute above quoted which *ipso facto* clothed her with American citizenship without any further act or volition on her part. She *eo instanti* relinquished her American citizenship when she married a British subject. She

eo instanti resumed her American citizenship upon the termination of the marital relation by his death. She has always claimed American citizenship, save during the existence of her marital relation with a British national when the act of the Congress of the United States deprived her of it. But that same act, operating upon her, a native American, resident and domiciled in the United States with the fixed intention to continue to reside therein, automatically restored her American citizenship upon the termination of the marital relation by her husband's death.

The act of the Congress of the United States passed in pursuance of its Constitution, on which alone American nationality depends, required nothing further of her. If it be said that under the statutes of Great Britain the claimant, after the death of her husband, had the right to elect to continue her British nationality, the sufficient answer is that it affirmatively appears from the record that she made no such election. If it be said that there must have been a period, however short, between her husband's death and her conscious election not to remain a British subject, during which period her British nationality continued, the sufficient answer is that it affirmatively appears from the record that prior to her husband's death she had a fixed determination to continue to reside in the United States and had elected that in the event of her husband's death she would not remain a British subject. But even if it be conceded that there was an uncertain period, not susceptible of being made certain by any fixed statutory rule, during which period claimant's British nationality continued pending a definite election by her after her husband's death not to remain a British subject, then at most hers was a not unusual instance of dual nationality, for by virtue of the statute of the United States and her continued residence therein she was *ipso facto* clothed with American nationality. While it is not necessary here to decide the claimant's status with respect to her possessing or not dual nationality following her husband's death, or the duration of such status if it existed, it is clear that as the claimant at the time of and ever since her husband's death has resided and had her domicile in the United States and that under the statutes of the United States she became, on her husband's death, and has since remained an American citizen, the claim is one in behalf of which the United States may properly intervene.

As several times pointed out in the decisions of this Commission, the compensation which Germany is obligated to make under the Treaty of Berlin for damages resulting from death is for pecuniary damages sustained by the survivors resulting from the death of another, and not damages sustained by the decedent or by his estate. Such right to recover damages accrues when, but not until, the death occurs. Upon the death of claimant's husband the initial right to demand compensation vested in her. This demand is original and in no sense derivative (see Administrative Decision No. VI, Decisions and Opinions, pages 208-211).^a Coincidentally with the vesting in her of this initial right, the claimant, through her residence in the United States and its continuance, was by virtue of the act of the Congress fully restored to American citizenship. It follows that the claim for damages suffered by her, here put forward by the United States, is American in origin and that, as she has ever since remained a citizen of the United States, this claim falls within the terms of the Treaty of Berlin.

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

^a *Note by the Secretariat*, this volume, pp. 164-166 *supra*.

Government of Germany is obligated to pay to the Government of the United States on behalf of Mary Barchard Williams the sum of ten thousand dollars (\$10,000.00) with interest thereon at the rate of five per cent per annum from November 1, 1923.

Done at Washington March 11, 1925.

Edwin B. PARKER
Umpire
