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UNITED STATES, AUSTRIA AND HUNGARY

BENJAMIN ALBERT KAPP (UNITED STATES) *v.* HUNGARY

*(May 25, 1928. Pages 69-71.)*

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A preliminary question is presented in this case to the Commissioner on motion of the American Agent objecting to interrogatories Nos. 4, 5, 6, and 7 propounded by the Hungarian Agent to the claimant for answer under oath.

The record as it now stands indicates that the claimant, born a German citizen, became an American citizen by naturalization on June 1, 1883.

The claim as originally filed was signed and sworn to by claimant on December 10, 1925, before the Vice-Consul of the United States of America at Frankfurt a. M., Germany. In this document claimant gives his address as Frankfurt a. M., Germany, Schumannstrasse 55. There is in the record another document signed by claimant October 6, 1927, and likewise sworn to before the American Vice-Consul at Frankfurt.

This is the extent of the record disclosure with respect to the citizenship of the claimant on and prior to December 7, 1917, and since that time. The memorial presented by the United States on behalf of the claimant recites that the claimant "became a naturalized citizen of the United States on June 1, 1883" but does not allege that the claimant has since remained, or remained until the coming into effect of the Treaty of Budapest, an American citizen.

The record as it stands suggests the possibility of claimant's having returned to the land of his birth and taken up his residence there under circumstances which would operate as a relinquishment of his American citizenship. Not only the Hungarian Agent but the Commissioner is entitled to a full disclosure of the facts with respect to claimant's residence in Germany as affecting his citizenship and as affecting the impressment of this claim with American nationality.

The interrogatories propounded by the Hungarian Agent to the claimant to which the American Agent objects are designed to elicit information concerning the citizenship of the claimant in order to establish whether or not the debts respecting the bonds upon which this claim is based were impressed with American nationality throughout the period of American belligerency. They are therefore directed to the very root of the right of the United States to maintain this claim and are material and relevant. Whether or not they go far enough to require a full disclosure by the claimant with respect to steps if any taken by him to preserve his American citizenship while residing in the land of his birth, is a question which the American Agent may well wish to consider.

The Commissioner has heretofore held <sup>1</sup> that a claimant is a competent

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<sup>1</sup> *Note by the (Commissioner's) Secretary.*—The holding referred to is set forth in the minutes of the Commission as follows:

January 6, 1928, page 89: "The American and Austrian Agents gave oral notice of submission, in the case of United States of America on behalf of Edward Cucuel, claimant, *v.* Austria, docket No. 1103-A, of the question whether or not the claimant had established a prima facie case by his affidavit as to the time of his acquisition of the bonds which are the subject-matter of the claim."

January 28, 1928, page 97: "The Commissioner announced his oral opinion as to the admissibility and weight to be given to the affidavit of the claimant as to when

witness before this Commission and that his unsupported but unrebutted testimony on a material fact prima facie establishes that fact. But where the Agent of either respondent Government is not satisfied with the claimant's testimony in any particular case or wishes to test the source or accuracy of the information upon which such testimony is based, or the credibility of the witness, or require a disclosure of other material facts within the claimant's knowledge, such Agent under such circumstances will be accorded the privilege of propounding interrogatories to the claimant to be forwarded by the American Agent to and answered under oath by the claimant and thereupon returned to this Commission and filed as evidence in the case in question.

The Commissioner confidently expects the Agent of Austria and the Agent of Hungary to exercise this privilege in good faith and in no case to propound interrogatories that are immaterial or irrelevant or for delay only.

The objection of the American Agent to the interrogatories propounded by the Hungarian Agent is overruled.

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