

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Hepzibah Vernon Butler (United States) v. Germany

21 February 1924

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of Germany is not obligated to make any payment to the Government of the United States on behalf of either Henry Groves or Joseph Groves.

Done at Washington February 21, 1924.

Edwin B. PARKER
Umpire

HEPZIBAH VERNON BUTLER (UNITED STATES)
v. GERMANY

(February 21, 1924, pp. 407-408.)

DAMAGES IN DEATH CASES: ANTICIPATED FINANCIAL CONTRIBUTIONS; PERSONAL PROPERTY: CLAIM TO BE PRESENTED BY EXECUTOR.—EVIDENCE: WITNESSES. Claim for loss suffered by mother of *Lusitania* victim. Application of rules announced in *Lusitania* Opinion, see p. 32 *supra*. Evidence concerning decedent's earning capacity: testimony of witnesses. *Held* that, since will of decedent was probated, claim for value of personal property lost should have been presented, if at all, on behalf of executor. Damages allowed for anticipated contributions to maintenance of claimant.

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

This case is before the Umpire for decision on a certificate of the American Commissioner and the German Commissioner^a certifying their disagreement. A brief statement of the facts as disclosed by the record follows:

George Lay Pearce Butler, an American national, 45 years of age, was a passenger on and went down with the *Lusitania* on May 7, 1915. He was survived by a widow, Inez Jolivet Butler—a violinist—who committed suicide in New York July 22, 1915; a father, who died July 21, 1920, at the age of 81 years; and a mother (this claimant), who was then 73 years of age; and also by two brothers and two married sisters, all of whom were mature and had domestic establishments of their own. A claim is being asserted here only on behalf of the surviving mother, Hepzibah Vernon Butler.

The decedent possessed marked versatility. He embarked in business as a banker; then became a concert singer, touring extensively; then an importer's agent and promoter; and during the last four months of his life was representing the Russian Government in the placing of contracts for munitions. At one place in the record the statement is made that he was en route to Europe to place a munitions contract for the Russian Government when he met his death; elsewhere in the record it is stated that he was en route to England for the purpose of bringing his wife to America. The testimony concerning his earning capacity is vague. Several witnesses estimated that during the last five years of his life his average annual income was from \$10,000 to \$20,000. There are also some more or less speculative estimates as to what he was earning and would probably have earned from his activities in placing munitions contracts.

It is stated in the record that the will of decedent was probated in New York September 6, 1916. His widow was then dead; his father and mother were then living. The record does not disclose the terms of the will or the value of his estate. It does appear from the record that the widow collected \$20,000 insurance on the life of decedent. The statement is also made that the mother

^a Dated February 14, 1924.

of the decedent "inherited from" him the sum of \$10,000. Whether the father, who was then living, "inherited" a like amount does not appear. One of the surviving brothers of decedent is a minister of the Gospel, the other a music teacher. The statement is made that the income of decedent was much larger than that of his brothers and sisters, and that he was better able to contribute to his mother's support. There is, however, no evidence in the record of such contributions having been made, save that decedent furnished his parents with "delicacies and luxuries".

The claimant, who is now 81 years of age, has personal property of the value of \$5,000 and an income for life from approximately \$20,000. She is feeble and in need of constant care and attention. Her income is not sufficient to maintain her. The record justifies her anticipation that had the decedent lived he would have contributed, to some extent at least, to her maintenance.

The value of the personal property lost with the decedent on the *Lusitania* is estimated at \$500, for which claim is made. As the will of the decedent was probated, this claim should have been put forward, if at all, on behalf of the executor. No such claim by the executor, or on behalf of the estate, is pending here.

Bearing in mind that the basis of the award is not the value of a life lost, nor is it the loss suffered by the decedent's estate, but only the losses to *claimant* resulting from the death of the decedent in so far as such losses are susceptible of measurement by pecuniary standards, and applying the rules announced in the *Lusitania* Opinion to the facts herein set forth, the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is obligated to pay to the Government of the United States on behalf of Hepzibah Vernon Butler the sum of five thousand dollars (\$5,000.00) with interest thereon at the rate of five per cent per annum from November 1, 1923.

Done at Washington February 21, 1924.

Edwin B. PARKER
Umpire

CHARLES H. ROSENTHAL, ADMINISTRATOR *DE BONIS NON*
OF THE ESTATE OF RETTA C. SHIELDS, DECEASED
(UNITED STATES) *v.* GERMANY

EDWIN H. SHIELDS AND ALBERT MILLS, ADMINISTRATORS
DE BONIS NON OF THE ESTATE OF VICTOR E. SHIELDS,
DECEASED (UNITED STATES) *v.* GERMANY

(February 21, 1924, pp. 412-415.)

DAMAGES IN DEATH CASES: ANTICIPATED INHERITANCE OF ESTATE, ANTICIPATED FINANCIAL CONTRIBUTIONS.—EVIDENCE: WITNESS. Claims for alleged loss of anticipated inheritance of estate and of anticipated contributions, suffered by heirs and next of kin of *Lusitania* victims. Application of rules announced in *Lusitania* Opinion, see p. 32 *supra*. Evidence: testimony of witness. No damages allowed.

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

These two related cases, which have been considered and will be decided together, are before the Umpire for decision on a certificate of the two National