

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Charles H. Rosenthal, Administrator de bonis non of the Estate of Retta C. Shields, Deceased (United States) v. Germany, and Edwin H. Shields and Albert Mills, Administrators de bonis non of the Estate of Victor E. Shields, Deceased

21 February 1924

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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

Commissioners^a certifying their disagreement. A brief statement of the facts as disclosed by the records follows:

Victor E. Shields, an American national, and Retta Cohen, also an American national, were married October 1, 1896. There was no issue of this marriage. They were both passengers on and went down with the *Lusitania*. At that time Shields was 45 and his wife 43 years of age. Shields had for a period of approximately 25 years been engaged in the wholesale liquor business at Cincinnati, Ohio. His average earnings were approximately \$10,000 per annum. He left an estate of a value of more than \$100,000 and life insurance of \$40,000. Mrs. Shields left an estate of \$20,000 and life insurance of \$10,000. On the 8th day of May, 1907, Shields executed a will bequeathing to his wife his entire estate and naming her as executrix of his will without bond. On the same day Mrs. Shields executed a similar will bequeathing her entire estate to her husband and naming him executor of her will without bond. Both of these wills were in effect at the time of their deaths. Shields left surviving him the following as his only heirs and next of kin, all being at the time of his death and ever since American nationals: Virginia Altman, a widowed sister; William H. Shields, a brother, since deceased, leaving no issue but being survived by his wife, Stella C. Shields; Edwin H. Shields, a brother; Emma Mihalovitch, a widowed sister, since deceased, who left surviving her Clarence Mills, Albert Mills, and Edgar Mills, each of whom changed his name from Mihalovitch to Mills, by which name they are now known; and Rose Baron, a married sister.

Mrs. Shields left surviving her the following as her only heirs and next of kin, all being at the time of her death and ever since American nationals: Sol W. Cohen, a brother; Delia C. Leiser, a sister; Mamie C. Rosenthal, a sister; Juliette E. Wartcki, a sister; Rose C. Rosenthal, a sister; and Belle C. Klein, since deceased, who left the following children, Sidney Klein, Ben F. Klein, Agatha Klein, Stanley Klein, and Will C. Klein.

These claims are put forward by the administrators of the estates of Mr. and Mrs. Shields respectively in behalf of the respective heirs and next of kin of decedents. None of their relatives were dependent upon either Mr. or Mrs. Shields for support and neither of them during their lives made any contributions to their relatives. Charles H. Rosenthal, administrator of the estate of Mrs. Shields, testified on October 24, 1923, that "None of the next of kin of deceased", Mrs. Shields, "were dependent upon her for support at the time of her decease. Deceased, did however from time to time give to her sister Delia Leiser (one of her next of kin) sums, the amount of which I have been unable to learn, towards the comfort of said Delia Leiser. Said Delia Leiser is a native-born citizen of the United States, is aged 70 years and now lives at the southeast corner of Ridgeway and Harvey Avenues, Cincinnati, Ohio". The Commission has not been given the benefit of the testimony of Delia Leiser. With the exception of the testimony above quoted, there is not a syllable in the record in either case indicating that either of the decedents made contributions to members of their respective families or that there was any occasion for their so doing.

It is urged that as Mr. Shields was two years older than his wife, she would, but for the wrongful act of Germany in sinking the *Lusitania*, have probably survived him and would then under his will have inherited his entire estate of a value of more than \$100,000, and that her next of kin would have ultimately benefited thereby.

On the other hand, Mr. Shields' next of kin urge that his "wife having

^a Dated February 14, 1924.

perished with him on the *Lusitania*, there is no room for doubt that *if he had survived*," he, being then without wife or children, would have been generous in his contributions to them. It is not suggested that either would have made contributions to the members of the respective families had both continued to live.

The speculative nature of these contentions is obvious. They furnish no sound basis on which to rest an award.

As heretofore pointed out, the awards which this Commission is empowered to make in death cases have for their basis not the value of a life but the losses sustained by the claimants resulting from a death, in so far only as such losses are susceptible of measurement by pecuniary standards. The records in these cases indicate that Mr. and Mrs. Shields maintained their own domestic establishment, separate and apart from both his and her relatives, all of whom were independent of them.

No claim is made in either case for property lost.

Applying the rules announced in the *Lusitania* Opinion to the facts as disclosed by the records, 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 claimants herein.

Done at Washington February 21, 1924.

Edwin B. PARKER
Umpire

THOMAS C. MILLER AND OTHERS (UNITED STATES)
v. GERMANY

(September 19, 1924, pp. 425-427.)

DAMAGES IN DEATH CASES: ANTICIPATED FINANCIAL CONTRIBUTIONS, PERSONAL PROPERTY. Claim for loss suffered by parents of *Lusitania* victim. Application of principles and rules announced in Commission's decisions. Damages allowed for anticipated contributions to maintenance of parents, and for personal property lost.

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

This case is before the Umpire for decision on a certificate of the two National Commissioners^a certifying their disagreement. A brief statement of the facts as disclosed by the record follows:

James B. Miller, an American national, was a passenger on and went down with the *Lusitania*. At that time he was 31½ years of age, unmarried and left no issue. His father, Thomas C. Miller, then 59½ years of age, his mother, Emma J. Miller, then 55 years of age, a married sister, Adena Miller Rich, and a brother, Thomas C. Miller, Jr., all of whom were born and have ever remained American nationals, survived him. The deceased had contributed to the education of his sister and younger brother, but at the time of his death they were not dependent on him and he was making no contributions to them. No claim is made on their behalf. The father of deceased has long been and still is an honored member of the bar of Erie, Pennsylvania.

At the time of his death Captain Miller was in the service of the United States Department of Commerce as Assistant in the Coast and Geodetic

^a Dated February 14, 1924.