REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Richard J. Hickson as Administrator cum testamento annexo of Catherine J. Hickson (United States) v. Germany, and Richard J. Hickson as Administrator cum testamento annexo of Caroline Hickson Kennedy (United States) v. Germany

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RICHARD J. HICKSON AS ADMINISTRATOR *CUM TESTAMENTO ANNEXO* OF CATHERINE J. HICKSON (UNITED STATES) *v.* GERMANY;

RICHARD J. HICKSON AS ADMINISTRATOR *CUM TESTAMENTO ANNEXO* OF CAROLINE HICKSON KENNEDY (UNITED STATES) *v.* GERMANY

(September 24, 1924, pp. 439-444.)

DAMAGES IN DEATH CASES: UNINTENTIONAL TERMINATION OF CONTRACTS BETWEEN VICTIMS AND CLAIMANT, MUNICIPAL COURT DECISIONS; PERSONAL PROPERTY; RULE OF PROXIMATE CAUSE.—EVIDENCE: CLAIMANT'S TESTIMONY. —INTERPRETATION OF TREATIES: INTENTION OF NEGOTIATORS, DRAFTERS, EXECUTORS. Claims for alleged losses suffered by brother of two *Lusitania* victims, employed in brother's service on verbal contracts. Application of rules announced in Provident Mutual Life Insurance Company and Others case, see p. 91 *supra*, and in other decisions. Evidence: sworn statement by claimant. *Held* that, under Treaty of Berlin, Germany not obligated to pay losses suffered by claimant flowing directly from termination of contracts by sisters' death on *Lusitania:* (1) reference made to Provident case, *supra*, (2) American Courts, including Supreme Court of United States, uniformly rejected claims for such losses *unintentionally* brought about, and nothing indicates that such claims were within contemplation of those who negotiated, drafted, and executed Treaty of Berlin. Damages allowed for lost property only.

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:

The two sisters of Richard J. Hickson, claimant herein, namely, Catherine J. Hickson and Caroline Hickson Kennedy, then 57 and 53 years of age respectively, each of the three a citizen of the United States, took passage on and went down with the *Lusitania*. At that time claimant was 55 years of age and, save for a niece who died in 1916, the sole surviving heir and next of kin of his sisters, and upon the death of both of them and the niece became the sole and universal legatee under the terms of their respective wills. Catherine J. Hickson had never married. Caroline Hickson Kennedy, a widow, left no children surviving her.

It appears from the records that in 1902 the claimant embarked on a "ladies' apparel business" venture in New York City with a capital of $800 advanced by his sister, Mrs. Kennedy. It was agreed between them that the business should belong to claimant and that Mrs. Kennedy should be employed by claimant and devote her entire time to the business during the remainder of her life, the claimant agreeing from the profits of the business to "pay her a salary plus a drawing account commensurate with her needs". This agreement was verbal. The business was conducted under the trade name of Hickson & Company but was owned by the claimant. During the early years of the business Mrs. Kennedy drew $50 a week. Later her drawings increased until

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[a] Dated September 23, 1924.

in 1915, the year of her death, and for several years prior thereto she drew an average of $5,000 per annum. The only legal interest she had in the business was this verbal contract of employment.

Catherine J. Hickson became identified with the claimant's business as an employee in the year 1910, under substantially the same contract with the claimant as that existing between the claimant and Mrs. Kennedy. In pursuance of this contract Miss Hickson from time to time drew from the business funds "commensurate with her needs" averaging from $50 to $75 per week.

Mrs. Kennedy and Miss Hickson resided together. Their brother, Richard J. Hickson, claimant herein, maintained a separate establishment, his wife and son, the latter 22 years old when the *Lusitania* was sunk, residing with him. During the years 1910, 1911, and 1912 the claimant drew from the business in excess of $20,000 per year, and during the subsequent years up to 1915 he drew in excess of $30,000 per year, all of which was absorbed in the living expenses of himself and family.

On January 1, 1910, the net assets of the business aggregated something over $32,000, and on January 1, 1915, approximately $ 61,500. The claimant states under oath that "The business at this time had gained such an impetus that in 1915, the year of Mrs. Kennedy's death, the profits earned amounted to $125,587.56" and further that "on December 31st, 1915, the net assets of the business amounted to $179,078.98 exclusive of goodwill".

The claim is made that because of Mrs. Kennedy's genius as a designer of women's apparel and her "peculiar and exceptional business abilities" the services she rendered the business, and for which she was paid by her brother, the owner of the business, $5,000 per annum, "were worth at least $50,000 a year" and that as a result of the loss of Mrs. Kennedy's services "difficulties soon set in and increased each year until 1920 when the business was unable to meet its obligations all of its liquid assets having been pledged to secure loans". It is by no means clear from the records that these difficulties resulted from the loss to the business of Mrs. Kennedy's genius. The strong inferences are that they resulted from the improvident financial ventures of the claimant. Shortly after the sinking of the *Lusitania*, when, according to claimant's statement, the net assets of the business, many of which were slow assets, aggregated only $179,000, it appears that claimant withdrew from the business $50,000 in cash which he invested in establishing a magazine to be managed by his son in connection with the business, which was a complete failure and the investment a total loss, and about the same time invested about $100,000 in furniture and fixtures. However, in view of the disposition which will be made of these claims the cause of claimant's financial failure becomes immaterial.

The two sisters sailed on the *Lusitania* intending to remain in Paris a considerable time as buyers for their brother's business. Each of them carried with her wearing apparel, gowns, furs, jewelry, and $1,000 in cash. While this personal property is not itemized, the statement is made that the value of each decedent's effects, including cash, was $7,000, or a total of $14,000. Under all the circumstances this is not regarded as excessive. All of this personal property was lost.

Mrs. Kennedy's estate consisted of cash in bank, $15.00; a half interest in household effects, $500; interest in real estate beyond the limits of the United States, $5,865.61. Miss Hickson's estate consisted of $5,000 cash in bank, $23,000 value of real estate beyond the limits of the United States, and a half interest, valued at $500, in household effects. Under their respective wills both of these estates were vested in the claimant herein.

With the exception of the item of personal property lost, the claim is expressly based on the alleged losses suffered by the claimant from the

termination of the two verbal contracts between the claimant and each of his sisters, by the terms of which they agreed to serve him during their respective lives; claimant in turn agreeing to pay them salaries, plus a drawing account, commensurate with their needs, the termination of which contracts, it is alleged, was directly and proximately caused by Germany's act in sinking the *Lusitania*.

The alleged contracts were entered into and were to be performed in the State of New York. The claimant in one breath contends that they were not void under the statute of frauds, since they *might* have been performed within one year, and in the next breath contends that the law of averages should be applied in measuring damages under the contracts and claimant has a right to recover on the assumption that the contracts would have remained in effect about 17 years longer but for Germany's act. Notwithstanding these apparently inconsistent contentions, for the purpose of this opinion each contract will be treated as one not contravening the statute of frauds.

The validity of the alleged contracts may well be challenged because of their uncertainty. What salaries and drawing expenses were commensurate with their respective needs must, in the nature of things, have depended largely on their own wills or wishes. Claimant's counsel meets this objection with the contention that this indefiniteness had been made definite by the actual construction given by the claimant and his sisters, so that in Mrs. Kennedy's case there was a positive agreement on her part "to render service to the claimant for $5,000 a year" and the "service rendered was worth $50,000 a year". Claimant's counsel contends that while the contract was perhaps not one that might be enforced through specific performance the courts would have enjoined Mrs. Kennedy from accepting employment from anyone engaged in a business similar to that of her brother. It may well be doubted if a court of equity would intervene to assist in the enforcement of a contract of employment, even though legal in its terms, where the employee had bound herself to work for life for her needs, placed by the claimant at $5,000 per annum, when, according to the claimant, her services were reasonably worth not less than $50,000 per annum. A court of conscience must decline to give its active aid to the enforcement of a contract which in its inherent nature is unfair, one-sided, and inequitable.

But brushing aside all the numerous obstacles to the establishment of valid contracts which beset claimant's path, and treating the two contracts declared on as valid, the question is presented: Under the terms of the Treaty of Berlin is Germany financially obligated to pay losses suffered by claimant flowing directly from the terminating of contracts between the claimant and his sisters, which termination resulted from their deaths on the *Lusitania?* The Umpire decides that she is not. The reasons therefor are set forth at length in the opinion of the Umpire in deciding the life-insurance cases (Decisions and Opinions, pages 121-140) [a] and need not be repeated here. Claimant's counsel earnestly contends that where one without sufficient justification interferes with a contract sanctioned by law to the injury of a party to it, the wrongdoer must respond in damages to the injured party. In support of this proposition are cited numerous authorities in each of which it was made to appear that the third party inflicting the injury upon one of the parties to the contract did so with full knowledge of the contract and with the *intention* of interfering with it. The authorities cited in no wise conflict with the rule here announced. But the great diligence of claimant's counsel has pointed this Commission to no case, and it is safe to assert that none can be found, where any tribunal has

[a] *Note by the Secretariat,* this volume, pp. *supra.*

awarded damages to one party to a contract claiming a loss as a result of the killing of the second party to such contract by a third party not privy to the contract without any *intention* of disturbing or destroying such contractual relations. The American courts, including the Supreme Court of the United States, have uniformly rejected such claims. The United States cannot now be heard to assert them against Germany. Certainly there is nothing in the Treaty of Berlin or in the records of these cases or of any of the cases before this Commission to indicate that claims of this class could have been within the contemplation of those who negotiated, drafted, and executed that Treaty.

For the reasons herein set forth and under the rules heretofore announced 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 (1) Richard J. Hickson as Administrator *cum testamento annexo* of Catherine J. Hickson the sum of seven thousand dollars ($7,000.00) and (2) Richard J. Hickson as Administrator *cum testamento annexo* of Caroline Hickson Kennedy the sum of seven thousand dollars ($7,000.00), with interest on each of said sums at the rate of five per cent per annum from May 7, 1915.

Done at Washington September 24, 1924.

Edwin B. PARKER
Umpire

DANIEL FROHMAN, INDIVIDUALLY, AS ADMINISTRATOR OF THE GOODS, CHATTELS, AND CREDITS OF CHARLES FROHMAN, DECEASED, AND AS ADMINISTRATOR OF THE GOODS, CHATTELS AND CREDITS OF CARYL FROHMAN, DECEASED, AND OTHERS (UNITED STATES) *v.* GERMANY

(September 24, 1924, pp. 444-447.)

DAMAGES IN DEATH CASES: ANTICIPATED FINANCIAL CONTRIBUTIONS. Claims for alleged losses suffered by brothers and sisters of *Lusitania* victim. Application of rules announced in *Lusitania* Opinion, see p. 32 *supra*, and in other decisions. No damages allowed, since probable contributions from decedent not greater than those actually received from his estate.

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

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

From the records it appears that Charles Frohman, an American citizen, then 54 years of age, was a passenger on and went down with the *Lusitania*. He had never married. He left surviving him two brothers, Daniel and Gustave Frohman, then 63 and 60 years of age respectively, and four sisters, Caryl, Emma, and Etta Frohman and Mrs. Rachel Frohman Davison, then 62, 58, 50, and 56 years of age respectively, all of these survivors being American nationals at the time of and ever since his death.

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[a] Dated September 23, 1924.