

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

---

## **RECUEIL DES SENTENCES ARBITRALES**

**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)**

24 September 1924

VOLUME VII pp. 269-271



NATIONS UNIES - UNITED NATIONS  
Copyright (c) 2006

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<sup>a</sup> 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.

---

<sup>a</sup> Dated September 23, 1924.

Caryl Frohman died January 18, 1924, leaving no will. Daniel Frohman has been appointed and qualified as sole administrator of her estate. Her only heirs and next of kin are her surviving brothers and sisters above named.

Since 1893 Charles Frohman had been engaged in business on his own behalf as a theatrical producer. His productions on the whole were well received throughout the United States and in England. Many of America's and several of England's foremost artists appeared under his exclusive management. He had their confidence and good will, perhaps his most valuable asset. During the ten years next preceding his death his gross profits from theaters, companies, and other theatrical business in the United States and Canada amounted to in excess of \$1,250,000 and his net profits were in excess of \$350,000. For several years prior to his death the deceased was interested in theaters in London, England, which he maintained on a lavish scale and on which he sustained heavy losses, substantially reducing his profits from his American business. He had practically given up all save two of these London establishments shortly before his death, and these two were disposed of by his successor, Charles Frohman, Inc., shortly after his death.

Two administrators of his estate were appointed and qualified, of whom the claimant Daniel Frohman is the sole survivor. The funeral expenses and expenses of administration amounted to \$42,171.70. The principal items were administrators' bonds, expenses of London administration, administrators' commissions, and legal services. After these expenses were paid and after deducting the liabilities of \$876,760.09 from the inventoried value of the assets (which were by no means liquid), it appears that the net worth of the estate, exclusive of the goodwill, was \$451.78. The administrators and creditors of the estate formed a corporation designated Charles Frohman, Inc., to which was conveyed all of the assets including the goodwill, but expressly excluding all claims for damages by reason of the death of the deceased, which corporation assumed all of the liabilities of the estate. Preferred stock was issued by this corporation to the preferred creditors who would accept it in full payment of their claims against the estate, and the common stock was issued one-half to the promoter and manager of the corporation for his services and the other one-half divided among the six brothers and sisters of the deceased, 250 shares to each.

Later on all of the common stock of Charles Frohman, Inc., was acquired by the Famous Players-Lasky Corporation on the basis of the common stockholders of Charles Frohman, Inc., receiving for three shares of their stock five shares of the common stock of the Famous Players-Lasky Corporation. At the time this agreement was entered into the Famous Players common stock was selling on the New York Stock Exchange at approximately \$112.00 per share. On this basis the 5,000 shares of the Famous Players-Lasky Corporation stock received by the holders of the common stock of Charles Frohman, Inc., was worth \$560,000 and each of the brothers and sisters of Charles Frohman, six in number, received Famous Players stock of the value of \$46,666.

The deceased had never made a will. He left no life insurance. There is nothing in the record to indicate that he had made any provision for the maintenance or support of any of his relatives in the event of his death. He did not reside with them. There is nothing in the record to show that he ever made or intended to make any pecuniary contributions to his brother Daniel. There is a statement in the record by the man who had been the confidential clerk, bookkeeper, and auditor of deceased from 1903 to the time of his death to the effect that he knows of gifts made by the deceased to his sister Mrs. Davison aggregating \$600. What these gifts were or when they were made is not disclosed. The record indicates that Mrs. Davison has long been living

with and is supported by her husband and was in no wise dependent on deceased for her maintenance or support.

Gustave Frohman, a brother of deceased, had formerly been in the latter's employ as manager of theatrical companies *en tour* out of New York, receiving a fixed salary. During 1913-1914-1915 this brother managed a corporation which he himself organized, which it appears was not successful. He states that the deceased in addition to his salary from time to time made to him gratuitous payments varying in amount, but that from 1910 he (Gustave) "had no need of and, therefore, did not ask for or receive from Charles Frohman any additional financial assistance or gifts". The record indicates that the probabilities of the deceased, had he lived, making further financial contributions to his brother Gustave were remote. A claim is made on behalf of Louis H. Frohman under an assignment from his father, Gustave, dated July 25, 1916, purporting to assign and transfer to Louis all of Gustave's "right to recover damages on account of the death of Charles Frohman resulting from the sinking of the *Lusitania*". It will not be necessary to consider the terms or effect of this assignment in view of the disposition of this case.

Daniel Frohman, a claimant herein, provided a house for the use of his three unmarried sisters, Caryl, Emma, and Etta Frohman, who resided together in New York City, and the deceased contributed \$50 a week to their support and maintenance. This contribution, equivalent to \$2,600 a year, was cut off by Charles Frohman's death. In lieu of it each of these three sisters as an heir received from his estate stock of the value of \$46,666, or of the aggregate value of \$140,000. The record indicates that the stock so received by these three sisters is now paying dividends at the rate of \$10,000 per annum.

There is no doubt but that Charles Frohman had a large earning capacity. His producing power was destroyed by his death. His operations were on a large scale but his income therefrom variable and speculative. His life expectancy was greater than that of any of his brothers and sisters save that of his sister Etta, who was four years his junior.

The record negatives the claim that any of the brothers or sisters of deceased would but for Germany's act which resulted in his death have probably received from him greater pecuniary contributions than they have received from his estate as his heirs.

No claim is made for the value of the personal effects lost with the deceased on the *Lusitania*.

Applying the rules announced in the *Lusitania* Opinion and in the other decisions of this Commission to the facts as disclosed by this record, 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 or any of them.

Done at Washington September 24, 1924.

Edwin B. PARKER  
*Umpire*

---