

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Elbert Hubbard II, Individually and as Executor of the Last Will and Testament of Elbert Hubbard, and Others (United States) v. Germany, and Elbert Hubbard II, as Executor of the Last Will and Testament of Alice Hubbard, and Miriam**

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ELBERT HUBBARD II, INDIVIDUALLY AND AS EXECUTOR  
OF THE LAST WILL AND TESTAMENT OF ELBERT HUBBARD,  
AND OTHERS (UNITED STATES) *v.* GERMANY

ELBERT HUBBARD II, AS EXECUTOR OF THE LAST WILL  
AND TESTAMENT OF ALICE HUBBARD, AND MIRIAM  
HUBBARD ROELOFS (UNITED STATES) *v.* GERMANY

(October 2, 1924, pp. 452-456.)

DAMAGES IN DEATH CASES: PERSONAL SERVICES; ACTUAL CONTRIBUTIONS; PERSONAL PROPERTY. Claims for alleged losses suffered by children of *Lusitania* victims. Application of rules announced in *Lusitania* Opinion, see p. 32 *supra*, and in other decisions. *Held* that in death cases Commission empowered to make awards for loss of actual or probable contributions, which were fruits of personal efforts of decedent, not for loss of such contributions derived as income from decedent's estate, which on his death vested in claimants and yields to them same income as it yielded to decedent during life (cf. Gladys Bilicke case, p. 263 *supra*). Damages allowed on behalf of (1) son for lost business training, (2) married daughter for lost counsel and supervision, (3) unmarried daughter for lost pecuniary contributions; no damages allowed on behalf of two independent sons, neither of whom would ever have received any pecuniary contribution from their father or his estate; damages allowed for lost property.

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

The two cases numbered and styled as above <sup>1</sup> have been considered and will be disposed of together. They are before the Umpire for decision on a certificate of the two National Commissioners<sup>a</sup> certifying their disagreement.

It appears from the records that Elbert Hubbard, then nearly 59 years of age, and his wife, Alice Hubbard, then nearly 54 years of age, were passengers on and were lost with the *Lusitania*. Elbert Hubbard left surviving him as the issue of his first marriage three sons, Elbert Hubbard II, Ralph, and Sanford, then 32, 28, and 27 years of age respectively, and a daughter, Katherine, then 19 years of age. Elbert and Alice Hubbard left surviving them a daughter, Miriam, then 20 years of age, now the wife of H. D. Roelofs, to whom she was married in July, 1917. Both of the deceased, all of the claimants, and the husband of Mrs. Roelofs were born and have ever remained American nationals.

Elbert Hubbard as author, lecturer, and business man had carved for himself a unique position. He possessed to an unusual degree the faculty of finding apt words for the coinage of pregnant ideas. While not always orthodox, in his writings and on the lecture platform he persistently preached the gospel of industry, thrift, regular habits, simple living, fair dealing, and good will. These records indicate that in these respects he followed in practice his own

<sup>1</sup> Original report: United States of America on behalf of Elbert Hubbard II, individually and as Executor of the Last Will and Testament of Elbert Hubbard, and Ralph Hubbard, Sanford Hubbard, Miriam Hubbard Roelofs, and Katherine Hubbard, Claimants, *v.* Germany, Docket No. 437; United States of America on behalf of Elbert Hubbard II, as Executor of the Last Will and Testament of Alice Hubbard, and Miriam Hubbard Roelofs, Claimants, *v.* Germany, Docket No. 438.

<sup>a</sup> Dated September 25, 1924.

precepts. As a result, through his own efforts he accumulated a competency and established a prosperous business, which he bequeathed to two of the claimants herein. That business, which was owned by The Roycrofters, a corporation established in East Aurora, Erie County, New York, was engaged principally in the printing and publishing business but also manufactured and sold various arts and crafts products in copper and leather as well as mission furniture and engaged in some other activities. Elbert Hubbard was president and general manager and Alice Hubbard was vice-president of the Roycrofters corporation. Of the 12,000 shares of that corporation Elbert Hubbard owned 9,909, Alice Hubbard 800, and the claimants herein 547 shares. A large part of the fortunes of both the deceased was represented by ownership in the stock of this corporation, which had paid no dividends prior to their deaths. The profits, which were substantial, were reinvested in and went toward the expansion of the business.

Elbert Hubbard devoted a considerable part of his time to the preparation of articles for and editing the Roycroft magazines, three in number, "The Philistine", "Little Journeys", and "The Fra". "The Philistine", which was launched in 1895, was discontinued on Hubbard's death. The publication of "Little Journeys" was started in 1900 and discontinued in 1909; the publication of "The Fra" started in 1908 and after an unsuccessful attempt to continue its publication following his death was discontinued in 1917. The publication of these magazines, most of the material for which was furnished by Hubbard himself, was an important factor in the success of the Roycrofters corporation.

About one-third of Elbert Hubbard's time was devoted to lecturing and the preparation of articles for magazines other than those published by his company. From the income derived from this purely personal source he paid all of his personal living expenses (save those paid by the application of \$2,500 per annum which he drew from the Roycrofters corporation), and the balance of his income from such sources, averaging slightly over \$18,000 per annum, he turned into the treasury of the Roycrofters.

Alice Hubbard made contributions to the Roycroft magazines and some books written by her were published by the Roycrofters corporation. She actively managed the Roycroft Shops and the Roycroft Inn. The corporation paid her also a salary of \$2,500 per annum.

Both Mr. and Mrs. Hubbard were in excellent health, strong, and unusually active. They had personal effects and cash with them on the *Lusitania* of the value of \$1,000 each, all of which was lost.

Each of the deceased left a will, both dated March 9, 1909, identical in their terms, each naming the other sole and universal legatee but providing in the alternative that if the testator should not survive the other spouse then their respective estates should be divided equally between Elbert Hubbard II and Miriam Hubbard. Both of these wills were in due time probated and their provisions carried into effect. Under their terms Elbert Hubbard II took as legatee under his father's will property valued under the statutes of New York for transfer-tax purposes at \$159,050.45 and Miriam Hubbard (now Roelofs) took property of a like value; while as beneficiaries under the will of Alice Hubbard each of them took property valued for transfer-tax purposes at \$50,614.71. From this it appears that the joint estates of decedents were of the value of \$419,330.32, of which Elbert Hubbard II and Miriam Hubbard Roelofs each took one half or \$209,665.16.

The domestic and business relations between Elbert Hubbard the elder and his son Elbert Hubbard II were unusually close. Through constant daily contact and supervision the elder man made many and varied contributions to his son, who was in training to succeed him, which had a pecuniary value.

At the time of the *Lusitania* disaster Ralph Hubbard, then 28 years of age, was attending the University of Colorado at Boulder, Colorado. He is a teacher by profession. To him his father had made no contributions of any nature for some years prior to his death. Sanford Hubbard, who was 27 years old at the time of his father's death, is a farmer and has a small income from property which he owns. To him Elbert Hubbard had made no contributions for some years prior to his death. The will of Elbert Hubbard, made more than six years prior to his death, did not mention these two sons and the clear inferences from the record are that neither of them would ever have received any pecuniary contributions from their father or from his estate.

Katherine Hubbard, who was then 19 years of age, was attending school at Buffalo, New York, at the time of and for several years prior to her father's death. He was accustomed to contribute from \$500 to \$1,000 per year to her support. She has never married and now lives with her mother in Boulder, Colorado, supplementing the very small income from her property by teaching music. The inferences from the record are that had Elbert Hubbard lived he would have continued to contribute funds to defray her living expenses.

Miriam Hubbard Roelofs is the only child of Elbert and Alice Hubbard. At the time of her parents' deaths she was a student 20 years of age, and she was graduated from the University of Michigan the following year. The third July following their deaths she married, and she has a happy home with four children and a husband. The latter has a small income as a university instructor. While both her parents were devoted to her and she has been deprived of their counsel and supervision, it is reasonably apparent from the record that she has not suffered any very great pecuniary injury through such deprivation.

It will be borne in mind that the measure of the awards which this Commission is empowered to make in these cases is not the value of the lives lost but the pecuniary losses suffered by *claimants* resulting from the deaths. To the extent that contributions by the deceased made during their lives and those which they would probably have made to claimants but for Germany's act causing their deaths were the direct fruits of the personal efforts of the deceased whose producing powers were destroyed by their deaths, the claimants have suffered pecuniary damages which Germany is obligated to pay. But to the extent that such actual or probable contributions were derived as income from the estates of deceased, which vested in the claimants on the deaths of deceased and yielded to the claimants the same income as it yielded to the deceased during their lives, the claimants have suffered no pecuniary damages (*Pym v. Great Northern Railway Co.*, 4 Best & Smith's Reports 396; *San Antonio & Aransas Pass Railway Co. v. Long*, 87 Texas Supreme Court Reports).

Applying the rules announced in the *Lusitania* Opinion and in the other decisions of this Commission to the facts as disclosed by the records herein, 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) Elbert Hubbard II individually the sum of twenty-five thousand dollars (\$25,000.00), (2) Miriam Hubbard Roelofs the sum of twenty-five thousand dollars (\$25,000.00), (3) Katherine Hubbard the sum of seven thousand five hundred dollars (\$7,500.00), with interest on each of said sums at the rate of five per cent per annum from November 1, 1923; (4) Elbert Hubbard II as Executor of the Estate of Elbert Hubbard, deceased, the sum of one thousand dollars (\$1,000.00) with interest thereon at the rate of five per cent per annum from May 7, 1915; and (5) Elbert Hubbard II as Executor of the Estate of Alice Hubbard, deceased, the sum of one thousand dollars (\$1,000.00) with interest

thereon at the rate of five per cent per annum from May 7, 1915; and further decrees that the Government of Germany is not obligated to pay to the Government of the United States any amount on behalf of the claimants Ralph Hubbard and Sanford Hubbard.

Done at Washington October 2, 1924.

Edwin B. PARKER  
*Umpire*

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CHARLES AMBROSE PLAMONDON, JR., SOLE SURVIVING  
ADMINISTRATOR OF THE ESTATE OF CHARLES A. PLAMONDON,  
DECEASED, AND INDIVIDUALLY AND ON BEHALF OF HAROLD  
MACKIN PLAMONDON AND OTHERS (UNITED STATES) *v.*  
GERMANY; AND TWO OTHER CASES

(October 2, 1924, pp. 457-461.)

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DAMAGES IN DEATH CASES: ACTUAL CONTRIBUTIONS; EDUCATION; UNINTENTIONAL TERMINATION OF CONTRACT BETWEEN CLAIMANT AND THIRD PARTY; EXPENSES. Claims for alleged losses suffered by children of *Lusitania* victims and by company of which one victim was vice-president, secretary and treasurer. Application of rules announced in *Lusitania* Opinion, see p. 32 *supra*, and in other decisions. *Held* that, under Treaty of Berlin, Germany not obligated to pay losses suffered by claimant company flowing directly from termination of its contract, if any, with other company on vice-president's death: reference made to Hickson case, p. 266 *supra*. *Held* also that in death cases Commission empowered to make awards for loss of actual or probable contributions, which were fruits of personal efforts of decedent, not for loss of such contributions derived as income from decedent's estate, which on his death vested in claimants and yields to them same income as it yielded to decedent during life (cf. Gladys Bilicke case, p. 263 *supra*). Damages allowed on behalf of (1) children for lost pecuniary contributions and education, (2) administrator of parents' estates for (a) expense, (b) lost property.

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

These three cases, which have been considered and will be disposed of together, are before the Umpire for decision on a certificate of the two National Commissioners<sup>a</sup> certifying their disagreement.

It appears from the records that Charles A. Plamondon and his wife, Mary Mackin Plamondon, both then 57 years of age, were passengers on and were lost with the *Lusitania*. They left surviving them two sons and three daughters, Charles A., Jr., then 25, Harold Mackin, then 23, Marie, then 34, Charlotte Plamondon Ripley, then 32, and Blanche Plamondon Smith, then 29 years of age. The daughter Marie has never married. The second daughter married Allen B. Ripley in April, 1910, and the third daughter married John Henry Smith in January, 1909. Both of the decedents, all of their children, and the husbands of the two married daughters were born and have ever remained American nationals.

The father of these claimants was strong physically, active in business as well as in civic affairs, and possessed a pleasing personality. He was the active

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<sup>a</sup> Dated September 28, 1924.