

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

**Caroline M. Bridge and Edgar G. Barratt, Administrators of the Estate of Justus
Miles Forman, et al. (United States) v. Germany**

19 March 1925

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the property disposed of by his will. Obviously the pecuniary returns to his widow and children from his bequests to them were greater than the contributions which they received from him during his life for their support and maintenance, which were made from the income from his estate the corpus of which on his death vested in them or for their use and benefit.

No claim is put forward on behalf of the executors of the decedent's estate for personal effects and other property belonging to and lost with him, nor is claim made for any expenses incurred by the estate resulting from his death.

Bearing in mind that the measure of the awards which this Commission is empowered to make in this case is not the value of the life lost but the losses *to claimants* resulting from the decedent's death, so far only as such losses are susceptible of being measured by pecuniary standards, and applying the rules announced in the *Lusitania* Opinion and in the other decisions of this Commission to the facts in this case, 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 March 19, 1925.

Edwin B. PARKER
Umpire

CAROLINE M. BRIDGE AND EDGAR G. BARRATT,
ADMINISTRATORS OF THE ESTATE OF JUSTUS MILES FORMAN,
ET AL. (UNITED STATES) *v.* GERMANY

(*March 19, 1925, pp. 595-597.*)

DAMAGES IN DEATH CASES: VALUE OF LIFE LOST, LOSS TO DECEDENT'S ESTATE, LOSS TO SURVIVORS; ACTUAL FINANCIAL CONTRIBUTIONS.—EVIDENCE: UNSUPPORTED ALLEGATION, CLAIMANTS' TESTIMONY. Claims for alleged losses suffered by relatives of *Lusitania* victim. Application of rules announced in *Lusitania* Opinion. see p. 32 *supra*, and in other decisions. *Held* that awards which Commission is empowered to make in death cases are not value of life lost (benefits of which decedent's estate was deprived), but losses to claimants themselves resulting from death, so far as susceptible being measured by pecuniary standards (see Administrative Decision No. VI, p. 155 *supra*). *Held* also that unsupported allegation by administrator of estate that decedent made money contributions to several claimants cannot be accepted as sufficient evidence, since claimants failed to offer personal testimony, though facts manifestly within their knowledge. No damages allowed.

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.

Justus Miles Forman, an American national, 39 years of age, was a passenger on and went down with the *Lusitania*. While the record does not so expressly state, the inference is that he had never married. He was a man of culture and ability, a prolific writer of popular fiction and a playwright. His income from these sources was between \$10,000 and \$12,000 per annum.

^a Dated January 5, 1925.

In the petition filed herein on behalf of his administrators the statement is made that "As a result of his untimely death he was deprived of the earnings of his most fruitful years and his estate was likewise deprived of the benefits thereof." This Commission has repeatedly held that the awards which it is empowered to make in death cases is not the value of the life lost but the losses to claimants resulting from the death, so far only as such losses are susceptible of being measured by pecuniary standards. A right to recover damages resulting from death accrues when, but not until, the death occurs. Manifestly a decedent can not recover for his own death, nor can his estate in a representative capacity recover what the decedent could not have recovered had he lived.

No claim is put forward for the value of personal effects owned by the decedent and lost with him.

The ten claimants herein are his heirs-at-law, a half-sister, a nephew, three nieces, two grandnephews, and three grandnieces, who at the time of decedent's death were of ages varying from 83 to 21 years. Five of them resided in Minnesota, two in Wisconsin, two in Montana, and the other one in either Illinois or New Jersey. The extent of decedent's contact with claimants, through correspondence or otherwise, is not disclosed by the record. The decedent died intestate and these claimants inherited his estate, valued at something over \$19,000.

The second supplemental petition, sworn to in July, 1924, by Edgar G. Barratt, one of the two administrators of the decedent's estate, recites:

Justus Miles Forman, deceased, was accustomed to contribute from time to time sums of money to the support of Caroline M. Bridge and to John Griswold, Maud Griswold, Stanley Griswold, Alice Griswold and Sadie Griswold LaClaire. While your petitioner believes that these sums were substantial in amount, he is unable to supply definite evidence of their extent and frequency because Justus Miles Forman kept no books, and no check stubs covering these payments were discovered among his effects by your petitioner as administrator. However, your petitioner is informed that such payments were made from time to time.

The decedent resided several hundred miles from each of the claimants mentioned in the paragraph here quoted. Had he made money contributions to them such contributions would probably have been sent by check and a record thereof would have been found in decedent's bank-check stubs. Caroline M. Bridge, the half-sister of the decedent, as one of the administrators of his estate, has executed numerous legal documents in connection with the settlement of said estate by the administrators. The names and addresses of the other claimants appear in the record herein, but the testimony of none of them is offered. The fact that no documentary evidence could be found among the decedent's effects of any contributions made by him to these claimants is all the more reason why the testimony of the claimants themselves as to the extent of such contributions, if any, should have been offered.

In this state of the record, when the facts were manifestly within the knowledge of the claimants themselves and their testimony is not offered, the unsupported allegation of one of the administrators, made on information, can not be accepted by the Commission as evidence upon which to base an award. The record as submitted is barren of competent and convincing evidence in support of the contention that the claimants or any of them suffered damages, as measured by pecuniary standards, resulting from decedent's death.

Applying the rules announced in the *Lusitania* Opinion and in the other decisions of this Commission to the facts as disclosed by the record 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 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 March 19, 1925.

Edwin B. PARKER
Umpire

ROGER B. McMULLEN *ET AL.* (UNITED STATES) *v.* GERMANY

(*March 19, 1925, pp. 602-604.*)

USE OF INVENTIONS NOT COVERED BY GERMAN PATENTS. Claims for loss suffered by alleged use by German Government, without compensation, of inventions not covered by German patents. *Held* that such use not prohibited by German patent laws which strictly conform to Convention for Protection of Industrial Property, and that claim does not fall within Treaty of Berlin.

BY THE COMMISSION:

The cause styled as above¹ is submitted to the Commission on the following Agreed Statement:

AGREED STATEMENT

The American and German Agents present the following agreed statement, and make the following recommendation as to further proceedings to be had in the matter of this claim:

Amount demanded by claimant: \$100,000,000.00.

ESSENTIAL FACTS: Roger B. McMullen, a native citizen of the United States (Exhibit 1), has filed a petition in support of a claim on behalf of himself, Henrietta Gathmann, Emil Gathmann, Paul Gathmann, Otto Gathmann, Olga Gathmann Foley, Elman Gathmann, James B. McMullen, Daniel Y. McMullen, George W. McMullen and Davis S. McMullen, all of whom, it is alleged, are either native or naturalized citizens of the United States (Exhibit 2). It is alleged that Louis Gathmann, since deceased, had certain German patents covering high explosive shell and gun for projecting trench mortar projectiles; safety fuse for high explosive shell in which the priming charge was kept separated from the main charge of the high explosive charge contained in the shell upon the discharge of the projectile from the gun; compass for use with submarine or submersible vessels; and periscopes adapted to be adjustably projected above the hull structure of submarine or submersible vessels; and that said patents were infringed by the Government of Germany during the war period. The records of the German Government show that there were three patents granted to Louis Gathmann, of Chicago, in 1896 and 1897, corresponding to three American patents, and the German Patent Office reports that all three patents expired because the annual fees required under German law to be paid on German patents were not paid in compliance with the German patent law. It is further claimed by the German officials that these patents had expired for the reason above stated long before the beginning of the World War (Exhibit 3). The American Agent has furnished the claimant with the information thus obtained from the German Patent Office and no contention is made by the claimant that the annual fee was paid or that the information received from the German officials regarding the failure to pay the said annual fees is not correct. It is also alleged by the claimant that long before the beginning of the World War application had been made to the German Government for the issuance of additional patents covering the devices above referred to and that the German Government was familiar with the said inventions.

¹ Original report: United States of America on behalf of Roger B. McMullen *et al.*, Claimants, *v.* Germany, Docket No. 5004.