

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

---

## **RECUEIL DES SENTENCES ARBITRALES**

**Walker, Armstrong & Company (United States) v. Germany**

31 August 1926

VOLUME VIII pp. 20-21



NATIONS UNIES - UNITED NATIONS  
Copyright (c) 2006

It seems probable that had the *Evelyn* set her course along the east coast of Great Britain and the Nase of Norway and thence via Listertief to the mouth of the Weser she would have arrived in safety. Or it may well be that had she laid a true course for Listertief of 51° from Terschelling Lightship off the Dutch coast she would have reached there in safety, and after there taking on a German pilot have landed her cargo at Bremen by this roundabout course. Certain it is that it was to the interest of Germany that the *Evelyn* and her cargo should reach her destination. Viewing the acts of the claimants and their agents in retrospect, it is easy to point out measures which they might have taken, and which they failed to take, to insure greater safety in the navigation of the ship. But for obvious reasons it was extremely difficult at that time to procure dependable information with respect to shipping conditions. There is evidence in this record suggesting that the master of the *Evelyn* was wilfully misinformed and sent into a zone of danger by the enemies of Germany. Be this as it may, the master, after making diligent inquiry from time to time, was compelled to act upon his own judgment and responsibility. The Umpire finds that the evidence falls short of establishing the contention that under all the circumstances and conditions existing at the time the claimants and their agents failed to exercise that care which a reasonably prudent man similarly situated would have exercised in manning and navigating the ship.

Therefore the Umpire holds that Germany's act in planting the mine or mines which he finds destroyed the *Evelyn* was the proximate cause of her loss.

The question discussed by counsel dealing with the legality of the act of Germany in planting mines off the Dutch coast and beyond the limits of her territorial waters is not material here. As this Commission has frequently held, Germany's liability is determined by the provisions of the Treaty of Berlin rather than by the legality or illegality of her acts as measured by rules of international law.

Based on the foregoing findings of fact and the agreement of the Agents of the United States and of Germany, confirmed by the National Commissioners, with respect to the fair market value of the Steamship *Evelyn*, 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 Harriss, Irby & Vose, the claimants herein, the sum of one hundred ten thousand dollars (\$110,000.00) with interest thereon at the rate of five per cent per annum from February 19, 1915.

Done at Washington August 31, 1926.

Edwin B. PARKER  
Umpire

---

WALKER, ARMSTRONG & COMPANY  
(UNITED STATES) v. GERMANY  
(August 31, 1926, pp. 827-832.)

---

SEA WARFARE: DESTRUCTION OF VESSEL BY MINE. — WAR: NEGLIGENCE. — DAMAGE: RULE OF PROXIMATE CAUSE. — DAMAGES: MARKET VALUE. — PROCEDURE: CONFIRMATION BY NATIONAL COMMISSIONERS OF AGREEMENT BETWEEN AGENTS. Destruction of vessel on February 22, 1915, by submerged German mine. *Held* that there is no evidence that claimants or their agents did not exercise care of ordinarily prudent man and that,

therefore, Germany's act in planting mines was proximate cause of loss. Agreement between Agents on fair market value of vessel confirmed by National Commissioners.

*(Text of decision omitted.)*

---

GANS STEAMSHIP LINE  
(UNITED STATES) *v.* GERMANY

*(August 31, 1926, pp. 832-836.)*

---

EXPROPRIATION OF VESSELS: CHARTERER'S INTEREST IN VESSELS, SOVEREIGN POWER OF EXPROPRIATION. — DAMAGE: CAUSED IN PROSECUTION OF WAR; EXCEPTIONAL WAR MEASURES, MEASURES OF TRANSFER. Sixteen German vessels chartered by claimant between October 26, 1915 and December 18, 1916, to be delivered to her after conclusion of peace, but expropriated by Germany for transfer in property to Allies free from encumbrances etc. as required by Treaty of Versailles, Part VIII, Section I, Annex III, as carried into Treaty of Berlin. Claim for value of charterer's interest in vessels. *Held* that seizure and deprivation of claimant's rights do not fall within terms of Treaty of Berlin: (1) no damage caused in the prosecution of war (reference made to Administrative Decision No. I, see Vol. VII, p. 21): interest in vessels, in any case subject to Germany's sovereign power of expropriation, expropriated in pursuance of terms of peace dictated by victorious powers; (2) no exceptional war measures or measures of transfer (Treaty of Versailles, Part X, Section IV, Annex, para. 3).

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

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

An award in the sum of \$6,821,813.74 is sought on behalf of the claimant, Gans Steamship Line, an American corporation, being the alleged value of its interest as charterer in sixteen steamships, all owned by German nationals at the time the charters were entered into. The case presented by the claimant, briefly stated, is this:

(1) Between October 26, 1915, and December 18, 1916, during the period of American neutrality, the claimant entered into charter-parties with the German owners of sixteen German ships varying from a one-way voyage charter from the United States to Europe to twelve-month time charters, to run from the date of delivery of each vessel thereunder.

(2) In varying forms of expression the charters provided for delivery "after peace has been concluded and trading for German ships is free in all waters", or "after official conclusion of peace", or "after officially declared conclusion of peace", or "after general conclusion of peace", or similar expression.

(3) At the time the charters were fixed the vessels were tied up at different ports, among them Hamburg, Luebeck, Antwerp, Bergen, Bilbao, Cadiz, and Barcelona, and one was building at Stettin, another at Luebeck.

(4) Annex III to Section I of the Reparation Provisions (Part VIII) of the Treaty of Versailles required that "The German Government, on behalf of themselves and so as to bind all other persons interested, cede to the Allied and Associated Governments the property in all the German merchant ships", described so as to include those on which claimant's charters were fixed. By