

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Gans Steamship Line (United States) v. Germany

31 August 1926

VOLUME VIII pp. 21-24



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

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

the same annex it was provided that " the German Government will: (a) Deliver to the Reparation Commission in respect of each vessel a bill of sale or other document of title evidencing the transfer to the Commission of the entire property in the vessel, free from all encumbrances, charges and liens of all kinds, as the Commission may require ".

(5) To fulfill these obligations the German National Assembly on August 31, 1919, enacted a law providing machinery for the acquisition through expropriation by the German Government of the ships which Germany was required to deliver to the Allied and Associated Powers through the Reparation Commission.

(6) The memorial filed on behalf of the claimant alleges that " Heretofore and on various dates during the year 1919 all right, title and interest, including the rights therein of claimant, to these steamers were seized by the German Government acting under the obligations assumed by said Government in the Versailles Treaty, Part VIII, Annex III, Section I, and claimant was deprived of said rights therein by said action."

The defenses put forward by the German Agent are: (1) that the allegations of the memorial do not bring the claim within the Treaty of Berlin; (2) that the claimant suffered no loss or damage; and (3) that a substantial part of the stock of the claimant corporation, at the times the charters were entered into and at all material times since, has been owned by German nationals and to this extent the claim is not impressed with American nationality.

The first only of these defenses will be considered. The allegation quoted in the preceding paragraph numbered (6) is the only ground upon which a recovery is sought against Germany and sharply presents the sole question certified to the Umpire, viz.: Do the acts of Germany complained of fall within the terms of the Treaty of Berlin?

The Umpire decides that they do not.

The financial obligation of Germany to the United States on behalf of its nationals arising under that Treaty with respect to so-called reparation claims were defined by this Commission in its Administrative Decision No. I.¹ Such claims are restricted to damages suffered by American nationals caused by Germany or her agents (or in certain categories by her allies or by any belligerent) in the prosecution of the war, or, as expressed in Article 231 of the Treaty of Versailles, such " loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies."

Manifestly Germany's acts, of which claimant complains, far from being acts of aggression, were acts of submission; far from being acts committed in the prosecution of the war, were acts performed to carry into effect the terms of peace imposed upon her by the victorious powers.

Assuming for the purposes of this opinion that the claimant had an interest in the ships which were expropriated by Germany and delivered to the Allied Powers through the Reparation Commission in pursuance of the provisions of the Treaty of Versailles, nevertheless that interest was when acquired and continued to be an interest in German ships subject to the sovereign power of expropriation by Germany in accordance with her laws. Germany not only acted within her sovereign power and in strict accordance with her laws but those very laws were enacted in pursuance of the terms of peace dictated by the victorious powers. It is not within the competency of this Commission to adjudicate the right if any to demand compensation which this claimant may have arising under the German statute of August 31, 1919, as applied by

¹ Decisions and Opinions, pages 1-3. (*Note by the Secretariat*, Vol. VII, pp. 21-22).

Germany in German territory, which demand must be governed by German municipal law, administered by German domestic tribunals, which are clothed with the exclusive power to administer justice within German territory where, as in this case, this sovereign power has not been expressly surrendered to an international tribunal or other agency.

But is it urged that if this is not a reparation claim as defined in Administrative Decision No. 1 it nevertheless falls within a category expressly excepted from that decision but embraced within the Treaty, namely, "claims arising out of the application of either exceptional war measures or measures of transfer as defined in paragraph 3 of the Annex to Section IV of Part X of the Treaty of Versailles." This contention is rejected.

Germany was required by Article 297 (a) of the Treaty immediately to discontinue and stay all exceptional war measures and measures of transfer with respect to the property, rights, and interests of nationals of the Allied or Associated Powers, and all such measures taken by Germany or the German authorities subsequent to November 11, 1918, were declared void (see 2nd clause of paragraph 1 of the annex last cited). So much of the Treaty definitions of these measures as are prospective in their scope apply to the Allied and Associated Powers but not to Germany. But Annex III to Section I of part VIII of this same Treaty, in pursuance of which the acts of Germany here complained of were taken, compelled "The German Government, on behalf of themselves and so as to bind all other persons interested," to cede to the Allied Powers the German ships chartered by claimant. Reading these provisions together, it is manifest that the measures taken by Germany and here complained of were not exceptional war measures or measures of transfer, as those terms are defined in the Treaty which expressly stripped Germany of the power to take such measures subsequent to November 11, 1918. As heretofore pointed out, they were measures looking toward peace, not measures of war.

But it is urged that Article 304 of the Treaty of Versailles (carried by reference into the Treaty of Berlin) clearly confers jurisdiction on this Commission to adjudicate this claim. The particular provision of that article relied on reads:

"In addition, all questions, whatsoever their nature, relating to contracts concluded before the coming into force of the present Treaty between nationals of the Allied and Associated Powers and German nationals shall be decided by the Mixed Arbitral Tribunal."

The relevancy of this provision as applied to this case is not apparent. It is unnecessary here to determine whether this provision is restricted to claims arising between nationals of the Allied and Associated Powers and German nationals which are within the competency of the Mixed Arbitral Tribunals constituted under the Treaty of Versailles or whether it also embraces claims against the German Government. It will be noted in passing that many of the provisions of the Treaty of Versailles with respect to contracts concluded between former enemies (section V of Part X) have no application to the United States or its nationals (see Article 299 (c)).

This claim is put forward on behalf of an American national against the German Government. The agreement between the United States and Germany in pursuance of which this Commission is constituted confers jurisdiction on it to adjudicate all claims falling within those terms of the Treaty of Berlin which define the pecuniary obligations of Germany to the United States and its nationals. The only question here presented is, Under the Treaty of Berlin is Germany obligated to compensate this claimant for the damages which it alleges it sustained? This Commission has jurisdiction to decide this question and, if answered in the affirmative, to assess the damage. A negative answer

has already been given. Hence it follows that the demand, if any, not based on any provision of that Treaty, which claimant may have against Germany or anyone else does not fall within the jurisdiction of this Commission.

Wherefore 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 claimant herein on account of the acts herein complained of.

Done at Washington August 31, 1926.

Edwin B. PARKER
Umpire

S. STANWOOD MENKEN, ADMINISTRATOR OF THE ESTATE OF
ALICE E. TESSON, DECEASED, AND OTHERS
(UNITED STATES) *v.* GERMANY

ANDREW C. MCGOWIN, ADMINISTRATOR OF THE ESTATE OF
FRANK B. TESSON, DECEASED, AND OTHERS
(UNITED STATES) *v.* GERMANY

(August 31, 1926, pp. 837-839.)

PROCEDURE: REHEARING AFTER FINAL JUDGMENT. — DAMAGE: (1) RULE OF PROXIMATE CAUSE, (2) SPECULATIVE DAMAGE. — DAMAGES IN DEATH CASES. — EVIDENCE: DECISION OF MUNICIPAL COURT OF LAST RESORT. Rehearing granted, although final decree entered before. Claims for alleged losses suffered by children by first marriage of woman, whose second husband carried life insurance payable to her in case she survived him, but who, according to decision of highest court of New York State, simultaneously with him went down with *Lusitania*. Held that wife's children cannot claim damages: (1) damage (insurance moneys lost) too remote, (2) Germany not liable for consequences of wife's not surviving her husband, but only for damages proximately resulting from her death, (3) no speculation permissible as to effect on her children of either her survival or her husband's.

PARKER, *Umpire*, made the announcement following:

In the cases numbered and styled as above,^a which were consolidated, a final decree on the decision of the *Umpire* was entered by this Commission on February 21, 1924.¹ The claimants in the first case have presented through their attorneys to the American Agent a petition for rehearing praying for an additional award, which has been called to the attention of the *Umpire*. The rules of this Commission make no provision for a rehearing of any case in which a final decree has been entered. However, in deference to the earnest insistence of eminent counsel the *Umpire* has carefully reviewed the record in these cases in the light of the petition for rehearing. But he finds nothing in either the record or the petition which had not been taken into account and carefully weighed before the decision was rendered.

The instant petition apparently fails to take into account and correctly appraise the pertinent considerations following:

^a Note by the Secretariat, Original report: Docket Nos. 217, 293, and 544.

¹ Decisions and Opinions, pp. 361-364. (Note by the Secretariat, not included in Vol. VII).