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RECUEIL DES SENTENCES ARBITRALES

F. E. Attiaux & Co., Inc. (United States) v. Germany

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three hundred twenty-three dollars (\$323.00) with interest thereon from November 11, 1918, both at the rate of five per cent per annum.

Done at Washington January 14, 1927.

Edwin B. PARKER
Umpire

F. E. ATTEAUX & CO., INC.
(UNITED STATES) v. GERMANY
(February 2, 1927, pp. 866-869.)

INTERPRETATION OF CONTRACTS: PRICE OWING WHEN SALES CONTRACT SILENT, MARKET-VALUE. — JURISDICTION: DEBT. — INTEREST. — EVIDENCE: AFFIDAVIT, CORRESPONDENCE BETWEEN PARTIES. Purchase by claimant from German firm, before United States' entry into war, of prepaid dyestuffs, not delivered. Delivery at various times from April 19 to August 12, 1921, on basis of new agreement. *Held* that price not agreed upon between parties and that seller, therefore, entitled to market-value at time and place of deliveries. *Held* also that any remainder of prepaid moneys constitutes "debt" of German firm to claimant as term is used in Treaty of Berlin, and shall bear 5 per cent interest per annum from date of last delivery. Evidence: see *supra*.

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.

It is put forward on behalf of F. E. Atteaux & Co., Inc., an American corporation, to recover a pre-war indebtedness, less certain credits hereinafter referred to, owing to the claimant by a German debtor.

From the record it appears that toward the end of 1915 and in the early part of 1916 claimant contracted to purchase from the Chemikalienwerk Griesheim G.m.b.H., of Frankfurt, Germany, hereinafter referred to as German debtor, certain specified dyestuffs for which claimant paid to the German debtor in Germany as follows:

September 10, 1915, M. 126,300.
November 12, 1915, M. 107,550.
April 4, 1916, \$141,394.85.
June 15, 1916, \$7,671.52.

The dyestuffs so purchased were invoiced to the claimant in the currency in which these remittances were made, the invoices reciting "We keep at your disposal and shall ship according to your instructions — as soon as the embargo is lifted". No shipments were made when, in August, 1919, the claimant cabled to the German debtor inquiring whether or not the dyestuffs purchased were then available for shipment, and on August 15 received a reply reading: "Your colors are not ready for shipment as they had to be used up but we will replace same soonest possible *unless you prefer to have money refunded*".

In the affidavit of Hermann C. A. Seebohm, director of the German debtor, dated May 8, 1923, it is stated that "In April 1921 we accordingly made arrangements with F. E. Atteaux & Co., Inc., to apply the money which they had already paid us toward the purchase of such colours as they might then designate."

From the record it appears, and the Umpire finds, that prior to and on the date of the declaration by the United States of the existence of a state of war with Germany there was owing to the claimant by the German debtor a dollar debt in the amount of \$149,066.37 and a mark debt in the sum of Marks 233,850 and that after the cessation of hostilities between the United States and Germany the claimant and the German debtor agreed that this indebtedness without interest should be credited with the value of such dyestuffs as might be purchased by the claimant from the German debtor. Thereafter the German debtor delivered to the claimant several parcels of dyestuffs at various times beginning with April 19, 1921. Under the certificate the Umpire must determine the basis for accounting by the claimant for the dyestuffs so delivered to it.

The German debtor contends that it agreed to ship to the claimant certain products described and listed with respect to quantity and quality in a schedule sent to claimant on July 27, 1920, which the claimant agreed to accept in full satisfaction of the debt owing to it. The claimant on the other hand contends that the schedule in question was simply submitted for it to select from, with the understanding that it should give the German debtor credit for the dyestuffs selected and received by it at the mark prices named in the schedule, but that there was no agreement with respect to the rate of exchange which should obtain in liquidating the dollar debt. The German debtor insists that these mark prices were specified solely as a basis for the assessment of duties on imports into the United States and did not affect the agreement under which, according to the German debtor's contention, the claimant was to receive particular dyestuffs or their equivalent in dyestuffs in full satisfaction of the debt.

It will serve no useful purpose to detail the voluminous correspondence between the parties. From its careful analysis the Umpire concludes that the parties failed to reach an agreement with respect to the basis on which the claimant should account for the dyestuffs shipped to it by the German debtor from time to time for a period of several months beginning with April 19, 1921. Therefore the debtor is entitled to credits for the goods which were delivered by it in Germany for export to the United States on the basis of their market value at the time and place of such delivery.

After the schedule of July 27, 1920, hereinbefore mentioned, was submitted, and before the first shipment of April 19, 1921, was made, there was a great decline in the exchange value of the German mark. It appears from the record that, because of the instability of the mark and its constant decline in exchange value, sales of dyestuffs made in the German market for export to America after the resumption of trade relations between Germany and the United States were made on the basis and in terms of American currency. While the German debtor invoiced the shipments which it made to the claimant in terms of German paper marks, it contended prior to such shipments, has ever since contended, and now contends that "these invoices are only for customs purposes". The United States customs authorities adopted this view and declined to accept the invoice paper-mark values as the basis for the collection of import customs duties, but after extended hearings undertook to assess the shipments on the basis of the dollar export value of the dyestuffs in Germany at the time the shipments were made.

The Umpire holds that prior to the delivery of the dyestuffs in question by the German debtor it was indebted to the claimant in the sum of \$149,066.37 and in the further sum of Marks 233,850 and that this has been satisfied to the extent of the value of the dyestuffs so delivered, using as a basis the market value obtaining in Germany at the time of delivery for dyestuffs intended for export to the United States. The facts should be further developed with a

view to determining what, if anything, is still due claimant after crediting the German debtor with the value of the dyestuffs delivered by it computed on this basis. As the German debtor contends that its debt has been liquidated and declines to make further payment through the delivery of additional dyestuffs or otherwise, the Umpire holds that the amount, if any, still owing by it is a "debt" owing to the claimant as that term is used in the Treaty of Berlin which debt, if any, so ascertained, shall bear interest at the rate of five per cent per annum from August 12, 1921, the date of the last delivery made by the debtor to the claimant.

Done at Washington February 2, 1927.

Edwin B. PARKER
Umpire

UNIVERSAL STEAMSHIP COMPANY
(UNITED STATES) v. GERMANY
(February 2, 1927. pp. 871-877.)

EVIDENCE: INSURANCE ADJUSTER'S REPORT; CIRCUMSTANTIAL EVIDENCE, EX PARTE AFFIDAVITS OF MEMBERS OF CREW OF CAPTURED AND SUNK BRITISH VESSEL: REBUTTAL THROUGH DIARIES OF GERMAN RAIDERS, AFFIDAVIT OF RAIDER'S COMMANDER, REPORTS U.S. NAVY DEPARTMENT, AFFIDAVITS OF MEMBERS OF CREW OF CAPTURED AMERICAN VESSEL. Loss of American vessel which left Brunswick, Georgia, on October 25, 1916, and was last seen on December 16, 1916. *Held* that there is no evidence that vessel was destroyed through act of war. Evidence: see *supra*.

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. It is put forward on behalf of the Universal Steamship Company, an American corporation, and is impressed with American nationality. A recovery is sought against Germany for the value, less insurance collected, of the wooden sailing bark *Brown Brothers*, which cleared from the port of Brunswick, Georgia, on October 25, 1916, bound for Troon, Scotland, laden with a cargo of sawn pine sleepers. She had a deadweight carrying capacity of 1,450 tons, was constructed in 1875 but completely overhauled in 1916. On December 16, 1916, in latitude 41° 13' N., longitude 43° 11' W. she was spoken by the westbound steamship *Thorvald Halvorsen*, the master of which, testifying from her log, states in substance that at the request of the master of the *Brown Brothers* he prepared to take on board from the *Brown Brothers* a shipwrecked crew which, however, declined to be transferred. Whereupon the *Thorvald Halvorsen* proceeded to New York, arriving there on December 24. At that time the *Brown Brothers* appeared "in good shape and reported all well". Neither the bark, any member of her crew, nor any member of the shipwrecked crew which she carried has since been heard from.

The bark carried with British insurers both war-risk and marine insurance. The loss appears to have been promptly and thoroughly investigated by an impartial adjuster whose report, dated July 16, 1917, is in the record. It recites his authority to compromise the claim "by directing that both sets of