

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Standard Oil Company (New Jersey) (United States) v. Germany

23 November 1927

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raider, this fact would almost certainly have been developed by the American Consul General. That the four affiants whose statements are offered by the claimant were prisoners on the *Yarrowdale* there can be no doubt.

On the record presented it is equally clear, and the Umpire finds, that they did not see the *Moewe* destroy the bark *Brown Brothers* on December 23 or on any other day.

Applying the principles announced in Docket No. 6552, *Waterman A. Taft et al.*, claimants (Decisions and Opinions, pages 801-806),^a and other decisions of this Commission, and weighing as a whole the record presented, the Umpire finds that the claimant has failed to discharge the burden resting upon it to prove that the *Brown Brothers* was lost through an act of war.

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 Universal Steamship Company, claimant herein.

Done at Washington February 2, 1927.

Edwin B. PARKER
Umpire

STANDARD OIL COMPANY (NEW JERSEY)
(UNITED STATES) v. GERMANY
(November 23, 1927, pp. 877-878.)

DAMAGE: INDIRECT (TO STOCKHOLDER), JURISDICTION. — WAR: PROPERTY BEYOND LIMITS OF ENEMY TERRITORY. Destruction in 1914 by Belgian military authorities in Belgium of property of Dutch corporation in which claimant was majority stockholder. *Held* that, thought claim within Commission's jurisdiction, Germany not liable: destruction not Germany's act under Treaty of Berlin.

BY THE COMMISSION: —

This claim is put forward on behalf of an American corporation to recover damages sustained by it as a majority stockholder in a corporation organized under the laws of the Kingdom of Holland growing out of the destruction in the latter half of 1914 by the Belgian military forces of petroleum products and installations belonging to the Dutch corporation and located in Belgian territory.

From the record it appears that the petroleum products and installations were destroyed by the Belgian military forces to prevent their seizure and use by the advancing German troops as military materials in furtherance of military operations.

The destruction of the property operated indirectly upon, and resulted in damage to, the claimant as a stockholder in the Dutch corporation. Therefore the claim falls within the jurisdiction of this Commission (Decisions and Opinions, page 12).^b

But inasmuch as the property was destroyed during the period of neutrality of the United States the test of Germany's liability is: Was the property destroyed by an act "committed by the German Government or by any German authorities" or by an act "of the Imperial German Government, or its agents", within the meaning of the Treaty of Berlin as interpreted by this Commission?

^a Note by the Secretariat, this volume, p. 3.

^b Note by the Secretariat, Vol. VII, p. 29.

Applying this test the Commission holds that Germany is not obligated to compensate the claimant for its interest in the property destroyed.

The act of the Belgian military authorities in destroying materials of neutral ownership susceptible of use for military purposes, in order to prevent their being used by Germany in military operations, was an act in the prosecution of the war. But it was not Germany's act any more than any other act of Germany's enemies in the prosecution of the war was, within the meaning of the Treaty. the act of Germany. The Treaty clearly differentiates between damage caused by acts of Germany or her agents during the period of neutrality of the United States and damage in consequence of hostilities or of any operation of war caused by the act of any belligerent after the United States entered the war (Decisions and Opinions, pages 2, 3, 11, 66, 316, 324).^a

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 the Government of the United States any amount on behalf of the claimant in connection with the claim here put forward.

Done at Washington November 23, 1927.

Edwin B. PARKER
Umpire

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner

BANK OF NEW YORK AND TRUST COMPANY, ADMINISTRATOR
WITH WILL ANNEXED OF THE ESTATE OF FRITZ ACHELIS
(DECEASED) (UNITED STATES) *v.* GERMANY

(December 6, 1927, pp. 879-880.)

NATIONALITY OF CLAIMS: ASSIGNMENT OF CLAIM. — APPLICABLE LAW: MUNICIPAL LAW. Assignment in May, 1919, by British subjects to their American *Unterbeteiligter* of German national's indebtedness dating back to December 31, 1914. Held that, under applicable German law, original debt was not owing to assignee at time of United States' entry into war and, consequently, that claim was not impressed with American nationality continuously during period of United States' belligerency.

BY THE COMMISSION: —

From the record it appears that in 1909 König Brothers of London, British nationals, entered into a contract with one Heinrich Otto Traun, a German national of Hamburg, by the terms of which König Brothers became a partner *en commandita* in Traun's business located at Hamburg to the extent of Marks 3,000,000. It was stipulated that the capital contributions made by König Brothers should be repaid in installments. Under this contract, which was twice amended, the entire amount invested by König Brothers was repaid to them with the exception of Marks 359,666.75, for which amount with interest claim is here made.

^a Note by the Secretariat, Vol. VII, pp. 22, 28, 68, 232 and 238.