

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

**Bank of New York and Trust Company, Administrator with Will Annexed of the
Estate of Fritz Achelis (Deceased) (United States) v. Germany**

6 December 1927

VOLUME VIII pp. 42-43



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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.

The basis of this claim is that Fritz Achelis, an American national, contributed the amount here claimed and more to Konig Brothers to be invested by them under their contract with Traun and that it was so invested with Traun's knowledge.

The Commission finds that there was no privity of contract between Traun and Achelis. But as against Konig Brothers Achelis had a "subparticipation" interest in Konig Brothers' investment with Traun. This interest was an "Unterbeteiligung" ("under-participation"), a term familiar to German jurisprudence connoting that behind a party to a contract are others who are not parties but who have a financial interest in the transaction as against such contracting party only but not as against the other contracting party.

The Commission further finds that the amount here claimed became payable by Traun as of December 31, 1914. At that time Great Britain and Germany were at war, and notwithstanding Traun's willingness so to do he was unable to make payment to Konig Brothers.

Thereafter in May, 1919, Konig Brothers executed and delivered a formal assignment to Achelis of Traun's indebtedness, which indebtedness is the basis of this claim.

The contract of partnership between Traun and Konig Brothers had its situs in Germany and its interpretation, and all rights and liabilities based upon it, are controlled by German law. Applying that law as developed in this case to the facts as disclosed by this record, the Commission holds that the debt owing by Traun, a German national, was not a debt owing to an American creditor at the time of America's entering the war on April 6, 1917.

It may be that there exists in the Estate of Achelis rights arising under German law which may be asserted and enforced against Traun before German courts, and that under the assignment to Achelis of May, 1919, his estate will, under the German revaluation law, be entitled to recover a substantial amount from Traun. Be this as it may, the Commission holds that on the facts submitted this claim was not impressed with American nationality continuously during the period of America's belligerency and that under the Treaty of Berlin of August 25, 1921, and under the rules and principles heretofore laid down by this Commission Germany is not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

Done at Washington December 6, 1927.

Edwin B. PARKER
Umpire

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner

UNITED STATES OF AMERICA ON ITS OWN BEHALF THROUGH
THE ALIEN PROPERTY CUSTODIAN *v.* GERMANY AND KALLE
& CO. AKTIENGESSELLSCHAFT, IMPEADED

(*March 8, 1928, pp. 881-882.*)

NATIONALITY OF CLAIMS: ASSIGNMENT TO ALIEN PROPERTY CUSTODIAN. —
DEBT. — INTERPRETATION OF TREATIES: LETTER, SPIRIT, MUNICIPAL LAW.
Assignment to Alien Property Custodian, prior to coming into force of