

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

**United States of America on its Own Behalf through the Alien Property
Custodian v. Germany and Kalle & Co. Aktiengesellschaft, Impleaded**

8 March 1928

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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

Treaty of Berlin, of German two-third interest in American corporation. Held that claim against German corporation presented by Custodian was not American on coming into force of Treaty of Berlin: "debts" under Treaty and under Agreement of August 10, 1922, limited to those owing to American nationals (letter, spirit of Treaty and Agreement, Settlement of War Claims Act).

Cross-reference: A.J.I.L., Vol. 22 (1928), pp. 683-684.

BY THE COMMISSION: —

From the record in the above captioned case it appears that the Kalle Color and Chemical Company, Inc., a New York corporation (hereinafter designated New York corporation), during the period of American neutrality sold goods, wares, and merchandise and made advances to Kalle & Co. Aktiengesellschaft (hereinafter designated German corporation). It is alleged that as a result of these transactions the German corporation was on September 29, 1917, indebted to the New York corporation in the sum of \$182,881.63.

The Government of the United States, through its Alien Property Custodian, during the period of American belligerency lawfully seized as German-owned 1,000 shares (being two-thirds) of the capital stock of the New York corporation, and through voting these shares elected a board of directors of its selection. This board caused the New York corporation to be dissolved and liquidated in pursuance of the laws of the State of New York. In the course of such liquidation the alleged claim of indebtedness of the New York corporation against the German corporation was on February 15, 1921, proportionately assigned by the liquidating trustees to the stockholders of record of the New York corporation as their respective interests then appeared, one-third of such claim being assigned to stockholders of American nationality and the remaining two-thirds to the Alien Property Custodian as such. It is for this two-thirds — amounting to \$121,921.08 — that an award is here sought against Germany.

It will be noted that the New York corporation, which possessed American nationality, had been dissolved and liquidated prior to the coming into force of the Treaty of Berlin on November 11, 1921. In the course of such liquidation the Alien Property Custodian, through the board of directors designated by him, caused the German interest to be carved out of the claim of the New York corporation against the German corporation and, because it was German-owned, assigned to the Custodian in his official capacity.

It is apparent therefore that on the coming into force of the Treaty of Berlin no American national had any interest in the claim here asserted.

Under the Treaty of Berlin and the Agreement between the United States and Germany in pursuance of which this Commission was constituted, "debts" for the payment of which Germany is obligated are limited to those owing by the German Government or by German nationals to American nationals.

The Commission holds that the debt here asserted by the United States through its Alien Property Custodian as an obligation of Germany is not embraced within either the letter or the spirit of the Treaty and of the Agreement mentioned.

This view is strengthened by the Act of the Congress of the United States designated "Settlement of War Claims Act of 1928", providing among other things for the ultimate return of all property of German nationals held by the Alien Property Custodian. Considering the claim here asserted in the light of the provisions of that Act, the United States through its Alien Property Custodian is, in the last analysis, seeking an award against Germany on behalf not of American nationals but of German nationals.

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 account of the claim asserted herein.

Done at Washington March 8, 1928.

Edwin P. PARKER

Umpire

Chandler P. ANDERSON

American Commissioner

W. KIESSELBACH

German Commissioner

ROSA VOLLWEILER (UNITED STATES) *v.* GERMANY

(*March 8, 1928, pp. 883-893.*)

WAR: EXCEPTIONAL WAR MEASURES; PROPERTY, RIGHTS, INTERESTS IN ENEMY COUNTRY. — DAMAGE: RULE OF PROXIMATE CAUSE, DEPRECIATION OF MARKET-VALUE OF BONDS, ACTUAL AND POTENTIAL LOSS. — EVIDENCE: BURDEN OF PROOF, PRESUMPTIONS, CLAIMANT'S UNSUPPORTED TESTIMONY. Purchase by claimant from broker, on September 28, 1915, and February 7, 1916, of German war bonds, deposited with German bank. Claim for loss through depreciation in market-value of bonds suffered during period from November 10, 1917, when exceptional war measure prohibited their withdrawal from Germany, to September 25, 1919, when bonds delivered to broker. *Held* that period from November 10, 1917, to July 23, 1919, when first unconditional instructions to deliver given, immaterial, and that no evidence submitted that exceptional war measure was proximate cause of (actual, not potential) loss through depreciation in market-value between July 23, 1919, and September, 25 1919: claimant failed to prove that she would have sold or exchanged bonds had she had possession of them during this period (burden of proof on claimant, no presumption in favour of intention to sell or exchange, claimant's unsupported testimony not sufficient).

Cross-reference: A.J.I.L., Vol. 22 (1928), pp. 685-693.

Bibliography: Annual Digest, 1927-28, p. 276.

BY THE COMMISSION: —

From the record it appears that the claimant, Rosa Vollweiler, an American national, purchased from Zimmermann & Forshay, bankers and brokers of New York City, Imperial German Government bearer bonds of the face value of M. 15,000, of which M. 10,000 were purchased September 28, 1915, and M. 5,000 were purchased February 7, 1916. At the time of such purchases Zimmermann & Forshay issued and delivered to the claimant so called "Interim Certificates" signed by them, the terms of which will be hereinafter examined. The definitive bonds were not received by Zimmermann & Forshay until September 25, 1919, and not delivered by them to the claimant until December 11, 1919.