

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

---

## **RECUEIL DES SENTENCES ARBITRALES**

**George Achelis, Julie Achelis Spies, John Achelis, Estate of Annie Achelis Vietor,  
Deceased, and Estate of Fritz Achelis, Deceased, Heirs and Legatees of the Estate  
of Thomas Achelis, Deceased (United States) v. Germany**

25 April 1928

VOLUME VIII pp. 59-63



NATIONS UNIES - UNITED NATIONS  
Copyright (c) 2006

This Commission in its Administrative Decision No. II (Decisions and Opinions, page 10) <sup>a</sup> held in effect that while this Commission, as an international tribunal applying the terms of the Treaty of Berlin in the light of established rules of international law and such rules of municipal law as may be applicable, has the exclusive and final power to determine the existence or non-existence of the original obligations, if any, of Germany, all questions involving conflicts in interests between American nationals or the transfer of interests in or to such original obligation must be decided by municipal tribunals according to local jurisprudence. <sup>1</sup>

So far as concerns the *original* claimant's primary *right to recover* this Commission's jurisdiction is exclusive and final, but all controversies over asserted rights to *receive payment* arising (1) between the original claimants and those claiming under them or (2) between two or more whose rights are derivative, not original, claiming through assignments or otherwise, voluntary or involuntary, from the original claimants, must be decided by municipal tribunals.

It follows that this is not the forum in which the petitioners should seek relief.

Although the rules of this Commission make no provision for a rehearing of any case in which a final decree has been entered, this petition has been carefully considered. It is hereby dismissed.

Done at Washington April 18, 1928.

Edwin B. PARKER  
*Umpire*

Chandler P. ANDERSON  
*American Commissioner*

W. KIESSELBACH  
*German Commissioner*

---

GEORGE ACHELIS, JULIE ACHELIS SPIES, JOHN ACHELIS,  
ESTATE OF ANNIE ACHELIS VIETOR, DECEASED, AND ESTATE  
OF FRITZ ACHELIS, DECEASED, HEIRS AND LEGATEES OF THE  
ESTATE OF THOMAS ACHELIS, DECEASED (UNITED STATES)  
*v.* GERMANY

(April 25, 1928, pp. 914-920.)

---

ESTATE CLAIMS: EXCEPTIONAL WAR MEASURES. — DAMAGE: RULE OF PROXIMATE CAUSE. Claim for loss resulting from prevention by German exceptional war measures of distribution of estate prior to August, 1921. Appli-

---

<sup>a</sup> *Note by the Secretariat*, Vol. VII, p. 28.

<sup>1</sup> See *Comegys and Pettit v. Vasse*, 1828, 1 Peters (26 U.S.) 193, 212; *Frevall v. Bache*, 1840, 14 Peters (39 U. S.) 95, 97; *Judson v. Corcoran*, 1855, 17 Howard (58 U.S.) 612, 614; *Phelps v. McDonald*, 1879, 99 U. S. (9 Otto) 298, 307; *Frelinghuysen v. Key*, 1884, 110 U. S. 63, 71; *Leonard v. Nyc*, 1878, 125 Massachusetts 455, 466; *Brooks v. Ahrens*, 1888, 68 Maryland 212, 221; *Heard v. Sturgis*, 1888, 146 Massachusetts 545, 547, and *Williams v. Heard*, 1891, 140 U.S. 529, 539-540; *Kingsbury v. Mattocks*, 1889, 81 Maine 310, 315; *Taft v. Marsily*, 1890, 120 New York 474, 477.

cation of rules announced in Administrative Decision No. IV, see Vol. VII, p. 117. *Held* that delay in distribution of estate and transmission and delivery to claimants of their interest therein was not proximately caused by German exceptional war measures, but by executor's decision, prior to enactment of German war legislation affecting American property, to wait until documents relating to securities deposited in England and taken over as enemy property by British Public Trustee for Enemy Property could be procured.

BY THE COMMISSION: —

This claim is put forward by the United States on behalf of those named in the foregoing caption as claimants, all American nationals, for compensation claimed to be due them from Germany for damages and injuries alleged to have resulted from the application of German exceptional war measures to money and securities which they were entitled to receive as heirs and legatees of the estate of Thomas Achelis.

From the record it appears that on April 6, 1911, Thomas Achelis, an American national, died, leaving a large estate located partly in the United States and partly in Europe. H. Hildebrand, Bürgermeister of Bremen, was appointed and qualified German executor in charge of the European estate. The five brothers and sisters of the decedent who were American nationals and who are claimants herein, together with their sister, Marie Achelis Smidt, of Bremen, Germany, a German national, were the residuary legatees.

At the outbreak of the war in July, 1914, certain of the securities constituting a portion of the European estate were held by the Deutsche Bank (Berlin) London branch in the name of Deutsche Bank, Bremen branch, but really for the account of the estate of Thomas Achelis. These securities were taken over as enemy property by the British Public Trustee for Enemy Property and they or their proceeds were not released by him until after the taking effect of the Treaty of Versailles (Exhibit 1).

Under the applicable German law Bürgermeister Hildebrand as executor was clothed with authority to liquidate and distribute the estate at such time or times and in such manner as dictated by his sound judgment and discretion. The record indicates that in the exercise of that discretion the German executor determined not to force liquidation and distribution of the estate but from time to time to sell the securities, which were of substantial value, when markets and conditions were favorable to yielding the largest returns, and that through his diligence, sound judgment, and discretion in the discharge of his duties as executor practically the entire estate was profitably liquidated.

Distributions were made by the German executor to the claimants and to their German sister and co-residuary legatee, each receiving one-sixth, as follows:

Prior to May 6, 1912 (the exact date not being disclosed).	M.1,800,000.00
On May 6, 1912 . . . . .	509,771.97
November 30, 1912 . . . . .	720,000.00
March 12, 1914 . . . . .	180,000.00

While the liquidation proceeded, no further distributions were made by the German executor until August, 1921.

In the meantime the checking account of the German executor showed credit balances as follows:

July 1, 1914 . . . . .	M.	95,230.00
January 1, 1915 . . . . .		75,736.90
July 1, 1915 . . . . .		111,277.10
January 1, 1916 . . . . .		244,312.00
July 1, 1916. . . . .		288,649.00
December 31, 1916 . . . . .		478,764.15
January 31, 1917 . . . . .		628,029.80

On January 31, 1917, there was transferred from the checking account to the deposit account of the German executor marks 600,000. As the deposit account bore a higher rate of interest than the checking account, conditioned upon the funds remaining on deposit for a definite period, this transfer indicated an intention on the part of the German executor to leave these funds on deposit for some time at least and reap the benefit of the higher interest rate.

A further sale of securities was made by the German executor February 23, 1917, so that on March 1, 1917, the checking account showed a credit balance of marks 52,658.65 while the deposit account showed a credit balance of marks 600,000 plus accrued interest. At that time there remained undisposed of in the hands of the German executor securities of the nominal value of only marks 112,000.

The claimants contend that German exceptional war measures prevented the German executor from distributing the estate prior to August, 1921, and that this delay resulted in damage to claimants for which compensation is demanded of Germany under Article 297 (e) of the Treaty of Versailles incorporated in the Treaty of Berlin.

The German Agent denies any obligation on the part of Germany to make compensation, contending that the German executor's failure to make distributions of the estate subsequent to March 12, 1914, was due to causes other than German exceptional war measures and that no such distribution would have been made had such war measures not been in effect.

The issue thus sharply drawn must be determined according to the rules applicable to estate claims deduced from the Treaty of Berlin by this Commission and embodied in Administrative Decision No. IV, which are substantially as follows:

(1) The amounts due from German executors, administrators, or other German nationals in connection with the administration of estates in Germany to American nationals claiming as heirs or legatees an interest in such estates are not "debts" as that term is used in Section III of Part X of the Treaty of Versailles incorporated in the Treaty of Berlin.

(2) If and when such executor, administrator, or other German national *became obligated* to transmit money or securities constituting a part of an estate in Germany to an American national residing beyond German territory and was prevented from so doing by a German exceptional war measure as that term is defined in the Treaty, such American national would, in pursuance of Article 297 (e) of the Treaty, be entitled to compensation from Germany in respect of resulting damage or injury, if any, inflicted thereby.

(3) By decree of the German Government effective August 9, 1917, it was prohibited to anyone in Germany to make any payments from Germany either directly or indirectly to creditors residing in the United States (or in an Allied country to which the prohibition applied) "whether in cash or by means of bills or checks or by transfer or in any other manner whatsoever, or to remove or transfer money or securities directly or indirectly" to the United States (or to such Allied country).

(4) By decree of the German Government effective November 10, 1917, it was made unlawful for anyone in Germany "to remove abroad, either directly or indirectly, property belonging to" American nationals, "in particular securities and money, without the authority of the Imperial Chancellor", etc.

(5) These two decrees of August 9, 1917, and November 10, 1917, were, in pursuance of the provisions of the Treaty of Versailles, repealed by the German Government effective January 11, 1920.

(6) On August 9, 1917, the rate of exchange for the German mark was 14.2 cents to the mark and on January 11, 1920, the rate of exchange was 2 cents to the mark.

(7) The repeal effective January 11, 1920, of the two decrees above mentioned ended any statutory interference by the German Government through exceptional war measures or measures in the nature of exceptional war measures with the sending of money and securities by executors, administrators, and heirs to American nationals entitled thereto. The German law of August 31, 1919, was enacted in pursuance of and to carry into effect the provisions of the Treaty of Versailles and particularly subdivision (a) of Article 296 thereof, and prohibited the payment by German debtors of "money demands and debts" save through Clearing Offices constituted as provided by the Treaty or until the Allied Opposing Power had formally elected not to adopt the Clearing Office system. The Commission holds that this German law of August 31, 1919, and the decree promulgated in pursuance thereof were peace measures and not exceptional war measures within the meaning of the Treaty.<sup>1</sup>

(8) In order to determine the damage or injury inflicted upon such American nationals by the application of exceptional war measures to securities and moneys of German estates to which they were entitled, there should be deducted from the market value of securities and the exchange value of money at the time delivery would have been made to them but for the application of German exceptional war measures the market or exchange value, as the case may be, as of January 11, 1920.

(9) Where it is made to appear that an obligation of a German executor or administrator to transmit money or securities to an American national arose during the period when the two German decrees above-mentioned were in effect and that he failed to discharge such obligation, it will be presumed, in the absence of evidence to the contrary, that these exceptional war measures were the proximate cause of such failure.

(10) But if it appears, from the evidence presented in any particular case and the reasonable inferences to be drawn therefrom, that such money or securities would not have been distributed or transmitted and delivered to the American national or nationals claiming as heirs or legatees of the estate even had such exceptional war measures not been in effect, then the exceptional war measures will not be held to have been the proximate cause of the damage and injury complained of and Germany will not be held liable to make compensation for the failure or delay in making such distribution and delivery.

Applying these rules to the facts as disclosed by the record in this case, the Commission finds that the delay complained of in the distribution of the German estate and the transmission and delivery to them of the claimant's interest therein was not proximately caused by German exceptional war measures.

As heretofore noted, a part of the European estate was seized as enemy property by the British Public Trustee for Enemy Property and not released

---

<sup>1</sup> Proctor v. German Government, decided by Anglo-German Mixed Arbitral Tribunal December 8, 1927. [VII Dec. M. A. T. 479.]

until after the coming into effect of the Treaty of Versailles. In response to a request of the private counsel for claimants, the German executor, who was responsible for the liquidation and distribution of the European estate, wrote [translation, Exhibit 4]:

"... In regard to the various stocks and other investments, shares in joint stock companies, etc., favorable conditions for paying off, which during the first years after 1911 and even afterwards did not present themselves, had to be waited for, inasmuch as documents relating to the matter were deposited in England and were not realized until later. In connection therewith, the distribution of the bank balance was likewise postponed."

This is the only positive statement in the record with respect to the cause of the delay in the distribution of the German estate. The claimants themselves, by their own testimony or that of their representatives in Germany, do not undertake to ascribe such delay to German exceptional war measures.

But it will be noted that no distribution was made between March 12, 1914, and August, 1921, although the cash credit balances of the German executor were considerable and, generally speaking, continued to increase practically up to the time of the entry of the United States into the war, until on February 1, 1917, they amounted to more than marks 628, 000 and only slightly increased thereafter. During the period of approximately three years and five months, from March 12, 1914, the date of the last distribution, to August 9, 1917, the date of the coming into force of the first exceptional war measure of Germany against the United States and its nationals, there was in force no statute or decree of the German Government which would have prevented the German executor from making a further distribution of the cash assets in his hands to the five American legatees and to the German legatee. This fact, coupled with his transfer on January 31, 1917, from the checking account to the deposit account of practically the entire credit balance, tends to corroborate the statement of the German executor that, in the exercise of his discretion, he determined that a further distribution of the bank balances should be postponed until the documents relating to the securities deposited in England could be procured, the estate fully liquidated, and a final distribution made. That he persisted in this determination throughout the period of American belligerency is evidenced by the fact that during that period he made no payment to Mrs. Marie Achelis Smidt, a German national living in Bremen, on account of her one-sixth distributive share of the available bank balances, notwithstanding there was no legal obstacle to his so doing.

By far the larger part of the German estate had been liquidated prior to July 1, 1914. The legatees were financially strong and the distributive share of each in the remainder was of comparatively small moment to them. The German estate was being ably administered. Apparently no reason existed for a further distribution prior to the final settlement.

Because the damage complained of was not proximately caused by German exceptional war measures, 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 claimants herein.

Done at Washington April 25, 1928.

Edwin B. PARKER  
*Umpire*

Chandler P. ANDERSON  
*American Commissioner*

W. KIESELBACH  
*German Commissioner*

---