

CAROLINE M. BRIDGE AND EDGAR G. BARRATT,
ADMINISTRATORS OF THE ESTATE OF JUSTUS MILES FORMAN,
ET AL. (UNITED STATES) *v.* GERMANY

(*March 19, 1925, pp. 595-597.*)

This case is before the Umpire for decision on a certificate of the two National Commissioners^a certifying their disagreement.

Justus Miles Forman, an American national, 39 years of age, was a passenger on and went down with the *Lusitania*. While the record does not so expressly state, the inference is that he had never married. He was a man of culture and ability, a prolific writer of popular fiction and a playwright. His income from these sources was between \$10,000 and \$12,000 per annum.

^a Dated January 5, 1925.

In the petition filed herein on behalf of his administrators the statement is made that "As a result of his untimely death he was deprived of the earnings of his most fruitful years and his estate was likewise deprived of the benefits thereof." This Commission has repeatedly held that the awards which it is empowered to make in death cases is not the value of the life lost but the losses to claimants resulting from the death, so far only as such losses are susceptible of being measured by pecuniary standards. A right to recover damages resulting from death accrues when, but not until, the death occurs. Manifestly a decedent can not recover for his own death, nor can his estate in a representative capacity recover what the decedent could not have recovered had he lived.

No claim is put forward for the value of personal effects owned by the decedent and lost with him.

The ten claimants herein are his heirs-at-law, a half-sister, a nephew, three nieces, two grandnephews, and three grandnieces, who at the time of decedent's death were of ages varying from 83 to 21 years. Five of them resided in Minnesota, two in Wisconsin, two in Montana, and the other one in either Illinois or New Jersey. The extent of decedent's contact with claimants, through correspondence or otherwise, is not disclosed by the record. The decedent died intestate and these claimants inherited his estate, valued at something over \$19,000.

The second supplemental petition, sworn to in July, 1924, by Edgar G. Barratt, one of the two administrators of the decedent's estate, recites:

Justus Miles Forman, deceased, was accustomed to contribute from time to time sums of money to the support of Caroline M. Bridge and to John Griswold, Maud Griswold, Stanley Griswold, Alice Griswold and Sadie Griswold LaClaire. While your petitioner believes that these sums were substantial in amount, he is unable to supply definite evidence of their extent and frequency because Justus Miles Forman kept no books, and no check stubs covering these payments were discovered among his effects by your petitioner as administrator. However, your petitioner is informed that such payments were made from time to time.

The decedent resided several hundred miles from each of the claimants mentioned in the paragraph here quoted. Had he made money contributions to them such contributions would probably have been sent by check and a record thereof would have been found in decedent's bank-check stubs. Caroline M. Bridge, the half-sister of the decedent, as one of the administrators of his estate, has executed numerous legal documents in connection with the settlement of said estate by the administrators. The names and addresses of the other claimants appear in the record herein, but the testimony of none of them is offered. The fact that no documentary evidence could be found among the decedent's effects of any contributions made by him to these claimants is all the more reason why the testimony of the claimants themselves as to the extent of such contributions, if any, should have been offered.

In this state of the record, when the facts were manifestly within the knowledge of the claimants themselves and their testimony is not offered, the unsupported allegation of one of the administrators, made on information, can not be accepted by the Commission as evidence upon which to base an award. The record as submitted is barren of competent and convincing evidence in support of the contention that the claimants or any of them suffered damages, as measured by pecuniary standards, resulting from decedent's death.

Applying the rules announced in the *Lusitania* Opinion and in the other decisions of this Commission to the facts as disclosed by the record herein, 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 or any of them.

Done at Washington March 19, 1925.

Edwin B. PARKER
Umpire
