HENRY CACHARD AND H. HERMAN HARJES, EXECUTORS OF THE ESTATE OF MEDORA DE MORES (UNITED STATES) *v.* GERMANY

(October 30, 1925, pp. 633-635.)

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

Medora de Mores, an American national, the widow of the Marquis de Mores, was the beneficiary of a trust fund, held by a German financial institution as trustee, which, during the years 1917 to 1919, was subjected to exceptional war measures by the Government of Germany, to her damage. She died on March 1, 1921, leaving two wills, one a holographic will made on November 1, 1917, disposing of all of her property in Europe; the other made December 14, 1917, disposing of her property in the United States and Canada. Her European estate, in which there is no interest impressed with American nationality, is being administered under the first will by two executors, one of whom is an American citizen residing in Paris, and the nationality of the other is not disclosed. Her estate in the United States and Canada is being administered under the second will by the two executors claimants herein, both of whom on March 1, 1921, and November 11, 1921, were, and since have remained, American nationals and residents of Paris. The testatrix bequeathed the sum of $20,000.00 to an American national residing in the United States and the residue of her estate to her two sons, Louis and Paul Manca de Vallombrosa, who were on her death and have ever since remained residents and nationals of France. The American beneficiary has been paid in full by the executors from the proceeds of the American estate, which is amply sufficient for the payment of all succession taxes, expenses of administration, commissions, and liabilities generally of the American estate. The entire amount of any award made in this case would therefore inure to the benefit of French nationals—the testatrix's sons, Louis and Paul Manca de Vallombrosa.

The fact that this claim is put forward on behalf of executors acting in their representative capacities and that these executors are American nationals does not in itself impress the claim with American nationality.[1] The contrary

[1] Halley, Administrator, and Grayson, Administrator, British-American Commission under Treaty of May 8, 1871, Hale's Report 19, Howard's Report 15, III Moore's Arbitrations 2241-2242; Wulff *v.* Mexico (1876), reported in II

rule contended for by the claimants has been rejected by the Mixed Arbitral Tribunals constituted under the Economic Clauses of the Treaty of Versailles. [2] The entire beneficial interest in the claim is in French nationals, and the Mixed Arbitral Tribunals to which France is a party have uniformly held that the nationality of the claim must be determined by the nationality of the beneficiary and have carried this rule to the extent of applying it to corporations, rejecting the juridical theory of the impenetrability of corporations for the purpose of determining the true nationality encased in the corporate shell. [3] The Umpire holds that the claim as here presented was not impressed with American nationality on November 11, 1921, when the Treaty of Berlin became effective, and under the rule announced in Administrative Decision No. V Germany is not under that Treaty obligated to pay it.

Applying the rules announced in Administrative Decision No. V and in the other decisions of this Commission to the facts as disclosed by the record

(Footnote continued from page 292.)

Moore's Arbitrations 1353-1354; Wiltz *v.* United States (1882), III Moore's Arbitrations at page 2254; Ralston's International Arbitral Law and Procedure, section 188; Borchard's Diplomatic Protection of Citizens Abroad, section 288.

[2] Decisions of Anglo-German Mixed Arbitral Tribunal in the cases of Executors of Lederer *v.* German Government, Volume III of Decisions of Mixed Arbitral Tribunals (hereinafter cited as "Dec. M. A. T.") at pages 765, 766, and 770, Dewhurst and Others *v.* German Government, III Dec. M. A. T. at page 528, and E. A. Rehder *v.* Langesellschaft "Wannsee", IV Dec. M. A. T., page 201. The decision of the same tribunal in the case of Executors of W. Klingenstein *v.* Maier, IV Dec. M. A. T., page 6, announced the same rule as in the case of Eckstein and Another *v.* Deutsche Bank, III Dec. M. A. T. at page 760, which expressly refers to and differentiates that case, arising under Article 296 of the Treaty of Versailles, from the Lederer and similar cases arising under Article 297 of that Treaty.

[3] Decision of Franco-German Mixed Arbitral Tribunal in the case of Société du Chemin de fer de Damas-Hamah c. la Compagnie du Chemin de fer de Bagdad, I Dec. M. A. T., pages 401-407. In this case both the claimant and defendant were by their incorporation Turkish. The jurisdiction of the tribunal was challenged by both the defendant company and the German Agent because the claimant company was not French and the defendant company was not German. The tribunal held that as the claimant company was French-controlled and the defendant company was German-controlled the tribunal had jurisdiction. In the course of the opinion it was said: "Moreover, it is thoroughly in accord with the spirit of the Peace Treaty to pay less attention to questions purely formal than to palpable economic realities; consequently, when the nationality of a corporation is to be determined more weight must be given to the interests represented therein than to the outward appearance which may conceal such interests. In the present case the circumstance that both corporations are described as Ottoman (Turkish) and that their charter seat is in Turkey must be considered as purely formal and not of decisive importance."

Decisions of Franco-German Mixed Arbitral Tribunal in the cases of Société anonyme du Charbonnage Frédéric Henri c. Etat Allemand, I Dec. M. A. T., pages 422-433, and Wenz et Co. c. Etat Allemand, II Dec. M. A. T., pages 780-784.

Decision of Franco-German Mixed Arbitral Tribunal in the case of Jordaan et Co. c. Etat Allemand, III Dec. M. A. T., pages 889-894. There the claimant was a joint stock company existing in Paris. The majority of its stock was owned by Dutch nationals. The tribunal held that under subdivision *(e)* of Article 297 of the Treaty of Versailles the claimant was not a French national and as such entitled to be compensated by Germany in respect of damage or injury inflicted upon its property, rights, or interests in German territory.

Decision of Franco-Bulgarian Mixed Arbitral Tribunal in the case of Régie générale de Chemins de fer et Travaux publics et Cie des Chemins de fer Jonction Salonique-Constantinople c. Etat bulgare, III Dec. M. A. T., pages 954-962.

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.

Done at Washington October 30, 1925.

Edwin B. PARKER
Umpire
