

Alice E. AND BerTE Scholborg
(UNITED STATES) v. GERMANY

(January 20, 1926, pp. 646-648.)

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

The claimants, Alice E. Scholborg and Berte Scholborg, sisters, were on July 17, 1914, and have since remained American nationals. On that date their aunt, Bertha Scholborg, died in Germany. Her death released a legacy bequeathed to the claimants by their uncle, George Scholborg, the income from which Bertha Scholborg was entitled to receive during her life. This legacy was in the form of securities held by Dr. C. Bulling, executor of the estate of George Scholborg. On October 27, 1914, Dr. Bulling wrote to the claimants, then residing in the State of New York, stating that he was prepared to deliver the securities bequeathed to them by George Scholborg to such person as they might authorize to receive them. The claimants, however, instructed Dr. Bulling to hold these securities "until the war is over" and added: "Any interest which accumulates I should like you to send". In accordance with these instructions, Dr. Bulling as executor continued to hold these securities and from time to time remitted the income therefrom to the claimants, the last remittance made being on October 18, 1916. The war legislation enacted by the German Government prohibited his remitting the claimants subsequent to that date the amounts collected by him, either as income or as principal of the maturing securities which he would have remitted but for this restraining legislation.

Under the rules announced by this Commission in Administrative Decision No. IV the claimants are entitled to recover, in terms of dollars, the amounts paid in marks to the executor valorized at the rate of exchange existing on the several dates when he would have paid them over to the claimants had he not been prevented from so doing by the German exceptional war measures, less the value, in terms of dollars, of these marks on January 10, 1920, when this war legislation was repealed and the statutory obstacle to making remittance removed.

The claimants, however, are not entitled to recover an amount equal to the depreciation in value of the securities which they voluntarily left in the hands of Dr. Bulling, executor, and which had not matured or been converted into cash prior to January 10, 1920, which securities were neither actually nor constructively seized or administered by or through the Treuhaender or any other German governmental agency. Claimants have failed to prove that the exceptional war measures of Germany had any application to the unmatured securities voluntarily left by them in Germany.

Applying the rules announced in Administrative Decision No. IV and in 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 obligated to pay to the Government of the United States on behalf of Alice E. Scholborg and Berte Scholborg jointly the following sums:

(1) Ninety-seven dollars thirty-three cents (\$97.33) with interest from May 1, 1917.

(2) Sixty-six dollars ninety-four cents (\$66.94) with interest from October 1, 1917,

(3) Four hundred nineteen dollars twenty-eight cents (\$419.28) with interest from May 1, 1918,

(4) Sixty-seven dollars seventy-one cents (\$67.71) with interest from October 1, 1918.

(5) Two hundred forty-five dollars thirty-nine cents (\$245.39) with interest from May 1, 1919, and

(6) Twenty-eight dollars forty-nine cents (\$28.49) with interest from October 1, 1919,

all interest at the rate of five per cent per annum.

Done at Washington January 20, 1926.

Edwin B. PARKER
Umpire