

MINUTE SHEET.

Reference

1152/6A/39-11
13
11

Black Tom

1. We are supporting claims of various British insurance companies (non-marine) who paid claims made by American Nationals in respect of property damaged by the Black Tom explosion in July 1916.
2. An American German commission was set up to adjudicate on claims by Americans against Germany for compensation for damages caused by Germany while America was still neutral.
3. Before a claim can be presented to the commission it must be espoused by the American agent who acts on the orders of the State Department.
4. In this case the S. D. by their letter of June 8th, 1927 (951/-/36) approved the refusal of the American Agent to espouse these claims on the ground that they would not inure to the benefit of American nationals. Rumsey and Morgan attorneys for the English companies had argued (letter May 31st 1927) that the companies were subrogated to the assured, i.e. the original sufferers of the loss. Subrogation is the principle of law by which an insurer stands in the shoes of the person he has insured. This is a universally established principle which is obviously equitable so that the wrongdoer who may have caused the damage to the assured should not escape by pleading that the insurer has made good the damage caused by his wrongdoing and therefore he, the wrongdoer, need not pay anything or else so that the assured should not be paid twice over, ^{once} by the insurer and once by the wrongdoer for his loss.

In their decision of 1927 the S. D. very cynically say, "The Department realizes that under municipal law the doctrine of subrogation may properly be

involved/

[OVER.

JGF:CL

(112) 0707/250
2,000,000 4/34 JGASL
Co. 644/229
(REQIMINT)

^{held}
involved regardless of the nationality of the corporation claiming its benefit, and as a matter of policy it invokes the same doctrine in international arbitrations where the result is to benefit American nationals. A different situation is presented, however, where a claim specifically predicated upon the doctrine of subrogation does not inure to the benefit of American nationals, and the Department consistently refuses in such cases to recognize the applicability of the doctrine."

5. This decision of the S. D. is not only manifestly unjust but also contrary to the U. S. practice which has often espoused claims in the past not ensuring to the benefit of American nationals. Besides as the passage above admits the U. S. have pressed claims on behalf of Americans subrogated to foreigners. In consequence of the iniquity of this decision E. Howard in a note (17(4)) of March 1st 1929 asked the S. D. to reconsider their decision on the ground of "severe and unmerited hardship" caused to the English insurance companies. On April 11th 1929 Stimson in answer (17 (14)) promised that if the commission should find Germany liable for the damage the Department "will again examine the cases of the British Insurance companies in the light of your note and accompanying memorandum". This is the promise we are now asking the S. D. to implement (see letter October 14th 1939); although technically the Commission has not found Germany liable though it is quite clear that this finding will soon take place.

6. The history of the American companies claim (also based on subrogation) is as follows:

October 16th 1930. Hague decision; case heard on its merits. Held case against Germany had not been proved.
December 3rd 1932. Washington decision; petition to re-open case for new evidence rejected.

June/

- 2 -

June 3rd 1936. Petition to set aside Washington decision allowed which meant that case was reopened for further hearing as to whether case should be reheard because of new evidence.

June 16th 1939. Petition to reopen case for new evidence allowed. Decision in such terms that it was clear that in absence of German commissioner who had retired in a huff the hearing on the merits would be formal and the American companies would obtain a decision in their favour.

7. In reliance on the S. D.'s promise of 1929 to reconsider the claims the British insurance companies have very largely helped the American companies to win the case by producing the evidence to show that the original decision in Germany's favour was obtained by fraud.

8. In the discussion tomorrow, October 20th, it is suggested:

- 1) That the promise of 1929 be recalled and that our assumption be confirmed that the S. D. will implement it.
- 2) That the procedure for reconsideration be settled. As the only chance is to shame the S. D. by showing them how monstrously they are behaving I would suggest that the British companies point of view should be advanced in a memorandum (either the 1929 one or a newer one) to be followed by a meeting at which the Embassy representatives should be accompanied by the English insurance companies' lawyers and if possible by the American companies' /

companies' lawyers who are sympathetic. At this meeting the broad considerations of justice should be stressed. We are not asking the S. D. to allow the claims but only to permit them to be presented to the Commission.

- 3) If opportunity arises some of the more glaring iniquities of the S. D.'s attitude might be brought in.

JF.

19th October 1939