Title:
ICC Award No. 513, World Trade, October 1932, at 10 et seq.

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Case No. 513

DISPUTE BETWEEN A BELGIAN MERCHANT AND AN ITALIAN MERCHANT REGARDING THE PAYMENT OF GOODS OF CHINESE ORIGIN, SOLD IN POUNDS BEFORE THE SUSPENSION OF THE GOLD STANDARD BY GREAT BRITAIN. ON THE 21ST SEPTEMBER, 1931, THE PLAINTIFF HAD SENT TWO INVOICES AMOUNTING IN ALL TO £ 432.13.3. ON OCTOBER 8TH THE PLAINTIFF DEMANDED PAYMENT OF THESE POUNDS IN GOLD VALUE. THE DEFENDANT REFUSED.

Extract of the award made on April 11th, 1932, by the arbitrator Mr. A. Daudet, former "Auditeur à la Cour des Comptes", Director of the Association Nationale d'Expansion Economique, Paris:-

"...Whereas, while in the initial exchange of correspondence establishing the essential conditions of the contract, the price was not expressly stipulated in "gold pounds", the absence of this latter mention is not sufficient to invalidate the claim,

"Whereas, conversely, the fact that two traders who are not British and who are of different nationalities negotiated in pounds sterling, cannot in itself be regarded as a certain indication of the desire of the two parties to deal in a stable currency,

"Whereas in fact, if the stipulation of pounds or dollars between traders of different nationality has been frequently and even generally due to the mutual desire of the interested parties to avoid currency fluctuations by dealing in a currency considered as stable the choice of the currency of a third country may equally be governed by other considerations, particularly the trading facilities enjoyed by drafts made out in that currency,

"Whereas, it is true, these latter considerations arise particularly in the case of contracts made between countries having an inadequate economic and banking organisation or where their reciprocal dealings are infrequent,

"Whereas, such is not the case as far as Belgium and Italy concerned,

"Whereas by reason of the importance of each one of these two countries, their proximity to one another, and the frequency of their relations and by reason of the facilities which existed even then for the plaintiff and the defendant to deal either in Belgian francs or in lire, the choice of the pound sterling could, in the absence of other indications, be regarded as being prompted by the mutual desire of the parties to safeguard their commercial dealings from the risks of exchange,

"But whereas the value of this interpretation is sensibly diminished by the fact that in the case in question the goods were sent from China, i.e. from a country where the quotation prices is generally if not exclusively made in sterling or dollars,

"Whereas, consequently, it may be considered that it was for convenience sake that the plaintiff made his prices in sterling to the defendant,
"Whereas, also, the invoices were made out by the plaintiff on September 21st, 1931, i.e. at a time when the pound was showing obvious signs of weakening, without the said Company having thought of stating that it had "gold pounds" in mind,

"Whereas, too, the first claims of the plaintiff were only formulated on October 5th, and it is permissible to think that the idea of an allowance being made only occurred to him later on and following the discussions of the question which were started in various economic circles,

"For these reasons and especially on account of the last mentioned fact, I, the said arbitrator,

"1. Award and find that the plaintiff is not justified in claiming, in respect of the sum involved of £ 432.13s.3d, the difference between the gold value of this amount before September 21st, 1931, and the gold value of this same amount on the date of the award;

"2. In consequence, dismiss the claim of the plaintiff;

"3. Confirm the arrangement agreed between the parties and according to which half the expenses and costs of the arbitration, including the arbitrator's fees, shall be paid by each one of the two parties;

"4. Decide in consequence that each party shall pay to Headquarters the sum of 1,000 French francs."

Referring Principles:

V.2.3 - Nominal-value principle