Case No. 536

DISPUTE BETWEEN TWO COMPANIES OF TWO COUNTRIES OF THE EUROPEAN CONTINENT CONCERNING PAYMENT FOR GOODS SOLD IN POUNDS STERLING BEFORE THE SUSPENSION OF THE GOLD STANDARD IN GREAT BRITAIN. THE SELLER DEMANDED PAYMENT IN GOLD POUNDS. THE DEFENDANT CLAIMED THAT HE NEED ONLY PAY THE NUMERICAL AMOUNT OF STERLING STIPULATED IN THE CONTRACT AND LEGAL TENDER IN ENGLAND AT THE TIME OF PAYMENT.

Extract from the award rendered in Paris on February 11th, 1933 by a board of arbitration consisting of three arbitrators.

Whereas the price of the goods was fixed in shillings;

Whereas the choice of the 4 sterling is sufficiently explained by the fact that the international market for the goods in question is London where it is quoted on the exchange and that such contracts are usually based upon £ sterling, without it being possible to deduce from that fact that it is not the £ sterling as legal tender, but the gold £ which is to be the currency of the contract;

Whereas, subsequently to the contract, the value of the fell considerably an the foreign exchange market and whereas the seller uses that fact as an argument for claiming that the price should be paid to him on the basis of the old gold parity;

Whereas the contract was clearly concluded without any reservations as to the rate of exchange and without any gold clause;

Whereas such reservations cannot be considered as having been implied, and whereas the plaintiff is not justified in using as an argument his intentions or his conviction that to conclude the contract in £ sterling offered as much security as to conclude it in gold;

Whereas the plaintiff has no one to blame but himself if he was deceived therein and if his perspicacity was at fault;

Whereas it would be useless to claim that since an arbitration court judges in equity rather than purely according to law the plaintiff should therefore be allowed partial damages in respect of his "disappointment";

Whereas, further, the arbitrators have not been authorised to act as "amiables compositeurs";

Whereas the contract in dispute provides for payment in shillings without any exchange guarantee, and whereas no arbitrator may in any way add to the clear and explicit Intention of the parties;

Whereas, in addition, the disastrous depreciation of the £ has, in the case of a large number of contracts, resulted in unexpected profit or loss; whereas the same persons have often gained and lost at the same time, an the one hand by settling debts in £ and on the other hand by being paid in £; whereas it would be inadmissible in law to modify business transactions on the ground that it was necessary to maintain a balance;
Whereas the contract in dispute is subject to the law of the buyer’s country, the delivery of the goods being fixed to take place in that country, and the domicile of the defendant and the place of payment being also in that country;

Whereas, nevertheless, even if the plaintiff’s case is unfounded, it cannot be said that he was imprudent in submitting his point of view to arbitration; whereas in fact the defendant himself upheld the same point of view in another case; whereas there was therefore legitimate doubt; whereas in these circumstances it seems fair, in accordance with the legal precedent of the defendant’s country, to divide the costs and expenses between the parties in the proportions given below;

For these reasons, the board of arbitration awards and finds that the plaintiff’s claim for an additional payment bringing the price up to the par rate of $ 4.86 per £ sterling is unfounded;

Awards and finds that the defendant has fully and entirely paid the price that was due;

Awards and finds that there is no ground for compensation owing to the depreciation of the £ sterling;

Consequently dismisses the plaintiff’s claim.

However, for the reasons given above, the board of arbitration awards and directs the defendant to pay one-sixth of the costs and the plaintiff to pay the remaining five-sixths, and further gives notice to the parties that they have undertaken to carry out the present award without further proceedings or formalities of any kind.

**Referring Principles:**

V.2.3 - Nominal-value principle