their German nationality by reason of ten years' absence from Germany, or whether such absence had been broken by their temporary returns to Germany. The Reichsgericht, which is the Supreme Court in Germany in civil and criminal matters, had in several cases held that the ten years' stay abroad was broken by a temporary return for a short visit or to take a cure. The Administrative State Courts in Prussia and Bavaria, against whose decisions there was no appeal, had taken the opposite view. The Reichswirthschaftgericht, a Court which is functioning in Germany for the purpose of deciding questions of compensation to Germans under the Treaty of Peace, and whose decisions are also made final, had in practice followed the decision of the Reichsgericht.

Mr. Justice Astbury, in his judgment, first referred to an unreported decision given by him in July, 1922, upon a somewhat similar question in the case of Reeve *v.* Loyanté. In that case the Custodian was also the defendant. An affidavit as to German law by the late Dr. Schuster was put in in support of the petitioner's claim, and, no other evidence having been put in by the Public Trustee, he had given his decision in favour of the petitioner, to the effect that she had become stateless, notwithstanding that she had on two occasions made temporary visits of a few hours to Germany to consult a lawyer, returning on each occasion to Paris on the same day.

In the present case it appeared to him that the position in Germany was entirely different to that which Dr. Schuster in his affidavit thought it was. He had had the assistance of three expert German lawyers, two called by the plaintiffs and one called by the defendant, and had been made acquainted with the state of the decisions in Germany and the opinions of its legal jurists to a very much greater and different extent from what was laid before him in the former case. The Reichsgericht, or the Imperial Court of Leipzig, which is the highest Court in Germany, and which has a civil and criminal side, had held on the 4th February, 1895, that the ten years' term in the Act of 1870 was interrupted by any physical entry of the person in question into Germany, and that as from such entry the ten years' term had to commence again. That decision of the Leipzig Court had been consistently followed in a considerable number of cases since February, 1895, and from that decision and the reasoning and effect thereof the Imperial Court had never departed whenever the question had arisen before it. The second set of Courts referred to in the action were what are called the Supreme Administrative Courts of the various German States. The first considered decision of those Courts was a decision of the Prussian Court of the 25th June, 1901, which had been followed in 1904 and 1908 by the Bavarian Administrative Court, and as late as the 1st January, 1924, there was a similar decision of the Administrative Court of Hamburg. In the first of those decisions the Court had held that a German-born subject who had gone abroad to Holland and had become naturalized there had not, by casual visits to Germany, interrupted the ten years' term. The Bavarian and Hamburg Courts had given decisions to the same effect.

There was a further Court in Germany from which again there was no appeal, a Reich or Imperial Court, which had been referred to in the case as the Economic Court or the Compensation Court. This was a Court set up to determine questions of compensation between individuals and the Reich on this very question. It appeared plain to the learned Judge, from reading three decisions of that Court which had been referred to, that it based itself upon the Leipzig view and not upon the view of the Administrative Courts. Although there was no direct decision of that Court definitely deciding the exact meaning of the ten years' uninterrupted stay abroad in the statute of 1870, he had no doubt, nor had the plaintiffs' expert witnesses, that that Court had acted in accordance with the view laid down by the Imperial Court at Leipzig, and had never attempted to follow or suggested that it ought to follow the view of those Administrative Courts that he had referred to.

The learned Judge, after reviewing the evidence given in the case and the certificates that the plaintiffs were stateless, which had been given by the Government authorities (Regierungsrath) of Birkenfeld, stated that it appeared plain from the experts' evidence that these certificates were only *prima facie* evidence.

The German jurists and text-book writers, to whose views he had been referred, differed very considerably in their opinions. Laband and Seydel, two leading writers of commentaries on German law, took the view that the Administrative Courts were right, but they differed in other respects in their reasons. Dr. Cahn, on the other hand, the most eminent authority who had written a general digest, adhered to the view taken by the Reichsgericht. There were a number of jurists who had written monographs or theses on the particular point under the Act of 1870, and, with the exception of one, all of them followed the view of the Reichsgericht and thought that it was right. Further, ordinances had been directed by the Executive of Prussia and a number of other States in Germany to those whom they controlled decreeing that the Leipzig decision was to be followed in preference to the others.

Upon the evidence before him he was unable to hold that the Administrative Courts' decisions represented the correct view of German law. He had no competence to decide which of two sets of Courts in Germany were the best interpreters of the German statutes. As to the principal contention made on behalf of the plaintiffs—that in the circumstances the giving of the certificates by the Regierungsrath was binding and conclusive—it seemed to him plain from the evidence of the three German experts that the certificates, which he would assume were issued by the proper and competent authorities, were only *prima facie* evidence of the statelessness which they certified. The whole of the expert evidence resulted in this: that, notwithstanding the *prima facie* validity of those certificates, nevertheless when produced before a Court in Germany having to try the question raised in the certificates, such Court would not only be entitled but bound, if facts were brought before it to show that there was a serious question whether the statelessness certified was a fact or not, to decide the question brought before it according to its own view of what the German law was. On the evidence proved before him as to what would be the practice in the German Courts with regard to the certificates, he had no hesitation in finding that, under the circumstances proved in that Court, if they arose in a German Court in which the question of statelessness was a relevant matter to be considered, the Court would not hesitate to go behind the certificates.

As a result he came to the following conclusions: He considered that the final onus of proving their statelessness was upon the plaintiffs. If the Leipzig and Economic Court decisions were right and the view of the German Executive authorities was correct, the plaintiffs' case of necessity failed; if, on the other hand, the view of the Administrative Court was to be preferred, then the evidence and general facts which had been adduced before him were consistent with the plaintiffs having possibly had throughout an intention to retain their German business connection. In his opinion, based on the evidence before him, it was impossible to say that even in an Administrative Court in Germany the plaintiffs must have made out their case if they had litigated it there upon the materials laid before him. In any event the question appeared to him to depend upon German law which he was unable and incompetent to construe for himself, and it was plainly impossible for him under the circumstances proved in that case to say what the unquestionable or undoubted German law, if there was such on the subject, was, when the highest German Courts and jurists differed diametrically upon it, and the Executive authorities insisted that the Liepzig construction of the Act of 1870 should be observed by those whom they control.

For these reasons he had no alternative but to hold that none of the plaintiffs had proved that their German nationality had been lost on or before the 10th January, 1920, and that the action must be dismissed with costs.

(3.) *Liquidation of Austrian Property.—Interpretation of Paragraph (b) of Article 249 of the Treaty of St. Germain-en-Laye.*

The Treaty of Peace (Austria) Order, 1920 (section 2), provides that the expression "nationals of the former Austrian Empire" does not include persons who, within six months of the coming into force of the Treaty, show to the satisfaction of the Administrator of Austrian Property that they have acquired, *ipso facto*, in accordance with its provisions, nationality of an Allied or Associated Power, including those who, under Articles 72 or 76 of the Treaty, obtained such nationality with the consent of the competent authorities, or who, under Articles 74 or 77 thereof, acquired such nationality by virtue of previous rights of citizenship. (This definition follows the exact wording of the last subparagraph of paragraph (*b*) of Article 249 of the Treaty of St. Germain-en-Laye.)

The meaning and effect of this provision was fully discussed in an unreported case before the Divisional Court—The King *v.* Administrator of Austrian Property, *ex parte* Charles Fidao and others—in which judgment was given on the 13th November, 1924.