The matter came before the Second Division for consideration in the case of Mabel de Vere Reed *v.* Rieder & Peratoner G.m.b.H. (No. 1690), in which the British creditor claimed under Article 296 to recover money lent to the debtors. Under the terms of the contract the loan was repayable without notice on the 15th April, 1920, but by reason of bankruptcy proceedings taken in Germany against the company during the war the Tribunal found that in accordance with German law the debt in question fell due at the date of the institution of those proceedings, and accordingly became payable during the war within the meaning of Article 296 (2). From entries in the files of the competent German Court it appeared that the bankruptcy proceedings came to an end on the 24th October, 1919, and that on the 1st December, 1919, an entry was directed to be made in the official Commercial Register stating that the company had been dissolved and the firm had ceased to exist. Accordingly the Tribunal found that the company in question ceased to exist as a legal entity before the Treaty came into operation.

The German Government Agent opposed the contention of the British Attorney-General that where a debtor company had been dissolved before the 10th January, 1920, no claim could be maintained under Article 296.

The Tribunal were of opinion that in order that there might be a debt within the meaning of either (1) or (2) of the article there must, as a general rule, have been a *vinculum juris* between a national of one of the Contracting Powers and a national of an opposing Power at the date when the Treaty came into force. Reliance was, however, placed by the German Government Agent upon clause (*b*) of the article, which provided that each of the High Contracting Parties should be responsible for the payment of "such debts" due by its nationals, except in the cases where before the war . . . the debt was due by a company whose business had been liquidated under emergency legislation during the war.

In the present case the borrower company itself had been liquidated, and not its business only. Moreover, the liquidation was not effected under emergency legislation, but under the ordinary law of Germany. It was therefore clear that, in their ordinary meaning, these words did not support the contention which was founded upon them. The German contention, moreover, in view of the Tribunal, disregarded the effect of the word "such" in the earlier part of the clause, whereby its application was limited to debts as defined at the beginning of the article. The Tribunal in a case such as the present, in which the meaning of the words of the Treaty in relation to the matter in question, read and construed in their ordinary sense, was reasonably clear, did not feel at liberty to depart from this meaning merely upon an assumption that the framers of the Treaty might have had their attention directed to a point which in fact might have been overlooked, and upon a speculative suggestion as to the way in which it was to be supposed that they intended that the draftsmen should deal with it.

The Tribunal therefore decided that on the 10th January, 1920, there was no debt due from the German company to the British creditor within the meaning of Article 296.

(5.) *Article 296 of the Treaty of Versailles.—Death of Debtor (a) prior to 10th January, 1920, (b) subsequently to 10th January, 1920.*

The German Clearing Office sought again, in the case of *Re* Bank fur Handel und Industrie *v.* H. Goldstein (German Clearing Office *v.* British Clearing Office) (No. 2415), to extend the Government guarantee under Article 296 to a case where the debtor national had died prior to the 10th January, 1920. In the case in question the British debtor was killed in action on the 23rd March, 1918, and no grant of administration of his estate had been taken out. The British Clearing Office contested the claim on the grounds that there was no living debtor resident in England on the 10th January, 1920, and that therefore Article 296 was not applicable. The German Clearing Office set up that the guarantee provided for in Article 296 (*b*) and paragraph 4 to Section III, Part X, of the Treaty was applicable to such a case.

The Tribunal decided that in its present form the claim could not succeed, and followed their decision in Delius *v.* German Government (No. 403), the decision being without prejudice to the right of the creditors to present their claim again, whether under Article 296 or any other article and against any person.

In cases under Article 296 where an enemy debt is shown to exist on the 10th January, 1920, the liability under the Treaty to credit cannot be affected by the death of the debtor since that date.

In the case of Redfern (Paris) Ltd. *v.* The Testamentary Executors of Edith Kappel (deceased) (No. 1767), (*Recueil*, iv, p. 645), the original German debtor died on the 2nd October, 1920, her heirs being her four children, of whom two had by marriage acquired non-German nationality. The German Clearing Office contested part of the claim on the grounds that the obligation of the executors was to administer the estate for the heirs, and that they (the executors) were not entitled to withhold an amount corresponding to the two daughters' share of the inheritance, for the daughters, having lost German nationality, could not be made answerable, through the clearing procedure, for the debt of the testatrix. Whilst, as a matter of procedure, German law allowed the executor of an estate not distributed amongst the heirs to be sued, this did not, it was stated, make him personally liable. On the other hand, until the estate was distributed, the heir, it was claimed, was not personally liable for the debts of the deceased, the limit of his obligation being that he was not entitled to object to the creditors of the deceased being satisfied out of and in proportion to his share of the estate. A similar position arose if the community of heirs were sued. The German Clearing Office therefore contended that under German law no personal legal liability existed, and that there could not therefore be a debt within the meaning of Article 296.

The Tribunal, however, were of opinion that, assuming that there was a pecuniary obligation within the provisions of Article 296—*i.e.*, a debt payable before the war and due by a German national residing within Germany on the 10th January, 1920, to a British national residing within British territory on the same date—the main provision directing its settlement through the Clearing Office was applicable, and that such provision was not to be affected or defeated through events which had happened in the course of unavoidable delay in carrying the matter through. In the case before them there were present on the 10th January, 1920, all the necessary elements, and there was in existence a debt of a determined amount to which the provisions of Article 296 applied.

As a matter of procedure, however, the Tribunal required that there should be before them some existing party against whom they might make an award. They did not consider it necessary to insist upon the community of heirs whose fortune was affected being before them, for under paragraph 327 of the German Civil Processordnung a judgment given in a case between an executor and a third person (*i.e.*, not an heir) in respect of a right that is subject to the administration of the executor operates whether for or against the heir. The Tribunal were thus in the position of being able to give an effective decision against the executor in his capacity as such. The creditors were therefore entitled to succeed.

(6.) *Decisions regarding Life Policies.*

The decision in Hahlo *v.* Law Union and Rock Insurance Co. Ltd. (No. 2501), (*Recueil*, v, p. 35), is one of some importance in regard to claims under policies of life insurance. The German creditor was the executor under the will of H. J. Hahlo, a German national, who died in September, 1916, and who held a policy of life insurance issued by the Crown Life Assurance Company. The policy contained a clause making the insurance company liable to pay amounts secured thereby within three calendar months after proof should have been given to the satisfaction of the directors of the death of the assured. On account of the war, proof of death was not given until the 12th April, 1922. The debtors were prepared to admit principal, bonus, and interest from that date, but the creditor claimed interest as from the date of death, relying upon paragraph 11 of the Annex to Section V, Part X, of the Treaty, which provides that contracts of life insurance entered into between enemies shall not be deemed to have been dissolved by the outbreak of war, or by the fact of the person becoming an enemy, and that any sum which during the war became due upon a contract deemed not to have been dissolved under the preceding provision shall be recoverable after the war, with the addition of interest at 5 per cent. per annum from the date of its becoming due up to the date of payment.