

spondence between the British and German Governments during the past year. At a meeting of all the members of the three divisions of the Tribunal a resolution was passed in the following terms:—

“The Anglo-German Mixed Arbitral Tribunal having deliberated in a joint meeting upon the subject of conflicting decisions on the part of its constituent divisions and upon divers measures which have been suggested in order to avoid the inconveniences incident thereto, and having carefully weighed all the considerations which appeared relevant in this connection, is of opinion that at the stage of existence and work of the Tribunal which has now been reached the best course to pursue with regard to this matter is for the three divisions to continue their recent practice of free but informal consultation between the members as occasion arises, with a view, as far as practicable, to obviating future divergences and minimizing the inconveniences resulting from those which have already occurred.”

“Although no definite solution of the problem could be found, I am hopeful that the procedure adopted by the Tribunal will in practice provide a working solution and will minimize the risk of conflicting decisions which are a very serious obstacle to the speedy settlement of claims.”

(1) *Government Guarantee of Clearing Office Claims.—Insolvent Companies.—Debtor deceased prior to 10th January, 1920, without Heirs.*

There has for long been considerable controversy between the two Clearing Offices as to the liability of companies and the application of the Government guarantee for insolvent companies, both in cases where the debtor company was completely dissolved prior to the 10th January, 1920, and in cases where, though not completely dissolved by that date, its business had during the war been subjected to liquidation under emergency legislation.

In the former class of case a decision favourable to the point of view of the British Clearing Office—namely, that the Government guarantee did not apply in cases where there had been a dissolution prior to the said date—had already been obtained in the case of *Mabel de Vere Reed v. Rieder and Peratoner Gesellschaft* (No. 1696), (*Recueil*, v, p. 270), to which allusion was made in last year's report. The German Clearing Office have appeared loath to accept this decision as governing cases of dissolved British companies and to withdraw claims already put forward, which, according to such decision, would be bad. In the meantime an attempt was recently made by them by proceedings in the British Courts to obtain the restoration to the Register under section 242 (6) of the Companies (Consolidation) Act, 1908, of a British company which was struck off and consequently dissolved under the earlier subsections of section 242, in order that the benefit of the British Government's guarantee might be obtained on the ground that the company, if restored, was to be deemed to have continued in existence as if its name had not been struck off. This attempt, however, failed, as shown by the case of *Re F. Godelmann & Co., Ltd.*, more fully referred to below.

In the second class of case the German Clearing Office have endeavoured to contend that the wording of Article 296 (b) and paragraph 4 of the annex to Section III, Part X, “whose business had been liquidated under emergency war legislation during the war,” means that the liquidation of the company, or, alternatively, of its business, must have been absolutely completed in order that the Government guarantee should not attach. There have been three recent decisions of the First Division throwing a certain amount of light upon the views held by the Tribunal upon the meaning of the article in question. In the case of *In re A. E. Huebsch v. A. E. Huebsch & Co., Ltd.* (German Clearing Office v. British Clearing Office), (No. 2982), a claim was made against the debtor British company for a debt, but was contested on the ground that in 1917 an order was made under emergency war legislation that the business of the company be wound up. In 1918 a further order was made that the company itself be wound up. The Tribunal held that paragraph (b) of Article 296, and paragraph 4 of the annex thereto, exclude the responsibility of the British Government for the payment of the debt due by the British company where its business had been liquidated under British emergency war legislation before the 10th January, 1920, in so far as assets and claims in British territory are concerned. The liquidation of the business of the company is not equivalent to the liquidation of the company itself, and need not have been completed by the 10th January, 1920, even so far as assets and claims in British territory are concerned. It is sufficient that a stage of the liquidation was reached at which dividends were actually paid or were ascertainable. This is a question of fact in each case. Dividends declared before the 10th January, 1920, or sufficiently ascertainable, and for payment of which money was available during the war, must be credited under Article 296 with interest.

In the second case, *Persische Teppich Gesellschaft v. The Persian Carpet Co., Ltd.* (No. 2567), where during the war a payment was made to the Custodian of Enemy Property on account of the debt owing to the German creditor, it was held that the liquidation of the business of the British company had reached a stage excluding the responsibility of the British Government for the payment of the debt, and the amount paid to the Custodian constituted a dividend within the meaning of paragraph 4 of the annex, which, notwithstanding the fact of payment to the Custodian, had to be settled through the clearing procedure, together with interest at 5 per cent. per annum. A similar payment made to the Custodian after the 10th January, 1920, was excluded from the clearing procedure.

In the third case, *Oppenheim v. Foreign Assets Co., Ltd.* (No. 3773), where the liquidation of the business was only ordered in March, 1919, and no dividends had been declared, the Tribunal held that the liquidation was not sufficiently completed, and that the clearing procedure and Government guarantee applied to the debt notwithstanding Section 1 (3) of the Trading with the Enemy (Amendment) Act, 1916, whereby assets of the company were to be applied in discharging debts to creditors who were not enemies in priority to creditors who were enemies.

On the other hand, in the case of *A. Dangerfeld (Liquidator of Calmann Bros. & Co., Ltd.) v. H. Kraus* (No. 2057), (*Recueil*, vi, p. 71), a claim was made by the Liquidator of Calmann Bros. & Co., Ltd., which company was incorporated in England in 1901, and in respect of which the Board of Trade made an order in November, 1918, under the Trading with the Enemy (Amendment) Act, 1918, ordering its liquidation. The company had never been dissolved. The claim was contested by the German Clearing Office on the ground that the company was a German concern, and that, although the Liquidator purported to act as the representative of the company, the only interest that he had to serve was that of the British Government, as in the event of his success the amounts collected would be subject to the charge; consequently that the proceedings were virtually liquidation proceedings against property situated in Germany, and so contrary to Article 297 (b), which limits the charge to German property in Allied and Associated countries on the 10th January, 1920. The Tribunal held that the real party before them was the company, a British national acting through its representative, and that therefore the cogent provisions of Article 296 operated, and that the debt to the company from the German debtor had to be settled as prescribed by that article.

In the same case a further point of some interest subsequently arose. The German Government Agent, on behalf of the defendants, disputed that there was any claim of the creditor against the debtor on the ground that it had prior to the war been assigned by Calmann Bros. & Co., Ltd., to E. Calmann, Hamburg, under an agreement the second paragraph of which provided that, in order to secure the Hamburg firm of E. Calmann with respect to all claims and rights already arisen or arising in future out of the current credit against the London company, the London company thereby ceded to the Hamburg firms all claims and outstanding debts which were presently due to them, or would be so in the future, from individuals and firms resident within the British Empire. The creditors contended that the agreement must be considered under English law, and that, no notice having been given to the debtor, the assignment was ineffectual in law to pass the legal right to the debt. On the other hand, it was contended by the German Government Agent that German law applied, and that under that law no notification to the debtor was necessary. The Tribunal, however, left open the question as to which law applied, for they decided the case on a different point. They were of opinion that section 14 (1) of the Companies Act, 1900, which provided that all floating charges on the undertaking or property of the company should be void against the liquidator and any creditor of