

and after his visit to Germany lived at residential hotels or chambers in London. His furniture was stored in London. The Third Division held that the condition in the Treaty as to residence is evidently to enable the Government responsible for the debt of its national to exercise jurisdiction over a debtor for the purpose of recovering payment. A debtor may leave the jurisdiction soon after the date of the Treaty, and the effect of the limitation is relative; there is therefore no reason to give too narrow a scope to the interpretation of the Treaty under which the Tribunal has held that a debtor or creditor must be resident at the date of the Treaty; if a national had his habitual physical presence within his country's territory at about the date of the coming into force of the Treaty, the fact that he was absent from his country a comparatively short time before and after that date should not lead to the conclusion that he was not resident in that country within the meaning of Article 296. They accordingly held that the debtor had not transferred his residence from England to Germany, and was liable under Article 296.

The second case was that of *Carpenter v. The Deutsche Palestina Bank* (No. 3039), in which the British creditor was a missionary employed by the Church Missionary Society, and was in 1914 performing duties at Nazareth. In March of that year he left Palestine for England with his wife and children on leave, and was in England on the date of the outbreak of war. He remained in England with his wife and family until the 31st July, 1919, when he returned to Nazareth, where, except for periods of leave, he remained until recently. He was therefore not in England on the 10th January, 1920, and in March, 1920, his wife and one child joined him, his other children remaining in England. On these facts the First Division held that the creditor was not resident within British Territory for the purposes of Article 296 on the 10th January, 1920.

(4) *Article 296 of the Treaty of Versailles.—Nationality of Parties to Claims.*

In *Brunner, Riches, and Others v. C. Grossmann Eisen-u-Stahlwerk A.G.* (No. 2993), the Tribunal adopted the view taken by the Second Division in *Levy v. Heim* (No. 2032), and the Third Division in *Trustees of Isidor Morris (deceased) v. Michaelis* (No. 3238), and declined to follow their decision in *Rehder v. Landsgesellschaft Wannsee* (No. 1543). The result is that for the purpose of claims and debts under Article 296 the only material date for the nationality of the creditor and debtor as well as for their residence must now be regarded as the 10th January, 1920, the date of the coming into force of the Treaty, without regard to the position on the 4th August, 1914.

(5) *Clearing Office Claims.—Periods of Prescription.*

On the question of the period of prescription for debts there have been two interesting decisions of the Third Division. In the first of these, *Livingstone & Findlay v. Graaff* (No. 3025), the creditors were a firm carrying on business in Scotland, who claimed £150 with interest from the 1st April, 1900. The debt was due under a minute of agreement dated May, 1900, which was executed as a "probative writ" under Scottish law, whereby a debt and interest which is evidenced by such a writ is not subject to any period of prescription except a period of forty years. Although the agreement between the parties was entered into under Scottish law, the German Clearing Office contended that under paragraph 4 of the annex to Section III, Part X, regard must be had to the territorial law of the debtor's country as to prescription, and that under German law the claim for interest for the time previous to four years before the war would be prescribed.

The Tribunal held that the term "Law of prescription in force in the country of the debtor" has the same meaning as "Laws of prescription to be applied by the Courts in the country of the debtor," and that the Tribunal must apply the law of prescription which would be applied by a Court sitting in the country of the debtor; accordingly, as German Courts would, under German private international law, apply the law governing the contract, in this case Scottish law, the claim for interest would not be barred by prescription until the expiration of a period of forty years.

On the other hand, in *Cook v. Kutscher* (No. 2263), a British creditor claimed for a debt in respect of clothing supplied to the debtor, and the Tribunal held that the contract was governed by English law, and that, in order to determine whether the debt was prescribed, they must consider the case as a Court sitting in Germany in accordance with the above-mentioned decision in case 3025. They further held that a Court sitting in Germany would not, under German private international law, apply a foreign law of prescription if such law was not part of the law of contracts but was only part of the foreign law of procedure, such as the Statutes of Limitations, which do not prescribe the debt, but only provide that no action shall be brought in respect of it after a certain period. They further held that in such a case the German domestic laws of prescription would apply, and a debt for clothes supplied would, under German law, be prescribed after the expiration of two years from the end of the year in which the debt became due.

(6) *Clearing Office Claims.—Treaty Interest.*

There have been a considerable number of decisions on the question of the interest payable under paragraph 22 of the annex to Section III, Part X. In *Salomons v. Bayerische Staatsbank* (No. 4149), (*Recueil*, vi, p. 30), the British creditor had an account with the debtor bank before the war on the terms that the basis of interest should be decided by the bank and communicated to the customers, but that any alteration should come immediately into force without the necessity of customers having notice. The bank admitted interest only at the rate of $1\frac{1}{2}$ per cent., and the creditor claimed such further interest as, together with the $1\frac{1}{2}$ per cent. already credited, would make up interest at the rate of 5 per cent. from the 4th August, 1914. Evidence was adduced by the debtor bank that interest was paid by them on similar accounts at rates during the war varying from $4\frac{1}{2}$ per cent. to $1\frac{1}{2}$ per cent. The Tribunal (Third Division) held that the creditor had under his contract a right to the same rate of interest as that which applied to other customers in the same position as himself, and that such rate was in the nature of a contractual rate of interest within the meaning of paragraph 22; further, that the right to an agreed rate of interest only concerned the rate, and not the right to payment of interest on capital made up by interest. They therefore decided that the creditor was entitled under Article 296 to interest at rates varying according to the rates allowed for the time being to the other customers of the bank as shown by the evidence adduced.

In *Commerz & Privatbank v. Pena Copper-mines* (No. 2763), under an agreement of the 12th December, 1911, between the parties it was provided that the loan should be repayable at latest on the 31st December, 1915. Under Article 3 the debtors undertook to pay interest at the rate of 6 per cent. per annum. The German Government Agent contended that in such a case, where a contract provides for the payment of interest at a rate other than 5 per cent., the contractual rate is maintained so long as the debt is outstanding. The debtors and the British Government Agent maintained that when the contract itself fixes a date for repayment the contractual rate runs only up to that date, after which the Treaty rate of 5 per cent. is to be applied.

The Tribunal, following the principle already enunciated by the Second Division in *Lloyds Bank, Ltd. v. Bank fuer Handel und Industrie*, and by the Third Division in *Crowe v. Heidelberg & Boie*, held that in respect of a period subsequent to the 31st December, 1915, there was no contractual rate between the parties, and that in consequence the creditors should recover interest at the rate of 5 per cent. per annum. A further point arose as to the commission of 1 per cent. per annum which the debtors had, under the agreement, undertaken to pay on the total amount of the loan until it should have been repaid or satisfied. The debtors contended that this was an annual remuneration for accommodation annually provided, or a payment for services rendered. The British Government Agent was unable to support this view, and the Tribunal held, as in the case of *Kleinworts Sons & Co. v. Weber & Schaer* (No. 2717), that the commission related to the security for the loan, that the making of the loan was an act done giving rise to a pecuniary obligation to pay commission so long as the loan remained unpaid, and that so much of the commission as was payable during the war constituted a debt under Article 296 (2) and was recoverable through the clearing procedure.

In *Wolff v. Morley* (No. 3069), (*Recueil*, v, p. 670), the German creditor claimed interest on a capital sum which was paid to the Public Trustee in 1917 in pursuance of a vesting order comprising the specific amount of the debt and not containing any general words. There was no contract or custom for interest, but the debt was for goods sold,