

and the creditors contended that under German law interest was payable on accounts for goods sold, and, further, that under paragraph 22 of the annex to Section III and paragraph 14 of the annex to Section IV, Part X, interest would be payable. The invoice bore the words "It is requested that remittances be made direct to the firm," and in previous transactions between the same parties it had been customary for payment to be made by cheque on a British bank.

The Third Division held that such procedure must have been within the contemplation and intention of the parties in the present transaction, and that, if English law applied, the Post Office would receive the cheque in England as agent of the addressee and the cheque would also be met in England when presented at the bank. Under German law the effect of the contract would also be that performance had to take place where the debtor had his domicile. The place of performance under both English and German law would therefore be in England, and English law, according to which no interest would be payable on such a debt, would apply.

The Tribunal further held that paragraph 22 of the annex to Section III only applies to debts within the meaning of Article 296, and that, where Section III is adopted, paragraph 14 of the annex to Section IV cannot extend the benefit of interest to debts not included in Article 296. The Tribunal had not to consider the effect of paragraph 14 in cases where Section III is not adopted.

In *Geisberg v. Clark's Furniture Co.* (No. 3231), (*Recueil*, v, p. 667), the German creditor claimed interest on a capital sum which had been paid to the Public Trustee during the war in pursuance of a vesting-order comprising the specific amount of the debt and not containing any general words. The Third Division held that no interest was payable, on the grounds stated in *Wolff v. Morley* (No. 3069), and on the ground that there had been several previous transactions between the parties in which accounts for goods sold had been paid before the war and no interest had been demanded or paid when settlement of the accounts had been delayed. The Tribunal were therefore satisfied that there was a standing agreement between the parties that interest should not be payable.

In *Heraeus G.m.b.H. v. Griffin & Sons, Ltd.* (No. 3392), (*Recueil*, v, p. 675), the German creditor claimed interest on a capital sum which was paid to the Public Trustee during the war in pursuance of a vesting-order comprising the specific amount of the debt and not containing any general words. It was part of the agreement between the parties, and was customary in previous transactions, for payment to be made by cheque on Berlin through a London branch of the *Crédit Lyonnais*. The Third Division accordingly held that the place of performance was Germany, and that, as the debt was for goods sold, the creditor was entitled to interest in accordance with German law up to the date of the vesting-order.

In *N. Levy & Co. v. Watts & Nephew* (No. 3006) the German creditors claimed interest on a capital sum paid to the Public Trustee in 1916 in pursuance of a vesting-order which scheduled the capital amount of the debt, and provided that the right to receive, sue for, or recover from the persons mentioned in the schedule the sums therein set forth, or other sums due from them to the enemy creditors, be vested in the Public Trustee. No interest on the debt had been collected by the Public Trustee, and the German creditors claimed that, in the circumstances, interest should be recovered under Article 296, or that the debtors should be directed to pay interest.

The Third Division held that, in view of the terms of the vesting-order, there could be no claim for interest under Article 296, and did not deem it necessary to consider whether by contract, law, or custom any interest would have been payable on the debt in question.

In *Commerz & Privatbank v. The Taltal Railway Co., Ltd.* (No. 3479), the German creditors claimed interest on the amount of certain bills of exchange which had been vested in the Public Trustee during the war. The thirds of exchange accepted by the debtors were in England during the war and were payable in England, but were not accepted "specially." The firsts and seconds of exchange, which bore no acceptances, were endorsed to the creditors as holders for value, but were not in England during the war.

The Third Division held that, as the bills were vested in the Public Trustee, any claim on the bills, whether for the amount of the expenses or for interest, would have to be preferred by the Public Trustee in whom the bills were vested, and dismissed the claim under Article 296.

In *Albrecht Bonitz v. Sargood, Son, & Ewen, Ltd.* (No. 3519), (*Recueil*, v, p. 629), by a vesting-order under section 4 of the Trading with the Enemy (Amendment) Act, 1914, the right to receive, sue for, or recover the specific debt or other sums owing by the enemy debtors to the British creditor was vested in the Public Trustee.

The Tribunal decided that if any interest were payable it would, at the date of the ratification of the Treaty, have been recoverable by the Custodian of Enemy Property only. The Tribunal therefore did not consider whether in the particular case interest was payable, but decided, for the reasons above stated, that there was no debt within the meaning of Article 296 of the Treaty.

In *Grace Penny v. F. Mehnarto* (No. 1675), (*Recueil*, vi, p. 46), the British creditor, as executrix of her deceased husband, claimed in respect of certain sums advanced to the debtor before the war under an agreement. The debtor was interned in Great Britain in 1915, and subsequently repatriated to Germany, leaving England on the 7th March, 1919, and arriving in Berlin on the 10th March, 1919. It was argued on behalf of the creditor that it was a reasonable presumption that trading with the debtor was prohibited from the date of internment, and that the parties became enemies as from that date.

The Tribunal held that the date of the debtor's arrival in Germany was the date when the parties to the agreement became enemies, and it assumed that the debtor reached Germany on the 9th March, 1919. On this date the contract between the parties was dissolved, and the sums advanced became repayable under Article 296 (2). Interest ran from that date, but the creditor's claim to interest before that date failed, as no agreement to pay interest had been established by her.

In *Crowe v. Heidelberg & S. Boie* (No. 1907) a claim by a British creditor under a mortgage was contested on the ground that the debtor died in 1916, and that one of the heirs was not a German national resident in Germany on the 10th January, 1920. The German Clearing Office ultimately admitted a sum on behalf of the heir, who was a German national resident in Germany, but the claimant contended that she was entitled to a further sum representing the other moiety, and that, as the mortgage was repayable without notice on the 31st December, 1915, interest at the contract rate of $4\frac{1}{2}$ per cent. was payable only up to the date referred to, and that interest at the Treaty rate of 5 per cent. was payable from the 1st January, 1916.

The Third Division made an award in accordance with the creditor's claim for the other moiety, and for the Treaty rate of interest from the 1st January, 1916.

In *Cohen v. Bernouilly* (No. 2089), (*Recueil*, vi, p. 65), the British creditor claimed the principal sum due under a mortgage on the ground that the interest due on the 1st October, 1914, had not been paid. In 1910 the creditor had advanced to the debtor the said sum on the security of a mortgage on house property in Berlin, it being agreed that the mortgage should become payable on the 1st October, 1922; the mortgage also contained a clause providing that upon failure by the debtor to pay the interest within eight days of the stipulated date the whole of the principal sum should become immediately repayable.

The Tribunal held that, under German law, unless there was a culpable failure to pay interest on the due date, the principal moneys did not necessarily become repayable, and in the present case, having regard to the outbreak of war, they considered that the default was not such as to cause the provision in the contract as to immediate repayment to become operative. Consequently the debt did not become payable during the war, and, in view of the decision in *Gunn v. Gunz*, did not fall under Article 296 (2). The Tribunal granted permission to the creditor to present a claim under Article 297 (e).

In *Strauss-Evans v. Scottish Widows' Fund Life Assurance Society* (No. 3188) the German creditor claimed interest on instalments which became due during the war of an annuity payable by an insurance company. The debtors contended that they were only liable to pay interest on the portion of the annuity which, according to their actuarial calculations, represented interest on capital. The Third Division held that interest was payable on the whole of the instalments under paragraph 22 of the annex to Section III, Part X.