

(15) *Claims under Article 297 of the Treaty of Versailles.—Rate of Compensation.*

The cases under Article 297 involving any special point of principle have been somewhat fewer during the last year.

In *Guterbock v. German Government* (No. 757), (*Recueil*, vi, p. 67), the matter in dispute between the parties was the rate at which interest should be allowed as compensation for loss of use of the claimant's moneys sequestrated by the Treuhaender. The claimant had deposited with the Deutsche Bank a number of securities on which the bank from time to time collected and placed to his credit the interest. Under the conditions ruling the business relations with the bank it was provided that all accounts of customers were to be considered as integral parts of one account in accordance with paragraphs 355–357 of the German Commercial Code. During 1913 and 1914 the rates of interest credited by the bank varied between 1½ per cent. to 4 per cent. After the appointment of the Treuhaender, and in accordance with the policy adopted by his department, all sums representing interest and drawn bonds collected after the 1st April, 1917, were transferred to him.

It was common ground between the parties that the governing principle was that of *Claudius Ash v. German Government* (No. 260), and, in consequence, it became necessary to determine what the claimant's position would have been if no exceptional war measure had been applied and he had been left to recover the debt due to him from the bank in the clearing procedure. The claimant contended that he would have been entitled to interest at the rate of 5 per cent. per annum, but the respondents disputed this on the ground that in the clearing procedure the rate of interest would be that to which he would have been entitled under the contract, and no more.

The Tribunal, in the first place, held that under German law a *kontokorrent* which on the accounting date was not renewed came to an end, and, consequently, that the Imperial decree of 30th September, 1914, granting a moratorium during which interest might not be claimed, did not affect the interpretation of the provisions of paragraph 22 of the annex to Section III, Part X. They further were of opinion that in a contract for a *kontokorrent* between a German bank and its customer a provision for the payment of interest at the usual rate was implied, and, following their decision in *Schwerdt v. Frankfurter Bank* (No. 847) refused to accept the contention of the British Government Agent that, owing to the change of position after the outbreak of war and to the impossibility of the customer drawing on the account, the rate applicable to a *kontokorrent* with a bank could not apply to such account. They accordingly refused to allow interest at the rate of 5 per cent. for loss of use, but allowed interest on certain items at 2 per cent., leaving other items open at the request of the claimant.

The Tribunal applied precisely the same principles in a subsequent case of *Speyer v. German Government* (No. 599), (*Recueil*, v, p. 700), in which they held that there was a contract between the bank and the customer under which the bank undertook to pay the usual rate, and that this covered the period in question—i.e., after 31st December, 1917.

In one case—that of *Strauss v. German Government* (No. 1293), (*Recueil*, vi, p. 17)—the respondents resisted the claim to compensation primarily on the ground that, owing to the measure taken by the Treuhaender in collecting during the war the proceeds of sale of certain land to which the claimant was entitled, he had become entitled to the pre-war rate of exchange under Article 297 (h), and so recovered the proceeds of sale of his property in sterling at a higher sum than that which he would have received if the money had come directly into his hands.

The Tribunal, however, refused to accept this contention, and pointed out that a claimant whose money in Germany had during the war been subject to the Imperial decree forbidding payments to the British Empire was entitled to be compensated under Article 297 (e)—(1) for depreciation, (2) for loss of use. The mere fact that the claimant had benefited in consequence of the operation of the machinery of the Treaty regarding cash assets, whilst it disposed of any question of depreciation, did not satisfy the claim that, whatever its value, the claimant was entitled to the use of his money as and when it became due. They accordingly awarded by way of compensation interest at the rate of 5 per cent. per annum on the sterling value of the moneys to which the claimant was entitled as from the dates on which he might have received them.

On the other hand, in the case of *Herbert Widdowson & Co. v. German Government* (No. 2171), (*Recueil*, vi, p. 21), the Treuhaender had collected the interest which accrued due during the war on the claimant's account with a bank at Plauen, and the total was credited by the respondents and paid to the claimant on the 30th April, 1923. The claimant sought to recover interest by way of compensation for loss of use of the money on the ground that if the interest had not been collected by the Treuhaender he would have received it on or about the 31st May, 1921, which was approximately the date upon which the capital sums in the hands of the bank were paid to him, having been credited under the provisions of Article 296. He contended, therefore, that the result of the payment to the Treuhaender was that he had been kept out of the use of his money from that date until the date on which the actual credit to him was made.

The Tribunal refused to uphold this contention, or to distinguish this case from *Naylor Benzon v. German Government* (No. 82), which was relied upon by the respondents, and accordingly dismissed the claim.

(16) *Article 297 (h) of the Treaty of Versailles.—“Cash Assets.”*

In the important case of *Antony Gibbs & Sons v. German Government* (No. 1271), (*Recueil*, vi, p. 24), the Second Division considered, after full argument, the meaning of the expression “cash assets” as used in Article 297 of the Treaty. The Tribunal, whilst recognizing that the material clauses were not wholly free from ambiguity, found that the references to “cash assets” were closely connected with the provisions concerning measures taken by or on behalf of the High Contracting Parties. It also observed in this connection that for the recovery of funds or moneys to which a British national might be entitled, and which could properly be regarded as comprised within the phrase “cash assets” in its most extensive signification, in so far as such funds or moneys had not come into the hands of the German Government, adequate remedies were provided either by Article 296 or Article 297 of the Treaty. In the result the Tribunal held that the operation of clause (h) of Article 297 was confined to cases in which the German Government, as distinguished from its nationals, had, in accordance with the provisions of the Treaty, become primarily liable as the accounting party in respect of a particular fund by reason of the actions of its own agents.

In the present case the Tribunal found as a fact that with regard to certain moneys realized in respect of sales of iodine up to the 9th October, 1915, the German Government had, by its representatives, exercised such possession or control as rendered it accountable for the same within the principles laid down in the Treaty. On the other hand, with regard to the residue of the fund in question, although it consisted of proceeds of property of British nationals which were subjected to exceptional war measures, the Tribunal was not satisfied that the German Government ever exercised such powers of disposition over these proceeds as to render it accountable for them as cash assets within the meaning of the Treaty. With regard, therefore, to this residue, the remedy of the claimants was confined to the recovery of such compensation as represented the actual damage or injury which they had sustained in connection therewith.

Regarding the investment in war loan of certain funds forming part of the German estate of a British national who died during the war, the Tribunal, in the case of *Susan Carswell Lister and Others v. German Government* (No. 1405), (*Recueil*, vi, p. 34), held that investments in war loan made by the executor before an order for compulsory administration of the estate in question was made did not constitute cash assets, and that only compensation under Article 297 (e) could be claimed for depreciation and loss of use under the German decree prohibiting export. The position, however, was different, they held, as to certain moneys invested on the 1st October, 1918, after the date of the administration order. It was admitted that the investment could not have been made without the Administrator's authority, and in the Tribunal's opinion the investment was to be treated as cancelled, and the sum in question was to be credited as a cash asset under the provisions of Article 297 (h).