

1927.
NEW ZEALAND.

ENEMY PROPERTY IN NEW ZEALAND

(SEVENTH REPORT ON) BY THE PUBLIC TRUSTEE AS CUSTODIAN OF ENEMY PROPERTY
AND CONTROLLER OF THE NEW ZEALAND CLEARING OFFICE.

Presented to both Houses of the General Assembly by Leave.

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REPORT.

To the Hon. the Attorney-General, Wellington.

SIR,—

I have the honour to submit my Seventh Report on Enemy Property, setting out the work performed during the year ended 31st March, 1927, in connection with the realization of ex-enemy property in New Zealand and the disposal of claims lodged by or against British nationals resident in New Zealand for settlement in accordance with the Clearing Office procedure established under the provisions of Article 296 of the Treaty of Versailles, or in accordance with the provisions of Article 297 of that treaty.

2. There have been few developments of particular interest during the past year, and, in view of the fact that the bulk of the work has now been disposed of, it is not anticipated that there will be many developments of note in the future. The statistics published in the appendix to this report indicate that only a very small proportion of the Clearing Office claims now remain outstanding; also that the ex-enemy property still remaining to be disposed of is comparatively small in extent and value. In view of the various circumstances affecting these matters, early finality in regard to the outstanding matters cannot be anticipated.

3. The present report, it will be observed, is, apart from extracts of decisions of the Anglo-German Mixed Arbitral Tribunal, largely confined to statistics in regard to the duties imposed upon the Public Trustee. In future, therefore, it is proposed, with the Hon. the Attorney-General's approval, to discontinue the preparation of a special report for submission to Parliament. A survey of the position in regard to this work will, however, be included in the annual reports upon the working of the Public Trust Office presented to Parliament.

4. The report is set out in substantially the same manner as last year's report.

REALIZATION AND DISPOSAL OF EX-ENEMY PROPERTY IN NEW ZEALAND.

AMOUNT CREDITED TO THE GERMAN LIQUIDATION ACCOUNT BY THE NEW ZEALAND CLEARING OFFICE.

5. The amount credited up to 31st March, 1927, to the German Liquidation Account in respect of German property rights and interests in the Dominion retained and liquidated in accordance with Article 297 of the Treaty of Versailles is £249,856 4s. 7d. Credits totalling £1,451 10s. have been withdrawn from the Liquidation Account, leaving a net amount credited of £248,404 14s. 7d. During the past year an application was received for the release of an amount of approximately £12,000 credited to the Liquidation Account, on the grounds that the applicant was a non-enemy subject and had acquired the property liquidated by purchase prior to the outbreak of the war. The claim has not been admitted, but possibly the applicant may decide to litigate the matter.

6. Up to the date of this report amounts totalling £150,000 have been paid to the Treasury as payments on account of surplus funds arising from the liquidation of ex-enemy property in the Dominion. Further payments will be made when the work advances sufficiently.

7. Table I appearing in the appendix to the report gives particulars of the cash amounts held in respect of ex-enemy property which for various reasons cannot as yet be credited to the Liquidation Account, and of the ex-enemy property which it has not yet been found possible to convert into cash.

AMOUNTS CREDITED TO THE AUSTRIAN LIQUIDATION ACCOUNT.

8. The total amount credited up to 31st March, 1927, to the Austrian Liquidation Account in accordance with Article 249 of the Treaty of St. Germain-en-Laye was £1,629 16s. 8d. One amount of £66 16s. 3d. was withdrawn with the concurrence of the Austrian authorities, leaving a net amount credited to the Liquidation Account of £1,563 0s. 5d.

AMOUNTS RELEASED AND STATEMENT OF FUNDS HELD.

9. Tables II and III of the appendix hereto give particulars respectively of amounts which have been released from the provisions of the various war and treaty legislation relating to ex-enemy property, and of the balances still held in accordance with this legislation.

NEW ZEALAND SECURITIES AND PROPERTY IN THE UNITED KINGDOM.

10. An arrangement has been concluded with the British Administrator of German Property having for its object the defining of the respective rights of the British and Dominion Governments in regard to certain classes of ex-enemy property where there is doubt as to which administration is entitled to exercise the rights of retention and liquidation conferred by the peace treaties.

11. In terms of the arrangement reached it is admitted to be within the right of the Dominion Government to deal with New Zealand Government securities held in the United Kingdom, and also shares and securities held in the United Kingdom of companies incorporated in the Dominion and dividends and rights derived therefrom. Similar rights are conceded to the British authorities in regard to British securities and shares held in the Dominion, and necessary exceptions are made in cases where one Administration has prior to the conclusion of the agreement already dealt with property of this description, and in other cases for purposes of convenience or in order to avoid a conflict of policy between the two Administrations in dealing with assets of this nature.

12. As a consequence of this arrangement it is anticipated that New Zealand Government securities of a considerable total will be transferred to this Office for administration.

SETTLEMENT OF CLAIMS BY OR AGAINST BRITISH NATIONALS RESIDENT IN NEW ZEALAND.

TOTAL OF CLAIMS RECEIVED FOR SETTLEMENT THROUGH THE NEW ZEALAND CLEARING OFFICE.

13. The following table shows the total amount of the claims by or against German nationals or the German Government received for settlement through the New Zealand Clearing Office to the 31st March, 1926, and 31st March, 1927, respectively. The total of the additional claims received since the last report is given in the third column :—

—	31st March, 1926.	31st March, 1927.	Increase.
<i>Claims under Article 296 of the Treaty of Versailles :—</i>	£	£	£
(a) By New Zealand nationals against German nationals ..	53,034	53,034	Nil
(b) By German nationals against New Zealand nationals ..	210,975	211,152	177
<i>Claims under Article 297 of the Treaty of Versailles :—</i>			
(c) By New Zealand nationals	52,732	52,732	Nil
Totals	316,741	316,918	177

The progress regarding the disposal of the Clearing Office claims is indicated in the tables printed in the Appendix hereto. Only a small percentage of the claims originally lodged for settlement remain outstanding.

CLAIMS IN TERMS OF PARAGRAPH 4 OF THE ANNEX TO SECTION IV OF PART X OF THE TREATY OF VERSAILLES.

14. No restriction is imposed by the Treaty as to the period of time within which claims in terms of the above Treaty provision are to be notified to the Arbitrator appointed to deal with these claims. Advice was received from the Central Clearing Office that it was proposed that the British and German Government Agents should apply to the Arbitrator appointed to adjudicate upon these claims to fix a final date for the lodging of the claims, and the New Zealand Government was approached for its approval of the time-limit proposed in regard to the Dominion. This approval was duly given, and in accordance with the arrangements agreed to by the Arbitrator it is necessary for persons with claims under this heading to notify them to the New Zealand Clearing Office in sufficient time to enable the claims to be referred to the Arbitrator in London prior to the 15th July next; otherwise they will not be accepted for consideration. A notification to this effect was published in the *New Zealand Gazette* No. 20, of the 7th April, 1927, and due publicity was given to the matter in the public Press.

15. Persons with claims under this provision of the Treaty must demonstrate that they suffered injury (in the sense of financial loss) directly caused by acts committed by the German Government or by German authorities between the 31st July and the 4th August, 1914. A common example of a claim under this heading is that of British sailors who suffered loss of wages through internment in Germany during the war consequent upon the illegal detention of their vessel by the German authorities during the period referred to.

NEW ZEALAND ACCOUNT WITH THE CENTRAL CLEARING OFFICE, LONDON.

16. It will be observed that the statement previously included in the appendix to my annual reports on ex-enemy property in relation to the New Zealand Clearing Office account with the Central Clearing Office, London, has not been continued in this report. During the past year the British Treasury approached the New Zealand Government with certain proposals in regard to the distribution of the pre-Dawes reparation receipts, and in return for concessions offered on other points it was decided to forgo any right the New Zealand Government might have to payment of this balance.

DECISIONS OF MIXED ARBITRAL TRIBUNALS.

17. Summaries of recent decisions of the Mixed Arbitral Tribunals which are of particular interest to this Office and New Zealand residents are reprinted hereunder. The summaries are derived from the report of the Legal Adviser to the Central Clearing Office appended to the last report of that Office, and I have inserted wherever possible the references to the volumes of the *Recueil des Décisions des Tribunaux Arbitraux Mixtes* in which the decisions are reported.

18. I quoted in my previous report an extract from the last published report of the Controller of the Central Clearing Office referring to difficulties arising as a result of conflicting decisions given by the various divisions of the Anglo-German Mixed Arbitral Tribunal. The following extract from his next report indicates that measures have been taken to remove or minimize this difficulty :—

“The difficulty occasioned by conflicting decisions of the Mixed Arbitral Tribunal, which was referred to in the last report, has been the subject of anxious consideration and considerable corre-

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

the company, unless filed as therein mentioned, was applicable to book debts and to the charge in question. No registration had been effected in the present case, and therefore, under English law, the liquidator was entitled to avoid it, and this he had done. Such being the case, the debtor could only discharge his debt by paying it to the creditor. The creditor was therefore entitled to succeed in his claim.

With further reference to the question of the Government guarantee, I may refer to the case of *Tannenbaum v. Prussian Treasury* (No. 400), (*Recueil*, v, p. 632). The British creditor had already made a claim against a German debtor who died during the war, without, however, being able to furnish information as to the heir of such debtor. The Tribunal, following their ordinary principles in such a case, held that it was necessary, in order to establish a claim under Article 296, to show that there was a German debtor resident in Germany on the 10th January, 1920, against whom an award could be given, and requested the German Court at Altona to proceed under paragraph 1964 of the German Civil Code to determine whether there was an heir. The creditor subsequently amended his claim and directed it against the Prussian Treasury, maintaining that, in the absence of any other legal heir, the Treasury had inherited as an heir, and that the Prussian State was a juridical person and consequently a German national. He based his contention on paragraph 1936 of the German Civil Code, which provides that, in the absence of any heir, the Treasury becomes the statutory heir. The Tribunal, however, dismissed the claim on the ground that the Prussian Treasury was identical with the State, and, in becoming the heir of a deceased person under the said paragraph, was discharging a public duty; its task was of a public nature, and consequently it could not be considered a debtor national within the meaning of Article 296 (1) or (2) of the Treaty.

(2) *Article 296 of the Treaty of Versailles.—Claims in respect of Goods ordered prior to the War but not received.*

There are a large number of outstanding claims especially by German nationals against British debtors who ordered goods shortly before the outbreak of war but who never received them, notwithstanding that the claimants handed the goods to forwarding agents in Germany, and there has been considerable argument between the Clearing Offices and before the Tribunal as to the precise effect of what had been done, and as to whether there had been a passing of the property under either British or German law, or delivery of the goods, sufficient to except the contract from dissolution under Article 299, and whether, in the circumstances, the British debtor was responsible for the price of the goods under Article 296, notwithstanding the fact that he had never received them. These questions have to some extent been solved by an important decision of the Third Division in the case of *Lütges & Co. v. Ormiston & Glass, Ltd.* (No. 3522). The British respondents had ordered goods from a German firm, the order specifying that the goods must be delivered "as required, carriage paid, packing free." The goods reached England on the 23rd July, 1914, but were not delivered, and all trace of them was lost. The Tribunal held that, on the terms of the order, and according to the practice of the parties in previous transactions, in which goods had been delivered at the purchasers' warehouse by the sellers' London agent, the contract was for delivery at the purchasers' warehouse. They further held that, even apart from the special terms of the contract, the property had not passed nor had the goods been delivered within the meaning of the annex to Section V, Part X, of the Treaty. The claim being against an English firm, English private international law applied, and under that law the passing of property must be decided according to the law of the country where the goods were situate at the time when the act relied on as passing the property took place. The handing to the carrier in Germany did not pass the property under German law. No act took place in England which showed the intention of the parties that the property should pass.

"Delivery" in the Treaty is to be interpreted according to English meaning, and signifies transfer of possession, in this case to the buyer. The handing of goods to a carrier does not ordinarily under German law transfer possession to the buyer, and although under English law handing to a carrier may, *prima facie*, transfer possession to the buyer, the handing of goods to a carrier in Germany, or the transfer from carrier to carrier in England, cannot under English law, *prima facie*, be taken as transfer of possession to the buyer.

Under paragraph 447 of the German Civil Code, when goods are handed to a carrier the risk of transport passes to the purchaser, but if the goods are not lost as a risk of transport before the outbreak of war the contract is dissolved, and there does not remain under Article 299 (a) any pecuniary obligation arising out of the act of handing to the carrier, as the provisions of the contract are not severable within the meaning of paragraph 3 of the said annex.

In the case of *Carl Berg A.G. v. F. A. Wellt & Sons* (No. 3254), the German creditors claimed against the British debtors for goods which had been shipped prior to the outbreak of war but which were detained in Antwerp and subsequently seized by the German Government, upon the footing that the property in the goods had passed. The order was for delivery f.o.b. Antwerp, and the goods having been shipped on s.s. "Huberfels" in Antwerp, the agents to the shipowners sent a mate's receipt for delivery to the creditors' agent in London. The latter, on the 5th August, 1914, offered to hand over that receipt to the debtors, who at first refused to accept it owing to the outbreak of the war, but eventually did accept it. The debtors paid the freight and obtained in exchange for the mate's receipt a bill of lading for the goods dated Antwerp, 31st July, 1914. As stated above, however, the goods never went out of Antwerp and were eventually seized by the German Government.

The Third Division pointed out that in a f.o.b. contract the property passes when goods are put on board at the disposal of the purchaser. In the present case there was no evidence to show whether the goods, when put on board, were shipped on account of the purchasers and at their disposal. The remission of the mate's receipt to the sellers' agent raised a presumption that they retained the disposal of the goods, and no evidence had been called to rebut this presumption. At the outbreak of war, therefore, the property had not passed and the goods had not been delivered, and the Tribunal accordingly found that there was no debt within the meaning of Article 296 due from the debtors to the creditors.

In *Gildemeister & Co. v. G. C. Dobell & Co., Ltd.* (No. 3509), (*Recueil*, vi, p. 60), a further question arose as to the passing of property in goods delivered. In 1912 a contract was entered into between the predecessors in title of the German creditors and the British debtors for the sale by the former of 11,000 quintals of nitrate each month, payment to be made in London, documents to be taken up in cash at the expiration of ninety days after the arrival of the first bill of lading, or earlier should the vessel arrive. Under this agreement, on the 1st June, 1914, the creditors sold to the debtors a parcel of nitrate to be delivered f.o.b. Iquique. The bill of lading was made out to the creditors or their assigns, but the documents, including the bill of lading, were never tendered to the debtors, and were, in fact, produced by the German Government Agent at the hearing. The German Government Agent contended that the property passed from the creditors to the debtors at Iquique, or, in the alternative, that the parcel was delivered there, and that in consequence the contract was saved from dissolution by the provisions of paragraph 2 (a) of the annex to Section V, Part X. It was common ground that English law was applicable.

The Tribunal found that the relevant fact was that the bill of lading was issued to the order of the sellers and not the buyers, and was kept by the former. Having regard, therefore, to section 19 (1) and (2) of the Sale of Goods Act, 1893, the property in the nitrate had not, they held, passed from the creditors, but remained in them on the outbreak of war. Moreover, delivery under the bill of lading had not taken place. The case did not, therefore, fall within paragraph 2 (a) of the annex to Section V, Part X, but the provisions of Article 299 (a) applied, and the contract between the parties was to be regarded as having been dissolved from the time of the outbreak of war, leaving no pecuniary obligation outstanding. They therefore decided that there was no debt due from the debtors to the creditors.

(3) *Article 296 of the Treaty of Versailles.—Residence of Debtor or Creditor.*

The question of residence of a creditor or a debtor for the purpose of Article 296 has also received further consideration, and there have been two decisions to which it may be worth calling attention. In *Magnus Alsleben v. Manasse* (No. 2987), (*Recueil*, vi, p. 63), the British debtor was temporarily staying in Germany for five months from October, 1919, until March, 1920, for family reasons. He had some time previously given up his house in London, and before

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,

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.

Gleislose Lloydbahnen Kohler's Bahnpatente G.m.b.H. v. Brush Electrical Engineering Co., Ltd. (No. 3306), (*Recueil*, v, p. 631). The German creditors claimed interest on patent royalties which had accrued due prior to the 4th August, 1914, and which were paid through the Clearing Office. This claim was contested by the British Clearing Office on the ground that royalties constitute a periodical payment representing interest on capital within the meaning of paragraph 22 of the annex to Section III, Part X. The Third Division refused to accept this contention, and held that interest was payable.

(7) *Article 296 of the Treaty of Versailles.—Life-insurance Policies.*

The case of *Stuttgarter Lebensversicherungsbank v. Turvill* (No. 1955), (*Recueil*, vi, p. 51), contains an interesting decision regarding a policy of life assurance under paragraph 14 of the annex to Section V, Part X. In March, 1914, the British debtor entered into a policy of life assurance with the creditors, the sum due being payable in 1934, or on his previous death. The policy was subject to the conditions contained in the statutes and general terms of insurance of the company. The insurance company claimed under Article 296 (2) in respect of the premiums payable during the war, and based their claim in the first instance upon paragraph 14 of the said annex. The First Division held that paragraph 14 dealt only with new rights given by the Treaty, and not with premiums which were enforceable under the terms of the policy and the law governing the contract. A claim rightly based on paragraph 14 could not, therefore, succeed under Article 296.

Alternatively, the creditors contended that their claim was covered by the second part of paragraph 11 of the said annex. The Tribunal held that the words contained in this paragraph were wide enough to cover premiums which were enforceable under the terms of the policy and the law governing the contract. As, therefore, under the general terms of insurance and under German law the premiums were debts and not merely voluntary payments, they were caught by the provisions of Article 296 (2), notwithstanding the fact that future payment of the policy-moneys or of the surrender value had to be settled outside the clearing procedure. The Tribunal accordingly made an award for the amount of the premiums under Article 296 (2).

(8) *Stockbroking Transactions.*

In the award in *Seligman Weinberger & Pearson v. Dreher & Uhry* (No. 758), (*Recueil*, iii, p. 749; iv, p. 657), of the 8th May, 1925, referred to in my report of last year, the Tribunal delivered an interim decision, in which they reserved the question of a further credit, which practically involved the question as to whether the creditors, who were brokers, were entitled to an indemnity from their clients. The creditors had carried over certain shares with a firm of H. Wagg & Co., who, up to December, 1912, had been members of the London Stock Exchange, but had since ceased to be members. Before the end-December account, 1912, the debtors had bought through the creditors a quantity of securities, which, however, were never taken up by the debtors, but carried over by the creditors with the said firm of H. Wagg & Co. Evidence was adduced by the creditors that a representative of the debtors' firm was frequently in London, and was fully aware that the creditors had arranged the financing of the debtors' account by carrying over both on and off the Stock Exchange. Further, the said representative of the debtors' firm had informed the creditors that his firm had an account open with Messrs. H. Wagg & Co., which continued down to the outbreak of the war.

The debtors relied on Rule 83 of the Stock Exchange Rules, which provides that a broker shall not execute an order with a non-member unless thereby he can deal for his principal to greater advantage than with a member. In such a case he shall not receive brokerage from such non-member, and the contract note shall state that the bargain has been done between non-members. The creditors, however, submitted that the rule in question did not apply to continuations, but only to original purchases of shares.

Having regard to the above facts, and in particular to the consent of the debtors, the Tribunal were of opinion that the creditors were entitled to be indemnified by the debtors, and made an award upon that basis.

In *Henry Ansbacher & Co. v. Weingart* (No. 1071), (*Recueil*, vi, p. 49), the British creditors, who were stockbrokers, bought for account of the German debtor certain shares on the 27th May, 1913, and continued the shares from account to account, themselves acting as "takers-in." On the first fortnightly account contango was charged at the rate of $7\frac{1}{2}$ per cent. per annum, and then until the 28th August, 1913, at $8\frac{1}{2}$ per cent. per annum. The debtor in June and April made certain payments to the creditors by cheque, but by August, 1913, the shares had fallen to such an extent that the creditors altered the transaction from one of continuation to one of loan, charging 8 per cent. compound interest with fortnightly rests. The German Clearing Office contended that the transaction did not alter in character and remained a continuation transaction in which the creditors were "takers-in." The Tribunal, however, upon the evidence, were satisfied that the character of the transaction was altered in this manner with the consent of the debtor. The creditors contended that they were entitled to 8 per cent. interest with fortnightly rests until the 29th July, 1914, and thereafter simple interest at the rate of 8 per cent. per annum on the amount due on that day. The contest, based in the first instance on the ground of the debtor's insolvency in the autumn of 1913, was rejected by the Tribunal upon the same facts as those on which they founded their decision in *Ladenburg v. Weingart* (No. 499). The debtor did not himself resist the claim to interest, but the German Clearing Office contended that only Treaty interest at the rate of 5 per cent. was payable, and that in any event the Treaty interest would not be payable on such part of the account as originated in interest. The Tribunal, upon the facts, decided that there was an agreement to pay 8 per cent. compound interest as from the 28th August, 1913, and that this agreement would take effect up to the 29th July, 1914. They accordingly held that the creditors were, under paragraph 22 of the annex to Section III, Part X, entitled to simple interest at the contractual rate of 8 per cent. on the sum then owing.

(9) *Clearing Procedure.—Residence in Plebiscite Territory.*

The question as to whether German creditors and debtors who resided on the 10th January, 1920, in the so-called plebiscite territory are subject to clearing procedure, regardless of the result of the plebiscite which subsequently took place, was for long a matter of controversy between the two Clearing Offices. The German Clearing Office originally adopted the view that such creditors and debtors were subject to clearing procedure, and to this view the British Clearing Office, adopting the strict and literal construction of the Treaty, acceded, and in pursuance thereof made a considerable number of admissions of claims put forward by the German Clearing Office. Subsequently, after the result of the plebiscite became known, the German Clearing Office changed their view and refused to admit British claims against German debtors who resided in that part of Silesia which, as a result of the plebiscite, eventually became Polish territory. The difference of opinion was decided in the case of *The Standard Bank of South Africa, Ltd. v. Bismarckhutte A.G.* (No. 1845), (*Recueil*, vi, p. 68), in which the creditors, an English company, with their head office in London, claimed a debt against a company which carried on business and continued to carry on business at Bismarckhutte, in that part of Silesia which was ceded to Poland under the provisions of Article 88 of the Treaty of Versailles in October, 1921.

The main contention put forward by the German Government Agent was that, whilst Article 296 rendered it necessary that a national should be resident in the territory of his State on the 10th January, 1920, this was only one of the elements necessary to make the clearing system applicable to the debts in which he was interested, whether as a debtor or creditor. It was submitted that in such a case as the present, where territory ceded after the coming into force of the Treaty was involved, the party must reside within the territory of his former State after the date of cession. It was said to be essential for the administration of the clearing system that the private party concerned should continue to be subject to the jurisdiction of the clearing State.

The Tribunal declared themselves unable to uphold that contention, as the Treaty under which the territories in question were ceded makes no reference to such considerations as those alleged on behalf of the German Clearing Office. They therefore made an award in favour of the British national for the amount of his claim.

(10) *Special Fee.—Claims in Nature of Liquidated Damages in respect of Different Transactions.*

Although, as mentioned in my previous reports, the Tribunal has on more than one occasion refused to allow a claim for unliquidated damages to be put forward as a debt under Article 296, it has nevertheless permitted a debtor to raise as a set-off in respect of a 296 claim the defence that he is entitled to a claim for unliquidated damages arising out of the same transaction in respect of which the original claim was made.

There have been numerous cases in which debtors have sought to set off against the same creditor claims in the nature of unliquidated damages arising out of different transactions. In all these cases the Tribunal has strictly adhered to their former view and refused to allow a set-off. In the *Nitrogen Fertilizers, Ltd. v. Verkaufs Vereinigung fuer Stickstoffdunger, G.m.b.H.* (No. 495), (*Recueil*, v, p. 648), a number of companies amongst which were the creditors (a British company) owed a debt to the debtors (a German company). Under agreements between the parties the creditors had to deliver to the debtors, subject to strikes, lock-outs, &c., quantities of lime nitrogen to be specified. The creditors claimed under Article 296 of the Treaty the amount due to them in respect of the deliveries which they had made before the outbreak of war.

The Tribunal held that the debtors were not entitled to set off against this claim costs incurred by them in defending actions brought against them by German purchasers for non-delivery of the lime nitrogen which they had contracted to sell, and which they could have delivered had the creditors effected the deliveries due from them; nor were they entitled to set off the amount which they had paid to a subsidiary Norwegian company belonging to the creditors, in respect of purchases of lime nitrogen made during the war in order to enable them to carry out their contracts with German purchasers.

They further held that the debtors were not entitled to set up by way of defence to the creditors' claim a counter-claim for damages for breach of contract to deliver to the debtors during the war the specific quantity of lime nitrogen, and to them alone, because such damages did not arise out of the deliveries in respect of which the creditors' claim was made. Moreover, the creditors' obligation to make deliveries to the debtors, and to them alone, was extinguished as from the outbreak of war by reason of Article 299 of the Treaty.

They further held, however, that the debtors were entitled to set off the amount of a penalty incurred by the creditors in respect of a breach of agreement before the outbreak of war; and, further, that, as the lime nitrogen had been sent to the debtors before the war as agents for sale and collection of the purchase price, acts had been done under the contract before its dissolution giving rise to a pecuniary obligation when the purchase price came into the debtors' hand: See *Schuster & Co. v. Deutsche Bank* (No. 409). The debtors therefore remained liable to the creditors for any surplus after payment by the debtors to a German bank of the amount of a loan to the creditors upon the security of the lime nitrogen.

The principle that a claim for unliquidated damages arising out of one transaction cannot be set off against an ordinary debt claim arising out of a separate transaction was also affirmed by the Third Division in four cases: *Morgan & Co. v. W. N. Chaplin & Co., Ltd.* (No. 3543), (*Recueil*, vi, p. 43); *Vandyck Printers, Ltd. v. Moderner Verlag* (No. 3058), (*Recueil*, vi, p. 33); *Delling v. Berliner & Co.* (No. 4057); *Weber & Co. v. I. Altschuler & Co.* (No. 3023).

(11) *Principal and Agent.—Sale of Perishable Goods without Special Authority.*

There have been a number of cases in which forwarding-agents, coming into the possession of perishable goods for their principals, took it upon themselves to realise such goods without any special authority. In such cases the Tribunal has always held that the agent must himself account to the principal for a debt under Article 296. Such a case was that of *Armour & Co., Ltd. v. Rudert* (No. 1676), (*Recueil*, vi, p. 29), in which the British creditors prior to the war had employed the debtor as their forwarding-agent in respect of goods purchased by the creditors on the Continent. In July, 1914, the creditors purchased certain eggs in Bessarabia, which were despatched thence on the overland route to the United Kingdom. On the 4th August, 1914, the eggs had reached the hands of the debtor.

The Tribunal found, as a fact, contrary to the contention of the German Government Agent, that the debtor held the eggs as the forwarding-agent of the creditors. It was common ground that, as it was then impossible to forward them to England, the debtor, in view of their perishable nature, on or about the 10th August, caused them to be sold by auction, and took charge of the proceeds of realization. In those circumstances the Tribunal held that the debtor was under an obligation to account for those proceeds to the creditors, and that this obligation was a debt which became payable during the war, and arose out of a transaction or contract with them of which the execution was suspended on account of the declaration of war.

(12) *Government Guarantee of Clearing Office Claims.—“Formal Indication of Insolvency.”*

With regard to the question of formal indication of insolvency in the case of *Baron & Salaman v. Max Arendt* (No. 2101), (*Recueil*, v, p. 303), referred to in my last report, whilst expressing their opinion that there had been a “formal indication of insolvency” by the German debtor, and that the creditors' claim was not one for the guarantee by the German Government, nevertheless, having regard to a statement by the creditors that certain dividends had been offered or paid during the war, the Tribunal allowed the point to remain open for six weeks with a view to the creditors, if so advised, presenting an amended case within that period. In their amended case the creditors established that the debtor had made a settlement with his Berlin creditors, the money having been placed at his disposal by relations, and that under the settlement so made—(1) The debtor was to pay to his creditors 8 per cent. on the balance owing; (2) no further claims were to be made against the debtor personally; (3) a deposit was made of the sum to which the creditors in this case would be entitled under the settlement.

In those circumstances, the Tribunal, having ascertained from the creditors that they were prepared to accept the dividend in question subject to the above conditions, declared that they regarded the creditors' share of the amount to be distributed as a dividend within the meaning of paragraph 4 of the Annex to Section III, Part X. In consequence it was to be credited through the clearing procedure, and would carry interest at the rate of 5 per cent. per annum. An award was accordingly made upon that basis.

In *Leader, Plunkett, & Leader v. Heye* (No. 1954), (*Recueil*, vi, p. 77), the creditors claimed a debt for which they had recovered judgment in Germany prior to the outbreak of war. The only question which arose at the hearing was whether the circumstances of the case brought it within the exceptions to the general provision rendering each of the High Contracting Parties responsible for the payment of debts due by their nationals contained in Article 296 (b) and paragraph 4 of the Annex to Section III, Part X.

On the 9th August, 1913, an attempt was unsuccessfully made to levy execution against the debtor upon a judgment, and a protocol attesting this fact was duly recorded in the Court in Berlin from which the proceedings in execution had issued. In July, 1914, an attempt to levy execution in another action was similarly unsuccessful, and the appropriate protocol thereof was duly made. Acting in pursuance of paragraph 807 of the German Civil Code, whereby under such circumstances a debtor may be required to swear the oath called “*Offenbarungseid*,” and in default that the Court may make an order for his personal arrest to enforce the making of such an oath, the District Court, upon the application of the creditor, made an order for the debtor's arrest with a view to compelling him to take the oath. The arrest did not appear to have been effected, but the order for his arrest remained open for inspection. Upon the facts established in the case, the Tribunal, after examination of both the English and French texts of the Treaty, were of opinion that at the outbreak of war the debtor was in a juridical condition comprised within the scope of the words “*en faillite ou déconfiture ou en état d'insolvabilité déclarée*,” and that he was within the scope of the intended meaning of the corresponding English words used in the Treaty: “in a state of bankruptcy or failure or had given formal indication of insolvency.” No question arose as to the recovery of any dividends in accordance with paragraph 4 of the annex. They accordingly decided that there was no debt within the meaning of Article 296 of the Treaty from the debtor to the creditor.

(13) *Article 296 of the Treaty of Versailles.—Mixed Partnerships.*

The case of a so-called "mixed partnership" was considered by the Tribunal (First Division) in *Aykroyd v. Peinemann* (No. 2249), (*Recueil*, v, p. 662), in which a claim was made by a British creditor under Article 296 (1) against the debtor as the German partner resident within German territory in the mixed partnership known as Duckitt & Co. in England and as Detering & Peinemann in Germany. The claim was also directed against Peinemann, as the representative of Detering, another German partner in the partnership, who was killed in the war. The said German partnership comprised four partners, two of whom were German and two were British nationals. Applying the principles of *Hardt v. Stern* (*Recueil*, iii, p. 12), the British nationals would receive 63 per cent. and the German partners 37 per cent. of the assets. On the 2nd June, 1919, one of the two British partners paid to the creditors the sum of £680, and on the 14th September, 1920, he paid a second instalment of £680 on account of the debt.

In the opinion of the Tribunal, the creditors were entitled to succeed, the only questions to be decided being, in the first place, as to the effect to be given to the part payment, and, in the second place, as to the amount on which interest should run. As to the first question, the Tribunal accepted the view of both Clearing Offices—namely, that where part-payment during the war had been made by a partner in a debtor firm which is a mixed partnership to a creditor, the amount of such payment would be inadmissible for the purposes of the claim by the creditor against the mixed partnership, and the claim would consist only of the amount outstanding on the 10th January, 1920. In making an award on that footing the Tribunal stated that it should not affect the rights of the creditors as to the balance of the debt which might be outstanding, or the adjustment of liability between the surviving members and the late members of the debtor partnership. As to the second question, the Tribunal were of opinion that in those proceedings interest should run only on the amount of the debt outstanding on the 10th January, 1920, such claim being dependent solely on paragraph 22 of Section III, Part X, and not being based on contract, law, or custom.

The principle of the mixed partnership was also applied by the First Division in a somewhat complicated case of *Commerz & Privatbank A.G. v. Pena Copper-mines, Ltd.* (No. 2763), in which the creditors were one of a group of firms consisting of the *Crédit Foncier d'Algérie*, a French company, the creditors, and the *Société Anonyme Cuivre et Pyrites*, a French company. Certain advances had been made by the above-mentioned group of firms to the debtors, and, by way of contest to the claim of the German member of the group for the proportionate amount of the debt due to such member, the debtors contended that the liability was a joint one to the three members, and that it was not severable, and, further, that if any debt was due from them to the creditors, the currency applicable was the French currency in which the advances were made. The latter contention was opposed at the hearing by the British Government Agent, who represented that any credit must be in sterling, and was not seriously maintained by the debtors.

In the opinion of the Tribunal, although the group could not be regarded as a partnership under English law, the three members had undertaken a joint liability, and were jointly entitled to the benefits arising from the agreement with the debtors. After referring to the cases of *Hardt v. Stern*, *Fischer & Co. v. Biehn*, and *Aykroyd v. Peinemann* as showing that when a debt was due from a mixed partnership the share of the debt applicable to partners not subject to the clearing procedure drops out, and only the share of the other partners is dealt with in the clearing, the Tribunal expressed their opinion that the same methods were to be employed in dealing with a debt due to a mixed partnership. The Tribunal further expressed their opinion that corresponding principles must govern cases, similar to the present, of joint liability or of joint rights, where the debtors, jointly liable, or the creditors, jointly entitled, were not all subject to the clearing procedure. Under English municipal law the joint creditors should sue jointly, but this would not be possible before the Tribunal, as two of them by the Treaty were excluded from the clearing procedure. On the other hand, under German municipal law similar considerations would apply.

In these circumstances it was necessary to adjust the English and German municipal laws to the principles of the Treaty. According to these principles, the shares of the creditors jointly entitled who were not subject to clearing procedure should be eliminated, and the creditors who under the Treaty were entitled to the benefits of the clearing procedure should recover their portion of the amount due. In the present case the main claim of the creditors represented their share of the joint debt, and this the Tribunal held they were entitled to recover.

(14) *Dissolution of Contract under Article 299 (a) of the Treaty of Versailles.—"Pecuniary Obligation."*

The question as to whether, upon the dissolution of a contract under which one of the parties had obtained a benefit at the expense of the other party, there remained a pecuniary obligation within the meaning of Article 299 (a) came before the Tribunal in the case of *Burroughs Wellcome v. Chemische Fabrik auf Actien* (No. 3958), (*Recueil*, vi, p. 13). The British creditors had purchased urotropine before the war upon the terms that, in addition to a cash rebate, they should be entitled to a 10-per-cent. goods bonus, under which the debtors at the end of each year had to deliver free of charge a quantity of urotropine equivalent to 10 per cent. of the amount purchased by the creditors during the year. The creditors claimed, by way of return of the purchase price paid, the cash value of the amount of urotropine to which they would have been entitled as bonus in respect of purchases for the period up to the 4th August, 1914.

The Third Division found that, under German and Scottish law, when a contract becomes impossible of performance, the party who has obtained a benefit at the expense of the other party must make repayment; and they held that, whether the contract was governed by English or German law, it was within the intention of the Treaty that, upon dissolution by Article 299 (a), the party who has obtained a benefit at the expense of the other party shall thereby be subject to a pecuniary obligation within the exception contained in Article 299 (a). This does not mean that a party who has received payment under a contract will necessarily have to make repayment in case the contract has not been fully performed, or that a party who has partly performed the contract will always be entitled to remuneration, as the parties may have contracted in such terms as to show the intention that part-performance should be at the risk of the party performing. In the present contract, however, the parties had made no special provisions for circumstances in which the further performance became impossible, and the creditors were therefore entitled to repayment.

In the case of *Davidson v. Dammann* (No. 2441) the British creditor had at various times before the outbreak of the war instructed the debtors to purchase securities for him, but, following the course of business between the parties, he did not find the whole of the purchase price, the necessary money being advanced by the debtors, who placed the amount to the creditor's debit in his current account, charging him interest thereon. Another bank in Germany at which the creditor's account was in credit succeeded, after obtaining permission from the proper German authorities, in applying part of that balance in discharge of the debit balance with the debtors, and on the 1st February, 1919, the necessary payment was made and accepted by the debtors.

The Tribunal held that on the outbreak of war the contract between the parties was dissolved, and the creditor lost the right to have the securities delivered to him; a pecuniary obligation, however, remained, and in the circumstances of the case the extent of that pecuniary obligation was to be ascertained under German law.

In the view of the Tribunal the question was governed by paragraphs 812 and 818 of the German Civil Code. The debtors had obtained a benefit which had no longer any legal ground, and was usually described as "unjustified enrichment." Having regard to Article 296, the Tribunal held that the proper date for the ascertainment of the capital amount of the debt was that of the coming into force of the Treaty—10th January, 1920. The Tribunal refused to hold that the payment of the 1st February, 1919, having been made with the assent of the German authorities, was invalid, and distinguished the case on the facts from *Meyer & Sohn v. Joseph* (No. 2690), where a payment made in October, 1919, was not accepted in discharge of a debt. The Tribunal therefore gave directions with a view to ascertaining the amount of the debtors' enrichment on the 10th January, 1920.

(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 sequestered 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).

The German Government agent submitted that all sums collected after the 11th November, 1918, notwithstanding that they came within the control of the compulsory administrator, should be deducted from the amount to be credited as cash assets. This submission was based on the second part of paragraph 1 of the annex to Section IV, Part X, under which all measures taken by the German authorities since the 11th November, 1918, were void.

The Tribunal were of opinion that this provision was not to be applied to the items of a pending administration continuing after that date, and that the sums so collected were to be treated as cash assets. There were, however, to be deducted all sums which had been collected as interest on the war loans taken up, whether in the course of the compulsory administration or prior thereto.

The case of *Epstein v. German Government* (No. 283), (*Recueil*, vi, p. 19) may be cited as illustrating the principle of "once a cash asset, always a cash asset." The British claimant had his pictures and property subjected to compulsory administration, and in the course of the proceedings the Tribunal directed the German Government to furnish a report setting out the total amount of the proceeds of all the sales and the expenses connected therewith, and any charges or debts to which the claimant was personally liable and which the administrator in fact discharged out of the proceeds of the sale of the pictures.

It appeared that on the 12th December, 1918, the compulsory administration came to an end, and that the amount then standing to the credit of the claimant at the bank was thereupon released, and so, according to the German Government, must be taken to have been returned to the claimant. The British Government Agent, however, intimated his intention of contending that the sum in question, having been in the hands of the Administrator, remained a cash asset and must be dealt with as prescribed by Article 297 (*h*). The Tribunal apparently accepted this view, for they held that this amount was not to be deducted according to their interlocutory decision, and that the question to which the British Government Agent referred did not therefore arise.

(17.) *Article 297 (c) of the Treaty of Versailles.—Internment and Compulsory Administration.*

The Tribunal have adhered to their previous decisions to the effect that no claim for compensation under Article 297 (*e*) arises by reason of loss or damage suffered through internment. Where, however, internment is coupled with compulsory administration of the business of the interned different considerations may apply. In the case of *Buehring v. German Government* (No. 227), the claimant, fearing internment, in November, 1914, gave a power of attorney to his wife, and on the following day he was interned, and on the 28th January, 1915, a compulsory administrator of his business was appointed. On the 20th March, 1915, the power of attorney given to his wife was annulled. On the 1st September, 1919, the compulsory administrator handed the business back to the claimant's wife, who thereupon signed a document agreeing that the assets had been administered duly and in accordance with the books of the business, so that there was no longer any claim against the administrator. The claimant, however, repudiated the authority of his wife to sign such a document.

In the opinion of the Tribunal the claimant was entitled, notwithstanding the said release by his wife, to be compensated in so far as he had suffered damage or injury as a result of the appointment of the administrator. They therefore appointed a neutral expert to present a report as to the amount of such damage or injury, and eventually assessed the compensation to which the claimant was entitled at £1,800, together with interest by way of compensation for loss of use from the date of the conclusion of the administration—*i.e.*, 1st September, 1919.

In the case of *Whitwell v. German Government* (No. 1513), the claimant owned a laundry business in Germany. On the 6th November, 1914, he was arrested and interned, and on the 6th November, 1915, he was repatriated to England. No administration order of the business was ever made, but the landlord took possession of the premises owing to rent being in arrear, and the property became deteriorated. The claimant suggested that the refusal of facilities to him to direct his affairs, and the omission of the German Government to appoint a caretaker or custodian, were exceptional war measures. This, in the opinion of the Tribunal, was unsustainable. The loss, they held, which the claimant might have suffered as the result of his internment did not fall within their jurisdiction. They, however, decided to award him the sum of £150 by way of compensation in respect of certain moneys and articles of value left in the hands of a relative and an agent, which came into his hands again only in 1925, when the value of their contents had deteriorated. Taking into account all the circumstances, the Tribunal were of opinion that in respect of these items the claimant had suffered damage as a result of the Imperial decree against export, and they accordingly made the above award.

MISCELLANEOUS.

CONVERSION OF GERMAN GOVERNMENT LOANS.

20. In paragraph 29 of my last report I set out the position in regard to the conversion of securities issued by the German Government by proprietors who had been in uninterrupted ownership from prior to the 1st July, 1920. Information was later received from the German Consul that German Government bonds acquired by their present owners after that date could be presented for exchange into the loan liquidation debt on the basis of R.M. 25 (*i.e.*, gold marks) for each M.1,000 of the old loan. The period for consideration of applications is to close on the 30th June, 1927, after which date those remaining unrepresented will become valueless. Due publicity was given to this statement from the German Consul, and holders of such bonds living in New Zealand and its dependencies or in Western Samoa were advised to communicate direct with the Consul.

ARCHIVES OF THE AUSTRIAN CONSULATE IN NEW ZEALAND.

21. The archives of the Austro-Hungarian Consulate at Auckland have now been delivered in accordance with the authority received from the Austrian Government to the Royal Swedish Vice-Consul at Auckland.

CLAIMS AGAINST RUSSIA.

22. No further developments have occurred in regard to these claims.

GERMAN PROPERTY IN SAMOA.

23. The proposal in regard to the revaluation of the ex-enemy-owned properties in Samoa, referred to in last year's report, has not yet been finally settled. In consequence the Samoan authorities have not yet found it possible to complete the liquidation schedules in regard to these properties. It is understood that it will be some time yet before these schedules will be available.

STATISTICS RELATIVE TO THE ENEMY PROPERTY AND CLEARING OFFICE WORK.

24. The following is a list of the tables printed in the appendix to this report, containing statistics relating to the work entrusted to the Public Trustee under the War Regulations and the Treaty of Peace Order, 1920. The comparative tables referred to under the last three headings were compiled by the Controller to the Central Clearing Office and published in his Sixth Annual Report :—

- I. Statement of the cash amounts held in New Zealand but not yet credited to the Liquidation Account, and the property not yet liquidated.
- II. Statement of amounts released in New Zealand from the provisions of the War Regulations, the Treaty of Peace Order, 1920, and the Treaty of Peace (Austria and Hungary) Order, 1924.
- III. Statement of the amounts held on the 31st March, 1927, by the Public Trustee as Custodian of Enemy Property and Controller of the New Zealand Clearing Office.
- IV. Statement showing the progress made in New Zealand towards the disposal of Clearing Office claims.
- V. Statement of the position in regard to claims in respect of enemy debts under Article 296 of the Treaty of Versailles owing to Allied creditors by German debtors.
- VI. Statement of the position in regard to claims in respect of enemy debts under Article 296 of the Treaty of Versailles owing to German creditors by Allied debtors.
- VII. Statement of the position in regard to claims by Allied nationals under Article 297 of the Treaty of Versailles.

The work has progressed as far as the various circumstances and factors affecting it have permitted. The remaining work to be performed will not occasion a great deal of difficulty or labour, but is of such a nature that it cannot be brought to a speedy conclusion. Its finalization depends upon factors entirely beyond my control.

I have, &c.,

J. W. MACDONALD,

Public Trustee, as Custodian of Enemy Property and
Controller of the New Zealand Clearing Office.

Wellington, 14th July, 1927.

APPENDIX.

I. STATEMENT OF THE CASH AMOUNTS HELD BUT NOT YET CREDITED TO THE LIQUIDATION ACCOUNT AND THE PROPERTY NOT YET LIQUIDATED.

Cash.

(1) Amounts held subject to the settlement of claims under Article 296 of the Treaty of Versailles	£	s.	d.
(2) Amounts held subject to the determination of contingencies	18,207	6	7
(3) Amount held subject to determination of the owner's nationality	97	10	2
	<u>£18,389 19 10</u>		

Property.

(The amounts shown are approximate only.)

(1) Interests in estates consisting of assets not realized or not yet realizable — e.g., unpaid purchase-money, mortgages not yet matured, &c.	£	s.	d.
(2) Property held subject to the determination of contingencies	13,422	0	0
(3) Property presenting inherent difficulties of realization, such as interests of German remaindermen, &c.	2,335	0	0
	7,630	0	0
	<u>£23,387 0 0</u>		

N.B.—(1) In the above figures no deductions have been made in respect of prior life interests.
(2) In addition there will be certain New Zealand Government inscribed stock (see paragraphs 10–12 of the report), as to which full particulars have not yet been received.

II. AMOUNTS RELEASED FROM THE PROVISIONS OF THE WAR REGULATIONS, THE TREATY OF PEACE ORDER, 1920, AND THE TREATY OF PEACE (AUSTRIA AND HUNGARY) ORDER, 1924.

The following statement shows the amounts which have been released from the provisions of the War Regulations, the Treaty of Peace Order, 1920, and the Treaty of Peace (Austria and Hungary) Order, 1924, on the undermentioned grounds, for payment to the persons beneficially entitled thereto, or to their authorized agents. These figures comprise only the amounts which have actually been refunded by the Custodian, and do not include the value of the properties in regard to which the power to retain and liquidate has not been exercised (*e.g.*, assets belonging to internees or other enemy nationals who have been permitted to remain in the Dominion, certain property belonging to British-born wives of German nationals, &c.). Payments made in respect of claims established by New Zealand nationals have not been included in this statement.

	£	s.	d.
(1) Amounts belonging to persons or firms who have submitted satisfactory documentary evidence that they possessed prior to the outbreak of war British, Allied, or neutral nationality, or were in a condition of statelessness ..	16,838	8	8
During the war all persons resident in enemy territory, or enemy occupied territory, irrespective of their nationality, were regarded as enemies for the purpose of the War Regulations, and consequently all amounts payable to them during the war were required to be paid to the Custodian of Enemy Property. On the conclusion of peace the necessary steps were taken to release the amounts belonging to British, Allied, and neutral subjects, or persons without nationality.			
(2) Amounts belonging to persons of former enemy nationality who have acquired the nationality of an Allied or Associated Power under one of the principal Treaties of Peace, or were otherwise entitled under such treaties to the release of their property ..	6,131	13	6
These persons are entitled to the release of their property in accordance with the express terms of the various Treaties of Peace.			
(3) Amounts belonging to British-born subjects who lost their British nationality on marriage, and who, subsequent to the coming into force of the Treaty of Peace, have been renaturalized as British subjects ..	29,342	19	1
These moneys have been released in conformity with the policy of the Imperial authorities in connection with similar cases in the United Kingdom.			
(4) Amounts belonging to British-born wives of German nationals ..	16,346	5	2
(5) Proceeds of investments representing savings from earnings made in New Zealand by German nationals who were not at the outbreak of the war permanently resident in the Dominion and who are now in necessitous circumstances ..	3,028	3	9
(6) Compassionate releases upon grounds other than (3), (4), and (5) above ..	8,301	3	2
(7) Moneys belonging to aliens who were interned during the war, and/or who were repatriated from New Zealand at their own request or otherwise ..	40,254	15	5
(8) Moneys belonging to the German Church Trust at Christchurch, released in pursuance of an Order in Council dated 23rd April, 1923, made under section 54 of the Reserves and other Lands Disposal and Public Bodies Empowering Act, 1922 ..	971	15	2
(9) Amounts transferred for disposal by the Commonwealth Clearing Office, the liquidator of the English branch of an enemy company, or in accordance with the Ex-enemy Absentee Property (Samoa) Order, 1923 ..	1,171	1	0
(10) Amounts transferred to Consolidated Fund :—			
(a) Proceeds of realty acquired by a German subject which was forfeited and declared by the Supreme Court to be vested in the Public Trustee in trust for His Majesty the King under section 5 of the War Legislation Act, 1917 ..	£	s.	d.
	520	4	5
(b) Sundry amounts where the legal or beneficial owners could not be traced ..	1,728	17	4
		2,249	1 9
(11) Miscellaneous releases ..		628	11 11
			£125,263 18 7

III. STATEMENT OF AMOUNTS HELD UNDER THE WAR REGULATIONS, THE TREATY OF PEACE ORDER, 1920, AND THE TREATY OF PEACE (AUSTRIA AND HUNGARY) ORDER, 1924.

The balances held in pursuance of the War Regulations, the Treaty of Peace Order, 1920, and the Treaty of Peace (Austria and Hungary) Order, 1924, as at the 31st March, 1927, have been summarized under the following headings :—

Credit Balances :—

	£	s.	d.
(1) Net proceeds of German property retained and liquidated in New Zealand and credited to Germany in accordance with Article 297 of the Treaty of Versailles (see paras. 5-7, <i>supra</i>) ..	248,404	14	7
(2) Sundry credit balances awaiting transfer to the German Liquidation Account, or release ..	18,389	19	10
(3) Net proceeds of Austrian property retained and liquidated in New Zealand and credited to Austria in accordance with Article 249 of the Treaty of St. Germain-en-Laye ..	1,563	0	5

(4) Sundry sums the disposal of which cannot at present be definitely determined	£	s.	d.	£	s.	d.
	665	15	11			
Inquiries to ascertain further particulars in regard to each case have been instituted.						
(5) Accommodation interest charged by the Custodian of Enemy Property against debtors who were granted extensions of time for payment of amounts payable to the Custodian in pursuance of the War Regulations	1,896	2	0			
				270,919	12	9
<i>Debit Balances :—</i>						
(6) Difference between sundry credit and debit balances in accounts relative to transactions under Article 296 of the Treaty of Versailles	2,977	6	1			
(7) Advertising, printing, stationery, sundry expenses	5,478	16	6			
(8) Commission charged by the Controller on amounts collected from New Zealand debtors and credited in full to the German Clearing Office in accordance with the provisions of the Treaty of Versailles	493	8	4			
(9) Bad Debts Account, being claims established by German nationals against New Zealand nationals or firms and credited to the German Clearing Office in accordance with the provisions of the Treaty, but which amounts cannot be recovered owing to the insolvency or disappearance of the debtors	1,038	5	1			
(10) Sundry debit balances representing claims admitted to the German Clearing Office in certain cases where the debtors have been unable to make immediate settlement of the amounts due but are paying by instalments	50	18	0			
The collection of these balances is receiving careful attention in order to prevent or minimize any loss to New Zealand funds.						
(11) (a) Claims paid in respect of the proceeds of	£	s.	d.			
British property liquidated in Germany	18,525	11	1			
(b) Payments on account of compensation awarded by the Anglo-German Mixed Arbitral Tribunal in respect of British property liquidated in Germany	2,324	5	6			
(c) Payment of claim under paragraph 4 of the Annex to Section IV of Part X of the Treaty of Versailles	267	15	0			
				21,117	11	7
				31,156	5	7
				239,763	7	2
Less payment to Treasury on account of surplus funds				100,000	0	0
Balance, being net amount held by Public Trustee in his capacity as Custodian of Enemy Property and Controller of the New Zealand Clearing Office				£139,763	7	2

N.B.—Since the 31st March last a further payment of £50,000 has been made to the Treasury.

IV. PROGRESS REGARDING THE DISPOSAL OF CLAIMS.

The following table indicates the progress which has been made in connection with the disposal of claims lodged through the New Zealand Clearing Office as at 31st March, 1926 :—

<i>(a.) Claims by New Zealand Nationals against German Nationals under Article 296 of the Treaty of Versailles.</i>						
171 claims lodged in New Zealand and forwarded to the Central Clearing Office, London	£	s.	d.	£	s.	d.
	34,665	15	5			
45 claims lodged with the London representative of the New Zealand Clearing Office	18,368	8	3			
				53,034	3	8
Claims withdrawn in whole or in part by the New Zealand Clearing Office in response to contests received from the German Clearing Office and in accordance with the instructions of the claimants	26,674	13	11			
Claims admitted by the German Clearing Office in whole or in part	22,201	4	1			
Claims rejected in terms of agreement with German Clearing Office, and deemed to be withdrawn	3,338	10	1			
				52,214	8	1
Balance, being four claims still under action (lodged in New Zealand)				£819	15	7

In addition to the sum of £22,201 4s. 1d. admitted and credited by the German Clearing Office as shown above, interest thereon amounted to £6,645 11s. 2d. has also been credited by that Office. The amount admitted, less a deduction of 2½ per cent., being Clearing Office commission thereon, has been paid by this Office to the New Zealand claimants.

Since the last report claims totalling £7 6s. 5d., together with Treaty interest thereon amounting to £4 4s. 9d., have been admitted by the German Clearing Office, and claims totalling £3,866 7s. 3d. have been withdrawn by the New Zealand Clearing Office. The total amount of claims disposed of during the year including claims rejected and deemed to be withdrawn is £7,212 3s. 9d.

Of the four outstanding claims, totalling £819 15s. 7d., two have been rejected by the German Clearing Office but have been referred by the claimants to the Anglo-German Mixed Arbitral Tribunal or adjudication.

(b.) *Claims by German Nationals against New Zealand Nationals under Article 296 of the Treaty of Versailles.*

1,476 claims received from the German Clearing Office through the Central Clearing Office	£	s.	d.
	211,151	12	10
Claims retransferred to the Central Clearing Office as not applicable to New Zealand	£	s.	d.
	1,164	5	2
Claims withdrawn in whole or in part by the German Clearing Office in response to letters of contest forwarded by this Office on behalf of the alleged New Zealand debtors	167,005	7	1
Claims admitted in whole or in part by New Zealand firms and credited to the German Clearing Office	30,540	15	11
Claims rejected under agreement with German Clearing Office, and deemed to be withdrawn	5,946	1	7
	204,656	9	9
Balance, being 43 claims still unsettled	£6,495	3	1

In addition to the sum of £30,540 15s. 11d. admitted and credited to the German Clearing Office as shown above, Treaty interest amounting to £10,694 13s. 11d. has also been admitted.

Since the last report liability in regard to claims amounting to £186 19s. 10d., exclusive of interest, has been established by the German claimants or acknowledged by New Zealand debtors. The necessary credit schedules have been duly forwarded to the German Clearing Office in respect of these claims.

In response to letters of contest lodged by this Office on behalf of the alleged New Zealand debtors, the German Clearing Office has withdrawn claims amounting to £4,310 1s. 5d. during the period.

Claims totalling £5,946 1s. 7d. have become ineffective as a result of rejection by the New Zealand Clearing Office, and the total amount of claims under these headings finally disposed of during the year is therefore £10,443 2s. 10d.

Of the forty-three unsettled claims totalling £6,495 3s. 1d., thirteen claims totalling £3,647 4s. 8d. have been notified as rejected, and there are therefore thirty claims totalling £2,847 18s. 5d. still under active consideration by this Office.

(c.) *Claims by New Zealand Nationals against Germany under Article 297 of the Treaty of Versailles.*

Thirteen claims forwarded to the German Clearing Office through the Central Clearing Office	£	s.	d.
	52,731	17	3
Claims acknowledged in part by the German Clearing Office or established before the Anglo-German Mixed Arbitral Tribunal and credited to the New Zealand Clearing Office	£	s.	d.
	18,793	6	1
Compensation awarded by the Anglo-German Mixed Arbitral Tribunal either by consent of the parties or in course of formal judgment ..	2,319	19	5
Claims withdrawn in part on acceptance of German offers of compensation or in accordance with judgment of the Mixed Arbitral Tribunal	31,618	11	9
	52,731	17	3

As will be seen from the above table, all claims under this heading have been disposed of.

VII.—POSITION IN REGARD TO CLAIMS BY ALLIED NATIONALS, UNDER ARTICLE 297 OF THE TREATY OF VERSAILLES, FOR COMPENSATION IN RESPECT OF DAMAGE OR INJURY INFLICTED UPON THEIR PROPERTY RIGHTS AND INTERESTS IN GERMAN TERRITORY BY THE APPLICATION OF EXCEPTIONAL WAR MEASURES OR MEASURES OF TRANSFER.

As at 31st March, 1926.

Allied Country.	Allied Claims.					German Property in Allied Territory.			
	Notified to Germany under Article 297 (b) and (c).	In respect of Claims notified, Credits have been given for—				Payments to Allied Claimants.		Property realized.	Credited to Germany under Article 297 (d).
		Proceeds of Liquidation under Article 297 (b).	Property restored under Article 297 (f).	Compensation awarded by the Mixed Arbitral Tribunal or agreed to by the German Government under Article 297 (e).	Total Credits.				
Belgium ..	Francs 156,021,468	Francs 28,758,280	Nil	Francs 24,000,000	Francs 52,758,280	Francs 19,788,698	Nil	Nil	} This figure is not at present available.
Great Britain ..	£66,248,772	£19,871,425	£114,537	£11,801,621	£31,787,583	£19,866,896*	†£53,714,824	£36,480,443	
France—	} Francs 1,009,668,006	Francs 249,931,869	Francs 83,686,958	Francs 559,478,016	Francs 893,086,843	Francs 175,989,691	Francs 2,016,445,140	Francs 2,016,445,140	} This figure is not at present available.
Paris Office ..					These figures are	not at present available.			
Strasbourg Office ..				Lire 17,121,106	Lire 22,378,270	Lire 5,257,164	Lire 17,121,106	Lire 219,300,934	} This figure is not at present available.
Greece ..		Lire 5,257,164	Nil	Nil	Ticals 403,928	Nil	Nil	Lire 4,626,232	
Italy ..		Nil	Ticals 403,928	Nil				Ticals 18,113	
Siam ..	Ticals 2,249,677								

* The figures of £19,866,896 and £11,988,078 include credits in favour of the Dominions and colonies which have been passed to them for settlement. † The delay in crediting the whole of this sum to Germany is largely due to the fact that it includes the proceeds of sale of depot securities which are subject to claims by third parties. It does not include realizations in the Dominions, particulars of which are not available at this office.

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