REPORTS OF INTERNATIONAL ARBITRAL AWARDS

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Tripartite Claims Commission (United States, Austria and Hungary) constituted under the Agreement of November 26, 1924 (12 April 1927 – 28 June 1929)

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NATIONS UNIES - UNITED NATIONS

PART II

TRIPARTITE CLAIMS COMMISSION (UNITED STATES, AUSTRIA AND HUNGARY) CONSTITUTED UNDER THE AGREEMENT OF NOVEMBER 26, 1924

PARTIES: United States of America, Austria, Hungary.

SPECIAL AGREEMENT: November 26, 1924.

COMMISSIONER: Edwin B. Parker (United States of America).

REPORT: Tripartite Claims Commission (United States, Austria and Hungary), Final Report of Commissioner and Decisions and Opinions (October 15, 1929). (U.S. Government Printing Office, Washington, 1933.)

HISTORICAL NOTE

When the Peace Treaties of Saint-Germain-en-Laye and Trianon, concluded between the Allied Powers and Austria on September 10, 1919, and between the same Powers and Hungary on June 4, 1920, had not been ratified by the United States, special treaties between the United States and Austria and Hungary were signed at Vienna and Budapest on August 24 and August 29, 1921, respectively, in which several provisions of the Treaties of Saint-Germain and Trianon were incorporated by reference. The Treaties of Vienna and Budapest secured to the United States and its nationals rights specified under a joint resolution of the Congress of the United States of July 2, 1921. They became effective on November 8 and December 17, 1921.

On November 26, 1924, a tripartite agreement was signed at Washington between the United States and Austria and Hungary. Article I of the Agreement which c ame into effect on December 12, 1925, provided for the selection of a Commissioner to pass upon most of the claims for losses, damages or injuries suffered by the United States or its nationals embraced within the terms of the Treaties of Vienna and Budapest and to determine the amounts to be paid to the United States by Austria and Hungary in satisfaction of all such claims. In pursuance of this provision, the Tripartite Claims Commission was established, consisting of Mr. Edwin B. Parker as sole Commissioner.

The Tripartite Claims Commission entered upon its duties on January 25, 1926. In the course of its 32 formal meetings, all held in Washington, D.C., it disposed of the claims presented. It concluded its judicial activities on May 11, 1929, in so far as Austria was concerned, and on September 27, 1929, with regard to Hungary.

The United States not having adopted the clearing system contemplated in the Treaties of Saint-Germain and Trianon, many claims presented before the Commission were settled out of court by the interested parties and subsequently withdrawn. This, and the fact that few reparation claims were filed, explains the small amount of decisions rendered by the Commission and the small total of its awards, i.e., $370,032.14 against Austria and $172,619.70 against Hungary, including interest.

BIBLIOGRAPHY

Agreement of November 26, 1924: L.N.T.S., vol. 48, p. 70; U.S. Treaty Ser., No. 730; State Papers, vol. 120, p. 57; de Martens, N.R.G., 3rd series, Vol. 15, p. 230.

Friedensrecht. Ein Nachrichtenblatt über die Durchführung des Friedensvertrages enthaltend die Verlautbarungen des österreichischen Abrechnungsamtes, vols. 1-9 (Wien, 1921-1930).

Ernst Prossinagg, Bericht des Sektionsrates Dr. —, osterreichischer Staatsvertreter bei der Tripartite Claims Commission United States, Austria and Hungary errichtet durch das Übereinkommen zwischen Österreich, den Vereinigten Staaten von Amerika und Ungarn vom 26. November 1924 (Wien, 1929, Druck der Österreichischen Staatsdruckerei).

Robert W. Bonynge, Report of—, Agent of the United States before the Tripartite Claims Commission (United States, Austria, and Hungary), established under the Agreement which became effective December 12, 1925, between the United States, Austria and Hungary (United States Government Printing Office, Washington, 1930).

Tripartite Claims Commission (United States, Austria and Hungary), Final Report of Commissioner and Decisions and Opinions (October 15, 1925) (U.S. Government Printing Office, 1933).

Agreement

AGREEMENT BETWEEN THE UNITED STATES AND AUSTRIA AND HUNGARY FOR THE DETERMINATION OF THE AMOUNTS TO BE PAID BY AUSTRIA AND BY HUNGARY IN SATISFACTION OF THEIR OBLIGATIONS UNDER THE TREATIES CONCLUDED BY THE UNITED STATES WITH AUSTRIA ON AUGUST 24, 1921, AND WITH HUNGARY ON AUGUST 29, 1921

Signed November 26, 1924, ratifications exchanged December 12, 1925[1]

The United States of America and the Republic of Austria, hereafter described as Austria, and the Kingdom of Hungary, hereafter described as Hungary, being desirous of determining the amounts to be paid by Austria and by Hungary in satisfaction of their obligations under the treaties concluded by the United States with Austria on August 24, 1921, and with Hungary on August 29, 1921, which secure to the United States and its nationals rights specified under a joint resolution of the Congress of the United States of July 2, 1921, including rights under the Treaties of St. Germain-en-Laye and Trianon, respectively, have resolved to submit the questions for decision to a commissioner and have appointed as their plenipotentiaries to sign an agreement for that purpose:

The President of the United States of America, Charles Evans Hughes, Secretary of State of the United States of America,

The President of the Federal Republic of Austria, Mr. Edgar L. G. Prochnik, Chargé d'affaires of Austria in Washington, and

The Governor of Hungary, Count László Széchényi, Envoy Extraordinary and Minister Plenipotentiary of Hungary to the United States,

Who, having communicated their full powers, found to be in good and due form, have agreed as follows:

Article I

The three Governments shall agree upon the selection of a Commissioner who shall pass upon all claims for losses, damages or injuries suffered by the United States or its nationals embraced within the terms of the Treaty of August 24, 1921, between the United States and Austria and/or the Treaty of August 29, 1921, between the United States and Hungary, and/or the Treaties of St. Germain-en-Laye and/or Trianon, and shall determine the amounts to be paid to the United States by Austria and by Hungary in satisfaction of all such claims (excluding those falling within paragraphs 5, 6 and 7 of annex I to section I of part VIII of both the Treaty of St. Germain-en-Laye and the Treaty of Trianon) and including the following categories:

(1) Claims of American citizens arising since July 31, 1914, in respect of damage to or seizure of their property, rights and interests, including any company or association in which they are interested, within the territories of

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[1] Source: L.N.T.S., vol. 48, p. 70.

either the former Austrian Empire or the former Kingdom of Hungary as they respectively existed on August 1, 1914;

(2) Other claims for loss or damage to which the United States or its nationals have been subjected with respect to injuries to or death of persons, or with respect to property, rights and interests, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war;

(3) Debts owing to American citizens by the Austrian and/or the Hungarian Governments or by their nationals.

ARTICLE II

Should the Commissioner for any cause be unable to discharge his functions, a successor shall be chosen in the same manner that he was selected. The Commissioner shall hold a session at Washington within two mounths after the coming into force of the present agreement. He may fix the time and the place of subsequent sessions according to convenience. All claims shall be presented to the Commissioner within one year from the date on which he holds the first session required by the foregoing provision.

ARTICLE III

The Commissioner shall cause to be kept an accurate record of the questions and cases submitted and correct minutes of proceedings. To this end each of the Governments may appoint a secretary, and these secretaries shall act together as joint secretaries and shall be subject to the direction of the Commissioner.

ARTICLE IV

The three Governments may designate agents and counsel who may present oral or written arguments to the Commissioner under such conditions as he may prescribe.

The Commissioner shall receive and consider all written statements or documents which may be presented to him, in accordance with rules which he may prescribe, by or on behalf of the respective Governments in support of or in answer to any claim.

The Governments of Austria and Hungary shall be notified of all claims filed with the Commissioner and shall be given such period of time as the Commissioner shall by rule determine in which to answer any claim filed.

The decisions of the Commissioner shall be accepted as final and binding upon the three Governments.

ARTICLE V

Each Government shall pay its own expenses, including the compensation of the secretary appointed by it and that of its agent and counsel. All other expenses which by their nature are a charge on the three Governments, including the compensation of the Commissioner and such employees as he may appoint to assist him in the performance of his duties, shall be borne one-half by the Government of the United States and one-half by the Governments of Austria and Hungary in equal moieties.

ARTICLE VI

This agreement shall be ratified in accordance with the constitutional forms of the contracting parties and shall come into force on the date of the exchange of ratifications.

IN FAITH WHEREOF, the above-named plenipotentiaries have signed the present agreement and have hereunto affixed their seals.

DONE in triplicate at the City of Washington this twenty-sixth day of November, one thousand nine hundred and twenty-four.

[SEAL] Charles Evans HUGHES
[SEAL] Edgar PROCHNIK
[SEAL] László SZÉCHÉNYI

Decisions

ADMINISTRATIVE DECISION No. I

(May 25, 1927. Pages 1-14. [1]*)*

TERMINOLOGY USED IN DECISIONS AND OPINIONS.—FUNCTIONS AND JURISDICTION OF COMMISSION: INTERPRETATION OF TREATIES, ENFORCEMENT OF AWARDS, PAYMENT OF OBLIGATIONS. Definitions set down for guidance of Agents and counsel. *Held* that Commission, whose jurisdiction is limited to interpretation of Treaty of Vienna (Budapest) and determination of Austria's (Hungary's) financial obligations thereunder, is not concerned with quality or legality of act causing damage claimed, nor with enforcement of awards or proper payment of obligations.

GENERAL PRINCIPLES FOR PREPARATION, PRESENTATION, DECISION OF CLAIMS: JURISDICTION AND NATIONALITY OF CLAIMS, RAISING *EX OFFICIO* OF QUESTIONS OF—, ESPOUSAL, WITHDRAWAL, COMPROMISING, PRIVATE INTEREST, EXTENT OF LIABILITY IN CASE OF STATE SUCCESSION, INTERPRETATION OF TREATY.—PRECEDENTS. *Held* that as preliminary question in each case Commissioner must determine jurisdiction. *Held* also that United States exercises untrammelled discretion with respect to espousing, presenting, pressing, withdrawing, or compromising claim of national, and that the latter bound by action. Since espousal does not vest title in United States, Commissioner will at any stage of proceeding require disclosure of private interest. Nationality of claims and jurisdiction will, so far as applicable, be determined by principles and rules laid down in decision of October 31, 1924, by Commissioner as umpire of United States-German Mixed Claims Commission. *Held* further that compensation in reparation claims and claims for damages resulting from acts of Austro-Hungary will be borne 63.6 per cent by Austria and 36.4 per cent by Hungary: (1) on this basis joint expenditures apportioned between Austria and Hungary before war, (2) no joint, but several liability instituted by Treaty of Vienna (Budapest).

Cross-references: Am. J. Int. Law, vol. 21 (1927), pp. 599-609; Friedensrecht, VI. Jahr, Nr. 6/7 (1927), pp. 42-47.

Bibliography [2]*:* Prossinagg, pp. 18-19, 21; Bonynge, pp. 4-6.

In addition to the Rules of Practice and Procedure heretofore prescribed [3] there are here set down for the guidance of the American Agent, the Austrian Agent, and the Hungarian Agent and their respective counsel definitions of terms and definitions of the functions and jurisdiction of the Commission, as well as general governing principles, which will, so far as applicable, control the preparation, presentation, and decision of cases submitted to the Commission.

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[1] References to page numbers following the date of each decision are to the final report of Commissioner referred to on p. 193 *supra*.

[2] References in this section are to publications referred to on p. 197 *supra*.

[3] *Note by the Secretariat:* see final report of Commissioner, pp. *et* 173 *seq.*

Definition of terms

The following terms as used in the decisions and opinions of the Commission shall be taken to have the meanings indicated below:

United States: the United States of America and/or the Government of the United States of America;

Austro-Hungary: the former Austro-Hungarian Dual Monarchy and/or the Imperial and Royal Austro-Hungarian Government as it or they existed on August 1, 1914, [1] or on December 7, 1917;

Former Austrian Empire: the Austrian Empire as it existed on and prior to August 1, 1914 [1];

Former Kingdom of Hungary: the Kingdom of Hungary as it existed on and prior to August 1, 1914; [1]

Austria: the Republic of Austria as now existing and as it existed on July 16, 1920, the date of the coming into effect of the Treaty of Saint-Germain-en-Laye, and on November 8, 1921, the date of the coming into effect of the Treaty of Vienna establishing friendly relations between the United States and Austria;

Hungary: the Kingdom of Hungary as now existing and as it existed on July 26, 1921, the date of the coming into effect of the Treaty of Trianon, and on December 17, 1921, the date of the coming into effect of the Treaty of Budapest establishing friendly relations between the United States and Hungary;

Allied Powers: the British Empire, France, Italy, Japan, Belgium, China, Cuba, Greece, Nicaragua, Panama, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, Siam, and Czecho-Slovakia, which with the United States were designated "Allied and Associated Powers" in the Treaties of St. Germain and Trianon, the United States being an "Associated Power" engaged with the Allied Powers in the prosecution of the war against the Imperial and Royal Austro-Hungarian Government;

Central Powers: those with which the principal Allied Powers were at war, namely, the Imperial German Government, the Imperial and Royal Austro-Hungarian Government, Bulgaria, and Turkey;

War period: the period between August 1, 1914, [1] and July 2, 1921, both inclusive, the latter date being the effective date of the joint resolution passed by the Congress of the United States declaring at an end the state of war between the United States and the Imperial and Royal Austro-Hungarian Government;

Period of American belligerency: the period between December 7, 1917, and July 2, 1921, both inclusive, the former being the effective date of the joint resolution passed by the Congress of the United States declaring the existence of a state of war between the United States and the Imperial and Royal Austro-Hungarian Government;

Period of American neutrality: the period between August 1, 1914, [1] and December 6, 1917, both inclusive;

American national: a person wheresoever domiciled owing permanent allegiance to the United States of America;

Treaty of Versailles: the Treaty between the Allied Powers and Germany signed at Versailles on June 28, 1919, which came into effect on January 10, 1920;

[1] See section 5 of the Peace Resolution approved by the President of the United States July 2, 1921, incorporated in the Treaties of Vienna and of Budapest, and paragraphs numbered (1) and (2) of the article I of the Tripartite Agreement.

Treaty of St. Germain: the Treaty between the Allied Powers and Austria signed at Saint-Germain-en-Laye on September 10, 1919, which came into effect on July 16, 1920;

Treaty of Trianon: the Treaty between the Allied Powers and Hungary signed at Trianon on June 4, 1920, which came into effect on July 26, 1921;

Treaty of Berlin: the Treaty between the United States and Germany signed at Berlin on August 25, 1921, restoring the friendly relations existing between the two nations prior to the outbreak of war, which Treaty came into effect on November 11, 1921;

Treaty of Vienna: the Treaty between the United States and Austria signed at Vienna on August 24, 1921, establishing friendly relations between the two nations, which Treaty came into effect on November 8, 1921;

Treaty of Budapest: the Treaty between the United States and Hungary signed at Budapest on August 29, 1921, establishing friendly relations between the two nations, which Treaty came into effect on December 17, 1921;

Tripartite Agreement: the Tripartite Agreement between the United States and Austria and Hungary signed at Washington on November 26, 1924, which became effective on December 12, 1925, under which the Tripartite Claims Commission is constituted;

Commission: the Tripartite Claims Commission constituted under and in pursuance of the Tripartite Agreement above defined;

Commissioner: the Commissioner selected by the United States, Austria, and Hungary to pass upon all claims of the United States and its nationals arising under the Treaty of Vienna and/or the Treaty of Budapest, including the three categories defined in Article I of the Tripartite Agreement;

Custodian Property: all property or the proceeds of the liquidation thereof now held by the Treasury of the United States or by the United States Alien Property Custodian or to which he is entitled under the provisions of the United States Trading with the Enemy Act of October 6, 1917, and amendments thereto, which at the time of his taking possession thereof or making demand therefor was the property of Austro-Hungary, the former Austrian Empire or its nationals, or the former Kingdom of Hungary or its nationals, or in which any of them had an interest;

Valorization: the conversion into American currency of Austro-Hungarian or other non-American currency at the pre-war cable transfer rate of exchange as provided in sections III and IV of part X of the Treaty of St. Germain carried into the Treaty of Vienna and of the Treaty of Trianon carried into the Treaty of Budapest.

All of the Allied Powers participated in drafting and became parties to both the Treaties of St. Germain and Trianon and the rights and advantages therein stipulated were, generally speaking, for the benefit of each and all of them. Consequently the language used in those Treaties as applied to the United States on the one part and to Austria and/or Hungary on the other part, incorporated *in haec verba* as a part of the Treaties of Vienna and of Budapest respectively, is sometimes inapt and confusing. Throughout the opinions and decisions of this Commission the language thus incorporated will, for the sake of brevity and lucidity, be so paraphrased as to make it applicable only to the United States on the one part and Austria and/or Hungary on the other part.

To avoid possible confusion this and subsequent opinions will generally deal with the United States and its nationals on the one part and Austria and/or Hungary and their respective nationals on the other part as affected by the

Treaties of Vienna and of Budapest respectively. Such provisions of the Treaties of St. Germain and Trianon incorporated respectively in these two Treaties designated "parts", "sections", "articles", "paragraphs", etc., as are referred to or quoted in these opinions in the main employ literally the same language, differing occasionally in the numbering. For convenience, citations to both Treaties will be made, the first citation by number applying to the Treaty of Vienna and the second to the Treaty of Budapest, usually without designating the Treaty cited.

Functions of Commission

This Commission was constituted and exists in pursuance of the terms of the Tripartite Agreement between the United States and Austria and Hungary which became effective on December 12, 1925. Therein are found the source of, and the limitations upon, the Commission's powers and jurisdiction in the discharge of its task of determining the amount to be paid by Austria and/or Hungary in satisfaction of their financial obligations to the United States and to American nationals falling within the terms of the Treaties of Vienna and/or Budapest respectively. Article I of the Tripartite Agreement provides that the Commissioner shall determine the amounts to be paid to the United States by Austria and by Hungary in satisfaction of claims embraced within the terms of the said Treaties "including the following categories":

"(1) Claims of American citizens arising since July 31, 1914, in respect of damage to or seizure of their property, rights and interests, including any company or association in which they are interested, within the territories of either the former Austrian Empire or the former Kingdom of Hungary as they respectively existed on August 1, 1914;

"(2) Other claims for loss or damage to which the United States or its nationals have been subjected with respect to injuries to or death of persons, or with respect to property, rights and interests, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war;

"(3) Debts owing to American citizens by the Austrian and/or the Hungarian Governments or by their nationals."

The financial obligations of Austria and/or Hungary which this Commission is empowered to determine arise out of claims presented by the United States falling within the several categories specified in the Tripartite Agreement and more particularly defined or described in the Treaties of Vienna and of Budapest. American nationals who acquired rights under these Treaties are without a remedy to enforce them save through the United States. As a part of the means of supplying that remedy this Commission was, by the Tripartite Agreement, created as the forum for determining the amount of the obligations of Austria and of Hungary. These Treaties fix those obligations and prescribe what Austria and/or Hungary shall pay for. The Tripartite Agreement neither adds to nor subtracts from the rights or the obligations thus fixed but clothes this Commission with jurisdiction over all claims of the United States and its nationals based on the terms of the Treaties and lays on the Commissioner the duty of applying those terms to the claims presented and of determining the amount, if any, due to the several claimants thereunder.

The Commission is not concerned with the enforcement of its awards or with the payment by Austria and/or Hungary of their financial obligations save as the terms of the Treaties with respect to payment affect such obligations absolute or contingent, direct or indirect, and the amount thereof. The definitions of what Austria and/or Hungary shall pay *for* are found in the

Treaties. The *amount* which Austria and/or Hungary shall pay must be judicially determined by this Commission through the application of appropriate rules for ascertaining pecuniary obligations and for measuring damages to the facts of such claims of the United States and its nationals as fall within the terms of the Treaties. But the problems of *how and when* the awards of this Commission shall be *enforced* and *how and when payment* shall be made or secured are political in their nature and must be settled by the appropriate political agencies of the Governments concerned. The Commission's task is confined solely to construing the Treaties and deciding what are the financial obligations of Austria and/or Hungary and their respective nationals arising thereunder and the amount thereof.

The liability of Austria and/or Hungary must be determined by the application of the terms of the Treaty or Treaties to the facts of each case. The Treaties embody in their terms contracts by which Austria and Hungary accorded to the United States, as one of the conditions of peace, rights in behalf of American nationals which had no prior existence. While these doubtless include some obligations of Austria and/or Hungary arising from violation of rules of international law or otherwise and existing prior to and independent of the Treaties, they also include obligations of Austria and/or Hungary which were created and fixed by their terms. All of these obligations, whatever their nature, are merged in and fixed by the Treaties. The Commission's inquiry in this respect is confined solely to determining whether or not Austria and/or Hungary by the terms of the Treaty or Treaties assumed the pecuniary obligation asserted or accepted responsibility for the act causing the damage claimed, and it is not concerned with the quality of that act or whether it was legal or illegal as measured by rules of international law.

Consolidation of machinery set up under other Treaties

The Treaties of St. Germain and Trianon (and similar Treaties between the Allied Powers and the Central Powers) provided for:

(1) A Reparation Commission to determine the amount of reparation claims (and clothed with other powers of a political and administrative character not necessary here to notice);

(2) Clearing Offices mainly for the purpose of "clearing" and paying the debts of the nationals of opposing Powers and paying designated claims of Allied nationals;

(3) Mixed Arbitral Tribunals clothed with power to hear appeals from Clearing Office decisions, to hear and adjudicate all claims for compensation lodged against Austria and/or Hungary for damage or injury suffered by nationals of Allied Powers arising under paragraph *(e)* of article 249 [232], and to hear and determine certain controversies between nationals of Allied Powers and nationals of Austria or Hungary arising out of contracts (paragraph *(b)* of article 256 [239]); and

(4) An Arbitrator to determine the amounts of certain claims of Allied nationals and debts of Austria and its nationals and of Hungary and its nationals with which amounts so ascertained Austrian or Hungarian property seized as a war measure by an Allied Power may be charged (paragraph 4 of the annex to section IV of part X).

Eliminating those provisions of the Treaties of St. Germain and of Trianon not adopted by the United States, the Tripartite Agreement in practical effect combines these several functions in one tribunal and the Commissioner is clothed with the power and it is made his duty to adjudicate reparation claims arising under part VIII and compensation claims arising under paragraph *(e)*

of article 249 [232] and as Arbitrator [1] to assess the amount of claims and debts to the payment of which the Government of the United States may, at its election, apply the Custodian Property.

Jurisdiction

At the threshold of the consideration of each case is presented the question of jurisdiction, which obviously the Commissioner must determine preliminarily to fixing the amount, if any, of Austria's and/or Hungary's financial obligations. When the allegations in a memorial presented by the United States bring a claim within the terms of the Treaty of Vienna and/or the Treaty of Budapest and the Tripartite Agreement, the jurisdiction of the Commission attaches—otherwise the claim as presented will be dismissed for want of jurisdiction. Should these allegations be controverted in whole or in part the issue or issues of fact thus made must be decided by the Commissioner, and if under such decision the claim does not fall within the terms of the Treaty or Treaties and the Tripartite Agreement it will be dismissed. But if the issue or issues of fact be so decided that the claim does fall within the terms of the Treaty or Treaties and the Tripartite Agreement, the Commissioner will apply such terms to the facts in the particular case and render judgment accordingly.

The claimant—Nationality of claims

All claims presented to this Commission shall be asserted and controlled by the United States as claimant either on its own behalf or on behalf of one or more of its nationals. With respect to espousing or not the claim of its national at the latter's request, and if espoused in determining when and how the claim will be presented and pressed or withdrawn or compromised, the United States will exercise an untrammelled discretion and the private owner will be bound by the action taken. While the nation's absolute right to control a private claim espoused by it is necessarily exclusive, because of the national interest that may be or become involved, nevertheless the private nature of such claim continues to inhere in it and the claim only in a very restricted sense becomes a national claim. The act of espousal does not vest in the nation the title to the claim. For the purpose of ascertaining the nationality of a claim as determined by its being impressed with the nationality of the private claimant, or for any other purpose pertinent to the proper exercise of its jurisdiction, the Commission will at any stage of a proceeding require a full disclosure of the private interest therein.

The nationality of claims as affecting the financial obligations of Austria and/or Hungary as well as the jurisdiction of this Commission will, so far as applicable, be determined by the principles and rules laid down by the present Commissioner as the Umpire of the Mixed Claims Commission, United States and Germany, in a decision rendered on October 31, 1924, appearing at pages 175 to 194 inclusive of the printed Decisions and Opinions of that Commission. In so far as the effective date of the applicable Treaty or Treaties affects the nationality of a claim, the date mentioned in that decision (November 11, 1921, when the Treaty of Berlin became effective) will be substituted in the case of Austria by November 8, 1921, and in the case of Hungary by December 17, 1921, the effective dates of the Treaties of Vienna and of Budapest respectively.

[1] See paragraph 4 of the annex to section IV of part X of the Treaties. The third category of article I of the Tripartite Agreement confers jurisdiction on the Commission to pass upon "Debts owing to American citizens by the Austrian and/or the Hungarian Governments or by their nationals."

Categories of claims

With a view to facilitating the preparation, presentation, and disposition of claims they are classified as follows:

I. *Reparation claims:* those arising under part VIII, the reparation provisions of the Treaties, including:

(a) Damage resulting from death of or injury to persons;

(b) Damage resulting from any kind of maltreatment of prisoners of war;

(c) Damage resulting from injury to or destruction of or taking of property.

II. *Economic claims:* those arising under part X, the economic clauses of the Treaties, including:

(a) Compensation for damage to or injury inflicted on property, rights, and interests by the application of war measures;

(b) Debts, including:

(1) those owing by Austrian (Hungarian) nationals including bank deposits and estate claims;

(2) State obligations;

(c) Public bonds, unmatured, and not subjected to war measures.

Reparation claims

Most of the claims of the United States or its nationals falling within the category of reparation claims grow out of damages resulting from death of or injury to persons or from injury to or destruction of or taking of property through physical force operating on physical property. With respect to such claims the principles and rules announced in the decisions and opinions of the Umpire of the Mixed Claims Commission, United States and Germany, will, so far as applicable, govern.

Apportionment of compensation in reparation claims and in claims for damages resulting from acts of Austro-Hungary

The Commissioner decides that the compensation for damages suffered by American nationals: (1) falling within the reparation provisions of the Treaties; or (2) resulting from acts of Austro-Hungary or its agents during the period of American neutrality, will be borne 63.6 per cent by Austria and 36.4 per cent by Hungary and awards made accordingly. The reasons for this decision follow.

Prior to the war the former Austrian Empire and the former Kingdom of Hungary were separate and distinct States. Each had its own governmental machinery, including a parliament. The citizenship of each was distinct from the other. Austro-Hungarian citizenship did not exist. An Austrian citizen could abandon his Austrian citizenship and acquire Hungarian citizenship and *vice versa*.

In 1867 a *de facto* and constitutional union with limited powers was formed whereby each of these States delegated to the Austro-Hungarian Dual Monarchy the power to act for them in the common administration of: (1) foreign affairs; (2) the common army and navy (excluding the special army of each State); and (3) matters of finance in so far as concerned joint expenditures for State purposes. This union was expressed in the common head who bore the title "Emperor of Austria and Apostolic King of Hungary". These joint expenditures were apportioned between the former Austrian Empire and the former Kingdom of Hungary by the Austro-Hungarian law of December 30, 1907, (B.L.I., No. 278) on the basis of 63.6 per cent to be borne by Austria and 36.4 per cent

to be borne by Hungary. This was the basis upon which contributions were made by the former Austrian Empire and the former Kingdom of Hungary to the Imperial and Royal Austro-Hungarian Government enabling it to wage war against the United States.

The former Austrian Empire and the former Kingdom of Hungary while existing as independent States had no international status. It was against the Imperial and Royal Austro-Hungarian Government that the United States waged war (see resolutions of Congress effective December 7, 1917, and July 2, 1921). Following the Armistice that Government ceased to exist (see recitations in preambles to the Treaties of Vienna and of Budapest). In pursuance of the terms of the several Treaties entered into between the opposing Powers after the Armistice, not only was the Austro-Hungarian Dual Monarchy dismembered but substantial parts of the territories of the former Austrian Empire and of the former Kingdom of Hungary were ceded some to new and some to existing States. The Austria and the Hungary dealt with by the United States in entering into the Treaties of Vienna and of Budapest respectively not only bore little resemblance either to the Government or the territory of the Dual Monarchy with which the United States had been at war but differed essentially from the former Austrian Empire and the former Kingdom of Hungary. Unlike the Treaty of Berlin "*restoring* friendly relations" between the United States and Germany, these Treaties in terms "*establish*" for the first time such relations between Austria and the United States and between Hungary and the United States.

The questions here presented are: what existing Government or Governments are liable for the acts of the Austro-Hungarian Government or its agents resulting in damage to American nationals; is that liability joint or several; and what is its extent?

The answer must be found in the provisions of the Treaties of Vienna and of Budapest. It will not be profitable to examine the divergent views maintained by European continental writers on international law as compared with those of Great Britain and the United States with respect to the liability of a Successor State for the obligations either *ex contractu* or *ex delicto* of a dismembered State. It is, however, interesting to note in passing that while one group maintains that such obligations pass with succession and are apportioned between the Successor States, and while the other group maintains that the obligations do not pass with succession, neither group maintains that a *joint* liability rests upon two or more Successor States where the territory of a dismembered State has been divided between them.

Under the financial clauses (part IX of the Treaties) elaborate provision is made for the apportionment between the Successor States, including Austria and Hungary as they now exist, of the pre-war indebtedness, secured and unsecured, of the former Austro-Hungarian Monarchy, the former Austrian Empire, and the former Kingdom of Hungary, fixing sole responsibility on each Successor State for the proportion of such indebtedness allocated to it.

All of the Successor States other than Austria and Hungary are classed as "Allied or Associated Powers" and under the Treaties it is entirely clear that none of them is held liable for any damages suffered by American nationals resulting from acts of the Austro-Hungarian Government or its agents during either the period of American neutrality or American belligerency.

By article 178 [162] of the Treaty Austria [Hungary] undertakes that she will make compensation for damage done, as defined in the annex thereto, to the civilian population of the United States and to their property by the aggression of Austro-Hungary and her allies. The language is the same in

both Treaties. [1] There is an undertaking by Austria to make compensation for specified damage and a separate undertaking by Hungary to make compensation for the same damage. Obviously it was not intended that double compensation should be made. Neither is there a joint undertaking.

Likewise in charging Custodian Property with the payment of neutrality claims identical provision is made in both Treaties (paragraph 4 of the annex to section IV of part X) for the "payment of claims growing out of acts committed by the former Austro-Hungarian Government or by any Austrian [Hungarian] authorities since July 28, 1914, and before . . . [the United States] entered into the war."

Having in mind the pre-war and war relationship between the former Austrian Empire and the former Kingdom of Hungary and their respective responsibilities for the acts of the Austro-Hungarian Monarchy, the Tripartite Agreement under which this Commission is constituted was executed. It recites that all three of the parties are "desirous of determining the amounts to be paid by Austria and by Hungary" under the Treaties of Vienna and of Budapest respectively and provides that the Commissioner "shall determine the amounts to be paid to the United States by Austria and by Hungary". This language imports a distributive and not a joint liability and a purpose to apportion damages for which both may be liable, allocating to each a definite amount. The notes exchanged between the United States and Austria during the negotiation of this Agreement clearly reflect this purpose. This is in harmony with the spirit of the Treaties considered as a whole which indicates a purpose not to create joint obligations as between Austria and Hungary as they now exist but to divide and to allocate to each its separate liabilities. [2]

The Reparation Commission, which under the Treaties of St. Germain and Trianon is clothed with the power to fix the amount of compensation to be paid by Austria and Hungary respectively under the reparation provisions of the Treaties, has not as yet directly dealt with this question of apportionment as between them. That Commission, however, acting within its jurisdiction has in a number of instances considered questions of credits on their reparation accounts to Austria and to Hungary respectively for warships, mine layers, abandoned war material, and other property formerly belonging to the Austro-Hungarian Government and passing under the Treaties through the Reparation Commission or otherwise to the Allied and Associated Powers. The Reparation Commission in apportioning these credits as between Austria and Hungary accorded to Austria 63.6 per cent and to Hungary 36.4 per cent of the aggregate amount thereof, this being the basis on which the former Austrian Empire and the former Kingdom of Hungary respectively contributed to the acquisition of the ceded property by the Austro-Hungarian Government It is believed that the rule applicable to the apportionment of credits to which Austria and Hungary are respectively entitled under the reparation provisions of the Treaties is equally applicable to the apportionment of their liabilities thereunder. The Governments of Austria and of Hungary in the agreement of June 1,

[1] This language follows like provisions in the Treaty of Versailles (article 232 and annex I) where Germany undertakes to make compensation for defined categories of damages including those inflicted by Germany's allies as well as by Germany herself. No claim has been pressed by the United States and no award made against Germany in any case of injury inflicted solely by the Government of Austro-Hungary or the former Austrian Empire or the former Kingdom of Hungary or their respective agents.

[2] Wapa *v.* République d'Autriche, Austro-Yugoslavian Mixed Arbitral Tribunal, III, Decisions of Mixed Arbitral Tribunals (hereinafter referred to as "Dec. M.A.T." 720.

1926, adopted as between themselves a division of liabilities in harmony with the rule here announced.

While this decision, in so far as applicable, will control the preparation, presentation, and decision of all claims submitted to the Commission falling within its scope, nevertheless should the American Agent, the Austrian Agent, and/or the Hungarian Agent be of the opinion that the peculiar facts of any case take it out of the rules here announced such facts with the differentiation believed to exist will be called to the attention of the Commissioner in the presentation of that case.

ADMINISTRATIVE DECISION No. II [1]

(May 25, 1927. Pages 15-36.)

INTERPRETATION OF TREATY: INDIRECT CONSEQUENCES OF CARRYING INTO EFFECT OF TREATY PROVISIONS. According to Treaty of St. Germain (Trianon), part X, section IV, annex, paragraph 14, "in the settlement of matters provided for in article 249 (232) . . . the provisions of section III respecting the currency in which payment is to be made and the rate of exchange and of interest" shall apply. *Held* that not all of the indirect consequences flowing from the carrying into effect of article 249 (232) are "matters provided for" therein. Enumeration of such matters.

INTERPRETATION OF TREATY.—DEBTS, MEANING OF TERM IN TREATIES OF ST. GERMAIN (TRIANON), ART. 249 (232), *(h)* (2), AND VIENNA (BUDAPEST). *Held* that term "debt" in Treaty of St. Germain (Trianon), article 249 (232), paragraph *(h)* (2), is short term for "debts, credits and accounts", which in turn is included in term "private property, rights and interests in an enemy country" used in article 249 (232), first clause, and section IV, annex, paragraph 14, first clause; that only "debts" owing by Austria (Hungary) or its nationals residing in Austrian (Hungarian) territory to American nationals are dealt with in article 249 (232), paragraph *(h)* (2); that term comprises four classes of pecuniary obligations including two classes of State debts, no limitation to private debts being found in article 249 (232), paragraph *(h)* (2); that generally cash demand deposits, and time deposits expiring "during the war", made prior to December 7, 1917, are included in term without affirmative proof of demand for payment by American depositor. Same meaning will apply wherever term found without qualifying word or phrase in Treaties of Vienna (Budapest) or in this and subsequent opinions of Commission.

EXCEPTIONAL WAR MEASURES, MEASURES OF TRANSFER: DEFINITION, BURDEN OF PROOF.—PRINCIPLES, RULES FOR DETERMINATION OF DAMAGE, INJURY RESULTING FROM WAR MEASURES, COMPENSATION: CURRENCY, RATE OF EXCHANGE,

[1] Reference is here made to Administrative Decision No. I for the definition of terms used herein. The language of the Treaties of St. Germain and Trianon incorporated in the Treaties of Vienna and Budapest respectively is in this opinion frequently paraphrased so as to make it applicable only to the United States on the one part and Austria and/or Hungary on the other part. The term "Treaty" or "Treaties" as used herein means as concerns Austria the Treaty of Vienna and as concerns Hungary the Treaty of Budapest. Citations to both Treaties will be made, the first citation by number applying to the Treaty of Vienna and the second to the Treaty of Budapest.

INTEREST. Statement of principles and rules for determination of extent of damage or injury inflicted in territory of Austrian Empire (Kingdom of Hungary) upon property, rights or interests (including debts, see *supra*) of American nationals by Austrian (Hungarian) war measures: (1) "exceptional war measures" are *(a)* those enumerated in section IV, annex, paragraph 3; and *(b)* all other measures which were in fact exceptional war measures; (2) "measures of transfer" are only those enumerated in section IV, annex, paragraph 3; (3) with respect to currency, rate of exchange, and interest provisions of section III will apply (see *supra*, compensation being a matter provided for in article 249 (232) paragraph *(e)*); (4) pre-war rate of exchange to be applied by Commission (article 248 (231), paragraph *(d)*) is 9.36 cents American currency to 1 Austro-Hungarian krone; (5) burden will be on United States to prove existence of general act or decree having general applicability to all property, rights, and interests of American nationals in territory of Austrian Empire (Kingdom of Hungary), or subjection in fact of such property, etc. to exceptional war measures or measures of transfer.

STATE LIABILITY FOR DEBTS OF NATIONALS: (1) DIRECT AND ABSOLUTE. (2) INDIRECT AND CONTINGENT.—STATE LIABILITY FOR CONSEQUENCES OF WAR: DEPRECIATION OF CURRENCY. *Held* that Austria (Hungary) is: (1) under direct and absolute liability to make compensation for damage or injury resulting from own acts in applying war measures, and to pay proceeds of liquidation of American property, including debts (article 249 (232), paragraphs *(e)* and *(h)* (2)); and (2) under indirect and contingent liability for debts owing by its nationals (article 249 (232), paragraph *(j)*) in the event the United States adopts method of payment through Custodian Property (article 249 (232), paragraph *(h)* (2), and section IV, annex, paragraph 4). *Held* also that Austria (Hungary) not liable for all direct and indirect, immediate and ultimate, consequences of war, and, therefore, not obligated to pay for losses due to depreciation during and after war in exchange value of Austro-Hungarian currency.

VALORIZATION OF DEBTS: CURRENCY, RATE OF EXCHANGE.—INTEREST. *Held* that no payment required in American currency at pre-war rate of exchange of Austrian (Hungarian) public debts or debts of Austrian (Hungarian) nationals owing to American nationals which by their terms are payable in non-American currency: since article 249 (232) does not deal with *settlement* of such debts, section III (rate of exchange) does not apply (section IV, annex, paragraph 14, see *supra*); and that payment in such currency at such rate will be obligatory only after adoption by United States of method of payment through Custodian Property (see *supra*).

PROCEDURE: INTERLOCUTORY, FINAL JUDGMENTS, JOINT DEFENDANTS.—INTEREST. Establishment of two classes of cases concerning debts and of system of interlocutory and final judgments therein. Determination of interest on amount of final judgment in cases based upon subjection of debts by Austria (Hungary) to war measures: 5 per cent per annum from date of damage or injury to date of payment. Claims based upon debts owing by Austrian (Hungarian) nationals to American nationals shall be asserted against Government of Austria (Hungary) and Austrian (Hungarian) private debtor jointly.

Cross-references: Am. J. Int. Law, vol. 21 (1927), pp. 610-627; Friedensrecht, VI. Jahr Nr. 6/7 (1927), pp. 47-56.

Bibliography: Prossinagg, pp. 12, 17, 29-31, 34-35; Bonynge, pp. 6-21.

There are pending before the Commission claims asserted by the American Agent on behalf of American nationals under the Economic Clauses incorporated in the Treaty of Vienna and/or the Treaty of Budapest based on:—

(a) Debts owing by Austrian or Hungarian nationals to American nationals;

(b) Debts owing by the Government of Austria and/or the Government of Hungary to American nationals; and

(c) Claims for compensation in respect of damage or injury inflicted upon the property, rights, or interests, including debts, credits, accounts, and cash assets, of American nationals in the territory of the former Austrian Empire or the former Kingdom of Hungary by the application either of exceptional war measures or measures of transfer as those terms are employed in the Treaties.

The Austrian and Hungarian Agents contend:

(1) That under the Treaty Austria [Hungary] is not primarily and directly obligated to pay debts owing by Austrian [Hungarian] nationals to American nationals which have not been subjected by Austria [Hungary] in the territory of the former Austrian Empire [former Kingdom of Hungary] to the application either of exceptional war measures or measures of transfer as those terms are employed in the Treaty;

(2) That with respect to debts owing in other than American currency by Austria [Hungary] or its nationals to American nationals the creditor is not entitled to the payment thereof in American currency at the pre-war rate of exchange;

(3) That with respect to debts owing by Austria [Hungary] or its nationals to American nationals the creditor is not entitled to the benefits of the provisions of paragraph 22 of the annex to section III of part X of the Treaty with respect to interest; and

(4) That debts owing by Austria [Hungary] or its nationals to American nationals do not constitute a charge upon the Custodian Property.

The Commissioner sustains the first contention of the Austrian [Hungarian] Agent and holds that under the Treaty Austria's [Hungary's] obligation to pay debts (which have not been subjected to war measures) owing by Austrian [Hungarian] nationals to American nationals is contingent and indirect and not absolute, primary, and direct.

The Commissioner provisionally sustains the second and third contentions of the Austrian [Hungarian] Agent, but holds that in the event the Government of the United States, through its law-making power, should elect to adopt the method of payment or procedure provided for by paragraph *(h)* (2) of article 249 [232] and paragraph 4 of the annex to section IV of part X of the Treaty and apply the Custodian Property to the payment of the claims and debts defined therein, then under the terms of the Treaty for the purposes of such payment the American creditors would be entitled to have their debts converted into American currency at the pre-war rate of exchange and also be entitled to the benefits of paragraph 22 of the annex to section III of part X of the Treaty with respect to interest.

The Commissioner holds that under the Treaty only the Government of the United States, acting through its law-making power, may determine whether or not the proceeds of the liquidation of the Custodian Property will be applied to the payment of such claims and of such debts as may be found by this Commission to have been owing by Austria [Hungary] or its nationals to American nationals.

The reasons upon which these conclusions rest[1] can be understood by a

[1] The precedents of the Mixed Claims Commission, United States and Germany, in dealing with debts, credits, and accounts, including cash assets, owing by Germany or its nationals to American nationals are of comparatively little value in solving the

review of the pertinent Economic Clauses of the Treaties and their application as between the United States and its nationals on the one part and Austria and/or Hungary and their respective nationals on the other part. Those clauses constitute part X of the Treaties. We are here concerned directly only with section IV and incidentally with section III thereof.

Section III—Clearing Offices

Section III provides a "method of payment" (first clause of paragraph 14 of the annex to section IV). This is in the form of Clearing Office machinery for the settlement of four defined classes (article 248 [231]) of "pecuniary obligations" described as "enemy debts" (paragraph 2 of the annex to section III). Procedure is provided and reciprocal rules are prescribed for determining the relative rights and obligations of both groups of Powers when—but only when —this method of settlement is adopted.

The American delegates who participated in drafting the Versailles and similar Treaties declined to commit the United States to this Clearing Office plan [1] and an alternate method of settlement or payment was provided embraced in paragraph *(h)* (2) of article 249 [232] and paragraph 4 of the annex to section

problems here presented because of the difference in practice between Germany on the one part and Austria and/or Hungary on the other part in the application of exceptional war measures to American property; and also because by agreement between the Government of Germany and the Government of the United States Germany assumed primary liability with respect to all such claims and debts falling within the jurisdiction of that Commission, and by another agreement they fixed the basis for the valorization of all such claims and debts. No such agreements have been entered into between the Government of the United States on the one part and the Governments of Austria and/or Hungary on the other part.

[1] The American delegates insisted that the adoption of the Clearing Office plan should be made optional with each of the Allied and Associated Powers, because of the difference in the economic conditions with which each and its nationals had to deal in relation to the opposing Powers and their nationals. Most of the principal Allied Powers were plunged into war with practically no warning. Their nationals had little opportunity to withdraw funds from enemy territory or liquidate or adjust existing contracts with enemy nationals. Consequently some of them—notably Great Britain—in order to avoid general financial disaster to their nationals and through them to the nation, and to prevent as far as possible economic dislocation, guaranteed pre-war acceptances or carried bills of exchange and similar negotiable paper falling due after the declaration of war drawn on enemy nationals in the territory of the Central Powers. But the situation was quite different with respect to the United States and its nationals. The war between the principal Allied Powers and Austro-Hungary had been in progress for more than three years prior to the declaration of the existence of a state of war between the United States and Austro-Hungary, during which period American nationals had had ample opportunity in their discretion to withdraw their funds from Austrian and Hungarian territory and liquidate and adjust their contracts with Austrian and Hungarian nationals.

Had the United States adopted the Clearing Office plan it would have been required to complete the liquidation of all Custodian Property held by it and to account for the proceeds thereof through the Clearing Offices. These requirements ran counter to the express provisions of section 12 of the American Trading with the Enemy Act which expressly reserved to Congress after the end of the war the right to determine the disposition to be made of seized enemy property. The Clearing Office plan contemplated the guaranty by both the United States and Austria [Hungary] of the payment of the private debts of their respective nationals and prohibited the voluntary settlement of debts between such nationals. It was believed that such a guaranty would have been repugnant to American conceptions of the functions of government and such interference with private contract rights in time of peace would have been repugnant to the spirit of American institutions.

IV of part X of the Treaty of St. Germain [Trianon], incorporated by reference in the Treaty of Vienna [Budapest], [1] which will be hereinafter noticed. Under that Treaty the United States (but not Austria [Hungary]) had the right to elect, within one month from the coming into effect of that Treaty, to adopt the provisions of section III (consisting of article 248 [231] and the annex of 25 numbered paragraphs embracing the Clearing Office plan) by giving notice to that effect.

The Treaties of Vienna and of Budapest came into effect on November 8, 1921, and December 17, 1921, respectively. The United States did not elect to adopt this "method of payment" provided through "the intervention of Clearing Offices" within one month thereafter and hence, under the express provisions of paragraph *(e)* of article 248 [231], the provisions of section III do not apply as between Austria [Hungary] and the United States, save in so far as they are read into section IV by express provision or by necessary implication.

The purpose and scope of section IV of part X of the Treaties

This section in both Treaties deals with State measures and the disposition of property subjected thereto. It is comprised of articles 249 and 250 [232 and 233] and an annex consisting of 15 numbered paragraphs. The opening clause announces its purpose to be the laying down of principles for the settlement of questions of "private property, rights and interests in an enemy country"; that is, so far as concerns the problems here under consideration, the private property, rights, and interests of American nationals in the territory of the former Austrian Empire [former Kingdom of Hungary] *and also* the private property, rights, and interests of nationals of the former Austrian Empire [former Kingdom of Hungary] in the "territories, colonies, possessions and protectorates" of the United States.

The second clause of paragraph 14 of the annex to section IV stipulates that "In the settlement of matters provided for in article 249 [232]" between Austria [Hungary] and the United States "the provisions of section III [which are copied in the margin [2]] respecting the currency in which payment is to be

[1] These provisions for the application by the United States of Austrian and/or Hungarian property and the proceeds of the liquidation thereof as an alternate method of payment are in harmony with the American Trading with the Enemy Act, leaving to the Congress the untrammelled right to dispose of such property and the proceeds thereof in its discretion.

[2] Article 248 [231] (*d*) reads as follows:

"Debts shall be paid or credited in the currency of such one of the Allied and Associated Powers, their colonies or protectorates, or the British Dominions or India, as may be concerned. If the debts are payable in some other currency they shall be paid or credited in the currency of the country concerned, whether an Allied or Associated Power, Colony, Protectorate, British Dominion or India, at the pre-war rate of exchange.

"For the purpose of this provision the pre-war rate of exchange shall be defined as the average cable transfer rate prevailing in the Allied or Associated country concerned during the month immediately preceding the outbreak of war between the said country concerned and Austria-Hungary.

"If a contract provides for a fixed rate of exchange governing the conversion of the currency in which the debt is stated into the currency of the Allied or Associated country concerned, then the above provisions concerning the rate of exchange shall not apply.

"In the case of the new States of Poland and the Czecho-Slovak State the currency in which and the rate of exchange at which debts shall be paid or credited shall be determined by the Reparation Commission provided for in part VIII, unless they shall have been previously settled by agreement between the States interested".

made and the rate of exchange and of interest shall apply." [1] Here is found the only express warrant for reading into section IV any of the provisions of section III as between non-clearing Powers and their nationals, and it will be noted: (1) that this warrant is strictly limited to the carrying into effect of the provisions of article 249 [232], or to the settlement and adjustment of rights, claims, obligations, or "matters" arising thereunder, and (2) that there are read into section IV only such provisions of section III as apply to or deal with currency and rates of exchange and interest. It is apparent, therefore, that those provisions of section III under which Austria [Hungary] guarantees the debts of its nationals (paragraph *(b)* of article 248 [231] and paragraph 4 of the annex to section III) cannot be directly invoked to fix liability on Austria [Hungary] for the private debts owing to American nationals by Austrian [Hungarian] nationals.

Reading together the opening clause of article 249 [232] and the second clause of paragraph 14 of the annex to section IV, [1] it is apparent that the first simply indicates in a general way the subject-matter of the provisions following and the field of their application. [2] A general definition of the scope of the matters provided for does not in itself make provision for such matters. Neither do all of the indirect consequences flowing from the carrying into effect of the provisions of article 249 [232] in themselves constitute "matters provided for" therein. In order to determine what matters the settlement of which is "provided for in article 249 [232]" the provisions following the introductory clause must be examined.

Matters provided for in article 249 [232]

The "matters provided for in article 249 [232]", so far as pertinent to the problems here presented, are:

(1) Provision for the discontinuance by Austria [Hungary] of the application of exceptional war measures and measures of transfer to the property, rights,

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Paragraph 22 of the annex to section III reads as follows:

"Subject to any special agreement to the contrary between the Governments concerned debts shall carry interest in accordance with the following provisions:

"Interest shall not be payable on sums of money due by way of dividend, interest or other periodical payments which themselves represent interest on capital.

"The rate of interest shall be 5 per cent. per annum, except in cases where, by contract, law or custom, the creditor is entitled to payment of interest at a different rate. In such cases the rate to which he is entitled shall prevail.

"Interest shall run from the date of commencement of hostilities (or, if the sum of money to be recovered fell due during the war, from the date at which it fell due) until the sum is credited to the Clearing Office of the creditor.

"Sums due by way of interest shall be treated as debts admitted by the Clearing Offices and shall be credited to the Creditor Clearing Office in the same way as such debts."

[1] This second clause reads as follows:

"In the settlement of matters provided for in article 249 [232] between Austria [Hungary] and the Allied or Associated Powers, their colonies or protectorates, or any one of the British Dominions or India, in respect of any of which a declaration shall not have been made that they adopt section III, and between their respective nationals, the provisions of section III respecting the currency in which payment is to be made and the rate of exchange and of interest shall apply unless the Government of the Allied or Associated Power concerned shall within six months of the coming into force of the present Treaty notify Austria [Hungary] that one or more of the said provisions are not to be applied."

[2] Margaret Williams *v.* Berlinische Lebens-Versicherungs Gesellschaft, Anglo-German Mixed Arbitral Tribunal, V Dec. M. A. T. at page 325; National Bank of Egypt *v.* German Government and Bank für Handel und Industrie, *ibidem*, page 26.

and interests of American nationals in Austrian [Hungarian] territory, and, where liquidation was not complete, the restoration of such property, rights, and interests to their owners (paragraph *(a)* of article 249 [232]);

(2) Provision reserving to the United States the right to retain and liquidate in accordance with its laws all Custodian Property (paragraph *(b)* of article 249 [232]);

(3) Provision for Austria [Hungary] making compensation to American nationals "in respect of damage or injury inflicted upon their property, rights or interests, including any company or association in which they are interested, in the territory of the former Austrian Empire [former Kingdom of Hungary], by the application either of the exceptional war measures or measures of transfer" as those terms are employed in the Treaty (paragraph *(e)* of article 249 [232]);

(4) Provision that the proceeds of the liquidation by Austria [Hungary] of American property, rights, and interests, including debts, credits, accounts, and cash assets, should be paid immediately by Austria [Hungary] to the American nationals entitled thereto or to the Government of the United States (paragraph *(h)* (2) of article 249 [232]);

(5) Provision that the Custodian Property shall be subject to disposal by the United States "in accordance with its laws and regulations and may be applied in payment of the claims and debts defined by this article or paragraph 4 of the annex hereto" (paragraph *(h)* (2) of article 249 [232]);

(6) Provision that the Custodian Property may be charged with the payment of *(a)* amounts due in respect of claims by American nationals against Austria [Hungary] "with regard to their property, rights and interests, including companies and associations in which they are interested, in territory of the former Austrian Empire [former Kingdom of Hungary]", *(b)* debts owing to American nationals by Austrian [Hungarian] nationals, and *(c)* claims growing out of acts committed by the former Austro-Hungarian Government or by any Austrian [Hungarian] authorities during the period of American neutrality (paragraph 4 of the annex to section IV, which, by the language of paragraph *(h)* (2) of article 249 [232] above quoted, is read into article 249 [232] and is one of the "matters provided for" therein); and

(7) Provision that "Austria [Hungary] undertakes to compensate her nationals in respect of the sale or retention" of Custodian Property by the United States (paragraph *(j)* of article 249 [232]).

In carrying into effect any of the foregoing provisions with respect to the rights of the United States or its nationals and making settlements and adjustments thereunder "the provisions of section III respecting the currency in which payment is to be made and the rate of exchange and of interest" will, so far as applicable, be taken into account (second clause of paragraph 14 of the annex to section IV).

From this survey of the somewhat confused provisions of sections III and IV of the economic clauses of the Treaties, we come to determine their application to the several distinct questions raised by the Austrian [Hungarian] Agent involving (1) a definition of the term "debts" as found in section IV; (2) *compensation* by Austria [Hungary] to American nationals for *damages* inflicted through the application of exceptional war measures or measures of transfer to the property, rights, and interests (including debts, credits, accounts, and cash assets) of American nationals in the territory of the former Austrian Empire [former Kingdom of Hungary]; (3) the nature and extent of Austria's [Hungary']s *liability* for claims of, or debts owing to, American nationals not subjected to exceptional war measures; (4) when and on what basis debts or obligations contracted in Austro-Hungarian kronen or currency other than American,

owing by Austria [Hungary] or its nationals to American nationals, shall be *valorized* and the rate and manner of computing interest thereon; (5) how the *amount* of such claims and debts shall be determined; and (6) the method of payment thereof.

Definition of debts

The Commissioner holds that the term "debts" as used in paragraph *(h)* (2) of article 249 [232] of the Treaty is a short term for "debts, credits and accounts" which in turn is included in the term "private property, rights and interests in an enemy country" (first clause of section IV; see also first clause of paragraph 14 of the annex to section IV).

Only debts owing by Austria [Hungary] or its nationals residing in Austrian [Hungarian] territory (enemy country) to American nationals are here dealt with [1]. The provisions of section III will be looked to as an aid in defining the very general term "debts". There are four classes of "pecuniary obligations" (first clause of article 248 [231]) described as "enemy debts" (paragraph 2 of the annex to section III) which are, by paraphrasing the language, defined thus:

(1) Debts payable before the war (December 7, 1917) and due by an Austrian [Hungarian] national residing [2] within Austrian [Hungarian] territory to an American national residing [2] within American territory;

(2) Debts which became payable during the war (period of American belligerency) [2] to American nationals residing [2] within American territory which arose out of transactions or contracts with Austrian [Hungarian] nationals residing [2] within Austrian [Hungarian] territory of which the total or partial execution was suspended on account of the existence of a state of war;

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[1] Debts owing to American nationals by nationals of the former Austrian Empire [former Kingdom of Hungary] who under the Treaties became nationals of other States included in the designation "Allied and Associated Powers" are not here included. The nationals of such Succession States are not "enemy debtors"; the American creditors are not as to them "enemy creditors"; and the debts owing by them are not "enemy debts" and are not included within the term "debts" as here used (paragraph 2 of the annex to section III). Provision is made for the prompt return by Austria [Hungary] to the nationals of such Succession States of their property, rights, and interests, including debts, credits, and accounts, situated in Austrian [Hungarian] territory (article 266 [249]). Special provision was made for the settlement of debts between nationals of such Succession States and Austrian [Hungarian] nationals (article 271 [254] and paragraph *(d)* of article 248 [231]). Provision was made by the Congress of the United States for the release and return of the property, rights, and interests, and the proceeds of the liquidation thereof, of the nationals of such Succession States, which consequently are no longer charged with and cannot be applied to the payment of claims and debts of American nationals as provided in paragraph *(h)* (2) of article 249 [232] (see subsection *(b)* of section 9 of the Trading with the Enemy Act as amended by the Act of June 5, 1920, 41 Statutes at Large 978).

[2] The term "residing" as here used with respect to time as affecting debts means residing at any time falling within the period of American belligerency after the debt became due, *provided* all cash demand deposits will, for this purpose, be treated as due. The "period of American belligerency" is defined in Administrative Decision No. I as the period between December 7, 1917, and July 2, 1921, both inclusive, the former being the effective date of the joint resolution passed by the Congress of the United States declaring the existence of a state of war between the United States and the Imperial and Royal Austro-Hungarian Government and the latter being the effective date of the joint resolution passed by the Congress of the United States declaring such state of war at an end.

The terms "Austrian national" and "Hungarian national" as here used do not

(3) Interest which accrued due before and during the war to an American national in respect of securities issued or taken over by Austria [Hungary], provided that the payment of interest on such securities to Austrian [Hungarian] nationals or to neutrals was not suspended during the war; and

(4) Capital sums which became payable before and during the war to American nationals in respect of securities issued by Austria [Hungary], provided that the payment of such capital sums to Austrian [Hungarian] nationals or to neutrals was not suspended during the war.

Cash demand deposits, and time deposits expiring "during the war" as that term is defined in the Treaties, including ordinary bank demand and time deposits, made or established by American nationals with Austrian [Hungarian] nationals prior to December 7, 1917, are included in the term "debts" as used herein without affirmative proof of a demand for payment by the American depositor, subject to the right of the Austrian [Hungarian] Agent to prove that the facts of any particular case take it out of the general rule here announced.

The foregoing definitions will be applied to the term "debts" wherever found without a qualifying word or phrase in the Treaties or in this and subsequent opinions of the Commission.

The Commissioner rejects the contention of the Austrian and Hungarian Agents that because of the apparent limitation of the phrase "debts owing to them [American nationals] by Austrian [Hungarian] nationals", found in paragraph 4 of the annex to section IV, the term "debts" as here used does not include the State debts described in the foregoing paragraphs (3) and (4). No such limitation is found in the applicable paragraph *(h)* (2) of Article 249 [232]. The construction which the Commissioner gives to the term "debts", as here used, to embrace State debts of Austria [Hungary] finds support in the decisions of the Mixed Arbitral Tribunals constituted under the several Treaties and in the practice obtaining between the Allied Powers and the Central Powers. [1]

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include nationals of the former Austrian [Hungarian] ceded territory who ceased to be Austrian [Hungarian] nationals upon the cession of such territory.

"Debts" as that term is used herein, or claims based thereon, are such as have been impressed with American nationality continuously during the period of American belligerency; *provided, however,* that if a debt or a claim based thereon became impressed with American nationality by the naturalization of the claimant or otherwise through operation of law after December 6, 1917, but before July 2, 1921, and remained to the latter date impressed with American nationality it will be separately dealt with by the Commissioner.

[1] See Agreement between the British and Hungarian Governments, ratifications of which were exchanged at London on April 20, 1922, copied in full in the supplement to volume 17 (1923), American Journal of International Law, pages 46-48. Paragraph 5 of that Agreement reads as follows: "To remove doubts the claims by British nationals with regard to their property, rights and interests with the payment of which all property, rights and interests of Hungarian nationals within British territory, and the net proceeds of the sale, liquidation or any other dealings therewith *may under paragraph 4 of the annex to section IV of part X of the Treaty be charged* shall be deemed to include the classes of pecuniary obligations referred to in paragraphs (3) and (4) of article 231 of the Treaty."

Rubens *v.* Austrian Government, III Dec. M. A. T. 37; The Municipal Trust Co., Ltd., *v.* Hungarian Government, *ibidem* 248. While these cases were appeals from Clearing Office decisions, nevertheless they throw some light on the question here considered.

See also fourth annual report of the British Administrator of Austrian Hungarian, and Bulgarian Property (1924), page 8, and the fourth paragraph of the Agreement of July 24, 1924, between the British Government and the Austrian Government appearing on page 26 of that report.

Liability for interest or capital sums due to American nationals in respect of securities issued or taken over by the former *Austro-Hungarian Government* will be dealt with in another decision.

Compensation for damages arising under Article 249 [232] (e)

Paragraph *(e)* of article 249 [232] provides in substance that Austria [Hungary] shall compensate American nationals "in respect of damage or injury inflicted upon their property, rights or interests, including any company or association in which they are interested, in the territory of the former Austrian Empire [former Kingdom of Hungary], by the application either of the exceptional war measures or measures of transfer".

This provision constitutes one of the "matters provided for in article 249 [232]", and hence in arriving at the measure of damages the provisions of section III with respect to currency and rates of exchange and interest will be taken into account.

The phrase "property, rights and interests" includes "debts, credits and accounts" (first clause of paragraph 14 of the annex to section IV).

Under the Tripartite Agreement the extent of the damage or injury, if any, inflicted upon an American national by the former Austrian Empire [former Kingdom of Hungary] through the application of war measures must be determined by the Commissioner.

In such determination the following principles and rules will apply:

(1) "Exceptional war measures" include those enumerated in the first clause of paragraph 3 of the annex to section IV [1] and all others which were in fact exceptional war measures whether or not expressly enumerated as such in the Treaty or expressly provided for in any administrative, legislative, or judicial act or decree. It will be noted that the enumeration of exceptional war measures is very broad and sweeping and seems to include all measures taken by Austria [Hungary] or her authorized agents or by any person connected with the administration or supervision of enemy property. However, it is significant that this enumeration while inclusive is not exclusive, and all measures and acts of the general nature of those enumerated will be held to have been exceptional war measures.

(2) "Measures of transfer" include only those defined in the Treaty provision copied in the margin, which definition is exclusive in its nature.

[1] The language of paragraph 3 of the annex to section IV follows:

"In article 249 [232] and this annex the expression 'exceptional war measures' includes measures of all kinds, legislative, administrative, judicial or others, that have been taken or will be taken hereafter with regard to enemy property, and which have had or will have the effect of removing from the proprietors the power of disposition over their property, though without affecting the ownership, such as measures of supervision, of compulsory administration, and of sequestration; or measures which have had or will have as an object the seizure of, the use of, or the interference with enemy assets, for whatsoever motive, under whatsoever form or in whatsoever place. Acts in the execution of these measures include all detentions, instructions, orders or decrees of Government departments or courts applying these measures to enemy property, as well as acts performed by any person connected with the administration or the supervision of enemy property, such as the payment of debts, the collecting of credits, the payment of any costs, charges or expenses, or the collecting of fees.

"Measures of transfer are those which have affected or will affect the ownership of enemy property by transferring it in whole or in part to a person other than the enemy owner, and without his consent, such as measures directing the sale, liquidation or devolution of ownership in enemy property, or the cancelling of titles or securities."

(3) In assessing the compensation to be paid by Austria [Hungary] for the damage or injury inflicted upon American nationals by the application of exceptional war measures or measures of transfer to their property, rights, or interests, the provisions of section III with respect to currency and rates of exchange and interest will be taken into account.

(4) The Commissioner finds that the average cable transfer rate prevailing in the United States during the month immediately preceding the declaration of the existence of a state of war between the United States and Austro-Hungary (paragraph *(d)* of Article 248 [231]) was 9.36 cents American currency to one Austro-Hungarian krone. This is the rate which will be applied by this Commission whenever it is proper to apply the "pre-war rate of exchange". [1]

(5) The Government of Austria and the Government of Hungary through their respective Agents represent that Austro-Hungary, the former Austrian Empire, and the former Kingdom of Hungary did not issue, promulgate, or give effect to any exceptional war measures or measures of transfer applicable to American nationals; that they had no Government agent or agency corresponding to the German Treuhänder or the Alien Property Custodian of the United States; that the decrees preventing their nationals from trading with enemies which applied to the nationals of Great Britain, France, Belgium, Italy, and other Allied Powers were never extended to or applied to American nationals or their property, rights, and interests, and that there were no Austro-Hungarian, Austrian, or Hungarian statutes, regulations, or decrees of any nature designed to prohibit, or which did in fact prohibit, Austrian or Hungarian nationals from communicating, trading, or having intercourse with American nationals during the period of belligerency, or designed to prevent, or which did in fact prevent, Austrian or Hungarian nationals from paying their debts owing to American creditors.

The burden will be upon the United States to prove the existence of Austro-Hungarian and/or Austrian [Hungarian] legislative, administrative, judicial or other general act or decree having general applicability to all the property, rights, and interests of American nationals in territory of the former Austrian Empire [former Kingdom of Hungary]. In the absence of such proof the burden will be upon the United States in putting forward a particular claim on behalf of one of its nationals to prove that the property, rights, and interests of the claimant in the territory of the former Austrian Empire [former Kingdom of Hungary] were in fact subjected to measures in the nature of exceptional war measures or to measures of transfer taken by Austro-Hungary and/or by Austria [Hungary] resulting in damage or injury thereto.

Austria's and Hungary's liability for claims and debts

From the analysis of the portions of sections III and IV of part X of the Treaty applicable to the United States and Austria [Hungary] and their

[1] The term "pre-war" applicable to the United States and its nationals as used in paragraph *(d)* of article 248 [231] fixing the rate of exchange refers to a time prior to December 7, 1917, while the same term as applied to Great Britain, France, and other Allied Powers refers to a time prior to the entry (on July 28, 1914, or later) of each into war with the Central Power concerned in the particular Treaty. During this period of American neutrality many of the debts which form the basis of claims before this Commission were incurred. Likewise during this period of more than three years the Austro-Hungarian krone as measured by the American exchange value depreciated to less than one-half of its par value. Consequently the Treaty pre-war rate of exchange applicable to Great Britain, France, and some of the other Allied Powers and their respective nationals is more than double the Treaty rate applicable to the United States and its nationals.

respective nationals it appears that the only provisions fixing *direct* and *absolute* liability on Austria [Hungary] for *debts* owing by their nationals are those embodied in paragraphs *(e)* and *(h)* (2) of article 249 [232], in the first of which Austria [Hungary] is held liable to make compensation for damage or injury resulting from its own acts in applying war measures to American property, rights, or interests, including debts, credits, accounts, and cash assets, and in the second of which Austria [Hungary] is required to pay to American nationals or the American Government the proceeds of the liquidation of American property, including debts [1].

An *indirect* liability is fixed on Austria [Hungary] for debts owing by its nationals (paragraph *(j)* of Article 249 [232]) *contingent, however*, on the Congress of the United States electing to retain and apply the Custodian Property to the payment of claims and/or debts in accordance with the provisions of paragraph *(h)* (2) of article 249 [232] and paragraph 4 of the annex to section IV.

Austria [Hungary] is, of course, independent of any Treaty provisions, primarily liable for its public debts, evidenced by its bonds, treasury notes, and the like.

But nowhere in such of the clauses of the Treaties as became effective with respect to the United States and its nationals is there found any provision fixing direct and primary liability on Austria [Hungary] for the debts of its nationals to American nationals in the absence of some act of the Austrian [Hungarian] Government operating upon such debts to the prejudice of the American creditors. The suggestion that, in the absence of such act by the Austrian [Hungarian] Government, it is obligated to pay American creditors for losses sustained by them due to depreciation during and after the war in the exchange value of Austro-Hungarian currency can be sustained only on the theory that Austria [Hungary] is liable for all of the direct and indirect, immediate and ultimate, consequences of the war. Clearly such a construction of the Treaty is not justified (see reasons set forth in the "Opinion in War-Risk Insurance Premium Claims" rendered by the Umpire of the Mixed Claims Commission, United States and Germany, Decisions and Opinions, pages 33 to 59 inclusive).

Valorization of debts—Interest

In the absence of a treaty so stipulating, there is no warrant for requiring the payment in American currency at the pre-war rate of exchange of Austrian [Hungarian] public debts or debts of Austrian [Hungarian] nationals owing to American nationals which by their terms are payable in Austro-Hungarian or other non-American currency. A contract obligation of the Austrian [Hungarian] Government or of an Austrian [Hungarian] national to pay Austro-Hungarian kronen is exclusively a krone obligation and is unaffected either by the purchasing power of the krone in Austria [Hungary] or by the exchange value of the krone as measured by other currencies. [2]

[1] In carrying these provisions into effect the provisions of section III respecting currency and rates of exchange and interest must be taken into account in measuring the extent of the damage inflicted by Austria's [Hungary's] act or the amount which Austria [Hungary] is required to pay from the proceeds of liquidation of American property.

[2] This is the effect of the decision rendered by the Supreme Court of the United States on November 23, 1926, in the case of Die Deutsche Bank Filiale Nurnberg *v.* Charles Franklin Humphrey. Mr. Justice Holmes in delivering the opinion of the court said:

"An obligation in terms of the currency of a country takes the risk of currency fluctuations and whether creditor or debtor profits by the change the law takes no account of it. Legal Tender Cases, 12 Wall. 457, 548, 549. Obviously in fact a dollar or a mark may have different values at different times but to the law that establishes

The Commissioner rejects the contention put forward by the American Agent that as paragraphs 4 and 14 of the annex to section IV treat debts owing to American nationals by Austrian [Hungarian] nationals as within the provisions of that section, therefore the second clause of paragraph 14 requires the application of the provisions of section III respecting currency and rates of exchange and interest to such debts. The Commissioner holds that the mere fact that such debts may fall within the scope of or be dealt with in section IV does not under any and all circumstances require the application to such debts of the provisions of section III with respect to currency and rates of exchange and interest. These provisions of section III may be applied to debts only in carrying into effect such provisions of section IV as deal with or operate upon debts. The clause invoked by the American Agent stipulates that "In the settlement of matters provided for in article 249 [232] between Austria [Hungary]" and the United States the provisions of section III respecting currency and rates of exchange and interest shall apply. Article 249 [232] makes no provision for the direct settlement of debts as between nationals of Austria [Hungary] and those of the United States or as between the Government of Austria [Hungary] and American nationals. Such debts (except those subjected to war measures) are not dealt with by article 249 [232] save in those clauses providing in effect that the Government of the United States may charge or apply Custodian Property to their payment. Or, to state the proposition in another form, the provisions of article 249 [232] do not deal with the settlement of debts as between private parties or as between American nationals and the Government of Austria [Hungary] but deal only with State measures taken by the United States (or by Austria [Hungary]) in respect of such debts. Should the United States elect to exercise the power of charging Custodian Property with or applying it to the payment of such debts in accordance with the provisions of paragraph *(h)* (2) of Article 249 [232] and paragraph 4 of the annex to section IV—one of the "matters provided for in article 249 [232]" —then in the application by the Government of the United States as against the Government of Austria [Hungary] of these State measures to such debts the provisions of section III with respect to currency and rates of exchange and interest will apply. [1]

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it it is always the same. If the debt had been due here and the value of dollars had dropped before suit was brought the plaintiff could recover no more dollars on that account. A foreign debtor should be no worse off."

To the same effect is the decision of the Supreme Court of the United States rendered on May 16, 1927, in the case of Zimmermann *et al. v.* Sutherland *et al.* (Wiener Bank-Verein, of Vienna) brought by American nationals to enforce the application of funds seized during the war by the United States as the property of the Vienna bank to the payment at the pre-war rate of exchange of the pre-war bank deposit in kronen of the plaintiffs in the Vienna bank and payable there in accordance with the law of Austria. In denying the existence of the asserted right the court held: "The only primary obligation was that created by the law of Austria-Hungary and if by reason of an attachment of property or otherwise the courts of the United States also gave a remedy the only thing that they could do with justice was to enforce the obligation as it stood, not to substitute something else that seemed to them about fair." In disposing of the contention that this suit could be maintained under the Act of the Congress of the United States designated the "Trading with the Enemy Act" the court held: "That Act did not turn the Austrian into an American debt and impose a new and different obligation upon the Austrian Bank."

[1] The reasoned opinions of the Mixed Arbitral Tribunals constituted under the Treaty of Versailles and similar Treaties involving private debts between nationals of non-clearing States sustain the view here expressed. National Bank of Egypt *v.* German Government and Bank für Handel und Industrie, V Dec. M. A. T. 26; Margaret Williams *v.* Berlinische Lebens-Versicherungs Gesellschaft, *ibidem* 322.

See also Goldschmiedt *v.* Heesch Hinrichsen et Cie., IV Dec. M. A. T. 530; Loy

The Treaty terms place the ultimate responsibility on the United States through its law-making power [1] to elect to apply or not to apply the Custodian Property to the payment of claims and debts of American nationals as defined therein. When the facts shall have been fully developed by this Commission, the debts ascertained and the claims adjudicated, this election may be made advisedly. Pending such election the Treaty provides that the Custodian Property shall be retained by the United States subject to the disposition of its law-making power until such time as Austria [Hungary] shall have made suitable provision for the satisfaction of all claims of American nationals against it. What those claims are must be determined by this Commission. What is suitable provision for their satisfaction must be determined by the law-making power of the United States. Should no other suitable provision be made by Austria [Hungary] for the satisfaction of American claims and debts, then the law-making power of the United States may at its election apply the proceeds of the liquidation of the Custodian Property to their payment in accordance with the provisions of paragraph *(h)* (2) of article 249 [232] and paragraph 4 of the annex to section IV of the Treaty, these being "matters provided for in article 249 [232]". In the event of such election—but only then—will the "debts" not subjected to war measures owing to American creditors by Austrian [Hungarian] debtors and by the Austrian [Hungarian] State payable in non-American currency be converted and stated for the purpose of payment in American currency at the pre-war rate of exchange, and the interest provisions of paragraph 22 of the annex to section III will apply. The amount so applied

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and Markus *v.* German Government *et al.*, V Dec. M. A. T. 551; Michalowski *v.* Deutsche Bank Berlin, *ibidem* 463; Tempel *v.* Deutsch-Russische Transport (decided by German-Polish Mixed Arbitral Tribunal July 23, 1926); and Zundhutchen und Patronenfabrik Aktiengesellschaft *v.* Westbank Aktiengesellschaft, III Dec. M. A. T. 982.

The leading case apparently announcing a different rule, but without stating reasons therefor, is that of George Stevenson & Co., Ltd., *v.* Banque Nationale de Bulgarie, II Dec. M.A.T. 77. It was brought under the provisions of the Treaty of Neuilly by a British national against a Bulgarian national. While Great Britain had not adopted the Clearing Office system as a method of settlement of claims and debts between its nationals and Bulgarian nationals, it had by Order in Council, entered prior to the bringing of this suit, elected to adopt the alternate method of settlement and to apply the proceeds of Bulgarian property in its hands to the payment of debts owing by Bulgarian nationals to British nationals (see fifth annual report of the Controller of the Clearing Office of Great Britain dated September 15, 1925, on page 13 under the caption "Department for the Administration of Bulgarian Property"; Armstrong's War and Treaty Legislation 1914-1922, 2nd edition, page 313 *et seq.*). Having by this Order in Council—a State measure taken by Great Britain against Bulgaria—made such election, it necessarily followed that, under the express terms of the Treaty of Neuilly, the claims and debts owing to British nationals by Bulgaria and its nationals must be converted into British currency at the pre-war rate of exchange and that the interest provisions of section III must be applied. Likewise Great Britain, having made this election, was required to apply the same provisions of section III in accounting to Bulgaria for the property retained and liquidated. In the light of this analysis of what was really involved in that case, it is apparent that the disposition made of it is not in conflict with the rule here announced.

[1] Paragraph *(h)* (2) of article 249 [232] provides that the Custodian Property "shall be subject to disposal by such Power [United States] in accordance with its laws and regulations". Section 5 of the [Knox-Porter] Peace Resolution adopted by the Congress of the United States and incorporated in the Treaty of Vienna [Budapest] provides that the Custodian Property "shall be retained by the United States of America and no disposition thereof made except as shall have been heretofore or specifically hereafter shall be provided by law," etc.

will be a credit to Austria [Hungary] which will in turn compensate its nationals in respect of such application of the proceeds of the liquidation of their property (paragraph *(j)* of article 249 [232]).

Method of payment

As heretofore noted, section III of part X of the Treaties, providing a "method of payment" of private debts and State obligations defined therein "through the intervention of Clearing Offices", was not adopted by the United States and hence has no application as between the United States and its nationals on the one hand and Austria [Hungary] and its nationals on the other hand.

But the provisions of paragraph *(h)* (2) of article 249 [232] and of paragraph 4 of the annex to section IV provide an alternate "method of payment" through the application by the Government of the United States of the Custodian Property to the payment of claims and debts of American nationals as defined therein. The Government of the United States by the terms of the Treaties reserved and it is expressly clothed with the power at its election [1] to make such application of the Custodian Property; but such election if made carries with it correlative burdens [2] and hence this alternate method of payment as well as the Clearing Office method is to some extent reciprocal.

Machinery for determining the amount of claims and debts

Eliminating those provisions of the Treaties not adopted by the United States, the Tripartite Agreement in practical effect clothes the Commissioner with the power and it is made his duty to adjudicate all claims presented by the Government of the United States on its own behalf or on behalf of its nationals against Austria [Hungary] or its nationals falling within the terms of the Treaties, including (1) reparation claims arising under part VIII, and (2) compensation claims for damage or injury falling within the terms of paragraph *(e)* of article 249 [232]; and, as Arbitrator appointed in pursuance of paragraph 4 of the annex to section IV of part X of the Treaties, to ascertain

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[1] Paragraph (*h*) (2) of article 249 [232] and paragraph 4 of the annex to section IV. It will be noted that these clauses of the Treaties providing for this alternate method of payment are so drawn as to harmonize with the provisions of the American "Trading with the Enemy Act" which reserved to the Congress of the United States the right to dispose of the Custodian Property and also with section 4 of the Peace Resolution incorporated in the Treaties which reserved to the United States all rights "to which it is entitled by virtue of any Act or Acts of Congress", including the Trading with the Enemy Act, and also with section 5 of the Peace Resolution incorporated in the Treaties which provides that the Custodian Property "shall be retained by the United States of America and no disposition thereof made except as shall have been heretofore or specifically hereafter shall be provided by law until such time" as Austria and Hungary shall have respectively made suitable provision for the satisfaction of claims of American nationals against them.

[2] Should the United States elect to apply the Custodian Property to the payment of the claims and debts of American nationals it must to the extent of the amounts so applied credit Austria [Hungary] and the latter in turn is obligated to compensate its nationals in respect of the proceeds of the liquidation of their property so applied. Moreover, the United States to the extent it shall exercise the right reserved to it under paragraph *(b)* of article 249 [232] to retain and liquidate Custodian Property—one of the "matters provided for in article 249 [232]"—must, in the settlement of such liquidation, apply the provisions of section III respecting currency and rates of exchange and interest. National Bank of Egypt *v.* German Government and Bank für Handel und Industrie, Anglo-German Mixed Arbitral Tribunal, V Dec. M. A. T. 26.

and assess in the contract currency the amount of debts not subjected to war measures in order that an account may be stated as a basis for the interested Governments taking measures looking to final settlement and that the law-making power of the United States may act advisedly in making final disposition of the Custodian Property. [1] In the discharge of the last-named function action by the Congress of the United States must be awaited before the Commissioner can take final action with respect to the conversion of foreign into American currency, determine the rate of exchange applicable thereto, and the application, if any, of the interest provisions of paragraph 22 of the annex to section III of part X of the Treaties.

Rules of procedure

The Commissioner prescribes the following rules governing debts and claims based on debts presented to the Commissioner by the United States on behalf of American nationals:

I. All such cases will be grouped by the Commissioner into two major classes designated class A and class B respectively. Class A shall comprise those debts (or claims based thereon) found by the Commissioner to have been subjected by Austria [Hungary] to exceptional war measures or measures of transfer. Class B shall comprise those debts (or claims based thereon) which the Commissioner shall find were not subjected to or affected by any Austrian [Hungarian] State measures. Class B shall be subdivided into class B (1) and class B (2). Class B (1) shall comprise debts (or claims based thereon) impressed with American nationality throughout the period of American belligerency. Class B (2) shall comprise debts (or claims based thereon) which became impressed with American nationality by the naturalization of the claimant or otherwise through operation of law after December 6, 1917, but before July 2, 1921, and which remained to the latter date impressed with American nationality.

II. A final judgment will be entered by the Commissioner in all class A cases for an amount stated in American currency compensating the American creditor for the damage or injury inflicted with interest thereon at the rate of 5 per cent per annum from the date of such infliction to the date of payment, such judgment to be in favor of the United States on behalf of the claimant against Austria [Hungary].

III. An interlocutory judgment will be entered by the Commissioner in all class B cases reciting *(a)* the name and residence of the creditor, *(b)* the name and residence of the debtor, *(c)* the date the debt was incurred, *(d)* the date of its maturity, *(e)* the principal amount thereof, *(f)* the rate of interest stipulated if any, and *(g)* the contract currency. The interlocutory judgment entered in all class B (2) cases shall also recite the date on which debts or claims based thereon became impressed with American nationality. Final judgment in all class B cases will be reserved by the Commissioner pending further notice to the respective Agents. [2]

[1] See Administrative Decision No. I dealing with the functions and jurisdiction of the Commission. There is thus combined in one tribunal functions which under the Treaty of St. Germain [Trianon] and similar Treaties between the Allied Powers and the Central Powers were allocated to the Reparation Commission, the Mixed Arbitral Tribunals, and an Arbitrator appointed in pursuance of paragraph 4 of the annex to section IV of part X.

[2] *Note by the Secretariat.* On April 9, 1928, the Commissioner, in the eighteenth meeting of the Tripartite Claims Commission, announced the following Act (original report, pp. 196-198):

IV. All claims based upon debts owing by Austrian [Hungarian] nationals to American nationals shall be asserted against the Government of Austria [Hungary] and the Austrian [Hungarian] private debtor jointly. Thereupon the Austrian [Hungarian] Agent shall cause notice of such claim to be given to the said Austrian [Hungarian] debtor and require such debtor to furnish the Austrian [Hungarian] Agent within 45 days from the date of such notice with all necessary information and data for the proper defence, if any, of such claim.

ACT OF THE COMMISSIONER OF THE TRIPARTITE CLAIMS COMMISSION (UNITED STATES, AUSTRIA AND HUNGARY) TAKEN IN PURSUANCE OF "SETTLEMENT OF WAR CLAIMS ACT OF 1928" FIXING THE RATE OF EXCHANGE AND OF INTEREST AND THE PERIOD DURING WHICH INTEREST SHALL RUN WITH RESPECT TO INTERLOCUTORY JUDGMENTS ENTERED BY THE COMMISSIONER.

Whereas the statute enacted by the Congress of the United States of America designated "Settlement of War Claims Act of 1928", which became effective on March 10, 1928, upon its approval by the President of the United States, provides in substance that the Commissioner of the Tripartite Claims Commission (United States, Austria and Hungary) is authorized and requested with respect to interlocutory judgments entered by him to fix such rate of exchange for the conversion of foreign currency into money of the United States and to fix such rate of interest applicable to said interlocutory judgments and such period during which such interest shall run as he may determine to be fair and equitable, and to give notice thereof within thirty days after the coming into force of said Act; and

Whereas the said Commissioner has considered all statements and arguments submitted by the Government of the United States and the Government of Austria and the Government of Hungary dealing with the fair and equitable rate of exchange and of interest and the period during which interest shall run, and is prepared to comply with the said request and to exercise the said authority conferred by said Act;

Now, therefore, the said Commissioner, being fully advised in the premises, does hereby comply with the said request and exercise the said authority conferred upon him and does hereby fix the rate of exchange at which all interlocutory judgments entered or to be entered by the Commissioner in foreign currency shall be converted into money of the United States, and the rate of interest applicable to all interlocutory judgments entered or to be entered by him and the period during which such interest shall run, as follows:

SECTION I

Rate of Exchange

(a) Gold Currency. Interlocutory judgments expressed in gold foreign currency shall be converted into United States currency at the rates following:

(1) 20.26 cents to the Austro-Hungarian gold krone;
(2) 48.237 cents to the Austro-Hungarian gold gulden or florin;
(3) 19.3 cents to the French gold franc;
(4) 23.82 cents to the German gold mark;
(5) $ 4.87 to the British gold pound.

(b) Interlocutory judgments classified by the Commissioner as B (1) and stated in foreign currency (other than gold) shall be converted into United States currency at the rates following:

(1) 12 cents to the Austro-Hungarian paper or silver gulden or florin;
(2) 6 cents to the Austro-Hungarian krone;
(3) 10 cents to the German mark;
(4) 12 cents to the French franc;
(5) $ 4.76 to the British pound sterling.

This practice, in pursuance of which final judgments stated in terms of American currency will be entered by the Commissioner in all cases save in class B cases as above defined, and interlocutory judgments will be entered in all class B cases, will enable the Governments of the United States, of Austria,

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(c) All interlocutory judgments classified by the Commissioner as B (2) stated in a foreign currency (other than gold) shall be converted into United States currency at the cable transfer rate of exchange found by the Commissioner to have been in effect (at New York in case of British or French currency and at Zurich in case of all other currencies) at the time the claim became impressed with American nationality, by the naturalization of the claimant or otherwise through operation of law, not exceeding, however, the rate fixed for conversion of interlocutory judgments classified by the Commissioner as B (1).

(d) Interlocutory judgments, if any, which may hereafter be entered by the Commissioner expressed in a foreign currency other than those hereinbefore enumerated shall be converted into United States currency at a rate of exchange to be fixed by the Commissioner, at the time of the entry of such judgments.

SECTION II

Interest

The rate of interest applicable to interlocutory judgments and the period during which such interest shall run are fixed as follows:

(a) Prior to January 1, 1929, interest shall not be payable on judgments based on dividends, interest, or other periodical payments which themselves represent interest on capital. Beginning with January 1, 1929, such judgments if any, remaining unpaid shall bear interest at the rate of 5 per cent per annum.

(b) Where the obligation upon which the judgment is founded expressly stipulates that the obligation shall not bear interest after maturity, interest shall not run prior to January 1, 1929; but beginning with that date interest shall run at the rate of 5 per cent per annum.

(c) In all cases not falling within the preceding paragraphs *(a)* or *(b)* where the obligation upon which the judgment is based matured prior to December 7, 1917, interest shall run beginning on December 7, 1917, until paid; and where the obligation matured on or subsequent to December 7, 1917, interest shall run from the date of maturity until paid.

(d) The rate of interest shall be 5 per cent per annum except in cases where the judgment finds a different contractual rate of interest stipulated, in which event the rate shall be the contractual rate.

(e) A deposit in the Austrian special deposit account or in the Hungarian special deposit account, as the case may be, in pursuance of the provisions of the Settlement of War Claims Act of 1928, of an amount sufficient to make the payments in respect of the awards (as defined in said Act) against Austria or against Hungary, as the case may be, authorized by subsection *(b)* of section 5 of said Act, shall be treated as a payment within the meaning of this Section II.

DONE at Washington April 9, 1928.

Edwin B. PARKER
Commissioner of the Tripartite Claims Commission

Cross-references. Am. J. Int. Law, vol. 23 (1929), pp. 179-181; Friedensrecht, VIII. Jahr, Nr. 6/7 (1929), pp. 38-39.

Bibliography: Bonynge, pp. 21-23; Prossinagg, pp. 15-21.

and of Hungary to act advisedly in adopting measures for the ultimate payment of such judgments—measures political rather than juridical in their nature; and will enable the law-making power of the United States to act advisedly in making final disposition of the Custodian Property as contemplated by section 5 of the Peace Resolution constituting a part of the Treaties of Vienna and of Budapest.

This decision in so far as applicable will control the preparation, presentation, and decision of all claims based on debts owing to American nationals by Austrian [Hungarian] nationals or by Austria [Hungary] presented to the Commission and falling within its scope. In any case in which the American Agent, the Austrian Agent, and/or the Hungarian Agent is of the opinion that the peculiar facts of that case take it out of the rules here announced, such facts, with the differentiation believed to exist, will be called to the attention of the Commissioner in the presentation of that case.

HERBERT PAYNE (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(April 12, 1927. Pages 46-47.)

RESPONSIBILITY FOR ACTS OF MILITARY AUTHORITIES.—WAR: SEIZURE, REQUISITION OF PRIVATE PROPERTY.—DAMAGES: MARKET VALUE. Austria and Hungary *held* responsible for seizure and requisition in Karlsbad of automobile by military authorities on or about November 15, 1915. Reasonable market value at time and place of seizure allowed.

In case styled and numbered as above [1] the claimant, an American national, in July, 1914, was motoring through Europe using an Italian automobile belonging to him. He stored his car at Karlsbad at the outbreak of the World War on or about August 1, 1914, and returned through The Hague to the United States. On or about November 15, 1915, this automobile was seized and requisitioned by the Austro-Hungarian military authorities and although demand for its return to the claimant was made through diplomatic channels it has never been returned to him.

On the record submitted the Commissioner finds that the reasonable market value of this automobile at the time and place of seizure in its then condition was $3,000.

Wherefore the Commission decrees that under the Treaty of Vienna the Government of Austria is obligated to pay to the Government of the United States on behalf of Herbert Payne the sum of one thousand nine hundred eight dollars ($1,908.00) with interest thereon at the rate of 5 per cent per annum from November 15, 1915, and that under the Treaty of Budapest the Government of Hungary is obligated to pay to the Government of the United States on behalf of Herbert Payne the sum of one thousand ninety-two dollars ($1,092.00) with interest thereon at the rate of 5 per cent per annum from November 15, 1915.

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[1] Original report: United States of America on behalf of Herbert Payne, claimant, *v.* Austria and Hungary, docket No. 17.

MRS. JULIUS BIRO (UNITED STATES) *v.* HUNGARY

(April 12, 1927. Pages 47-48.)

JURISDICTION.—ARREST OF ALIEN, SEIZURE OF PRIVATE PROPERTY.—EXCEPTIONAL WAR MEASURES. Arrest of claimant's husband, charged with being money smuggler, and seizure of money found on him by Hungarian civil authorities in Hungarian territory on or about May 13, 1920. *Held* that act was no exceptional war measure within terms of Treaty of Budapest.

On behalf of Mrs. Julius Biro, claimant in case styled and numbered as above, [1] it is alleged that she is an American citizen; that in 1920 her late husband visited Hungary and while there the Hungarian authorities, purporting to act in pursuance of Hungarian law, seized $700.00 in American currency belonging to him which was never returned; and that the claimant as the surviving spouse of her husband is entitled to receive all property and enforce all claims belonging to her husband during his life.

The record indicates that claimant's husband, being in Hungary, crossed the frontier ostensibly to visit his mother, who resided in that part of Czechoslovakia which lately was embraced within the territorial limits of Hungary; that he had several times previously crossed the Hungarian frontiers; that on or about May 13, 1920, he was arrested by the Hungarian authorities in Hungarian territory, charged with being a money smuggler in violation of Hungarian laws, at which time the $700 in cash found on his person was seized and retained by the Hungarian authorities. There is nothing in the record indicating or even suggesting that the act complained of was in any sense an exceptional war measure as that term is defined in the economic clauses of the Treaty of Budapest. On the contrary, the arrest was made and the funds seized by the Hungarian civil authorities 18 months after the signing of the Armistice. It is not within the competency of this Commission to adjudicate the rights, if any, which claimant may have arising under Hungarian municipal law (not partaking of the nature of war measures), administered by Hungarian domestic tribunals, or arising under international law and espousable diplomatically by the United States, when as in this case the claim does not fall within the terms of the Treaty of Budapest.

Wherefore the Commission decrees that under the Treaty of Budapest the Government of Hungary is not obligated to pay to the Government of the United States any amount on behalf of the claimant, Mrs. Julius Biro, on account of the acts herein complained of.

WILLIAM SCHNEIDER AND JOSEPH BLEIER (UNITED STATES) *v.* HUNGARY

(April 12, 1927. Page 48.)

JURISDICTION.—ALIENS: TAXATION. Exaction of tax on December 19, 1920, by Hungary on funds sent in 1920. *Held* that claim falls outside terms of Treaty of Budapest.

[1] Original report: United States of America on behalf of Mrs. Julius Biro, claimant, *v.* Hungary, docket No. 375.

On behalf of the claimants in case styled and numbered as above, [1] an award is sought against Hungary for $66.11, the amount of a tax levied on December 19, 1920, by the Hungarian Government on funds sent by claimants to Hungary during 1920. It is alleged that a Hungarian court decision rendered in 1925 based on a statute passed in 1921 declared such taxes illegal with respect to foreigners.

Claimants' demand against Hungary arises under Hungarian statutes and is governed by Hungarian municipal law administered by Hungarian domestic tribunals. It is not a claim falling within the terms of the Treaty of Budapest.

Wherefore the Commission decrees that under the Treaty of Budapest the Government of Hungary is not obligated to pay to the Government of the United States any amount on behalf of the claimants on account of the acts herein complained of.

KURT HEPPE (UNITED STATES) *v.* HUNGARY AND HUNGARIAN COMMERCIAL BANK OF PEST

(April 12, 1927. Page 49.)

JURISDICTION.—WAR, CONSEQUENCES: DEPRECIATION OF SECURITIES. Purchase of bonds during war or after signing of Armistice. *Held* that claim for subsequent depreciation in value falls outside terms of Treaty of Budapest.

On behalf of the claimant in case styled and numbered as above [2] it is alleged that in 1918 (the exact date is not stated) the claimant sent 100,000 Hungarian crowns in the form of a bank check to the Hungarian Commercial Bank of Pest with instructions to invest same for his account in such manner as in the bank's judgment would prove safe and desirable; that the bank replied that it had invested the remittance in its own bonds which it assured him were absolutely safe, but that said bonds had so depreciated that they are now practically worthless. It is apparent that the bonds were acquired by the claimant while the war was in progress or after the signing of the Armistice and the claim is put forward for the depreciation in their value after such acquisition. There is no suggestion that the claim grows out of any pre-war transaction or that the bonds were subjected to any exceptional war measures.

The Commissioner holds that the claim does not fall within the terms of the Treaty of Budapest.

Wherefore the Commission decrees that under the Treaty of Budapest the Government of Hungary is not obligated to pay to the Government of the United States any amount on behalf of the claiment herein on account of the acts herein complained of.

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[1] Original report: United States of America on behalf of William Schneider and Joseph Bleier, claimants, *v.* Hungary, docket No. 1168.

[2] Original report: United States of America on behalf of Kurt Heppe, claimant, *v.* Hungary and Hungarian Commercial Bank of Pest, *Impleaded*, docket No. 1275.

GRIFF GLOVER (UNITED STATES) *v.* AUSTRIA AND OESTERREICHISCHER-LLOYD

(June 9, 1927. Pages 50-51.)

JURISDICTION.—DEBTS, NATIONALITY OF CLAIM.—EXCEPTIONAL WAR MEASURES.—EVIDENCE: BURDEN OF PROOF. Purchase of boat tickets from Trieste Company in July, 1914. Cancellation of trip on August 3, 1914. Refund of fare by payment, without claimant's authority, to Vienna branch of Prague firm which failed to transmit amount to United States. *Held* that, since on July 16, 1920, Company became Italian, and proprietor of firm became Czechoslovakian national, claimant did not discharge burden to prove that on July 2, 1921, debt was owing to him by national of Republic of Austria. *Held* also that no evidence in record of exceptional war measure.

Bibliography: Bonynge, pp. 28-29.

On behalf of the claimant in case styled and numbered as above [1] it is alleged that in July, 1914, the claimant, an American national, purchased from the Oesterreichischer-Lloyd three tickets for passage on its steamship *Thalia* from Amsterdam to Norway and return; that the sailing of the *Thalia* was cancelled on August 3, 1914, whereupon claimant demanded of the Oesterreichischer-Lloyd's representative a refund of the purchase price of said tickets, 2,740 kronen; that this amount was, without claimant's authority, transmitted in October, 1915, by the Oesterreichischer-Lloyd to L. & G. Halphen in Vienna; that claimant instructed the Halphen firm to transmit said amount in dollar currency to him in the United States, but these instructions were never complied with; and that the said Oesterreichischer-Lloyd is still indebted to the claimant in the sum of 2,740 kronen valorized at the pre-war rate of exchange, or $257.56, with interest thereon at the rate of 5 per cent per annum from August 3, 1914. It is further alleged that the failure of the said Oesterreichischer-Lloyd and the said Halphen firm to transmit these funds to claimant was due to the existence of exceptional war measures promulgated and enforced by the Austrian Government.

The Commissioner finds:

(1) That the principal office of the Oesterreichischer-Lloyd was in July, 1914, and still is at Trieste;

(2) That the principal office of L. & G. Halphen and its successor was in July, 1914, and still is at Prague;

(3) That upon the coming into effect of the Treaty of St. Germain on July 16, 1920, Trieste became Italian territory and Prague became Czechoslovakian territory; and

(4) That upon the coming into effect of the Treaty of St. Germain the Oesterreichischer-Lloyd became an Italian national with the name Lloyd-Triestino and the proprietor of L. & G. Halphen became a Czechoslovakian national.

It follows that the claimant has failed to discharge the burden resting on him to prove that on July 2, 1921, the debt declared upon was owing to him by a national of the Republic of Austria as then and now existing.

The Commissioner further finds that there is no evidence in this record of any exceptional war measure taken by the former Austrian Government or any other Government which interfered with the transmission to claimant of funds claimed by him.

[1] Original report: United States of America on behalf of Griff Glover, claimant, *v.* Austria and Oesterreichischer-Lloyd, *Impleaded*, docket No. 9.

Applying the rules announced in Administrative Decision No. II to the facts as disclosed by the record herein, the Commission decrees that under the Treaty of Vienna the Government of Austria is not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

JOSEPH AMSCHLER (UNITED STATES) *v.* AUSTRIA AND BANCA COMMERCIALE TRIESTINA

(June 9, 1927. Pages 51-52.)

JURISDICTION.—DEBTS, NATIONALITY OF CLAIM. Deposit in Austrian bank which on July 16, 1920, became Italian national. *Held* that debt is not "enemy debt" within terms of Treaty of Vienna.

Bibliography: Bonynge, pp. 28-29.

On behalf of the claimant in case styled and numbered as above [1] an award is sought against Austria based exclusively on a bank deposit of 5,248 kronen and 75 heller to the credit of claimant in the Banca Commerciale Triestina, located at Gorizia, which prior to the war was embraced in the territory of the former Austrian Empire. On the coming into effect of the Treaty of St. Germain on July 16, 1920, Gorizia became a part of and the debtor bank a national of Italy. [2]

The Commissioner holds that the Banca Commerciale Triestina is not with respect to claimant an "enemy debtor" within the meaning of that term as found in the Treaty of Vienna and that the claim here asserted is not an "enemy debt" falling within the terms of that Treaty.

Applying the rules announced in Administrative Decision No. II to the facts as disclosed by the record herein the Commission decrees that under the Treaty of Vienna of August 24, 1921, the Government of Austria is not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

FRIEDERIKE GOTTLIEB (UNITED STATES) *v.* AUSTRIA AND BOHEMIAN SAVINGS BANK

(June 9, 1927. Pages 52-53.)

JURISDICTION.—DEBTS, NATIONALITY OF CLAIM. Deposit in Austrian bank which prior to July 16, 1920, became Czechoslovakian national. *Held* that debt is not "enemy debt" within terms of Treaty of Vienna.

Bibliography: Bonynge, pp. 28-29.

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[1] Original report: United States of America on behalf of Joseph Amschler, claimant, *v.* Austria and Banca Commerciale Triestina, of Gorizia, Italy, *Impleaded*, docket No. 337.

[2] See Banca Commerciale Triestina *v.* Banque des pays de l'Europe centrale before Italo-Austrian Mixed Arbitral Tribunal, decided on November 12, 1924, V Dec. M.A.T. 523.

On behalf of the claimant in case styled and numbered as above [1] an award is sought against Austria based exclusively on a savings bank deposit of 38.57 kronen to the credit of claimant in the Bohemian Savings Bank, located at Prague, which before the war was embraced in the territory of the former Austrian Empire. Prior to the coming into effect of the Treaty of St. Germain on July 16, 1920, the principal Allied and Associated Powers had recognized the existence of Czechoslovakia as an independent State, and it was a party to that Treaty as an Allied Power (see preamble to Treaty of St. Germain).

The deposit upon which this claim is based is in a bank located at Prague in Czechoslovakia, which bank is not with respect to claimant an "enemy debtor" within the meaning of that term as found in the Treaty of Vienna, and the claim here asserted is not an "enemy debt" falling within the terms of that Treaty.

Applying the rules announced in Administrative Decision No. II to the facts as disclosed by the record herein the Commission decrees that under the Treaty of Vienna of August 24, 1921, the Government of Austria is not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

ALEXANDER KARL RUDOLPH (UNITED STATES) *v.* AUSTRIA

(June 9, 1927. Page 53.)

JURISDICTION.—WAR: CONFISCATION OF PRIVATE PROPERTY. *Held* that claim based upon confiscation of property in 1805 during Napoleon's campaign falls outside terms of Treaty of Vienna.

On behalf of the claimant in case styled and numbered as above [2] an award is sought against Austria for $250,000, the value of property belonging to the claimant's grandfather who fought in the Prussian army allied with the Austrian army and whose property was confiscated in 1805 during Napoleon's campaign.

The Commissioner holds that the claim here asserted does not fall within the terms of the Treaty of Vienna.

Applying the rules announced in Administrative Decision No. II to the facts as disclosed by the record herein the Commission decrees that under the Treaty of Vienna of August 24, 1921, the Government of Austria is not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

HENRY NEUGASS (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(January 6, 1928. Pages 54-59.)

BONDED PUBLIC DEBTS AND STATE SUCCESSION: LIABILITY FOR INTEREST.—INTERPRETATION OF TREATIES: RULE OF EFFECTIVENESS.—INTERLOCUTORY

[1] Original report: United States of America on behalf of Friederike Gottlieb, claimant, *v.* Austria and Bohemian Savings Bank, of Prague, *Impleaded*, docket No. 553.

[2] United States of America on behalf of Alexander Karl Rudolph, claimant, *v.* Austria, docket No. 891.

JUDGMENTS. Purchase in 1884 of six bonds 5 per cent "unsecured unified public debt" of Austrian Empire, issued October 1, 1868. Contribution by Austria and Hungary to service of debt proportionate to 71.348 per cent and 28.652 per cent, respectively (Austro-Hungarian conventions concluded in 1867, ratified and confirmed by statutes). Conversion of 71.348 per cent of debt into part of "Austrian unsecured debt", and of 28.652 per cent of debt into part of "Hungarian unsecured debt" (Treaty of St. Germain (Trianon), article 203 (186), annex). Distribution of "Austrian (Hungarian) unsecured debt" among Succession States by Reparation Commission, so that Austria (Hungary), being one of Succession States, solely responsible for liabilities incurred prior to July 28, 1914, which by their terms became due and payable prior to coming into force of Treaty (article 203 (186), paragraph 2). Issuance of new obligations by Succession States for period after that date. Relevant provisions of Treaty of St. Germain (Trianon) carried into Treaty of Vienna (Budapest). As each provision of Treaty must be given such reasonable construction in connexion with every other provision as to give effect to all of them, *held* that phrase "securities issued or taken over by the former Austro-Hungarian Government" (article 248 (231), Treaty of St. Germain (Trianon)) refers to "unsecured unified public debt" *supra*, and that, therefore, Austria liable for interest due on or prior to July 16, 1920 (date of coming into force of Treaty of St. Germain), and Hungary liable for interest due on or prior to July 2, 1921 (date on which United States declared state of war with Austro-Hungary ended), in respect of pre-war "Austrian (Hungarian) unsecured debt" and that bond-holders must look to new obligations issued by Succession States for interest accruing subsequent to these dates. Interlocutory judgments will be entered.

Cross-references: Am. J. Int. Law, vol. 22 (1928), pp. 693-698; Friedensrecht, VIII. Jahr Nr. 1/2 (1929), pp. 12-14.

Bibliography: Prossinagg, pp. 25-26; Bonynge, pp. 35-37.

This claim is asserted by the United States on behalf of Henry Neugass, an American national through naturalization, against Austria and Hungary jointly for 705.60 gulden, the aggregate amount of 48 coupons detached from six bonds and filed herein, six of which coupons became payable by their terms on October 1, 1917, and six on April 1 and October 1 of each year thereafter, ending with April 1, 1921.

The bonds in question were all acquired by the claimant in 1884. They were of the issue of October 1, 1868, and have not matured. While they are in terms obligations of the former Austrian Empire, they recite (in translation) that they form:

" . . . an integral part of the 5 per cent unified public debt . . . which said debt arose in accordance with the law of 20th June 1868 from the transforming of the different sorts of the funded general public debt as existing at the end of 1867, and for the payment of the interest of which the lands of the Crown of Hungary contribute, according to agreement, the yearly quota determined in Article XV, 1867".

The coupons upon which this claim is based are payable in silver gulden or florin, which terms are used interchangeably, one of them appearing on some and the other on the rest of the coupons.

The record presents two questions for decision:

1. To what extent, if at all, is Hungary liable for the coupons here presented, and

2. When, did the liability of Austria and/or Hungary for the payment of said coupons terminate and the liability of the Succession or Cessionary States

(including Austria and Hungary), resulting from the dismemberment of the former Austrian Empire and the former Kingdom of Hungary, attach?

From the record it appears that for some 18 years prior to 1867 the State known internationally as the Empire of Austria claimed and exercised jurisdiction over the lands of the Holy Hungarian Crown. In 1867 the former Austrian Empire and the former Kingdom of Hungary as they existed on and prior to July 28, 1914 began to function under separate constitutions, and the Austro-Hungarian Dual Monarchy came into existence as a *de facto* and constitutional union with limited powers. The debt evidenced by the bonds to which the coupons here presented appertained was created prior to 1868.

By formal conventions entered into between the former Austrian Empire and the former Kingdom of Hungary, as independent States, ratified and confirmed by statutes enacted by their respective lawmaking bodies,[1] it was agreed that Hungary should annually contribute to the service of the debts incurred prior to 1868, which debts came to be known as the "unsecured unified public debt", the liability of Austria and of Hungary therefor being 71.348 per cent and 28.652 per cent respectively.

This was the situation with respect to the bonds and coupons in question when the Treaty of St. Germain and the Treaty of Trianon were negotiated and signed. So far as concerns the questions here presented the provisions of these Treaties are substantially identical. Under them the Austro-Hungarian Dual Monarchy was dismembered and substantial parts of the territories of the former Austrian Empire and of the former Kingdom of Hungary were ceded, some to new and some to existing States, all of which, including the existing Republic of Austria and the existing Kingdom of Hungary, will be hereinafter referred to as "Succession States".[2] The financial clauses (part IX) of the Treaties made elaborate provision for the apportionment between the Succession States as they now exist, including Austria and Hungary, of the secured and unsecured pre-war indebtedness of the former Austrian Empire and the former Kingdom of Hungary, fixing sole responsibility on each Succession State for the portion of such indebtedness allocated to it. We are here concerned only with the pre-war unsecured bonded debts of Austria and/or Hungary as they existed on July 28, 1914, which consisted of *(a)* the bonded debt of the former Austrian Government for which it alone was liable, *(b)* the bonded debt of the former Hungarian Government for which it alone was liable, and *(c)* the unsecured unified public debt already referred to created prior to 1868, nominally of the former Austrian Government but for the payment of interest on which Austria and Hungary were liable in the proportions of 71.348 per cent and 28.652 per cent respectively.

A feature of the comprehensive refunding plan worked out by the makers of these Treaties was the segregation of the liability of the former Austrian Government from that of the former Hungarian Government with respect to the unsecured unified public debt and the allocation to each of a sole liability computed on the percentages hereinbefore mentioned.

This was the purpose of the first paragraph of the annex following article

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[1] Austrian laws of December 21 and December 24, 1867, of June 20, 1868, and of December 30, 1907, and Hungarian laws Nos. XII of December 27, 1867, VII of June 11, 1868, and XVI of 1908.

[2] As to Austria these States are: Austria, Czechoslovakia, Italy, Poland, Roumania, and the Serb-Croat-Slovene Kingdom (Jugoslavia). As to Hungary these States are: Hungary, Austria, Czechoslovakia, State of Fiume, Poland, Roumania, and the Serb-Croat-Solvene Kingdom.

203 of the Treaty of St. Germain [1] and the corresponding provision of the Treaty of Trianon, [2] the practical effect of which was to convert 71.348 per cent of the unsecured unified bonded debt into a part of the "Austrian unsecured debt" and the remainder, or 28.652 per cent, thereof into "Hungarian unsecured debt". This conversion of the joint liability with respect to the unsecured *unified* bonded debt into several liabilities left but two classes of *unsecured* bonded debts to be dealt with, namely, Austrian debts and Hungarian debts, and removed many of the difficulties of apportioning and fixing liability with respect to these debts and interest thereon, as from the dates of the coming into force of the relevant Treaties, among the two groups of Succession States (including Austria and Hungary), which differed in their composition. Such segregation, allocation, and distribution was in fact made by the Reparation Commission in pursuance of the authority conferred upon it by the terms of the Treaties (see authorized publication of the Reparation Commission numbered VII, entitled "Distribution of the Pre-War Austrian and Hungarian Debt").

The Treaty of St. Germain provides that each Succession State, including Austria, shall be liable for such portion of the unsecured bonded debt of the former Austrian Government as may be fixed by the Reparation Commission calculated on a prescribed basis, such liability to attach from "the date of the coming into force of the present treaty", viz., July 16, 1920. The Treaty further provides that "The Austrian Government shall be solely responsible for all the liabilities of the former Austrian Government incurred prior to July 28, 1914", save where otherwise specifically provided. Under this provision the pre-war liabilities of the former Austrian Government which by their terms became due and payable prior to the coming into force of the Treaty became a liability of the existing Austrian Republic.

But from the coming into force of the Treaty on July 16, 1920, the liabilities of the former Austrian Government as such ceased to exist and in lieu thereof there was substituted a new liability of the Succession States, including Austria.

The Treaty of Trianon, which came into force on July 26, 1921, contains like provisions with respect to Hungary.

All these provisions constitute part of the program for making effective a comprehensive but complicated debt-refunding plan made necessary by the dismemberment of the territories of the debtor nations. They are carried into the Treaties of Vienna and of Budapest entered into between the United States

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[1] The first paragraph of the annex following article 203 of the Treaty of St. Germain reads as follows:

"The amount of the former unsecured Austrian Government bonded debt, the responsibility for which is to be distributed under the provisions of article 203, shall be the amount of that debt as it stood on July 28, 1914 after deducting that portion which represents the liability of the former Hungarian Government for that debt as provided by the additional Convention relating to the contribution of the countries of the Sacred Hungarian Crown to the charges of the general debt of Austria-Hungary approved by the Austro-Hungarian Law of December 30, 1907, B.L.I. No. 278."

[2] The corresponding provision of the annex following article 186 of the Treaty of Trianon reads as follows:

"In addition to the former unsecured Hungarian Government bonded debt to be divided as above, there shall also be divided among the several States, in the same proportion, the amount of the former unsecured Austrian Government bonded debt which represents the liability of the former Hungarian Government for that debt, as provided by the additional Convention relating to the contribution of the countries of the Sacred Hungarian Crown to the charges of the general debt of the Austro-Hungarian State approved by the Austro-Hungarian Law of December 30, 1907, B.L.I., No. 278."

on the one part and Austria and Hungary respectively on the other. The United States on behalf of its nationals is taking the benefit of this plan. Its nationals are bound thereby. The American Department of State has, in accordance with the provision of the annex following article 203 of the Treaty of St. Germain [article 186 of the Treaty of Trianon], [1] delivered to the Reparation Commission lists of bonds of Austria and of Hungary reported by American nationals, who upon their surrendering the old obligations of Austria or Hungary are entitled to receive, through the Caisse Commune established under the sanction of the Reparation Commission, new obligations of the Succession States. Where the obligations surrendered are a part of the "Austrian unsecured debt" the new obligations are under the Treaty to provide for interest from July 16, 1920, and where the surrendered obligations are a part of the "Hungarian unsecured debt" the new obligations are to provide for interest from July 26, 1921.

In Article 248 [231] of section III of part X of the Treaty of St. Germain [Trianon], dealing with and defining "debts" falling within that section, [2] it is provided:

"In the case of interest or capital sums payable in respect of securities issued or taken over by the former Austro-Hungarian Government the amount to be credited and paid by Austria [Hungary] will be the interest or capital in respect only of the debt for which Austria [Hungary] is liable in accordance with part IX (financial clauses) of the present Treaty, and the principles laid down by the Reparation Commission."

There were no "securities issued or taken over by the former Austro-Hungarian Government" as such, and the only securities answering the substance but not the letter of this description is the unsecured unified public debt hereinbefore dealt with. As each provision of the Treaty must be given such reasonable construction in connection with every other provision as to give effect to all of them, the Commissioner holds that the phrase "securities issued or taken over by the former Austro-Hungarian Government" found in these paragraphs refers to the unsecured unified public debt the liability for which, for all of the purposes of the Treaties, had been apportioned 71.348 per cent of the total and no more to Austria to be treated as a part of "the Austrian unsecured debt" and 28.652 per cent of the total and no more to Hungary to be treated as part of "the Hungarian unsecured debt".

The Commissioner holds that the existing Republic of Austria is liable (other Treaty requisites of liability being present) for all interest which became due on or prior to July 16, 1920, in respect of the pre-war "Austrian unsecured debt". Bondholders must look to the new obligations issued by the Succession States for interest accruing subsequent to that date.

Likewise the Commissioner holds that the existing Kingdom of Hungary is liable (other Treaty requisites of liability being present) for all interest which

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[1] The provision referred to reads as follows:

"Holders of unsecured bonds of the old Austrian Government Debt [Hungarian Government debt] held outside the boundaries of the States to which territory of the former Austro-Hungarian Monarchy is transferred, or of States arising from [out of] the dismemberment of that Monarchy, including Austria [Hungary], shall deliver through the agency of their respective Governments to the Reparation Commission the bonds which they hold, and in exchange therefor the Reparation Commission shall deliver to them certificates entitling them to their due proportionate share of each of the new issues of bonds corresponding to and issued in exchange for their surrendered bonds under the provisions of this annex."

[2] See also "Definition of debts", Administrative Decisions No. II, pp. 22-25 inclusive (note of the Secretariat: this volume, pp. 219 *et seq. supra*).

became due on or prior to July 2, 1921 (the date on which the United States declared the state of war with Austro-Hungary ended), in respect of the pre-war "Hungarian unsecured debt". Bond-holders must look to the new obligations issued by the Succession States for interest accruing subsequent to that date. [1]

It follows that the United States on behalf of the claimant herein is entitled to an award against Austria for 377.57 silver gulden, being 71.348 per cent of the aggregate amount of the coupons presented herein which by their terms became due on or prior to July 16, 1920, and also an award against Hungary for 202.17 silver gulden, being 28.652 per cent of the coupons presented herein which by their terms became due on or prior to July 2, 1921.

Interlocutory judgments herein will be entered in accordance with the rules of procedure announced in Administrative Decision No. II at page 35. [2]

ESTATE OF ALEXANDER ORTLIEB (UNITED STATES) *v.* AUSTRIA AND EDWARD COUMONT, EXECUTOR OF ESTATE OF LOUIS ORTLIEB

(January 6, 1928. Page 60.)

JURISDICTION.—DEBTS. *Held* that claim for unpaid annuities over period 1917-1920 falls outside terms of Treaty of Vienna: no debt which fell due during period of belligerency arising out of pre-war transaction or contract.

Bibliography: Prossinagg, p. 31.

This case having come before the Commission for decision upon the statement of facts submitted by the American Agent, and due consideration having been had, the Commissioner finds that the claim does not fall within the terms of the Treaty of Vienna of August 24, 1921, it appearing that it is based exclusively on a demand for payment of four annuities of $2,000.00 each payable in the United States on December 25 of the years 1917, 1918, 1919, and 1920, under the will of decedent claimant's brother, an Austrian national, which annuities remain unpaid except for three sums aggregating $1,650.000 received in 1923 and 1924, the last annuity fully paid being that for the year 1916, and it further appearing that there is no debt herein asserted which fell due during the period of belligerency arising out of a pre-war transaction or contract within the meaning of the Treaty of Vienna and Administrative Decision No. II; therefore it is by the Commission.

Decreed, That under the Treaty of Vienna of August 24, 1921, and in accordance with its terms the Government of Austria is not obligated to pay to the Government of the United States any amount on behalf of the claimant, Estate of Alexander Ortlieb, deceased, and the case numbered and styled as above [3] is hereby dismissed.

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[1] The conclusion here reached is in harmony with the decisions of the Anglo-Hungarian Mixed Arbitral Tribunal (see British Clearing Office *v.* Hungarian Clearing Office, J. H. Gosschalk *v.* Hungarian Government, V. Dec. M. A. T. pp. 53-58).

[2] This volume, p. 227 *supra*.

[3] Original report: United States of America on behalf of Estate of Alexander Ortlieb, deceased, claimant, *v.* Austria and Edward Coumont, Executor of Estate of Louis Ortlieb, deceased, *Impleaded*, docket No. 811.

KARL KLEIN (UNITED STATES) *v.* AUSTRIA

(March 8, 1928. Pages 61-62.)

BONDED PUBLIC DEBTS AND STATE SUCCESSION: LIABILITY FOR INTEREST.—INTERLOCUTORY JUDGMENTS. Acquisition in 1916 of bonds constituting portion of Austrian debt specifically secured on railways and in existence on July 28, 1914. Decision by Reparation Commission pursuant to article 203, Treaty of St. Germain, that as from July 1, 1919, Austria liable for 20.023 per cent, and Czechoslovakia for 79.977 per cent of debt. *Held* that Austria liable for interest due on or before July 16, 1920 (reference made to Henry Neugass award, see p. 235 *supra*). Interlocutory judgment will be entered for half of amount claimed.

Cross-reference: Am. J. Int. Law, vol. 22 (1928), pp. 698-699.

Bibliography: Prossinagg, p. 32; Bonynge, p. 39.

This claim is asserted by the United States on behalf of Karl Klein, an American national through naturalization in 1906, against Austria for 384 German marks, the aggregate amount of thirty-two coupons detached from bonds acquired by claimant in the year 1916 and since owned by him. These coupons matured by their terms November 1, 1919, May 1, 1920, November 1, 1920, and May 1, 1921, so that ninety-six marks became payable on each of these four dates. The bonds from which the coupons were detached constitute a "portion of the debt of the former Austrian Government which is specifically secured on railways . . . and which was in existence on July 28, 1914" dealt with in article 203 of the Treaty of St. Germain. In pursuance of the provisions of that article the Reparation Commission decided that as from July 1, 1919, Austria should be held liable for 20.023 per cent of this debt and Czechoslovakia for 79.977 per cent thereof.

The Austrian Agent contends that Austria is not liable for coupons maturing on or after July 1, 1919; while the American Agent contends that so far as American-owned bonds are concerned Austria is liable for all interest which matured on or before July 2, 1921, when the state of war came to an end.

For the reasons set out in the opinion of this Commission of January 6, 1928, in docket No. 1147, Henry Neugass, claimant, and in the decision of the Anglo-Hungarian Mixed Arbitral Tribunal in the case of the North British and Mercantile Insurance Company, Limited, *v.* the Hungarian Government, III Dec. M. A. T. 788 *et seq.*, and in the decision of the Anglo-Austrian Mixed Arbitral Tribunal in the case of the North British and Mercantile Insurance Company, Limited, *v.* the Austrian Government, IV Dec. M. A. T. 292 *et seq.*, the Commissioner holds that Austria is liable as for a debt on each of the coupons which matured on or before July 16, 1920, the date of the coming into force of the Treaty of St. Germain, but not liable for the coupons which matured subsequent to that date.

It follows that the United States on behalf of the claimant herein is entitled to an interlocutory judgment against Austria for 192 German marks, which will be entered in accordance with the rules of procedure announced in Administrative Decision No. II at page 35. [1] This judgment will decree the dismissal of the balance of the claim, amounting to 192 German marks.

Leave is hereby granted the American Agent to withdraw from the record herein all coupons which matured subsequent to July 16, 1920, in order that

[1] This volume, p. 227 *supra*.

they may be returned to the claimant, who may desire to present them to the Succession States liable therefor under the terms of the Treaty of St. Germain.

ANTON PENTZ (UNITED STATES) *v.* AUSTRIA, HUNGARY, AND AUSTRO-HUNGARIAN BANK

(March 28, 1928. Pages 62-66.)

JURISDICTION.—DEBTS: EVIDENCE, CURRENCY NOTES.—DUAL NATIONALITY, LIQUIDATION OF AUSTRO-HUNGARIAN BANK. Acquisition in 1914 of currency notes issued by Austro-Hungarian Bank. *Held* that claim against Austria (Hungary) for value of notes converted into American currency at pre-war rate of exchange falls outside terms of Treaty of Vienna (Budapest), article 206 (189) thereof and the annex following it making express provision for liquidation of Austro-Hungarian Bank, which was legal entity possessing dual nationality, and special and exclusive provision for payment of its notes, which are no evidence of "debts" as term is used in Treaty.

Cross-reference: Am. J. Int. Law, vol. 22 (1928), pp. 699-702.

Bibliography: Prossinagg, p. 25; Bonynge, p. 35.

This is one of a group of cases put forward by the United States on behalf of American nationals who seek awards against Austria [Hungary] for the value of currency notes issued by the Austro-Hungarian Bank. From the record in this particular case it appears that the claimant, Anton Pentz, an American national by naturalization, sold property in Hungary in 1914 and in payment therefor came into possession of Austro-Hungarian Bank currency notes aggregating in amount 4,050 kronen which have since been in his possession and ownership, and for which, converted into American currency at the rate of exchange in effect in 1914, an award is sought.

The Commissioner holds that the Treaties of Vienna and of Budapest contain no warrant for entering an award on behalf of the claimant. The reasons for this holding can best be stated by briefly reviewing the provisions of the Treaties dealing with the Austro-Hungarian Bank and the measures taken in pursuance thereof looking to its liquidation.

The Austro-Hungarian Bank was a private stock company constituted in pursuance of a statute of Austria and a similar statute of Hungary. It possessed a legal exclusive right to issue banknotes for both countries, each of which exercised equal supervision over it. The last concession granted to it by the two Governments was for a term of years to expire December 31, 1919.

The by-laws of the bank obligated it "to redeem immediately on demand at its head offices at Vienna and Budapest, against legal coin of Austrian or Hungarian coinage, the notes issued by it". This provision of the by-laws, however, was, by the statutes of both Austria and Hungary, "suspended for such time until they come into force in accordance with the provisions of article V of the Austrian law and paragraph V of the Hungarian law, respectively, concerning the prolongation of the license of the Austro-Hungarian Bank. or shall be made valid by the legislatures of both States" (Imperial Law Gazette, 1911, No. 157, and 1917, No. 513). The provision requiring redemption of these currency notes remained suspended, although prior to the war the bank in practice maintained these notes at a parity with gold.

The Commissioner finds that the Austro-Hungarian Bank was a legal entity possessing a dual nationality and was both an Austrian national and a Hun-

garian national within the purview of the Treaties of Vienna and Budapest respectively. [1]

The framers of part IX—financial clauses—of the Treaties of St. Germain and Trianon, in the adjustment of the rights and obligations of the Successor States growing out of the dismemberment of the territory embraced in the Austro-Hungarian Dual Monarchy, made express provision for the liquidation of the Austro-Hungarian Bank "as from the day succeeding the day of the *signature*" of the Treaty of St. Germain (article 206 [189] and the Annex following it).

It was in substance provided that:

(1) The Austro-Hungarian Bank should be liquidated as from the day following the signature of the Treaty of St. Germain, by receivers appointed by the Reparation Commission, in accordance with the statute of the bank and the regulations laid down by the Treaties.

(2) Each Successor State was required to stamp all the Austro-Hungarian Bank notes existing within its own territory within two months from the coming into force of the Treaty of St. Germain, and

(3) Replace them, within 12 months from the coming into force of that Treaty, by its own or a new currency, and

(4) Deliver to the Reparation Commission, within 14 months from the coming into force of that Treaty, the notes, stamped or unstamped, which had been previously withdrawn from circulation, together with all records of the conversions, and

(5) Receive from the Reparation Commission, in return for such notes so delivered, certificates showing the number of notes converted within and without the limits of the former Austro-Hungarian Monarchy. It was provided that these certificates should entitle the bearer to lodge a claim with the receivers of the bank for currency notes thus converted which are entitled to share in the assets of the bank.

(6) No notes issued on or *prior to* October 27, 1918, wherever they may be held, rank as claims against the bank unless they are presented through the Government of the country in which they are held, but if so presented they rank equally (so far as they have any claim at all under these provisions) against the general assets of the bank other than the specially deposited Government securities.

(7) Notes issued *after* October 27, 1918, rank against securities issued by the Austrian or Hungarian Governments at any time and deposited with the bank as security for the notes, for which securities the new Austria and the new Hungary are to remain responsible; but such notes do not share in the distribution of the general assets of the bank. And finally it was provided that:

(8) "The holders of currency notes of the Austro-Hungarian Bank shall have no recourse against the Governments of Austria or the present Hungary or any other Government in respect of any loss which they may suffer as the result of the liquidation of the bank."

On January 1, 1920, the bank was divided into an Austrian section and a Hungarian section, and in August, 1920, three receivers in liquidation were appointed as provided in the Treaties, who undertook to get in all of the assets for distribution in pursuance of the Treaty terms. While the status of this liquidation is not disclosed by the records before this Commission, it

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[1] Luxardo *v.* Public Trustee (1923), British Supreme Court of Judicature, Chancery Division, [1924] 1 Ch. 1.

French Office of Private Goods and Interests *v.* Liquidators of the Austro-Hungarian Bank, I Dec. M. A. T. 611, decided November 28, 1921.

apparently is not yet complete. Property belonging to the Austro-Hungarian Bank was, during the war period, seized by the Alien Property Custodian of the United States and the major portion of such property or its proceeds is still held by him. The Act of the Congress of the United States effective March 10, 1928, designated "Settlement of War Claims Act of 1928", provides in effect that such property or its proceeds shall in pursuance of the provisions of that Act be returned to the liquidators of the Austro-Hungarian Bank. It is for such liquidators to make distribution in conformity with the Treaty terms.

From the foregoing statement it is apparent that special and exclusive provision for the payment of Austro-Hungarian Bank notes was made by the Treaties. A compliance therewith was and is the only remedy available to these note-owners. These provisions furnished an orderly method for the equitable liquidation and distribution of the bank's assets. The Treaties in express terms deny to the note-owners recourse against the Government of Austria or of Hungary "or any other Government in respect of any loss which they may suffer as the result of the liquidation of the bank".

The Government of the United States, through its Department of State, recognizing this exclusive method for the payment of these currency notes, has from time to time presented, directly or indirectly to the liquidators of the bank, notes owned by American nationals, and received in exchange payments as provided by the terms of the Treaties.

It is not for the Commissioner to determine whether or not this method of payment is still available to the American owners of these notes. This is rather a matter for negotiation between the Government of the United States and the liquidators of the Austro-Hungarian Bank. The Commissioner only decides that the Austro-Hungarian Bank notes are not evidence of "debts" as that term is used in the Treaties and in this Commission's Administrative Decision No. II, and that the United States is not entitled to an award against Austria and Hungary on behalf of the owners of these notes for the amount thereof.

Wherefore the Commission decrees that under the Treaty of Vienna of August 24, 1921, and the Treaty of Budapest of August 29, 1921, and in accordance with their terms, the Government of Austria and/or the Government of Hungary are not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

CHARLES R. CRANE (UNITED STATES) *v.* AUSTRIA AND CITY OF VIENNA

(May 25, 1928. Pages 66-69.)

BONDED PUBLIC DEBTS, INTEREST: FOREIGN CURRENCY CLAUSE, PLACE OF PAYMENT.—INTERPRETATION OF CONTRACT: RULE OF EFFECTIVENESS, TERMS OF CONTRACT. Possession prior to December 7, 1917, and ever since, of interest coupons detached from City of Vienna bonds, each coupon, like each bond, bearing clause that, *inter alia*, 8 crowns equal 1.60 dollars United States gold coin payable in New York. *Held* that clause not simply intended for convenience of holder without affecting amount received abroad, but clear undertaking to pay in dollars at fixed rate of exchange: clause otherwise meaningless. *Held* also that claimant not required to make demand for payment in New York: under Tripartite Agreement Commissioner empowered to determine amount of such debts as declared upon in

this case. Interlocutory judgment will be entered for amount claimed to which no contract rate of interest applies.

Bibliography: Prossinagg, pp. 32-33; Bonynge, pp. 37-38.

This claim is put forward by the United States on behalf of Charles R. Crane, an American national, who, prior to December 7, 1917, and ever since, has held and owned 24 interest coupons detached from bonds of the City of Vienna, of which the coupons maturing on July 1, 1915, typical of all others, read as follows [translation]:

"Interest Coupon Loan of the City of Vienna *(Investitions-Anlehen):*

Eight Crowns =6.80 Marks=8.40 Francs=6 Sh. $7^1/_2$ d.=4.02 Dutch Florins =1.60 Dollars United States gold coin, payable on the 1st July 1915 at the Chief Cashier's Office of the City of Vienna, further at such other places as will be designated by special advertisement, to wit: in Austria in crowns and in foreign countries in the money of the places of payment, at the choice of the bearer, in Berlin, Frankfurt a. M., Paris, Lyons, Amsterdam, Brussels, Zurich, Basle, Geneva, London and New-York, free from every deduction and any Austrian tax, present or future. This coupon becomes void if not presented within three years from maturity."

The bonds to which these coupons appertained contain among others the following provisions [translation]:

"This bond forms part of the loan of the City of Vienna contracted under resolution of 27th December 1901, Z. [registration index number] 15142, of the Municipal Council of the City of Vienna and under the law of the country of Lower Austria of 20th February 1902 (L. G. Bl. number 15) bearing 4 per cent annual interest repayable within ninety years and amounting to Crowns 285,000,000 equal to Marks 242,250,000, equal to Francs 299,250,000, equal to Pounds Sterling 11,827,500, equal to Dutch Florins 143,355,000, equal to Dollars United States gold coin 57,000,000."

"The payment of interest as well as the redemption of the capital of this bond takes place at the Chief Cashier's Office of the City of Vienna, further at such other places as will be designated by special advertisement, to wit: in Austria in Crowns, and in foreign countries, at the choice of the bearer, in Berlin, Frankfurt a. M., Paris, Lyons, Amsterdam, Brussels, Zurich, Basle, Geneva, London and New York, in the money of the place of payment, at the fixed rates of exchange of 100 Crowns=85 Marks=105 Francs=4 Pounds Sterling 3 Shillings=50.30 Dutch Florins=20 Dollars United States gold coin."

The American Agent contends that the claimant has the right at his election to require that these bonds and coupons be paid in United States gold coin, and that each coupon is an obligation of the City of Vienna to pay in gold $1.60.

The Austrian Agent contends that the obligation of the City of Vienna is to pay in crowns, the dominant currency, and that the provisions above quoted for the payment at designated financial centers outside of Austria were simply for the convenience of the holder of bonds and coupons in receiving payment, but were not intended to affect the amount received as measured by the dominant currency, crowns.

It is further contended that no right to demand payment in currency other than Austrian crowns exists save in cases where the bond or coupon is actually presented at the place designated for payment and then only in the currency of the place designated.

The Commissioner rejects both of the contentions of the Austrian Agent.

While the Commissioner holds crowns to be the primary currency of the obligations in question, there was a clear undertaking on the part of the City

of Vienna to pay in other currency at a fixed rate of exchange at the election of the bearer. That obligation was not to pay crowns translated into the currency of a designated place of payment at the current rate of exchange, but was to pay in the currency of the designated place at a rate of exchange expressly fixed by the terms of the bond.

The maker of the bond agreed at the election of the bearer to pay at New York at the fixed rate of exchange of one hundred crowns equal twenty dollars United States gold coin. This provision is equally binding with all other provisions of the bond. To hold that the bearer for his convenience could demand payment in New York, but that the amount which he could demand must be stated in crowns translated into dollars at the current rate of exchange at the time of payment, would be to hold the quoted provisions meaningless.

While not applicable here[1] it is interesting to note that the Treaty of St. Germain, incorporated in the Treaty of Vienna, in dealing with debts (section III of part X) and providing for the conversion of Austrian currency into the currency of an Allied or Associated Power "at the pre-war rate of exchange", recognized the existence of Austrian debts arising out of contracts providing for a fixed rate of exchange and carefully safeguarded and preserved such contract rights (article 248 *(d)*).

As, under the Tripartite Agreement in pursuance of which this Commission was created, the Commissioner is empowered to determine the amount of such debts as are declared upon in this case, the claimant is not required as a condition to the assertion of this dollar claim to go through the idle ceremony of making demand for payment in New York even if the City of Vienna had an agency in New York upon which such demand could be made.

This opinion, in so far as applicable, will control the preparation, presentation, and decision of all claims falling within its scope. It will not control claims where the obligation, simply for the convenience of the bearer, is to pay at designated places outside of Austria or Hungary in kronen translated into the currency of the place of payment at the current rate of exchange at that time. Whenever the American, Austrian, or Hungarian Agent is of the opinion that the peculiar facts of any case take it out of the rules here announced, such facts with the differentiation believed to exist will be called to the attention of the Commissioner in the presentation of that case.

For the reasons stated an interlocutory judgment class B (1) will be entered in accordance with the rules of procedure announced in this Commission's Administrative Decision No. II (pages 34 and 35) [2] which shall among other things recite that the City of Vienna is indebted to Charles R. Crane in the principal amount of thirty-eight dollars forty cents ($38.40) to which indebtedness no contract rate of interest applies.

BENJAMIN ALBERT KAPP (UNITED STATES) *v.* HUNGARY

(May 25, 1928. Pages 69-71.)

NATIONALITY OF CLAIM.—EVIDENCE: INTERROGATORIES, CLAIMANT AS WITNESS, UNSUPPORTED BUT UNREBUTTED TESTIMONY, PRIMA FACIE EVIDENCE. Ameri-

[1] This Commission's Administrative Decision No. II, pages 29 to 32, inclusive (note of the Secretariat: this volume, pp. 223-226 *supra*); Settlement of War Claims Act of 1928, enacted by the Congress of the United States, section 7 (d) (2); Act of the Commissioner of the Tripartite Claims Commission dated April 9, 1928, taken in pursuance of the Settlement of War Claims Act of 1928.

[2] This volume, p. 227 *supra*.

can objection against interrogatories propounded by Hungarian Agent to claimant for answer under oath concerning nationality. *Held* that, since record suggests possibility of relinquishment by claimant of American citizenship, and since interrogatories designed to elicit information in order to establish whether debts upon which claim based were impressed with American nationality throughout period of American belligerency, interrogatories are material and relevant. *Held* also that claimant is competent witness and that his unsupported but unrebutted testimony on material fact prima facie establishes that fact. American objection overruled.

A preliminary question is presented in this case to the Commissioner on motion of the American Agent objecting to interrogatories Nos. 4, 5, 6, and 7 propounded by the Hungarian Agent to the claimant for answer under oath.

The record as it now stands indicates that the claimant, born a German citizen, became an American citizen by naturalization on June 1, 1883.

The claim as originally filed was signed and sworn to by claimant on December 10, 1925, before the Vice-Counsul of the United States of America at Frankfurt a. M., Germany. In this document claimant gives his address as Frankfurt a. M., Germany, Schumannstrasse 55. There is in the record another document signed by claimant October 6, 1927, and likewise sworn to before the American Vice-Consul at Frankfurt.

This is the extent of the record disclosure with respect to the citizenship of the claimant on and prior to December 7, 1917, and since that time. The memorial presented by the United States on behalf of the claimant recites that the claimant "became a naturalized citizen of the United States on June 1, 1883" but does not allege that the claimant has since remained, or remained until the coming into effect of the Treaty of Budapest, an American citizen.

The record as it stands suggests the possibility of claimant's having returned to the land of his birth and taken up his residence there under circumstances which would operate as a relinquishment of his American citizenship. Not only the Hungarian Agent but the Commissioner is entitled to a full disclosure of the facts with respect to claimant's residence in Germany as affecting his citizenship and as affecting the impressment of this claim with American nationality.

The interrogatories propounded by the Hungarian Agent to the claimant to which the American Agent objects are designed to elicit information concerning the citizenship of the claimant in order to establish whether or not the debts respecting the bonds upon which this claim is based were impressed with American nationality throughout the period of American belligerency. They are therefore directed to the very root of the right of the United States to maintain this claim and are material and relevant. Whether or not they go far enough to require a full disclosure by the claimant with respect to steps if any taken by him to preserve his American citizenship while residing in the land of his birth, is a question which the American Agent may well wish to consider.

The Commissioner has heretofore held [1] that a claimant is a competent

[1] *Note by the (Commissioner's) Secretary.*—The holding referred to is set forth in the minutes of the Commission as follows:

January 6, 1928, page 89: "The American and Austrian Agents gave oral notice of submission, in the case of United States of America on behalf of Edward Cucuel, claimant, *v.* Austria, docket No. 1103-A, of the question whether or not the claimant had established a prima facie case by his affidavit as to the time of his acquisition of the bonds which are the subject-matter of the claim."

January 28, 1928, page 97: "The Commissioner announced his oral opinion as to the admissibility and weight to be given to the affidavit of the claimant as to when

witness before this Commission and that his unsupported but unrebutted testimony on a material fact prima facie establishes that fact. But where the Agent of either respondent Government is not satisfied with the claimant's testimony in any particular case or wishes to test the source or accuracy of the information upon which such testimony is based, or the credibility of the witness, or require a disclosure of other material facts within the claimant's knowledge, such Agent under such circumstances will be accorded the privilege of propounding interrogatories to the claimant to be forwarded by the American Agent to and answered under oath by the claimant and thereupon returned to this Commission and filed as evidence in the case in question.

The Commissioner confidently expects the Agent of Austria and the Agent of Hungary to exercise this privilege in good faith and in no case to propound interrogatories that are immaterial or irrelevant or for delay only.

The objection of the American Agent to the interrogatories propounded by the Hungarian Agent is overruled.

ALEXANDER TELLECH (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(May 25, 1928. Pages 71-73.)

JURISDICTION: DUAL NATIONALITY, DETERMINATION OF NATIONALITY BY MUNICIPAL LAW.—RESPONSIBILITY FOR ACTS OF CIVIL, MILITARY AUTHORITIES: ARREST, INTERNMENT, IMPRESSMENT INTO MILITARY SERVICE. Arrest in August, 1914, of claimant, a national of Austria and United States, residing in Austria, as an agitator, followed by his internment and his being impressed into service in Austro-Hungarian army. *Held* that claim for compensation for lost time, suffering and privation falls outside terms of Treaty of Vienna (Budapest): citizenship is determined by municipal law, and since under Austrian law, to which claimant voluntarily subjected himself, he was Austrian citizen, Austrian and Austro-Hungarian authorities were within their rights.

Cross-reference: Friedensrecht, VII. Jahr Nr. 6 (1928), pp. 49-50.

Bibliography: Prossinagg, p. 22; Bonynge, p. 28.

This claim is put forward by the United States on behalf of Alexander Tellech for compensation for time lost and for alleged suffering and privation to which he was subjected, first through internment in Austria, and then through enforced military service in the Austro-Hungarian army. The claimant was born in the United States of Austrian parents on May 14, 1895. Under the Constitution and laws of the United States he was by birth an American national. Under

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he acquired the bonds which are the subject-matter of the claim in Docket No. 1103-A, United States of America on behalf of Edward Cucuel, claimant, *v.* Austria. The Commissioner held that the claimant's affidavit is admissible and makes a prima facie case and in the absence of rebutting evidence will sustain an interlocutory judgment and that this rule will be applied generally in all such cases but that each respondent Agent shall be permitted to propound to the claimant (to be transmitted by the American Agent) interrogatories for the purpose of searching the conscience and testing the credibility of the claimant as a witness in his own behalf and ascertaining the facts, in any case in which such Agent entertains doubt as to the truth of the testimony in the record."

the laws of Austria he also possessed Austrian nationality by parentage. This created a conflict in citizenship, frequently described as "dual nationality". When the claimant was five years of age he accompanied his parents to Austria, where he continued to reside.

In August, 1914, the claimant, while residing in Austria a short distance from the Russian border, was subjected to preventive arrest as an agitator engaged in propaganda in favor of Russia. After investigation he was interned and confined in internment camps for 16 months. He then took the oath of allegiance to the Emperor of Austria and King of Hungary and was impressed into service in the Austro-Hungarian army. A decision of the sharply controverted claim that this oath was taken under duress and that he protested that he was an American citizen is not necessary to a disposition of this case. It appears that in 1915 and later representatives of the Government of the United States in Austria interested themselves in securing his release, but the application was denied.

In July, 1916, the claimant deserted from the Austro-Hungarian army and escaped into Russia, where he was arrested and held by the Russian army authorities as a prisoner of war until the outbreak of the Kerensky revolution, when he was released and thereupon returned to Prague, where he still lives and where he is practicing medicine.

The action taken by the Austrian civil authorities in the exercise of their police powers and by the Austro-Hungarian military authorities, of which complaint is made, was taken in Austria, where claimant was voluntarily residing, against claimant as an Austrian citizen. Citizenship is determined by rules prescribed by municipal law. Under the law of Austria, to which claimant had voluntarily subjected himself, he was an Austrian citizen. The Austrian and the Austro-Hungarian authorities were well within their rights in dealing with him as such. Possessing as he did dual nationality, he voluntarily took the risk incident to residing in Austrian territory and subjecting himself to the duties and obligations of an Austrian citizen arising under the municipal laws of Austria.

Assuming that the claimant suffered the loss and injury alleged and had not lost his American citizenship by taking the Austrian Army oath, the Commissioner finds no provision of the Treaty of Vienna or of Budapest obligating Austria and/or Hungary to make compensation therefor.

Wherefore the Commission decrees that under the Treaty of Vienna and the Treaty of Budapest the Government of Austria and the Government of Hungary are not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

MAX FOX (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(May 25, 1928. Pages 73-74.)

JURISDICTION: DUAL NATIONALITY, DETERMINATION OF NATIONALITY BY MUNICIPAL LAW.—RESPONSIBILITY FOR ACTS OF MILITARY AUTHORITIES.—ENROLMENT IN ARMY, IMPRESSMENT INTO MILITARY SERVICE, DURESS. Enrolment in 1914 of claimant, a national of Hungary and United States, residing in Hungary, in Austro-Hungarian army, followed in May, 1915, by his being compelled to render military service. Oath of allegiance to Emperor (King) of Austria (Hungary), taken under duress. *Held* that claim for compensation

of damages growing out of enforced military service falls outside terms of Treaty of Vienna (Budapest): reference made to Alexander Tellech award, see p. 248 *supra*.

Bibliography: Bonynge, p. 28.

This claim is put forward by the United States on behalf of Max Fox (formerly Fuchsbalg) to recover damages alleged to have been sustained by him growing out of enforced military service in the Austro-Hungarian army.

The claimant was born in the United States May, 1, 1896, of Hungarian parents. When claimant was some three years of age he returned with his parents to Hungary, where his mother died and where he continued to live with relatives after his father (who remained an Hungarian national until 1923 at least) returned to the United States. After attending the schools he entered the employ of a bank about 1912 and continued his studies in a college. At the outbreak of the European war he was enrolled for military duty. He claims that he protested that he was an American citizen and not subject to military services in the Austro-Hungarian army, but beginning with May, 1915, was compelled to render such service. The representatives of the Government of the United States in Hungary interested themselves in claimant's application for relief from service but the application was denied. In October, 1916, as a result of a flesh wound, he was in a hospital for several months. He was promoted to the rank of lieutenant and continued in the active service until the Armistice was signed. He returned to the United States in 1920 and has since remained there.

While he took an oath of allegiance to the Emperor of Austria and King of Hungary, he claims that this was under duress. While controverted, for the purposes of this decision the truth of his statement is assumed.

The facts in this case are very similar to those in the case of Alexander Tellech, claimant, docket No. 2, this day decided. For the reasons therein set out neither Austria nor Hungary is obligated to make compensation on account of the damages alleged to have been sustained by claimant.

Wherefore the Commission decrees that under the Treaty of Vienna and the Treaty of Budapest the Government of Austria and the Government of Hungary are not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

GRUBNAU BROS., INC., AND ATLANTIC MUTUAL INSURANCE COMPANY (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(May 25, 1928. Pages 74-76.)

RESPONSIBILITY FOR ACTS OF MILITARY AUTHORITIES.—WAR: SEIZURE OF PRIVATE PROPERTY.—DAMAGES: INVOICE VALUE. Seizure on October 2, 1914, at Trieste, by Austro-Hungarian military authorities, of wool sold by Carl Grübnau & Son, to all of whose rights the first claimant succeeded, and insured by the second claimant. *Held* that Austria obligated to pay 63.6 per cent, and Hungary 36.4 per cent, of price owing on December 31, 1914, by purchaser, with interest thereon at 5 per cent per annum from December 31, 1914, less sum paid through Austrian Clearing Office since claim was filed.

From the record it appears that in 1914 Carl Grübnau & Son (a co-partnership composed at all material times of American nationals) sold 42 bales of

wool to J. Ginzkey, of Maffersdorf, Austria, for which the purchaser agreed to pay on December 31, 1914, the sum of $4,569.60. On October 2, 1914, the wool in question while in transit was seized at Trieste by the Austro-Hungarian military authorities under circumstances rendering Austria and Hungary liable under the Treaties of Vienna and Budapest. The wool was insured by the Atlantic Mutual Insurance Company, an American corporation, which paid Carl Grübnau & Son the sum of $3,677 under circumstances operating as an assignment of this claim to the extent of the amount so paid.

Grübnau Bros, Incorporated, an American corporation, has, with respect to this claim, succeeded to all of the rights of the former partnership of Carl Grübnau & Son and acquired all of the interests of Carl Grübnau & Son.

Since this claim was filed there has been paid through the Austrian Clearing Office to the claimant the sum of $387.61.

The Commissioner finds that the claimant Grübnau Bros., Incorporated, is entitled to an award of $892.60 with interest thereon at the rate of 5 per cent per annum from December 31, 1914, which interest is to be credited with the aforesaid amount of $387.61, and that the claimant Atlantic Mutual Insurance Company is entitled to an award of $3,677 with interest thereon at the rate of 5 per cent per annum from December 31, 1914, of which awards 63.6 per cent will be borne by Austria and 36.4 per cent will be borne by Hungary (see Administrative Decision No. I, page 10.) [1]

Wherefore the Commission decrees that under the Treaty of Vienna the Government of Austria is obligated to pay to the Government of the United States on behalf of Grübnau Bros, Incorporated, the sum of five hundred sixty-seven dollars sixty-nine cents ($567.69) with interest at the rate of 5 per cent per annum from September 6, 1923, and Atlantic Mutual Insurance Company the sum of two thousand three hundred thirty-eight dollars fifty-seven cents ($2,338.57) with interest at the rate of 5 per cent per annum from December 31, 1914, and that under the Treaty of Budapest the Government of Hungary is obligated to pay to the Government of the United States on behalf of Grübnau Bros., Incorporated, the sum of three hundred twenty-four dollars ninety-one cents ($324.91) with interest at the rate of 5 per cent per annum from September 6, 1923, and Atlantic Mutual Insurance Company the sum of one thousand three hundred thirty-eight dollars forty-three cents ($1,338.43), with interest at the rate of 5 per cent per annum from December 31, 1914.

ROSA H. KOHN (UNITED STATES) *v.* HUNGARY

(May 25, 1928. Page 76.)

PUBLIC DEBTS, TREASURY NOTES. Acquisition on August 2, 1916, of interim certificate obligating American firm to deliver Hungarian Treasury notes. Compliance with obligation on July 27, 1920. *Held* that Hungary not liable since acquisition of note not a pre-war transaction.

The Commissioner holds:

First, with respect to that part of the claim embraced in paragraph (1) of the Agreed Statement, the claimant paid to an American firm, Zimmermann & Forshay, $187.50 and received in lieu thereof on August 2, 1916, interim certificate No. 4051 signed by Zimmermann & Forshay obligating them to

[1] This volume, p. 209 *supra*.

deliver to claimant 5% Hungarian Treasury notes due in 1918 in the principal amount of marks 1,000. From the record it appears that Zimmermann & Forshay did not comply with their obligation to claimant but on July 27, 1920, delivered to the claimant a Hungarian Treasury note for marks 1,000 dated August 29, 1918, which matured on April 1, 1921. The claim is based on this treasury note. While the transaction as between the claimant and Zimmermann & Forshay was a pre-war transaction, the acquisition by claimant of the Hungarian Treasury note from Hungary through Zimmerman & Forshay was not a pre-war transaction. On this count of the claim Hungary is not liable.

Second, with respect to that part of the claim dealt with in paragraph (2) of the Agreed Statement Hungary is liable and an interlocutory judgment B (1) will be entered against Hungary in the usual form for Kronen 30.

INDIAN MOTOCYCLE COMPANY (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(May 25, 1928. Pages 77-78.)

RESPONSIBILITY FOR ACTS OF MILITARY AUTHORITIES.—WAR: SEIZURE OF PRIVATE PROPERTY.—DAMAGES: INVOICE VALUE. Seizure at Trieste, by Austro-Hungarian military authorities, of motorcycles and parts shipped by claimant. Surrender of shipment, some of the parts missing, to American Consul, followed by sale. Proceeds paid to claimant on May 25, 1915. *Held* that Austria obligated to pay 63.6 per cent and Hungary 36.4 per cent, of difference between proceeds and invoice value, with interest thereon at 5 per cent per annum from May 25, 1915.

While the evidence adduced in the above captioned case is meager and unsatisfactory, the Commissioner finds:

(1) That on July 18, 1914, the Hendee Manufacturing Company, an American corporation, forwarded a shipment of Indian motorcycles and parts by steamship *Belvedere* consigned to Odessa, Russia, via Trieste, Austria, covered by shipper's order bill of lading notify F. Zorn, Odessa, and at the same time drew on Zorn for the invoice value of the shipment, $402.

(2) On October 26, 1923, the corporate name of the Hendee Manufacturing Company was changed to Indian Motocycle Company.

(3) This shipment was seized by the Austro-Hungarian military authorities at Trieste. On the representations of the claimant through the American Department of State and the American Consul at Trieste, the austro-Hungarian military authorities recognized the shipment as the property of an American national and delivered it to the American Consul for account of claimant.

(4) On account of some of the parts being missing from the shipment at the time it was surrendered by the military authorities and sold, the net proceeds of the sale were only $240.20, which amount was paid to the shipper on May 25, 1915.

(5) The Commissioner finds that the claimant has been damaged by the acts of the Austro-Hungarian military authorities in the sum of $161.80 with interest thereon at the rate of 5 per cent per annum from May 25, 1915, of which 63.6 per cent will be borne by Austria and 36.4 per cent by Hungary.

Wherefore the Commission decrees that under the Treaty of Vienna the Government of Austria is obligated to pay to the Government of the United

States on behalf of the Indian Motocycle Company the sum of one hundred two dollars ninety cents ($102.90) with interest thereon at the rate of 5 per cent per annum from May 25, 1915, and that under the Treaty of Budapest the Government of Hungary is obligated to pay to the Government of the United States on behalf of the Indian Motocycle Company the sum of fifty-eight dollars ninety cents ($58.90) with interest thereon at the rate of 5 per cent per annum from May 25, 1915.

HENRY ROTHMANN (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(July 11, 1928. Pages 78-87.)

NATIONALITY OF CLAIM.—NATIONALITY AND RIGHT TO PROTECTION.—NATURALIZATION: MISUSE OF NEW NATIONALITY, EXPATRIATION, EFFECT OF RETURN TO ADOPTED COUNTRY.—INTERPRETATION OF MUNICIPAL LAW.—RESPONSIBILITY FOR ACTS OF MILITARY AUTHORITIES: PERFORMANCE OF MILITARY SERVICE. Arrival of claimant, Austrian by birth, in United States on or about June 6, 1901. Naturalization as United States citizen on June 6, 1906. Return to Austria not later than February 18, 1910, followed by marriage, pecuniary investments and personal activities in local business, conclusion on June 6, 1913, of non-assignable contract with Austrian military authorities for term ending December 31, 1920. Application on April 30, 1915, to American Embassy, Vienna, for passport. Declination of passport by American Department of State on May 28, 1915, on account of statutory presumption of expatriation (Act of Congress, March 2, 1907), but issuance of emergency passport valid only for journey to United States, conditioned on claimant's agreement that he could and would return forthwith to United States for permanent residence. Failure to comply with condition. Order on July 15, 1916, to report to Austro-Hungarian military authorities for military service. Performance of military service until November 3, 1918. Issuance on January 8, 1917, of second emergency passport on same condition as first one. Application on March 22, 1917, to American Embassy, Vienna, for extension of second emergency passport. Denial of extension and cancellation of passport on ground of misrepresentation: claimant applied for emergency passports not for immediate return to United States for permanent residence, but for use in effecting release from military service in order to return to his business. Continued residence in Austria until latter part of 1919, when claimant returned to United States. *Held* that during period when acts complained of occurred claimant not entitled to recognition and protection as American citizen and claim, therefore, not impressed with American nationality: Commission construes and applies to facts Act of Congress, March 2, 1907, *supra*, which provides against misuse of new nationality to avoid obligations to native land, and which for time being deprives of right to recognition and protection as American citizens those against whom statutory presumption of expatriation has arisen, even though presumption is not conclusive and residence abroad for period prescribed by statute does not of itself terminate permanently American citizenship. *Held* also that, even did claimant's return to United States retroactively overcome statutory presumption, this cannot affect nationality of claim.

Cross-reference: Am. J. Int. Law, vol. 23 (1929), pp, 182-186.

Bibliography: Prossinagg, pp. 23-25; Bonynge, pp. 25-27.

This claim is put forward on behalf of Henry Rothmann as a naturalized citizen of the United States to recover $151,613.01 against Austria and Hungary on account of damages alleged to have been sustained by him resulting from enforced military service in the Austro-Hungarian army and from alleged confiscation of real and personal property located in territory of the former Austrian Empire now constituting a part of Poland and also on account of an indebtedness alleged to be due him by the respondent Governments.

The Commissioner finds (1) that the claimant has failed to prove that the Austro-Hungarian military authorities or representatives of either repondent Government seized, confiscated, or damaged any property belonging to him or that either of the respondent Governments is indebted to him and (2) that the claimant has failed to prove that the property located in Austria belonging to the partnership of which he was a member was confiscated by the Austro-Hungarian military authorities or by representatives of Austria or Hungary. It results from these findings that with respect to the items based upon alleged indebtedness and confiscation of and damage to property no liability has been established against the respondent Governments.

With respect to the only remaining item, based upon enforced military service in the Austro-Hungarian army, the respondent Governments admit that claimant was forced to perform certain services in connection with their armies. They deny that claimant was ever an American citizen; they allege that if he ever obtained a certificate of naturalization as a citizen of the United States it was by fraud, and that even if he had obtained naturalization he had by his subsequent acts and under the laws of the United States ceased to be an American citizen and had placed himself beyond the protection of the American Government.

In the absence of convincing proof of fraud in obtaining naturalization, and in view of the facts reflected by the record, the inquiry arises. At the time of the alleged occurrences of which complaint is made did claimant have such status of American citizenship as to impress this claim with American nationality?

The Commissioner's conclusions of fact relevant to this question, drawn from the hopelessly conflicting evidence contained in the voluminous and unsatisfactory record, follow.

(1) The claimant, Henry Rothmann, arrived in the United States from Austria on or about June 6, 1901.

(2) On the record presented the Commissioner finds that Rothmann became a citizen of the United States by naturalization on June 6, 1906.

(3) There is evidence in the record tending to prove that claimant left the United States soon after the date of his naturalization and returned to Austria. The date of his return is uncertain. He arrived at Przemysl, Galicia, not later than and probably much earlier than February 18, 1910, on which date, according to the official records contemporaneously made, he entered into a pre-nuptial contract, which was followed by his marriage on March 15, 1910. The registry of marriages described him as a "merchant in Tarnow", Galicia. Soon thereafter he made pecuniary investments and engaged actively in business of a local nature having no relation to American trade or commerce.

(4) On May 4, 1912, claimant purchased an interest in a partnership owning and operating a laundry located at Przemysl. On June 6, 1913, he, as managing partner of the firm of which he was a member, entered into a non-assignable contract with the Austrian military authorities binding the firm and all of its members for a term ending with December 31, 1920.

(5) So far as disclosed by the record, for more than five years after his return to Austria he did not by word or deed indicate any intention ever to return to the United States. On the contrary he apparently held himself out as a resident and citizen of Austria.

(6) On April 30, 1915, claimant applied to the American Embassy at Vienna for a passport, when, so far as disclosed by the record, he for the first time since his return to Austria claimed American citizenship. In passing on this application for a passport the American Department of State, acting through Robert Lansing for the Secretary of State, expressly held that the claimant had not "overcome the statutory presumption of expatriation which has arisen against him, and it [the Department of State] must, therefore, decline to issue a passport to him." However, the issuance of an emergency passport "valid only for the journey hither" was authorized "if he [claimant] makes arrangements to return *forthwith* to this country for permanent residence." There is evidence in the record indicating that such an emergency passport was issued on claimant's application, but if issued it was never used.

(7) There are in the record what purport to be copies of three affidavits made by claimant in connection with his applications for passports. In two of them he stated that he resided uninterruptedly in the United States from 1901 to 1912. In the other he stated that he resided uninterruptedly in the United States from 1901 to 1913. All are misstatements of fact with respect to the date of his return to Austria, material to his application for an American passport.

(8) On July 19, 1916, he was ordered to report to the Austro-Hungarian military authorities for military service, which service, according to his own statements, he sought to avoid on the ground that he was engaged in Austria in an essential war industry and on the further ground that he was an American citizen. Notwithstanding his protests he was required to perform military service as a clerk and interpreter and continued in the service until November 3, 1918, when the army was disbanded and he was discharged.

(9) While this impressment into military service occurred during the period of American neutrality, claimant then made no attempt to obtain the assistance of the diplomatic agents of the United States stationed in Austria to effect his release. The American Department of State had on May 28, 1915, expressly held that claimant was not entitled to the protection of the United States because of failure to "overcome the statutory presumption of expatriation which has arisen against him". If an emergency passport was in fact issued to claimant in the spring of 1915, it was conditioned on claimant's agreement that he could and would return *forthwith* to the United States for permanent residence. He knew that this condition had not been complied with. He knew that the American authorities had held that he was not entitled to protection as an American citizen. He therefore did not seek their assistance to effect his release from military service. On the contrary when, on January 5, 1917, he again applied to the American Embassy at Vienna for a passport he suppressed the fact that he was then and had for some six months been serving in the Austro-Hungarian army, and represented that he was in a position to, and would in fact, proceed immediately to the United States. On these representations an emergency passport limited to use within two months was on January 8 issued to him. On March 22, 1917, he applied to the American Embassy at Vienna for an extension of this passport and then for the first time asked for the interposition of the Embassy to effect his discharge from the Austro-Hungarian army. His application was denied, the passport issued January 8, 1917, was taken up and cancelled on the ground that it had been procured through

misrepresentation, and the protection of the American Government was expressly denied him.

(10) Throughout the period of the happenings complained of the claimant's actual status as viewed by the competent American authorities was that of a naturalized American citizen who had failed to overcome the statutory presumption (Act of March 2, 1907) that he had ceased to be an American citizen arising from a residence of more than two years in the foreign state from which he came.

(11) The evidence points strongly to the conclusion (as expressed in the findings of the American Embassy of March 22, 1917), that claimant misrepresented the facts in order to procure emergency passports which he did not intend to use for immediate return to the United States for permanent residence, and that his sole purpose in attempting to have such passports issued to him was to procure evidence to bolster up his claims of American citizenship for use in effecting his release from military service in order that he might return to look after his business in Galicia.

(12) The claimant at different times and under varying conditions has given irreconcilable testimony with respect to the date of his return from the United States to Austria, the purpose of his return, and the length of his stay in his native land—all material to the determination of his citizenship status then in issue. Some of this testimony was given under circumstances clearly indicating that the misstatements were deliberate and could not have been due to faulty memory on claimant's part.

(13) Claimant's credibility is impeached by his own testimony as well as that adduced by the Agents of the respondent Governments. His oft-repeated statement that from the time of leaving the United States to return to his native land, Austria, it was and continued to be his fixed intention to return and reside permanently in the United States is not supported by testimony, direct or circumstantial, of any other witness and is negatived by his own acts.

(14) In court proceedings in which claimant was a defendant, instituted to liquidate the partnership hereinbefore mentioned of which claimant was a member, a decree was on June 9, 1917, entered by an Austrian civil court directly impeaching claimant's integrity and credibility.

(15) Although released from military service on November 3, 1918, claimant remained in Austria looking after his property interests certainly until the latter part of 1919 and the date of his return to the United States is not disclosed by the record.

In determining the status of claimant's citizenship at the time of the occurrence of the events of which he complains, it becomes necessary to construe and apply to the foregoing conclusions of fact section 2 of the Act of the Congress of the United States effective March 2, 1907, entitled "An Act in reference to the expatriation of citizens and their protection abroad", which provides:

"That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

"When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however*, that such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe: *And provided also*, that no American citizen shall be allowed to expatriate himself when this country is at war."

Opinions and decisions construing and applying the provisions of this statute are not readily reconciled. [1] In seeking its purpose it must be borne in mind that the admission by a nation of an individual to citizenship implies not only the duty of protection by that nation but the assumption by the individual of the correlative obligations and duties inherent in citizenship. When an individual foreswears allegiance to his native country and takes the oath of allegiance to the United States of America, that nation will exact from its new citizen the assumption by him in fact as well as in name of the duties which he owes to it, and cannot tolerate his treatment of his new allegiance as a mere form to be used as a cloak to be put on or laid off to suit his convenience and merely to protect him against the discharge of the duties and obligations which he previously owed to his native country or which he assumed toward his adopted country. To permit such use to be made of the privilege of acquiring American citizenship through naturalization would be to permit the perpetration by the individual of a fraud on both his native and his adopted nation.

In an attempt to provide against such imposition by naturalized citizens, the Congress of the United States enacted the second paragraph of section 2 of the Act of March 2, 1907, above quoted. Its purpose is thus expressed by the Committee on Foreign Affairs in reporting the bill to the House of Representatives:

". . . The citizenship of the United States should not be sought or possessed for commercial or dishonest ends. To guard against this evil, this bill provides that a naturalized citizen who leaves this country and dwells elsewhere continuously for five years shall be presumed to have abandoned his citizenship. This presumption can be overcome, but such a provision as this would be a great assistance to the Department of State, would avoid possibilities of international complications, and will prevent those who are not entitled to its protection from dishonestly hiding under the American flag".

This statute provides a definite rule, in terms of time of residence in a foreign state, fixing the status of one who after acquiring American citizenship through naturalization takes up his residence abroad. Previous to its adoption competent Government authorities were required, under circumstances of great difficulty, to apply general principles to the facts of each particular case in determining the right to protection abroad of one who had become an American citizen through naturalization. This involved inquiring into the motives prompting the individual to reside in a foreign state and his intentions with respect to remaining there or returning to the United States. The statute substituted a definite rule, comparatively simple and uniform in its application—a rule of expediency. It is a rule of evidence but something more. It fixes the correlative rights and obligations of the Government of the United States and the individual concerned for the period during which it remains in effect. While the presumption of law is not conclusive and residence abroad for the period prescribed by the statute does not of itself terminate permanently American citizenship, nevertheless when the statutory period has run and the legal presumption has arisen against the individual he has for the time being forfeited all right to be recognized as an American citizen and protected as such. He can overcome

[1] Sinjen *v.* Miller, 281 Federal Reporter (hereinafter cited as Fed.) 889; Miller *v.* Sinjen, 289 Fed. 388; United States *ex rel.* Anderson *v.* Howe, 231 Fed. 546; Banning *v.* Penrose, 255 Fed. 159; Stein *v.* Fleischmann Co., 237 Fed. 679; Nurge *v.* Miller, 286 Fed. 982; Thorsch *v.* Miller, 5 Fed. (2nd) 118; Nelson *v.* Nelson, 113 Nebraska 453; 28 Opinions of Attorneys-General 504; Opinion of Attorney-General Sargent rendered February 8, 1928; Compilation of Certain Departmental Circulars, etc., Department of State, 1925, pages 119 to 126; Departmental Order No. 438 issued by Secretary of State, dated March 6, 1928.

this statutory presumption (at least so long as he resides abroad) by complying with the rules prescribed by the Department of State in pursuance of the statute, which rules while in effect are as binding as the terms of the statute itself.

The real question here presented is, what is the nationality of the claim here asserted as determined by the status of claimant's citizenship during the material period when the acts complained of by him occurred? This status must be determined by the law then in effect as applied to evidence now produced but then available. Neither the United States nor Austria could foresee, or were required to forsee, future events or the future state of mind of claimant which would impel him or not at some indefinite future time to pursue a course tending to overcome the legal presumption raised by the statute against him.

Claimant was voluntarily in Austria, the land of his birth, and subject to its jurisdiction. He sought to avoid obligations of citizenship to his native land on the ground that through naturalization he had become an American citizen. But he had voluntarily placed himself beyond the jurisdiction of his adopted country and sought to be recognized by it as its citizen, not in order to return to the United States and serve it but to avoid serving Austria. He was concerned with promoting his selfish interests free from obligation to either his native or his adopted country. At a time when the relations between the United States and the Central Powers were reaching the breaking point, when the United States was interested in having within its jurisdiction all of its citizens capable of rendering military service, its Embassy at Vienna issued to claimant an emergency passport for immediate use in returning to the United States. In applying for this passport claimant deliberately suppressed the fact that he was then and had for some six months been serving in the Austro-Hungarian army. The passport was issued on claimant's misrepresentation that he was in a position to proceed at once to the United States and would do so. When these facts came to the knowledge of the American authorities they at once took up and cancelled the passport, refused so interpose to assist him in procuring release from military service, for which assistance he then for the first time applied, and expressly declined to recognize him as an American citizen. Prior to that time the American Department of State had expressly held that the statutory presumption of expatriation had arisen against claimant and this presumption and holding remained in effect.

On behalf of the claimant it is contended that his return in the latter part of 1919 to the United States, where he has since resided, has retroactively overcome the legal presumption which the statute raised against him during the material period and the presumption must be treated as if it had never existed. The Commissioner expressly declines to deal with the effect, operating prospectively, of a return to the United States by one against whom the statutory presumption of expatriation has arisen while residing abroad, or how this presumption can be overcome after such return, as a decision of these questions is not necessary to a disposition of this case. The Commissioner rejects the contention that the subsequent overcoming of the presumption can affect the nationality of this claim which had arisen during the time when claimant was not entitled to recognition and protection as an American citizen; especially as the very existence of the claim turns on the status of claimant's citizenship at the time it arose.

The effect of the rule here contended for would be to permit the Government of the United States to say to the Government of another State: This man is not today entitled to protection as an American citizen, but if today you do not treat him as such he may, at his election and by his voluntary act, at some indefinite time in the future, change his status, whereupon the United

States will then on his behalf demand that your Government pay damages for its failure to give to him now the recognition to which he is not entitled.

The purpose of the statute is to deny the protection due an American citizen to one against whom an unrebutted presumption of expatriation has arisen. That purpose would be defeated if claimant could, subsequent to the events forming the basis of a claim, overcome the presumption, and then as an American citizen demand and receive compensation as damages resulting from acts against which he was not entitled to protection.

The nationality of the claim here asserted is determined by the status of claimant's citizenship at the time the claim arose, and as at that time the claimant was not entitled to and was expressly denied recognition and protection as an American citizen the claim cannot be impressed with American nationality through the subsequent acts of claimant, even should such acts operating prospectively be held to overcome the legal presumption which the statute had raised against him. His citizenship, as determined by the statutory rule then in effect, and all of his rights dependent thereon were permanently impressed upon the claim here asserted, and the nationality thereof cannot be affected by claimant's subsequent acts.

On the record submitted the Commissioner holds that throughout the material period claimant was not entitled to recognition or protection as an American citizen; that because of his then status the competent authorities, designated to act for the United States in dealing with him and others similarly situated, expressly declined then to recognize him as an American citizen or to interpose then to obtain his release from military service in the Austro-Hungarian army; that on claimant's behalf the Government of the United States cannot now complain that the Austrian authorities then pursued a like course and declined to recognize claimant as an American citizen; and that this claim, based on enforced military service by claimant, who at the time had presumptively ceased to be an American citizen, is not one which from its inception was impressed with American nationality, and hence does not fall within the terms of the Treaties of Vienna and of Budapest.

For the reasons stated the Commission decrees that neither the Government of Austria nor the Government of Hungary is obligated under the Treaty of Vienna or of Budapest to pay to the Government of the United States any amount on behalf of Henry Rothmann, claimant herein.

LOUIS ZECCHETTO (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(July 11, 1928. Pages 87-88.)

NATIONALITY OF CLAIM.—NATIONALITY AND RIGHT TO PROTECTION.—NATURALIZATION: EXPATRIATION, EFFECT OF RETURN TO ADOPTED COUNTRY.—INTERPRETATION OF MUNICIPAL LAW. Naturalization of claimant, Italian by birth, as United States citizen on April 14, 1902. Return to Italy not later than 1914. Purchase on September 5, 1916, of real property in Italy. Alleged damage caused by Austro-Hungarian troops on November 11-21, 1918. Return to United States after 1918 to reside. *Held* that claimant failed to prove that his claim on account of damage, if any he ever had, was impressed with American nationality at time it arose (reference made to Henry Rothmann award, p. 253 *supra*). Claim disallowed.

This claim is put forward on behalf of Louis Zecchetto as a naturalized citizen of the United States to recover the sum of $10,904.00 against Austria

and Hungary on account of damages alleged to have resulted from the occupancy of claimant's lands and three houses located in Italy and the seizure of claimant's livestock and personal property by the Austro-Hungarian army.

From the meager record submitted it appears:

(1) That claimant, a native of Italy, became through naturalization a citizen of the United States on April 14, 1902.

(2) Thereafter he returned to Italy. The date of his return is not disclosed by the record, but it is apparent that he was living in Italy in 1914.

(3) On September 5, 1916, he purchased 17 acres of land in the town of Annone Veneto, Italy, upon which were located three houses. Claimant with his wife and children resided on this property as did also claimant's aged parents. There appears to have been a vineyard located on the property and it was well stocked with poultry.

(4) It is alleged that the Austro-Hungarian army occupied and damaged these premises and confiscated livestock, poultry, feed, wine, and other personal property belonging to claimant. The only statement in the record with respect to the time the acts complained of occurred is that "it was in the latter part of November 1918, that is, from the 11th to the 21st of November".

(5) From the record it appears that the Austro-Hungarian troops occupying the Italian territory began a hasty retreat on October 29, 1918, so that when the Armistice of November 3, 1918, was signed no Austro-Hungarian troops remained on Italian territory save those who had been taken prisoners by the pursuing Italian armies.

(6) At some time after 1918 not disclosed by the record claimant returned to the United States to reside.

On the record submitted the Commissioner holds that the claimant has failed to discharge the burden resting upon him to prove that his property was appropriated or damaged by Austro-Hungarian troops or that he was otherwise damaged as a consequence of hostilities or of any operations of war bringing his claim within the terms of the Treaty of Vienna or the Treaty of Budapest.

For the reasons set forth in the opinion this day handed down in the case of Henry Rothmann, claimant, docket No. 8, the Commissioner further holds that the claimant has failed to prove that his claim, if any he ever had, was impressed with American nationality at the time it arose.

Wherefore the Commission decrees that neither the Government of Austria nor the Government of Hungary is obligated under the Treaty of Vienna or of Budapest to pay to the Government of the United States any amount on behalf of Louis Zecchetto, claimant herein.

LOUIS JOHN HOIS (UNITED STATES) *v.* AUSTRIA AND WIENER BANK-VEREIN

(July 24, 1928. Pages 37-45.)

DEBTS, APPLICABLE LAW, *LEX LOCI SOLUTIONIS*. INTERPRETATION OF MUNICIPAL LAW.—DISCHARGE OF DEBT: EFFECT OF COURT DEPOSIT, LEGAL TENDER.—INTERPRETATION OF CONTRACTS: INTENTION OF PARTIES.—INTERPRETATION OF TREATIES: CLEAR LANGUAGE. General checking account, established by claimant on August 15, 1916, with Vienna bank. Conditions *inter alia:* (1) right of bank to cancel account at any time; (2) place of performance: Vienna; (3) applicability of Austrian law. Offer by bank on October 24, 1919, to repay pre-war credit balance. Failure of claimant to reply. Court

deposit by bank on November 14, 1919, in accordance with section 1425, Austrian General Civil Law Code, of balance in old kronen unstamped banknotes. *Held* that in the absence of agreement to the contrary applicable law is *lex loci solutionis:* intention of parties, basis of construction of all contracts. *Held* also that under terms of contract and under Austrian law bank's debt to claimant definitely and completely discharged and extinguished as of November 14, 1919, and that not then Austrian State or those acting for it became debtor to claimant. *Held* further that Court deposit not void because aimed at protection of bank against Clearing Office provisions of Treaty of St. Germain: (1) Court deposit made before date of coming into force of Treaty, from which date (and not from date of signing) Clearing Office provisions effective: clear language of Treaty; (2) United States no party to Treaty, and Clearing Office provisions not incorporated into Treaty of Vienna. *Held* finally that under Austrian law bank entitled to pay in old kronen unstamped banknotes, though at time of Court deposit German-Austrian stamped banknotes were legal tender in Austria.

Cross-references: Am. J. Int. Law, vol. 23 (1929), pp. 187-193; Friedensrecht, VII. Jahr (1928), Nr. 6, pp. 46-49.

Bibliography: Prossinagg, pp. 35-38; Bonynge, pp. 31-32.

In accordance with the rules of procedure of this Commission announced in Administrative Decision No. II, the United States on behalf of the claimant, Louis John Hois, an American national, seeks an interlocutory judgment for 11,012 kronen, the amount with interest of the credit balance of an account opened by claimant on August 15, 1916, in the Wiener Bank-Verein, a corporate Austrian national (hereinafter designated bank).

The uncontroverted facts briefly stated are:

(1) On December 10, 1912, the claimant through naturalization became and has since remained a citizen of the United States.

(2) On August 15, 1916, the claimant, who then and has since resided in Milwaukee, Wisconsin, established in his own name with the bank in Vienna a general checking account in the amount of 10,000 kronen which bore interest at the rate of 3% per annum.

(3) On January 1, 1917, and at semi-annual intervals thereafter the bank sent to the claimant, who received and retained without objections, regular statements of account calling the claimant's attention to the general conditions governing the relations between the bank and claimant printed on the statement, among these being the following:

"Unless otherwise agreed upon we are entitled to cancel existing connections at any time and according to our free decision.

"The relations existing between us and our business friends are in general being governed by the laws in force in Austria. So far as transactions with our main office come into consideration, the city of Vienna is to be considered the place where payment is to be made or where obligations are to be met as the case may be."

(4) On July 21, 1919, the claimant in addressing the bank by letter with respect to his deposit of 10,000 kronen wrote: "I presume that the Austrian Government has sequestrated this sum and, as in this case I will apply to the American Government for indemnification, I ask you to kindly inform me how this matter stands."

(5) To this inquiry the Austrian bank replied under date of August 18, 1919, assuring the claimant that his account had not been subject to sequestration, but that with accumulated interest he then had a credit balance with the bank of 10,846 old kronen which he was at liberty to dispose of in any way he saw fit.

(6) Section 1425 of the Austrian General Civil Law Code, which has been continuously in effect since the date of its enactment in 1812 provides:

"If a debt cannot be paid because the creditor is unknown, absent or dissatisfied with the offer or because of other important reasons, the debtor may deposit in court the subject matter in dispute; or if it is not susceptible of such action, he may take legal steps for its custody. If legally carried out and the creditor has been informed thereof, either of these measures discharges the debtor of his obligations and places the subject matter delivered at the risk of the creditor."

(7) On October 24, 1919, the bank cabled the claimant: "Offer you prompt repayment of your pre-war credit balance. Cable immediately to avoid depositing to law courts as trustee."

(8) Receiving no reply from the claimant, the bank on November 14, 1919, in pursuance of section 1425 of the Austrian General Civil Law Code, quoted above, deposited in the office of the Circuit Court of Vienna (which was the appropriate court in which to make this deposit, pursuant to this section of the code) old kronen unstamped banknotes in the amount of 11,012 kronen, being the full amount of claimant's deposit with the bank with accrued interest, which notes were received at the deposit office, put in an envelope, sealed and earmarked as held for claimant's account. These notes have since been and now are held in the physial custody of the deposit office of the court. Due notice of the fact of such deposit was promptly given to the claimant by the bank as well as by the court, and was received by claimant during December, 1919. The claimant was advised that these banknotes were at his free disposal and held subject to his order.

(9) From the letters of the bank to the claimant of December 3, 1919, and January 20, 1920, it is apparent that the action taken by the bank in seeking to discharge its indebtedness to the claimant through making this court deposit was taken to protect itself against the terms of the Clearing Office provisions of the Treaty of St. Germain which was signed on September 10, 1919, and which became effective on July 16, 1920.

(10) From claimant's letter to the bank of December 29, 1919, it is apparent that the claimant received the bank's cable of October 24 offering prompt repayment of claimant's pre-war credit balance and advising that if not accepted by claimant it would be deposited in the law courts, but in claimant's own language as he "did not know how to act intelligently . . . I refrained from taking any action".

The deposit established by the claimant with the bank on August 15, 1916, constitutes a debt within the meaning of the Treaty unless it has been discharged and extinguished. The sole question for decision in this case is; on the facts stated what if any debt is due and owing by the bank or other Austrian national to the claimant within the meaning of the Treaty of Vienna?

The contract which established the relation of creditor and debtor between claimant and the bank expressly stipulated that "the City of Vienna is to be considered the place where payment is to be made, or where obligations are to be met, as the case may be," and that the contract should be "governed by the laws in force in Austria."

These stipulations express the rule which would obtain in this case in the absence of any express agreement of this nature. Its basis is that governing the construction of all contracts—the intention of the parties, who when they stipulate that transactions shall occur in a particular place manifestly intend, in the absence of an agreement to the contrary, that their performance shall be governed by the laws of that place. In considering contract claims, international tribunals have applied and given effect to the law of the place of

performance. [1] This rule has been adopted and applied by the several Mixed Arbitral Tribunals constituted and functioning under the Treaty of Versailles, the Treaty of St. Germain, and similar treaties of peace. [2] It is recognized as the law by publicists and jurists, including those of Austria and of the United States, [3] and by the highest courts of both. [4] Effect will be given to this rule, where applicable, in all cases coming before this Commission.

The relation of creditor and debtor was established between the claimant and the bank on August 15, 1916. At that time section 1425 of the Austrian General Civil Law Code, quoted above had been in effect and constantly availed of for more than a century. It was in full force and effect so far as concerns this claimant and the bank on November 14, 1919. when the court deposit above mentioned was made. The bank was entitled at any time by payment to terminate the relation of debtor and creditor which existed between it and the claimant. To its offer so to do the claimant made no reply. Following this default by claimant the statute authorized the bank to make the deposit in court, for the creditor cannot by remaining passive deprive the debtor of a legal right. [5] In making this deposit all of the requirements of the statute were fully met by the bank. It follows that in pursuance of the provisions of the applicable Austrian law the bank's debt to claimant was discharged and extinguished and the relation of debtor and creditor terminated [6] as of November 14, 1919. [7]

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[1] Puerto Cabello & Valencia Railroad Co. (Venezuelan Arbitrations Mixed Claims Commission, Ralston's report, Senate Document 316, 58th Congress, 2nd session, p. 455); Pacific Mail Steamship Company (Convention between the U. S. and New Grenada), Moore's Arbitrations, p. 1412; Henry Woodruff *v.* Venezuela, Morris' report, 1904, p. 321-3; "Manoa Cases," Morris' report, 1904, p. 451; Henry Woodruff and Flannagan, Bradley, Clark & Co. (United States and Venezuelan Claims Commission, 1889-1890, p. 425).

[2] Wolf *v.* Morley, 5 M.A.T. 670; Haeraeus *v.* Griffin, 5 M. A. T. 675; Gruening *v.* Frankel Brothers before the Anglo-German Mixed Arbitral Tribunal (1 M. A. T. 726).

[3] Savigny, System of the Present Roman Law, 8, 200 *et seq.*; Unger, System of Austrian General Civil Law, I, 179; Story, Commentaries on the Conflict of Laws, 7th edition, section 342, p. 279; Wharton, A Treatise on the Conflict of Laws, 3rd edition, section 401, p. 862 and 3; Phillimore, Commentaries on International Law, etc., 3rd edition, p. 525; Westlake, A Treatise on Private International Law, 7th edition, section 212, p. 302; Foote, A Concise Treatise on Private International Law, 5th edition, p. 429; Dicey, Conflict of Laws, 3rd edition, p. 602; Dernburg, The Civil Law of the German Empire, I, 103.

[4] Zimmermann & Forshay *v.* Wiener Bank-Verein, 274 U. S. 253; London Assurance *v.* Companhia de Moagens, 167 U. S. 149; Austrian Supreme Court, S. Z. III No. 79, IX No. 56, No. 152 (Spr. Rep. No. 13), V No. 30, Slg XVI No. 6352 (Spr. Rep. No. 219).

[5] Hasenoehrl, Austrian Law of Obligations, 2nd vol., 1898, p. 498 and 510; Ehrenzweig. System of Austrian General Private Law, 2nd vol., 1st half, 6th edition, 1920, section 347, p. 302.

[6] Zimmermann & Forshay *v.* Wiener Bank-Verein, 274 U. S. 253; Bamberger *v.* Steinhauser, decided by the Supreme Court of Austria, Dec. 14, 1927; Hasenoehrl, Austrian Law of Obligations, 2nd edition, section 94, p. 510; Schey, Concept and Substance of the *mora creditoris* in Austrian and in General Law (1884, p. 39); Frind, Austrian Court Journal for 1911, No. 8, p. 62; Decision of Supreme Court of Austria, June 28, 1921, Ob II 425; Marelli *v.* Haas, Italo-Austrian Mixed Arbitral Tribunal, 7 M. A. T. 249; Efisio Paris *v.* Impresa Auteried & Co., Austrian-Italian Mixed Arbitral Tribunal, 6 M. A. T. 436.

[7] Hasenoehrl, Z, Sec. 94, p. 498; Krainz-Pfaff, System, 2nd vol., 4th ed., 1907, sec. 344, p. 161; Ehrenzweig, System, 2nd vol., 6th ed., sec. 347, p. 305; Czyhlarz, Gruenhut's Zeitschrift, 6 (1879), p. 669.

On behalf of the claimant it is contended that even if the bank's indebtedness to him was discharged by the court deposit the same debt is still due him by an Austrian national, viz.: the Government of Austria, or the Austrian Court, or the clerk or other officer having the custody of the court deposit. This contention is rejected. The deposit office in receiving and holding the deposit for and subject to the order of the claimant acted in strict accordance with the Austrian statute. In so doing it performed a governmental function. In no sense did the Austrian State or those acting for it become debtor to the claimant. The kronen deposited never became the property of the State, which had no pecuniary interest therein. The State and all those acting for it, in receiving and holding the deposit, acted in a public and not a private capacity, and what they did in pursuance of the Austrian statute did not operate to keep alive the indebtedness which had been due the claimant and which was terminated as definitely and completely as if payment had been made directly to the claimant and full acquitance executed and delivered by him. [1]

On behalf of claimant it is further contended that by the "device" of a court deposit made by the bank in pursuance of the municipal law in effect in Austria, for the express purpose of protecting itself against the terms of the Clearing Office provisions of the Treaty of St. Germain, which had been signed but had not then come into force, the debtor is seeking to defeat the very purpose of that Treaty, and Austria is seeking to evade the burden of valorization of debts which the terms of that Treaty place upon her, and that all acts taken in furtherance of these purposes are void. Paraphrasing the language of Mr. Justice Holmes of the Supreme Court of the United States, [2] the short answer to this contention is that claimant's rights against the bank were ended before the Treaty became effective.

But there are other answers. Assuming that the bank did make the court deposit in question for the express purpose of protecting itself against the terms of the Clearing Office provisions of the Treaty of St. Germain, neither the United States nor its nationals can complain of its so doing, for the reasons, amongst others, that the United States declined to become a party to the Treaty of St. Germain, and while the provisions of that Treaty, here under consideration, were incorporated into the Treaty of Vienna, the United States by deliberate inaction, refused to adopt the Clearing Office plan, and by so doing refused to put into effect the provisions against which the bank sought to protect itself. It is manifest that neither the United States nor its nationals can complain that the bank took measures to protect itself against treaty provisions which never became effective as between the United States and Austria.

Section III of part X (Economic Clauses) of the Treaty of St. Germain provided for the *reciprocal* settlement of "debts" between the nationals of the opposing powers through the intervention of Clearing Offices. Each of the Allied and Associated Powers had the option to adopt or not the Clearing Office plan. Paragraph *(a)* of article 248 of the Treaty provided that:

"*(a)* Each of the High Contracting Parties shall prohibit, as from the coming into force of the present Treaty, both the payment and the acceptance of payment of such debts, and also all communications between the interested parties with regard to the settlement of the said debts otherwise than through Clearing Offices."

It is clear that these provisions prohibiting payment of debts were as between Austria and other nations applicable only to those nations adopting

[1] Tannenbaum *v.* The Prussian Treasury, 5 M. A. T. 632; Solomon & Co. *v.* Staatsanwalt, etc., Anglo-German Mixed Arbitral Tribunal, case No. 2214, decided Sept. 30, 1924.

[2] Zimmermann & Forshay *v.* Wiener Bank-Verein, 274 U. S. 253.

the Clearing Office plan; that they were to be effective, if at all, only as from July 16, 1920, the date of "the coming into force of the present Treaty;" and that they were reciprocal, applying alike to the United States and to Austria. The treaty makers could readily have stipulated that the prohibition-of-payment provisions should be effective as from the date of the *signing* of the Treaty; or could have gone further and provided that all such payments made after the Armistice of November 3, 1918, should be void [1]—but they did not do so. On the contrary in this respect they left nothing to construction but *expressly* stipulated that these prohibitory provisions should be effective "as from the coming into force of the present Treaty". It is not permissible for the Commissioner to speculate with respect to what the treaty makers might or could or should have provided when their language is clear.

While the United States signed the Treaty of St. Germain, it never through ratification became a party to it. However, all of the provisions of the Treaty of St. Germain here under consideration were carried into and became a part of the Treaty of Vienna between the United States and Austria signed August 24, 1921, which became effective November 8, 1921. But the United States did not, as it had the right to do, adopt the Clearing Office provisions of the Treaty of Vienna and consequently did not enact any legislation to make effective the reciprocal prohibition-of-debt-payment provisions above referred to. Of the extent to which American nationals, in the absence of any legislation prohibiting their so doing, used depreciated kronen currency in voluntarily discharging their kronen obligations to Austrian nationals, the Commissioner is not advised. But the records of this Commission disclose that such transactions took place without impediment. Obviously the United States and its nationals were not in a position to demand that Austria should prohibit its nationals from paying or discharging, according to the law in effect at the contract place of payment, the debts owing by them to American nationals.

Austria could not foresee that the United States would not ultimately become a party to the Treaty of St. Germain which it had signed and within one month thereafter elect to adopt the Clearing Office plan. Therefore, the prohibition-of-payment decrees which Austria was required to and did enact, in pursuance of the provisions of the Treaty, by their terms prohibited Austrian nationals from paying debts owing by them to American nationals. The Supreme Court of Austria has held [2] that these Austrian prohibition-of-payment decrees presented no impediment to an Austrian debtor discharging his indebtedness to an American creditor through a court deposit made in pursuance of section 1425 of the Austrian General Civil Law Code. The basis of this holding is that while the decrees in question nominally forbade payment, in any form, of debts due by Austrian to American nationals, nevertheless the reason for their enactment was the carrying out of the Clearing Office provisions of the Treaty, and as the United States rejected the Clearing Office plan the reason for the decrees failed in so far as they applied to American nationals, and hence the letter of the decrees will not be applied and enforced as between the United States and Austria and their respective nationals.

The Commissioner declines to deal with the effect, if any, of these Austrian decrees, on their coming into force, on the right of an Austrian national through a court deposit to discharge a debt owing by him to an American national,

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[1] A precedent for such a stipulation is found in the last sentence of paragraph 1 of the annex to section IV of part X of the Treaty making void all exceptional war measures taken by Austria and Austrian authorities since November 3, 1918.

[2] Bamberger *v.* Steinhauser, decided by the Supreme Court of Austria, December 14, 1927.

as a decision of this question is not necessary to a disposition of this case. The decrees prohibiting payment had not been passed and could not therefore have presented any impediment to the bank's action when the debt due by the bank to the claimant was lawfully discharged.

The further contention is made on behalf of the claimant that the court deposit made by the bank is without legal effect because made in old unstamped kronen, not legal tender, instead of "German-Austrian stamped kronen", then legal tender in Austria where payment was made. It would not be profitable to examine here in detail the Treaty provisions and the several decrees passed in pursuance thereof bearing on the question here raised. The Commissioner holds that while at the time the court deposit was made German-Austrian stamped banknotes were the legal tender in Austria, nevertheless under the provisions of section 6 of the Austrian decree of March 25, 1919, it was permissible for the bank to use old kronen unstamped banknotes in the payment of its debt direct to claimant or in discharging this debt through a court deposit.

The Commissioner holds that the debt due by the bank to claimant was lawfully discharged and extinguished through the court deposit made by the bank on November 14, 1919, approximately two years before the coming into force of the Treaty of Vienna on November 8, 1921, under the terms of which Treaty this claim is asserted. It follows that no debt exists upon which the interlocutory judgment prayed for can be based.

Wherefore the Commission decrees that the Government of Austria is not obligated under the Treaty of Vienna to pay to the Government of the United States any amount on behalf of Louis John Hois, claimant herein.

THE FIRST NATIONAL BANK OF BOSTON (UNITED STATES) *v.* AUSTRIA AND WIENER BANK-VEREIN

(November 9, 1928. Pages 89-91.)

DEBTS, APPLICABLE LAW, *LEX LOCI SOLUTIONIS*, INTERPRETATION OF MUNICIPAL LAW.—DISCHARGE OF DEBT: EFFECT OF COURT DEPOSIT, EXCEPTIONAL WAR MEASURES.—INTERPRETATION OF CONTRACTS: INTENTION OF PARTIES.—INTERPRETATION OF TREATIES: CLEAR LANGUAGE. Open account, established by claimant with Vienna bank. Court deposit by bank, in accordance with section 1425, Austrian General Civil Law Code, of balance in banknotes. Notice of deposit to claimant on December 3, 1919. *Held* that Court deposit operated as discharge for reasons stated in Louis John Hois award (p. 260 *supra*), and because, prior to Court deposit, claimant's balance not subjected to exceptional war measures of general applicability to property, rights, and interests of American nationals in territory of former Austrian Empire (reference made to Administrative Decision No. II, p. 212 *supra*), the existence of which measures claimant failed to prove.

Cross-reference: Am. J. Int. Law, vol. 24 (1930), pp. 186-188.

Bibliography: Prossinagg, pp. 27-29; Bonynge, p. 24.

The United States on behalf of the claimant, The First National Bank of Boston, an American corporate national (hereinafter designated "American bank"), seeks an interlocutory judgment for kronen 100,952, the balance alleged to have been due it on open account on December 7, 1917, from the

impleaded debtor, the Wiener Bank-Verein, an Austrian corporate national (hereinafter designated "Austrian bank").

The Austrian bank deposited banknotes in the amount claimed with the Circuit Court Innere Stadt, Vienna, which court was at that time the court of competent jurisdiction, and gave the American bank notice of such deposit on December 3, 1919. All of the provisions of section 1425 of the Austrian General Civil Law Code were complied with by the Austrian bank and, under the decision of the Commission in the Hois case, [1] the court deposit made by the Austrian bank operated as a discharge and extinguishment of its pre-war debt to the American bank *unless*, prior to such court deposit, the Government of Austria or the competent Austrian authorities had subjected the American bank's credit balance with the Austrian bank to "exceptional war measures" as that term is used in the Treaty of Vienna.

The American Agent on behalf of the claimant contends that during the war the former Empire of Austria generally so applied exceptional war measures to bank deposits owing to American nationals as to entitle the claimant herein to a present final award in dollars "in respect of damage or injury inflicted upon their property, rights or interests" as provided in paragraph *(e)* of article 249 of the Treaty of St. Germain carried into the Treaty of Vienna, and in pursuance of the rules laid down by this Commission in Administrative Decision No. II at pages 25 to 28, inclusive. [2] This contention presents the sole question arising on the record in this case remaining for decision.

No case has been called to the attention of the Commissioner in which American-owned property was in fact subjected to supervision or compulsory administration during the war by virtue of any decree of the Austrian Government, but the American Agent relies on the provisions of several decrees of the former Empire of Austria, particularly those of March 10, 1916, December 19, 1916, and June 18, 1918, which he contends constituted exceptional war measures. These have all been carefully examined by the Commissioner. It will not be profitable to discuss them in detail. One of them prohibited, among numerous other articles, the exportation of gold and other coined metals. Others attempted to regulate traffic and commerce in foreign exchange and in general traffic with foreign countries in an effort to save foreign exchange and Austrian currency for lawful purposes and to prevent speculation to the disadvantage of the Austrian currency as well as the flight of capital from Austria at a time when the preservation of the value of the currency was of vital importance. The obvious purpose of these decrees was to save Austria's liquid resources in gold, foreign exchange, and its own currency for the purchase abroad of the materials most vitally needed. They were applicable to Austrian nationals as well as all other residents of Austria. They were in no sense exceptional war measures *directed against American or other enemy nationals*.

The expression "exceptional war measures" as defined in the Treaty [3] "includes measures of all kinds, legislative, administrative, judicial or others, that have been taken or will be taken hereafter *with regard to enemy property*, and which have had or will have the effect of removing from the proprietors the *power of disposition* over their property, though without affecting the ownership, such as measures of supervision, of compulsory administration, and of sequestration; or measures which have had or will have as an object *the seizure of*, the use of, or the interference with *enemy assets*", etc. It is apparent that the decrees

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[1] See p. 260 *supra*.

[2] This volume, pp. 221-222 *supra*.

[3] Paragraph 3 of the annex to section IV of part X of the Treaty of St. Germain carried into the Treaty of Vienna.

referred to by the American Agent were not directed at or taken "with regard to enemy property" any more than Austrian or neutral property. It is apparent that such decrees did not remove from the American depositors in Austrian banks the power of disposition over their deposits such as "measures of supervision, of compulsory administration, or of sequestration" would have done. It is apparent that these decrees did not have for their object "the seizure of, the use of, or the interference with enemy assets". On the contrary, the records before this Commission indicate that during the years 1917 to 1920 kronen in considerable amounts were transferred directly from Austria to the United States. These do not include payments, believed to have been large, made to neutrals for the purpose of ultimate transfer to the United States where direct transfer was difficult because of the provisions of the United States Trading with the Enemy Act, which had no counterpart in the statutes and decrees of Austria as applied to the United States and its nationals.

The Commissioner holds that the claimant herein has failed to discharge the burden which rests upon it to prove the existence of exceptional war measures of general applicability to the property, rights, and interests of American nationals in the territory of the former Austrian Empire or that its bank deposit was "in fact subjected to measures in the nature of exceptional war measures" [1] within the meaning of the Treaty.

Wherefore the Commission decrees that the Government of Austria is not obligated under the Treaty of Vienna to pay to the Government of the United States any amount on behalf of The First National Bank of Boston, claimant herein.

MARY FEDERER, ADMINISTRATRIX OF THE ESTATE OF JOHN J. FEDERER (UNITED STATES) *v.* AUSTRIA AND WIENER BANKVEREIN

(November 9, 1928. Pages 92-97.)

DEBTS, APPLICABLE LAW, *LEX LOCI SOLUTIONIS*.—INTERPRETATION OF MUNICIPAL LAW, *DEPOSITUM IRREGULARE, REGULARE*, CUSTODY DEPOSIT, BAILMENT. General checking account, established by Mr. Federer, claimant's husband, on January 18, 1917, with Vienna bank. Custody deposit by bank on October 10, 1919, in agreement with Mr. Federer, of balance of account, free of charges, bearing no interest, and at depositor's free disposal: amount placed in special safe for custody deposits, never commingled with bank's own moneys nor treated as part of its assets. *Held* that applicable law is Austrian law: Austrian contract to be performed in Vienna. *Held* also that under sections 1376 and 1377, Austrian General Civil Law Code, the original account *(depositum irregulare)*, a debt within meaning of Treaty of Vienna, terminated on October 10, 1919, and that contract of bailment *(depositum irregulare*, recognized by Austrian Courts and publicists) concluded instead, not giving rise to such debt.

Cross-reference: Am. J. Int. Law, vol. 24 (1930), pp. 181-185.

Bibliography: Prossinagg, pp. 38-40; Bonynge, pp. 32-34.

In accordance with the rules of procedure of this Commission announced in Administrative Decision No. II, the United States, on behalf of the claimant, Mary Federer, the widow and the administratrix of the estate of John J. Federer,

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[1] Administrative Decision No. II at page 28 (this volume, p. 222 *supra*).

deceased, who was an American national through naturalization, seeks an interlocutory judgment for a kronen debt as hereinafter stated.

The facts are these:

(1) On January 18, 1917, John J. Federer resided in the State of New Jersey where he continued to reside to the time of his death, May 7, 1927. On May 23, 1927, his widow was duly appointed and qualified as administratrix of his estate.

(2) On January 18, 1917, Federer established in his own name in Vienna with the Wiener Bank-Verein, an Austrian corporate national (hereinafter designated "bank"), a general checking account in the amount of kronen 30,000 which bore interest at the rate of % 3 per annum.

(3) On September 6, 1919, the bank dispatched to Federer at his address in West New York the following letter:

"In view of the regulations of Peace Treaty we must request you herewith to kindly dispose of your old kronen credit balance by return mail as we would otherwise be compelled to deposit same with the local court. Owing to the complications and inconveniences which through those proceedings may arise for you, we are prepared to place your balance in banknotes into a special custody depot with us, free of any charges, such depot not to bear interest and to be held at your free disposal at any time. We beg to point out to you that your respective instructions must expressly indicate that the deposit with the court is to be avoided by us.

"The mail service between the States and our country being still rather unreliable we would suggest that you upon receipt of the present, cable us as follows: 'Avoid court deposit' from which we shall gather, that you wish us to take your balance into custody depot as outlined above. Should you on the other hand feel disposed to transfer your credit balance to somebody else, please instruct us accordingly and by so doing oblige", etc.

(4) On or about October 10, 1919, the bank received from Federer a cable reading:

"Avoid court deposit".

(5) On October 10, 1919, the bank wrote Federer to his address in West New York as follows:

"We received to-day your cable reading as follows: 'Avoid court deposit' in compliance with which we have today closed your account with us as per enclosed statement, showing a balance in your favor of *K* 32.237.—for which we are debiting you *val. 9th inst.*

"We have placed this amount into your custody deposit with us, bearing no interest but being kept at your free disposal at any time".

(6) The special custody deposit referred to in that letter was erected by placing banknotes to the amount of kronen 32.237, representing Federer's balance, in a special safe which served solely as a receptacle for so-called "custody deposits" accepted by the bank. No other moneys or securities were placed in that safe nor were the contents of that safe ever commingled in any way with the bank's own moneys nor were they ever treated as part of its assets. A cashier of the bank (see exhibit Bb in docket No. 335) testified with respect to the custody deposits of Federer and other American customers as follows:

"... upon the transfer of a customer's account from a current account to a custody deposit, banknotes in the amount of the balance were actually placed in a separate safe which served solely as a receptacle for such custody deposits. In case of a disposition being ordered, banknotes in the amount required were removed from this safe and disposed of in accordance with the order of the party. Today also the custody deposits remain separately kept."

The deposit of kronen 30,000 established by Federer with the bank on January 18, 1917, was a general deposit—*depositum irregulare*—known to the jurisprudence of both Austria and America. [1] Under it the bank acquired the ownership of the funds deposited which were intermingled with its other funds. The security of the depositor was based solely on the credit of the depositary. The equivalent of the funds deposited were at the disposal of the depositor, yet they were not withdrawn from commerce but belonged to and were used by the depositary. The depositor was not entitled to the return of the fungible things deposited but only to things of equal quantity and quality, that is, of the same amount and the same kind. This deposit constituted a debt within the meaning of the Treaty of Vienna.

The sole question for decision in this case is, on the facts stated what, if any, debt is now due and owing by the bank to the claimant within the meaning of the Treaty of Vienna?

Upon receipt of the bank's letter to him of September 6, 1919, three courses were open to Federer:

(1) To withdraw his credit balance or transfer it to another;

(2) To agree that the bank should convert this credit balance into a "custody deposit"; or

(3) To decline to pursue either of these courses, whereupon the bank would have deposited the amount of the credit balance in the local court at Vienna in pursuance of the provisions of section 1425 of the Austrian General Civil Law Code.

Under the Hois case, [2] had Federer declined to pursue either course (1) or (2) the bank would clearly have been within its rights in pursuing the third course, which would have resulted in the discharge and extinguishment of its indebtedness to Federer. The latter, however, with a view to avoiding the court deposit, expressly agreed that the bank should place his balance in banknotes into a special custody deposit to be erected by the bank, free of any charge to him, to bear no interest, and to be held by the bank, at his free disposal at any time. In pursuance of this express agreement Federer's balance in banknotes was placed by the bank in a special safe which served solely as a receptacle for such custody deposits and Federer so informed. These banknotes were never commingled with the bank's own money or treated as part of its assets. They have been held ever since subject to Federer's free disposal.

The contract between the bank and Federer was an Austrian contract to be performed in Vienna and is governed by the laws of Austria. [3] Under those laws the general deposit, the original account current, the *depositum irregulare*, was terminated and a new liability, based on the custody deposit agreement, was created in its stead. Sections 1376 and 1377 of the Austrian General Civil Law Code in translation read:

Section 1376 ."The change without the addition of a third party takes place when the legal basis or when the principal substance of a debt is changed, so that the old obligation is transformed into a new one."

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[1] Serafini, Del Deposito Irregolaro, Giurista d. Napoli VI; u. 36 e. 53 (1863); Muehlhauser, Umfang und Geltung des *depositum irregulare* (1879); Niemeyer, *Depositum irregulare* (1889); Neumann-Hofer, Depositen-Geschäfte und Depositen-Banken (1894); Schey, Obligations-Verhältnisse, Sec. 50, S. 351; Ehrenzweig's System, Sec. 358, S. 383 f.; Pfaff, Geld als Mittel Pfandrechtlicher Sicherstellung, 39; Schey, Sec. 50, S. 353 f.; Morse on Banks and Banking, 5th edition, sec. 186 and 289.

[2] See p. 260 *supra*.

[3] Hois case, p 260 *supra*.

Section 1377. "Such a change is called a novation. By virtue of this contract the principal obligation ceases and the new one simultaneously comes into force."

The decisions of the Austrian courts and the writings of Austrian publicists recognize in Austrian commercial and banking usage and practice the existence of a custody deposit, a special deposit, the *depositum regulare*, where the depositary has no right to use the thing deposited but is obligated to return it. In such a case the property deposited does not become part of the assets of the bank and must not be mingled therewith. The title to the deposit remains in the depositor whose relation to the bank is not that of creditor to his debtor but of a bailor to his bailee.

The rule, in so far as applicable to this case, is thus stated by Ehrenzweig, *System des Österreichischen allgemeinen Privatrechtes*, volume 2, paragraph 358, page 335 (translation):

"In the ordinary *Summendepositum* [aggregate deposit] the recipient obilges himself to return, if not the things received, the same number of things of the same kind, which must, however, be always kept separate from his own property and must be held in custody as the property of another. The depositor remains the owner; the custodian is merely entitled to replace individual pieces by others of the same kind. The rule is the same when money is (specially) deposited unsealed, as also in the case of a bank deposit of securities without a list of specific serial numbers. The banker in such deposits is not required to exercise any special caution to prevent the exchange between the same kinds of securities belonging to different customers. The interests of the depositor are not affected by such change."

"By the regular Sammeldepositum [mingled deposit], the property taken over is mingled with other property of similar depositors. The banker mingles securities of the same kind in a common mass. Possibly even lottery pieces in which the gain or loss is proportionately allocated amongst the depositors. In the case of the mingled deposit, the bailee does not become the owner . . . each depositor is the owner of the amount which belongs to him and he is entitled to reclaim the same in any denominations or things out of the common mass."

Professor Joseph von Schey, an outstanding Austrian publicist *(Die Obligationsverhaeltnisse des Österreichischen allgemeinen Privatrechtes*, paragraph 54, in translation) says:

"The growth of commercial relations has developed another form of deposit of substitutable things, in which the things given in custody are not kept separately in specie, but are mingled in one mass with similar deposits of other customers. The name *Sammeldepot* or *Vermengungsdepositum* suggests itself for deposits of this class (the words *Sammeldepot* and *Vermengungsdepositum* both mean the same thing, a commingled deposit). The depositor in this case is not entitled to demand the return of the identical things, but only the delivery of the same amount of things of the same kind out of the aggregate mass of deposits of the same kind. At the same time, it cannot be said that because the depositor is responsible not for the return of the same things, but for the same amount of similar things, this deposit becomes an irregular deposit; for the fungibles so received have not been placed at the custodian's free disposal, but were delivered to him for actual though not for separate custody. He must at all times hold in actual custody the actual amount of the same things which he has received for custody from his different depositors and not have merely, as in the case of an irregular deposit, usual 'banking cover' for the same. He is therefore economically not in a position to make even the slightest use of deposits of this sort for his own account. The individual depositor does not 'credit'

him; every depositor remains the owner of his portion of the total mass of deposits, is entitled to alienate the same and to reclaim it in case of bankrupty. This modification of the agreement of deposit therefore also belongs to the category of regular deposits."

The Commissioner holds that on the erection of the "custody deposit" on or about October 10, 1919, the relation of creditor and debtor which was established between Federer and the bank on January 18, 1917, was terminated and replaced by an entirely new contract of bailment. Therefore on the coming into effect of the Treaty of Vienna there existed no debt owing by the bank to Federer upon which to base the interlocutory judgment prayed for.

Wherefore the Commission decrees that the Government of Austria is not obligated under the Treaty of Vienna to pay to the Government of the United States any amount on behalf of the claimant, Mary Federer, administratrix of the estate of John J. Federer, deceased.

GEORGE AND THERESA ZOHRER (UNITED STATES) *v.* AUSTRIA AND POSTSPARKASSEN-AMT IN WIEN

(November 9, 1928. Pages 97-99.)

BONDED PUBLIC DEBTS: COLLECTION OF INTEREST COUPONS.—DEBTS: RATE OF INTEREST. Purchase of Austrian War Loan bonds through American broker and Austrian bank. Bonds held for claimants by bank which collected interest coupons but, without authority from claimants, credited proceeds to broker who paid only part of them to claimants. *Held* that interlocutory judgment should be entered for part of proceeds not turned over to claimants, with interest on amount of each coupon from date of maturity at 2 per cent per annum (contractual rate between broker and bank).

Bibliography: Prossinagg, pp. 40-41; Bonynge, pp. 38-39.

In accordance with the rules of procedure of this Commission announced in Administrative Decision No. II, the United States on behalf of the claimants, George and Theresa Zohrer, seeks an interlocutory judgment for a kronen debt alleged to be due them by the Postsparkassen-Amt in Wien (Austrian Postal Savings Bank in Vienna), hereinafter called "impleaded debtor".

The facts are these:

(1) The claimants are American citizens by virtue of their naturalization on July 6, 1915.

(2) On or about February 28, 1916, the claimants, through the Transatlantic Trust Company (a corporation created under the laws of New York), jointly subscribed and paid for bonds of the Third Austrian War Loan of the face value of kronen 20,000 bearing interest at the rate of $5\frac{1}{2}\%$ per annum.

(3) The impleaded debtor issued to and in the name of the claimants a deposit certificate *(Rentenbuch)* which it delivered to the claimants through the Transatlantic Trust Company. The bonds subscribed and paid for by claimants were held by the impleaded debtor for the claimants.

(4) In these transactions the Transatlantic Trust Company acted solely as a broker. The impleaded debtor knew that the bonds, for which it had issued to the claimants a deposit certificate *(Rentenbuch)*, had been paid for and were owned by the claimants.

(5) The deposit certificate *(Rentenbuch)* issued by the impleaded debtor and held by the claimants, among other things, provided (translation): "The coupons of the bonds deposited shall be collected by the Postal Savings Bank

[impleaded debtor] at the time they become due and shall be credited to the respective savings bank account or check account, unless requested otherwise."

(6) The impleaded debtor clipped the coupons from the claimants' bonds and credited not the claimants but the Transatlantic Trust Company with the amount thereof as follows:

Date	*Amount Kronen*
July 1, 1916	550
January 1, 1917	550
July 1, 1917	550
December 31 1917 (coupons of January 1, 1918)	550
June 28, 1918 (coupons of July 1, 1918)	550
December 31, 1918 (coupons of January 1, 1919)	550

It appears from the record that of the amounts so credited to the Transatlantic Trust Company it paid to the claimants (on January 1,1917) the sum of $68.75, and no more.

(7) The record is barren of any evidence of authority given by the claimants to the impleaded debtor to credit the Transatlantic Trust Company with the proceeds of claimants' interest coupons. It is likewise barren of any authorization by claimants to the Transatlantic Trust Company to act for them in the collection of the interest coupons in question.

(8) The claimants in the early part of 1928 surrendered to the impleaded debtor the deposit certificate *(Rentenbuch)* issued by it which they held and received in lieu thereof Third Austrian War Loan Bonds of the face value of kronen 20,000. From these bonds the claimants have clipped interest coupons maturing July 1, 1919, to July 1, 1921, both inclusive, of the total face value of kronen 2,750 which have been filed with the Commission, and an interlocutory judgment has been heretofore entered on account thereof (docket No. 1083-B).

(9) There is pending before the Commission docket No. 96, United States of America on behalf of Transatlantic Trust Company, claimant, *v.* Austria and Postsparkassen-Amt in Wien, impleaded, in which an interlocutory judgment is sought on behalf of the Transatlantic Trust Company based on kronen credits accorded it by the impleaded debtor for the proceeds of interest coupons clipped from the bonds of the claimants herein, George and Theresa Zohrer, and others similarly situated who purchased Austrian War Loan bonds through the Transatlantic Trust Company acting as a broker.

On the facts stated the Commissioner holds that the impleaded debtor was obligated to account to the claimants for the proceeds of coupons collected by it and this obligation was not discharged by its crediting the Transatlantic Trust Company with such proceeds. It follows that an interlocutory judgment should be entered on behalf of the claimants as follows:

Coupons due	*Amount Kronen*
July 1, 1916	550
July 1, 1917	550
January 1, 1918	550
July 1, 1918	550
January 1, 1919	550
	2,750

with interest on each of said amounts from the date of maturity of the coupons at the rate of 2 per cent per annum (the contractual rate governing the Transatlantic Trust Company account with the impleaded debtor).

It is so ordered.

TRANSATLANTIC TRUST COMPANY (UNITED STATES) *v.* AUSTRIA AND POSTSPARKASSEN-AMT IN WIEN

(November 9, 1928. Pages 99-100.)

BONDED PUBLIC DEBTS: COLLECTION OF INTEREST COUPONS.—EVIDENCE: BURDEN OF PROOF. *Held* that claimant failed to prove existence of debt within meaning of Treaty of Vienna in circumstances analogous to those discussed in George and Theresa Zohrer award (see p. 272 *supra*).

Bibliography: Prossinagg, pp. 41-42; Bonynge, p. 39.

The Commissioner's decision in docket No. 1083-A, George and Theresa Zohrer, claimants, this day decided is here referred to.

An interlocutory judgment is sought herein on behalf of the Transatlantic Trust Company, alleged to be an American corporate national (hereinafter referred to as "claimant"), for a kronen debt alleged to be due it from the Postsparkassen-Amt in Wien (hereinafter referred to as "impleaded debtor").

The record in this case is meager and unsatisfactory notwithstanding the efforts of both the American and the Austrian Agents to develop the facts. On the record submitted the Commissioner finds that the indebtedness in the form of a credit balance alleged to be due the claimant by the impleaded debtor is made up largely of items credited by the impleaded debtor to the claimant as the proceeds of interest coupons clipped from Austrian War Loan bonds which belonged—not to the claimant—but to claimant's customers, for whom it acted as a broker in the purchase of such bonds, and who occupied the same position with respect to the claimant and the impleaded debtor herein as did George and Theresa Zohrer in docket No. 1083-A.

On the record submitted the Commissioner further finds that the claimant herein has failed to prove that it was entitled to these credits, and that when they are eliminated from the account between the claimant and the impleaded debtor it appears that the claimant is in the latter's debt.

The Commissioner holds that the claimant has failed to discharge the burden resting upon it to prove the existence of a debt due it by Austria or an Austrian national within the meaning of the Treaty of Vienna and of this Commission's Administrative Decision No. II.

Wherefore the Commission decrees that the Government of Austria is not obligated under the Treaty of Vienna to pay to the Government of the United States any amount on behalf of the Transatlantic Trust Company, claimant herein.

HENRY HOWARD ELLISON, WILLIAM RODMAN ELLISON, AND HENRY HOWARD ELLISON, Jr., AMERICAN PARTNERS IN THE LATE FIRM OF JOHN B. ELLISON & SONS (UNITED STATES) *v.* AUSTRIA AND LEOPOLD KURANDA

(March 22, 1929. Pages 101-102.)

DEBTS, DEATH OF DEBTOR.—EVIDENCE: BURDEN OF PROOF. *Held* that claimant failed to prove existence of debt within meaning of Treaty of Vienna: debtor died on December 7, 1917, leaving neither assets, nor heirs or legal successor(s).

Bibliography: Prossinagg, p. 31; Bonynge, p. 29.

This claim is put forward by the United States on behalf of claimants, American nationals, against Austria and Leopold Kuranda, impleaded Austrian debtor, asserting an indebtedness to claimants by Kuranda due and owing prior to December 7, 1917, which has never been paid.

The American and Austrian Agents agree that on February 11, 1918, Kuranda died, leaving no assets and no heirs or legal successor or successors.

It follows that subsequent to his death and on the coming into effect of the Treaty of Vienna there was no Austrian national indebted to the claimants and no debt due and owing by an Austrian national to the claimants. In these circumstances the asserted claim does not fall within the terms of the Treaty of Vienna. [1]

The rules invoked on behalf of the claimants, which are incorporated in Administrative Decision No. II of this Commission, apply to questions of nationality and of residence of claimant creditors and impleaded debtors. They are not applicable here where the question presented turns on the existence of a debt due and owing by an Austrian national to the claimants at the time of the coming into force of the Treaty creating rights on behalf of the claimants which had no prior existence.

The Commissioner holds that the claimants have failed to discharge the burden resting on them to prove the existence of a debt falling within the terms of the Treaty of Vienna and the claim is dismissed.

CYRUS WILFRED PERKINS (UNITED STATES) *v.* AUSTRIA AND WIEN-FLORIDSDORFER MINERALOEL FABRIK

(March 22, 1929. Pages 102-104.)

DEBTS.—INTERPRETATION OF CONTRACTS, DATE OF CONCLUSION OF PEACE.—DECISION BY MUNICIPAL COURT, *RES JUDICATA*.—INTERPRETATION OF TREATY: PRE-WAR TRANSACTION, NATIONALITY OF CLAIM. Sale, late 1916, after beginning of war between Great Britain and Austria, by Mr. Jacob Perkins, British national, of stock to Austrian corporation, which on January 2, 1917, accepted to retain purchase price until "after the conclusion of peace", and to pay meanwhile interest. Death of vendor on July 21, 1917. Naturalization of claimant, vendor's son, and one of his heirs, as American citizen on March 6, 1918, and "delivery" to him on July 24, 1919, of three-twentieths of father's estate by competent Polish probate court. *Held* that phrase "conclusion of peace" in contract means conclusion of peace between Austria and Great Britain, which peace was concluded on July 16, 1920, when Treaty of St. Germain became effective. *Held* also that claimant on July 16, 1920, entitled to three-twentieths of purchase price bearing contractual interest from January 2, 1917, less three-twentieths, as of September 23, 1915, of claim against father's estate then acquired by corporation. *Held* further that sale (1916) was pre-war transaction so far as concerns claimant (naturaliz-

[1] Delius *v.* German Government, 2 M. A. T. 213; Bank für Handel und Industrie *v.* H. Goldstein, 5 *ibid.* 288; Garve Bros. *v.* Ballantyne, 6 *ibid.* 595; also Reed *v.* Rieder & Peratoner G. m. b. H., 5 *ibid.* 270; Midland Bank, Ltd., *v.* Louis Littauer and the heirs of Ernst Littauer, 6 *ibid.* 598; and Gordon L. Jacobs & Co *v.* Heirs of Walter Flatow, 6 *ibid.* 601.

ed 1918), and that his claim became impressed with American nationality on July 24, 1919 (decision Polish court).

This case having come before the Commission for decision, the American Agent and the Austrian Agent having been heard, the case having been finally submitted. and due consideration having been had, the Commissioner finds:

1. Claimant's father, Jacob Perkins, a British national resident in Austria, late in 1916 (after the beginning of the war between Great Britain and Austria) sold certain shares of capital stock to the impleaded debtor herein, an Austrian corporation. The transaction was confirmed in a letter of January 2, 1917, which stated that the purchase price, kronen 400,000, was to be retained by the impleaded debtor and could not be disposed of by the vendor until "after the conclusion of peace" and that the debtor meanwhile was to pay interest thereon at the same rate it received from its bankers, $3^1/_2\%$ unless changed. There is nothing in the record to indicate that this rate did change.

2. Jacob Perkins died in Austria intestate on July 21, 1917, leaving a widow and four children, British nationals, and another child, the claimant herein, who became an American national through naturalization on March 6, 1918.

3. The contract between Jacob Perkins and the impleaded debtor was binding on the heirs of this British national irrespective of their nationality.

4. There was "delivered" to the claimant herein on July 24, 1919, by order of the competent Polish probate court, an interest of three-twentieths of his father's estate. From that time forward three-twentieths of that estate vested in him.

5. As the contract referred to was entered into between a British national and an Austrian national, the Commissioner holds that the phrase "conclusion of peace" therein means conclusion of peace between Austria and Great Britain. That peace was concluded when the Treaty of St. Germain became effective on July 16, 1920.

6. The impleaded debtor on September 23, 1919, acquired by assignment a claim against the estate of claimant's father in the amount of kronen 8,712.89. The claimant on July 16, 1920, was entitled to receive three-twentieths of the purchase price, kronen 400,000, which three-twentieths bore interest from January 2, 1917, from which should be deducted three-twentieths of kronen 8,712.89 as of September 23, 1919.

Accordingly the Commissioner further finds:

That a debt was and is due and owing to *(a)* Cyrus Wilfred Perkins, an American national residing in the United States, by *(b)* Wien-Floridsdorfer Mineraloel Fabrik, an Austrian corporation having its principal place of business in Vienna, Austria, *(c)* which debt was incurred as a result of a pre-war transaction so far as concerns this claimant and *(d)* matured on July 16, 1920, *(e)* in the principal amount (representing this claimant's interest) of kronen sixty thousand (60,000.00), *(f)* that the rate of interest stipulated between the parties to the said transaction was $3^1/_2\%$ *(g)* that the impleaded debtor was entitled to deduct from interest accrued (on said principal amount of kronen 60,000.00) through July 16, 1920, aggregating kronen seven thousand four hundred thirty and thirty-three one-hundredths (7,430.33), the sum of kronen one thousand three hundred six and ninety-three one-hundredths (1,306.93) in accordance with paragraph numbered 6 above, leaving on account of interest through July 16, 1920, kronen six thousand one hundred twenty-three and forty one-hundredths (6,123.40), *(h)* that said debt was and is payable in Austrian

kronen, and *(i)* that this claim became impressed with American nationality on July 24, 1919.

Final judgment in this case is reserved.

HUGO DYLLA (UNITED STATES) *v.* AUSTRIA; JOHN SZANTO AND SZEKELY VARGA KATALIN SZANTO *v.* AUSTRIA; CHARLES GASPER (UNITED STATES) *v.* AUSTRIA

(March 22, 1929. Pages 104-105.)

BONDED PUBLIC DEBTS: COLLECTION OF INTEREST COUPONS.—EVIDENCE: BURDEN OF PROOF. Purchase of Austrian War Loan bonds through American and Austrian banks. Understanding, acquiesced in by claimants, that bonds shall be held, interest coupons shall be collected, and proceeds shall be placed, by Austrian bank in deposit of American banks. *Held* that claimants failed to prove existence of debts due by Austrian national.

Bibliography: Prossinagg, p. 42.

In each of these three cases the bonds involved were purchased by the claimant through American bankers from the impleaded Austrian debtor. [1] The impleaded debtor was notified that the bonds had been subscribed for account of the claimant but notified the claimant in writing that the bonds would be held by it in the deposit of the American banker, the latter being "the only one who may dispose of the subscribed War Loan". So far as appears from the records the claimant in each case acquiesced in this arrangement, and the bonds continued to be held by the impleaded debtor in the deposit of the American banker. When the coupons matured they were collected by the impleaded debtor and the proceeds placed to the credit of the American banker, which was in accordance with the understanding, acquiesced in by the claimant, that the bonds (and hence the interest thereon) should remain with the impleaded debtor in the deposit of the American banker. These cases are distinguishable from the Zohrer case (docket No. 1083-A) [2] in that in each of these cases the claimant was not entitled to receive the interest payments on the bonds save through the American banker through whom the bonds were purchased. The claimant in each case has failed to discharge the burden resting on him to establish a debt due him by an Austrian national. The cases are dismissed.

HARALD WALDEMAR VON CAMPEN (UNITED STATES) *v.* AUSTRIA

(March 22, 1929. Pages 105-106.)

JURISDICTION: DEBTS, EXCEPTIONAL WAR MEASURES.—DEPRECIATION OF SECURITIES, CURRENCY NOTES.—EVIDENCE: BURDEN OF PROOF. *Held* that alleged indebtedness to claimant of claimant's brother, a Danish national, alleged payment by the latter with depreciated securities and currency notes

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[1] Wiener Bank-Verein, Budapest Branch.

[2] See p. 272 *supra*.

made after the United States entered war, and alleged exceptional war measures against claimant's brother and his property fall outside jurisdiction of Commission, and that claimant, therefore, failed to prove existence of claim within terms of Treaty of Vienna.

The debt on which this claim is based represents the proceeds of the sale of real estate located in Austria the legal title to which was in claimant's brother, a Danish national. The claimant asserts that the equitable title in this real estate was in him. Under the laws of Austria the claimant could not have enforced as against his brother any claim or interest in this real estate or the proceeds thereof. Claimant's brother, however, admits that he was indebted to the claimant to the amount of the proceeds received by him for this real estate but asserts that he has discharged this indebtedness by payments already made to the claimant and by depreciated currency and securities which he has set aside and holds for claimant's account.

The indebtedness declared upon by claimant was an indebtedness due him by a Danish national and therefore not within the jurisdiction of the Commission. The securities and currency notes which claimant now holds were acquired by him from his brother after the United States entered the war and therefore not within the jurisdiction of the Commission. The alleged exceptional war measures, if they were such, were taken against claimant's brother and his property and not against the claimant or his property. On the record submitted, giving the claimant the benefit of every doubt, the facts do not bring the claim within the jurisdiction of this Commission. The claim is dismissed on the ground that the claimant has failed to discharge the burden resting on him to establish facts bringing his claim within the terms of the Treaty of Vienna.

CAMILLA SHORT (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(March 29, 1929. Pages 106-107.)

BONDED PUBLIC DEBTS: COLLECTION OF INTEREST COUPONS.—EVIDENCE: BURDEN OF PROOF, AFFIDAVITS OF CLAIMANT AND HUSBAND.—NATIONALITY OF CLAIM. *Held* that from affidavits of claimant and husband it appears that until January, 1920, claimant's mother, an Austrian national, entitled to proceeds of interest coupons of bonds Austrian "unified public debt" owned by claimant, and that claimant, therefore, failed to prove that during period of belligerency of United States claim was or became impressed with American nationality.

From the meager record in this case it appears that the claimant inherited from her father, an Austrian national, certain bonds issued by Austria, known as Unified Public Debt bonds, which have been held by her for some 25 years, and that these bonds were deposited in the Austro-Hungarian Bank in Vienna in a trust fund, the interest thereon to be paid to the claimant's mother, Countess Hoyos, during her lifetime. The instrument creating this trust fund is not in the record and its terms are not disclosed. It is apparent from the affidavit of the claimant and the later affidavit of her husband, Charles W. Short, that the claimant's mother had and claimed the right to receive the proceeds of the interest coupons, which right she undertook in January, 1920, to relinquish to the claimant. The record indicates that the claimant and her husband are at least morally obligated to claimant's mother for all amounts which claimant

may collect on account of said coupons. The claimant's mother was on the death of her husband, and so far as is disclosed by the record still remains, an Austrian national.

On the unsatisfactory record submitted the Commissioner holds that the claimant has failed to discharge the burden resting on her to prove that during the period of the belligerency of the United States the claim for the interest coupons or the proceeds thereof was impressed with American nationality or became so impressed by operation of law. The claim is dismissed.

JACOB MARGULIES (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(May 11, 1929. Pages 107-111.)

NATIONALITY OF CLAIM.—NATIONALITY AND RIGHT TO PROTECTION.—NATURALIZATION: EXPATRIATION, EFFECT OF RETURN TO ADOPTED COUNTRY.—INTERPRETATION OF MUNICIPAL LAW.—RESPONSIBILITY FOR ACTS OF FORCES.—EVIDENCE: CLAIMANT AS WITNESS, PROOF OF NATIONALITY.—PROCEDURE: RELAXATION OF RULES, EXAMINATION OF CLAIMANT, ADDITIONAL BRIEFS, ORAL ARGUMENTS BY CLAIMANT'S PERSONAL ATTORNEY. Emigration of claimant, Austrian by birth, to United States in May, 1888. Naturalization as United States citizen on October 26, 1893. Return to Austria in 1903, followed by marriage, operation after father's death of farm held on lease by the latter, conclusion in 1906 of unassignable lease for another farm extending well beyond 1914, and investment of considerable sums in equipping that farm. Failure of claimant to register in Austria as United States citizen, though on November 25, 1912, he claimed to be United States citizen in letter to United States Consul General at Vienna, from which inference to be drawn is that he intended not to return to United States but to continue to live in Austria. Occupation on September 12, 1914, by Russian troops of territory where claimant was residing. Flight to Vienna where, on false sworn statements made by claimant and wife to United States Embassy, emergency passports issued. Arrival in United States, late 1914, where claimant and family have since continuously resided. Claim brought before Commission for value of personal property alleged to have been requisitioned by Austro-Hungarian Army, and for damage to other property. Personal appearance and testimony by claimant. Relaxation of Commission's rules: claimant's personal attorney permitted to examine claimant, file additional briefs, and make oral argument. *Held* that issuance of passports is neither material in determining prior citizenship status of claimant, nor evidence of citizenship at time of issuance. *Held* also that claim was not impressed with American nationality at time it arose (reference made to Henry Rothmann award, p. 253 *supra*).

Bibliography: Prossinagg, p. 25; Bonynge, p. 27.

This claim is put forward on behalf of Jacob Margulies as a naturalized citizen of the United States for the value of personal property alleged to have been requisitioned by the Austro-Hungarian Army in August, 1914, and for damage to other property, all located in territory of the former Austrian Empire now constituting a part of Poland.

This case was first submitted to the Commissioner by the Agents of the United States, of Austria, and of Hungary on briefs and oral arguments on November 9, 1928. Thereafter on March 22, 1929, at the request of the American Agent the

claimant was permitted personally to appear and testify before the Commissioner and also, at the request of the American Agent, the rules of the Commission were relaxed and the claimant's personal attorney was permitted to examine the claimant, file additional briefs, and make an oral argument before the Commissioner.

On the record as it now stands the Commissioner finds:

(1) The claimant was born in Galicia, Austria, May 20, 1872.

(2) He emigrated to the United States in May, 1888, landing at New York.

(3) He became a citizen of the United States by naturalization on October 26, 1893.

(4) He returned to his father's home in Austria in 1903. Shortly after his return his father died.

(5) During his residence in the United States he was employed in an establishment for the manufacture of women's clothing, operating a sewing machine for the greater part of that time. He had accumulated no propety at the time of his return to Austria in 1903.

(6) A few months after his father's death the claimant married in Galicia a girl whom he had known prior to first leaving for the United States.

(7) This was his first and only marriage. His wife is still living. At the time of the marriage she had never been in the United States.

(8) There were born in Galicia to claimant and his wife three children, all of whom are living.

(9) Claimant was the second of two sons, and he had a sister younger than himself. Both his brother and sister were living in Galicia at the time of his return in 1903, engaged in farming under separate leases held by them. The claimants' father was also engaged in farming under a lease. Upon his father's death the claimant with the assistance of his brother and sister took over and operated his father's farm.

(10) When the lease on his father's farm expired in 1906 the claimant entered into a lease for another farm which was equivalent in size to about four or five hundred American acres. The term of this lease is not accurately established, but on the record submitted, including the sworn testimony of the lessor, the Commissioner holds that it ran several years beyond the year 1914, with an option of the lessee to renew. It was not assignable, but the claimant had the conditional right to subiet.

(11) The claimant's brother, an Austrian national, while not nominally a party to this lease was a "silent party" thereto and interested with the claimant therein. The extent of their respective interests is not disclosed by the record.

(12) The claimant never registered in Austria as an American citizen.

(13) On November 25, 1912, the claimant addressed a letter to the Consul General of the United States at Vienna in which he claimed to be an American citizen; called attention to the fact that he lived on the Russian frontier and that disturbances had broken out in that vicinity, and asked advice as to how he should proceed in case the Russians should interfere with his property. There is nothing in this communication indicating that he sought to register as an American citizen or that he contemplated returning to the United States. On the contrary, the inference to be drawn from his letter is that it was his purpose to continue to live in Galicia where he was a leaseholder. Consul General Denby on November 27 made a routine reply to this letter advising that "In case of war, the Austrian authorities at your place will undoubtedly advise you as to what to do". This exchange of letters between the claimant and Consul General Denby is the only correspondence which claimant ever had with the American authorities, following his return to Austria in 1903 and prior to August, 1914, at the time the claim here put forward arose.

(14) On September 12, 1914, Russian troops occupied the territory in which claimant was residing, and a few hours prior to such occupancy the claimant fled to Vienna, reaching there September 19. On that day he applied to the American Embassy for an emergency passport which was issued to him. On October 10, 1914, Mrs. Margulies and the three children reached Vienna and applied for emergency passports which were issued to them.

(15) In the application for passport the claimant under oath stated that he had resided uninterruptedly in New York City for 22 years from 1888 to 1910; that he returned to Austria in October, 1910, for the purpose of disposing of his father's property; that their three children were born in New York, Laura in 1902, Israel in 1907, and Abraham in 1909. Like statements were made in the application of Mrs. Margulies for a passport for herself and children, and she further stated that she resided in the United States uninterruptedly for 15 years from 1895 to 1910. The claimant now admits that all of these statements were untrue. His attempt to explain them and to make it appear that he had not wilfully misrepresented the facts is not convincing.

(16) The claimant landed in New York in the early fall of 1914, where he was joined by his wife and children a short time later and where they have since continuously resided. Prior to that time his wife and children had never been in the United States.

(17) From the claimant's testimony it appears that, measured by pecuniary standards, he was more successful in Galicia than in the United States either before his return to Galicia or since his return to the United States in 1914.

(18) The claimant had returned to the land of his origin where he married and was rearing a family. He had, through borrowings and otherwise, invested considerable sums in equipping a farm, which he held under a long and non-assignable lease which in 1914, at the expiration of his ten years' continuous residence in Galicia, still had several years to run. He was more prosperous than he had been at any time before or since. On the record as a whole the inferences are strong that had it not been for the World War and the losses which he sustained as a consequence thereof he would have continued to reside with his family in the land of his birth. The Commissioner finds that during his ten years' residence in Galicia the claimant had no fixed intention ever to return to the United States.

The Commissioner agrees with the statement contained in claimant's recent brief that the false statements under oath referred to in the foregoing paragraph numbered (15) were, in the language of claimant's counsel, "made after the claimant's claim arose, and hence after the time as of which the claimant's citizenship status and the nationality of his said claim became fixed" and therefore cannot affect the nationality of this claim. The fact that passports were issued to claimant and to his wife and children on applications containing these misstatements of fact is not material in determining the prior citizenship status of the claimant, nor is it even evidence that the persons to whom they were granted were citizens of the United States at the time of issuance. [1] The false statements in these affidavits are immaterial save as they affect claimant's credibility.

Applying the rule laid down by this Commission in the Rothmann case [2] to the findings of fact as above set out, it is apparent that under the laws of the United States then in effect the claimant had presumptively ceased to be an American citizen in August, 1914, at the time the claim here asserted arose; that the claimant had at that time done nothing to rebut this presumption of

[1] Miller *v.* Sinjen, 289 Fed. at p. 394, and cases there cited.
[2] See p. 253 *supra*.

expatriation arising under the Act of March 2, 1907, from a residence of more than two years in the foreign state from which he came; that the nationality of the claim is determined by the status of the claimant's citizenship at that time; and that, as the claimant was not at that time entitled to protection as an American citizen, the claim at its inception was not impressed with American nationality. The reason for this rule is fully stated in the Rothmann case and need not be repeated here.

It is unnecessary for the Commissioner to consider other questions arising on the record.

For the reasons stated the Commission decrees that neither the Government of Austria nor the Government of Hungary is obligated under the Treaty of Vienna or of Budapest to pay to the Government of the United States any amount on behalf of Jacob Margulies, claimant herein.

EMIL FRENKEL (UNITED STATES) *v.* AUSTRIA

(May 11, 1929. Pages 111-115.)

PUBLIC DEBTS: GOVERNMENT OBLIGATION TO PAY ANNUAL AMOUNT TO RAILROAD COMPANY, LIABILITY FOR DIVIDENDS ON COMPANY'S SHARES. Guaranty by Austria, in 1864 and 1867, respectively, to Austrian railroad company, of certain net annual income from two railroads in Austria, superseded in 1894 with fixed obligation to pay annually certain amount. Guaranty by Romania, in 1868, to same company, of certain net annual income from branch lines in Romania. Payments to company made by Austria until October 15, 1918, and by Romania until October 13, 1916. Failure of company to declare and pay dividends on claimant's shares on May 1, 1918, and subsequent thereto, due in part at least to default of Romania, and not to any default of Austria. No payments to company made by Austria after Armistice, November 1918, the railroads in question lying outside post-war Austria. Claim brought before Commission for payment by Austria of dividends which claimant alleges should have been paid him between May 1, 1918, and November 11, 1921, inclusive. *Held* that unpaid dividends are not debts owing claimant by Austria within meaning of Treaty of Vienna: Austria never agreed to pay or guaranteed payment of dividends to company's shareholders.

Bibliography: Prossinagg, p. 33; Bonynge, p. 40.

This claim is put forward on behalf of Emil Frenkel as a naturalized citizen of the United States, hereinafter referred to as claimant. The facts, as disclosed by the record, are as follows:

(1) In the year 1864 the Government of the former Austrian Empire, to encourage the construction of a railroad from Lemberg to Czernowitz, guaranteed to the company building it a net annual income of 1,500,000 florins, Austrian silver currency.

(2) In the year 1867 the Government of the former Austrian Empire, to encourage the construction of a railroad from Czernowitz to Suczawa, guaranteed to the company building it a net annual income of 700,000 florins, Austrian silver currency.

(3) Both of these lines were constructed and operated by the Lemberg-Czernowitz-Jassy Railway Company, an Austrian corporation. The amounts for which the Government of the former Austrian Empire was obligated under

these guarantees were in substance subsidies varying from year to year according to the earnings of the railway company, but repayable by it out of surplus and in the event of liquidation from the proceeds of the railway company's assets after satisfying all other claims.

(4) In 1868 the Romanian Government entered into similar agreements with the Lemberg-Czernowitz-Jassy Railway Company to encourage the building of branch lines in Romania, guaranteeing to the railway company an annual net income of 3,865,173.86 francs.

(5) The Lemberg-Czernowitz-Jassy Railway Company from time to time issued founders' or guaranteed shares of its stock. The claimant owns 751 of such shares, of which 483 are of the second issue, of November 1, 1868, and 268 are of the fourth issue. The second issue, of November 1, 1868, carries a clause reading:

"Bearing 7 % interest secured by the guaranty of a net revenue granted to the Company by the Austrian and Romanian Governments."

Provision was also made for the amortization and redemption of these shares "within the time of the concessions according to the plans approved by the Governments." Claimant also owns four *Genuss-Scheine* (use and share certificates) of the railway company which relate to extra dividends for 1918-1921.

(6) In 1894 through a law enacted by the Government of the former Austrian Empire, formally assented to by the general assembly of stockholders of the Lemberg-Czernowitz-Jassy Railway Company, it was provided that the Austrian Government's guaranties of a yearly net income of 1,500,000 florins and 700,000 florins respectively should be superseded with a fixed obligation of the Government to pay annually 2,200,000 florins to the railway company.

(7) All payments stipulated to be made under the readjustment of 1894 and which fell due prior to the Armistice of November, 1918, were promptly met by the Government of the former Austrian Empire. The Romanian Government made no corresponding payments due by it subsequent to October 13, 1916.

(8) Due in part at least to the default of the Romanian Government, the railway company was not in funds to declare and pay dividends on its founders' or guaranteed shares on May 1, 1918, and subsequent thereto, although the Austrian Government had on January 15, 1918, paid to the railway company the amount due by it with respect to the Lemberg-Czernowitz line and on October 15, 1918, paid to the railway company the amount due by it with respect to the Czernowitz-Suczawa line. The failure of the railway company to declare and pay dividends on its founders' shares on May 1, 1918, was not attributable to any default on the part of the Austrian Government.

(9) The payments falling due subsequent to the Armistice of November, 1918, were not made by Austria because the railway lines in question lie wholly outside the territory of the present Republic of Austria, partly within the territory of Romania and partly within the territory of Poland.

(10) Article 203 of the Treaty of St. Germain provides for the apportionment among the Successor States of the secured debts of the former Austrian Empire. The Reparation Commission, acting in pursuance of the authority conferred upon it by that Treaty, has as of July 1, 1919, apportioned the obligations of the former Austrian Empire to the Lemberg-Czernowitz-Jassy Railway Company between Poland and Romania.

The claimant has received no dividends on his founders' or guaranteed shares of stock in the Lemberg-Czernowitz-Jassy Railway Company since January 15, 1917, and now seeks to recover from Austria dividends which he alleges should have been paid between May 1, 1918, and November 11, 1921,

inclusive. He also alleges that the failure of the Government of the former Austrian Empire to meet its payments to the railway company prevented the latter from carrying out the plan to amortize the shares by annual drawings thereby impairing the value of the claimant's shares, to his damage the amount of which he seeks to recover.

Unless the claim asserted falls within some provision of the Treaty of Vienna obligating Austria to pay it, the claimant is not entitled to an award before this Commission. He is not seeking to establish an indebtedness owing him by an Austrian national, because the Lemberg-Czernowitz-Jassy Railway Company is not now a national of the Republic of Austria and perhaps was not an Austrian national on July 2, 1921, or upon the coming into effect of the Treaty of Vienna. But the claimant contends that as a stockholder of the railway company he is entitled to recover from Austria the dividends which he would have received from the railway company had Austria met her obligations to it.

In the stipulation entered into between the Agent of the United States and the Agent of Austria in the submission of this case, the claimant's position is stated thus:

"It is the contention of the claimant that if the Austrian Government had paid to the aforesaid railway company the annual payment, that said railway company could have paid the coupons calling for payment of semi-annual dividends maturing on his bonds, and redemption of the original capital investment, and that by reason of the failure and neglect of the Austrian Government to pay said annual payment, he is entitled to recover from said Austrian Government the amount of the unpaid dividends belonging to him, which he alleges became payable between May 1, 1918, and November 11, 1921, inclusive."

In the brief filed by claimant's counsel and adopted by the Agent of the United States, there is put forward this proposition:

"The failure to pay the guaranteed income as provided by law and stated on the face of the shares is a debt owed by the Austrian Government to the claimant herein and gives the claimant a standing before this Commission."

The question presented is: do the unpaid dividends on claimant's stock which accrued May 1, 1918, to November 11, 1921, inclusive, constitute debts owing claimant by Austria within the meaning of the Treaty of Vienna? The Commissioner holds that they do not.

The obligation of the Government of the former Austrian Empire was to pay the Lemberg-Czernowitz-Jassy Railway Company definite amounts at stated intervals. That Government first guaranteed to the railway company certain net revenues and by the readjustment of 1894 that guaranty was converted into a fixed obligation to pay a stipulated amount, but that Government never at any time itself agreed to pay or guaranteed the payment of dividends in any amount to the railway company's shareholders. The railway company had obligated itself to declare and to pay to holders of its founders' shares stipulated dividends, but the Government of the former Austrian Empire was not a party to this undertaking and there was no privity of contract between that Government and such shareholders. The railway company from other sources of income might have been in a position to declare and pay dividends notwithstanding a default by the Government of the former Austrian Empire. On the other hand, it appears from this record that, notwithstanding that Government met its obligations and paid throughout the year 1918 the stipulated amounts which it had agreed to pay, nevertheless the railway company was unable to declare and to pay the dividends due throughout that year. This default by the railway company was not attributable to the Government of the former Austrian Empire, which had not then defaulted. The failure of Austria

and Romania or of either of them to meet their contract obligations to the railway company doubtless did affect the ability of the latter to declare and pay dividends, but such failure would not give to the claimant and others similarly situated a direct cause of action against those Governments for debts. It follows that there is no debt owing to the claimant by Austria within the meaning of the Treaty of Vienna. Such losses as may have been suffered by the claimant belong to that numerous class suffered as a consequence of the war or of post-war Treaty adjustments, for the payment of which the Treaties make no provision.

The claimant's counsel have cited cases decided by the Franco-German Mixed Arbitral Tribunal growing out of exceptional war measures taken by Germany. These cases are governed by the terms of the Treaty provisions applicable to damage resulting from exceptional war measures. It is not contended that claimant suffered as a result of any exceptional war measures taken by Austria and hence the decisions cited have no application to this case.

It is unnecessary to consider the effect upon the claim here asserted of the financial clauses of the Treaty of St. Germain and of the Treaty of Vienna dealing with secured debts of the former Austrian Empire and the apportionment between Poland and Romania by the Reparation Commission of the obligations of the former Austrian Empire to the Lemberg-Czernowitz-Jassy Railway Company.

The Commission decrees that under the Treaty of Vienna the Government of Austria is not obligated to pay to the Government of the United States any amount on behalf of Emil Frenkel, claimant herein.

ERNA McARTHUR (UNITED STATES) *v.* AUSTRIA

(May 11, 1929. Page 116.)

BONDED PUBLIC DEBTS: EXCEPTIONAL WAR MEASURES.—EVIDENCE: BURDEN OF PROOF. *Held* that claimant, who on April 17, 1916, inherited from her father funds which were invested in War Loan bonds and now seeks award for damages through alleged application of exceptional war measures, failed to prove loss or damage within terms of Treaty of Vienna.

Bibliography: Prossinagg, p. 29.

This claim is put forward on behalf of Erna McArthur, born an Austrian national, who acquired American nationality on July 6, 1912, through her marriage to Albert Chase McArthur, an American citizen.

Claimant inherited from her father, who died April 17, 1916, funds which, after being supplemented by her mother, were invested in various War Loan bonds having a total face value of kronen 410,000. The claimant seeks an award for damages alleged to have been sustained by her through the alleged application of exceptional war measures to these bonds by the Government of the former Austrian Empire.

The case has been carefully prepared, and the evidence submitted and the voluminous briefs have had the careful consideration of the Commissioner in the light of the provisions of the Treaty of Vienna as construed in the previous decisions of this Commission. It would serve no useful purpose here to repeat and apply to the facts as disclosed by this record what has already been stated in those decisions.

The Commissioner finds that the claimant has failed to discharge the burden resting on her to prove any loss or damage for which Austria is financially obligated under the terms of the Treaty of Vienna.

The Commission decrees that under the terms of the Treaty of Vienna the Government of Austria is not obligated to pay to the Government of the United States any amount on behalf of Erna McArthur, claimant herein.

ELIZABETH FILO AND BERTHA SALAY (UNITED STATES) *v.* HUNGARY

(June 28, 1929. Pages 117-121.)

RESPONSIBILITY FOR ACTS OF REVOLUTIONARY (BELA KUN) RÉGIME: PROPERTY DAMAGE, PERSONAL INJURIES.—INTERPRETATION OF TREATY: END OF AGGRESSION, CAUSAL CONNEXION BETWEEN AGGRESSION AND ACTS OF REVOLUTIONARY RÉGIME. Seizure of power in Hungary by revolutionary (Bela Kun) régime, military invasion of Czechoslovakia by that régime in June, 1919, occupation of Kassa, arrest of claimants, custody, and alleged brutal and degrading treatment, physical injuries, mob violence, looting of, and damage to, apartment. Claim brought before Commission for personal injuries, humiliation, mental suffering, value of personal property, damage to apartment. *Held* that claim for property lost and damaged, if established, would fall within part X, section IV, article 232, II, Treaty of Trianon, incorporated in Treaty of Budapest, but that remainder of claim falls outside Treaty, and in particular outside part VIII obliging Hungary to make compensation for defined categories of damage (including injuries to the person) inflicted "by the aggression of Austria-Hungary and her allies" (article 161): with signing of Armistice, November 3, 1918, Hungary's aggression as contemplated by Treaty, part VIII, came to an end, and no causal connexion exists between this aggression and invasion of Czechoslovakia by Bela Kun régime some seven months or more thereafter.

EVIDENCE: BURDEN OF PROOF, NEGLIGENCE IN COLLECTING EVIDENCE; CLAIMANT AS WITNESS: UNCORROBORATED, IMPROBABLE TESTIMONY, REBUTTAL BY OWN PREVIOUS STATEMENTS. *Held* that claimants failed to prove claim for property lost and damaged (see *supra*): their own testimony uncorroborated (though numerous individuals seem available to testify), improbable, and rebutted by testimony of disinterested witnesses, official records, and previous statements by claimant B. Salay.

Bibliography: Bonynge, pp. 40-41.

This claim is put forward on behalf of Elizabeth Filo and Bertha Salay, mother and daughter, to recover against Hungary $59,852.50 and $758,302.00 respectively on account of damages alleged to have been inflicted upon them during June and July, 1919, by representatives of the Bela Kun régime which had temporarily and forcibly wrested the administration of the Government of Hungary from the duly constituted authorities. The claimants allege that while residing in Kassa in the newly-constituted Czechoslovakian republic they were arrested and taken into custody by Bolshevik soldiers of the Bela Kun régime who invaded and took possession of Kassa; that while under arrest they were brutally treated and subjected to physical injuries of a permanent nature; that they were unprotected by the soldiers and left to the mercy

of a mob of Bolshevik sympathizers, including communist women, who stripped them of their belongings and beat them; that they were subjected to degrading treatment; and that while they were confined, first in prison and later in a hospital, their apartment at Kassa was looted and damaged. They seek to recover for personal injuries, for humiliation and mental suffering, for the value of personal property taken from their persons by the mob, for the value of personal property taken from their apartment in Kassa, and for damage done to the apartment itself.

The jurisdiction of this Commission is challenged by Hungary on the ground that, at the time of the happenings complained of, claimants were not entitled to protection as American citizens and hence that the claims were not at their inception impressed with American nationality. On this issue the Commissioner finds that both claimants were born in Hungary; that John Filo, husband of the claimant Elizabeth Filo, emigrated to the United States in the "early eighties" and with claimants established a residence at Butte, Montana; that John Filo became an American citizen through naturalization on October 8, 1898; that the claimant Bertha Salay married at Butte, Montana, on November 22, 1896, Joseph Salay, a native of Hungary but then an American citizen through naturalization; that John Filo died at Butte, Montana, June 24, 1901; that in 1902 the claimants returned to Hungary where on September 3, 1902, Mrs. Filo reported to the police as residing at 40 Kovacs Street, Kassa; that on July 7, 1903, Mrs. Salay, at 41 Kovacs Street, Kassa, gave birth to a son named Alexander; that on December 24, 1904, a decree was entered at Butte in the District Court for Silver Bow County, Montana, at the instance of Joseph Salay, divorcing him from the claimant Bertha Salay on the ground that she had wrongfully deserted him and taken up her residence in Kassa, Hungary; that on June 17, 1906, Mrs. Filo purchased residence property at Kassa upon which she erected an apartment house in which the claimants and the minor Alexander Salay lived; and that the record is not clear with respect to the claimants' whereabouts from the middle of 1903 to 1910 but it is admitted by both that they resided in Kassa from 1910 to 1920, when, with Alexander Salay, they returned to the United States.

On this record and under the rule announced in the cases of Henry Rothmann [1] and Jacob Margulies [2] there is much support for the contention of Hungary that claimants herein were not entitled to protection as American citizens in June and July, 1919, at the time of the happenings complained of. But the record on this issue is far from satisfactory and the Commissioner will, for the purposes of this decision, assume that the claimants, having through the naturalization laws of the United States become American citizens prior to their return to the land of their birth, continued to be entitled to American protection until their return to the United States in 1920.

Leaving out of consideration for the moment the allegations with respect to the comparatively small items based on property lost and damaged at Kassa, which if established would fall within paragraph 2 of subdivision II of article 232 of the Treaty of Trianon, incorporated in the Treaty of Budapest, the Commissioner holds that the remainder of the claim does not fall within the Treaty. It is not embraced within section IV of part X, the "Economic Clauses" of the Treaty, that section being limited in its application to property. [3]

[1] See p. 253 *supra*.

[2] See p. 279 *supra*.

[3] Brueninger *v.* Germany (1923), III Dec. M. A. T. 20, Anglo-German Mixed Arbitral Tribunal; Richelle *v.* Germany (1922), II *ibid.* 403, Belgo-German Mixed Arbitral Tribunal; Edgley *v.* Germany (1923), III *ibid.* 217, Anglo-German Mixed Arbitral Tribunal, etc.

On behalf of the claimants it is sought to bring this part of the claim within part VIII, the "Reparation" provisions of the Treaty, under which Hungary is obligated to make compensation for damage, falling within defined categories (including injuries to the person), inflicted "by the aggression of Austria-Hungary and her allies." But in reparation claims originating after the United States became a belligerent only damages for which Hungary is jointly responsible with Germany and Austria because arising out of their joint aggression are within the Reparation provisions. So far as Hungary is concerned the "joint aggression" of the Central Powers terminated with the signing of the Armistice on November 3, 1918, whereby Hungary severed all relations with Germany and bound herself to prohibit the transport of troops or munitions to the German troops in Romania. With the signing of that armistice Hungary's aggression, forming the basis of her liability arising under part VIII of the Treaty, came to an end. The invasion of Czechoslovakia by the Bela Kun régime seven months or more thereafter does not constitute an aggression of Hungary against the Allied and Associated Powers within the meaning of the Treaty provisions. This construction is in harmony with the decision of the Reparation Commission holding that Czechoslovakia could not maintain a reparation claim against Germany, Austria, or Hungary for damages inflicted by the invasion of Czechoslovakia by the Bela Kun régime. [1] It is also in harmony with the decision of the Umpire of the Mixed Claims Commission in the Eisenbach case [2] cited on behalf of claimant, where Germany was held liable for the planting of a mine during the period of American belligerency and prior to the armistice which resulted in damage to the claimant subsequent to the armistice. There it was held that the act of a belligerent in planting the mine, "while remote in time from the damage it caused, is not remote in natural and normal sequence. . . . The damage wrought was directly attributable to the hostile act of planting the mine and was directly in consequence of hostilities within the meaning of the Treaty of Berlin."

But in this case there was in legal contemplation no causal connection between the joint aggression of Hungary and her allies against the Allied and Associated Powers dealt with in part VIII of the Treaty, which terminated with the signing of the armistice, and the acts of the Bela Kun régime in forcibly seizing the reins of the Government of Hungary and invading Czechoslovakia some seven months or more after the armistice was signed.

Coming now to that branch of the claim made for property alleged to have been lost or damaged, which if established would fall within paragraph 2 of subdivision II of article 232 of the Treaty, the Commissioner holds that the claimants have failed to discharge the burden resting on them to prove their claim. The American Agent has been diligent in his efforts to have developed and to present to the Commission all of the facts bearing on the issues raised by the pleadings herein. The claimants have not exercised a like diligence. They have offered no evidence corroborating their own testimony. Alexander Salay, the minor son of the claimant Bertha Salay, was living with claimants in

[1] See opinion of Legal Service of Reparation Commission February 16, 1921, annex 656, opinion No. 183-B, dealing with "Right of Czechoslovakia to reparation"; decision of Reparation Commission No. 1019, dated March 11, 1921; and opinion of Legal Service of Reparation Commission dealing with Austrian and Hungarian claims, dated February 14, 1923, holding "that the Treaty of Trianon does not admit of a claim for reparation under annex I of part VIII in respect of military operations against the Bela Kun Government."

[2] United States of America on behalf of Eisenbach Brothers and Company, claimants, *v.* Germany, decided May 13, 1925, Decisions and Opinions, Mixed Claims Commission, United States and Germany, pp. 269-272.

June and July, 1919. He was not arrested but remained in Kassa. The material facts with respect to this claim must be fully known to him. It has been made to appear to the Commission that he is now and for some time has been residing in California. While the American Agent has urged that his testimony be taken by the claimants, it is not in the record nor is its absence accounted for. The same is true of numerous other individuals residing in Kassa who must have first-hand knowledge of the facts. In addition to the improbability of many of the material statements which claimants make, they are rebutted by the testimony of disinterested witnesses and in some particulars by official records and by statements previously made by the claimant Bertha Salay. Assuming that some of the claimants' statements are true, the truth is so blended with the false that it cannot be isolated. [1] This is a condition for which claimants alone are responsible and the consequences must be borne by them.

For the reasons stated the Commission decrees that the Government of Hungary is not obligated under the Treaty of Budapest to pay to the Government of the United States any amount on behalf of Elizabeth Filo and Bertha Salay, claimants herein.

JOHN UJVARI (UNITED STATES) *v.* HUNGARY

(June 28, 1929. Pages 121-122.)

JURISDICTION: OBJECTION.—BONDED PUBLIC DEBTS: SUSPENSION OF INTEREST PAYMENT BY REVOLUTIONARY (BELA KUN) RÉGIME.—INTERPRETATION OF TREATY.—INTERLOCUTORY JUDGMENT. Decree of March 29, 1919, issued by revolutionary (Bela Kun) régime, suspending payment of interest *inter alia* on bonded public debts of Hungary, and declared void by *de jure* Government in 1920. *Held* that payment not suspended within meaning of article 231, paragraph (3), Treaty of Trianon, carried into Treaty of Budapest, and that Commission, therefore, has jurisdiction over claim for interest matured between March 29, 1919, and December 31, 1919, and interlocutory judgment should be entered for amount of it.

Bibliography: Bonynge, p. 40.

In accordance with the rules of procedure of this Commission announced in Administrative Decision No. II the United States on behalf of the claimant, John Ujvari, an American national, seeks an interlocutory judgment for 245 kronen based upon certain interest coupons and talons appertaining to bonds owned by the claimant issued by the Kingdom of Hungary, which interest became due during the war period. Hungary admits the debt and that an interlocutory judgment as prayed should be entered save in respect to the coupons which matured between March 29, 1919, and December 31, 1919, aggregating in amount 17.50 kronen. With respect to this amount only Hungary challenges the jurisdiction of this Commission, contending that during the period mentioned the payment of interest on all Hungarian Government securities was suspended within the meaning of the proviso of paragraph (3) of article 231 of the Treaty of Trianon carried into the Treaty of Budapest, and therefore that the amount of interest so suspended does not constitute

[1] The Santissima Trinidad, 20 U. S. 283; Quock Ting *v.* United States, 140 U. S. 417; Wellman *v.* United States, 297 Fed. 925.

a debt within the meaning of the Treaty and of the decisions of this Commission construing it. [1]

The Commissioner rejects this contention and holds that there was no general suspension during the war of the payment of interest on securities issued by the Kingdom of Hungary within the meaning of the Treaty clause invoked. [2]

The revolutionary régime of Bela Kun, which had temporarily forcibly usurped the administration of the Hungarian Government, issued a decree dated March 29, 1919, reading:

"The payment of matured coupons of all domestic securities is herewith suspended."

This abortive attempt on the part of the Bela Kun régime through this decree to suspend interest payments accruing on the lawful obligations of Hungary was promptly repudiated by the *de jure* Government of Hungary on its resuming the exercise of its authority. This repudiation is embodied in article 9 of statute I of the year 1920 which declares "that all the people's laws, ordinances, or decrees issued by the People's Republic or by the Soviet Republic are void."

In the light of this very proper action on the part of the present Government of Hungary which with the United States subsequently entered into the Treaty of Budapest, it does not now lie with Hungary through a plea to the jurisdiction of this Commission to seek to avoid the payment under the Treaty of an obligation otherwise confessedly binding upon it, on the ground that such obligation was, within the meaning of a provision of that Treaty, suspended by a decree which Hungary has formally and effectively denounced as void.

An interlocutory judgment will be entered herein for the amount prayed for in accordance with the rules of procedure prescribed by Administrative Decision No. II.

ADOLFO STAHL (UNITED STATES) *v.* HUNGARY

(June 28, 1929. Pages 123-125.)

BONDED PUBLIC DEBTS: UNAUTHORIZED EXCHANGE OF PRE-WAR BONDS FOR BONDS ISSUED DURING WAR.—PROCEDURE: SWORN STATEMENT BY CLAIMANT.—PRE-WAR DEBT. Purchase on November 11, 1913, through German firm, of 4½% Hungarian Staatskassenscheine, held for claimant by firm and due January 4, 1916. Exchange of bonds by firm, when due, for 5 % Hungarian Kassenscheine due January 10, 1918, which in turn exchanged by firm, when due, for 5 % Hungarian Staatskassenscheine, series C, due April 1, 1921. Claim brought before Commission for amount of bonds issued January 10, 1918, with interest thereon. Statement under oath by claimant that he neither authorized nor ratified extensions. *Held* that claim falls outside terms of Treaty of Budapest: if claimant did neither authorize nor ratify extensions, he has claim against firm, a German national, and no title to bonds issued January 10, 1918, and if he has title to bonds, debt owing him by Hungary is not pre-war debt: new bonds evidence new obligation.

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[1] Administrative Decision No. II, pages 22 to 25, particularly at 24 (Note of the Secretariat: this volume, p. 220 *supra*).

[2] The North British & Mercantile Insurance Co. Ltd. *v.* Hungarian Government, decided January 23, 1924, III Dec. M. A. T. at page 791.

This claim is put forward on behalf of Adolfo Stahl as a naturalized citizen of the United States to recover from Hungary 56,250 reichsmarks, the amount with interest thereon of 10 certificates of 5,000 reichsmarks each issued by the Hungarian Government on January 10, 1918, and which matured April 1, 1921.

The facts as disclosed by the record are as follows:

(1) On November 11, 1913, the claimant purchased through L. Behrens & Söhne of Hamburg, Germany, marks 50,000 4½% Hungarian Staatskassenscheine evidenced by 10 certificates of marks 5,000 each numbered 460 to 469, both inclusive, which certificates were held for claimant by L. Behrens & Söhne.

(2) When the above-mentioned certificates became due on January 4, 1916, L. Behrens & Söhne surrendered them and took in exchange therefor 5 % Hungarian Kassenscheine due January 10, 1918, evidenced by 10 certificates of marks 5,000 each, numbered 3478 to 3487, both inclusive.

(3) When the certificates mentioned in the next preceding paragraph became due L. Behrens & Söhne surrendered them and took in exchange therefor 5 % Ungarische Staatskassenscheine, series C, evidenced by 10 certificates of marks 5,000 each numbered 4093 to 4102, both inclusive.

(4) The claimant under oath states that he:

". . . was not consulted by L. Behrens & Sohne as to whether or not the extensions above referred to should be made at the time that this was done, and did not then authorize the making of said extensions and has not since the re-establishing of communications with L. Behrens & Söhne ratified said extensions".

The Commissioner holds that the claimant was entitled to payment by Hungary of his pre-war certificates when they matured, January 4, 1916. If, as he states, he did not then authorize L. Behrens & Sohne, through whom he purchased these certificates and with whom they were deposited by him, to exchange them for a new issue of certificates bearing a different rate of interest and maturing two years later, and has not since ratified their act, then it would seem he has a claim against L. Behrens & Söhne for the amount he was then entitled to receive from Hungary, but is not entitled to the new certificates or those subsequently received in exchange and upon which this claim is based. [1]

The new certificates accepted by L. Behrens & Söhne for the claimant evidenced a new obligation of Hungary. The owners of the old certificates were entitled to demand payment in cash, or at their election were entitled to receive in lieu of cash new certificates bearing a higher rate of interest and maturing at a later date. If claimant has title to the certificates upon which this claim is based he acquired such title through L. Behrens & Sohne who, purporting to act for claimant, received these certificates for him. They were issued January 10, 1918, and constitute an obligation of Hungary as of that date. They are not, therefore, as between the claimant and Hungary, pre-war obligations and do not constitute a debt owing by Hungary to the claimant within the terms of the Treaty of Budapest.

This decision is in harmony with that of the Anglo-German Mixed Arbitral Tribunal which in the case of The Lautaro Nitrate Co. Ltd. (creditor) *v.* L. Behrens and Sohne (debtor) had before it in another form practically the question here presented. In that case L. Behrens & Sohne since 1913 had in their custody for The Lautaro Nitrate Co. Ltd. bonds of the City of Vienna

[1] The Lautaro Nitrate Co. Ltd. *v.* L. Behrens and Sohne (case 608), decided by the Anglo-German Mixed Arbitral Tribunal, February 20, 1924, IV Dec. M. A. T., pp. 37 *et seq.*

bearing interest at the rate of 4½% per annum, which by their terms matured May 15, 1916. Without authority from the creditor company L. Behrens & Söhne on the maturity of these bonds exchanged them for new bonds of the City of Vienna bearing interest at the rate of 5 % per annum and maturing May 15, 1921. The Tribunal held that:

". . . the reinvestment made by the Debtors is not an answer to the Creditors' claim, and that since it cannot be taken into account the Debtors are to be considered as having, on behalf of the Creditors, received payment of the loan at the proper date and that therefrom arose, on their part, towards the Creditors firm a debt coming within the provisions of article 296.

". . . On the other hand they have no right to the new bonds, which belong to the Debtors."

The Tribunal held that the exchange of the securities by L. Behrens & Söhne was in legal effect:

". . . a payment and reinvestment, by the working of which the City of Vienna was liberated from their old debt, and the Debtors invested the amount of the former loan in a new loan for which new bonds were issued by the City of Vienna, and appear to have been delivered to the Debtors."

It follows from what is above written that, if claimant has title to the bonds upon which the claim is based, the debt evidenced by such bonds owing him by Hungary is not a pre-war debt falling within the terms of the Treaty of Budapest. If claimant did not authorize L. Behrens & Söhne to accept new certificates in lieu of payment in cash and has not since ratified their act, then they are indebted to claimant for the amount which claimant was entitled to receive on his pre-war certificates which matured January 4, 1916. Such a debt would be owing by a German national to claimant and hence would not fall within the terms of the Treaty of Budapest.

For the reasons stated the Commission decrees that the Government of Hungary is not obligated under the Treaty of Budapest to pay to the Government of the United States any amount on behalf of Adolfo Stahl, claimant herein.