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Charles R. Crane (United States) v. Austria and City of Vienna

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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; Bonyngé, 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. 7½ 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 here¹ 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*.