

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

**The First National Bank of Boston (United States) v. Austria and Wiener Bank-
Verein**

9 November 1928

VOLUME VI pp. 266-268



NATIONS UNIES - UNITED NATIONS
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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; Bonyngé, 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 Treaty³ "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

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 BANK-VEREIN

(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; Bonyngé, 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,

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