

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

**George and Theresa Zohrer (United States) v. Austria and Postsparkassen-Amt
in Wien**

9 November 1928

VOLUME VI pp. 272-273



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

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 bankruptcy. 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; Bonyng, 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:

<i>Date</i>	<i>Amount Kronen</i>
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:

<i>Coupons due</i>	<i>Amount Kronen</i>
July 1, 1916	550
July 1, 1917	550
January 1, 1918	550
July 1, 1918	550
January 1, 1919	550
	<hr/> 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.