

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

**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**

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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; Bonyng, 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; Bonyngé, 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-FLORIDSORFER 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.