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Cyrus Wilfred Perkins (United States) v. Austria and Wien-Floridsdorfer Mineraloel Fabrik

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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*.