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Erna McArthur (United States) v. Austria

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and Romania or of either of them to meet their contract obligations to the railway company doubtless did affect the ability of the latter to declare and pay dividends, but such failure would not give to the claimant and others similarly situated a direct cause of action against those Governments for debts. It follows that there is no debt owing to the claimant by Austria within the meaning of the Treaty of Vienna. Such losses as may have been suffered by the claimant belong to that numerous class suffered as a consequence of the war or of post-war Treaty adjustments, for the payment of which the Treaties make no provision.

The claimant's counsel have cited cases decided by the Franco-German Mixed Arbitral Tribunal growing out of exceptional war measures taken by Germany. These cases are governed by the terms of the Treaty provisions applicable to damage resulting from exceptional war measures. It is not contended that claimant suffered as a result of any exceptional war measures taken by Austria and hence the decisions cited have no application to this case.

It is unnecessary to consider the effect upon the claim here asserted of the financial clauses of the Treaty of St. Germain and of the Treaty of Vienna dealing with secured debts of the former Austrian Empire and the apportionment between Poland and Romania by the Reparation Commission of the obligations of the former Austrian Empire to the Lemberg-Czernowitz-Jassy Railway Company.

The Commission decrees that under the Treaty of Vienna the Government of Austria is not obligated to pay to the Government of the United States any amount on behalf of Emil Frenkel, claimant herein.

ERNA McARTHUR (UNITED STATES) *v.* AUSTRIA

(*May 11, 1929. Page 116.*)

BONDED PUBLIC DEBTS: EXCEPTIONAL WAR MEASURES.—EVIDENCE: BURDEN OF PROOF. *Held* that claimant, who on April 17, 1916, inherited from her father funds which were invested in War Loan bonds and now seeks award for damages through alleged application of exceptional war measures, failed to prove loss or damage within terms of Treaty of Vienna.

Bibliography: Prossinagg, p. 29.

This claim is put forward on behalf of Erna McArthur, born an Austrian national, who acquired American nationality on July 6, 1912, through her marriage to Albert Chase McArthur, an American citizen.

Claimant inherited from her father, who died April 17, 1916, funds which, after being supplemented by her mother, were invested in various War Loan bonds having a total face value of kronen 410,000. The claimant seeks an award for damages alleged to have been sustained by her through the alleged application of exceptional war measures to these bonds by the Government of the former Austrian Empire.

The case has been carefully prepared, and the evidence submitted and the voluminous briefs have had the careful consideration of the Commissioner in the light of the provisions of the Treaty of Vienna as construed in the previous decisions of this Commission. It would serve no useful purpose here to repeat and apply to the facts as disclosed by this record what has already been stated in those decisions.

The Commissioner finds that the claimant has failed to discharge the burden resting on her to prove any loss or damage for which Austria is financially obligated under the terms of the Treaty of Vienna.

The Commission decrees that under the terms of the Treaty of Vienna the Government of Austria is not obligated to pay to the Government of the United States any amount on behalf of Erna McArthur, claimant herein.

ELIZABETH FILO AND BERTHA SALAY (UNITED STATES) *v.*
HUNGARY

(June 28, 1929. Pages 117-121.)

RESPONSIBILITY FOR ACTS OF REVOLUTIONARY (BELA KUN) RÉGIME: PROPERTY DAMAGE, PERSONAL INJURIES.—INTERPRETATION OF TREATY: END OF AGGRESSION, CAUSAL CONNEXION BETWEEN AGGRESSION AND ACTS OF REVOLUTIONARY RÉGIME. Seizure of power in Hungary by revolutionary (Bela Kun) régime, military invasion of Czechoslovakia by that régime in June, 1919, occupation of Kassa, arrest of claimants, custody, and alleged brutal and degrading treatment, physical injuries, mob violence, looting of, and damage to, apartment. Claim brought before Commission for personal injuries, humiliation, mental suffering, value of personal property, damage to apartment. *Held* that claim for property lost and damaged, if established, would fall within part X, section IV, article 232, II, Treaty of Trianon, incorporated in Treaty of Budapest, but that remainder of claim falls outside Treaty, and in particular outside part VIII obliging Hungary to make compensation for defined categories of damage (including injuries to the person) inflicted "by the aggression of Austria-Hungary and her allies" (article 161): with signing of Armistice, November 3, 1918, Hungary's aggression as contemplated by Treaty, part VIII, came to an end, and no causal connexion exists between this aggression and invasion of Czechoslovakia by Bela Kun régime some seven months or more thereafter.

EVIDENCE: BURDEN OF PROOF, NEGLIGENCE IN COLLECTING EVIDENCE; CLAIMANT AS WITNESS: UNCORROBORATED, IMPROBABLE TESTIMONY, REBUTAL BY OWN PREVIOUS STATEMENTS. *Held* that claimants failed to prove claim for property lost and damaged (see *supra*): their own testimony uncorroborated (though numerous individuals seem available to testify), improbable, and rebutted by testimony of disinterested witnesses, official records, and previous statements by claimant B. Salay.

Bibliography: Bonyne, pp. 40-41.

This claim is put forward on behalf of Elizabeth Filo and Bertha Salay, mother and daughter, to recover against Hungary \$59,852.50 and \$758,302.00 respectively on account of damages alleged to have been inflicted upon them during June and July, 1919, by representatives of the Bela Kun régime which had temporarily and forcibly wrested the administration of the Government of Hungary from the duly constituted authorities. The claimants allege that while residing in Kassa in the newly-constituted Czechoslovakian republic they were arrested and taken into custody by Bolshevik soldiers of the Bela Kun régime who invaded and took possession of Kassa; that while under arrest they were brutally treated and subjected to physical injuries of a permanent nature; that they were unprotected by the soldiers and left to the mercy