

LOSSES INCURRED OWING TO GERMAN VESSELS SEEKING REFUGE IN NEUTRAL PORTS ON THE OUTBREAK OF WAR.

36. Several claims have been lodged with this Office by New Zealand firms on account of losses and extra expense incurred by them owing to German vessels carrying cargo consigned to them seeking refuge in neutral ports on the outbreak of the war. From the legal opinions which have been received by this Office it appears that no claim against the German steamship companies will lie under Article 296 or 297 of the Treaty of Versailles, as the German bills of lading specifically contract the companies out of all liability in such circumstances.

On the 20th March, 1923, the High Commissioner for New Zealand in London was requested to ascertain from the Imperial authorities whether British nationals who have suffered loss under the above heading might successfully prefer claims against the German Government under the provisions of Articles 231 and 300 (d) of the Treaty of Versailles. These articles read as follows:—

*Article 231.*—"The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies."

*Article 300 (d).*—"Where a contract between enemies has been dissolved by reason either of failure on the part of either party to carry out its provisions or of the exercise of a right stipulated in the contract itself the prejudiced party may apply to the Mixed Arbitral Tribunal for relief. The Tribunal will have the powers provided for in paragraph (c)."

It is provided by paragraph (c) of Article 300 that if restoration is inequitable or impossible the Mixed Arbitral Tribunal may grant compensation to the prejudiced party to be paid by the German Government.

37. In the case of *Dame Franz v. German Government* and *Hourcade v. German Government* (*Recueil des Décisions des Tribunaux Arbitraux Mixtes*, 1922, I, p. 781) the Franco-German Mixed Arbitral Tribunal held:—

(1.) That an Allied national whose luggage had been booked in Germany for France, then detained and sold by order of the German railway company, was entitled to claim an indemnity for the non-execution of the transportation contract entered into between himself and the railway company.

(2.) That Germany, under Article 231 of the Treaty, having acknowledged the responsibility of the war and of its consequences, the German State cannot take advantage of an exception of main force due to the war, where litigation is incurred with Allied nationals.

As soon as further information on the foregoing subject is received the New Zealand firms who have notified claims to this Office will be informed of the position if the Imperial authorities are of the opinion that such claims could properly be enforced.

COMPENSATION CLAIMS.

38. As mentioned under paragraph 33 (2) (b), British nationals are entitled to such compensation as may be awarded by the Anglo-German Mixed Arbitral Tribunal in respect of any loss or damage which they may have sustained by reason of the sale of their property by the German authorities or the application of exceptional war measures.

39. In the case of *I. W. Raymond v. The German Government* the Anglo-German Mixed Arbitral Tribunal held that where the German Arbitration Court for War Economics has assessed the value of goods subject to exceptional war measures the amount of such assessment shall be credited under the provisions of Article 297 (h) (1) of the Treaty of Peace. If the claimant proves that the amount so assessed does not represent the true value of the goods an additional sum is awarded by the Tribunal; such later sum, together with interest on the aggregate of the two sums, is treated as compensation payable under Article 297 (e). (*Recueil des Décisions des Tribunaux Arbitraux Mixtes*, 1922, II, p. 523.)

40. The position regarding the payment of these claims is set forth in the following extract from the second report of the Controller of the Central Clearing Office, p. 4:—

The amount of compensation awarded is an obligation of the German Government, but as collateral security a charge has been created under Order in Council pursuant to the permissive provisions of paragraph 4 of the Annex to Section IV of the Treaty over the property of German nationals in British territory in favour of this class of claimant. This charge is, however, postponed in favour of claimants in respect of debts and proceeds of liquidation to whom a prior charge has been given over the same property. Until, therefore, the first two classes of obligations have been covered by cash realized from the sale of the charged property, there will be no funds available for distribution amongst the ultimate encumbrancers. The Public Trustee, who is responsible for the liquidation of German property in this country, is making every effort to expedite its sale, but the matter is one of very great difficulty having regard to the nature of the charged property and, in many cases, to conflicting claims to its ownership. Owing, however, to his endeavours, the prospects of these claimants are becoming more favourable, and it is hoped to make a distribution on account in the course of a few months.

The difficulties of this Department in providing the necessary funds to meet the various classes of claims for payment of which it is responsible will be greatly accentuated in the future by the default on the part of the German Government, referred to hereafter, to meet its obligations to the Clearing Offices on the monthly accounts. This will throw the liability, which should be met in cash by the German Government, upon the ultimate chargees. It is hoped that the efforts, referred to above, which are being made by the Public Trustee and the negotiations which are taking place with the German Government for securing payment of the debt balances will ultimately safeguard the position of these claimants.

41. Since the foregoing report was published information has been received that the Central Clearing Office has been authorized by the Treasury (Imperial) to pay a dividend to the claimants who have been awarded compensation. This dividend is payable out of the balance of the proceeds of liquidation of German property in Great Britain after provision has been made for meeting the first charge upon such proceeds of liquidation—i.e., after provision has been made for—(a) The estimated amount of any balance payable by Germany under paragraph 11 of the Annex to Article 296 which Germany has not yet paid; (b) an estimate of the amount still to be credited under Article 297 (h) (1) in respect of the proceeds of liquidation of British property in German territory.