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

45. In para. 36 of my last report (H.–25, 1923) I mentioned that the question had been raised whether British nationals who had suffered loss owing to German vessels carrying cargo consigned to them seeking refuge in neutral ports on the outbreak of war might successfully lodge claims against the German Government under the provisions of Articles 231 and 300 (*d*) of the Treaty of Versailles. Reference was also made to the decision of the Franco-German Mixed Arbitral Tribunal in the case of Dame Franz *v.* German Government and Hourcade *v.* German Government (*Recueil des Décisions des Tribunaux Arbitraux Mixtes*, Vol. i, p. 781). The High Commissioner was requested to submit the matter to the Controller of the Central Clearing Office, London, who supplied the following valuable opinion, dated the 4th July, 1923:—

I have to inform you that in the view of this Department the provisions of Article 300 (*d*) cannot be regarded as applicable to the present case where the contract was partially executed but the voyage was never completed owing to the default of the shipping company consequent on the outbreak of war.

It would appear that Article 300 (*d*) was intended to deal with contracts which became dissolved either, as stated, owing to the exercise of a right stipulated in the contract itself, or by operation of law owing to the failure on the part of one of the parties to carry out its provisions, and in that case where a restitution *in integrum* is impossible the Mixed Arbitral Tribunal may award compensation to be paid by the German Government. It is considered improbable that the Tribunal would apply this article to a case where a contract of carriage had been only partially but not wholly performed, as this seems not quite consistent with the idea of a "dissolution"; but if the interested parties desire to test the matter it is quite open to them to commence proceedings for that purpose, though, having regard to Rule 1 (*d*) of the Tribunal rules, it would probably be necessary for them to obtain special leave.

As regards Article 231, Part VIII, Reparations, which is one of the articles setting out the principles on which reparation may be claimed, it is considered doubtful whether the Tribunal would consider this article as material in such a case as the present. It is true that it was called in aid by the Franco-German Mixed Arbitral Tribunal in the case of Dame Franz *v.* Germany and in Hourcade *v.* Germany (*supra*), which concerned acts done in Germany, but the Anglo-German Mixed Arbitral Tribunal has shown itself less willing than the Franco-German Tribunal to award compensation against the German State unless the damage can clearly be shown to have arisen directly out of exceptional war measures. For example, the Franco-German Mixed Arbitral Tribunal has held that under Article 302 compensation can be awarded against the German Government. The Anglo-German Mixed Arbitral Tribunal has taken a contrary view of this article and will only award compensation thereunder against the individual who has obtained the judgment in the German Courts during the war. In the view of this Department, therefore, it is not considered likely that proceedings directed against the German Government would succeed.

NOTE.—Article 302, referred to in the above-quoted opinion, provides, *inter alia*, that if a judgment in respect of any dispute which may have arisen has been given during the war by a German Court against a national of an Allied or Associated State in a case in which he was not able to make his defence, the Allied or Associated national who has suffered prejudice thereby shall be entitled to recover compensation to be fixed by the Mixed Arbitral Tribunal provided for in Section VI of Part X of the Treaty.

In view of the opinion expressed by the Central Clearing Office the New Zealand consignees who suffered loss owing to German vessels seeking refuge in neutral ports decided not to pursue their claims in the meantime.

SETTLEMENT OF AMOUNTS DUE BY GERMANY TO THE ALLIED CLEARING OFFICES UNDER ARTICLE 296 OF THE TREATY OF VERSAILLES.

46. An interesting statement in connection with the negotiations between the Allied Clearing Offices and the representatives of the German Government regarding the settlement of outstanding amounts due by Germany to the Allied Clearing Offices under Article 296 of the Treaty of Versailles is contained in the Third Annual Report of the Controller of the Central Clearing Office, London. In view of the importance of this matter the statement has been quoted in full. The headnotes have been added in order to facilitate reference, and do not appear in the original report.

Default by Germany in Payment of the Clearing Office Balances.

Monthly Accounts.—As stated in my last annual report, the German Government, in August, 1922, notified the Allied Powers interested that it was not in a position to meet its engagements to the Clearing Offices under the London Agreement of the 10th June, 1921, and thereupon the Supreme Council denounced the said agreement, and the matter was referred to the Controllers of the Allied Clearing Offices with instructions to negotiate separate arrangements with the German Government for settlement of the outstanding balances due to the respective Offices. These instructions were coupled with the condition imposed by the Supreme Council that any arrangement come to should be submitted for approval to the Reparation Commission.

It is, I think, desirable at this point to make a digression, and, at the risk of repeating what I have said in previous reports, to explain the Treaty provisions as regards the operation of the clearing procedure in order to appreciate the position in which the Clearing Offices now find themselves.

Operation of the Clearing Procedure.—Government Guarantee.

The clearing procedure is analogous to that which has long existed amongst bankers for clearing their obligations *inter se*. In lieu of direct recourse between debtor and creditor for settlement of their mutual obligations, Clearing Offices are established to act as intermediaries. The Treaty provides that all debts shall be paid in Allied currency at the pre-war rate of exchange, and the Governments concerned are required to clothe their respective Clearing Offices with all necessary powers to enforce this obligation. The opposing Clearing Offices, in their turn, undertake to account to each other for the amount of the debts admitted by or found due from their debtor nationals. The only loss which a Clearing Office can sustain in giving effect to these provisions arises from the fact that, subject to certain specified exceptions, each Government guarantees the solvency of its debtor nationals; but the Treaty contains a specific provision which entitles the respective Governments to indemnify themselves for any loss which may result from such guarantee by deduction from the amounts credited to them by the opposing Clearing Offices. From the above it will be apparent that the true position of a Clearing Office is that of an agent for the collection and payment of debts, and if the provisions of the Treaty are strictly observed no loss will result to a Clearing Office from the operation.