

obtaining payment of the balance from the Central Clearing Office, having regard to the large cash payments made by the New Zealand Clearing Office to that office. The matter is at present under discussion with the Central Clearing Office, and finality has not yet been reached.

The statement contained in the appendix to my last report showing the transactions in the New Zealand Clearing Office Account with the Central Clearing Office has been brought up to date. An explanation of the accounts and the manner in which they are set out will be found in paragraph 50 of that report. The account runs up to the 31st December last only. The later figures have not yet been forwarded by the High Commissioner. It will be noted that the balance then standing to the credit of the New Zealand Clearing Office was £4,862 11s. 6d.

DECISIONS OF MIXED ARBITRAL TRIBUNALS.

49. Further publications of the *Recueil des Décisions des Tribunaux Arbitraux Mixtes* have been obtained and forwarded by the High Commissioner for New Zealand in London. These reports are indispensable for the purpose of advising New Zealand claimants or debtors of decisions bearing on their particular claims. Some idea of the number of cases reported may be gathered from the fact that the publications now in my possession cover over four thousand pages.

50. The last report of the Controller of the Central Clearing Office contains a summary by the Legal Adviser to that office of the decisions of the Tribunals announced since his previous report. I have reprinted hereunder the précis of those cases which are of particular interest to the New Zealand Clearing Office. The reference to the volumes of the *Recueil des Décisions des Tribunaux Arbitraux Mixtes* in which the particular cases appear have been inserted by me. Where no reference to this publication is given the issue containing the report of the particular case has not yet reached me.

(1.) *Article 296 of the Treaty of Versailles—Correct Claimant is Person with Legal Title.*

One of the questions as to which little assistance can be derived from the wording of the Treaty is as to whether, in order that a claim may be made effective, it is sufficient to show that the claimant is the person who, under the ordinary law of his country, is clothed with the legal title to make the claim, or whether regard must be had to the persons entitled to the beneficial interest in any moneys resulting from an award. This question has come before the Tribunal in more than one case, and certain principles may be regarded as having been laid down.

In the case of *Executors of William Klingenstein v. Maier* (No. 946), (*Recueil*, iv, p. 6) the claimants were the executors of a naturalized British subject who died on the 27th February, 1916, having left a will which was duly proved by the claimants, under which several persons of German and American nationality, as well as of British nationality, were entitled to substantial benefits. The claim was under Article 296, for the sum of £3,657 4s., being the sterling equivalent of M.75,000, outstanding on a loan made by the testator to the debtor, together with interest thereon. The debtor did not dispute the amount of the debt, but contended that the claim could only succeed as to a part thereof corresponding to the proportion of the testator's estate to which the beneficiaries of British nationality might be found to be entitled, and objection was also taken to the fact that the will had not been proved in Germany, the country of the debtor. The Tribunal (Second Division), however, held that, according to the law of England, the right of the testator to receive payment devolved on the claimants, and it was they who were entitled to enforce payment of the debt when the Treaty came into operation. Moreover, by virtue of the comity of nations, the claimants were *prima facie* entitled to recognition in any country in which it might be necessary for them to sue in order to recover assets to which the testator was entitled, subject to their compliance with any formalities prescribed by the *lex fori*. The Tribunal in that case constituted the *lex fori*, and its rules of procedure did not require compliance with any formality beyond the proof which had been given of the title vested in the claimants by virtue of the probate granted by the High Court of Justice in England.

Upon the question as to the beneficial interest, the Tribunal did not consider it its duty to inquire in any particular case as to the ultimate destination of funds which a British or German national might seek to recover before it. It merely had to determine whether, within the meaning of Article 296, a debt was due from one party to the other. It was for the forum of the creditor's own country to determine, wherever necessary, what rights, if any, others might have against him in respect of the sum which he recovered. Such a duty, indeed, the Tribunal was not in a position satisfactorily to discharge, especially where, as in the case of a claim by executors, the attempt to do so might involve a task akin to that of the administration of the testator's estate.

The Tribunal accordingly decided that there was a debt within the meaning of Article 296 for the amount claimed due from the debtor to the executors of the will of William Klingenstein, and directed a corresponding credit to be made by the German Clearing Office.

A similar principle, in so far as regards claims under Article 296, is to be extracted from the decision in the matter of *F. G. Eckstein and Another v. Deutsche Bank* (No. 1769), (*Recueil*, iii, p. 758), being a case taken up by the British Clearing Office. The creditors were British trustees of a pre-war settlement under which they were to pay part of the income to a German national resident in Germany, and accumulate the balance, which was to be paid to the children of the German national on their attaining the age of twenty-one.

The securities representing the funds were held by the Deutsche Bank at Berlin, against whom the claim was made, and the latter bank had, in accordance with pre-war directions, been collecting the annual dividends and paying them into an account in the name of the creditors, subject to a deduction in respect of the annuity to the German national which the bank had continued to pay during the war. The balance accumulated during the war to the creditors' account at the bank amounted on the 10th January, 1920, to the mark equivalent at the Treaty rate of exchange of the sum of £1,360 9s. 6d.

The German Clearing Office contested the claim on the ground that the trustees could only claim on behalf of the German national and his children who were the real creditors. The Tribunal considered that this was not an answer to the creditors' claim, for it was to them alone to whom the funds in the hands of the Deutsche Bank became due and payable during the war. All that the German nationals had was a right, a chose-in-action, against the creditors. They distinguished the claim from one for compensation under Article 297, such as in the case of *F. Lederer* (deceased) *v. German Government*, referred to below, on the ground that the case before them came under Section III, Part X, of the Treaty, which prescribed that debts due on the 10th January, 1920, by a German national to a British national were to be settled by way of the Clearing Offices. They accordingly decided that there was due from the debtors to the creditors the sum of £1,360 9s. 6d., and directed a credit accordingly.

(2.) *Article 297 of the Treaty of Versailles—Correct Claimant defined—Decisions regarding Article 296 distinguished.*

Whilst the principle as to claims by executors and trustees under Article 296 appears to have been settled by these two decisions, the Tribunal (First Division) has made an important distinction in claims for compensation under Article 297 (e) and proceeds of liquidation credited under Article 297 (h) (1).

In the case of *Executors of F. Lederer* (deceased) *v. German Government* (No. 439), (*Recueil*, iii, p. 762) the executors of a British national claimed the sum of £4,010 18s. 2d., together with interest which had been owing to