As to (*a*), the creditors had in May and July, 1914, bought 100 shares for the debtors, and had continued these from account to account, the bargain remaining unclosed throughout the war. The creditors' claim was made up in respect of (1) purchase price, commission, and contract stamp; (2) contango charges; (3) 5 per cent. interest on the average balance, which they stated to be owing from the debtors; credit being given for (1) remittances, (2) dividends, (3) the average price of the shares on the last account day prior to the 10th January, 1920.

As to (*b*), in 1912 and 1913 the creditors had purchased fifty shares on behalf of the debtor. The shares were taken up, and the debtors paid one-half of the purchase price and borrowed the remainder from the creditors. The shares remaining in the hands of the creditors were subject to the charge of the British Government. The creditors claimed that the sum advanced on loan was, by agreement, to carry interest at 1½ per cent. above bank rate; but this was contested by the German Clearing Office, who also contended that such a variable rate of interest is not within the exceptions to the rate provided for by paragraph 22 of the Annex to Section III, Part X, of the Treaty.

As to (*a*), the case was adjourned for further evidence to be produced as to the manner in which the 100 shares referred to were dealt with by the creditors. As to (*b*), the Tribunal were of opinion, following their decision in Schwerdt *v.* Frankfurter Bank (No. 847), (*Recueil*, iv, p. 970), that the rate of interest, though variable, fell within the provisions of paragraph 22 of the Annex to Section III, Part X, of the Treaty. In respect of (*b*), therefore, they awarded the creditors the sum claimed by them, together with interest at 1½ per cent. above bank rate on part thereof from January, 1920, until crediting.

(9.) *British Accepting Houses—Cold Storage Bills.*

The liability of German firms to indemnify British accepting houses against the full amount for which the latter became liable in respect of so-called "cold storage" bills, and which was in principle already decided in the cases of F. Huth & Co. *v.* Fahr & Setzer (No. 6), (*Recueil*, i, p. 286) and Fruhling & Goschen *v.* Breyer (No. 53), (*Recueil*, i, p. 860), to which reference was made in my report for the year 1922, has come again before the Tribunal on subsidiary points. In F. Huth & Co. *v.* Beyer (No. 805), (*Recueil*, iv, p. 2) a special defence on the facts of the case was relied on by the German debtor—namely, that certain bales of wool which were his property were held on behalf of the creditors as collateral security by another German company, and that after the outbreak of war these bales were requisitioned by the German Government, and subsequently released on payment of a sum of money which was eventually transferred to the Treuhander. The debtor therefore claimed to be released from his liability to the extent of the sum so transferred, while the creditors contended that, the bales being merely collateral security, they were under no obligation to resort to them for the satisfaction of the debt, and that in fact they had never done so.

The Tribunal found as a fact that when the wool was taken over by the debtor, who purchased it from the German Government, he paid the sum in question to the other German company on behalf of the military authority, and that subsequently, in August, 1917, that sum came into the hands of the Treuhander. They accordingly found that at the time the debtor paid the amount in question he was not freed from his debt to the creditors, and they did not consider that the subsequent events affected his position as regards the latter firm. The debtor was therefore under a liability to indemnify the creditors for the full amount claimed.

On the other hand, in a claim which came before the Second Division—F. Huth & Co. *v.* Goeters (No. 2128)—in which the German debtor had under German law been compelled to pay what he alleged to be owing by him in respect of "cold storage" bills to the compulsory administrator of F. Huth & Co. in Germany, it was held that such payment did not completely discharge the debtor from his liability to indemnify the creditors from liabilities incurred by them in respect of the bills of exchange. The Tribunal found that the effect of these payments made in pursuance of the exceptional war legislation of Germany had in law as between the parties the same effect as if they had been made to F. Huth & Co. at the date when they were so made to the administrator in Germany, and that such payment accordingly *pro tanto* discharged the debtor from his obligation to indemnify the creditors against liabilities incurred by them in respect of the bills.

In the case of Goschens & Cunliffe *v.* Hinrichsen & Co. (No. 846) the "cold storage" bills for which the creditors had become liable shortly after the outbreak of war were drawn against certain shipments, including one of 183 drums of bean-oil on board the s.s. "Silesia," which on the outbreak of war was at Batavia and there remained interned. In November, 1914, a proposal was made by the debtors to the creditors that an Antwerp firm should take up the bills for the bean-oil, but this was never carried out, as the vessel never reached Rotterdam—a term which was required by the Antwerp firm. The debtors contested the obligation to indemnify on the ground that the creditors did not act with reasonable care and prudence, and that they ought not to have agreed to the addition of the term that the ship was to arrive in Rotterdam, the goods being stated to have been shipped on a c.i.f. contract under which the Antwerp firm were compelled to find the necessary funds irrespective of the position of the ship.

The Tribunal decided that the creditors had acted reasonably, and that, on the basis of the principles enunciated in F. Huth & Co. *v.* Fahr and Setzer and Fruhling and Goschen *v.* Breyer, they were entitled to be indemnified.

(10.) *Contracts relating to the Sale of Goods—Dissolution of Contracts under Article 299 of the Treaty of Versailles.*

In claims relating to sale of goods the question frequently arises whether, having regard to paragraph 2 of the Annex to Section V, Part X, excepting from dissolution under Article 299 certain classes of contracts, including contracts having for their object the transfer of real or personal property where the property had passed or the object had been delivered before the parties became enemies, the goods the subject of the claim had passed under the contract so as to enable the vendor to claim the price as a pecuniary obligation, or whether they remained the property of the vendor, thus possibly giving rise to other claims.

This question was considered by the Tribunal in the cases of Antony Gibbs & Sons *v.* Gumprecht & Co. and Others and the German Government (No. 120) and Gumprecht & Co. *v.* Antony Gibbs & Sons (No. 1586), (*Recueil*, iii, p. 779), which were heard jointly.

In the first of the two cases the British claimants had agreed to sell goods c. and f. Hamburg, to be shipped per steamer of the Kosmos Line. The goods were shipped, but on the outbreak of war the shipping documents were still in the claimants' possession. The goods had reached Hamburg, and the German Government required them for munitions. They obtained an order of the Commander of the Army Corps at Altona, directing the Kosmos Line to deliver to the respondents. The Tribunal held that the property in the goods had not passed, as the respondents had not received the shipping documents. Permission was given to join the German Government as respondents, and the Tribunal decided that the order of the military authorities constituted an exceptional war measure and entitled the claimants to compensation.

In the second case the British respondents agreed to purchase nitrate of soda c.i.f., the amount of the invoice to be due ninety days after the arrival of the bill of lading. The shipping documents were tendered to the British respondents during the war by the German claimants' agents in this country, but were not taken up. The vessel containing the goods was captured by a British destroyer, and the goods were condemned as prize. The Tribunal held that the property in the goods could only be transferred by the handing-over of the bills of lading, and that it had not therefore passed when the contract was dissolved. For the same reason there had been no delivery of the cargo to the buyers before the contract was dissolved. The German claimants alternatively contended that if the property had not passed, at any rate, according to the contract, the risk had passed and become the risk of the buyers, and that therefore any loss was to be borne by the respondents. As to this point the Tribunal were of opinion that any instructions given by the claimants to their agents as to the tendering of the shipping documents could not amount to an act done under the contract within the meaning of Article 299 (*a*). The contract was completely dissolved on the outbreak of war, and any term, express or implied, as to the passing of the risk had gone therewith before the goods were captured.