In the case of Strong & Co. *v.* Gebruder Muller (No. 1184) the British claimants sold goods on terms c.i.f. Hamburg, documents against acceptance. The goods were shipped and freight was paid, but the bills of exchange were not tendered until after the declaration of war. The bills were not accepted, and the claimants sold the goods and claimed the difference between the proceeds of sale and the value of the goods and freight paid. The invoice had stated that the goods were shipped on purchasers' account and risk.

The Tribunal (Second Division) held that they were not satisfied that the property in the goods had passed to the purchaser, or that the goods had been delivered before the parties became enemies. The contract was therefore dissolved under Article 299, and no claim could be made for any pecuniary obligation.

The question as to liability for goods consigned but not received was again raised in the case of Andreas Koch A.-G. *v.* Little (No. 1625), in which a claim was made against a British national for goods consigned to the debtor on the 5th May, 1914. The debtor denied having received the goods, but did not appear at the hearing. The Tribunal, however, were prepared to assume that the goods were not delivered, but were satisfied that they had been duly consigned on the 5th May, and that the goods had been lost prior to the 4th August. They therefore held that it was not necessary to decide in that case whether English or German law applied. The case had been argued by both Government agents on the footing that the contract was governed by German law, and the Tribunal had therefore dealt with it on that footing. The creditors were therefore held entitled to succeed, under German law, which saddles the purchaser with the risk upon the property being consigned, for the loss was held to have taken place prior to the 4th August. If English law applied the result would be the same, for under English law delivery under the terms of the contract, as proved to have existed in that case, would have been effected by the seller at his factory, and the property would have passed there to the debtor.

(11.) *Effect of Declaration of War upon Relationship between Principal and Agent.*

The principles which have already been acted on by more than one Tribunal in such cases as Maridort & Behrens (page 581 of Vol. I of the *Recueil*) and Schuster, Son, & Co. *v.* Deutsche Bank (No. 409), (*Recueil*, i, p. 518) were again applied by the Tribunal (Second Division) in the case of Wenner *v.* Engelhardt (No. 1168), (*Recueil*, iii, p. 760). The German debtor was acting as agent in Germany to the British creditor at the time when the war broke out, and in this capacity had custody of a quantity of cotton goods belonging to the creditor. Part of this stock was sold by the debtor, and the proceeds were paid by him into a German bank.

The Tribunal found as a fact that in selling the goods the agent intended to do what he believed to be best in the interests of the creditor in the new situation which had arisen, and in their view it followed juridically that, the contractual relation of principal and agent having been dissolved, the position of *negotiorum gestor* was thereafter assumed by the debtor, and the ordinary rights and liabilities incident to such relationship thenceforth came into operation. The Tribunal accordingly decided that there was a debt within the meaning of Article 296 due for the balance of account owing by the heirs of the debtor who had died during the war.

(12.) *Effect of Declaration of War upon Banker's Authority.*

A question somewhat similar to that decided in Schuster, Son, & Co. *v.* Deutsche Bank (see last year's report) arose for decision in Berliner Bank Institut *v.* Koop (No. 2065). A Berlin bank had an account for a British national, and held securities and collected dividends before the war. He instructed them to subscribe for German shares on his behalf, and remitted to them the first instalment. In October, 1913, a further instalment became payable, and was paid by the bank out of his account. It was disputed at the hearing whether there had been specific instructions for that payment, or whether it had been made by the bank in regular course. In 1919 the last instalment fell due and the bank paid it out of the account.

The payment made during the war was repudiated by the British national on the ground that the bank had no authority, but the Tribunal held that the shares belonged to the British national, who would as owner of the shares in any case have been liable to pay through the Clearing Office the call on the shares, and that the bank by paying the amount had released him from this liability and were therefore entitled to be reimbursed. The claim for reimbursement arose out of the pre-war relations under which the bank had undertaken to hold the shares and look after the interest of the creditor. In the Tribunal's opinion the bank acted reasonably and properly in paying the final instalment on his behalf. Although the contract, unknown to the debtors when they made the payment, must be deemed to have been dissolved in consequence of Article 299, there remained, under paragraph 674 of the German Civil Code, the obligation of the principal to repay to his agent expenses properly incurred. The bank was therefore entitled to set off such claim to reimbursement against the creditor's claim against them.

On the other hand, a bank is not, in the view of the Tribunal, entitled without any authority from the customer to apply money coming into his account from redeemed bonds by reinvestment in other bonds. In Lautaro Nitrate Co. Ltd. *v.* L. Behrens & Sohne (No. 608), (*Recueil*, iv, p. 37) the debtor bank held on the creditor's behalf Vienna Treasury bonds which became redeemable in May, 1916. In April, 1916, the Vienna authority made an offer to exchange the bonds for new bonds carrying higher interest, redeemable in May, 1921. The bank considered the offer advantageous, and, being unable to communicate with the creditors, they accepted it.

The Tribunal held that, although the bank never actually received and reinvested the proceeds of the original bonds, the transaction was legally a payment and reinvestment. They considered the question whether in normal circumstances a banker who, being unable to take his clients' order, decides to reinvest proceeds of securities which have become repayable, can legally bind his client thereby; and they held that the client would not be bound when the banker had no previous authority to reinvest money which came into the hands of the banker. An award was therefore given in favour of the creditors for the amount of the redeemable value of the original bonds.

(13.) *Definition of Term "German National" for the Purposes of Article 296 of the Treaty of Versailles.*

The Tribunal has in two cases—Duncan *v.* Duncan's Leinen Industrie A.G. (No. 1012), (*Recueil*, iii, p. 770), and Alfred Herbert Ltd. *v.* Alfred Herbert G.m.b.H. (No. 67), (*Recueil*, iv, p. 193)—followed their former decision in Chamberlain & Hookham Ltd. *v.* Solar Zahlerwerke (No. 36), (*Recueil*, i, p. 722), and that in James Dawson & Son Ltd. *v.* Balkanische & Handels Industrie A.G. (No. 748), and made awards to the creditor arising out of debts owing by the debtor on the footing that a company incorporated under German law and having its seat in Germany is to be considered as a German national for the purpose of Article 296. In the first of the above two cases the creditors owned a relatively large interest in the debtor company, and in the second case the creditor company owned the whole of the capital of the debtor company.

In General Electric Co. Ltd. *v.* Deutsche Gasgluhlicht A.G. (No. 1556), (*Recueil*, iv, p. 193), the debtors were shareholders in and controlled a British company, and for private reasons caused declaration of dividends to be delayed. Moneys of the British company were from time to time advanced to the debtors to be retained by them until a dividend should be declared, and were by arrangement placed in the hands of German bankers at the disposal of the debtors, who obtained payment from the bank during the war. The claim was by an assignee of the British company. The debtors contended that the original creditors were a subsidiary company of the debtors, and that the disposal of the money was exclusively the right of the debtors in whom was the beneficial ownership of the money.

The Tribunal held that, although the debtors had the control of the British company, which was the original creditor, they had no other rights than that of shareholders, and they could not appropriate funds of the company otherwise than by getting the company to declare dividends. As the company had not declared dividends during the war, the amount they received was only an advance, and was repayable under Article 296.