to the jurisdiction of the British Court, and according to English law the judgment created a new debt in which the old debt merged. Even admitting that in Germany execution could not be issued on the British judgment, a new debt sprang from the judgment, and the obligation therefore arose not out of the sale but out of the judgment. Judgments under British law carry interest at 4 per cent., and the amount of the judgment with interest at 4 per cent. from the date thereof was awarded.

(19.) *Unliquidated Damages—Not claimable under Article 296 of the Treaty of Versailles, but allowable as a Set-off.*

The Tribunal have already held that a claim for unliquidated damages cannot be regarded as coming under Article 296. In the case of Empire Transport Co. Ltd. *v.* Blumenfeld (No. 839), (*Recueil*, iv, p. 205), the British creditors claimed freight from the debtors who contested the debt, claiming a set-off for damages caused to the cargo owing to unseaworthiness of the vessel. The Tribunal accordingly had to consider whether such damages could be set off in a claim under Article 296. In their judgment they referred to the fact that, under Clearing Office procedure where there are cross-claims which are both debts, the one is deducted from the other and the balance only credited, and that the British Clearing Office has always contended that damages which are only a matter of arithmetical calculation constitute a debt under Article 296. They accordingly held that whilst claims for unliquidated damages cannot be presented through the Clearing Office as debts, nevertheless, if a claim for damages arises out of the same transaction as that under which a debt is claimed, and its ascertainment is merely a matter of calculation, it can be set off in diminution or extinction of the debt. In the present case the quantity of cargo damaged had been investigated at the time by persons appointed under German law, and the damage could therefore be directly calculated from the market price, which would be readily ascertainable. The validity of the claim for damages would form the subject of investigation by the Tribunal.

(20.) *Claims under Article 297 of the Treaty of Versailles—Seizure by German Authorities of Goods in Occupied Territory.*

Turning more particularly to the cases decided under Article 297, and the question of claims against the German Government for seizure of goods in occupied territory which was discussed in Tesdorpf & Co. *v.* German Government (No. 489), (*Recueil*, iii, p. 22), to which allusion was made in last year's report, a claim was made—Ralli Bros. *v.* German Government (No. 485), (*Recueil*, iv, p. 41)—by a British firm in respect of the seizure by the German military authorities of cotton and other property which was at the outbreak of war stored at Antwerp. As a result of the seizure the cotton was sent to Bremen, and the taking-over values of these goods were assessed on various dates in 1916 by the German Imperial Indemnity Commission.

The claimants asked for compensation under Article 297 (*e*) for damage sustained by them by reason of the removal into Germany and the subsequent disposal of the goods, and in the alternative claimed under Article 297 (*h*) the value of the cotton as assessed.

The claim was based on two distinct contentions: (1) That the seizure of the goods in Belgium, being contrary to international law, was to be disregarded, that the cotton was still the claimants' property when carried off to Germany, and was whilst in German territory subjected to exceptional war measures causing them damage for which they were entitled to compensation under Article 297 (*e*); (2) that by taking the said measures under German law or under the very orders given for the seizure, the German authorities assumed the obligation to pay the value of the goods which were seized, and that therefore there had been in Germany a sum due to the claimants in the nature of a cash asset to be considered and dealt with in accordance with Article 297 (*h*).

The Tribunal which, in the Tesdorpf case, had found that the requisition of coffee was substantially in pursuance of Rule 52 of the Hague Convention of October, 1907, notwithstanding that there had been a certain misuse of the goods, in the present case were unable to accept the view put forward by the German Government that the seizure of the cotton was within the limits of Rule 52, and were therefore of opinion that such requisitions were not in accordance with the Hague Convention.

Notwithstanding this, the Tribunal were unable to overlook the fact that the goods, though contrary to international law, had whilst in Belgium been requisitioned by the German authorities for the purpose of immediate appropriation, and that the later dealings with them in German territory were rather the use by the German State of the goods previously taken from their legitimate owner. However unjustified that seizure may have been, it appeared hardly possible for the Tribunal to apply the principles of private law concerning illegal dealings by private persons with the private property of others to the acts of a belligerent State in the use or misuse of its military power in occupied territory.

Following upon this, and after an examination of the words used in Part VIII and Part X of the Treaty respectively, the Tribunal came to the conclusion that Article 297 (*e*) appeared to rely on the distinction made in the doctrine of international law between such measures as a State was taking within its own territory by virtue of its territorial sovereignty and those measures taken and carried out by its authorities in the enemy country invaded and occupied by its armies. Requisitions in invaded enemy territory belong to the second category. It therefore appeared that, if the framers of the Treaty meant to appreciate such requisitions not at the date when and the place where they were carried out, but according to the later use which Germany may have made in German territory of the goods requisitioned in occupied territory, they would have given expression to this distinction, the more so because requisitions within and beyond the limits of Article 52 of The Hague Convention were during the war carried to unprecedented lengths by the German armies. This view was strengthened, in the opinion of the Tribunal, by the special reference to occupied territory in the provisions of Section IV, Part X, other than Article 297 (*e*), and was also supported by the wording of Annex 1, paragraph 9, to Section 1 of Part VIII, according to which compensation under Article 232 included damage in respect of all property which had been carried off, seized, &c. by the acts of Germany or her allies.

In the opinion of the Tribunal the framers of the Treaty had therefore placed under Article 232, and not under Article 297 (*e*), the compensation stipulated for goods seized in occupied territory. The Tribunal mentioned that the same view had been taken by French, American, and other commentaries, but they did not refer to the fact that an important decision to the contrary effect had been given by the Franco-German Mixed Arbitral Tribunal in the case of La Czenstochovienne *v.* German Government, reported at page 926 of the third volume of the *Recueil*.

As to the argument which had been adduced as to the crediting of the proceeds of sale of the goods under Article 297 (*h*), for the reasons already given the Tribunal were of opinion that no claim under that article could arise, and they further added that paragraph (*h*) of that article was directly connected with (*b*) and (*e*), and its purpose was to determine the way in which the provisions of (*b*) and (*e*) were to be carried out with regard to proceeds of sale or to cash assets of enemies. It followed that (*h*) could only be applicable in the field and within the limits of (*b*) or (*e*), and since neither of these two provisions could apply in the case before them the claim could not succeed.

The Tribunal followed their decision in Ralli Bros. in Bombay Co. Ltd. *v.* German Government (No. 1249), Dymes & Co. Ltd. *v.* German Government (No. 1001), Wenner Ltd. *v.* German Government (No. 852), and in other cases.

In the case of H. Ford *v.* German Government (No. 352), (*Recueil*, iv, p. 279), the cases of Tesdorpf and Ralli Bros. were distinguished on the following grounds: The claimants were a British company who owned certain parcels of wheat lying at the outbreak of war in the port of Antwerp. At a subsequent date the wheat was transhipped into lighters which proceeded into German territory, and a sale was effected by a German company called the Getreide Commission Aktiengesellschaft. This company, which had been founded prior to the war for dealing in cereals, in October, 1915, addressed to the claimants' agents at Antwerp a letter crediting the claimants with M.104,359·72 in respect of this wheat. The claimants claimed compensation in respect of the wheat which it was alleged had been