

It was contended on his behalf that on his internment his personal effects must be taken to have been subjected to exceptional war measures, and that in consequence they were covered by paragraph 6 of the Annex to Section IV, Part X, under which Germany is responsible for the conservation of property of Allied nationals which has been subjected to exceptional war measures. The Tribunal held that the claim was not covered by the above paragraph and refused the claim for compensation, relying on former decisions that internment is not an exceptional war measure within the meaning of Article 297 (e).

This decision is contrary to decisions of the Franco-German Tribunal, such as *De Luck v. Etat Allemand* (*Recueil* iii, p. 634) and *Wernle v. Etat Allemand* (*Recueil*, iii, p. 932), in which, whilst declaring themselves incompetent to grant compensation for expenses or damage to health incurred through internment, they held that Article 297 (e) of the Annex applies to damage to Allied property rights or interests, though such damage arose through measures taken against the owner, and awarded compensation in respect of such damages.

(27.) *Anglo-Austrian Mixed Arbitral Tribunal—Claim for Interest on Proceeds of Liquidation not allowed.*

A question of considerable importance was considered and decided in *re M. Thorsch & Sohne* between the Austrian Clearing Office and the British Clearing Office (1924 A/2). Messrs. M. Thorsch & Sohne, Austrian nationals, at the time of the outbreak of war owned and held certain shares in an English company. In pursuance of war legislation in Great Britain these shares were sold during the war. On the 31st May, 1922, the Austrian Clearing Office were credited by the British Clearing Office with the net proceeds of the sale of the shares in accordance with Article 249 (h) of the Treaty of St. Germain-en-Laye. In the pleadings put forward on behalf of the Austrian Clearing Office it was contended by that office that they were entitled to a further credit in respect of interest on the sum in question at the rate of 5 per cent. per annum from the date of the sale of the shares until the 31st May, 1922, which contention was based upon the combined effect of paragraph 22 of the Annex to Article 248 and paragraph 14 of the Annex to Section IV of Part X. It was further contended that in any event it was not permissible for the British authorities to retain and use for their purposes the fruits of the proceeds of liquidation over which they had exercised control since May, 1917, and it was said that any earnings of the fund constituted "*quidquid ex re nasci et renasci solet*"—i.e., an accessorium of the principal, to which the adage "*accessorium sequitur principale*" was to be applied—and on this footing an account was asked for showing the profits earned by the British Government in respect of the proceeds of liquidation.

At the hearing the case was argued mainly upon the question of interest on the proceeds of liquidation being provided for under the Treaty, and reliance was placed on a decision in *Compagnie Continentale du Pegamoid v. Preussische Staatsbank et Etat Allemand* (*Recueil*, iii, p. 561), before the German-Belgian Mixed Arbitral Tribunal. The Tribunal held that nothing was due from the British Clearing Office to the Austrian Clearing Office by way of interest or otherwise in respect of the proceeds of liquidation in question.

It would appear, therefore, that this decision is a clear authority for the proposition that, so far as Austrian nationals are concerned, it was not the intention of the framers of the Treaty that either interest on or the fruits or profits of proceeds of liquidation should be accounted for under the provisions of Article 249 (h) (1), and that no such claim can be maintained.

AMENDMENT OF WAR REGULATIONS DATED 22ND FEBRUARY, 1916.

51. By paragraph 4 of the War Regulations dated 22nd February, 1916, which are continued in force by virtue of the War Regulations Continuance Act, 1920, an executor or administrator of an estate of a deceased person was forbidden, unless he obtained the consent of the Hon. the Attorney-General, from distributing or paying any part of the assets to any beneficiary or creditor who was an alien enemy. The definition of "alien enemy" was such that it included persons who had at any time been subjects of the ex-enemy States.

If such a beneficiary first became entitled to the share of the estate subsequently to the date of the coming into force of the Treaty of Peace with the country of which he is or was a subject there is no justification or necessity for imposing any restriction on his right to payment. I therefore made the suggestion that as the regulations were issued merely as a means of preventing the distribution to alien enemies of property which the Government was entitled to take possession of and retain under the various war measures, it was desirable to amend the regulations in such manner as to exclude from their operation estates where the deceased had died subsequently to the coming into force of the Treaty of Peace with the State of which the beneficiary had been or was a subject.

As the Hon. the Attorney-General approved of this suggestion an amending order was drafted, and it duly received approval, and was gazetted in *New Zealand Gazette* No. 63, of the 2nd October, 1924, at page 2251. In terms of this amendment it is no longer necessary to seek the Hon. the Attorney-General's consent before payment to an "alien enemy" beneficiary of an estate where such beneficiary's interest arose after the date of the coming into force of the Treaty of Peace with the State of which such beneficiary is or was formerly a subject.

52. A somewhat similar position arose in regard to clause 2 of the above regulations, which provided that without the consent of the Hon. the Attorney-General no person should make application to the Supreme Court for probate or letters of administration of any person who at his death was an "alien enemy," and I made the further recommendation that the clause should be amended so as not to impose any restriction on the right of any person to apply for administration of the estate of a deceased "alien enemy" who had died subsequently to the coming into force of the Treaty of Peace with the State of which he had been a subject.

The amending order giving effect to my recommendation was gazetted in *New Zealand Gazette* No. 79, of the 27th November, 1924, at page 2830.

53. A further suggestion was made that the Hon. the Attorney-General might think fit to suggest to the Judges of the Supreme Court the desirability of having the rule of Court (Rule 531BB), issued to ensure compliance with the above regulation, amended in the same manner. The amending rule was gazetted in *New Zealand Gazette* No. 77, of the 20th November, 1924, at page 2790.