The Tribunal (First Division) were of opinion that this provision of the Treaty governs all contracts of insurance to which it applies, and in so far as it conflicts with the contract it is to be taken as overruling the contract. By the operation, therefore, of the above paragraph, the day of the death of the assured is to be taken as the day on which the principal sum became due under the policy, and interest runs from that date.

This decision was followed by the same Division in the British claim of Zillessen *v.* Concordia Colnische Lebens Versicherungs (No. 1751), (*Recueil*, v, p. 35).

(7.) *Principal and Agent.—"Reasonable Conduct."*

In Charles *v.* Lomer (No. 2125), (*Recueil*, v, p. 33), the Tribunal (First Division) again adopted the principle of making their award depend upon reasonable conduct in relation to events which happened subsequently to the outbreak of war, a test which has frequently been applied in cases between principals and agents.

The creditor prior to the war had acted as London agent to the debtor in the purchase of furs, and had been in the habit of making himself liable on purchases for his principal, looking to the latter for indemnity and for funds to enable him to pay for the goods purchased. As a result of the declaration of war the debtor was unable to provide the creditor with the necessary funds to pay for certain purchases, and accordingly allowed the goods to be sold by the brokers from whom the purchases had been made in accordance with the conditions of sale. The creditor became liable for a balance of £2,079 17s. 7d., representing the differences between the prices at which the goods were purchased and at which they were sold and other expenses, and was compelled to pay this sum to the brokers.

The German Clearing Office contested the claim on the ground that it was made in respect of a contract of purchase which was cancelled under the Treaty, but the Tribunal considered that the claim arose not under a contract of purchase, but under the contract of agency between the parties, and that by incurring thereunder a liability on behalf of the debtor the creditor had performed an act giving rise to a pecuniary obligation reserved under Article 299 (*a*), and therefore falling within Article 296 (2). The creditor had, in the opinion of the Tribunal, acted reasonably, not being under any obligation to find out of his own pocket the whole of the balance of the purchase price, and he was therefore entitled to reclaim the sums of money which he had expended. They further awarded him interest at the rate of 6 per cent. per annum, that being the rate at which it appeared from pre-war accounts that dealings between the parties was customary.

(8.) *Government Guarantee of Debts established through Clearing Office Procedure.—Article 296 (b) of the Treaty of Versailles.*

The meaning of the term "formal indication of insolvency" in Article 296 arose again for consideration in the case of Baron & Salaman *v.* Max Arendt (No. 2101), in which the British creditors claimed against the debtor a pre-war balance of a stockbroking account in which they acted as brokers for the debtor.

The claim was contested by the German Government Agent on the ground that on the 20th May, 1914, the debtor had made an oath of discovery as to his assets (*Offenbarungseid*), and that he was therefore, before the war, in a state of failure, or had given formal indication of insolvency. From the official file relating to the swearing of the oath in question, which the Tribunal had before them, it appeared that execution under a judgment had been levied and proved fruitless, and that the assets disclosed on oath by the debtor were insufficient to discharge the liabilities in respect of which he had thereupon been called upon to swear the oath.

In those circumstances the Tribunal were of opinion that the swearing of the oath at the order of a Court was a most formal act, and that where the deponent disclosed assets which are insufficient to discharge claims notified against him, it could not be said that it is not an indication of insolvency. The creditors' claim therefore was not one which was guaranteed by the German Government. The Tribunal, having regard to a statement by the creditors that certain dividends had been offered or paid during the war, allowed the point to remain open for six weeks with a view to the creditors, if so advised, presenting an amended case within that period.

(9.) *Article 296 (2) of the Treaty of Versailles.—Suspension of Execution of Contract on account of the Declaration of War.*

With reference to the case of the Pacific Phosphate Co. Ltd. *v.* Anglo-Continentale, &c., Guano Works (No. 1305), (*Recueil*, v, p. 3), referred to in last year's report, which was adjourned for further information on certain points, and in which the German Government Agent submitted that, in so far as concerned Article 296 (2), there was no suspension of payment in view of the fact that the creditors could at any time during the war have been paid by the branch office of the debtors in London, the case came on for further hearing before the Tribunal (First Division). On the further information supplied the Tribunal held that, although a payment of £2,000, made in July, 1915, *prima facie* appeared to substantiate the German Government's Agent submission, the true position was that this payment was made by consent of the British Board of Trade and on a certain condition, and that later during the war the debtors' London branch was sequestrated as an enemy concern and sold by the British Custodian.

The Tribunal, therefore, were of opinion that, with regard to the balance due from the debtors to the creditors in respect of goods consigned to the debtors, there was a suspension of payment. Consequently the creditors were entitled to recover the balance due under the provisions of Article 296 (2).

In two cases of Burns, Philp, & Co. Ltd. *v.* Nord-Deutsche Lloyd (Nos. 502 and 1453), (*Recueil*, iv, p. 627), the British creditors claimed a sum of £6,263 17s. 4d. against the German debtors in respect of a pecuniary obligation alleged to arise out of a contract between the two parties, and, in the alternative, in respect of a debt payable before or during the war and arising out of a bill of lading dated July, 1914, whereby the debtors agreed to carry certain bags of copra belonging to the creditors from Sydney to Hamburg on the s.s. "Pommern." The bill of lading contained certain exceptions permitting deviation, and a provision that in case the ship should be prevented from reaching her destination by the hostile act of any Power the master might discharge the goods into any convenient port, where the ship's responsibility should cease.

On the 3rd August, 1914, in compliance with a wireless message, the master caused the vessel, which had already started on her outward voyage, to turn and run for Honolulu, then a neutral port. The copra was eventually sold in October, 1914, for £11,482 3s. 6d., and the creditors' claim was for the difference between that sum and £17,746 0s. 10d. stated by them to be the value of the goods.

The debtors relied on the exceptions and conditions in the bill of lading, and further contended that the claim was one for damages, and if it arose at all did not arise on the contract, but out of a breach of the contract, and was in consequence not within Article 296 (2).

The Tribunal considered that the parties intended the contract to operate under English law, which makes a clear distinction between deviation in the course of the voyage and abandonment of the voyage. In the opinion of the Tribunal, the captain must be considered as having abandoned the voyage, and they arrived at this conclusion after an examination of a number of English authorities, in particular The "Teutonia" (L.R. 4 P.C., page 171). Once it was decided that the voyage had been abandoned, the contract contained in the bill of lading must be deemed to have been repudiated, and the carrier could no longer rely on the terms thereof or on the exceptions in his favour permitting of deviation. The Tribunal proceeded to give directions for the parties to arrive at the amount of the damage suffered by the claimants, and held that such damages could not constitute a debt under Article 296 (2), but would be recoverable by the claimants under the provisions of Article 304.

In pronouncing their decision the Tribunal stated that such decision had been arrived at by a majority, the minority holding that abandonment of the voyage before the 4th August, 1914, with the consequent dissolution of the contract, had not been sufficiently proved; and, further, that the deviation was in accordance with the exceptions