

was residing in Germany on the date of the coming into force of the Treaty, the claim may not be accepted by the German Clearing Office.

(ix.) *Losses incurred owing to the Outbreak of War.*—Claims arising out of the non-fulfilment of contracts which was caused by the outbreak of war present considerable difficulty, and each case must be dealt with on its own merits. From the English Law Reports it appears that the Courts are endeavouring to solve this vexed question on two lines :—

(a.) Considering whether there was necessarily an implied term in the particular contract that the happening of an event of a particular character should dissolve the contract ; and

(b.) If so, ascertaining whether what has happened is an event of that particular character. Where they have held, as they generally have, that there is an implication that an event reasonably likely to cause such difficulty or delay in performance as to render the contract commercially impossible, or to frustrate the commercial adventure, renders the contract void, they have been disposed to hold that the war itself was of so serious a character and so indefinite and indeterminate a length that delay caused by it is such a frustration—still more if there is direct prohibition of performance during the war.

(x.) *Goods on German Vessels interned in Neutral Ports.*—Several claims against German steamship companies have been received by the Clearing Office in regard to expenses and losses incurred owing to German vessels which were carrying cargo for New Zealand seeking refuge in neutral ports on the outbreak of the war. The copies of the German bills of lading produced to this Office contain a paragraph specifically contracting the German steamship company out of any liability in regard to transshipment charges or losses caused by the vessel seeking refuge in a neutral port on the outbreak of war. It is therefore considered that the New Zealand claimants have but a slight chance of recovering the amount disbursed by them in arranging for their shipments to be forwarded to New Zealand.

(xi.) *Unused Steamer Tickets.*—Where a German shipping company has failed to carry out its contract with a passenger of British nationality such company remains after the war liable to pay him damages for its breach of contract, and the measure of such damages would, as a rule, be the actual loss sustained. In all cases, however, this right to recover damages would be subject to two conditions :—

(a.) That the original steamer ticket contained no provision contracting the shipping company out of any such liability ; and

(b.) That the contract itself was not of such a character as to be deemed in law to have become impossible of performance owing to the war.

The Central Clearing Office, London, advises that, while claims in respect of the unexpended portion of steamer tickets may be recoverable under Article 296 of the Treaty, no claim can be preferred either under that article or under Article 297 in respect of extra expenses incurred by the holders of such unexpended portions owing to the non-fulfilment of the contract. Claimants are entitled to recover the difference between the amount paid for the return ticket and the cost of a single ticket for the journey completed by such claimants.

(xii.) *Deduction of Cash Discount.*—In cases where under the terms of the contract the debt is subject to a cash discount if paid before a certain date such discount may be deducted from the amount of the claim, provided that the payment fell due subsequently to the 4th August, 1914.

(xiii.) *Mixed Partnerships.*—Where a firm consists of British nationals and aliens, the proportionate interest of the British national or nationals must be ascertained, and the share of the debt due to such British national or nationals may be claimed through the Clearing Office.

(xiv.) *Interest on Debts.*—In the collection of claims received through the German Clearing Office against New Zealand firms and nationals considerable difficulty has been experienced by the Clearing Office in regard to the interest due under the Treaty on such debts. It is therefore considered desirable to quote paragraph 22 of the annex to Article 296, which provides for interest :—

“ 22. Subject to any special agreement to the contrary between the Governments concerned, debts shall carry interest in accordance with the following provisions :—

“ Interest shall not be payable on sums of money due by way of dividend, interest, or other periodical payments which themselves represent interest on capital. The rate of interest shall be 5 per cent. per annum, except in cases where, by contract, law, or custom, the creditor is entitled to payment of interest at a different rate ; in such cases the rate to which he is entitled shall prevail. Interest shall run from the date of commencement of hostilities (or, if the sum of money to be recovered fell due during the war, from the date at which it fell due) until the sum is credited to the Clearing Office of the creditor. Sums due by way of interest shall be treated as debts admitted by the Clearing Offices, and shall be credited to the creditor Clearing Office in the same way as such debts.”

As a general rule interest is not payable on debts unless express provision is made therefor.

(xv.) *Rate of Exchange.*—Paragraph (d) of Article 296 provides that debts shall be paid or credited in the currency of the Allied Power concerned. If the debts are payable in some other currency they must be paid or credited in the currency of such country at the pre-war rate of exchange, which is defined as the average cable transfer rate prevailing in the Allied or Associated country concerned during the month immediately preceding the outbreak of war between the said country concerned and Germany. The rate has been fixed as follows :—

(a.) Between Great Britain and Germany—at 20·5075 marks = £1 ;

(b.) Between New Zealand and Germany—at 20·30 marks = £1.

If a contract provides for a fixed rate of exchange governing the conversion of the currency in which the debt is stated into the currency of the Allied or Associated country concerned, then the above provisions concerning the rate of exchange shall not apply.