Decisions of the Mixed Arbitral Tribunals.

53. The more important of the decisions delivered by the various Mixed Arbitral Tribunals established by the Allied and Associated Powers and the former enemy States in accordance with the provisions of the Treaties of Peace are printed and published by a French firm of legal publishers under the title of the *Recueil des Décisions des Tribunaux Arbitraux Mixtes*. The reports are printed in the language in which the decisions were delivered—*e.g.*, English, French, Italian. After considerable difficulty the High Commissioner has succeeded in obtaining for this Office the complete issue of this publication, which has proved of great value in supplying New Zealand claimants or debtors with details of decisions bearing on the claims in which they are interested.

54. In the report of the legal adviser to the Controller of the Central Clearing Office, London, the chief matters decided by the Anglo-German Mixed Arbitral Tribunal since his last report have been summarized. The precis of those cases which are of particular interest to New Zealand claimants have been reprinted hereunder. The headings and the references to the report published in the *Recueil des Décisions des Tribunaux Arbitraux Mixtes* have been inserted by this Office and do not appear in the original summary.

(1.) *Debts owing by or to Partnerships consisting of Persons of Different Nationalities.*

One of the most important decisions was that of In re Hardt & Co. *v.* Stern (*Recueil*, iii, p. 12)—the German Clearing Office against the British Clearing Office (No. 524)—in which the Tribunal laid down the principles which were to govern the vexed question of "mixed partnerships."

The Treaty, whilst including under Article 296 debts due by a national of one of the Contracting Powers to a national of an Opposing Power, gave no indication of what the procedure should be in cases where the debt was owing to or by persons jointly, some of whom were British or German nationals and some of whom were nationals of a neutral or ex-enemy State. The most common instance of this is a partnership consisting of persons of different nationalities, and the matter was still further complicated by the fact that under English law partners are liable for the debts of the firm, not severally but only jointly, whilst under German law the liability is both joint and several. Further, under the laws of neither State was a partnership to be regarded as a separate juridical entity having a separate nationality of its own, irrespective of the nationality of its members. This had already been decided as to German partnerships in the case of Wydra & Söhne *v.* Hyman (No. 16), (*Recueil*, i, p. 291).

The British Clearing Office had, in cases where claims by German creditors had been put forward against such a mixed partnership carrying on business here, refused to admit more than a proportion of the debt equivalent to the interest of the British partners in the capital, whilst, on the other hand, claims by British nationals had been put forward against the German member of a mixed partnership in Germany for the total amount of the debt owing by the firm, on the ground that, as above stated, the liability of the German partner for the whole debt was not merely joint but several. A deadlock had thus occurred, as the German Clearing Office, whilst unable to deny that the liability of its nationals was several, had refused to admit that two different principles could govern the two cases, and in consequence very large numbers of claims remained unsettled, interest in the meantime accumulating upon the unadmitted debts.

The difficulty was at last solved by the decision in the above-mentioned case of In re Hardt & Co. *v.* Stern, in which German creditors had put forward a claim for the total amount of a debt owing to them by a firm consisting partly of British and partly of American members. 50 per cent. of the debt representing the share of the American members had been paid to the Custodian as being subject to the charge created by the Treaty of Peace Order, 1919, and the other half the British Clearing Office were willing to admit.

The German Clearing Office contended that the payment of the American partners' share to the Custodian having taken place after the 10th January, 1920, was not valid as against the German Clearing Office, and that the entire debt came within the provisions of Article 296, and could be settled only through the Clearing Offices.

The Tribunal in the course of their judgment stated it as their opinion that the Treaty was the binding law which must prevail over the laws of the individual countries, and that two guiding principles could be derived from the Treaty for the solution of the question :—

(1.) That the Treaty intended to subject to clearing procedure the claims and debts of nationals of both States without making exception of the cases in which one of those nationals had taken a neutral into the partnership; and

(2.) That it did not in these matters prescribe unequal treatment of Allied and German nationals.

Having regard to these points of view, the municipal laws of the countries must be relegated to a position in which they would not render impossible a settlement of the question according to the intention of the Treaty. If, therefore, the claims and debts of a mixed partnership were not to be completely excluded from the clearing procedure, and if, on the other hand, the interests of a neutral partner were to remain so excluded from that procedure, a division must be effected by which a part representing the interest of the neutral partner was excluded. The Tribunal therefore regarded the proportion which each partner would have received of the assets of the firm in the event of its winding up on the 4th August, 1914, as the proper measure for the proportional division, and in accordance with that principle, after observing that the share of the British partners in the case under discussion would in the event of a winding-up have amounted to half the proceeds of liquidation of the assets of the firm, decided that the proportion of the debt due from the British interest in the firm was discharged when the payment of the 50 per cent., the amount already admitted by the British Clearing Office, was made to that Office. The remainder, representing the proportion of the debt due from the non-British partners, was a German property right and interest in the United Kingdom and therefore subject to the charge pursuant to Article 297 of the Treaty.

In pursuance of the principles laid down in re Hardt & Co. *v.* Stern, the Tribunal decided in the case of Fisher & Co. *v.* Biehn (*Recueil*, iii, p. 19), in which British creditors were claiming against the German partner in the firm of Biehn & Max, of Frankfurt, the other partner being a Hungarian, the entire debt due from the firm, that the German Clearing Office had validly contested 50 per cent. of the debt, that being the share equivalent to the interest of the Hungarian partner in the assets of the firm, assuming that a winding-up had taken place on the 4th August, 1914. The Tribunal therefore held that the claim by the British creditors for the balance of the debt was not one to be settled through the intervention of the Clearing Offices under Article 296.

(2.) *Dividends payable by British Companies to German Nationals.*

Another case of importance was that of the Siemens'sche Familienbesitzverwaltung G.m.b.H. *v.* Indo-European Telegraph Co., Ltd. (No. 704). (*Recueil*, ii, p. 882.)

Under the Trading with the Enemy Amendment Act, 1914, section 2 (1), any sum which, had a state of war not existed, would have been payable and paid to or for the benefit of an enemy by way of dividends, interest, or share of profits was to be payable to the Custodian to hold subject to the provisions of that Act and any Order in Council made thereunder; and under section 4 (3) the Custodian's receipt was to be a good discharge to the person paying the same as against the person in respect of whom the sum was paid to the Custodian.

The German creditor was in possession of certain bearer shares issued by the Indo-European Telegraph Co., Ltd., which entitled the bearer, upon presentation of the coupons, to payment of dividends. These coupons were, in fact, not presented during the war, and on the 10th January, 1920, the company still held the money payable in respect