dependent upon the determination of a point of Treaty law which has been the subject of varying decisions by different Divisions of the Tribunal, the Legal Service can only draw attention to these decisions and point out that the result of the proceedings will presumably depend upon the allocation of the case.

"An almost equally grave inconvenience which is occasioned by these conflicting decisions is the delay which they entail in the settlement of outstanding claims. It had been the practice of the British and German Clearing Offices to agree to advise parties to withdraw their claims when an adverse decision had been given by the Tribunal in a case in which the legal issue was identical. For the reasons stated above this procedure is now frequently impossible, with the result that the Tribunal's list is unduly swollen with cases which ordinarily would have been settled without their intervention.

"The above state of uncertainty is equally inconvenient to the parties themselves and to both Clearing Offices, and proposals have therefore been made by H. M. Government to the German Government which, if accepted, will, it is thought, solve the difficulty. The matter is now the subject of discussion between the two Governments, and it is hoped that an agreement will be arrived at."

(1.) *Decisions regarding Nationality.—Article 296 of the Treaty of Versailles.*

In last year's report I mentioned the cases of Rehder *v.* Landsgesellschaft Wannsee (No. 1543), (*Recueil*, iv, p. 201) and Abraham *v.* Weiss (No. 1419), (*Recueil*, iv, p. 601), in which the Tribunal (First Division) held that for the purpose of Article 296 the test of nationality was to apply not only as on the 10th January, 1920, but also (*a*) for pre-war debts, at the date of the outbreak of war between the two respective Powers; (*b*) for debts which became payable during the war, at the date when they became payable. I also referred to the fact that a similar question had arisen for the decision of the Tribunal (Second Division) in two cases, but that their judgment had been reserved. The Second Division have since delivered an important judgment in one of those two cases, that of Levy *v.* Heim (No. 2032), (*Recueil*, iv, p. 642), in which they have decisively differed from the view held by the First Division. The debtor Heim at the outbreak of war was a British national, and acquired German nationality on the 7th July, 1915. The German Government Agent therefore contended that the British creditor could not recover the debt in question under Article 296 owing to the nationality of the debtor not having been German at the date of the outbreak of war.

The Tribunal was of opinion that the literal meaning of Article 296 (1) was reasonably clear. Bearing in mind that the words "due" and "residing," without express qualification as to the time in respect of which they were used, naturally indicated that the framers of the Treaty were intending to speak as from the date when it should come into force, the Tribunal thought that the words of the clause were equivalent to the following: "Debts payable before the war and due on this present day of the 10th January, 1920, by one who is now a national of one of the contracting Powers residing within its territory, to one who is now a national of an opposing Power residing within its territory."

If effect was to be given to this meaning the present claim must succeed. Accordingly they had to decide whether there was any sufficient reason for departing from the literal meaning of the language of the Treaty and construing the words used as relating only to pre-war debts due on the 10th January, 1920, by one who was a national of one of the contracting Powers both on that date and on the 4th August, 1914, and resident within its territory on the 10th January, 1920. Such a construction did considerable violence to the language actually used, and in the Tribunal's view could be justified only if it were clear that the literal meaning of the words could not have been intended by the High Contracting Parties, and that, on the contrary, the suggested construction was in fact so intended.

The Tribunal, however, considered it natural that the Contracting Powers, in framing Article 296, should have desired to set up machinery for the recovery of debts owing to and by those who should be their respective nationals at the time when the Treaty came into force, irrespective of their previous personal history. On the other hand, there was nothing in the language used to suggest that the framers of the Treaty contemplated that the questions of nationality and residence should not be determined by reference to one and the same date. There seemed no conclusive reason why a difference in this respect between nationality and residence should have been intended, and to construe the clause as if it contained the words necessary to establish such a difference would, in the Tribunal's opinion, be an act of legislation rather than of judicial interpretation.

There was a consensus of opinion on the part of the Mixed Arbitral Tribunals which had had occasion to consider the matter that, with reference to residence within the meaning of the Article, the 10th January, 1920, was the only material date, and this consensus of authoritative opinion in itself presented a formidable obstacle against the adoption of the suggested construction that with regard to nationality within the meaning of the clause in question another date had also to be considered.

The Tribunal therefore decided that there was a debt within the meaning of Article 296 of the Treaty of Versailles of the sum claimed from the debtor to the British creditor.

In the case of Huth *v.* Niepenberg (No. 1087), before the Second Division, to which I also referred to in last year's report, no final judgment has been given, but the case was mentioned to the parties by the President on the 19th March, 1925, and an intimation was given that the Tribunal were in favour of the claimant's contention, and that judgment could be given against the defendant, although the defendant at the outbreak of war was not a German national. The question of how far the claimant could succeed must depend upon certain difficult questions of mixed partnership which would involve a consideration of how such matters were to be dealt with, having regard to the Hardt *v.* Stern decision. Unless the parties were able to come to a settlement on this subject it would be necessary for the Tribunal to hear further argument and to decide this question.

The importance of this pronouncement lies in the fact that the claim in this case was one under Article 296 (2), so that the Tribunal (Second Division) apparently came to the conclusion that for the purpose of (2) as well as (1) the material date for nationality as well as residence must be the 10th January, 1920, the date of ratification of the Treaty.

The question as to the material date for nationality under Article 296 was also considered by the Third Division in the case of Trustees of Isidor Morris (deceased) *v.* Michaelis (No. 3238), and this Division in a considered judgment adopted the same view as the Second Division. The creditors were British nationals, and the debtor, who had lost his German nationality a considerable time before the war broke out, only became German again by naturalization on the 30th January, 1917. It was common ground that the debtor was indebted to the British creditors in the sum claimed of £506. The claim was, however, contested on the ground that it could not be recovered under Article 296, as the debtor was not a German national on the 4th August, 1914. It was further contended that the debt did not become due before the coming into force of the Treaty of Versailles, but upon the facts the Tribunal were of opinion that the debt fell due before the 4th August, 1914.

As to the contention that the debt could not be recovered under Article 296, the Tribunal stated that the wording of Article 296 (1) did not indicate any intention on the part of the High Contracting Powers to restrict the scope of the stipulation only to such cases where the parties already at the date of the outbreak of war were nationals each of one opposing Power. As regards residence, it was generally agreed that the material date was the date of the coming into force of the Treaty of Versailles, and the wording of Article 296 (1) did not indicate that any different interpretation should be made as regards the material date for the test of nationality.