ANTON PENTZ (UNITED STATES) *v.* AUSTRIA, HUNGARY, AND AUSTRO-HUNGARIAN BANK

(March 28, 1928. Pages 62-66.)

This is one of a group of cases put forward by the United States on behalf of American nationals who seek awards against Austria [Hungary] for the value of currency notes issued by the Austro-Hungarian Bank. From the record in this particular case it appears that the claimant, Anton Pentz, an American national by naturalization, sold property in Hungary in 1914 and in payment therefor came into possession of Austro-Hungarian Bank currency notes aggregating in amount 4,050 kronen which have since been in his possession and ownership, and for which, converted into American currency at the rate of exchange in effect in 1914, an award is sought.

The Commissioner holds that the Treaties of Vienna and of Budapest contain no warrant for entering an award on behalf of the claimant. The reasons for this holding can best be stated by briefly reviewing the provisions of the Treaties dealing with the Austro-Hungarian Bank and the measures taken in pursuance thereof looking to its liquidation.

The Austro-Hungarian Bank was a private stock company constituted in pursuance of a statute of Austria and a similar statute of Hungary. It possessed a legal exclusive right to issue banknotes for both countries, each of which exercised equal supervision over it. The last concession granted to it by the two Governments was for a term of years to expire December 31, 1919.

The by-laws of the bank obligated it "to redeem immediately on demand at its head offices at Vienna and Budapest, against legal coin of Austrian or Hungarian coinage, the notes issued by it". This provision of the by-laws, however, was, by the statutes of both Austria and Hungary, "suspended for such time until they come into force in accordance with the provisions of article V of the Austrian law and paragraph V of the Hungarian law, respectively, concerning the prolongation of the license of the Austro-Hungarian Bank. or shall be made valid by the legislatures of both States" (Imperial Law Gazette, 1911, No. 157, and 1917, No. 513). The provision requiring redemption of these currency notes remained suspended, although prior to the war the bank in practice maintained these notes at a parity with gold.

The Commissioner finds that the Austro-Hungarian Bank was a legal entity possessing a dual nationality and was both an Austrian national and a Hun-

garian national within the purview of the Treaties of Vienna and Budapest respectively. [1]

The framers of part IX—financial clauses—of the Treaties of St. Germain and Trianon, in the adjustment of the rights and obligations of the Successor States growing out of the dismemberment of the territory embraced in the Austro-Hungarian Dual Monarchy, made express provision for the liquidation of the Austro-Hungarian Bank "as from the day succeeding the day of the *signature*" of the Treaty of St. Germain (article 206 [189] and the Annex following it).

It was in substance provided that:

(1) The Austro-Hungarian Bank should be liquidated as from the day following the signature of the Treaty of St. Germain, by receivers appointed by the Reparation Commission, in accordance with the statute of the bank and the regulations laid down by the Treaties.

(2) Each Successor State was required to stamp all the Austro-Hungarian Bank notes existing within its own territory within two months from the coming into force of the Treaty of St. Germain, and

(3) Replace them, within 12 months from the coming into force of that Treaty, by its own or a new currency, and

(4) Deliver to the Reparation Commission, within 14 months from the coming into force of that Treaty, the notes, stamped or unstamped, which had been previously withdrawn from circulation, together with all records of the conversions, and

(5) Receive from the Reparation Commission, in return for such notes so delivered, certificates showing the number of notes converted within and without the limits of the former Austro-Hungarian Monarchy. It was provided that these certificates should entitle the bearer to lodge a claim with the receivers of the bank for currency notes thus converted which are entitled to share in the assets of the bank.

(6) No notes issued on or *prior to* October 27, 1918, wherever they may be held, rank as claims against the bank unless they are presented through the Government of the country in which they are held, but if so presented they rank equally (so far as they have any claim at all under these provisions) against the general assets of the bank other than the specially deposited Government securities.

(7) Notes issued *after* October 27, 1918, rank against securities issued by the Austrian or Hungarian Governments at any time and deposited with the bank as security for the notes, for which securities the new Austria and the new Hungary are to remain responsible; but such notes do not share in the distribution of the general assets of the bank. And finally it was provided that:

(8) "The holders of currency notes of the Austro-Hungarian Bank shall have no recourse against the Governments of Austria or the present Hungary or any other Government in respect of any loss which they may suffer as the result of the liquidation of the bank."

On January 1, 1920, the bank was divided into an Austrian section and a Hungarian section, and in August, 1920, three receivers in liquidation were appointed as provided in the Treaties, who undertook to get in all of the assets for distribution in pursuance of the Treaty terms. While the status of this liquidation is not disclosed by the records before this Commission, it

[1] Luxardo *v.* Public Trustee (1923), British Supreme Court of Judicature, Chancery Division, [1924] 1 Ch. 1.

French Office of Private Goods and Interests *v.* Liquidators of the Austro-Hungarian Bank, I Dec. M. A. T. 611, decided November 28, 1921.

apparently is not yet complete. Property belonging to the Austro-Hungarian Bank was, during the war period, seized by the Alien Property Custodian of the United States and the major portion of such property or its proceeds is still held by him. The Act of the Congress of the United States effective March 10, 1928, designated "Settlement of War Claims Act of 1928", provides in effect that such property or its proceeds shall in pursuance of the provisions of that Act be returned to the liquidators of the Austro-Hungarian Bank. It is for such liquidators to make distribution in conformity with the Treaty terms.

From the foregoing statement it is apparent that special and exclusive provision for the payment of Austro-Hungarian Bank notes was made by the Treaties. A compliance therewith was and is the only remedy available to these note-owners. These provisions furnished an orderly method for the equitable liquidation and distribution of the bank's assets. The Treaties in express terms deny to the note-owners recourse against the Government of Austria or of Hungary "or any other Government in respect of any loss which they may suffer as the result of the liquidation of the bank".

The Government of the United States, through its Department of State, recognizing this exclusive method for the payment of these currency notes, has from time to time presented, directly or indirectly to the liquidators of the bank, notes owned by American nationals, and received in exchange payments as provided by the terms of the Treaties.

It is not for the Commissioner to determine whether or not this method of payment is still available to the American owners of these notes. This is rather a matter for negotiation between the Government of the United States and the liquidators of the Austro-Hungarian Bank. The Commissioner only decides that the Austro-Hungarian Bank notes are not evidence of "debts" as that term is used in the Treaties and in this Commission's Administrative Decision No. II, and that the United States is not entitled to an award against Austria and Hungary on behalf of the owners of these notes for the amount thereof.

Wherefore the Commission decrees that under the Treaty of Vienna of August 24, 1921, and the Treaty of Budapest of August 29, 1921, and in accordance with their terms, the Government of Austria and/or the Government of Hungary are not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.
