PHILADELPHIA-GIRARD NATIONAL BANK (UNITED STATES) *v.* GERMANY

(April 3, 1929, pp. 936-939.)

The transactions between the Philadelphia-Girard National Bank [1] (hereinbelow called the Philabank) and the Disconto-Gesellschaft (hereinbelow called the Disconto), out of which this claim arises, were briefly as follows:

For several months prior to the outbreak of the World War, the Philabank transmitted from time to time to the Disconto funds which the Disconto used at the request of the Philabank to establish ruble credits in its own name but for the account of the Philabank in unnamed banks in Russia. The Philabank was entitled to issue drafts against these credits and did so in the course of its business, which drafts were always honored up to the outbreak of the War between Russia and Germany. Immediately before that date the Disconto endeavored to arrange for a transfer to the Philabank of the entire remaining ruble credit in Russia to which it was entitled under these transactions. The then existing ruble credit of the Disconto in Russia was ample for this purpose, but the attempted transfer was prevented because the Russian authorities,

[1] Claimant bank's name having been changed, the award entered on April 3, 1929, was on behalf of " The Philadelphia National Bank".

immediately upon the outbreak of the War, prohibited the Russian banks from carrying on any business dealings with German nationals

It also appears that the Disconto, shortly before the outbreak of the War, suggested to the Philabank the advisability of selling ruble exchange in order to close out its ruble credits, and asked for instructions, which the Philabank failed to give. At that time the entire ruble interest of the Philabank could have been sold out at a comparatively small loss.

As a matter of act, the Disconto, acting on its own responsibility, did sell at that time for the Philabank 150,000 rubles without any substantial loss, but, although the Philabank accepted this transaction, it failed to respond to the Disconto's specific request for a " firm order " as to further sales.

The purpose of the Philabank in entering into these transactions with the Disconto was to take advantage of the latter's well known and extensive banking interests in Russia in securing ruble credits there. It relied upon the Disconto to maintain in Russia for its account ruble credits equivalent to the value of its remittances to the Disconto, and it also relied upon the Disconto to make these credits available wherever in Russia the Philabank might desire to draw against them.

During all this period the ruble credits maintained by the Disconto in Russia were far in excess of the remittances from the Philabank.

The above stated purposes of these transactions are confirmed in the claimant's brief, which states that they were made " with the object of enabling the claimant to invest in Russian exchange, and to obtain a higher rate of interest on funds so invested than it could obtain at home, without any of the risks to the claimant in establishing and operating against a ruble account in Russia, with whose banks, and financial and industrial conditions and methods the claimant was not at the time familiar ".

As a matter of law, the relationship established between the two banks by these transactions did not constitute the Disconto a debtor of the Philabank, as contended by that bank, because the Disconto's obligation was merely to establish for the use of the Philabank ruble credits in Russia, which obligation it completely fulfilled. It did not sell, and was not asked to sell, rubles or ruble credits in Germany to the Philabank. On two occasions it bought for the Philabank Russian rubles in Germany, but in both instances it acted under special instructions outside of the general arrangements and transactions above described. Those two purchases do not enter into the present claim. Neither did the Disconto act as the agent of the Philabank in establishing ruble credits for that bank in Russia because it did not establish in Russia any ruble credits independently of its own credits there.

All that the Philabank asked the Disconto to do, and all that the Disconto did, was to sell to the Philabank a participation, or a right to participate, in the Disconto's ruble credits in Russia to the extent of the funds remitted for that purpose, valorized in Russian rubles at the rate of exchange prevailing when it invested those funds in ruble credits in Russia.

As above stated, up to the time of the outbreak of the War between Russia and Germany, the Disconto fulfilled all of its obligations to the Philabank under these arrangements. Indeed it went even beyond its legal obligation in attempting to save the Philabank from anticipated loss on account of war conditions.

The termination of these arrangements and the resulting loss to the Philabank were not due to any negligence or default on the part of the Disconto, nor to any action on the part of the German Government. In these circumstances the relationship of debtor and creditor between the Disconto and the Philabank did not arise. Neither does any question of exceptional war measures in Germa-

ny, within the meaning of the Treaty of Berlin, enter into the case, because the claimant is an American national, and the United States was still a neutral at the time of these transactions.

The termination and frustration of the arrangement between these two banks and the resulting losses were due solely to the action of the Russian authorities in prohibiting further financial transactions between Russia and Germany immediately upon the outbreak of the War between those two countries. It is evident, therefore, that the damages resulting from the termination and frustration of these transactions were a consequence of circumstances for which the Disconto was not responsible, and they do not constitute a financial obligation for which Germany is responsible under the terms of the Treaty of Berlin as interpreted by this Commission.

Done at Washington April 3, 1929.

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner