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UNITED STATES, AUSTRIA AND HUNGARY

ADOLFO STAHL (UNITED STATES) *v.* HUNGARY

*(June 28, 1929. Pages 123-125.)*

This claim is put forward on behalf of Adolfo Stahl as a naturalized citizen of the United States to recover from Hungary 56,250 reichsmarks, the amount with interest thereon of 10 certificates of 5,000 reichsmarks each issued by the Hungarian Government on January 10, 1918, and which matured April 1, 1921.

The facts as disclosed by the record are as follows:

(1) On November 11, 1913, the claimant purchased through L. Behrens & Söhne of Hamburg, Germany, marks 50,000  $4\frac{1}{8}\%$  Hungarian Staatskassenscheine evidenced by 10 certificates of marks 5,000 each numbered 460 to 469, both inclusive, which certificates were held for claimant by L. Behrens & Söhne.

(2) When the above-mentioned certificates became due on January 4, 1916, L. Behrens & Söhne surrendered them and took in exchange therefor 5 % Hungarian Kassenscheine due January 10, 1918, evidenced by 10 certificates of marks 5,000 each, numbered 3478 to 3487, both inclusive.

(3) When the certificates mentioned in the next preceding paragraph became due L. Behrens & Söhne surrendered them and took in exchange therefor 5 % Ungarische Staatskassenscheine, series C, evidenced by 10 certificates of marks 5,000 each numbered 4093 to 4102, both inclusive.

(4) The claimant under oath states that he:

"... was not consulted by L. Behrens & Sohne as to whether or not the extensions above referred to should be made at the time that this was done, and did not then authorize the making of said extensions and has not since the re-establishing of communications with L. Behrens & Söhne ratified said extensions".

The Commissioner holds that the claimant was entitled to payment by Hungary of his pre-war certificates when they matured, January 4, 1916. If, as he states, he did not then authorize L. Behrens & Sohne, through whom he purchased these certificates and with whom they were deposited by him, to exchange them for a new issue of certificates bearing a different rate of interest and maturing two years later, and has not since ratified their act, then it would seem he has a claim against L. Behrens & Söhne for the amount he was then entitled to receive from Hungary, but is not entitled to the new certificates or those subsequently received in exchange and upon which this claim is based.<sup>1</sup>

The new certificates accepted by L. Behrens & Söhne for the claimant evidenced a new obligation of Hungary. The owners of the old certificates were entitled to demand payment in cash, or at their election were entitled to receive in lieu of cash new certificates bearing a higher rate of interest and maturing at a later date. If claimant has title to the certificates upon which this claim is based he acquired such title through L. Behrens & Sohne who, purporting to act for claimant, received these certificates for him. They were issued January 10, 1918, and constitute an obligation of Hungary as of that date. They are not, therefore, as between the claimant and Hungary, pre-war obligations and do not constitute a debt owing by Hungary to the claimant within the terms of the Treaty of Budapest.

This decision is in harmony with that of the Anglo-German Mixed Arbitral Tribunal which in the case of *The Lautaro Nitrate Co. Ltd. (creditor) v. L. Behrens and Sohne (debtor)* had before it in another form practically the question here presented. In that case L. Behrens & Sohne since 1913 had in their custody for *The Lautaro Nitrate Co. Ltd.* bonds of the City of Vienna

<sup>1</sup> *The Lautaro Nitrate Co. Ltd. v. L. Behrens and Sohne* (case 608), decided by the Anglo-German Mixed Arbitral Tribunal, February 20, 1924, IV Dec. M. A. T., pp. 37 *et seq.*

bearing interest at the rate of  $4\frac{1}{2}\%$  per annum, which by their terms matured May 15, 1916. Without authority from the creditor company L. Behrens & Söhne on the maturity of these bonds exchanged them for new bonds of the City of Vienna bearing interest at the rate of 5 % per annum and maturing May 15, 1921. The Tribunal held that:

"... the reinvestment made by the Debtors is not an answer to the Creditors' claim, and that since it cannot be taken into account the Debtors are to be considered as having, on behalf of the Creditors, received payment of the loan at the proper date and that therefrom arose, on their part, towards the Creditors firm a debt coming within the provisions of article 296.

"... On the other hand they have no right to the new bonds, which belong to the Debtors."

The Tribunal held that the exchange of the securities by L. Behrens & Söhne was in legal effect:

"... a payment and reinvestment, by the working of which the City of Vienna was liberated from their old debt, and the Debtors invested the amount of the former loan in a new loan for which new bonds were issued by the City of Vienna, and appear to have been delivered to the Debtors."

It follows from what is above written that, if claimant has title to the bonds upon which the claim is based, the debt evidenced by such bonds owing him by Hungary is not a pre-war debt falling within the terms of the Treaty of Budapest. If claimant did not authorize L. Behrens & Söhne to accept new certificates in lieu of payment in cash and has not since ratified their act, then they are indebted to claimant for the amount which claimant was entitled to receive on his pre-war certificates which matured January 4, 1916. Such a debt would be owing by a German national to claimant and hence would not fall within the terms of the Treaty of Budapest.

For the reasons stated the Commission decrees that the Government of Hungary is not obligated under the Treaty of Budapest to pay to the Government of the United States any amount on behalf of Adolfo Stahl, claimant herein.