REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Transatlantic Trust Company (United States) v. Austria and Postsparkassen-Amt in Wien

9 November 1928

VOLUME VI p. 274

NATIONS UNIES - UNITED NATIONS
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TRANSATLANTIC TRUST COMPANY (UNITED STATES) *v.* AUSTRIA AND POSTSPARKASSEN-AMT IN WIEN

(November 9, 1928. Pages 99-100.)

BONDED PUBLIC DEBTS: COLLECTION OF INTEREST COUPONS.—EVIDENCE: BURDEN OF PROOF. *Held* that claimant failed to prove existence of debt within meaning of Treaty of Vienna in circumstances analogous to those discussed in George and Theresa Zohrer award (see p. 272 *supra*).

Bibliography: Prossinagg, pp. 41-42; Bonynge, p. 39.

The Commissioner's decision in docket No. 1083-A, George and Theresa Zohrer, claimants, this day decided is here referred to.

An interlocutory judgment is sought herein on behalf of the Transatlantic Trust Company, alleged to be an American corporate national (hereinafter referred to as "claimant"), for a kronen debt alleged to be due it from the Postsparkassen-Amt in Wien (hereinafter referred to as "impleaded debtor").

The record in this case is meager and unsatisfactory notwithstanding the efforts of both the American and the Austrian Agents to develop the facts. On the record submitted the Commissioner finds that the indebtedness in the form of a credit balance alleged to be due the claimant by the impleaded debtor is made up largely of items credited by the impleaded debtor to the claimant as the proceeds of interest coupons clipped from Austrian War Loan bonds which belonged—not to the claimant—but to claimant's customers, for whom it acted as a broker in the purchase of such bonds, and who occupied the same position with respect to the claimant and the impleaded debtor herein as did George and Theresa Zohrer in docket No. 1083-A.

On the record submitted the Commissioner further finds that the claimant herein has failed to prove that it was entitled to these credits, and that when they are eliminated from the account between the claimant and the impleaded debtor it appears that the claimant is in the latter's debt.

The Commissioner holds that the claimant has failed to discharge the burden resting upon it to prove the existence of a debt due it by Austria or an Austrian national within the meaning of the Treaty of Vienna and of this Commission's Administrative Decision No. II.

Wherefore the Commission decrees that the Government of Austria is not obligated under the Treaty of Vienna to pay to the Government of the United States any amount on behalf of the Transatlantic Trust Company, claimant herein.

HENRY HOWARD ELLISON, WILLIAM RODMAN ELLISON, AND HENRY HOWARD ELLISON, Jr., AMERICAN PARTNERS IN THE LATE FIRM OF JOHN B. ELLISON & SONS (UNITED STATES) *v.* AUSTRIA AND LEOPOLD KURANDA

(March 22, 1929. Pages 101-102.)

DEBTS, DEATH OF DEBTOR.—EVIDENCE: BURDEN OF PROOF. *Held* that claimant failed to prove existence of debt within meaning of Treaty of Vienna: debtor died on December 7, 1917, leaving neither assets, nor heirs or legal successor(s).