

# ERSTE ABTEILUNG

# VÖLKERRECHT

## RECHTSPRECHUNG

### Entscheidungen nationaler Gerichte

#### Britisches Reich

#### House of Lords

Civilian War Claimants Association, Limited v. the King. Nov. 19, 1931. (48 Times Law Rep. 83)

Kriegsschäden Privater. — Versailler Vertrag Art. 232. — Reparationen. — Kein Anspruch der Geschädigten gegen die Krone auf Auszahlung des Erlangten.

*1. Durch Kriegshandlungen geschädigte Privatpersonen haben keinen Anspruch auf Auszahlung der von der Regierung auf Grund eines internationalen Vertrages als Entschädigung erhaltenen Beträge.*

*2. Eine Verantwortlichkeit der Krone hinsichtlich der Entschädigung der einzelnen Staatsangehörigen besteht nur gegenüber dem Parlament.*

Lord Buckmaster. — My Lords: During the War there were many subjects of his Majesty who suffered damage to person and to property owing to air craft and bombardment from the sea. Claims immediately arose in respect of the injuries that had been so suffered, and were brought at once before the notice of his Majesty's Government. On February 4, 1915, and again on March 31, 1915, the Prime Minister stated that the Government had undertaken to give relief for damage caused by the raids which had then taken place. Again, on February 17, 1915, it was stated by the Chancellor of the Exchequer that payment of relief for damage caused by air craft would be made out of Imperial funds. Following this, on September 7, 1916, a Proclamation was issued calling upon all people who had suffered and who had claims

against enemy persons or Governments to make returns of their claims to the proper officers.

The appellants here represent a number of people who suffered such damage and whose claims they have purchased, and their case, as formulated in a petition of right which they have presented, is that the Crown has received from Germany moneys in respect of this damage and that it is consequently either an agent or a trustee for them for the moneys so received, or that the moneys at any rate have been received by the Crown as moneys had and received to their use.

It is plain from what I have stated that up to 1917 nothing had happened to support any such claim at all, for all that had then occurred was that the claimants had been told that they were to file their claims, and statements had been made that the moneys would be made good out of the National funds—indeed, at that moment, whatever might have been hoped, the issue of the War was uncertain, and it was impossible to know what might be the issue. On July 13, 1917, the Prime Minister, in answer to a memorial asking that full compensation should be made for such losses out of national funds, stated that he accepted in principle the case so made. Up to this time the payment contemplated was out of the funds of this country, but finally, on January 8, 1918, President Wilson made his celebrated speech containing what are called the 14 points, and when the Armistice was granted it was upon the terms that Germany should make compensation for all damage done to the civilian population of the Allies and their property by land, by sea, and from the air. Following upon that there was a discussion before the Peace Conference as to what these moneys might include, and ultimately the Treaty itself was signed, and that contained what are the material provisions for the present purpose. First, in Article 231 there was an affirmation by the Allied and Associated Governments, accepted by Germany, that Germany was responsible for causing all the loss and damage to which the Allied Governments and their nationals had been subjected, and by Article 232 it was provided that compensation should be made in the following words: "The Allied and Associated Governments recognize that the resources of Germany are not adequate after taking into account permanent diminutions of such resources which will result from other provisions of the present Treaty to make complete reparation for all such loss and damage. The Allied and Associated Governments however require and Germany undertakes that she will make compensation for all damage done to the civilian population of the Allied and Associated Powers and to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by such aggression by land by sea and from the air and in general all damage as defined in Annex I. hereto." It is known that, associated with the specific damage caused on the sea and by air craft and bombardment to our people at home during the War, there were included in the claims for damages against Germany large sums representing the damage that was suffered in payment of pensions to

soldiers' widows and similar matters, which were in a different category from the damage of the nature I have already mentioned; but the whole was collected together into one group claim, and there was no separated and specific claim under one head or another, so that one whole claim was put forward and approved by the Reparations Commission to represent the total claim against Germany under that head. Moneys have undoubtedly been received in respect of that claim, and it is in respect of those moneys that the present proceedings are brought.

In the first place, to establish that any one was a trustee of that fund under the circumstances I have mentioned is, to my mind, to attempt an impossible task. I can see no evidence whatever of an acceptance of trusteeship on the part of the Government, or assertion of trusteeship on the part of the people who suffered damage, nor anything up to the time when the money was received to show that the conception of trusteeship was in the minds of anyone in any form whatever. Indeed, the original statements that were made were made of the readiness to compensate out of the National funds at home, and nobody suggests that the Government were trustees of those funds for this purpose.

Finally, when the moneys were received, it is said that from and after that moment the Crown became a trustee. I have pointed out in the course of the argument, and I repeat, that if that were the case, unless you are going to limit the rights which the beneficiaries enjoy, those rights must include, among other things, a claim for an account of the moneys that were received, of the expenses incurred, and the way in which the moneys have been distributed. Such a claim presented against the Crown in circumstances such as these would certainly have no precedent, and would, as it appears to me, invade an area which is properly that belonging to the House of Commons.

That the money was received by the Crown as agent, it seems to me, can no more be established than that the money was received by it as trustee. In fact, the trusteeship is the agency stated in other words. If it was not a trustee, neither was it an agent; nor can I see that in any sense it received these moneys as money had and received to the use of the people whose claims were made. The people whose claims were made were not considered by Germany on making the payment at all. The terms of the Treaty were that Germany should pay the sum necessary to satisfy the claims of various people who had suffered, and it was left to the Governments themselves, as between them and their nationals, to determine how that money was to be distributed. Therefore, my Lords, on general principle, I should have thought that the petition must fail, but the general principle is immensely strengthened by the case of *Rustomjee v. The Queen* (1 Q.B.D. 487), for there a case similar in many respects to this, although of course not exactly identical, arose for consideration in the Queen's Bench Division. It was a case of a British subject who had had a claim for debt against a group of Chinese merchants, which, owing to Chinese disturbance, had been dissolved, and the debts had been lost. When a Treaty was made between Great

Britain and China, a sum of money representing 3,000,000 dollars was paid to the British Government on account of the debts that were so due to British subjects from these Chinese merchants, and it appears to me that in that respect the case is closely analogous. There were claims from the British subjects which were gathered together and amounted to a total of 3,000,000 dollars, and those 3,000,000 dollars so constituted were paid over to the British Government, and thereupon one of the alleged creditors issued a petition of right and made precisely the claim that is made here, that the Crown was either an agent or a trustee, or that the money was money had and received to his use. There can be no doubt that the learned Judges expressed themselves upon that claim in extremely emphatic terms. Chief Justice Cockburn seemed to think that it was strange that any such claim should have been made at all, and Mr. Justice Blackburn (who subsequently became Lord Blackburn) pointed out that such a claim made a little earlier might have led to very disastrous consequences. Mr. Justice Lush stated the matter in what I regard as the most simple and the most accurate form of all. He said this (page 497):—"It seems to me that the relation which is pressed upon us here never existed in this case between the Crown and the subject, and is one which cannot exist in any state like ours between the sovereign and the subject."—I should like to pause here for a moment to point out that that is a relationship which arises by reason of a Treaty having been made in the circumstances there set out, and he adds: "No doubt a duty arose as soon as the money was received to distribute that money amongst the persons towards whose losses it was paid by the Emperor of China; but then the distribution when made would be, not the act of an agent accounting to a principal, but the act of the Sovereign in dispensing justice to her subjects. For any omission of that duty the Sovereign cannot be held responsible. The responsibility would rest with the advisers of the Crown, and they are responsible to Parliament, and to Parliament alone." My Lords, that appears to me to be a perfectly exact and accurate way of stating what the true position is, and it completely covers the present case.

Attempts were made to distinguish that authority both on the ground of the difference in the circumstances which led to the case coming before the Court, and on the ground which I found it more difficult to apprehend, that something had happened since the decision of that case that had in some way changed the constitutional relationship of the Sovereign and the subject. I can find nothing to support such a view and I can see no reason why such a change should have taken place. In my opinion the quotation I have made from that judgment is as applicable to this case as it was applicable to the case then before the Court, in the days when it was decided, and, so regarded, it defeats this claim.

Lord Warrington of Clyffe.—My Lords, I concur.

Lord Atkin.—My Lords, I concur. It has to be remembered that this House is dealing in this case with a demurrer to a petition of right in which the facts alleged in the petition must be taken to be true for the purposes of the argument. But even making that assumption, it appears to me, for the reasons that have been stated by the noble Lord on the Woolsack, that the petition does not in fact disclose a cause of action, for it discloses the action taken by the Crown in receiving the sum of money in circumstances which make it impossible to impute to the Crown the position either of a trustee or of an agent. In other words, when the Crown is negotiating with another Sovereign a Treaty, it is inconsistent with its sovereign position that it should be acting as agent for the nationals of the sovereign State, unless indeed the Crown chooses expressly to declare that it is acting as agent. There is nothing, so far as I know, to prevent the Crown from acting as agent or trustee if it chooses deliberately to do so. In the circumstances of this case there appears to me to be nothing which indicates that the Crown expressly assumed the position of agent or trustee, and I think the circumstances negative the idea that the Crown ever did intend to occupy that position and negative any circumstance from which the law might impose upon it the position either of agent or of trustee. It appears to me that the case of *Rustomjee* (I Q.B.D. 487) and the principles laid down therein, limited, as they ought to be, to the circumstances of that case and applied to the circumstances of this case, are perfectly correct.

## Frankreich

### Conseil d'État

(Dalloz Per. 1931, III, 36)

Mandatsverwaltung — A Mandate — B Mandate — Zuständigkeit des Conseil d'État — Vertrag von Versailles — Auslegung.

1. *Die Beamten der Postverwaltung, die dem Oberkommissar der französischen Republik in Beyrut und von diesem der Post- und Telegrapheninspektion der zu dem Mandat für Syrien und Libanon gehörenden Staaten zugeteilt sind, und aus dem Budget dieser Staaten bezahlt werden, sind Beamte einer den gemeinsamen Interessen dieser Staaten dienenden Verwaltung.*

2. *Eine Entscheidung des Oberkommissars bezüglich eines Antrags auf Gehaltserhöhung dieser Beamten ist kein Akt einer französischen Verwaltungsbehörde, über den der Conseil d'État entscheiden könnte.*

3. *Dasselbe gilt von der Anwendung von Verordnungen des Oberkommissars über die Verteilung von Entschädigungen aus Geldstrafen wegen Plünderung.*