

*Reparations—Mr. Cahan*

dissatisfied with the awards made should apply for a rehearing. In some cases the suggestion has been made that rights of action lie against the crown. I am informed that such representations have been made to some of the soldiers who were prisoners of war in an effort to obtain authority from them to bring actions for compensation against the crown. I should like to refer those lawyers to a case recently decided by the House of Lords in England.

The case of Civilian War Claimants Association, Limited, and The King was finally decided by the House of Lords in November, 1931. The decision will be found in 1932 Appeal Cases, page 14.

By a petition of right the suppliants, as assignees of civilian claimants, who had suffered loss and damage by German aggression during the war, claimed on their behalf payment of compensation out of moneys paid or payable by Germany under article 232 of the treaty of Versailles and the provisions of annex I thereto.

The case made by the petition was that the claimants had sent particulars of their claims, first, to the Foreign Claims Office and, afterwards, to the Reparation Claims department in accordance with the instructions of His Majesty's government, that these claims had been duly verified by the government, and were included in the agreed total of claims for reparations which Germany was required to pay under the treaty, and that the crown in inviting the claimants to submit their claims had constituted itself an agent or a trustee for the claimants in respect of any money received by it from Germany on account of reparations, and that any such money was money had and received by the crown to the use of the claimants.

Held, on demurrer by the crown, that the petition afforded no ground for the contention that the money received under the treaty was received by the crown as an agent or a trustee for the claimants, or as money had and received to their use, and was had as disclosing no ground of claim cognizable by the court.

*Rustomjee v. The Queen (1876) 1 Q.B.D. 487; 2 Q.B.D. 69*, was approved and followed.

Lord Buckmaster, in delivering the opinion of the Lords, said:

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

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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 aircraft 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 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 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 the crown was not a trustee, neither was it an agent; nor can I see that in any sense the crown 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