ambassador's staff exercising diplomatic functions, a list of such members is furnished from time to time to the Secretary of State by every ambassador. The list is not accepted as of course on behalf of his Majesty, and after investigation it not infrequently happens that recognition is withheld from a person whose name appears upon the furnished list, either because his diplomatic status is in doubt, or because the number of persons for whom status is claimed appears to the Secretary of State to be excessive.

I have not thought it necessary to discuss the many cases which were cited in this House. It is enough to say that some of them support and no one of them is opposed to the view that I have above expressed.

I have also thought it unnecessary to say anything about the statute of Anne. It is well settled that the questions that we have been discussing do not depend on the statute but are principles of common law, having their origin in the idea of the comity of nations.

For the reasons above expressed I am of opinion that this appeal should succeed and the orders of the Court of Appeal and Mr. Justice Shearman should be discharged, and a declaration made as proposed from the Woolsack. The appellant does not ask for costs and the order will therefore be without costs here or below.

Lord Blanesburgh concurred in the judgment of Lord Buckmaster [3]).

* * *

c) High Court of South West Africa

Königlich Preußisch-Brandenburgisches Hausfideikommiß v. His Honour the Administrator of South West Africa and the Registrar of Deeds. [1]) Sept. 7, 1928.

Versailler Vertrag, Artikel 256, 257.

1. *Der Ausdruck "Royal personages" (personnes royales) in Art. 256 des Versailler Vertrages hat die gleiche Bedeutung wie der Ausdruck "other German sovereigns" (anciens souverains allemands) in Art. 56 des Versailler Vertrages. Der Umfang des nach Art. 257 den Mandatarmächten zufallenden Vermögens ist in derselben Weise bestimmt. Unter "private property of the former German Emperor and other Royal personages" ist nicht zu verstehen das Privatvermögen der Mitglieder des Königlich Preußischen Hauses soweit sie nicht selbst unter die "other German sovereigns" gehören.*

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3) Vgl. u. a. zu diesem Urteil die Debatte im House of Commons vom 1. August 1928 (Hansard Parl. Deb. H. o. C. 1928, Vol. 220, p. 2146), die kurze Note im Solic. Jour. (4. Aug. 1928, S. 525), das unten S. 204 wiedergegebne Urteil des Oberlandesgerichts Darmstadt und die Zusammenstellung der Judikatur im Harvard Law Rev. (February, 1929 p. 582).

1) Nach amtlicher Mitteilung.

2. An den Vermögensstücken des Preußisch-Brandenburgischen Fideikommisses könnten die Mitglieder des Königlichen Hauses, möglicherweise auch der ehemalige Kaiser, nur als joint-owner beteiligt sein. Daher könnte höchstens der unbestimmte und nicht abzusondernde Anteil des Kaisers an diesem Vermögen, soweit es im Mandatsgebiet belegen ist, nach Art. 257 auf die Mandatsmacht übergegangen sein.

3. Das Brandenburgisch-Preußische Hausfideikommiß ist nach preußischem Recht eine juristische Person, dessen Vermögen von dem der destinataires verschieden ist; es können daher weder der Kaiser noch die Mitglieder des Königlichen Hauses als Eigentümer der dem Fideikommiß gehörenden Vermögensstücke betrachtet werden. Ein Übergang von solchen Vermögensstücken auf Grund des Art. 257 ist daher ausgeschlossen, selbst wenn man unter dem Ausdruck "other Royal personages" die "other Members of the Royal Family" und nicht nur die "other German sovereigns" verstehen wollte.

Tatbestand. *"Grindley-Ferris A. J.* The Applicant alleges that it is by German Law a duly constituted *universitas personarum* or corporation entitled in its own name to sue or to be sued, to make contracts, to hold immovable property, and generally to exercise all the rights as well as being subject to all the obligations of a legal persona. It alleges that it was constituted in 1733 by the Will of Friedrich Wilhelm I, King of Prussia, for the support of the non-ruling members of his family and their descendants. It alleges that in 1912 Wilhelm II., in his capacity as sole administrator or representative of the Applicant acquired for it two farms "Dickdorn" and "Kosis" in the District of Gibeon, South West Africa, and that these farms were subsequently registered in its name in the Grundbuch of South West Africa. After the Treaty of Versailles, South West Africa, a former German Colony, was to be administered as a mandated territory under the Treaty by the Government of the Union of South Africa. The Petition alleges that the Governor-General in Council, purporting to act under Article 257 of the Treaty, passed two Resolutions in October 1921, approving of the cancellation of the Title of these farms in favour of the Applicant and directing the Registrar of Deeds to effect the necessary entries in his Registers. These directions were carried out by the Registrar of Deeds of South West Africa. The material portion of Article 257 of the Treaty reads: 'All property and possessions belonging to the German Empire or to German States situated in such territories shall be transferred with the territories to the mandatory power in its capacity as such and no payment be made nor any credit given to these Governments in consideration of this transfer. For the purposes of this Article the property and possessions of the German Empire and of the German States shall be deemed to include all the property of the Crown, the Empire or the States, and the private property of the former German Emperor and other Royal personages.' The Applicant now approaches the Court for relief contending that the farms are not the private property of the former German Emperor or other Royal personages within the

meaning of the provisions of the Treaty and asking for an Order (1) declaring that the provisions of the Treaty do not apply to it, (2) interdicting the Administration of South West Africa from disposing of the farms and (3) directing the Registrar of Deeds to rectify his Deeds Register by striking out the entry cancelling the registration of the properties in favour of the Applicant. At the hearing the Court raised the question whether the proper parties were before the Court, in other words, whether the Union Government should not have been made a party to the application. The Attorney General who appeared on behalf of the Respondents informed the Court that the Union Government was fully aware of this application and raised no objection to the form of the proceedings.

The facts in regard to the purchase of these farms are fully set out in the Affidavit of van Keil who belonged to the Ministry of the Royal Household from 1901 to 1921. He states that since 1848 such Ministry was not a State Department in the real sense, that the Minister of the Household was not a State Minister but merely managed the private affairs of the King and of the Royal Family. That towards the end of 1912 the Minister of the Household had interested His Majesty, the Emperor and King, in the purchase at a price not exceeding 150,000 Marks, of a property in South West Africa, to be leased immediately to farmers 'in order to invest this sum, which the capital funds of the Hausfideikommiss then had available, to good purpose, that is to say both for the benefit of the Royal Family and for the promotion of German Colonial enterprise'. He states that the King approved of the suggestion and that Counsellor Heckel was instructed to proceed to South West Africa, to make the necessary enquiries and to purchase suitable farms, 'through the instrumentality of the Administration'. Heckel purchased the two farms Dickdorn and Kosis, signed the necessary Deed of Purchase, and entered into a lease of the two farms with one von Koenen who was to receive for purposes of cultivation of the farms a loan of 24,000 Marks.

The Deed of Purchase purported to transfer the farm 'to his Majesty, the King of Prussia'. On the return of Counsellor Heckel to Germany, the Minister of the Royal Household reported the result of Heckel's mission to South West Africa in a document numbered 11411 dated Berlin, 17th July, 1912. That report begins by saying that after the King's assent to the purchase of a property in South West Africa for the Königlich Hausfideikommiss had been given, Heckel proceeded to South West Africa and there concluded an agreement by which the farms Dickdorn and Kosis "are being acquired for Your Majesty'. The report then states that the direct administration of the newly acquired property was to be transferred in agreement with the Secretary of the Imperial Colonial Office to the Administration at Windhoek and to the District Office at Gibeon respectively. The report concluded by requesting the Emperor and King to execute orders sanctioning the Deed of Purchase and the payment of the purchase price out of the Improvement Funds and out of the Capital Funds of the Hausfideikomiss.

On the same date the Minister of the Royal Household wrote under number 411 to the Secretary of the Imperial Colonial Office to the effect that when the documents sent to the King for approval were returned, they would be sent to him so that the formal completion of the purchase transaction could be effected through the instrumentality of the Administration and that 'any special powers of Attorney required would have to be executed by me, as the property is being incorporated in the Königlich Hausfideikommiss'. These orders were signed by the King on the 23rd July. The one relating to the purchase sanctioned the agreement 'by which the farms Dickdorn and Kosis in German South West Africa have been purchased for me' and directed that the property should be incorporated 'in my Hausfideikommiss and that the purchase price be paid out of the Capital fund of the Hausfideikommiss' while the other which was addressed to the Minister of the Royal House directed that the amount to be advanced to the Lessee of the farms should be 'paid out of the Capital Fund of my Hausfideikommiss'.

On the 31st July 1912, Count Eulenberg, the Minister of the Royal House as the lawful representative under its constitution of the Königlich Preussisch-Brandenburgische Hausfideikommiss by a Power of Attorney authorised the Imperial Counsellor in Windhoek to accept the declaration of sale of the farms in South West Africa 'acquired for the Königlich Hausfideikommiss'. Steps were taken in Windhoek for the registration in the Grundbuch of the two farms in the name of the Königlich Preussisch-Brandenburgische Hausfideikommiss and the farm Kosis was so registered in October 1912 and the farm Dickdorn in May 1913. In a prior communication numbered 11 261 dated at Berlin 1st May 1912, the Minister of the Royal House refers to the fact that property in German South West Africa might possibly be acquired 'for the Crown'.

In dealing with these documents in connection with the purchase, van Keil explains that the express written sanction of the Emperor and King was required for all purchases and sales of properties for the Hausfideikommiss and that without such sanction money could not be definitely drawn from the Capital Funds of the Hausfideikommiss. Van Keil's Affidavit contains the following passage 'In accordance with the intention, known to me, of His Majesty the King, of the Minister of the Household and of the other parties concerned, and also in view of the origin and source of the moneys available for the purchase, the farms Dickdorn and Kosis were to become and to remain the sole and exclusive property of the Hausfideikommiss and thus property of the Royal Family; nothing has been altered herein as long as German South West Africa belonged to the German Empire, more particularly the farms have been neither voluntarily nor compulsorily disposed of, nor have they been alienated from the property of the Hausfideikommiss. To purchase the farms for His Majesty the Emperor and King Wilhelm II. personally was out of the question, inter alia because he did not have

at his disposal the moneys required for the purchase of these two farms, and because he could not dispose over the moneys of the Hausfideikommiss, according to its constitution, for himself but only for the benefit of the Royal Family'. Van Keil says that the failure to mention the Hausfideikommiss in the Deed of Purchase of these farms was probably merely due to the fact that Heckel was not directed to make any particular purchase but that it was left to his discretion to conclude a purchase 'for the Crown' and that this vague designation and Heckel's ignorance of the fund from which the purchase money was to be drawn may have induced him to name as purchaser His Majesty the King of Prussia."

Aus den Gründen: Der Richter untersucht, was unter 'property of the Crown', 'property of the Emperor or States' und was unter 'private property of the German Emperor and other Royal personages' zu verstehen ist. Er prüft die Frage zunächst nach deutschem Recht und entscheidet im Anschluß an ein Gutachten der Juristischen Fakultät der Universität Breslau, daß 'Crown property' eine Unterart des 'State property' darstelle, das dem besonderen Zweck des Unterhaltes des Sovereigns und seiner Familie gewidmet sei. Der Richter kommt zu dem Ergebnis, daß die zum Brandenburgisch-Preussischen Hausfideikommiss gehörenden Güter nicht unter das 'Crown or State property' im Sinne des deutschen Rechtes fielen. Er fährt dann fort:

"There is definite evidence that the properties of the Hausfideikommiss are not State or Crown property and on the information before me I am not prepared to reject it. In my opinion the farms must be regarded as being in the same position as the other properties of the Hausfideikommiss.

I have therefore now to determine the question whether the properties of the Hausfideikommiss including these two farms are to be regarded as the private property of the Emperor or other Royal personages within the meaning of Section 257 of the Treaty of Versailles. It will not, I apprehend, be disputed that what I might term the Wusterhausen Niegripp and Mansfield properties were regarded by Frederick Wilhelm I, as his private property. Indeed that seems to be clear from the Will of the monarch which refers to these properties in the following language: 'And inasmuch as we have by means of certain Deeds of Donation executed this day and signed by us personally, disposed in regard to the Wusterhausen property received by us as a present from H. M. Our Father, now with God, as also other properties later personally acquired by us elsewhere with money saved and much sour sweat and labour, as set out in the specifications attached, in manner that we have donated in hereditary ownership to our son Prince August Wilhelm the aforesaid Wusterhausen property and all that pertains to the same. To our son Prince Frederich Heinrich Ludwig the Bailiwick Niegripp situate in the Duchy of Magdeburg with all villages and outworks belonging thereto. To our son August Ferdinand all the properties acquired by us in the Mansfield territory, all as more fully set out in the abovementioned Deed of Donation'.

Accordingly when the several donations took effect the properties would become the private properties of the respective donees unless there were some provisions in the Will or in the Deeds of Donation indicative of a contrary intention.

As I have already indicated the Wusterhausen, Niegripp and Mansfield properties were donated to the respective donees in hereditary ownership and 'in such manner as we have hitherto possessed and enjoyed or could, should or might have enjoyed the same' so that the donees and after their death their legitimate male heirs of their bodies and descendants 'may at all times peaceably possess, use and enjoy the same as their true property'.

Van Keil says that the Will and the Deeds of Donation show that the Hausfideikommiss was constituted by Frederich Wilhelm I, in 1733 'from monies saved and properties acquired with a good deal of hard sweat and work'. The King, or as the case may be, the Head of the family for the time being, has sole authority to administer the assets of the Hausfideikommiss without consulting the agnates, is under no obligation to account for his administration, alone represents the Hausfideikommiss as against third parties and allots to each member of his family in his free discretion so much as he is to receive as additional allowance towards his living expenses. Van Keil continues: 'neither he (the King) nor any member of his family has any personal right in, or any claim whatsoever to the property of the Hausfideikommiss, the ownership is vested in the family as a whole.'

There is nothing in the records to indicate that the rights of Frederich Wilhelm I, and his predecessors in title over the properties donated were in any way different from or narrower than those of private holders of full ownership.

From the Deeds it would, therefore appear as if the intention of Frederich Wilhelm I, was that the donees of his private properties should hold them in the same way as he and his predecessors in title held them.

When considering the question whether the properties donated were to be regarded as Crown property, reference was made to a provision in the Deeds of Donation by which the properties donated were never to be considered as part of or as included in the properties covered by the Edict of 1713 which was 'a Pragmatic sanction and perpetual fundamental law of our Royal Electoral and Princely House'. The deeds state that the reason why the properties donated were excluded from the operation of the Edict was, firstly because they were private properties which had not been incorporated into the domain and exchequer properties, and secondly, because the revenues had always been paid into the donor's personal account and not into that of the Exchequers. The donor reserved to himself the right to collect, use and dispose of all revenues accruing from the properties but declared that such reservation was in no manner or way to prejudice or impair the 'right and ownership' granted to the respective donees. The deeds

also state that it is not permitted to any 'owner' of the Niegripp properties or any 'possessor' of the Wusterhausen or Mansfield properties to sell, pledge or in any way alienate the same wholly or in part.

It seems clear from the deeds that the intention was to burden the properties donated with a perpetual fideikommiss in such a way that only the income and interest therefrom could be enjoyed.

Van Keil says that the Königlich Preussisch-Brandenburgische Hausfideikommiss could never in terms of the Deed of Foundation be included in the Landes-Fideikommiss, i. e., in the State domains but that it was on the extinction of all the side lines to devolve upon the reigning line as a perpetual fideikommiss of the Princely House of Prussia and Brandenburg. This statement suggests an inquiry into the manner in which the Exchequer and King of Prussia held his properties.

The Will of Frederich Wilhelm I, provided that the whole of the bequest to the Crown Prince was to remain as a Fideikommiss with the Crown and Electorate and stipulated that the bequests to the Prince should remain with 'our Royal and Electorate house permanently and indissolubly as a perpetual Fideikommiss'.

Under the Will the properties donated to the Princes were, by virtue of the Fideikommiss imposed on them, to pass on the death of all the Princes without male posterity to the then reigning successor to the Crown and Electorate. The same eventually was apparently provided for in the Deeds of Donation by the provision that on failure of male heirs of all the three Princes the properties were to go to the then existing successors to the Throne and Electorate as a permanent and perpetual Fideikommiss of 'our Royal Electorate and Princely House'.

It seems possible to construe these provisions of the Will and Deeds of Donation as meaning that the property of any reigning Sovereign acquired from his predecessor should remain as a perpetual Fideikommiss with the Crown and Electorate and that this Fideikommiss should extend to properties mentioned in the Deeds or acquired by any reigning Sovereign because of the failure of all the male heirs of the original donees. But any property acquired by any reigning Sovereign as a male descendant or as a male heir of any of the original donees was merely by the permanent Fideikommiss of the Royal and Princely House.

It that be the true construction it will be instructive to ascertain by what title the Emperor and King of Prussia held his properties. On the death of Frederick the Great in 1786 the Crown passed to his nephew Frederich Wilhelm II. son of Prince August Wilhelm to whom Wusterhausen had been donated. In terms of the Will and Deed of Donation Frederich Wilhelm II. on his accession lost the Wusterhausen properties but acquired in their stead the domains in the Crown and Electorate. On the death in 1843 of the last male heir of the side line of Frederich Heinrich Ludwig and August Ferdinand the Wusterhausen and Niegripp properties were inherited by the ruling Sovereign and his Agnates as male heirs of the Princes Friedrich Heinrich Ludwig and August Ferdinand.

The property of the Ex Emperor and King of Prussia may apparently be divided into three portions, firstly property acquired as being the reigning Sovereign and bound by the Fideikommiss of the Crown, secondly property acquired as a male descendant from the original donees and bound by the Fideikommiss of the Royal and Princely House, and thirdly, purely private property free from any Fideikommiss.

Interested with him in the second class of property are his male agnates as male heirs of the Princes Friedrich Heinrich Ludwig and August Ferdinand.

For the purposes of this application it is not necessary to determine the quality of the property acquired by the Ex Emperor and King by virtue of being the reigning Sovereign. It seems clear that the farms being registered in the Hausfideikommiss to which belong the Wusterhausen and Niegripp properties held by him and his agnates as male heirs of two of the original donees must be regarded as bound by the same Fideikommiss which bound these properties. The Breslau opinion seems to indicate that according to Prussian Law the ownership in regard to ordinary Fideikommiss is divided up so that the usufructuary or lower ownership (Dominium utile) is allotted to the owner or owners for the time being whereas the paramount ownership (Dominium directum) is vested in the whole family. But special legal principles obtain in regard to the Family and Crown Fideikommiss of Sovereign ruling houses. The families of the higher nobility (including the ruling families) are regarded as corporations and juristic persons, and consequently the family and only the family can rightly be described as the owners of the family property — the ownership of the family properties of the higher nobility is vested solely in the corporation of the family. There is no question of a usufructuary ownership or a sub-ownership of the usufructuary for the time being. Only the Family is entitled to dispose of the Family property in accordance with the law of the Family. The Breslau opinion then states: 'One can, therefore, according to the principles of the private law concerning Princes immediately assume that all the socalled Fideikommiss existing within the Prussian House are competent parts of the House property, the full ownership of which is vested in the House as a juristic person. The so-called special Fideikommiss within the family serves according to the family law, special purposes, namely the usufruct by a single side line of the House which has against the House a special real right to this usufruct without thereby extinguishing its character as a part of the Family property'.

If I am correct in thinking that the farms must be regarded as belonging to this Family Fideikommiss and that the property of this Fideikommiss is not State or Crown property the only question which remains for investigation is whether the property of this Fideikommiss is included in the words 'private property of the former German Emperor and other Royal personages', in Section 257 of the Treaty.

Mr. Duncan suggests that an endeavour should be made to give

these words their ordinary and usual meaning and one which will fit in with the other parts of the Treaty, and that regard should be had to the object and intention of the framers of the Treaty so far as such can be gathered from the Treaty itself. He contends that Articles 256 and 257 which employ the same language only refer to state property and to the private property of the Emperor and other ruling Sovereigns of the German States. What he says is: the proper construction to be placed upon the words on the application of the *ejusdem generis* principle of construction is enunciated in Commissioner of Inland Revenue vs. Lunnon (1924 A. D. D 94) and Rex vs. Jones (1925 A. D. 117). Vide also Ex Parte Brink (1922 T. P. D. 239). To include under 'other Royal personages' the members of the Royal Family would, (says Mr. Duncan) be giving the words too wide a meaning, for it cannot have been the intention to confiscate the private property of all members of the Royal family however distant and remote the relationship may be. He suggests that for the purpose of these sanctions of the Treaty the members of the Royal family should be regarded as ordinary subjects.

With the exception of the mining property in the Saar Basin, there has been no confiscation of the private property of German nationals and it is contended that the words 'other Royal personages' must be restricted to mean other persons who were royal in the same sense that the Emperor is Royal, i. e., because he wore a Crown.

As against that the Attorney General who appeared on behalf of the respondents contends that the ordinary and usual meaning of the words 'Royal personages' is 'persons of royal blood' or 'members of the Royal family'. He argues that such is the ordinary meaning which should be given to the words unless it is clear that some other meaning was intended.

The words 'other Royal personages' appear in Article 144 which deals with Morocco and in Article 153 dealing with Egypt, but it is important to note that while the private property of the former German Emperor and other Royal personages in the sherifian Empire and Egypt passed to the Maghzen and the Egyptian Government respectively without payment, those sections expressly provide that all movable and immovable property in the Sherifian Empire and in Egypt belonging to German Nationals must be dealt with in accordance with other provisions of the Treaty. Article 136 dealing with Siam also provides for the administration of the goods, property and private rights of German Nationals.

Under Article 56 France entered into possession of all property and estate situate within certain areas and which belonged to the German Empire or German States. The property and estate taken over consisted of 'all movable or immovable property of public or private domain together with all rights whatsoever belonging to the German Empire or the German States or to their administrative areas'. That Article provides that 'Crown property and the property of the former

Emperor or other German Sovereigns shall be assimilated to property of the public domain'.

Construing that Article without reference to Article 256 it would seem that France took over (1) the movable or immovable property of public domain belonging to the German Empire or German States, included in what was German territory, and the property of the former Emperor and other German Sovereigns, (2) movable or immovable property of private domain belonging to the same Empire or States and (3) all other rights whatsoever belonging to the same Empire or States. These properties were taken over without making any payment or giving any credit therefore to the cedents.

These properties were however to be taken over in conformity with Article 256. That Article which is found in Part IX, containing the Financial Clauses, is a general clause applying to all Powers to which German territory ceded. It provides that such Powers shall acquire in the Territory ceded 'all the property of the Crown, the Empire or the states and the private property of the former German Emperor and other Royal personages'. ('Toutes les propriétés de la Couronne, de l'Empire, des Etats allemands et les biens privés de l'Ex-Empereur d'Allemagne et des autres personnes royales'.)

On comparing these two Articles it will be seen that both deal with four classes of property (1) Crown property, (2) Property belonging to German Empire. (3) Property belonging to German States. The fourth class of property is in Article 56 defined as 'the property of the former Emperor or other German Sovereigns' and in Article 256 as 'the private property of the former German Emperor and other Royal personages'.

Is there any reason to suppose that Article 256 was intended to deal with property different to that dealt with in Article 56 or to cover more property than such Article did? That might be the result if the words 'other Royal personages' were construed as not being synonymous with 'other German Sovereigns'.

'Members of the German Royal family' would be included under German Nationals, but German Sovereigns would not.

Special provision is made throughout the Treaty for the treatment of property belonging to Nationals. As I have already indicated Articles 144 and 153 which cede property defined in exactly the same language as that used in Article 256 make special provisions for the treatment of the property of German Nationals. As members of the German Royal Family are included under German Nationals it seems to me that they were not intended to be included under 'other Royal personages' in Article 144 and 153.

Is there then any reason why they should be included in the same words in Article 256? I think not. Articles 56 and 256 must to a certain extent be read together and by limiting the words 'other Royal personages' to mean 'other German Sovereigns' the properties mentioned in the two Articles would seem to agree in detail. In my opinion the

words 'other Royal personages' in Article 256 are synonymous with 'other German Sovereigns'.

By Article 119 Germany renounced in favour of the Principal Allied and Associated Powers all her rights and titles over her overseas possessions. The next Article provided for the passing of all the movable and immovable property belonging to the German Empire or to any German States in such territories to the Government exercising authority over such territories on the terms laid down in Article 257 of the Treaty.

For the purpose of this application I am prepared to accept that the properties mentioned in Article 257 are those transferred to the Mandatory although Article 120 merely refers to Article 257 for the terms of transfer. The properties mentioned in Article 257 are described in language identical to that appearing in Article 256 and I know of no reason why I should conclude that the two Articles refer to different classes of property or to properties belonging to different classes of persons. The conclusion at which I have arrived is that the property transferred to the Mandatory in terms of Articles 119 and 120 read with Article 257 includes the private property of the former German Emperor and the other German Sovereigns but does not include the private property of the members of the Royal family of the German Emperor unless any of them should perchance have been among the other German Sovereigns.

The absence of evidence to show whether or not any such ruling Sovereign or any member of the Emperor's family did at the date of the Treaty, privately own property in any form in any of the Mandated territories is not, I think an obstacle to the determination of the meaning of the words 'other Royal personages'. It seems to me that the framers of the Treaty intended to cede to the Mandatories the private property of a certain class of person if it were found within the territories ceded, and that they were not concerned with the preliminary question whether any of such class did or did not own property there.

The Affidavit of Koehler who has since 1915 been an official at the Ministerial Department of the Royal House and who as such has been more particularly engaged on the personal affairs of the members of the Royal House, gives a list of such members who are entitled to share in the Königlich-Preussisch-Brandenburgische Hausfideikommiss. That last does not include any of the other German Sovereigns.

It would seem therefore that the only persons interested in the properties of the Hausfideikommiss are the Ex-Emperor and the members of his family.

As in my opinion the private property of the members of the Ex-Emperor's family is not included in the property made over to the Mandatories, it is merely the Ex Emperor's share in the properties of the Hausfideikommiss (if indeed he can be said to have a share) which could have been so made over.

If the Ex Emperor does in fact own a share in the two farms Dickdorn and Kosis it is an undefined, undivided share because the other members of his family also own shares. The Ex Emperor and the mem-

bers of his family can at the most be said to own the farms in joint ownership and in undivided shares. If the farms are held in joint ownership by the Ex Emperor and by members of his family whose property was not made over to the Mandatory, the Mandatory would not be justified in regarding the whole of the farms as transferred to it. It would only be entitled to deal with the Ex Emperor's share in the farms, whatever that might be, and not with the whole of the farms.

But in my opinion the Ex Emperor and the members of his family cannot be said to be co-owners of the farms. The Breslau opinion and the Affidavits of van Keil, Lieber, Caspari and Gerhard seem clearly to indicate that under Prussian Law the Königlich Preussisch-Brandenburgische Hausfideikommiss is to be regarded as a separate juristic persona in which is vested the ownership of all properties registered in its name, that the persons for whose benefit the Fideikommiss was constituted cannot be regarded as being the owners of such properties and that the Emperor is merely vested with the unfettered administration thereof. The Breslau opinion concludes by saying 'They (i. e. the properties included in the Hausfideikommiss) were neither property of the German Empire, nor of the German State nor of the German Emperor or Prussian Crown nor of the former German Emperor or other Royal persons. They were, on the contrary, parts of the private property of the family of the former Prussian-Brandenburg ruling House which was a corporation and a legal persona. This legal persona was a private owner of the fideikommissum properties, the individual member of the family was merely entitled to a life usufruct in the fideikommissum.'

I know of no reason to question the accuracy of such statement. I must therefore accept it as a fact that these two farms belong to the applicant, a juristic persona, and not to the Ex Emperor and other Royal personages. If that be so, it matters not whether the words 'other Royal personages' as used in Articles 257 of the Treaty of Versailles mean 'other members of the Royal Family' or 'other German Sovereigns'.

I think the contention of Mr. Duncan is sound, that it was not the intention of the framers of the Treaty to transfer property belonging to corporations or juristic personae.

I have come to the conclusion that these farms were not transferred to the Union Government as Mandatory of South West Africa and consequently such Government was not entitled to take action it did.

The applicant is there entitled to succeed. I am however not prepared to declare that the provisions of the Treaty of Peace do not apply to the applicant. I cannot say that none of the provisions of the Treaty affect the applicant because the present application merely relates to the question wheter the two farms Dickdorn and Kosis were made over to the Union Government as Mandatory under the Treaty.

An order will be granted interdicting the disposal of these two

farms and the Registrar of Deeds is directed to rectify the Deeds Register by deleting his entries dated the 19th October 1921, cancelling the registration entries of the farms Dickdorn and Kosis in favour of applicant.

The applicant is entitled to the costs."

* * *

3. Danzig

Danziger Obergericht

(2 III U 463/27) 7. März 1928 (Danziger Juristische Monatsschrift 1928 S. 108.)

Versailler Vertrag, Artikel 256 — Staatensukzession.

Der Eigentümer eines ehemals westpreußischen, jetzt polnischen Grundstücks hat keine Ansprüche gegen die Bauernbank, wenn der polnische Staat die Wiedereintragung von Rechten verfügt, die auf Grund einer Löschungsbewilligung der als Rechtsnachfolgerin des preußischen Staates handelnden Bauerbank im Dezember 1919 gelöscht sind.

Tatbestand. Der Kläger ist Eigentümer eines Grundstücks in der an Polen abgetretenen westpreußischen Stadt Dirschau. Im Grundbuche dieses Grundstücks sind auf Grund des Rentengutsvertrages und der Bewilligung des damaligen Grundstückeigentümers vom 30. Oktober 1908 am 26. November 1908 folgende Eintragungen für den Preußischen Staat (Ansiedlungskommission für Westpreußen und Posen) erfolgt:

in Abt. II Nr. 5 ein Wiederkaufsrecht,
Nr. 6 eine Versicherungspflicht,
Nr. 7 folgende jährliche Renten:

a) 1 Mark dauernde Rente, nur mit Zustimmung des Berechtigten und des Verpflichteten ablösbar,
b) 1296 Mark Hauptrente, ablösbar nach näherer Bestimmung des Rentengutsvertrages auf Verlangen des Verpflichteten einen Monat nach Kündigung durch den 20fachen Betrag,
c) 97,20 Mark Zusatzrente, bei Erlöschen der Hauptrente wegfallend, im übrigen ablösbar nur mit Zustimmung des Berechtigten und Verpflichteten;

in Abt. III Nr. 8 20 300 Mark Sicherungshypothek.

Der Preußische Staat hat die Ansprüche aus den Eintragungen Abt. II Nr. 5, Nr. 6 und Nr. 7 an die beklagte Bauernbank abgetreten. Die Eintragung der Abtretung im Grundbuche ist am 15. August 1919 erfolgt. Die Abtretung erfolgte gleichzeitig hinsichtlich aller gleichartigen an Grundstücken in Westpreußen bestehenden Rechte des Preußischen Staates. Demnächst hat der Kläger im August 1919 an die Beklagte zwecks Ablösung ihrer Rechte ein Ablösungskapital von etwa