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FACTORY AT CHORZÓW (MERITS)

DISSENTING OPINION BY M. EHRLICH

Tribunal:
Ludwik Ehrlich (Judge Ad-hoc)

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Dissenting Opinion by M. Ehrlich

I regret that I disagree on some of the questions decided by the judgment which has just been given.

I.

In my opinion, the Court should have taken into consideration the judgment given by the Civil Court of Katowice.

The Parties are agreed, and moreover it follows from the principles generally applied by arbitral tribunals, that in cases like the present the basis of the award must be found, not in the enrichment of the Respondent, but in the loss suffered by the individuals concerned. In this case these are the Bayerische and Oberschlesische, and the Respondent has contended, among other things, that the Oberschlesische was not the owner of the lands and buildings which were entered in its name in the land register, from January, 1920, until this entry was vacated, in 1922, in accordance with the Polish law of 1920.

In my opinion this contention of the Respondent cannot be rejected on the basis of what the Court has said either in Judgment No. 7 or in Judgment No. 8.

The judgment which has just been given does not, it is true, rely on *res judicata ;* this is correct, for it is quite certain, to mention only the case of the Pious Fund of the Californias, that in international law, one of the conditions on which the existence of *res judicata* is dependent is that there must be "identity of subject matter" and that the point which was decided must relate to the "merits of the case". It is evident that in the proceedings concluded by Judgment

No. 7, the question of the ownership of the Oberschlesische was not a part of the main dispute, but that it was a question to be decided as a preliminary and incidental point. This is precisely what the Court said in Judgment No. 7 :

> "In the next place, it must be observed that the Court, in the exercise of the jurisdiction granted by Article 23 of the Geneva Convention, will not examine, save as an incidental or preliminary point, the possible existence of rights under German municipal law."

German legislation was referred to because, in Polish Upper Silesia, it is German civil law which determines such questions of real property.

The Court maintained the same standpoint in Judgment No. 11, when it recalled that, in Judgment No. 7, it had recognized the necessity of examining, though "as an incidental or preliminary point", the contention of the Polish Government that the contract of 1919 and the transfer of the factory to the Oberschlesische were of a fictitious and fraudulent character.

It is generally admitted that the principles of litispendency and *res judicata* do not apply to questions decided as incidental and preliminary points.

Without however laying down that there is *res judicata,* the judgment which has just been delivered declares that it would be impossible for the Oberschlesische's right to the Chorzow factory to be defined differently for the purposes of Judgment No. 7 and in relation to the claim for reparation which is the subject matter of the present judgment.

On this point I disagree. It is true that facts adduced by one Party and accepted by the Court as the direct or indirect basis of its decision cannot be disputed by the same Party in a subsequent suit ; similarly, a rule of law applied as decisive by the Court in one case, should, according to the principle *stare decisis,* be applied by the Court as far as possible in its subsequent decisions. But it may be necessary to view differently the same situation of fact in a different suit, of which the subject matter is different, and in which, consequently, different principles should be applied.

In the proceedings concluded by Judgment No. 7, the Applicant said that the Chorzow undertaking was not and had never been from the outset (contract of 1915) an enterprise of the Reich, that the Bayerische was the business concern which worked it (Publications of the Court, Series C., No. 11—I, pages 351, 159), and the Applicant maintained, as to what had been the property of the Reich until 1919-1920, that even admitting the nullity of the contract of 1919,
"the Oberschlesische Stickstoffwerke were entered in the land registers as owners and, in accordance with paragraph 891 of the German Civil Code, if a right is entered in those régisters in favour of a certain person, the presumption is that that person is the possessor of the right. And should the contents of the registers not be in accordance with the real situation at law, the interested Party may, under paragraph 894, call upon the person entered to have the entry rectified....

If therefore the Polish Government considered that the contract of 1919 was fictitious, why did it not resort to the legal remedy afforded by the Civil law in force?"

Then, dealing with the question whether the contract of 1919 was fictitious, or concluded *in fraudem creditorum,* the Applicant insisted that :

"The most favourable result for the Polish Government would therefore be that it could bring an action against the Oberschlesische for the transfer to it of the ownership in the immovable property obtained by the Oberschlesische under a fraudulent contract."

It is in accordance with these contentions of the Applicant that the Court, in Judgment No. 7, has said :

"In the present case, in fact, the Court holds that the Oberschlesische's right of ownership of the Chorzow factory must be regarded as established, its name having been duly entered as owner in the land register. If Poland wishes, to dispute the validity of this entry, it can, in any case, only be annulled in pursuance of a decision given by the competent tribunal ; this follows from the principle of respect for vested rights..."

Judgment No. 7. in so far as it relates to the Chorzow case, says, as had already been said in Judgment No. 6, that the Chorzow undertaking was an entity of which the factory, which belonged at first to the Reich and afterwards to the Oberschlesische, was only one constituent part ;, consequently, the undertaking as such did not fall within the scope of Article 256 of the Treaty of Versailles. Judgment No. 7 also says in regard to the Oberschlesische, first, that the sale to the latter by the Reich was permissible from the point of view of international law, and, secondly, as has been said above, that the name of the Oberschlesische had been entered in the land register and that as a result of this, in the absence of a decision to the contrary by the competent municipal court, the presumption was that the right of the Oberschlesische was established. The reason expressed in the words "its name having been duly entered as owner in the land register" suffices to establish that, while the Geneva Convention may have been violated by the failure to observe the rules of municipal law regarding this entry, it is in this failure alone that the violation of the Geneva Convention consists in this respect.

The violation of the Geneva Convention cannot be effaced *ex post facto* by a decision which should have preceded the vacation of the rights of the Oberschlesische on the land register. That is all that is to be deduced from Judgment No. 7 as regards subsequent decisions of competent municipal courts. As is also said in Judgment No. 8, an examination of the right of ownership

> "in order to justify such dispossession after it has taken place, cannot undo the fact that a breach of the Geneva Convention has already taken place, or affect the Court’s jurisdiction."

But, in the present proceedings, there is no question of deciding whether the breach was justified, or whether it has been effaced. These two points are *res judicata :* both Parties agree that Judgment No. 7, in so far as it decides that there

has been a breach of the Geneva Convention, cannot be called in question, and the Respondent has not referred to any possibility of making good this breach.

The question to be decided now is entirely different. It is this : what was the loss actually sustained by the Oberschlesische ? There is nothing in Judgment No. 7 to prevent a subsequent decision by the competent tribunals, as to the existence and extent of property rights at municipal law, nor is there anything to prevent such a decision being taken into account by the Court. There is neither in the operative part nor anywhere else in Judgment No. 7 anything which might come either to appear erroneous or to be invalidated, if the Court, in the present case, were to take into account the decision of the Tribunal of Katowice of November 12th, 1927. Incidentally, that decision was given in accordance with the terms of the German Code of Civil Procedure which is in force in Polish Upper Silesia, and therefore, having been rendered by default, does not contain a statement of the grounds on which it is based. The fact that the passages in question in Judgment No. 7 were not made solely with regard to the case then before the Court, clearly appears also from the interpretative Judgment No. 11 which says in regard to the passage beginning "If Poland wishes. :

> "Though from the use of the present tense it may be concluded that the Court had in view the possibility of the institution by Poland, èven after the judgment, of proceedings with a view to obtaining the annulment of the entry by means of a decision of the competent municipal tribunals, it would be contrary to the whole of the reasoning to construe it as a reservation implying that the binding effect of the judgment given—and more especially of paragraph 2 *(a)* of the operative part thereof ("that the attitude of the Polish Government in regard to the Oberschlesische Stickstoffwerke and Bayerische Stickstoffwerke Companies was not in conformity with Article 6 and the following articles of the Geneva Convention")—were to depend on the result of such proceedings instituted subsequently."

The same conclusion is indicated by the fact that the operative part of Judgment No. 11 definitely affirms that a declaration of the ownership of the Oberschlesische had been made (in Judgment No. 7) with binding effect "in respect of that particular case".

II.

In my opinion, the objections of the Respondent based on the view that the rights of the Reich both in the Chorzow enterprise and in the shares (of the Oberschlesische) have passed to Poland under Article 256 of the Treaty of Versailles, should have been upheld.

I hold that the Reich is owner of the shares of the Oberschlesische.

I cannot accept the view that the question of the ownership of the shares is—though not *res judicata* in virtue of Judgment No. 7—no longer an open question since that judgment. All that is said in Judgment No. 7 on the question of the Treuhand as owner, is to be found in an incidental observation in the following context :

> "Moreover, it was the Bayerische which, in conjunction with another Company, the *Deutsche Petroleum A.-G.,* had founded the Treuhand which owned all the shares of the Oberschlesische ; and the purchase of the factory by the latter may therefore be regarded, in a sense, as the exercise, modified in accordance with circumstances, of the right of purchase possessed under the contract of March 5th, 1915, by the Bayerische which, by itself, had not the necessary funds at its disposal."

On 24 December 1919, were concluded simultaneously :

(1) the memorandum of association of a new limited liability company (hereinafter called the Treuhand) with a share capital of 300,000 marks, increased the same day to 1,000,000 marks ;

(2) the memorandum of association of a new joint stock company (hereafter called the Oberschlesische) with a share capital of 250,000 marks, increased the same day to no,000,000 marks ;

(3) a contract between the Reich, the Oberschlesische and the Treuhand, by which the Reich left over to the Oberschlesische the Chorzow factory ; the contract laid down the principles on which the purchase price (*Uberlassungspreis)* was to be calculated, and added that this price represented, according to the documentary evidence then existing, about 110,000,000 marks, and that on this sum would be reckoned interest at 5 % from December 31st, 1919. The contract continued as follows :

> "§ 3.—The purchase price *(Kautpreis)* and the interest will be liquidated by paying to the Reich the whole of the net profit shown by the balance sheet (of the Oberschlesische).

After adding that larger payments in liquidation of the debt would be permissible at any time, the contract proceeded :

> "§ 4.—The Treuhand will assume in place of the Oberschlesische, as sole debtor, in accordance with the provisions laid down above, all the obligations imposed by their contract upon the Oberschlesische in respect of the Reich.
>
> § 5.—The interest and capital of the purchase price shall be liquidated exclusively by the payment to the Reich of the profits on the shares (of the Oberschlesische)..."

The contract also stipulated that the Oberschlesische should increase its capital to a sum equal to the purchase price of the factory and that as guarantee for the claims of the Reich under this contract, the Treuhand should

> "undertake to obtain for the Reich a lien on all existing shares of the Oberschlesische after this increase, with the effect that the Reich will be authorized itself to exercise all rights derived from the possession of the shares and especially the right to vote at general meetings of shareholders".

The Reich agreed, in its capacity as holder *(Inhaber)* of the shares, to maintain the rights of the Bayerische resulting from previous contracts between the Reich and the Bayerische. The Treuhand might at any time pay the whole or a part of the capital and interest and, if a part of the purchase price were refunded, shares of a nominal value corresponding to the payment would be released from the lien, whereas the reduction of the capital sum by the payment of the profits of the Oberschlesische would liberate no shares from the lien. But—

the contract proceeded—the Stickstoffwerke (a designation used in the contract to denote the Oberschlesische)
"can only claim the handing over of the shares if and in so far as they may sell shares to a third party with the consent of the Reich. Until such time the shares will remain in possession of the Reich, which will continue to exercise all rights derived from possession of the shares, including the right to vote at general meetings of shareholders."

The contract lays down that any alienation (sale, transfer, pledging, pooling, leasing, or grant of a right to receive dividends, in short, any kind of disposal) of the shares or of a part thereof will only be permitted, even after the expiration of the lien, with the consent of the Reich, and that, as a guarantee of compliance with this obligation, the Reich will retain possession of the shares even after the expiration of the lien.

Finally, there were provisions concerning, the sale of the shares by the Reich, in which case the Treuhand might declare its readiness to acquire *(erwerben)* the shares at the price which the Reich was prepared to accept, and if the Treuhand made no such declaration, it was to receive 10 % of the surplus remaining after deduction of the capital sum and of the arrears of interest of the price of the factory ; if, on the other hand, the Treuhand wished to dispose of the shares or a part thereof, which it could never do without the consent of the Reich, the Reich was to obtain out of the purchase price the total sum due to it and the arrears of interest plus 85 % of the surplus, the remainder of the surplus going to the Treuhand.

The shares of the Oberschlesische were shares to bearer *(Inhaberaktien) ;* the Treuhand was never mentioned in the contract as owner of the shares ; it could only obtain them, even after having paid the whole of the debt with all interest, by acquiring *(erwerben)* them if the Reich were willing to sell them and if it (the Treuhand) availed itself of the right of preemption ; it could decide nothing as to the sale of the shares without the Reich's consent ; if on the other hand the Reich wished to dispose of them, the Treuhand had only a right of preemption ; it could not exercise the rights of a shareholder, until it had "acquired" the shares under the conditions indicated or by permission (by sufferance) of the

Reich. On the other hand, the Reich was always, in all circumstances, to remain holder of the shares *(Inhaber* of the *Inhaberaktien)* until the moment when it decided to alienate them.

A limited liability company which had just been formed could hardly guarantee to the Reich a debt amounting to 110 times its capital. At all events, the Treuhand's only responsibility towards the Reich was to obtain for it the shares of the Oberschlesische, a thing which it was able in principle to do there and then at no expense. Over and above the right of preemption which I have mentioned, the Treuhand had only a hypothetical right to a commission. Indeed, it is in the Case of the applicant Government in the proceedings concluded by Judgment No. 7 that the difference of 5 % has been described as a "commission" (Publications of the Court, Series C., No. 11—1, page 356). It is obvious that an owner does not receive commission on the sale of his own property.

Even if it be sought to deny that the Reich was owner of the shares of the Oberschlesische, it is impossible to deny that it had a complete and perpetual right of antichresis in virtue of which it was the owner in so far as all third parties were concerned. The only restriction upon it, namely the obligation to maintain the management in certain hands for a limited time, cannot be looked upon as a real obligation, but as a purely personal obligation, which cannot affect the position of the Reich as the actual shareholder.

The question of the alleged control of the Reich over the Oberschlesische has been left open by Judgment No. 7.

All that is to be found on the subject in Judgment No. 7 is confined to the two following paragraphs :

> "In a similar connection, the further question might be examined whether the Oberschlesische, having regard to the rights conferred by the contract of December 24th, 1919, on the Reich in respect of that Company, should be regarded as

controlled by the Reich and, should this be the case, what consequences would ensue as regards the application of the Geneva Convention.

It is, however, not necessary for the Court to go into this question. The Respondent, who adopts the standpoint that no measure of liquidation has been taken by the Polish Government in respect of the Chorzow factory, has not raised it, even as a subsidiary point, and it would seem that he does not dispute—apart from the argument regarding the fictitious character of. the agreements of December 24th, 1919—the fact that the Oberschlesische is a company controlled by German nationals."

It appears from these paragraphs that the Court had not considered the question of control in Judgment No. 7. It also appears that it "seemed" that Poland did not dispute the contention that the Oberschlesische was controlled by German nationals and not by the Reich. Even if the Court had dealt with this question, it would only have dealt with it as with an incidental and preliminary point ; consequently, even if the Court had decided the point, its decision would not have the force of *res judicata; a fortiori,* it is impossible to argue that because the Respondent did not raise this incidental and preliminary point, it was thereby debarred from ever raising it.

Even admitting for the sake of argument that the Reich was not the owner of. the Oberschlesische's shares, it would still be true that that Company was exclusively controlled by the Reich. It would be difficult to conceive a clearer case of control by the Reich than that of a company of which all the shares, and bearer shares at that, remained in the hands of the Reich which had all the rights of a shareholder in perpetuity, subject only to the possibility of sale if it saw fit, in which case it would receive practically the whole sale price, these rights of the Reich being limited only by a. contractual obligation to maintain in certain hands, and for a certain time, the management of the works owned by the Company. '

The rights of the Reich fall within the scope of Article 256 of the Treaty of Versailles of which paragraph 1 is as follows:

> "Powers to which German territory is ceded shall acquire all property and possessions situated therein belonging to the German Empire or to the German States, and the value of such acquisition shall be fixed by the Reparation Commission, and paid by the State acquiring the territory to the Reparation Commission for the credit of the German Government on account of the sums due for reparation."

The interpretation of this article as found in Judgment No. 7 has not the force of *res judicata.*

In declaring that it had jurisdiction to deal with the case decided by Judgment No. 7, the Court in Judgment No. 6 said :

> "It is true that the application of the Geneva Convention is hardly possible without giving an interpretation of Article 256 of the Treaty of Versailles and the other international stipulations cited by Poland. But these matters then constitute merely questions preliminary or incidental to the application of the Geneva Convention."

This point of view was in accordance with that of the Applicant, on whose behalf the following observation was made during the hearing in regard to the question of jurisdiction :

> "And if it [Article 256] is to be taken into consideration solely on this ground (erroneous citation thereof by the Polish Government), it is only as a preliminary question to be decided incidentally."

If the Reich either was the sole owner of the shares of the Oberschlesische, or controlled the Oberschlesische, the whole of the property of that Company in Polish Upper Silesia falls under the provisions of Article 256. Such is actually the case.

But, even if this were not so, the rights of the Reich should in any case be regarded as situated in Polish Upper Silesia.

It appears to me impossible to hold that these rights consisted entirely or for the most part, in the so-called claim against the Treuhand, a claim which was only guaranteed by a lien on the shares. The Treuhand was a limited liability

company with a capital amounting to less than 1 % of the sale price of the factory ; the balance sheet of the Treuhand drawn in 1924, mentioned a capital of 1,000 RM. so that this Company cannot reasonably be held to be indebted for value which the applicant Government has estimated in the present proceedings at a figure in any case exceeding 50,000,000 RM. Furthermore, it does not appear from the contract of 1919 that the Treuhand had any obligation towards the Reich ; by handing over to it all the shares of the Oberschlesische, it freed itself from any possible obligation. In the proceedings leading up to Judgment No. 7, the Applicant stated that the Treuhand was "merely a legal device for the exercise of shareholders' rights ; it was not essential. It was created in order to provide a special mechanism for the sale of the shares and also so as not to burden the balance sheets of the other companies with the debt arising from the contract of purchase and sale" (Publications of the Court, Series C., No. 11—I, page 241). It must be remembered that the Treuhand was a limited liability company whose obligations would not therefore involve obligations on the part of the companies which formed it.

The fact that the Treuhand does not regard itself as the Reich's debtor also appears from the fact that in its gold-balance sheet drawn up for the first time in 1924, there appear neither the shares of the Oberschlesische, the value of which was considered fictitious, nor the debt to the Treasury. This is explained in a letter from the Treuhand to the Deutsche Bank, submitted to the Court by the Applicant, in the following terms :

> "It follows naturally that the balance sheet also cannot include amongst the liabilities, a debt to the Treasury of the Reich. The value of the shares in the balance sheet must be set off against the debt. But since it is impossible to assess the value of the shares in the balance sheet, owing to the seizure of the factory, our obligation towards the Reich Treasury also disappears *(fâllt... fort')."*

Even admitting for the sake of argument that the Reich had a genuine claim upon the Treuhand, it cannot be denied

that that claim would be localized in Polish Upper Silesia, since the Chorzow factory constituted the only property of the Oberschlesische and since all the net profits of the Oberschlesische and consequently all the net profits of the undertaking, except perhaps certain very small deductions, were to be paid to the Reich, which moreover, in virtue of its position as sole shareholder, had the whole of the property of the Oberschlesische at its disposal. It appears to me impossible to deny that the terms of Article 256 of the Treaty of Versailles would apply to a factory situated in ceded territory, a factory of which all or nearly all the net profits went to the Reich and over which the Reich had in fact all possible-rights of ownership, except that, for a certain time, it was obliged by a contract not to change the management.
I find it impossible to hold that the rights of the Reich are not situated in Upper Silesia, on the ground that these rights are rights as against the Treuhand, the registered office of which is in Germany. For it would follow that, contrary to what the Court has laid down in Judgment No. 7, Poland has not expropriated the contractual rights of the Bayerische, since these rights were derived from contracts between the Bayerische and the Reich, and later, between the Bayerische and the Oberschlesische, that is to say, between Parties which, according to the judgment just given, were all domiciled in Germany. Yet the Court did decide in Judgment No. 7 that these contractual rights of the Bayerische related to the factory and were so to speak concentrated in that factory. From this the Court drew the conclusion that they should not have been expropriated, having regard to the last sentence of Article 6 of the Geneva Convention, which lays down that, with certain exceptions, "property, rights and interests of German nationals or of companies controlled by German nationals, cannot be liquidated in Polish Upper Silesia".

Article 256 must be construed in good faith and consequently,in accordance with the principle that the real state of things must be ascertained and that no decisive value must be attached to mere legal forms. Again, the interpretation of this article

must take into account the economic conditions of which legal forms are merely an outward expression. Legal forms such as a joint stock company must serve the objects of economic life, but they must not obscure economic facts. There is no doubt that a joint stock company is very closely bound up with its property ; that is why, for instance, according to the German Commercial Code, which is in force both in Germany and in Polish Upper Silesia, a total alienation of the property of a company involves in principle the liquidation of that company. It must be remembered that the rights of the Oberschlesische in the Chorzow undertaking constituted its sole property. During and since the world war, it has been found more and more necessary to define the nationality of joint stock companies in accordance with economic facts (for instance the question of control) instead of by means of formal criteria such as the registered office of the place of registration. Quite recently the House of Lords refused to admit that a company which was registered in London and had a secretary there, but of which the whole commercial activity was carried on in Egypt, was. "resident" in England. Lord Sumner, who delivered the leading judgment, declared the argument to be "too transcendental for acceptance" (Egyptian Delta Land and Investment Co., Ltd., v. Todd [1]). It seems to me impossible to deny that for the purposes of Article 256 the commercial domicile of the Oberschlesische was not at Chorzow, assuming that one regards that Company as the owner of the factory.

I cannot agree that it is the Bayerische which had control over the Oberschlesische. Control is the power of final decision belonging to the shareholder, but not the power to appoint under an obligation accepted by the shareholder, the board of management or some of its members. Again, since the Oberschlesische has, at the utmost, succeeded to the rights of the Reich and since the Bayerische has only retained the powers held by it under the contract with the Reich, it cannot be argued that the Bayerische had control over the

[1] *The Times,* July 24th, 1928.

owner of the factory ; for the owner, before the Oberschlesische, had been the Reich itself.

III.

Assuming that the Oberschlesische was legally owner of the factory at Chorzow and that it was neither identical with the Reich as treasury nor controlled by it, it must also be held that the Oberschlesische has suffered no material damage.
It is not disputed that if it had suffered such damage, this should have been taken into account in fixing the amount of the indemnity to be paid to Germany.

But the indemnity can only include the amount corresponding to the damage actually sustained by the persons whose losses should, according to the claim of the German Government, serve as a basis for the assessment of compensation in the present case. For this reason, damage sustained by any third person, and amongst others by the Reich Treasury, must be left out of account ; for the German Government has not asked the Court to take into account damage suffered by itself (its Treasury). The Court has only to estimate the loss suffered by the Oberschlesische and Bayerische, in accordance with the principle *non ultra petita.*

The loss caused to any given person can only be *quantum ejus interest.* If two persons have different rights over a piece of land, one being the owner, and the other being owner of land in favour of which a servitude over the land has been established, the reparation due to each of these persons will be represented by the value of his right, excluding the value of the rights of the other person. It is true that the amount of debts and other obligations, for which the injured person is responsible, must not be excluded ; but by this is meant only personal debts and other personal obligations. On the other hand, the reparation of the loss caused, for instance, by the destruction of a house—whether the person concerned be owner, tenant, or owner of a property in favour of which **a** servitude exists—, would only cover the value of the rights of the particular person, excluding the rights of every other person.

Now, if the interests of the Reich be excluded, no material injury could have been suffered by the Oberschlesische ; for the Reich had, to the exclusion of anyone else, all rights of ownership in the factory ; thus, in the exercise of its rights as shareholder, it could alienate the factory ; it could also draw from it all the net profits. If the shareholder were not identical with the Reich, he had never obtained and could never obtain from the factory any profit except that which the Reich, in the exercise of its rights at the general meeting of shareholders, chose to grant him.

IV.

Any assessment of the damage resulting from the taking over of the enterprise must be based on the extent of the damage suffered at the time of dispossession. If there were delay in payment, the damage may be increased by the amount of the loss resulting from such delay ; this loss may either be expressed in terms of interim interest, or may be estimated by taking into account, according to the circumstances, the balance of the profit and loss which, in all probability, would have accrued between the date of dispossession and the date of judgment. It is impossible to take as the date of assessment a date subsequent to dispossession, unless it were the fault of the Respondent that the claim could not be brought earlier before the international tribunal.
Moreover the German Government itself has asked for a sum consisting of the capital amount and of interest calculated as from 1922.

It should be added that in the present case no subjective consideration enters into account, such as a wrongful act entailing damages which should be calculated on some special basis ; indeed the Court cannot presume that there has been anything but an error on the part of Poland in construing and applying the Geneva Convention.

V.

It is not permissible to infer from the articles of the Oberschlesische, the existence of a vested right on its part to

work the so-called chemical factory. The articles of a joint stock company are, from a legal point of view, only a contract of private law, which, according to the commercial code, must be entered in the commercial register. Such an entry merely establishes that the rules of the commercial code have not; been infringed in the formation of the Company. It does not involve any right to carry on the activities contemplated in the contract.